

An Analysis of Nigeria's Land Acquisition and Compensation Policy

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Abstract

The administration of land, particularly with regards to acquisition and compensation has been redefined by the Land Use Act, which by its establishment in 1978 created a dialectical relationship between the state and communities. The relationship empowered the state to own and control land within its territory for public interest. The main thrust of this paper is to examine the policies that underpin land administration particularly as regards acquisition and compensation in Nigeria and, to know whether it has been able to bring about the achievement of its noble objective. Land use and management has proved to be a source of worry and conflict in the world especially the developing world. In contemporary Nigeria, most people no longer view land as a place where people live, but a new way for business deals and new profit opportunities. This paper found out that, there are gaps in policies guiding the process of land acquisition and payment of compensation in Nigeria, and there is a possibility of abuse by those who control the affairs of the state to their advantage. This paper also found out that, section 47(2) of the Act seems dictatorial; for compensation litigation, the court is not to determine the value of properties of a beneficiary or would be beneficiary. This paper concludes that, the increasing vulnerability of customary land rights due to weak governance structures and shortcomings in the implementation of land policies has a direct

consequence. Therefore, the practice in Nigeria is not equitable and as such not in tune with global best and standard practices. The paper recommended that, provisions of the Land Use Act that are obnoxious and undemocratic be reviewed to allow for better practices as it is done in other countries.

Keywords: Land Policies, Land Acquisition, Compensation, Development, Public Interest

Introduction

Land has always played a crucial role in life of human community and is basics to human existence and also a limited resource. It plays an important role as a financial asset. Investment in infrastructure development such as airport, road, railways, hydropower, irrigation and town development for public purpose is very important for the development of any country and any infrastructure development needs a huge quantity of land. The first step towards the public infrastructure development is the acquisition of land. Land acquisition is a process of acquiring private or public land and providing for the public benefits. The compulsory acquisition or expropriation is the method for acquiring the land. Acquisition of land with low market value is common for the land acquisition in developing countries. The issues such as land valuation, compensation, and violation of rights, loss of ownership and livelihood of affected people come together during land acquisition.

The world over, laws exist that govern land and its resources and Nigeria is not an exception. In 1978, the Land Use Act was established which created a dialectical relationship between the State and communities. The relationship empowered the State to hold land in trust for public interest. However, the exercise of this power by the State is not without controversy which seems to border on valuation methods which results into insufficient compensation. These laws that specify how land is to be acquired

and used are determined by the state's system of land administration. It is the administrative system that determines the portion of land, condition and time limits to the use of land resources. In contemporary Nigeria, the demands for land and its usage keep increasing everyday; the space to build and live, the space to construct and the space to farm is becoming unavailable in most places. The government of the day wants to acquire the land for development purposes; the community's quest to keep its land is connected to construction of houses, farming, and burial of deceased members, establishment of market squares and other communal uses. Land use and the interest in land is becoming complex. In all these, the concern remains an effective land administration system. The core objective of the paper are:

- a. To examine the policies that underpin land acquisition and payment of compensation in Nigeria
- b. To find out the implication of these on the nation's development.

Conceptualization

To Chandan (2008), land acquisition is the tool government uses to acquire private property in order to provide public facilities; a tool to assist in the management of a country's natural resources. This tool may be used to help mitigate and prepare against damage in the satisfaction of human needs and wants through land development. According to Otubu (2012, p. 7), "it is a process by which local and national governments obtain land and premise for development purposes when they consider this to be in the best interest of the community". In all cases, the owners or occupiers are denied their property rights for overriding public interest or public benefit (Kakulu, 2008).

On the other hand, compensation simply means recompense for loss, deprivation or injury suffered (Ibagere, 2010). Umezuruike, (1998) as cited in Deeyah and Akujuru (2017) defined compensation

as 'placing in the hands' of the owner expropriated the full money equivalent of the thing of which he has been deprived. Compensations for compulsory acquisition must reflect the price which the claimant would have expected to have obtained for the property on a sale in the open market together with other consequential losses (Rowan-Robinson, 1990). The whole essence of compensation is to put the person in a state the person was before the harmful action of hurt took place. The property owner, therefore, shall be compensated for the losses he/she suffers due to expropriation. In other words, the affected property owner/ shall be in the same economic position as if the compulsory acquisition had never happened. "Compensation is to repay the affected people for the losses they suffered, and should be based on principles of equity and equivalence" (Belachew, 2013).

Policies on Land Acquisition and Compensation in Nigeria

In an attempt to analyse the provisions of the policy that underpin land acquisition, one must bear in mind the objectives the Act was set up to achieve. For it is only when these are correctly identified that a rational assessment of the provisions of the Act that deals with acquisition and compensation can be meaningfully undertaken. In this section, this paper analysis the provisions of the Land Use Act and the 1999 Constitution of the Federal Republic of Nigeria as amended. This is to expose the issues as contained in these laws, the contradictions if any, and the implications on the overall development on Nigerians and Nigeria as a nation.

The Land Use Act

The Nigerian Land Use Act promulgated on 29th March 1978, was introduced as a result of the existing scenario in land use management in the country as evident in land speculation, huge land compensation bill, land hoarding and vagaries in land tenure and management approaches in different parts of the country. The

introduction of the Land Use Act radically re-positioned Nigerian land rights, the main thing being that individuals presumably now only had right of possession but ownership was in the hands of the state. There are four main objectives derivable from the Act and these are:

- i. To effect structural change in the system of land tenure;
- ii. To achieve fast economic and social transformation;
- iii. To negate economic inequality caused by the appropriation of rising land values by land speculators; and
- iv. To make land available, easily and cheaply, to both the government and private individual developers.

In reference to the fourth objective, the Act provided for a unique land acquisition and compensation process hitherto unknown to native land tenure system. Though, the provisions of the Act on compulsory acquisition process are found in sections 28 and 29, it is important to first of all know who owns land in Nigeria according to our extant legislation. In Nigeria, Section 1 of the Land Use Act vests all land in each state in the state's governor to be held in trust and administered for the use and common benefits of all Nigerians in accordance with the provisions of the Act. This section seemingly looks same with that of Chief/head of family authority under the indigenous land tenure system; though different in relation to the power of management and control of the land. Thus, what operates under the Act is the revocation of the right of occupancy either expressly or deemed granted by the State. This brings us to section 28 of the Land Use Act which says thus;

1. It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.
2. Overriding public interest in the case of a statutory right of occupancy means;
 - a. the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the

- provisions of this Act or of any regulations made there under;
- b. the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation;
 - c. the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.
3. Overriding public interest in the case of a customary right of occupancy means;
- a. the requirement of the land by the Government of the State or by a Local Government in the State in either case for public purpose within the State, or the requirement of the land by the government of the Federation for public purposes of the Federation;
 - b. the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;
 - c. the requirement of the land for the extraction of building materials;
 - d. the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.
4. The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the (Head of the Federal Military Government) if such notice declares such land to be required by the Government for public purposes.

Another important section of this Act is Section 29. It provides for compensation for land revoked or acquired for overriding public interest, but this compensation is limited to the value of their unexhausted improvements at the date of revocation, but the

Minerals Act applies if revocation is for mining or oil pipelines purposes. And the subsections provide thus;

1. If a right of occupancy is revoked for the cause set out in paragraph;
 - b. of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their un-exhausted improvements.
2. If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 or in paragraph (b) of subsection (3) of the same section the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Mineral Act or the Mineral Oils Act or any legislation replacing the same.
3. If the holder or the occupier entitled to compensation under this section is a community the Governor may direct that any compensation payable to it shall be paid;
 - a. to the community;
 - b. to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable customary law;
 - c. into some fund specified by the Governor for the purpose of being utilised or applied for the benefit of the community.
4. Compensation under subsection (1) of this section shall be, as respects;
 - a. the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;
 - b. building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation,

together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

- c. crops on land apart from any building, installation or improvement thereon, for an amount equal to the value a prescribed and determined by the appropriate officer.
5. Where the land in respect of which a right of occupancy has been revoked forms part of a larger area the compensation payable shall be computed as in subsection (4) (a) above less a proportionate amount calculated in relation to that part of the area not affected by the revocation but of which the portion revoked forms a part and any interest payable shall be assessed and computed in like manner.
6. Where there is any building, installation or improvement or crops on the land to which subsection (5) applies, then compensation shall be computed as specified hereunder, that is a respects (a) such land, on the basis specified in that subsection; (b) any building, installation or improvement or crops thereon (or any combination or two or all of those things) on the basis specified in that subsection and subsection (4) above, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in like manner.

The 1999 Constitution of Nigeria

The power of the State over land in Nigeria is concretized in the Nigerian Constitution which affirms the power of exercise of jurisdiction over all land in Nigeria by demarcating boundaries of all land areas, such as states and local governments in Chapter 1, Part II, Section 8. In addition, the Constitution incorporates the previously enacted Land Use Act (LUA) of 1978, which contains provisions on the ownership and administration of all lands in

Nigeria. Section 44 (1) of the Constitution of the Federal Republic of Nigeria also addressed issues of land acquisition and payment of compensation. In addition, section 44(3) of the Constitution specifies that all minerals in, on all land in Nigeria belong to the State. The primary right of acquisition of land therefore rests within the purview of the state government although the federal government has the power to override the state power over land when the land is mineral rich. In addition, the Federal Government access to land under the Act is at the behest of the Governor under Section 28(2) (b). The Constitutional provisions are therefore to be read concurrently with the LUA Section 28 (Odiase-Alegimenlen, 2017).

Section 44 (1) of the Constitution of the Federal Republic of Nigeria also addressed issues of land acquisition and payment of compensation. It stated thus:

No movement property or any interest in an immovable shall be taken possession of compulsory and no right over interest or property shall be acquired compulsorily in any part of Nigeria without payment of compensation and determination of his or her interest to a court of law or interest.

Interrogating the Controversies in Land Policies in Nigeria and its Implications

In as much as the issues surrounding land acquisition and payment of compensation are concretized in the constitution, it does appear that there are some contradictions in Nigeria's land policies which has also impacted on the development of the people. Section 1 of the land use act vests all land in each state in the state's governor to be held in trust and administered for the use and common benefit of all Nigerians. In addition, section 28 (6) of the Act Cap L5 laws of the Federation of Nigeria 2004, authorized the appropriate officers to act in that capacity. In this case, the Director of Lands, is empowered to prescribe payment of compensation in accordance with the provision of section 29 (1) of the Act. This section of the Act posits that, the holder and the occupier of land shall be entitled

to compensation for the value at the date of revocation of their unexhausted improvement.

The position above has also been reinforced by section 44(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides as follows:

No moveable property or interest in an immoveable property shall be taken possession of compulsorily, and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for purposes prescribed by a law that among other things:

- i. requires the prompt payment of compensation therefore;
- ii. and gives to any person claiming such compensation a right of access for the determination of his interest in the property and amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

However, there is a contradiction between the Constitution of the Federal Republic of Nigeria and the Land Use Act which has some negative effects on the development of the people affected. These contradictions are found in section 44(1), 315(5) of the Constitution and section 47(2) of the Land Use Act. While section 44(1) provides that,

to compulsorily acquire any moveable or interest in an immoveable property, there shall be prompt payment of compensation and any person claiming such compensation have a right of access for the determination of his interest in the property an amount of compensation to a court of law.

Section 47(2) of the Land Use Act posits that, “no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.” Section 315(5) of the Constitution of the federal republic of Nigeria has further re-enforced this contradiction, wherein it provided that, “nothing in the Constitution shall invalidate the provisions of the Land Use Act.” It does appear the compensation principles are far removed from

what is considered standard and global best practices as adopted in other countries. According to Steiinholt (2010) in Norway, the Act that governs land acquisition recognizes the expropriation court which main task is to calculate compensation in accordance with the Expropriation Compensation Law. The procedures follow normal court standards with lawyers on both sides. The court's decision can be appealed to higher courts. When all appeal possibilities are ended the expropriator can acquire the property after paying the compensation sum and all procedural costs included. Similarly, Gyasi (2012), in Ghana, Article 20 (1) of the 1992 Constitution and section 125 of the State Land Act of 1962 seems to agree on the right of owners of land to approach the courts in the event of disagreement over amount to be paid as compensation. While Article 20(1) provides that:

No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the state unless the following conditions are satisfied: a. The taking of possession of acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit; and b. The necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property;

Article 20(2) of the Constitution states that compulsory acquisition of property by the state shall only be made under a law which makes provision for:

- i. The prompt payment of fair and adequate compensation;
- ii. A right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

Contributing to the debate, Nuhu (2010) observed that, in Kenya, Section 22 of the Kenyan Land Acquisition Act provides for the establishment of a Land Acquisition Compensation Tribunal (LACT) which consists of five members including an advocate as Chairman and two valuers as members to determine appeals against compensation awards. A person not satisfied with the decision of the LACT can appeal to the court. The entire provisions of the policies on acquisition from other nations of the world as revealed above, is contrary to the provision of the LUA as stated earlier.

These contradictions arising from the policies land acquisition has its implications on first the noble objectives of the Act and the psych of people affected and by extension, national development. Section 30 for instance states ‘Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.’ While it is not wrong to draw the attention of the Allocation Committee to the anomaly, it is obviously undemocratic because the committee members are appointed by the state governors. With that provision, Nigerians are forced into arbitration without the option of going to court. Again this section leaves land owners at the mercy of the Governor. It is quite understandable that court processes might stall governmental development and will somewhat make a mess of the aim of enacting the law, but it is not enough reason for an aggrieved person to be forced into arbitration. The democratic system in Nigeria is put to question by this section of the Act.

These policies contradiction has also affected the objective on promotion of security of tenure. This is before; the LUA families hold lands from generation to generation, no limitation on tenure. The land use Act brought about 99 years maximum ownership. One is yet to understand what happens to the development in the

land after 99 years. In fact instead of encouraging development of land, LUA deter it. In practice, land moves from one person to the other, if one buys land when the tenure is remaining ten years; the landowner may not develop for fear of losing investment. On the other hand, the LUA has impacted on the local communities by removing perpetual ownership limiting occupation to 99 years. Individual can now sell land subject to the Governors consent with LUA, but removed radical title in land from individual Nigerians, families, and communities and also removed the control and management of lands from family and community heads or traditional rulers (Okonkwo, 2013).

Olayiwola and Adeleye (2006, p.3) summarises this controversies or deficiency as it does as thus:

In the course of these years, it has become clear that due to its implementation not its structure or intendment, the objectives for which the land use act was promulgated have largely remained unfulfilled; indeed, they have been distorted, abused and seriously undermined. The lofty hope in the second stanza of the preamble that the rights of all Nigerians to use and enjoy land in Nigeria and the natural fruits thereof in sufficient quantity to enable them provide for the sustenance of themselves and their families be assured, protected and preserved or in section 1 “that all land be held in trust and administered for the use and common benefit of all Nigerians” has been nothing but a forlorn hope, a pipe dream.

As it is currently, what can be seen of most provisions of the Land Use Act is mixed and confused system. Just as Tagliarino (2017) opined that, provisions of the Land Use Act does not protect the rights of the people, therefore, nation states should always make laws that would protect the rights of the people and without ambiguities.

Conclusion

This paper concludes that, what is seen in practice since the enactment of the Land Use Act are: stringent procedure for an

average Nigerian which tends to favour the government or few rich individuals at the detriment of vast poor peasant, delays the execution of projects, delays in payment of compensation, insecure inheritance land and irregularities. Therefore, because of these gaps found in the Act, compensation practices in Nigeria as can be seen in the provisions of the Land Use Act and the Constitution of the Federal Republic of Nigeria is not in tune with the global best and standard practices on land administration, particularly as it concerns policies on acquisition and payment of compensation.

This paper recommends thus, there should be a liberalization of the Land Use Act. This is because, section 47(2) of the Act seems dictatorial; for compensation litigation, the court is not to determine the value of properties of a beneficiary or would be beneficiary. In view of this, this study suggests that, there should be Land Arbitration Panel where a neutral Estate Surveyors and Valuers will be a member to inspect and evaluate the process of value claimed. Such legal avenues of redress will enable affected population to hold governments or acquiring bodies accountable for poor compensation decisions. In addition, assessment of crops, economic trees and buildings should be based on the market price of such properties and not the common practice of predetermined rates.

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