
Examining the Eminent Domain Law in Rehabilitation and Slum Renewal in Nigeria: A Case Study of Misplaced Priority

Israel, Godspower Chukwudi & Ogunrayewa, Micheal Olabode (Ph.D)

Department of Architecture,
Faculty of Environmental Sciences,
University of Jos.

Email: israelchukz@gmail.com, ayoola3@live.com

Abstract

*Acquisition of land for public use by government originated from the colonial legacy in Nigeria. Public interest and economic development are concurrent and the taking of land for public usage has continued under various indigenous governments. Nigeria's policies on land use and acquisition for development exercised during the military era were perceived as being corruption prone, leading to allegations of abuse of power. The Land Use Act of 1999 is the law regulating compulsory acquisition of land in Nigeria. Public purpose has been defined under S. 51 of the Act, which states that public purpose includes, use by both government and public use by a body corporate or concerning the provision of public service such as education and other social services like railways and provision of telecommunications, electricity or mining. It could also be for land required for planned urban or rural development/settlement. The Supreme Court in *Osho vs Foreign Finance Corp [1991] 4 NWLR PART 184*, was of the opinion that revocation for public purpose "outside" the ones prescribed in the list even though ostensibly for purposes prescribed in the list is against the policy and intention of the Act. On the other hand, the Court of Appeal in *Olatunji vs Military Governor, Oyo State (1995 5 NWLR PART 397* categorically held that "although the section opens with the words "public purpose includes" which imply that the definition of public purpose therein may not be exhaustive, other public purposes not stated under Section 51 have to be inferred from the reference to public purposes stated therein. Such other public purposes must be those similar to those stated in the section". Land acquisition policies have changed from acquisition mainly for government use to usage by both the government and the new private sector organizations operating as successor companies to the previous monopolistic State Owned Enterprises (SOE's), under the economic liberalization reform. The objective of state land acquisition in this new dispensation would necessarily be different. The paper examines the impact of these reforms in terms of legal changes in respect of the land acquisition system and the regulatory framework for both the old and new régimes. Naturally all the implications and nuances of the situation cannot be addressed, but suggestions as to how to solve some of the emerging contradictory issues of conflict between the old and new regimens will be proffered, especially in terms of the regime for compensation when land taking for public use is given over to private sector operators.*

Keywords: *Eminent domain, Rehabilitation, Slums, Urbanization, Urban Renewal.*

1.0 Introduction

1.1 Background of the study

The democratic dispensation guarantees individual rights, which include the right to own property. Article 18(1) states: "Every person has the right to own property either alone or in association with others." Land has economic, social and cultural significance, and is considered a source of pride for individuals, families and clans. In Ghana, lands could be

owned by families, stools, clans and individuals, who sometimes hold it in trust for the living, the dead, and generations yet unborn. In Ghana, land forms the basis of our beliefs and cultural systems, and many people recognize that their family lands were gained through difficult sacrifices made by their forefathers. The larger the tract of lands owned by an individual, family or stool, the higher the status in the community.

In as much as the constitution gives people the chance to own property and protect them, it as well has the right to take land away from any individual or family through the Power of Eminent Domain. Eminent Domain gives power to the president or government to take away any land, with or without the consent of the property owner, in the interest of national development. The 1992 Constitution of Ghana however guarantees the prompt payment of fair and adequate compensation, in cases of compulsory acquisition of property for national developments, such as railway, roads, hospitals, and other social amenities. The need to have a look at the power of the state to take people's property for development, results from experiences of communities in mining areas, which have complained that they are not paid fair and adequate compensation when their lands are taken over for surface mining operations. The Minister for Environment, Science and Technology, Ms. Sherry Ayithey, recently expressed worry over the large tracts of land given to mining companies as concessions, which deprives indigenous people of their lands for farming and other economic activities. The communities sometimes prefer to remain farmers, rather than have one-time payment of compensation, and lose their lands forever.

1.2 What is Eminent Domain?

Eminent Domain is the compulsory purchase, resumption/compulsory acquisition or expropriation of a land or property for public project or use. It is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent Namnso B. U. (2014). The property is taken either for government use or by delegation to third parties who will devote it to public or civic use, or in some cases, economic development. The most common uses of properties taken under Eminent Domain are for public utilities, highways, and railroads. The original intention was for land that would only be used for the common good. Land taken through Eminent Domain is paid for very well by governments. Governments have the right to acquire privately owned land through the exercise of the Power of Eminent Domain. Eminent Domain is the right or power of a unit of government or a designated private individual to take private property for public use, following the payment of a fair amount of money to the owner of the property. The theory behind Eminent Domain is that the local government can exercise such power to promote the general welfare, in areas of public concern, such as health, safety, or morals.

Property owning in Nigeria

The right to own property in Nigeria has been made possible for everyone due to the existence of democracy. Article 18 (1) provides that every person has the right to own property either alone or in the association with others. Our democracy has given people the right to sell, buy and own land for any purpose of their choice, be it for commercial or private purposes. A rightful owner of a land cannot be intimidated, nor have his/her rights infringed upon, since the person is protected by the national constitution. Article 18 (2) states that no person shall be subjected to interference with privacy of his home, property, correspondence or communication, except in accordance with law, and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of crime, or for the protection of the rights

or freedoms of others.

1.3 Power of eminent domain

This power is exercised very often in Nigeria, due to the intention of every reigning government of developing the country. However, one of the commonest instances where Eminent Domain takes place is towns with lands endowed with natural mineral resources. Every now and then, due to the Power of Eminent Domain people in remote areas tend to lose their lands and properties to the government, through the power of the President. A lot of farmlands like cocoa and citrus farms in places such as Abuja, Port Harcourt, Kaduna and Plateau are destroyed through the practice of these mining companies.

The Ghana Constitution Chapter 5 article 20 (6) states: Every mineral in its natural state in, under or upon any land in Ghana, rivers, stream, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the republic of Ghana and shall be vested in the president on behalf of and in trust for the people of Ghana.

In most cases, the government takes these lands with mineral resources, and gives them to mining companies with the intention of generating revenue for the country. Since the lands are owned and considered the livelihood of the people, the company which takes over is expected to compensate the people on behalf of the government, as the constitution makes it clear.

The Constitution of Ghana - Chapter 5 article 20(3) where a compulsory acquisition or possession of land affected by the state in accordance with clause (1) of this article involves displacement of any inhabitants, the state shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values).

1.4 Eminent Domain and mining towns

In Ghana, the Eminent Domain in the 1992 Constitution is expressed in Article 257(6), which states: "Every mineral in its natural state, in, under, or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone, and any area covered by the territorial sea or continental self, is the property of the Republic of Ghana, and shall be vested in the President on behalf of, and, in trust for the people of Ghana." This forms the basis of the power of the President to take lands from people in mining towns such as Ahafo, Obuasi, Tarkwa and Nzema, and give the community lands to mining companies for surface mining operations.

Even though it is expected that people affected by the exercise of the Power of Eminent Domain, would be treated fairly in terms of compensation, it does not work that way. Whilst Article 20(3) of the 1992 Constitution of Ghana states: "Where a compulsory acquisition or possession of land effected by the state in accordance with clause (1) of this article involves displacement of any inhabitants, the state shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values," communities that have been forced to resettle, live with situations where they cannot continue to undertake their farming activities because of the absence of land. This is a clear violation of the provisions in the 1992 Constitution of Ghana.

Interviewing a resident of the Ahafo area, whose name has been withheld, about the compensation programmes of a mining company operating in the area, he noted that the company only paid a minimal amount as rent for the resettled farmers, and even in that case, the company paid rent that would cover two years farming activities of the resettled people. If a farmer takes more than two acres of land he is resettled on, he pays for it himself, and when he rents it for more than two years, the mining company just pays for the two years, while the farmer pays for the remaining years, or vacates the land when unable to continue with the

payment. Such an arrangement deprives the farmers of the opportunity to cultivate long term cash crops like cocoa.

Even though mining companies claim to compensate affected people handsomely, a research titled “Advocacy for the establishment of standards of compensation in the Mining Industry,” carried out by the Ghana Chamber of Mines and the Business Sector Advocacy Challenge, confirmed that about 79% of people in communities affected by mining were dissatisfied with their compensation packages. This shows that the interest of the people, in terms of compensation and a good livelihood, is taken for granted.

2.0 Literature Review

Theoretical and conceptual framework

Compulsory purchase compensation in Nigeria dates back to the colonial era when Lands were compulsorily purchased by the Colonial Government for some public purposes. This purpose includes development of Schools, Hospitals, Roads, and other facilities. Legislations were enacted to enable the colonial Government achieve successful compulsory purchase of Land. Odudu, (1978) observed that the Land Use Act is silent on the question of “Disturbance”, which may be defined as molestation or interference with a person’s right to property. Claims for Disturbance in relation to losses, which are the direct result of the compulsory taking or revocation of a claimant’s right of occupancy, which are not remote or purely speculative in nature. He further stressed that loss of profits in connection with a business carried on, on the premises and which will be directly injured by the dispossession of the owner of the business premises should be a permissible subject of claim. Again, where a claimant is displaced from his dwelling house, he should be entitled to claim not only for the “unexhausted improvements” but also for cost of removal, fixtures, incidental expenses etc. Olawoye (1982) reports that: “One of the earliest legislations, introduced by the colonial administration was that dealing with acquisition of Land for public purposes the first of such legislation was the Public Land ordinance of 1876 which was re-enacted with modification as Public Lands Acquisition Act of 1917”.

However, the Public Lands Acquisition Act of 1917 was fashioned in line with the already existing British laws followed by the State Lands (compensation) Decree of 1968, Public Lands Acquisition (miscellaneous provision) Decree of 1976 and the Land Use Decree (now Act) of 1978. Thus while the Public Lands Acquisition Act of 1917 provided for assessment of Compensation based on open market value (Adisa, 2000) other enactments and laws fell short of this provision. The Land Use Act which is the current land policy instrument of the Federal Republic of Nigeria negates the basis of open market valuation for Compensation for Compulsory purchase and provides for a basis of valuation which many scholars including Omuojine (1999) and Adisa (2000) have argued are inadequate.

Valuation for compulsory purchase and payment of compensation in Nigeria is a statutory valuation. In other words, the enabling statute dictates the basis and method of valuation. Thus, while compensation for compulsory purchase of land under common law is based on open market value that of the Land Use Act is calculated on the unexhausted improvement on land based on depreciated

2.1 Early Evolution of Eminent Domain Cases

The federal government’s power of eminent domain has long been used in the United States to acquire property for public use. Eminent domain “appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty” *Boom Co. v. Patterson*, 98 U.S. 403, 406 (1879). However, the Fifth Amendment to the U.S. Constitution stipulates: “nor shall private property be taken for public use, without just

compensation.” Thus, whenever the United States acquires a property through eminent domain, it has a constitutional responsibility to justly compensate the property owner for the fair market value of the property. See *Bauman v. Ross*, 167 U.S. 548 (1897); *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 9-10 (1984). The U.S. Supreme Court first examined federal eminent domain power in 1876 in *Kohl v. United States*. This case presented a landowner’s challenge to the power of the United States to condemn land in Cincinnati, Ohio for use as a custom house and post office building. Justice William Strong called the authority of the federal government to appropriate property for public uses “essential to its independent existence and perpetuity” *Kohl v. United States*, 91 U.S. 367, 371 (1875). The Supreme Court again acknowledged the existence of condemnation authority twenty years later in *United States v. Gettysburg Electric Railroad Company*. Congress wanted to acquire land to preserve the site of the Gettysburg Battlefield in Pennsylvania. The railroad company that owned some of the property in question contested this action. Ultimately, the Court opined that the federal government has the power to condemn property “whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the constitution” *United States v. Gettysburg Electric Ry.*, 160 U.S. 668, 679 (1896).

2.1 Condemnation: From Transportation to Parks

Eminent domain has been utilized traditionally to facilitate transportation, supply water, construct public buildings, and aid in defense readiness. Early federal cases condemned property for construction of public buildings (e.g., *Kohl v. United States*) and aqueducts to provide cities with drinking water (e.g., *United States v. Great Falls Manufacturing Company*, 112 U.S. 645 (1884), supplying water to Washington, D.C.), for maintenance of navigable waters (e.g., *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913), acquiring land north of St. Mary’s Falls canal in Michigan), and for the production of war materials (e.g. *Sharp v. United States*, 191 U.S. 341 (1903)). The Land Acquisition Section and its earlier iterations represented the United States in these cases, thereby playing a central role in early United States infrastructure projects.

Condemnation cases like that against the Gettysburg Railroad Company exemplify another use for eminent domain: establishing parks and setting aside open space for future generations, preserving places of historic interest and remarkable natural beauty, and protecting environmentally sensitive areas. Some of the earliest federal government acquisitions for parkland were made at the end of the nineteenth century and remain among the most beloved and well-used of American parks. In Washington, D.C., Congress authorized the creation of a park along Rock Creek in 1890 for the enjoyment of the capital city’s residents and visitors. The Department of Justice became involved when a number of landowners from whom property was to be acquired disputed the constitutionality of the condemnation. In *Shoemaker v. United States*, 147 U.S. 282 (1893), the Supreme Court affirmed the actions of Congress. Today, Rock Creek National Park, over a century old and more than twice the size of New York City’s Central Park, remains a unique wilderness in the midst of an urban environment. This is merely one small example of the many federal parks, preserves, historic sites, and monuments to which the work of the Land Acquisition Section has contributed.

2.2 Land Acquisition in the Twentieth Century and Beyond

The work of federal eminent domain attorney’s correlates with the major events and undertakings of the United States throughout the twentieth century. The needs of a growing population for more and updated modes of transportation triggered many additional

acquisitions in the early decades of the century, for constructing railroads or maintaining navigable waters. *Albert Hanson Lumber Company v. United States*, 261 U.S. 581 (1923), for instance, allowed the United States to take and improve a canal in Louisiana. The 1930s brought a flurry of land acquisition cases in support of New Deal policies that aimed to resettle impoverished farmers, build large-scale irrigation projects, and establish new national parks. Condemnation was used to acquire lands for the Shenandoah, Mammoth Cave, and Great Smoky Mountains National Parks, See *Morton Butler Timber Co. v. United States*, 91 F.2d 884 (6th Cir. 1937)). Thousands of smaller land and natural resources projects were undertaken by Congress and facilitated by the Division's land acquisition lawyers during the New Deal era. For example, condemnation in *United States v. Eighty Acres of Land in Williamson County*, 26 F. Supp. 315 (E.D. Ill. 1939), acquired forestland around a stream in Illinois to prevent erosion and silting, while *Barnidge v. United States*, 101 F.2d 295 (8th Cir. 1939), allowed property acquisition for and designation of a historic site in St. Louis associated with the Louisiana Purchase and the Oregon Trail. During World War II, the Assistant Attorney General called the Lands Division "the biggest real estate office of any time or any place." It oversaw the acquisition of more than 20 million acres of land. Property was transformed into airports and naval stations (e.g., *Cameron Development Company v. United States* 145 F.2d 209 (5th Cir. 1944)), war materials manufacturing and storage (e.g., *General Motors Corporation v. United States*, 140 F.2d 873 (7th Cir. 1944)), proving grounds, and a number of other national defense installations. Land Acquisition Section attorneys aided in the establishment of Big Cypress National Preserve in Florida and the enlargement of the Redwood National Forest in California in the 1970s and 1980s. They facilitated infrastructure projects including new federal courthouses throughout the United States and the Washington, D.C. subway system, as well as the expansion of facilities including NASA's Cape Canaveral launch facility (e.g., *Gwathmey v. United States*, 215 F.2d 148 (5th Cir. 1954)). The numbers of land acquisition cases active today on behalf of the federal government are below the World War II volume, but the projects undertaken remain integral to national interests. In the past decade, Section attorneys have been actively involved in conservation work, assisting in the expansion of Everglades National Park in Florida (e.g., *U.S. v. 480.00 Acres of Land*, 557 F.3d 1297 (11th Cir. 2009)) and the creation of Valles Caldera National Preserve in New Mexico. In the aftermath of the September 11, 2001 terrorist attacks, Land Acquisition Section attorneys secured space in New York for federal agencies whose offices were lost with the World Trade Towers. Today, Section projects include acquiring land along hundreds of miles of the United States-Mexico border to stem illegal drug trafficking and smuggling, allow for better inspection and customs facilities, and forestall terrorists. Properties acquired over the hundred years since the creation of the Environment and Natural Resources Section are found all across the United States and touch the daily lives of Americans by housing government services, facilitating transportation infrastructure and national defense and national security installations, and providing recreational opportunities and environmental management areas.

2.3 The power of eminent domain in slum-clearance

Under the authority of Title II of the National Industrial Recovery Act, enacted by Congress in 1933, 1 the President issued executive orders creating the Federal Emergency Administration of Public Works and delegated to its Administrator all powers granted thereunder. "With a view to increasing employment quickly," To the Public this power may be exercised to condemn private property only for a public use, which means a use by the government for legitimate governmental purposes, or a use designed for all the public, even though available to only a part of the public, whether the property is held by the government or by some private agency.

(3) This public right to use must result from the law itself. In other words, a national emergency may afford a reason for the exercise of the power of eminent domain, but the power must exist independently of the emergency.

(4) Therefore, the N. I. R. A., in so far as it attempts to authorize the government to condemn private property for slum-clearance and low-cost housing projects, is unconstitutional. Such uses are not **public** uses."

(5) Article I, Section 8, clause 1, of the Constitution, empowering Congress to lay and collect taxes to pay debts and provide for the general welfare, does not authorize the condemnation. "This clause, by its very terms, restricts Congress to providing for the general welfare through appropriations only, because it relates only to taxation and to the use of funds raised by taxation. It does not authorize the exercise by Congress of a power not committed to it merely that there may be brought into existence something for which appropriations may be made in the furtherance of general welfare. The power granted is that of laying taxes-not that of providing for the general welfare. The latter is only one of the- purposes for which taxes may be levied."

(6) The power to condemn property proved to be a menace to public health or safety is not the power of eminent domain, but a part of the local police power, and may not be exercised by the government within a state. On appeal to the Circuit Court of Appeals, the government as petitioner contended that it had the power to take land for the purposes enumerated under Title II of the N. I. R. A. 14 because (1) Title II is a valid exercise of the power of Congress to appropriate money under the general welfare clause; (2) condemnation for slum clearance and low-cost housing is for a public use within the Fifth Amendment; and (3) Congress, having declared the existence of the

3.0 Case study of misplaced priority

If there's one guaranteed method to raise the collective blood pressure of a community, it's invoking the controversial land grab practice known as eminent domain. The right of federal, state and local government to seize private property if they argue it will benefit the greater good (with increased tax revenue or a better economy) has been debated for decades. Though property owners are compensated, not everyone is willing to stick a price tag on their memories, or ancestral land. Nor are the goals of development always as admirable or necessary as they are claimed to be. Here are a few infamous cases of people who found themselves displaced for less-than-sensible reasons.

(a) **The Golf Course Manager Needs your House:** There is no shortage of golf courses in West Palm Beach, Florida, which is why John and Wendy Zamecnik were particularly frustrated that the county had targeted their neighborhood for a facelift. In the mid-1980s, over 300 homes were purchased to make way for a new course. Most families sold and moved willingly; the Zamecniks were one of a handful who did not. They watched as the community of empty houses became dilapidated and ransacked while their own land values plummeted. At one point, their home was earmarked to be the residence of the golf course's manager. According to the *Sun-Sentinel*, protracted legal battles culminated in the couple being forced out of their home in 2002. The postscript? The golf course was never built.

(b) **The Church That Never Had a Prayer:** Governments can often use some disingenuous tactics to invoke eminent domain, especially when they're trying to displace non-taxable religious organizations—including the one organized by Reverend Fred Jenkins, who had ambitious plans for his North Hempstead, N.Y. church, St. Luke's. In 1997, Jenkins spent a considerable sum buying a "fixer-upper" property and sorting out the zoning paperwork so he could move his congregation out of a modest basement location. According

to the *Christian Science Monitor*, no one had told Jenkins the property had been tagged as a redevelopment site three years prior. He had been allowed to spend money for renovations and other plans that would be useless. Worse, the Town offered him \$50,000 less than he'd paid for it, leaving him with a mortgage even after the church was destroyed.

(c) The Judge with Conflicting Interests: Nevada is often ground zero for cases involving casino expansion. When John Pappas died and left rental property to his widow, Carol Pappas, she and her sons expected to continue operating their small strip mall on the land. But in 1994, Las Vegas demanded Pappas turn it over so they could build a parking garage as part of a redevelopment. She refused; Vegas sued. Presiding Judge Stephen Huffaker ruled that the city could begin bulldozing. But according to the *Los Angeles Times*, Huffaker failed to mention he had financial ties to the redevelopment plan by owning shares in a local casino. The Pappas family took the case to the U.S. Supreme Court and eventually settled with the city for \$4.5 million.

(d) Condemned—and Billed for a New Sidewalk: In the late 1990s, Bill Brody purchased and renovated four buildings in Port Chester, N.Y. that housed 10 small business shingles. When the city made a deal with a developer to reinvigorate the downtown area, they failed to formally inform Brody he had only 30 days to lodge a complaint; the law stipulated that a newspaper notice (that he never saw) was enough. Unaware of the time limit, Brody was helpless as the village first seized and then demolished his buildings—but not before billing him \$40,000 to improve the sidewalk. Worse, they took over a year to compensate him while, according to the *New York Times*, collecting rent from his tenants. The good news? Brody eventually won his litigation against the city. The bad? It took over a decade.

(e) Death and Taxes: The quagmire of bureaucracy can sometimes blind officials to the very personal consequences of ushering a family out of their home. In Hurst, Texas, the prospect of a large shopping mall meant over 100 houses would need to be vacated and demolished in 1997. Leonard Prohs was among 10 homeowners trying to hold out, though he requested an extension for a very valid reason: His wife was in an area hospital dying of brain cancer. The court refused his request. According to the *Free-Lance Star*, Prohs had to leave his wife's bedside in order to move his belongings out. The land was eventually occupied by, among other stores, a Pet Smart and a Starbucks.

(f) Something Smells: In the early 1990s, residents near a sewage treatment plant in Bremerton, Wash. successfully petitioned the city to do something about the smell. The city began condemnation proceedings on dozens of properties nearby, claiming that the land would be used, according to the *Kitsap Sun*, to "create an odor easement." But as soon as their eminent domain invocation was completed, the paper reported that Bremerton did an about-face and instead sold the land to a car dealership for nearly \$2 million—without doing a single thing about the odor.

(h) Only a One-Car Garage?: When Lakewood, Ohio discovered their waterfront properties were appealing to condominium developers, they began to plot the exodus of hundreds of residents out of the area. But with occupants resisting, the city had to come up with a way to classify their area as "blighted," or run down. Because the homes and apartments were well-maintained, Lakewood opted for higher standards: homes were earmarked for seizure because "blighted" was defined to mean anything less than a two-car garage, three bedrooms, and central air conditioning. The entire plan was distasteful enough that, according to a 2003 *CBS News* report, citizens eventually voted the acting mayor out of office.

3.1 The power of eminent domain in slum-clearance and low-cost housing projects.

Origin of the Problem

Under the authority of Title II of the National Industrial Recovery Act, enacted by Congress in 1933,¹ the President issued executive orders creating the Federal Emergency Administration of Public Works and delegated to its Administrator all powers granted thereunder.² "With a view to increasing employment quickly,"³ the Public Works Administration was expressly granted the power "to acquire * * * by exercise of the power of eminent domain, any real or personal property" ⁴ in furtherance of the "construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects." Pursuant to such authority, the P. W. A. has embarked upon a comprehensive slum clearance and low-cost housing program that is nation-wide in scope **The Federal Aspect.** In the case of **United States v. Certain Lands in City of Louisville**, et al.,⁷ the constitutionality of the program was seriously challenged. There, the P. W. A. caused the United States Attorney to file a petition in the United States District Court for the Western District of Kentucky to condemn certain lands, preparatory to acquiring a site for its Louisville project. The owners of the lands sought to be condemned demurred, and an order sustaining the demurrer was entered together with a judgment denying the petition. The decision, written by Judge Dawson, was predicated on the following grounds: (1) The power of eminent domain is inherent in sovereignty and is, therefore, possessed by the national government. Furthermore, the Fifth Amendment, prohibiting the taking of private property for public use without just compensation, implies that the national government has the power of eminent domain.

The conclusion reached from a study and comparison of these cases arising out of federal and state condemnation is that the fundamental distinction between the right of eminent domain of a state and that of the federal government lies in the structure of the powers of the two sovereignties. The power of eminent domain may be exercised by the state within its borders only in furtherance of a public use, whereas the power may be exercised by the federal government within state borders to effect such purposes as are public and are, at the same time, within the scope of the powers delegated by the states in the Constitution. It seems abundantly clear that the federal program under consideration here involves a public use, and that a liberal application of the general welfare clause would result in the vesting of a power in the federal government to materialize its program. The fundamental principles of the Constitution must be subserved, but because the Constitution is not a fixed definition of static rights, as of the day of its adoption, but was designed rather as a document capable of reflecting future economic and social changes, these principles must be taken into consideration in the argument of slum-clearance and low-cost housing legislation. It appears that the **Hoosac Mills** case takes full cognizance of this basic thought. The federal aspect of this problem may soon assume different proportions; it seems that the day is soon to come, when the solution of our slum-clearance and low-cost housing problem will be realized. The public has become concerned, and the courts and legislatures are striving diligently to round out the proper legal

4.0 Problems identified

Some problems faced in the acquisition of Gwarinpa estate site are identified as follows.

1. Problems of identifying real Claimants
2. Double counting of Compensation items
3. Conflicting Claims
4. Logistics

5. Method of Compensation
6. Illiteracy of Claimants
7. Inadequate funding of the exercise.

5.0 Summary of findings

So many problems have hindered the successful implementation of compulsory and payment of adequate Compensation in Nigeria. This originated from the provisions of the LUA No. 6 1978 on compensation for Compulsory acquisition. These have generated feeling of dissatisfaction and resentment which has helped discredit the Compensation procedure in Compulsory acquisition of Land. The following are the findings in the course of the research.

1. Inadequate revocation notice
2. Inadequate Compensation
3. Illiteracy of the Claimants
4. Inadequate funding of the Compensation exercise
5. Non-payment of interest on delay payment
6. Problems of conflicting Claims
7. Use of low rates for assessment of economic Trees & Crops
8. Non-enumeration for some Crops/ economic Trees
9. Problem of identifying Claimants (owners)
10. Disallowance of Surveyors to represent Claimants
11. Logistics
12. Non-existence of Land Tribunal
13. Nonpayment of some Claimants
14. Communication problem
15. Non-payment for undeveloped Land
16. Corruption of Government Officers

5.1 Conclusion/Recommendation

It can be concluded that the implementation of Public Land acquisition and payment of compensation in Nigeria generated controversies, lapses and disputes in the past. Claimants whose interests had been revoked are always at the losing end and usually left in a position far worse than they were before the revocation. Thus, the aim of compensation has been defeated. The inadequacy in the compensation payable due to the statutory method of valuation provided has been examined in this study. Steps should be taken to remove the LUA from the Constitution of the Federal Republic of Nigeria and the National Assembly should legislate to enact a Law with special provisions to land holding in the FCT, Abuja. Professionals should also be involved in the formation of an effective National Land Policy for Nigeria. Based on the problems militating against effective Land acquisition and payment of Compensation, with reference to its adequacy and fairness, the following recommendations will help to minimize these problems.

1. Open market value as basis Valuation

The issue of Depreciated Replacement Cost (DRC) approach and on the spot value adopted in accessing the value of improvement in the study area was not adequate. Generally, the adoption of the former approach as provided in the LUA is usually not adequate or appropriate in many instances. Properties capable of producing income flow would require the use of investment and cost method of valuation. Similarly, compensation for all types of economic trees and crops with the capacity of generating annual income, except seedlings, should be determined by the application of investment method of valuation. The valuation of rural and urban land for compensation purposes should be left to the discretion of Valuers

who know the most appropriate methods for appraising all types of properties.

2. Payment of Compensation for Bare land

Compensation for Bare site is recommended to reduce the tension normally involved in land acquisition and compensation in Nigeria, and also to ensure equity. In order to ensure adequacy and fairness, other incident expenses such as cost of surveying, cost of clearing the site, preparation of plans and drawings, town planning approvals, and so on, are common expenses normally incurred in a Bare site and which, in the event of an acquisition, should be included in compensation for bare site.

3. Representation of Claimants by Estate Surveyors and Valuers.

Estate surveyors and Valuers or an attorney should be allowed and granted autonomy to act as representation of claimants in the event of acquisition to defend their interest.

4. Payment of their items of Claim

The other items or Heads of claim such as disturbance, severance, injurious affection, abortive, expenditure and so on, which the LUA was silent on, should be include as Heads of claim. This is to ensure that claimants will actually receive what Compensation really is (putting the claimant in the same position he was before the acquisition).

5. Payment of interest on delayed payment

Usually, most acquiring Authorities do not pay interest on delayed payment. It is recommended that FHA should pay interest for compensation which has not yet been paid up till date, at least to satisfy the Claimants which must have been suffering and restricted from carrying out their daily routines like farming. The government should endeavor that interest on current bank rate is being paid for all delayed payment of Compensation as provided by the LUA, especially in a country with fluctuating inflation period.

6. Establishment of Land Tribunal

Land Tribunal should be established, in all states, so as to handle all cases of disputed quantum of compensation and other Compensation matters. This is necessary because of the delay in seeking redress in law court and in certain cases impossible to challenge the LUA which is part of the Constitution of the Federal Republic of Nigeria. The LUA failed to define how adequate compensation should be, but only saddle the appropriate officer with a discretionary power.

7. Adequate publicity

Most a times, the duration for revocation notice is normally very short especially with due reference to the case study which was for only about one week. A land policy should state on clear terms the duration for notice of revocation; as it was stated in the in the old public lands acquisition, of 1917 (for 6 weeks). Acquiring authorities should endeavor that revocation notices get to the grassroots, especially where majority of the claimants are illiterates.

8. Prompt payment Compensation

Prompt payment of compensation as provided by the Constitution of 1999, is recommended. Where acquiring authority defaults in this provision, claimants should be allocated to seek for redress in an appropriated Land Tribunal. This is to ensure that unnecessary suffering imposed on the Claimants is eliminated.

9. Personal consent of holders of special properties

This is where disputes and resentment normally arise when special properties such as shrines, burial ground, churches, mosque and so on, are involved in the acquisition exercise in order to reduce such problems the government can enter into private pact with the holders to such properties to obtain their consent before the government can acquire such properties, whatever is agreed upon can be regarded as basis of Compensation.

10. Enumeration of all Crops/economic Trees

Another problem faced by the acquisition was the non-enumeration of some classes of Crops and Trees which were regarded as not of economic value, and upon which no compensation would be paid. It is recommended that the government should ensure provision is made that all Crops and economic Trees should be enumerated, to ensure adequacy and fairness in payment of Compensation.

11 Allocation of alternative plots to Claimants

Dispossessed person especially those on owner occupier, should be provided with free alternative plots to build their houses or continue their farming activities, while Compensation should be paid for development on land. Consequently, the FCDA hastened up in the relocation of Gwarinpa inhabitants.

Reference

- Adisa, S. Y. (2000), Conflict of Laws: The Valuer's dilemma in Compensation for Land Acquisition, the Estate Surveyors and Valuers, Vol. 23, NO. 4, pp 53-59
- Denyer-Green, B. (2005), Compulsory Purchase and Compensation, the Eighth Edition, Estate Gazette, London Pp 3, and 110.
- Brown, B.D.(2014)"*The Power of Eminent Domain in Slum-Clearance and Low-Cost Housing Projects*,"Vol. 10: Iss.2, Article7.Availableat:<http://scholarship.law.stjohns.edu/lawreview/vol10/iss2/7>
- Fekumo, J. F. (2001) Oil Pollution and the Problems of Compensation in Nigeria F & F publishers, Port Harcourt, pp 7
- F G N (1976) Public Lands Acquisition (miscellaneous provisions) Decree, 1976 – Supplement to official Gazette NO.39, Vol. 63, Part A
- F G N (1978) Decree No. 6 – Land Use Decree 1978, official Gazette No. 14, Vol. 65
- F G N (1990) Cap. 338, the Oil Pipelines Act, Government Printers, Section II (1), (3) and (5)
- Garner, B. A. (Ed.) (1999) Just Compensation 7th Edition, West Group, St. Paul, Minnesota, p.277
- Kingu, R.A. (1983) Territorial Schedule for Valuation of Agriculture properties for compensation: How Realistic Are They? Diploma Project. Ardhi Institute, Dar-es-salaam.
- Leach, W. A. (1963), Disturbance on Compulsory Purchase. London: the Estate Gazette Limited
- Nuhu, M.B. (2006). Compulsory Acquisition and Compensation of Land in Federal Capital Territory Abuja (A case study of University of Abuja Permanent site) Journal of Environmental Technology and Science – ETSJ, Vol.1 No.1.
- Odudu, W. O. (1978) the Journal of the Nigerian Institution of Estate Surveyors and Valuers, Vol. II, No. 1, pp 27-32
- Odiase A.O. etal. (2015). Taking with the right and giving out with the Left: Government acquisition of public land for private sector use in Nigeria, SouthEast Journal of contemporary Bussiness, Economics and Law Vol 8, Issue 4

- Olawoye, C. O. (1982), Statutory Shaping of Land Law Administration up to the Land Use Act, in Omotola. J.A. The land Use Act, University of Lagos Press Lagos.
- Omuojine, E. O. (1999) The Land Use Act and the English Doctrine of Estate Surveyors and Valuers Vol. 22, No. 3, Pp 54-56
- Per Scott (1941) L. J. Horn Vs Sunder Land Corporation, 2 K. B.26, pp 42.
- Syagga, P.M. (1994), Real Estate Valuation Handbook: with special reference to Kenya. Nairobi University, Press.
- Uduehi, G. O. (1987) Public Lands Acquisition and Compensation Practice in Nigeria, pp. 32, and 4,