

# Resistance to Government Acquisition by Indigenous Communities as a Result of Fragile Compensation System – A Set Back to Economic Development.

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## Abstract

The right of government to compulsorily acquire land for public purpose is universally recognized and such land acquired will never revert back to the owner or owners. In such circumstance, it will be unjust and a violation of the right of the property owner or owners as guaranteed under the Constitution of the Federal Republic of Nigeria, African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Public Lands Acquisition Decree now referred to as Public Lands Act which operates in *pari passu* with the Land Use Act and such other International covenants and conventions to forcefully acquire land without payment of adequate compensation. This paper attempted to examine the impacts of resistance to government acquisition of land on the nation's economy due to the fragile compensation system. It was found that government hiding under the coverage of limitation laws, has failed in times past to compensate communities thus giving rise to unbearable hardship and injustice on the social, economic and cultural lives of the affected persons. This paper elucidated on the concept of acquisition, compensation and limitation law and consequently made recommendations accordingly.

**Keywords:** Land, Acquisition, Compensation, Indigenous Communities

## 1.1. Introduction

In recent times, increasing oppositions to the acquisition of individual, community and family land have been mounted due to government's refusal to pay compensation hiding under the cloak of statute of limitation. These land owners are aware of government's antics and the possibility of losing their lands as well as compensation, they usually resist government's effort to acquire their lands. In most cases, these resistances have turned violent<sup>1</sup>. Thus, this has further reduced the amount of land available to government to acquire with the added disadvantage that often, the development projects which could benefit the people cannot be executed by the government.

However, section 28 of the Land Use Act<sup>2</sup> provides for payment of compensation to a land owner, family/communities whose lands are acquired. Such payment is essential and a condition precedent to a valid acquisition as the court held in *Ogunleye v Oni*<sup>3</sup>.

This paper will elucidate concisely on statutes of limitation, compulsory acquisition, compensation, compulsory acquisition without compensation. Statutes of limitation can be broken into two constituent parts – 'statutes' and 'limitation'. Statute connotes law (especially enacted law) while limitation is defined as the act of limiting or the condition of being limited - a time frame.<sup>4</sup> Limitation also connotes a restriction or bar; something which prevents the doing of a thing or the exercise of a power. Limitation of actions has been seen as the period of time within which a party must file his lawsuit or claim in court or before an appropriate agency.<sup>5</sup> It connotes a law which sets the maximum period within which a person can wait before initiating a legal action. This length of time varies from claim to claim. Law of limitation has been defined as a set of legislative and judicially related rules which determine whether a claim is still maintainable or not<sup>6</sup>. This set of rules created by the Legislature and the courts categorize claims, state the duration of the limitation periods applicable to them which determine whether any given claim or action is still

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<sup>1</sup> K C Nwoko, 'Land Ownership Versus Development in the Era of Globalization: A Trajectory of Conflict and Wealth Accumulation in Southern Nigeria' [2015] *Codesria* 14; 1-16, 7-12.

<sup>2</sup> LUA 2004, Section 28.

<sup>3</sup> (1990) 2 NWLR (Pt 135) 745.

<sup>4</sup> Farlex, The Free Dictionary <<https://www.legal-dictionary.thefreedictionary.com/limitation+of+actions>>. Accessed on 25<sup>th</sup> March, 2025.

<sup>5</sup> *Ibid*

<sup>6</sup> T T Ochoa and A Wistrich, 'The Puzzling Purposes of Statutes of Limitation' [1997] (28) *Pac. L.J.*453, 454

alive and can be maintained in court<sup>7</sup>. Statutes of limitation may further be viewed as law which prevents the filing of an action at the expiration of a given time. Like the equitable doctrine of laches and acquiescence, statutes of limitation require the persons who are aggrieved based on the violation of their rights to approach the court timeously in order to seek redress. Within the context of claims, the laws specify the duration of time within which each type of action or claim may be brought and this may differ from jurisdiction to jurisdiction. It is the law which specifies the time – limit for bringing an action in court in the enforcement of a right.<sup>8</sup>

According to Apeh, any statute which imposes time limit for classes of action is called statute of limitation. It is seen as a law which imposes the time limit within which to commence suits to claim under a law, contract or the common law.<sup>9</sup> A statute of limitation has been characterized as possessing the following features: it sets the deadline for bringing a suit for violation suffered or a right violated; defines when the time starts running in order to ascertain whether or not a right of action is still valid. The maxim *ubi jus ibi remedium* does not apply in perpetuity as it may be caught by statutes of limitation. Jerry Amadi agrees with the above submission.<sup>10</sup> There are instances where there could be a wrong without remedy. This will happen where a party has slept unduly over his right to the extent that enforcing same may be detrimental to public policy.

Such a right of action is reckoned to have accrued inclusive of the time at which wrong or violation complained of happened or when the damage arising out of the alleged wrongful act became known.

In *Texaco Panama Incorporation v SPDC*<sup>11</sup>, statute of limitation was defined as the law which bars the bringing of stale actions upon the lapse of the stipulated time. In this case it was stated that such time will begin to run from the date the wrong was allegedly violated. In *Atolagbe v Awuni*<sup>12</sup>, the Supreme Court of Nigeria stated that prescription laws limit time for a suit to be filed and entertained by the court. Such statute therefore renders any action commenced outside the period incompetent. Also, in *Savanna Bank v Pan Atlantic*,<sup>13</sup> the court noted that a statute is a statute of limitation if it specifies mandatory time – limits within which certain classes of action may be brought in court. In addition, the Supreme Court of South Africa offered a most eloquent and compelling justification for statutes of limitation to the effect that such statutes are designed to encourage timeous assertion of rights and enforcement of claims. According to the court, permitting the prosecution of stale claims in court not only damages interest of justice but also keeps everybody dependent on the subject matter of the claim in suspense. That it will also be unconscionable to allow a claimant to wake up from this slumber to assert a right where vital documents relevant to the disproof of his claim are no longer in existence<sup>14</sup>. The above summarizes the policy considerations that weigh heavily on the mind of the courts whenever they are confronted with statutes of limitation. Public policy demands stability in human affairs. Human affairs and transactions ought to enjoy stability and security. People should not live in perpetual fear that a claim could be successfully maintained even after a century of its non – assertion. Where

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<sup>7</sup> *Ibid*

<sup>8</sup> J F Josling, *Periods of Limitation* (4<sup>th</sup> edn, London: Oyez Publishing Ltd 1973) 7.

<sup>9</sup> E E Apeh, *Nigerian Law of Limitation of Actions* (Benin City; Elaigwu Apeh Law Publications 2001) I.

<sup>10</sup> J Amadi, *Limitation of Action; Statutory and Equitable Principles* (vol 1, Port Harcourt: Pearl Publishers 2011) 1 (2002) FWLR (Pt 96) 579 [SC].

<sup>12</sup> (1997) 9 NWLR (Pt. 523) 536 [SC].

<sup>13</sup> (1987) 1 NWLR (Pt 49) 212, 259 [Oputa JSC].

<sup>14</sup> *Mohlomi v Minister of Defence* 1997(1) S A 124 (CC), paras 11 and 12 [per Didcot J].

a person who has a claim or right sleeps over his right for an inordinately long period of time so as to give the advance party the impression of, he will no longer insist on the right would not be allowed to pursue or insist on the claim/right at a point when it will be manifestly disadvantageous and oppressive to do so. The illustrations are very instructive which demonstrates how statutes of limitation extinguishes citizen's compensation entitlements within the frame work of lands by specifying mandatory and non-extendable time bars for the commitment of claims for compensation. This means that claims brought outside definite time periods are dismissed as unmaintainable.

Again, this violates the citizen's fundamental right to receive compensation in the event that their lands are acquired compulsorily. It is unconscionable, inequitable and smacks of fraud for the state or acquiring authority which is in default of payment of compensation to turn around to plead limitation statutes to defeat legitimate claims of affected land owners. In other words, statutes of limitation may be viewed as an evil wind that knocks off the claimant's right to approach the court to seek compensation merely that it is statute – barred. Is this not a violation of the citizens right to compensation and access to the court as guaranteed by 1999 Constitution?

### **Research Questions**

This paper to seeks to provide specific focus and possible answers to the following questions.

1. Is the right to compensation a fundamental right of a citizen of Nigeria in view of sections 42 and 43 of the constitution of Nigeria (as amended)?
2. Can the compensation right of a citizen of Nigeria in cases of state acquisition of land be taken away by statute?
3. Is it equitable or conscionable for the state to violate the compensation right of a citizen relying on limitation of statute in defence in compulsory acquisition cases?
4. In what ways do statutes of limitation infringe on the citizens' property and compensation rights under the 1999 constitution and compulsory acquisition cases?
5. What can be done to protect citizens' right to compensation for compulsorily acquired land?

### **1.2. Acquisition**

The history of compulsory acquisition of land in Nigeria dates back to antiquity but for ease of reference, will be broken down into two phases – The pre-colonial era and the colonial era<sup>15</sup>. Before the arrival of the British colonialist in Nigeria, communities, kingdoms, clans, empires had existed. Each of these units recognized authorities or traditional institutions like kings, chiefs and title holders which administered law and order. When a community needed land for a project of communal benefit, individual families readily made their lands available for public use. For instance, the construction of farm parts for village square or shrine. The commotion created by land acquisition during this time was absent due to at least three reasons. In the first place, land was generally in abundance due to the fact that population level was generally low. Therefore, the need for the donation of land towards communal use was not seen as a problem, as families voluntarily donated their lands for communal projects. So, the act of donating lands for community benefit was seen as a thing of pride, an act of patriotism and philanthropic. The second reason is

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<sup>15</sup> C C Wigwe, *Land Use and Management Law* (Mountcrest University Press 2016) 3.

that pre-colonial communities relied exclusively on agriculture for their survival. Land was essentially used for planting and cultivation of crops and rearing of animals. The pattern of agricultural practice then was essentially subsistence which thrived on the use of crude implements. This means that only small portions of land were actually needed by the community members or families at any point in time. The third reason is that lands acquired by the communities were usually small mainly for miniature projects like construction of village paths, farm routes, village markets, town square or other like ventures. In most cases a single piece of land was enough unlike today where a single act of acquisition to stretch to several thousands of hectares or acres. One remarkable feature of the state acquisition of land during this era is that monetary compensation as is known today was unknown<sup>16</sup>.

The applicable mode of compensation was through the provision of alternative land. But where a building was involved, another land was provided by the community and affected building replaced through communal efforts<sup>17</sup>

In the colonial period, Lagos Island witnessed an influx of missionaries when Lagos was ceded to the British crown in 1861. Shortly, it became congested culminating in the need to acquire more land in order to decongest the city and make provisions for social amenities and developmental projects. Thus, buildings were pulled down and private lands were seized. This forceful seizure or acquisition of vast expanse of the land of families and communities sparked off protests, some of which turned violent. In order to curb the excesses of these and pave way for a seamless land acquisition process, the British colonial administration promulgated Ordinance No. 17. The Ordinance empowered the then Governor – General to acquire any land in the colony for developmental purposes. The Governor was empowered to pull down any existing building affected by acquisition, provided that compensation was paid. Thus, the first statute in relation to land acquisition was Ordinance No. 17 of 1903. This was followed by the Public Lands Acquisition Ordinance<sup>18</sup>. The Public Lands Acquisition Ordinance was later christened the Public Lands Acquisition Act<sup>19</sup>, and then, the Public Land Acquisition (Miscellaneous) Decree. All these statutes gave the Governor elaborate powers to acquire any land situated in any part of the state for public purposes. It is pertinent to note that these legislations have ceased to apply to land acquisition and compensation in Nigeria upon the promulgation and coming into effect of the Land Use Act 1978<sup>20</sup>. These legislations made provisions for both acquisition and compensation to the affected land owners.

The Food and Agricultural Organization however argued that government requires land for public purpose because of its enormous responsibilities to provide utilities to the citizenry. Thus, government need land for developmental projects such as construction of roads and bridges, building of government offices, provision of schools and institutions of higher learning, advancement of agriculture, stimulation of economic growth, provision of security, sports and recreation, construction of markets, motor parks, cemeteries, slaughter houses, medical facilities, rail lines and stations, extraction and exploitation of natural resources, ports, irrigations and

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<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Public Lands Acquisition Ordinance 1903

<sup>19</sup> Public Lands Acquisition Act, Cap. 167, Laws of the Federation of Nigeria and Lagos 1958. This has now been replaced by the Land Use Act.

<sup>20</sup> Decree No. 33 of 1976. This has now been replaced by the Land Use Act of 1978.

canalization, beautifications and parks among others. To undertake these responsibilities, government needs land.<sup>21</sup>

### **1.3. The Concept of Compensation in Compulsory Land Acquisition**

Compensation is derived from the verb ‘compensate’ which means “to pay (another) for services rendered<sup>22</sup>” Compensation is rendered as a remuneration or other benefits received in return for services rendered. It is similarly stated to be the payment of damages, or any other act ordered by the court to be done by a person who has caused injury to another<sup>23</sup>. Compensation generally refers to indemnification. It is the act of making amends in injury or loss caused to a person. Compensation represents damages paid to a party injured by act of another. Compensation aims at restoring an injured party to his former position. In *Railroad Co. v Deninan*<sup>24</sup> compensation was defined to mean the equivalent in money which is paid to the owners and occupiers of lands compulsorily acquired or injuriously affected by the operations of companies exercising the power of eminent domain. It is the just compensation paid to occupiers and owners of land where their assets are confiscated by state authorities for public use beneficial to the society.

Compensation is a fair payment made by the government for property compulsorily acquired, usually assessed at the property’s fair market value, so that the owner is not worse-off after the acquisition. It aims at providing succor to affected property owners and serves to write what would otherwise count as wrong or injury to the property owner. It is restorative in nature and payable not only for the loss of the land compulsorily acquired by the state, but also for other losses caused to the affected property owner as a result of the acquisition.

Compensation could be in the form of monetary payment or replacement of land or structures. Compensation is an inextricable component of every government attempt to take over land for public utility because State acquisition of land involves the loss of homes, lands and sometimes means of survival by the affected persons<sup>25</sup>. According to the Food and Agricultural Organization (FAO) handbook

*Compensation should be for any disturbances or other losses to the livelihoods. The disturbances accompanying compulsory acquisition often means that people lose access to the sources of their livelihoods. This can be due to a farmer losing agricultural fields, a business owner losing shops or a community losing its traditional lands*<sup>26</sup>

This requires states when expropriating the land rights of their citizens for public purposes, to provide for a fair valuation and prompt compensation in accordance with national law. It provides that compensation may be in cash, replacement of land or a combination of both.

In Nigeria, the Land Use Act provides for compensation under *Section 29* of the Act. Scholars and Jurists have defined compensation from different perspectives. It has been defined as remuneration

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<sup>21</sup> D Oluwamotemi, ‘Land Acquisition, Compensation and Resettlement in Developing Economies: Nigeria as a Case Study’. Paper Presented at the FIG Congress (2010) held 11-16 April 2010 at Sydney Australia.

<sup>22</sup> B A Garner (ed), *Black’s Law Dictionary* (8<sup>th</sup> edn, Thomson West 2004) 301

<sup>23</sup> Ibid

<sup>24</sup> 10 Minn 280(Gd 2008).

<sup>25</sup> A Otubu, ‘The Land Use Act and Compulsory Acquisition without Compensation’ [2016] (7) (4) *The Gravitas Review of Business and Property Law*; 13-21, 14

<sup>26</sup> Food and Agricultural Organization, *FAO Land Tenure Studies: Compulsory Acquisition of Land and Compensation* (FAO-United Nations 2009) 11.

and other benefits received in exchange of services rendered for instance, salaries and wages. It is also submitted that compensation is wider than that and may apply to situations where there is no contact between the payer and the payee. It is not in all cases that a party renders services to the party paying in compensation. Sometimes, compensation is paid as recompense for injury caused to the party receiving it. In the case of property acquisition, it could be the replacement of the property with a suitable alternative. In the case of destruction of property, it may be the cost of replacing the property at the prevailing market value. According to Ajibola and others, compensation is a reward for loss. The authors opine that such recompense must approximate to the extent possible to the monetary value of the property acquired. In their view, compensation should be capable of restoring the affected party to his pre-acquisition position and should not be left worse off after the acquisition<sup>27</sup>. Aboki also shares the view that compensation connotes recompense simpliciter<sup>28</sup>. He stressed that the aim of compensation is to ensure that a property owner who has been forced to give up his property receives something of equivalent value. He further opined that compensation should in the worst case restore the property owner to his pre-acquisition position as anything short of that is not compensation. Ankama and others argue that compensation ought to be fair and adequate; it should be capable of replacing the lost item or remedy the wrong for which it is paid, it should not be less than what was lost or the replacement cost of the wrong caused<sup>29</sup>.

#### **1.4. Principles of Compensation**

Compensation is governed by certain principles.

##### **1.4.1. Principle of Equivalence**

This principle states that the amount of compensation to which a land owner or occupier would be entitled in the event of acquisition should be exactly the cost or value of his loss arising from government's acquisition action. In other words, being an equitable doctrine or principle, it does not advocate for over compensation. The principle abhors the use of the compensation mechanism as a device to enrich or impoverish a property owner or occupier for the loss of his land.

It stipulates that the amount an affected land owner or occupier will receive as compensation for the expropriation of his land right, must be the exact value or amount of loss occasioned by the acquisition and nothing more or less. It contemplates that the amount paid as compensation ought to be equal (for example, equivalent) with the actual value of the loss suffered by the acquisitive act<sup>30</sup>

##### **1.4.2 Principle of Interest Balancing**

This principle reflects the competing interest involved in public demand for land and attempts to resolve this competing interest by striking a balance. It states that in acquiring land, the process should strive to protect the interest or rights of the citizens to the ownership or use of their land *vis-à-vis* the need for the government to use land for the better good of all. The principle realizes that the owners of land are entitled to its use. It also acknowledges the right of the government to

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<sup>27</sup>M O Ajibola, T O Osota and S A Oloyede, 'An Examination of Contemporary Methods for Assessing Compensation in Nigeria' [2012] (1) (9) *Business and Social Science Review*; 1-16, 6.

<sup>28</sup> Y Aboki, 'Introduction to Statutory Land Law in Nigeria' (Unpublished Notes on the Land Use Act 1978).

<sup>29</sup> R G Ankama, J N Aliu and Maisamari, 'The Operational Framework of the Power of the Governor to Revoke Land for Public Purposes' [2014] (2) (1) *International Journal of Advanced Studies in Ecology Development and Sustainability* 154-168, 163.

<sup>30</sup> Ibid

use land for its developmental efforts. However, the principle laid down that in the process of acquisition, compensation should be such as would take the right of the affected land owners or occupiers into consideration.<sup>31</sup> Under this principle, alternative land can be provided. The compensation paid should be such that will enable the affected land owner or occupier to acquire land of comparable status.

#### **1.4.3. Principle of Flexibility**

The principle holds that there should be clarity and specificity in the law to allow for compensation that will address the entire spectrum of losses suffered by an affected land owner or occupier due to the acquisition. The principle requires the law be specific enough to provide clear guidelines that will govern the acquisition of compensation at the same time create room for adjustments to meet the demands of commensurate compensation. The principle urges for some modicum of flexibility so that the law may be adopted to provide compensation for land owners or occupiers in deserving cases. Where the law is unduly rigid, it may lead to the exclusion of bona fide land owners or occupiers<sup>32</sup>.

#### **1.4.4. Principles of Comprehensiveness**

This principle requires that compensation regime for compulsorily acquired land should be all-encompassing. It should address not only *de jure* (legal) right holding in land but also *de facto* rights in an equitable manner.

This principle holds that in situations where the law does not recognise the legal right or claim to the land occupied by his squatters the state may assist in resettling them on alternative land in addition to payment of compensation for their assets or improvements on the land. Where the squatters are poor, and in circumstances where government has condoned the squatting, the principle advocates that some form of fair compensation should be paid to them.<sup>33</sup>

#### **1.4.5. Principle of Fairness and Transparency**

This principle appeals to equality of negotiation or bargaining power of the landowner/occupier and the State. It holds that the bargaining power of both parties should be as equal as possible. It abhors unilateral assessment and valuation of the acquired property by the State authority and the unilateral payment of compensation not borne out of negotiation and agreement.<sup>34</sup> It further states that where the affected land-owning communities are poor or illiterate persons, the acquiring authority should offer them such support as would enable them on an equal footing with the state or acquiring body. This support could include for instance, the services of an interpreter, surveyor or estate valuer, legal practitioner or other professionals that will assist them to make informed negotiation. The principle also requires that the negotiation team should not be lopsided in such a manner as to tilt the result in favour of the acquiring authority or to achieve a predetermined outcome.<sup>35</sup> It requires openness and information sharing in negotiations for compensation. The principle holds that the surveying and valuation of land should be done in the most transparent manner.

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<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

### **1.5. Purpose of Compensation in Land Acquisition**

State acquisition generally affects peoples' economic, social cultural and religious lives which also affect their livelihood. It is therefore necessary that compensation in all cases of expropriation ought to be sufficiently reflective of the asset's worth. In order to proffer a guide on how to integrate the equitable and equivalent principles into compensation regimes by government, the Food and Agricultural Organization sets out certain criteria: these are equivalence, balance of interest, flexibility, comprehensiveness, fairness and transparency, under reference.

The Food and Agricultural Organization further recommends that compensation should be a comprehensive package to consider; the acquired land; things added to the land (for example, artificial content) such as buildings and fixtures, plants and crops/trees.

Also, the monetary value of any other utility apart from money which the land owner or occupier of land would have derived from the land in question if it had not been acquired; loss of value of the land owners' contiguous lands consequent upon the acquisition of the land; costs of preparation and submission of compensation claims (such as legal fees, valuer's fees and other miscellaneous costs for processing of claims); cost of dislocation and resettlement, cost incurred in getting alternative accommodation (where residential or other building is acquired), loss in earnings temporarily occasioned by acquisition; personal hardship to the owner or occupier caused by expropriation and other losses of damages arising therefrom.

### **1.6. Compulsory Acquisition Without Compensation in Nigeria**

There are instances where government acquired land without due compensation. These instances vary from state to state. In Lagos State there was a case of Chris Okechukwu who acquired a piece of land from a family at Isheri Oshun, off the Lagos-Badagry expressway a few years ago but was disposed of his property using the LUA, allegedly because he did not have a Certificate of Occupancy. The same scenario played out between the Registered Trustees of Believers Love World (a.k.a Christ Embassy) and the church was disposed of its land by the Lagos State Government.<sup>36</sup> Though, the church sued the government to a High Court of Lagos State over the purported revocation of its landed property situated at Oyeleke Street, Alausa, Ikeja, Lagos, the case.

In Oyo, the case of non-compensation by government was noted. The case of Afolabi family of Jongbon Village in Akinyele Local Government Area of the State whose land was acquired by the State government for the construction of the Ibadan Circular Road since 2005 without any compensation either for the land acquired or the cash crops on the three acres of land acquired. This situation undoubtedly increased the poverty level of the family which is dependent on agricultural production for survival<sup>37</sup>

In Ogun State, the result of the Judicial Commission of Inquiry into all land allocation, acquisitions, sales and concessions of government properties and administration of land policies, rules and regulations instituted by the Amosun administration to cover a period between January, 2004 and May 29, 2011 indicted former administration in the state especially the preceding

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<sup>36</sup> K C Nwoko, 'Land Ownership Versus Development in the Era of Globalisation: A Trajectory of Conflict and Wealth Accumulation in Southern Nigeria' [2015] *Codesria* 14; 77-94, 85-90

<sup>37</sup> Ibid

government and recommended the annulment of the whole process and recovery of lands, funds from some companies and individuals that were also involved in the illegal acquisitions.<sup>38</sup>

The implication of that report is that the issue of abuse of the Land Use Act by state governments was real. One of the many discoveries that support the final report of the commission was the release of state government land (acquired from their owners) to non-existing beneficiaries as well as the allocation of lands and issuance of Certificate of Occupancies to supposed allottees without evidence of any payment(s). This practice, of course, gave credence to several allegations that the state governments were simply acquiring lands from individuals and communities and allocating same to private individuals who will employ the property to the same use the original land owners have been putting it to.

This violated the objectives of the Land Use Act, which envisaged the acquisition of land by state government for overriding public interest. There are lot of conflicts from forceful dispossession, lack of compensation and outright rejection of land take-over by government between individuals and communities and the state government have remained largely unresolved both by legal and peaceful means.

In Imo State, there are cases of land disputes between the state government, communities and organizations in the State. The case of land dispute between the Imo State Government and the people of Amawom Community in Owerre Nchi Ise attracted attention. Another land at Area K near the World Bank Housing Estate, was alleged to have been forcefully acquired from the community and allocated to some individuals who were alleged to be private developers and business partners of some government officials.

This accusation without adequate compensation and consultation angered the Amawom people against the director of lands in the State to the extent the aggrieved community resisted by occupying the land in their numbers with men, women, including the aged and youths keeping vigil on the land and consequently disrupting alleged plans by government to build on the land. According to Donald Ebere and Emmanuel Ozuzu, Chairman and Secretary of Amawon Renaissance Group, the community petitioned to the United Nations for intervention. The petition was to let the world body to be aware that the “forceful acquisition of Owerri community lands has caused Owerri indigenous people and individuals to be subjected to a forced assimilation and destruction of their culture.” According to them, the provision of the Land Use Act has been misapplied to forcefully take away land from the indigenous people without regards to their economic well-being, aspirations and needs. The Imo State Government on the other hand through its commissioner for lands and urban development at the time, Uche Nwosu, insisted that some of these lands were acquired by previous administrations in the state.

That the State under the Okorochoa administration had compensated Owerri indigenes whose lands were acquired. Whereas, the indigenes alleged that apart from not receiving any adequate compensation, the acquired lands were not used for any developmental ventures order than erecting hotels, housing estates and private business of government officials thereby creating personal wealth from their community patrimony. Beyond this, there are several other cases which the government of Imo State had been contending with. In a particular one against the church, the Diocese of Oru in the State had alleged forceful acquisition of its land by the government, threatening to resist the take-over by employing legal action against the government if the state did

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<sup>38</sup> Ibid

not desist from the encroachment. The land located at the central primary school, Mgidi, Oru West Local Government Area according to the Bishop of the Diocese, Rt. Rev. Geoffrey Chukwunye, had been in the possession of the Church since 1914<sup>39</sup>

In Enugu State, the indigenes of Ngwo community in Enugu North Local Government Area, an agricultural community, had resisted what they called a flagrant disobedience by the State government to court order with regard to the conflict between them and the State. According to the allegation, the government of Enugu State had violated a subsisting court order from an Enugu High Court made by Justice B. E, Agbatah on March 17, 2009 restraining the government from trespassing on a piece of land opposite the Golf Estate Enugu.<sup>40</sup> Some of the indigenes of Ngwo Community displayed their frustration against what appeared to be connivance by their own state government with private investors to rip them off what belonged to them. Some believed that some of the land forcefully taken from them were given to friends and cronies of the government to establish their own private companies and business and wondered how these would benefit the public. The frustration is even worsened when these people drive big cars with their security escorts in and out of their land as if they are strangers.

In Katsina State, the issue appeared to be that of inadequate compensation. In this state, resistance against government acquisition of individual or communal lands are being on the ground government would not compensate the owners adequately. For instance, it is alleged by individuals whose properties along the Liyafa Hotel Airport Road, were acquired since 2009, and they were not compensated adequately as their houses were partially or completely destroyed to pave way for the road construction<sup>41</sup>

The result of this was several protests and demand for better compensation. The state government announced an adjustment in the compensation formula to assuage their grievance as well as accommodate their losses, especially for those whose structures had been affected. In Benue State, the acquisition of arable lands from individuals and communities by government coupled with inadequate compensation had led to disagreement between land owners and the state.

Benue which is often depicted as the food basket of the country is an agrarian State with these arable lands as the bedrock of agricultural production in the State. Apart from affecting agricultural yield and the cost of food, the forceful dispossession of land owners of their land often times without notice had remained the basis for protests and resistance by the indigenes of the state<sup>42</sup> While crisis between individuals and government do not often attract public attention, resistance by groups or communities often does. A particular land dispute between the Nigerian Union of Teachers, Benue state wing and the state government had elicited commentaries from observers. The 1000 square meters land which the state government had allegedly requested the NUT to surrender and collect undisclosed compensation would enable the government to carry out the expansion of entrepreneurial centre in the state<sup>43</sup>

In 2009, the Rivers State Government embarked upon its urban renewal programme championed by the Greater Port Harcourt Development Authority. This led to the revocation of temporary occupancy licenses of three water front residents – residents of Njemanze, Bundu and Abonnema

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Ibid

Wharf waterfronts without compensation. The Njemanze waterfront was demolished on 28<sup>th</sup> August, 2009. Amnesty International estimates show that between 13,000 and 19,000 people were forcibly evicted from their homes. These evictions were carried out without prior and genuine consultations with the affected residents and without the issuance of adequate notice. Compensation was not paid, nor was alternative accommodation provided. Thousands of people, including children, women and the elderly were rendered homeless and vulnerable to other human right abuses<sup>44</sup>. This action of the state government was condemned by civil society groups and even residents as a violation of the rights of the affected persons to land and adequate housing.

Another incident of compulsory acquisition without compensation which sparked off violent protests in Rivers State was the acquisition of land for the establishment of Rivers State Banana Farm in Ogoniland.

This is, perhaps, the most controversial case of land acquisition in the history of Rivers State. In 2011, the Rivers State Government compulsorily acquired over 2,000 hectares of the ancestral lands of several Ogoni communities located in Khana and Tai Local Government Areas of the State.<sup>45</sup> The affected communities include Korokoro and Ueken communities in Tai Local Government Area, and Luusue Sogho, Zor Sogho, Barakanni Sogho, Akporo Sogho, Teka Sogho, Nuaga Sogho, Kaani, Kanni 2, Luebe and Okwale, all in Khana Local Government Area. The land in question was being cultivated by over 30,000 small holder farmers. The Ogoni axis of Rivers State is the agricultural hub of the State. The communities are predominantly farmers whose livelihoods and survival depend entirely on land and its resources.

The Rivers State Government acquired these farmlands to set up the Rivers State Banana Farm to boost the agricultural base of the state. The project which is undertaken as a public-private partnership came into force through a Memorandum of Understanding (MOU) signed between the Rivers State Government and a Mexican firm. Under the MOU, the Rivers State Government owns 60 percent equity shares in the farm. The Mexican company was to construct a N10 billion Banana Plantation in Ogoniland.

The communities claim that they were not consulted prior to the acquisition and that what they saw was government letter informing the paramount rulers of each of the affected communities that their lands had been acquired by the state government. The government letter also informed the affected communities that a team of government surveyors had been dispatched to survey the acquired lands. Alternative lands were not provided. Most families forcefully relocated because the affected lands were all they owned. Government paid compensation for the crops on the land but not for the lands themselves. Regrettably, the compensation paid was to the community chiefs/leaders for disbursement to the affected land owner. The process was not transparent and there were no mechanisms to hold the traditional institutions accountable as the compensation funds allegedly diverted and misappropriated. This led to crisis and conflicts between villages and their chiefs.<sup>46</sup>

Protests were organized by several affected communities against the forceful acquisition of their ancestral lands without compensation. When all attempts at getting the government to do the proper

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<sup>44</sup>Amnesty International, *Just Move Them: Forced Evictions in Port Harcourt, Nigeria* (London: Amnesty International Publications 2010) 1.

<sup>45</sup>*Social Development Integrated Centre, Killing for Banana: Government Land Grab, Violence and the Forgotten Rights of Ogoni Farmers* (Port Harcourt) Social Development Integrated Centre (Social Action) (2013) 1.

<sup>46</sup> Ibid

thing failed, the affected communities and individuals went to court to challenge the forceful takeover of their lands<sup>47</sup>

### **1.7. Compensation Determination Models**

This is to determine how much an affected land owner or occupier ought to receive a compensation for land compulsorily acquired and in achieving this, a number of models have been used. The basic ones are market value and the replacement cost models.

#### **1.7.1 The Market Value Model**

Under International valuation standards, market value within the context of land acquisition is the price a willing seller and a willing buyer will agree to exchange the asset in the open market. It is the amount of money a non-coerced purchaser will voluntarily offer as consideration for the purchase of an asset and also the sum a non-coerced seller will voluntarily demand in respect of a property on the date the valuation of the property is carried out.<sup>48</sup> It is an assumption that both seller and buyer will arrive at the price when they both act knowledgeably, frugally and willingly. Open market value possesses a number of characteristics which include: that in a transaction, there is a willing buyer and a willing seller; that both parties are sufficiently aware of the asset's utility and benefit; that the sale and purchase transaction is carried out using proper marketing; and that there is the absence of compulsion. How much will a willing seller with knowledge that he has a choice and will not be compelled to give up his property be prepared to accept as fair compensation for parting with the use of his property?

The market value approach is fraught with a number of difficulties because it involves a consideration of several complex factors. First, the market value of land may not be correctly assessed in circumstances where planning laws have designated uses to which certain areas of a community or city may be used. For instance, a land in an area mapped out for agricultural purposes may automatically lose its true market value. Conversely, land situated in the same agricultural area may automatically appreciate its value the moment the area is re-designated as an industrial or commercial area. Second, there might be situations where the owner of the land is using the land for uses that fall far below the maximum permissible use under the town planning law applicable. It has been argued that the highest permissible value criteria or what is referred to as the 'hope value' should form the basis of measuring the true worth of assets as obtainable in the open market, hence compensation. Third, there could be situations where the seller could show that a willing purchaser was ready to offer a sum higher than the prevailing market rate. This occurs in most cases due to the strategic position of the land or its other attractive features.<sup>49</sup>

#### **1.7.2. Replacement Cost Model**

Replacement cost is based on the fair replacement value in determining 'just compensation' or 'adequate compensation' in land acquisition. What is fair replacement value? FRV has been defined as "value to the owner equivalent with market value of the property with consideration of the extraordinary condition of non-physical losses caused by the acquisition of the property"<sup>50</sup> The replacement cost of land involves two items. The first element is the value of the property at the prevailing market rate. The second element is the non-physical losses associated with acquisition of the property. Replacement cost can be mathematically represented as physical market value +

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<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid

non-physical market value. The Physical Market Value includes the land itself, buildings, plants, fixtures, crops, trees and any other objects relating to land. NMV includes items such as the cost of relocation/resettlement, cost of dislocation of business or change of vocation occasioned by the acquisition (i.e. forced migration), loss of job and residential value of the land.<sup>51</sup>

It could also be a useful approach in countries where a specific category of use of land does not yet have a market to benchmark payable compensation. A typical example of this scenario will be where the land is used for religious purposes or as cemetery. Thus, the RC model is based not only on the cost of the asset, building or other additions on the acquired land but also on the income or value related to have been generated if the acquisition had not taken place.

### **1.8. Economic under Development Caused by Fragile Compensation System.**

Fragile compensation system is a setback to economic development. In Nigeria, credit is a vital component of a modern commerce, development of any economy and the sustenance of lives of consumers, among others. Land is one of the most important assets in the economic development of any nation. Invest decisions and activities are tied to the availability of land both as a means of secured credit and also as the building block of industrialization. The Land Use Act provides for payment of compensation to the holder of right of occupancy and the occupier in the event of compulsory acquisition<sup>52</sup> Land is the most acceptable security in secured credit transaction.

Economic growth or development is defined as a positive change in the national income or the level of production of goods and services by a country over a certain period of time.

In Nigeria, Banks and other formal lenders hardly give unsecured loan credit to their customers except in some cases, overdraft facilities on a short-term tenor to trusted account holders whose trust is determined by the customer's previous credit history. The role of secured credit in the economic growth of Nigeria cannot be over-emphasized as credits are obtained by various economic agents to enable them meet operating expenses.<sup>53</sup> For instance, business firms obtain credit to buy machinery and equipment. Farmers collect loans to buy seeds, fertilizers, farm implement/tools and erect farm structures. Individuals and families also require credit to buy and pay for goods and services. It has been asserted that the provision of credit with sufficient consideration for the sectors volume and prices system is a way to generate self-employment opportunities. This is because credit helps to create and maintain a reasonable business size as it is used to establish or expand the business to take advantage of economies of scale. Credit is also used to improve informed activity and increase its efficiency. Credits can also be used to prevent an economic activity in Nigeria from suffering total collapse due to economic recession, natural disaster or war. The banking section helps to make credit available by mobilizing surplus funds from depositors/savers that have no immediate need of such funds and thus channel same in the form of credit to investors who have brilliant ideas on how to create additional wealth in the economy but lack the necessary capital to execute the ideas. Nigeria is the most populous country in Africa with tremendous potentials for economic activities that require credit financing. Whilst

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<sup>51</sup> C O Olowoye, *Title to Land in Nigeria* (Evans & Brothers 1974) 9.

<sup>52</sup> Land Use Act 2004, *Section 29(1)*.

This is often measured in terms of the level of production of goods and services within the economy. It is the steady process by which the productive capacity of the economy is increased over time to bring about rising levels of national output and income.

<sup>53</sup> R O Oluitan, 'Bank Credit and Economic Growth: Evidence from Nigeria' [2012] (5) (2) *Journal of International Business and Management*; 102-110, 102

the inflow of foreign direct investment to the whole of Africa grew from Nigeria alone in 2009 was \$116. These potentials therefore make the need of credit inevitable.

With land, credit can be obtained which can be used in investment and other economic activities. The security of the lending institution (for example, bank) is that where the land which is subject matter of a mortgage is compulsorily acquired, compensation payable shall accrue to the lender and used to settle the outstanding loan debt. However, in circumstances where there is no certainty of compensation due to the operation of statutes of limitation, lenders are usually loath to grant credit. The starvation of the economy of credit will in the long run discourage economy growth, stifle investment opportunities, leading to low economic development.

Indeed, investment is the livewire of any economy.

With decreasing investment due to the uncertainty that land as a security for credit affords, other sectors of the economy are starved of the needed credit. Businesses and investments suffer and results in unemployment, poverty and adversely affects the society<sup>54</sup>

### **1.9. Summary, Observation/Conclusion**

It is amply clear that there is a fundamental and enforceable right of ownership and acquisition of land (property) as provided by the 1999 constitution of the Federal Republic of Nigeria. This is further buttress on other international laws, standards, covenants and conventions. The 1999 constitution and the Land Use Act 1978 empowers the state to expropriate the land rights of citizens of the country, provided adequate compensation is paid to affected land owners. This paper agrees that the right to be paid compensation for land acquisition goes hand in gloves with the right to acquire the land. One cannot be divorced from the other. In other words, Section 44 of the 1999 Constitution lays down that land acquisition cannot be effectuated in the absence of prompt compensation and without giving to affected persons the right to ventilate their grievances in court in respect of the manner of acquisition or the quantum of compensation. This means that the right to claim compensation for compulsory acquired land is a fundamental right protected and enforced under the constitution.

It further adumbrates that compensation entitlement does not only have a constitutional flavor but also puts on the garb of a fundamental right. No restriction or derogation from the right is valid except the limitation imposed by the 1999 constitution itself. Statutes of limitation oscillates between ten years as in Rivers State and other States, twelve years applicable in Lagos and twelve months applicable in FCT. The effect of this is that claims brought outside this definite time period are dismissed as unmaintainable. Unfortunately, this violates the citizens fundamental right to receive compensation in the event that their lands are acquired compulsorily. It is wrong because the state ought not to extinguish the right of entitlement to compensation. This is because the obligation to pay compensation fall squarely on the state in Nigeria. Sadly, the Nigerian law, unlike the Indian law, does not make the payment of full compensation a condition precedent to the taken of possession of acquired land in Nigeria. This opens an opportunity for the state to dispute or outrightly reject claims for compensation by affected land owners for acquired land while taking possession immediately. This protracted circumstance coupled with other factors such as ignorance of the existence of the right to sue for compensation, illiteracy, poverty, absence of information on

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<sup>54</sup> J O Enyia and K Udungeri, 'The Use of Land as a Collateral Security for Credit in Nigeria: Problems and Challenges' [2018] (6) (7) *International Journal of Managerial Studies*: 44-56, 54.

procedure for processing compensation claims including ignorance of the existence and impact of limitation statutes, combine to frustrate the claimants who cannot bring their claims within time. It is regrettably, unconscionable, inequitable and even fraud for the acquiring authority which is in default of payment of compensation to turn around to plead limitation statutes to defeat legitimate claims of affected land owners. It takes away the right to sue or maintain an action to claim compensation, as such suit is branded as statute-barred by the court. The fact is obvious that preventing citizens from having their rights to compensation determine in court is a violation of their right of access to court and fair hearing protected under the 1999 constitution. The situation is worrisome and obviously excites sympathy and calls for reforms.

## **10 Recommendations**

1. The limitation laws applicable in each state of the federation of Nigeria should be amended and drafted in such a way as to exclude their application to land compensation claims.
2. In alternative, Nigerian courts should follow the South Africa example and strike down provisions of limitation laws for violating the constitutionally guaranteed rights to compensation and the access to court.
3. The 1999 Constitution and the Land Use Act should be amended to make the payment of full and final compensation for compulsorily land a condition *sine qua non* to the entry into possession of acquired land as applicable in India. This reform will put the state under pressure and will reduce cases of delayed compensation. The land acquisition and compensation regime of the Land Use Act is antiquated, retrogressive and most unfair to affected land owners. Enacting a new act will usher in, a more progressive and up-to-date protection for the compensation rights of land owners in Nigeria. It should also adopt a comprehensive compensation valuation and assessment package. There should be compensation for the following items: cost of the land as obtainable on the open market; damage cause by severing the acquired land from other lands of the affected owner; damage caused to other property or improvements on the land; damage arising from loss of earnings; damage caused by abrupt and unplanned change of residency or place of business, etc.
4. Nigeria should carry out a comprehensive audit of its land acquisition and compensation laws to harmonize the standards and guidelines governing the acquisition of land and payment of compensation as well as global best practices.
5. Claimants should explore the fundamental right enforcement option in filing their compensation claims. This option is highly appealing and advantageous from the perspective of the claimant as such action cannot be defeated by time no matter how long the claimant sleeps on his right.
6. In the absence of express exclusion of compensation claims from the ambit of prescription laws, Nigerian courts should be imbued with the jurisdiction to condone the enlargement of time in land compensation where good cause for delay is shown.
7. Government can as well create or establish a special court designed to handle acquisition and compensation cases in the State and the Federal. In this case, challenges associated with delay in payment of compensation, application of limitation laws and other issues associated will be viewed by the court concerned with such matters. This

will go a long way to enumerate the difficulties variously encountered by land owners. The frustration encountered by the land owners as arising from non-payment of compensation on their land acquired by the government subject them to unbearable condition as well as resistance to government acquisition of their land as a last resort.