

EXAMINATION OF THE ROLE OF SOME INSTITUTIONS IN THE COMPULSORY ACQUISITION, REVOCATION AND COMPENSATION OF LANDS IN NIGERIA*

Abstract

Land is the most treasured commodity from the ancient time throughout the world and is still highly valued in our today's world. In fact, man's whole existence and activities seem to be tied to land and its ownership which had resulted to lots of disputes among men. This paper examines the role of some institutions in the compulsory acquisition, revocation and compensation of lands in Nigeria. The institutions examined are the family, Land Use Allocation Committee, Ministry of Land, Survey and Urban Development, Office of the Governor and Office of the Chairman. The writer discovers that these institutions have different roles to play in compulsory acquisition of lands in Nigeria and that the roles of these institutions are overlap. The writer recommended that there is need to harmonize the roles of these institutions for effective and efficient administration of lands in Nigeria.

Keywords: Institutions, Compulsory Acquisition, Revocation, Compensation, Land

1. Introduction

Land is a free gift of nature. Most human activities are dependent on it. Man, naturally relies on land to satisfy his material, social, political, cultural and physical and even his spiritual desires. The provision of basic needs like food, clothing, shelter, heat, production of goods, exchange of goods and services, leisure and recreation, spiritual engagements and satisfaction, territorial sovereignty, wealth creation, and many others have been satisfied with the use of land.¹ The demand by both the public and private users of land for various uses such as residential, transportation, commercial, institutional and agricultural in both urban and rural areas require that land must be made available at the right time, in the right quantity and quality and at the right places.² Land also defines the extent of a community's boundary - the economic strength and socio-cultural heritage of a community. In this article, we are going to look at the role of the family, Land Use Allocation Committee, Ministry of Land, Survey and Urban Development, Office of the Governor, Office of the Chairman and the Corporate Affairs Commission in the compulsory acquisition, revocation and compensation of lands in Nigeria.

2. What is Land?

Section 13(3)³ defines land to include any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include minerals. According to Mohammad,⁴ apart from the frequently economic importance of land, it remains the fulcrum of life and a symbol of pride and identity to the inhabitants. Every community apart from having a common boundary also works in common to fight any intruder to the land, as the land is owned communally and no distinct person may claim ownership of any part of such land. Land has an inherent value and also creates value. A plot of land, for instance, can provide a household with physical, financial and nutritional security, and provide a labourer with a source of wages.⁴ Land basically is essential for good livelihoods. It is also a potential resource for various socio-economic and political exploits. Efficient and effective land management therefore must be of great concern to governments in different jurisdictions as land is the most important economic asset to mankind. A statutory definition of land was given in the Law of Property Act 1925 as follows: 'land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other incorporeal hereditaments; also ... a rent and other incorporeal hereditament, and an easement, right, privilege, or benefit in, over or derived from land'. The English Interpretation Act⁷⁹ also defines land to include buildings and other structures, land covered with water, and any estate, interest, easement, servitude in or over land. The definitions of land in both the Law of Property Act 1925 and that of English Interpretative Act 1978 are merely inclusive and not exclusive. The above definitions include corporeal and incorporeal hereditaments as land. Corporeal hereditaments are physical objects: physical land and its attributes; while incorporeal hereditaments are rights, (not objects) - rent, charges, easements, profits. Flowing from the above definitions of land, any claim for compensation for revocation of land cannot exclude land itself, or any other hereditament, neither could such a claim exclude interest, right, easement or a privilege. Omotola⁵ described land as an element which every man requires for his support, preservation and self actualization in an ideal society, and is a foundation for shelter, food and employment.⁶ Land is part and parcel of a given society without which man cannot exist. Deprive man of his land, you have left him bereft of meaning of his existence. Wigwe's description of land aligns with that given by Omotola when he described land as the most treasured commodity from the ancient time throughout the world which value in present time is still very high of which reason our whole existence and activity is/was tied to land and its ownership.⁷ Sir Edward Coke sees land as follows:⁸

Land, in its restrained sense, means soil, but in its legal acceptance, it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath; it includes also houses, mills, castles and other buildings, for which the conveyance of land, structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *cujus est solum ejus est usque ad coelum et ad in feros*....

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¹ H. Briassoulis, 'Factors Influencing Land Use and Land Cover Change: Land Use, Land Cover and Soil Sciences', (Vol. 1), *Encyclopedia of Life Support System (EOLSS)*, (2010), 21. <http://www.eolss.net/Eolss-sampleAll>. Accessed 17 May-5-2018.

² W. Morenikeji & Others, *Land Administration problems in Nigeria: A case study of Oyo and Niger States*, (Urban and Regional Planning Department, Federal University of Technology, Minna, 2001).

³ Interpretation Act of 1964.

⁴ M. B. Nuhu and A. U. Aliyu, 'Compulsory Acquisition of Communal Land and Compensation Issues: The Case of Minna Metropolis', *South East Asia Journal of Contemporary Business, Economics and Law*, (Vol. 8, Issue 4, 2015),

⁵ Omotola, J. A, *Law and Land Rights: Wither Nigeria?* (University of Lagos Akoka, Inaugural Lecture Series, 1988) 6.

⁶ *Ibid*.

⁷ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

⁸ *Jowitt's Dictionary of English Language*, (1977, 2nd ed), vol. 2, pp1058 – 1059.

The above definition is all embracing and simply implies that the owner of the soil is presumed to own everything beginning from the sky and down to the centre of the earth. This reasoning was applied by the Court of Appeal in *Ibrahim v. Yola*⁹ that according to principles of inherited English Common Law, land includes everything up to the sky and down to the centre of the earth. This means that a particular piece of land includes not only the physical soil but all buildings permanently attached to the soil or permanently fastened to anything which is attached to the soil.

The general basic rule is that, whatever is fixed, attached or annexed to the land is land itself. This view was expressed in *Buckland v. Butterfield*¹⁰ where it was held that a conservatory which was attached to a house by eight cantilevers, each 9 inches long, formed part of the land. The Court went further to state that a seller who wishes to exclude such fixture has to specifically indicate it in a contract of sale of such land. The *Buckland v. Butterfield*¹¹ case also buttresses the point that since the house is land, because it is fixed to the earth, anything which is fixed to the house also becomes land. However, anything merely placed upon the land but not fixed to it will not be regarded as forming part of the land no matter how heavy the object is and no matter how difficult to remove it. This principle was much illustrated in the case of *Berkley v. Poulett*¹² where a large statue made of marble and weighing nearly half a ton, was not regarded as part of the land, because it was not fixed down in any way.

The Court¹³ equally held that each case is different and should be determined based on its own circumstances, and so the intention of the parties is what matters in every circumstance or the purpose of the person who put the property in place whether to permanently affix or not. The above notwithstanding, in *Elistestone Ltd v. Morris*,¹⁴ Lord Clyde stated the fact that the purpose which the object is serving and not the intention or purpose of the person who put the object there is what matters.¹⁵ In *Shell Petroleum Development Co. of Nigeria Ltd v. Burutu Local Government Council*,¹⁶ caravans which are houses on wheels not permanently fastened to land were held not to be part of the land.

Both Common law and statutory definitions of land agree that land covers more than just the surface of the earth. Thus, the Property and Conveyancing Law of the Western Region¹⁷ defined land as: 'Land of any tenure, buildings or parts of buildings whether the division is horizontal, vertical or made in any other way and other corporeal hereditaments, also a rent and other incorporeal hereditament and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land'.¹⁸ Under section 205 (1) (iv),¹⁹ land include minerals, top soil, subsoil, things above or below the soil, rights and privileges and other things derived from land. The general rule is that minerals are part of the soil and thus belongs to the owner of the surface.²⁰ There are however exceptions to this rule in Nigeria. Government owns both land and minerals as the people own merely leasehold interest in the property. In England, all gold and silver in gold and silver mine belong to the Crown and such cannot be worked by an individual even on their own land without license from the Crown.²¹ Section 3 of the Interpretation Act²² defines immovable property or land to include land and everything attached to the earth or permanently fastened to anything, which is attached to the earth or permanently fastened to anything, which is attached to the earth including minerals. While the definition offered by section 91 of the Nigerian Urban and Regional Planning Acts²³ excludes minerals in its definition. Generally, minerals are considered part of land but usually vested solely on the government with licenses granted to individuals, corporations for exploration of minerals.

Land is the most treasured commodity from the ancient time throughout the world and is still highly valued in our today's world. In fact, man's whole existence and activities seem to be tied to land and its ownership which had resulted to lots of disputes among men. Apart from private use of land by man, government often requires land to build offices or social amenities for public use. Most times, individuals resist this government move to obtain private land for government projects or where they agreed the property price may be outrageously expensive. In order to obtain land therefore when and where it is required by the government, every government in every jurisdiction exercises what is called power of eminent domain, a power of compulsory requisition and acquisition of land where the owners of a particular land can be compelled by the government to sell their land for it to be used for public purpose. The problem with this power of revocation however is that most times government converts acquired land to his or her cronies who put it to other use instead of particular purpose for which it is revoked, thus breaching the main purpose of revocation. As for compensation for compulsory acquisition, compensation for compulsorily acquired land should not only be limited to land and other improvements permanently affixed to the ground but also include other inconveniences and other incidental expenses incurred by the owner.

Land is God's gift to man to ensure his survival. It is on land that man lives and produces the food he eats; upon the land he builds; and when he dies, he goes back to earth. Land like air is a free gift of nature, but scarcity of land has made it an essential commodity, and a lot of controversies trail its ownership, unlike air which no individual can claim ownership of. No wonder Megarry²⁴ stated that the study of law is tortuous and an undoddy jumble.

Land before the arrival of the colonial masters to Africa was used by our forefathers as the great source of wealth. It was also regarded as a common wealth to be used for the benefit of the unborn, the living and the dead. Land comprises all naturally occurring resources as well as geographic land. Land is fundamental to the production of all goods and economic production. It is considered the most important when compared

⁹ (1986) 4 CA (Pt. 1) 98, 113.

¹⁰ (1820) 2 Brod and Bing 54.

¹¹ *Supra*.

¹² (1976) 242 EG 39.

¹³ *Ibid*.

¹⁴ (1997) 1 WLR 687.

¹⁵ *Ibid*.

¹⁶ (1998) 2 NWLR (Pt. 565) 318.

¹⁷ The Property and Conveyancing Law of the Western Region 1959.

¹⁸ *Ibid*.

¹⁹ English Law of Property Act 1925.

²⁰ *Ibid*.

²¹ *A-G v. Morgan* (1891) 1 Ch. 432, CA. By virtue of the English Coal Industry Act, for instance, coal is vested in Coal Authority and license is required to mine coal.

²² CAP 192 Laws of the Federation 1990.

²³ No. 88 of 1992.

²⁴ Megarry & Wade, *The Law of Real Property*, 5th ed (Sweet & Maxwell, London 1984) 1.

with other factors of production such as labour and capital. As such, no man ought to be deprived of his property without adequate plan to reinstate him on an equivalent land and other incidental losses covered as well.

3. Acquisition

Acquisition of land is one of the topical issues that confront many nations including Nigeria. The power of government to acquire land for developmental projects is recognized all over the world. Acquisition is the act of acquiring or gaining possession of something. A property may be acquired voluntarily or involuntarily. It is involuntary when it is acquired under threat by the public domain or the government, and is otherwise referred to as compulsory acquisition. A property can however be acquired voluntarily where the owner gave his consent before acquisition, for instance, for a sale of interest in land. An acquisition may also be defined as an act by which a person procures the property of another. An acquisition can also be temporary or perpetual, and may be procured either for a valuable consideration (purchase), or without consideration (gift). In Nigeria, the federal government, the State and the Local Government are saddled with the responsibility of acquiring land for provision of public facilities and infrastructures that guarantees safety and security, health and welfare, social and economic enhancement and protection and restoration of natural environment. The Nigerian Land Use Act of 1978 is the law guiding the management of land and land transactions in Nigeria. The Act vests all land comprised in the territory of each State (except land vested in the Federal Government or its agencies) solely in the Governor of the State, who would hold such land in trust for the people, and would henceforth be responsible for allocation of land in all urban areas to individuals resident in the State and to organizations for residential, agricultural, commercial and other purposes. Similar powers with respect to non-urban areas are conferred on Local Government. The Act further provides that all land held by the governor will be administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.²⁵

Under section 28 of the Act, the Governor is empowered to revoke private properties for overriding public interest. It also made provisions for procedures for acquisition of land and compensation thereof.²⁶ Where land is acquired compulsorily by a government, compensation is usually made provision for to ensure that the owner of the acquired land is not bereft of any remedy and to cushion the effect of land acquisition which includes displacement of owners from their homes and their businesses as well as other means of livelihood. Acquisition of land for public purpose²⁷ without adequate compensation is not only unjust but a violation of the property rights guaranteed under the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as other international instruments. Where however land is acquired by the Government, such land must be used for a particular purpose for which it was acquired. Where this is not the case, such land is expected to automatically revert to the owner. Courts have generally frowned at situations where land acquired for a particular purpose is diverted for personal or other purposes not included under the Land Use Act.²⁸ In *Provost v. Edur*²⁹ the Court listed conditions that must be fulfilled before an acquisition for public purpose should be considered valid:

1. Notice of acquisition must be specific and precise as to the property to be acquired;
2. the particulars of the public purpose for which such property is acquired must be given;
3. the acquiring authority must give notice of intention to the owner before publishing same in the gazette.

The general interest of the public must be considered before acquisition is made by the Government. There should be a balance between protecting the interest of the public in creation of amenities, and protection of private or individual property rights.

4. Land Acquisition

Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is however of the view that no movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by law. These conditions include prompt payment of compensation³⁰ and a right of access to court to determine the interest in the property and amount of compensation.³¹ In this regard, section 47 (2) of the Land Use Act which has to do with an ouster clause, is in sharp contrast with the provisions of section 44 (1) (b) of the 1999 Constitution that made provision for right of access to court for determination among others the amount of compensation to a court of law or tribunal.³² Ordinarily, this provision ought to be invalidated upon this ground due to the supremacy of the Constitution but this provision cannot easily be amended without first amending the provision of section 315 (5) of the 1999 Constitution which provides that nothing in this Constitution shall invalidate the Land Use Act. What this simply means is that the Land Use Act is enshrined in the Constitution and this entrenchment of the Act has been described to have been due to the Military regime which heralded its birth.³³ The Court in *Nkwocha v. Governor of Anambra State*³⁴ however arrived at a conclusion that the Land Use Act is not an integral part of the Constitution.

5. Compulsory Acquisition

According to Wigwe,³⁵ compulsory acquisition, also known as eminent domain, is a power granted to the government to take private property for public use, without the willing consent of the owner, upon payment of adequate compensation. Governments of all ages have required appropriate land to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, as well as protection and preservation of artifacts and monuments to ensure sustainable development. In order to obtain land for such development, government reserves the right, or the power of compulsory acquisition of land. The Food and Agriculture Organization³⁶

²⁵ Section 1 of the Land Use Act, 1978.

²⁶ *Ibid*, section 29.

²⁷ Section 51 of the Land Use Act defines public purpose.

²⁸ *Mayegun v. Governor of Lagos State* (2010) LPELR –CA/L/126/07.

²⁹ (24) NJAC 94.

³⁰ Section 44 (1) (a) of the 1999 Constitution (as amended).

³¹ Section 44 (1) (b) of the 1999 Constitution (as amended).

³² *Aderonpe v. Eleran* (2019) 4 NWLR (Pt. 1661) 141 SC.

³³ Smith Imran Oluwole, *Sidelining Orthodoxy in Quest for Reality: Towards an Efficient Legal Regime of Land Tenure in Nigeria* (University of Lagos Press: 2008), 12.

³⁴ (1984) 6 SC 62.

³⁵ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

³⁶ Food and Agriculture Organization, (2009) 'Compulsory Acquisition of Land and Compensation,' Land Tenure Studies 10, Food and Agricultural Organization of the United Nations (FAO), Rome.

defines compulsory acquisition as the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant, usually for social and economic development like building of roads, railways, airports, hospitals, schools, electricity, and for environmental protection where a particular land is required to conserve natural resources or repair damage to the surroundings.³⁷ Olusegun,³⁸ while discussing the need for a global uniform mode of assessment of compensation for compulsorily acquired land described compulsory acquisition as the implementation of the power of government to acquire private interest in land (land rights of individuals) through the exercise of the power of eminent domain for the purpose of public good. This power is usually mandatory as most often than not land owners are unwilling to part with their land even with the promise of payment of compensation. Without the government's power to acquire land by force, the size and capabilities of our public infrastructure would become inadequate to serve the needs of society. Stated conversely, compulsory acquisition is where a government makes claim to a piece of land compulsorily not by agreement in order to carry out a public project such as building new roads or railways or other public construction projects. It is a tool for the control of land uses as well as land acquisition for developmental projects by the public authorities usually government. In Nigeria, compulsory acquisition can be exercised by both the federal or local governments when they consider such acquisition to be in the best interest of the community. The exercise of this power of eminent domain is usually influenced by laws which provide the basis upon which such acquisition may be carried out. With no legal instrument spelling out the *modus operandi* of land acquisition and revocation, governments would depend on the willingness of landowners to sell their land in to realize their plans for the State, and this we all know would be nearly impossible as time and money would be wasted. Therefore, the power of compulsory acquisition of land is usually inserted in land laws as an exception to fully protected private property rights. The Constitution of the United States of America, for instance, mandates that no person...shall be deprived of ...property, without due process of law; nor shall private property be taken for public use without just compensation.³⁹ Article 24 of Chilean Constitution which also provides for protection from expropriation says that:

No one can, in any case, be deprived of his property, the assets affected or any of the essential faculties or powers of the domain, but by virtue of a general or special law that authorizes expropriation for public utility or national interest, qualified by the legislator. The expropriated may protest the legality of the expropriation act before the ordinary courts and shall always have the right to be compensated for the patrimonial damage effectively caused, which will be determined by agreement or by a sentence dictated in accordance with the law by the said courts.

Section 44(1) of the Nigerian Constitution provides that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law. In the same vein, Rwanda's Constitution states that private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation.

In the world generally, and in Nigeria in particular, negative reactions have trailed the implementation of compulsory acquisition or eminent domain - as it is generally referred to in other jurisdictions. Due to the dire need of land for different purposes, the demand for land for public purposes has increased particularly the demand on the government for provision of agricultural and industrial related projects. Hence, the need for government's provision of exercise of its enormous power of compulsory acquisition of land in the Land Use Act of 1978, to ensure sustainable development and make available different public infrastructure and facilities that guarantee the security, health and social welfare of the citizenry.

Despite the laudable reasons for compulsory acquisition by the government, the act of compulsory acquisition had been described as an area usually filled with tension.⁴⁰ The topic does not generate such interest or excitement for most people except to those in academic settings, among law students or legal practitioners. Wigwe⁴¹ summarized the effect of exercise of eminent domain on the citizens thus:

The people...feel unsecured and the fear of unknown relocation might grip them because they are threatened with dispossession. Though the compulsory acquisition of land for developmental purposes may in the long run bring unquantifiable benefits to society but it is disruptive to people whose land have been acquired. It displaces families from their ancestral homes, farmers from their fields, and businesses from their neighbourhoods. This may separate families, greatly interfere with livelihoods, deprive communities of important cultural or religious sites and cut off networks of social relations. A poorly handled compulsory acquisition process may leave people homeless and landless, with no way of earning a livelihood.⁴²

The law of natural justice demands that a man deprived of his property should be given adequate compensation or alternative property-in this case land- or be put in a position to enable him feel as if he was not deprived of his property at all. It is an unjust act and a serious violation of the rights guaranteed under the Nigerian Constitution, the African Charter on Human and People's Rights (Ratification and Enforcement) Act⁴³ to compulsorily acquire private land without adequate compensation. At times lands are revoked without being put to the purpose for which it was revoked. In situations where a particular land is compulsorily acquired for a specific purpose and it turns out that the property cannot be put to the particular use for which it was originally revoked, courts have held such revocation and acquisition *void*⁴⁴ and returned back to the owner even when compensation had been paid for non-compliance with the rule of law or failure to meet the requirements of the law.

³⁷ *Ibid.*

³⁸ Olusegun O. O. et al, 'Towards Global Uniformity and Sustainable Compensation Valuation for Compulsory Land Acquisition', *Journal of Design and Built Environment* (Dec. 2017), <http://www.researchgate.net/publication/322254637>. Accessed 24 June, 2023.

³⁹ Article V of the US Constitution.

⁴⁰ C. Wigwe, *Land Use and Management Law*, (Mountcrest University Press, 2016).

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Cap A9 Laws of the Federation 2004.

⁴⁴ *Doggo v. Ashdene Association (Nig) Ltd & Ors* (2022) LPELR – 56910 CA.

There is no doubt that the procedure for compulsory acquisition requires adequate notice to be given to the owner⁴⁵ and compensation paid for acquiring the property. There is also a legal requirement that the acquisition must be for public purpose. For any revocation of private property to be considered valid therefore, the following conditions must be met:

- i) A notice of acquisition of such property must be specific and precise as to the particular property to be acquired;
- ii) The particulars of the public purpose for which such property is acquired must be given; and
- iii) The acquiring authority must give notice of intention to acquire the property before publishing same in the gazette.⁴⁶

The laws governing compulsory acquisition of property are partly property law and part administrative law which dictates governance procedures. Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearing and appeals and even judicial review. In Nigeria, the Land Use Act of 1978 is the law governing land revocation and acquisition. Sections 28 and 29 thereof provide that:

- 1) It shall be lawful for the governor to revoke a right of occupancy for overriding public interest.
- 2) Section 28 of the Land Use Act empowers the governor to revoke for overriding public interest any right of occupancy he had earlier granted. Overriding public interest includes when the government requires the land for public purposes, projects or infrastructural developments. Subsections of section 28 make provisions to guide the governor of a State in the exercise of his vast powers of control of land within his territory. One of the pre-conditions for the exercise of this power of revocation is that it must be shown clearly to be for overriding public interest. In other words, any compulsory acquisition must be within the confine of the provisions of section 28 of the Act otherwise the exercise of such power may be declared invalid.⁴⁷

Of great importance is the ousting of court's jurisdiction under section 47(2) of the Land Use Act and its attendant implications.⁴⁸ There is a tendency for the power of compulsory acquisition bestowed on the government to be abused. For instance, an unfair procedure for compulsory acquisition of land and inequitable compensation for its revocation or loss may lead to feeling of insecurity by the aggrieved party and loss of confidence in the rule of law. This therefore calls for clear cut policies that define specific purposes for which land may be acquired by the Nigerian Government. There is need for transparency, use of fair procedures in land acquisition and provision of equitable compensation. And also, need for the amendment of section 49 of the Act to ensure transparency in land revocation transactions.

6. Examination of the Roles of some Institutions in the compulsory acquisition, revocation and compensation of lands in Nigeria

Family

A family may be defined as a group of people consisting of parents and their children. It may also be defined as a group of persons connected by blood, by affinity or by law. In the case of *Okuladé v. Awosanya*⁴⁹ the Court per Uwaifo JSC defined family as: 'The body of persons who live in one house or under one head, including parents, children, whether living together or not; in wider sense all those who are nearly connected by blood or affinity ... those descendants claiming descent from a common ancestor; a house; kindred lineage'. Also the Court in *Shell Petroleum Development Company of Nigeria Ltd v. Amadi & Ors*⁵⁰ defined the word family in relation to a family property as a group of persons who are entitled to succeed to the property of a deceased founder of the family, usually made up of the children of the deceased founder of the family. A family may also be defined as a group of persons lineally descended from a common ancestor exclusively through males (in communities called patrilineal for this reason) or exclusively through females starting from the mother of such ancestor (in communities called matrilineal for this reason) and which group succession to office and property is based on this relationship.⁵¹ Family property can be created in the following ways: firstly, by way of a declaration of an intention to create a family property by parties involved or by a landowner with the intention to make the property a family property for the benefit of all other members of the family; Secondly: by way of Declaration in a Will. Here, the deceased landowner before his death declares which of his properties would be held jointly as family property upon his demise. Thirdly, by way of Conveyance, where the owner of the property conveys his property by Deed for the use and enjoyment of certain named members of the family in the Deed. Fourthly, by way of Intestacy, where the owner of the property dies without a valid intestate, that is, without making a valid will. In this case, the rules of customary law apply and such land devolves on the owners' family in perpetuity held jointly as family property. Members of the family have been held to exclude brothers, sisters, cousins or uncles of the deceased founder of family when it comes to issue of inheritance, however, the deceased may by the use of declaration in a Will enlarge family to include his relatives.⁵¹ With respect to land holding, possession, transfer and disposition of lands under the native law and custom, Viscount Haldane clearly recounted the state of land ownership under native law and custom in *Amodu Tijani v. Secretary, Southern Nigeria*⁵² thus:

... The notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner . . . This is a pure native custom along the whole length of this coast.

The King or the Chief is usually held under customary law, to be the head of the family or the oldest male member of the family. As a head of the family, he manages family property for and on behalf of other family members.⁵³ He represents the family in a representative

⁴⁵ *Santos Estate v. Associated Properties & Trust PLC* (2022) LPELR -56937 (CA).

⁴⁶ *Provost v. Edu* (2004) MJSC.

⁴⁷ *G.C. M. Ltd v. Travellers Palace Hotel* (2019) 6 NWLR (Pt. 1669) 507 SC.

⁴⁸ *Benue State Urban Development Board & Ors v. Asuakor* (2019) LPELR - 47233 (CA).

⁴⁹ (2002) FWLR (Pt. 25) 1666 per Uwaifo, JSC.

⁵⁰ G. Woodman, *Customary Law of the Ghamman* (Accra, Ghana University Press) 218.

⁵¹ *Sogbesan v. Adebisi* (1941) 26 NLR 26.

⁵² (1921) 2 AC 399.

⁵³ *Akano v. Ajuwon* (1982) II SC 1.

capacity and holds the property as a trustee of the family property.⁵⁴ Under the native law and customs, this head of the family is bound to allocate land to various families for their own use or even to strangers upon a payment of tribute,⁵⁵ but he usually does not have powers to sell or alienate the land at his own disposal without the consent of other members of the family. Where however he misappropriates the family property or deals with the property in a manner contrary to the interest of all the family members, the family would have no option but to remove him as the head of the family- In *Agara v. Agunbiade*⁵⁶ there's no doubt that the principle has been settled, to the effect that where the family finds the head thereof misappropriating the family possession or property and squandering them, the only remedy is to remove him . . . Title to land under customary law is vested in the group called family or community and no individual within the family or community can lay claim to any portion of the land as the owner. The individual right is limited to the use and enjoyment of the land and is not vested in any way with the power to alienate same without the consent of the other members of the community or family.⁵⁷

Land Use Allocation Committee

The Governor is empowered under section 2(2) of the Act⁵⁸ to establish the Land Use and Allocation Committee. The body is saddled with the responsibility of:

- (a) Advising the Governor on any matter connected with the management of all land in urban areas;
- (b) Advising the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest;
- (c) Determining disputes as to the amount of compensation payable for improvements on land.

Section 30 of the Land Use Act makes provision for any dispute as to compensation to be referred to the Land Use Allocation Committee. According to Ekpu,⁵⁹ the appointment, composition and the *modus operandi* of the Land Use Allocation Committee is at the exclusive discretion of the Governor.⁶⁰ Under section 2(3), (4) of the Land Use Act, the Governor determines the members of the Committee as well as the presiding officer of the Committee and gives direction as to the proceedings of the committee. The committee shall consist of such number of persons as the Governor may determine with at least two persons qualified in the area of Estate Surveyors or Land Officers with such qualifications for not less than five years and a Legal Practitioner. Omotola while commenting on the composition and relevancy of the committee observed that: 'It is doubtful whether from the composition and mode of appointment of members of the committee whether any person can ever obtain a satisfactory compensation even for improvements on land compulsorily acquired by government. Since the committee cannot be an independent and impartial tribunal, the provision is not only retrograde but also conflicts with the fundamental principles of natural justice, which requires that a person shall not be a judge in his own cause'.⁶¹

The Supreme Court had opportunity in *Makun & Ors. v. FUT, Minna & Ors*⁶² to consider whether a Governor can acquire land from an individual without payment of adequate compensation and stated that:

whereas the law is clear that when an issue of payment of compensation is at such cross road reference must be made to Land Use and Allocation Committee. The disparity in the amount of valuation and the amount offered had given cause to a dispute by virtue of section 30 of the Land Use Act. While a government cannot acquire land from an individual without payment of adequate compensation, the gap between N18.89 million and Six Million to communities of rural areas is suicidal.

This disparity in amount assessed to be paid as compensation for compulsory acquisition is the mere reason a deprived owner ought to be represented by an independent valuer of his choice to enable unbiased assessment. Many have called for the repeal of this section of the Act that gives enormous powers on the governor as the committee had been rendered ineffective by the governor as they cannot function without the control of the governor. The legislature cannot also easily resolve this problem since it lacks the power to amend or review the Land Use Act being a federal legislation.

7. Ministry of Land, Survey and Urban Development

This Ministry is also often referred to as the Ministry of Lands, Housing, Physical and Urban Development often headed by a Commissioner or a Permanent Secretary. It is established to enhance the speedy processing of land matters in the State. The Ministry is directly under the supervision of the Governor's Office and has the responsibility of overseeing all forms of policy making as it pertains to land and land management. It is established in every State within the nation to ensure land policy implementation.⁶³ The main duty of the Ministry is the designing and implementation of urban renewal. Every land must be surveyed and approved by the Ministry of Land and Survey, and every building plan must also undergo an approval by the State Capital Development Authorities before registration. The Ministry also has the responsibility of approving all layouts, monitoring and controlling of physical development in the State. The mandate of the Ministry includes but not limited to the following:

1. The acquisition and allocation of land for developmental projects by the various levels of governments, corporate organizations and for other uses of interest to the public.

⁵⁴ *Bassey v. Cobham* (1924) 5 NLR 90.

⁵⁵ G. Coker, *Family Property among the Yorubas*, (London, Sweet and Maxwell, 1958) 24.

⁵⁶ (2013) All FWLR (PT. 683) 1899 at p. 1919, para. D.

⁵⁷ I. O. Smith, *Practical Approach in Real Property in Nigeria*, (Lagos Eco-watch Publications Ltd, 2007).

⁵⁸ Land Use Act.

⁵⁹ O. Ekpu, 'The Role of the Local Government in the Implementation of the Land Use Act: The Bendel State Experience in Olayide Adigun (ed) *The Land Use Act: Administration and Policy Implementation* (University of Lagos Press, 1999), 49.

⁶⁰ *Aderonpe v. Eleran* (2019) 4 NWLR (Pt. 1661) 142 SC.

⁶¹ J. A. Omotola, *Compensation Provisionas of the Land Use Act* (1980) (XVI) Nigerian Bar Journal 36.

⁶² (2011) LPELR – 15514 SC.

⁶³ Government of Ekiti State, <<https://ekitistate.gov.ng/executive-council/mdas/ministry-of-landshousing-physical-planning-urban-development/>> *pnent/*> Accessed on 12 July 2020.

2. Processing and payment of Compensation to dispossessed owners of properties or land acquired for overriding public interest.
3. Acquisition and management of land and landed properties for various purposes on behalf of the State Government.
4. Processing of application for the Governor's consent for further transactions on land.
5. Establishment of site and services schemes and provision of infrastructures at Government existing estates (Residential, Commercial or Industrial).
6. Issuance of Title documents on land e.g., Certificate of Occupancy.
7. Valuation of properties for Compensation purposes.
8. Provision of survey services and Geo-mformatics to Government Agencies and the public.
9. Survey of all government land and demarcation of Intra-and Inter - State boundaries.
10. Production of maps (Base Maps, administrative Maps, etc.) and other survey documents.
11. Responsibilities for towns and country planning *via*:
 - i. Design of government Layouts.
 - ii. Preparation of Master plan and land-use plans.
 - iii. Design and implementation of urban renewal programmes.
 - iv. Approval of survey and building plans.
 - v. Approval of private layouts.
 - vi. Monitoring and control of physical development.
12. Registration of all titles and other registrable instruments on land.

The Ministry of land and Survey is established to enhance speedy service delivery and achievement of results. Their vision is to ensure the rational use of the geographical space (the environment) of the State and its resources in a sustainable symbiotic manner. While their mission is the implementation of the State Government's policy on the acquisition, management of land and landed properties, the issuance or approval of title documents or instruments on lands aimed at facilitating further transactions on land or landed properties.

Office of the Governor

The Land Use Act 1978 vests all land comprised in the territory of each State in the federation in the Governor of the State in trust to be administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.⁶⁴ The Governor is empowered under section 3 of the Land Use Act to designate certain parts of the area of the territory of the State as constituting land in urban area. The Governor also has the control and Management of land within an urban area only while local government Chairman takes charge of land in the rural areas.⁶⁵ The Land Use Act failed to demarcate or define territories to be designated urban or rural areas, and up until this moment, no nationally approved standard of demarcation has been approved with the National Council of States saddled with the responsibility. This failure had led to confusion and friction between the State Governor and the Chairman of a local government. The Office of the Governor which is established in the 36 States of the federation is saddled with the enormous management and administrative powers which include the power to grant and revoke right of occupancies; power to issue Certificate of Occupancy, power to impose rents on land, power to give consent for land transactions⁶⁶etc.

Office of the Chairman

The Chairman of a Local Government is in-charge of managing and administering land not located in urban areas, in this case, all land within the rural area of a State is within the control of the Chairman.⁶⁷ It is indeed not clear which area of land within a State is urban or rural area as there is no clear-cut demarcation of what comprises each component. Again, the Governor is saddled with the responsibility of declaring a particular zone rural area or not.⁶⁸ The office of the Chairman comprises of the Chairman himself, and the Land Allocation Advisory Committee which consists of persons as may be determined by the Governor of that State after consultation with the Local Government. The responsibility of the advisory committee is to assist the Local. The powers of the Local Government Chairman are as enumerated under Section 6 of the Land Use Act thus: 'It shall be lawful for a local government in respect of land not in an urban area to - (a) Grant customary rights of occupancy to any person or organization for the use of land in the local government area for agricultural, residential and other purposes; (b) Grant customary rights of occupancy to any person or organization for the use of land for grazing purposes and such other purposes ancillary to agricultural purposes as may be customary in the local government area concerned'. A Chairman of the local government cannot grant a single customary right of occupancy in respect of an area of land in excess of 500 hectares if for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.⁶⁹ The local government is also empowered to revoke any land not within the purview of the Governor for public purposes,⁷⁰ and to also pay compensation to the holder and occupier as required under the Act for the value at the date of revocation of their unexhausted improvements.⁷¹ Where the Chairman refuses or neglects to carry out his responsibility of payment of compensation to a holder or occupier as stipulated under the Act, the Governor may direct him to pay the requisite amount of such compensation.⁷²

8. Conclusion

The writer has painstakingly looked at some institutional framework for compulsory acquisition, revocation and compensation of land in Nigeria. Such institutions like the family, the Land Use and Allocation Committee, Ministry of Land, Survey and Urban Development, Office of the Governor and Office of the Chairman The writer discovers that these institutions have different roles to play in compulsory acquisition, revocation and compensation of land in Nigeria and that the roles of these institutions overlap. The writer recommends that there is need to harmonize the roles of these institutions for effective and efficient administration of lands in Nigeria,

⁶⁴ Section 1 of the Land Use Act.

⁶⁵ Section 2 of the Land Use Act.

⁶⁶Section 5 of the Land Use Act.

⁶⁷ Section 2 (b) of the Land Use Act.

⁶⁸ Section 3 of the Land Use Act.

⁶⁹Section 6 (2) of the Land Use Act.

⁷⁰ Section 6 (3) of the Land Use Act.

⁷¹ Section 6 (5) of the Land Use Act.

⁷² *Ibid*, Section 6 (7).