



ENVIRONMENTAL JUSTICE AND THE LAND USE ACT 1978: THE CHALLENGE OF OVERRIDING PUBLIC INTEREST

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Abstract

Environmental justice means fair treatment of people as it affects their rights to the use of the environment and lands. The regulation of the environment, mode of acquisition of interest in lands and development of same are all integral parts of the use of the environment. The principal legislation on this subject is the Land Use Act 1978. It is worrisome that more often than not, people living a peaceful communal lifestyle sometimes receive notice of Government's acquisition of their lands for public interest. This interest is known as "Overriding Public Interest" but does not always serve the intent and purpose of the Act due to lack of adequate notices and compensations to victims. It is oppressive and injustice to the occupants of the lands. The passion to balance this conflicting overriding public interest gave rise to this research and in this regard, this research adopts the doctrinal legal research methodology and examine environmental justice and the Land Use Act 1978 vis-a-vis the challenge of overriding public interest. On this premise, this research recommends a structural amendment to include compensation right to seek redress under the Land Use Act.

KEYWORDS: Environment, Land, Overriding Public Interest

INTRODUCTION

The physical condition affecting the development, growth or performance of a person or thing is referred to as the Environment.¹ An individual living in an environment possesses certain natural rights to the peaceful co-existence and enjoyment of the ecosystem. In this regard, the constitution has provided that the State shall protect and improve the environment and safeguard the water, air, land, forest and wild life of Nigeria.² This environmental right has also gained international recognition, in that, the African Charter on Human and People's Right provides to the effect that all people shall have the right to a general satisfactory environment favourable to their development.³

It is important to state that such rights includes right to acquire and own immovable property anywhere in Nigeria. The Constitution of the Federal Republic of Nigeria (hereinafter referred to as the Constitution) provides that every Nigerian shall have the right to acquire and own immovable property anywhere in the Country.⁴ This right also stemmed as the right of occupancy. However, the Land Use Act 1978 enacted by the Government of Nigeria is one of the most far reaching and controversial legislations in Nigeria.⁵ The Land Use Act has contravenes certain provisions of the Constitution which are hereinafter examined in the later part of this research.

¹ Bryan A. Garner, et al, Black's Law Dictionary, 11 Edn. (U.S.A: Thomson Reuters, 2019.) p.675.

² Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 20, hereinafter referred to as the Constitution.

³ African Charter on Human and People's Right 1986, Article 24

⁴ The Constitution, s. 43

⁵ Okoye C.J., Non-Customary Land Law: Land Use Act, <https://cjokoyelawview.com/law-422-land-law-ii/topic-i-non-customary-land-law-land-use-act> (2004) accessed 21 October 2025.



In the case of *Oniyale v. Macaulay*,⁶ the Supreme Court, in its ruling stated to the effect that on the issue of valid grant of Certificate of Occupancy or right of occupancy, if it can be proved in evidence that another person other than the holder of a certificate of occupancy, has a better title or right of occupancy to the land upon which the grant is based, it is proper for a court of competent jurisdiction to set aside the said grant or disregard such grant as invalid or defective grant.⁷ In the case of *Nigerian Engineering Work Ltd v. Denap Ltd*,⁸ the court stated to the effect that where there is existence of two rights of occupancy in the hands of two different persons over the same parcel of land, the latter right of occupancy granted without first revoking the former right of occupancy will be treated as invalid or defective right following the provision of section 28 of the Land Use Act.⁹

In the course of this research, the authors reviewed some relevant literature works of some scholars for the purpose of identifying research gaps. Foremost among them are; an article titled “Impact of the Nigerian Land Use Act on Economic Development in the Country”. The Nigerian Land Use Act 1978 is the principal legislation that regulates contemporary land tenure system in Nigeria.¹⁰ The enactment of it brought revolutionary changes in the erstwhile land tenure system in Nigeria.¹¹ It follows therefore that these lands which were originally in the hands of natives varies in uses and in terms of development. As earlier noted, the Nigerian Land Use Act enacted by the Government of the Federation, was originally put in place for the purpose of mitigating conflicting interest arising from the use of land with regards to acquisition, right of occupancy, ownership, trusteeship and development of land in Nigeria. It was enacted to reduce the high cost of land required for industrial estate and mechanized agriculture.¹² As part of its mandate, the Act aims principally at the effective and sustainable management and control of land in Nigeria especially in such a manner that gives Government adequate powers over the acquisition, transfer or otherwise assignment of land and resources.¹³ It is important to state that the Land Use Act provides under part 1 to the effect that all land comprised in the territory of each State of the Federation is vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefits of all Nigerians in accordance with the provisions of the Act.¹⁴

This vesting Order enables the Governor to grant statutory right of occupancy and could also revoke same. Upon the grant of a statutory right of occupancy, all existing rights to the use and occupation of the land which is the subject of the statutory right of occupancy shall be extinguished.¹⁵ This power of revocation is further given efficacy in section 28 of the Act on the basis that it shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.¹⁶ This author’s work is relevant to this research in that it expatiated the governing principles and the impact of the Act in land use system in Nigeria.

Another article reviewed is titled “The Essence of the Land Use Act, 1978: The Abuses and its Impact on the Availability of Land for Housing Development in Nigeria”. The reason for the promulgation of the Land Use Act 1978 was principally birth from the pressing need for more efficient, planned and controlled utilization of the land in every state for the optimum benefits of the members of the

⁶ (2009) 7 NWLR (PT.1141) 597.

⁷ See Okoye C.J., above n.5

⁸ (2001) 18 NWLR (PT.746) 726.

⁹ See Okoye C.J., above n.5

¹⁰ Matthew Enya Nwocha, Impact of the Nigerian Land Use Act on Economic Development in the Country’, Acta Universitatis Danubius.Administratio, Vol.8, No.2 (2016) <https://journals.univ-danubius.vo>view> accessed 21 October 2025

¹¹ Ibid. at 10

¹² Ibid. at 10

¹³ Ibid. at 10

¹⁴ Section 1 Land Use Act 1978.

¹⁵ Land Use Act 1978, s. 5 (2)

¹⁶ Land Use Act 1978, s. 28 (1)



public.¹⁷ The coming into effect of the Land Use Act unlocked and made lands hitherto in the hands of natives available for development purposes.¹⁸ According to this author, in spite of the benefits of the Land Uses Act, the Act has come under serious criticisms for various reasons among which is the unbridled abuse of power associated with the Governors of the various States in their acts of acquisition and allocation of land in their States.¹⁹ The work of this author is relevant to this research as it highlights some of the injustice and unfairly use of the overriding public interest clause by Governors of States in acquiring lands and revocation of right of occupancy though it did not address the area of inadequate compensation to rightful occupants of land prior to compulsory acquisition of their land. This is one major gap, which this research seeks to bridge. The incessant revocation of right of occupancy without prior notice to the occupants and re-allocation of land majorly for industrial purpose may not serve the intent and purpose of the Act. Thus, economic value of land varies on circumstances and geographical location, for instance, there are; agricultural land which is used for growing crops and rearing of animals and this is the oldest form of human use of land; residential land use which refers to the use of land for housing purpose; while commercial land is used for building businesses.²⁰ Thus, six types of land use has been identified as residential land use exclusively for housing developments, commercial land use, industrial land use, agricultural land use, recreational and green zones and mixed-use land.²¹

The correlation between the clause of overriding public interest and justification of environmental right of compensation are inconsistent with the principle of environmental sustainability due to inadequate or non-compensation to occupants of acquired land. Again, the grant of a new right of occupancy which consequentially revoke an already existing right of occupancy is a problem. These problems gave rise to this research in examining environmental justice and the Land Use Act 1978 vis-a-vis the challenge of overriding public interest as it relates to revocation of right of occupancy and compensation. This research aims at mitigating these problems and to achieve this purpose, apart from the introduction, this research is further divided into four sections. Section one deals with environmental rights and justice while section two discusses the legal framework relating to overriding public interest and compensation. Section three concludes the research and makes recommendations necessary to expand the law in the subject matter of research while section four which is the last part provides for the acknowledgement.

1. Environmental Rights and Justice

Environmental rights are those rights that indigenous people of a particular geographical location possess in relation to the use of the environment. Promoting environmental rights is critical to fighting against environmental degradation, climate change and biodiversity loss.²²

Environmental rights and basic fundamental human rights are inseparable as they both connote right and freedom to have access to a healthy and hazard free environment from anything capable of endangering human life in the environment. This is because, healthy people can only be found in a healthy environment. Speaking on the importance of environmental rights or right of an individual to the enjoyment and use of a healthy and serene environment, as earlier noted, the Constitution of the Federal Republic of Nigeria has provided that the State shall protect and improve the environment

¹⁷ Stephen Chuka Unachukwu, 'The Essence of the Land Use Act, 1978: The Abuses and its Impact on the Availability of Land for Housing Development in Nigeria' (2019). <https://www.researchgate.net/publication/359385147> accessed 21 October 2025.

¹⁸ Ibid. at 17

¹⁹ Ibid. at 17

²⁰ Heidi Kent, David Wood and Sean Harington, 'Land Use Definition, Types and Examples (Geography) Lessons' (2023). <https://study.com/academy/types-of-land-use> accessed 21 October 2025.

²¹ Different Land Use Plans Available in Lagos: A Complete Guide <https://affablehomes.com.ng/different-land-use-plans-1>

²² Francine Pickup, 'Five Steps to Environmental Justice', (2022) *United Nations Development Programme*. <https://www.undp.org/blog/five-steps-environmental-justice> accessed 23 October 2025.



and safeguard the water, air, land, forest and wildlife of Nigeria.²³ Further recognition of the importance of environmental rights can be recalled from the UN establishment of human rights in March 2012; the UN Human Rights Council established a mandate on human rights and the environment, to among other tasks, study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and also promote best practices relating to the use of human rights in environmental policy making.²⁴

As at 38th of November 2018, the Human Rights Council Resolution stated the importance and the need for conservation and protection of the environment for man's use as follows:

I. To continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in consultation with Governments relevant international organizations and intergovernmental bodies including the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP) and relevant multilateral environmental agreements, human rights mechanisms, local authority, national human rights institutions, civil society organizations including those representing indigenous peoples and other persons in vulnerable situations, the private sector and academic institutions.²⁵

II. To continue to identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policy making, especially in the area of environmental protection and in that regard, to disseminate and consider updating documents elaborated by the previous mandate holder as appropriate.²⁶

III. To promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, taking into account the reports and documents produced on its mandate and to disseminate all findings by continuing to give particular emphasis to practical solutions with regards to their implementations.²⁷

IV. To work on identifying challenges and obstacles to the full realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and protection gaps thereto in the context of sustainable development.²⁸

From the foregoing, this research argues that environmental right is an access to an uninterrupted use and peaceful enjoyment of a healthy and hazard-free environment. Importantly, environmental rights should be enforced as fundamental human rights enshrined in chapter IV of the Constitution of the Federal Republic of Nigeria and not the other way round as provided for in chapter II under directive principles of state policy which are mere declarative principles that cannot be enforced by aggrieved individual whose right has been infringed upon.

Environmental justice on the other hand, is simply referred to as a social movement that addresses injustice that occurs when poor or marginalized communities are harmed by hazardous waste, resource extraction and other land uses from which they do not benefit.²⁹ The movement for environmental justice has thus become more global with some of its aims now being articulated by the United Nations.³⁰ The movement overlaps with movements for indigenous land rights and such

²³ The Constitution, s. 20

²⁴ Nenibarini Zabbey, 'Coordinator; Environmental Right Education Manual', *Centre for Environment, Human Rights and Development (CEHRD)* (Port-Harcourt, Rivers State: Nigeria: Mobility Concepts 2021) ISBN:978-978-995-188-8 www.cehrd.org.ng accessed 9 November 2025. Pp.13-14

²⁵ *Ibid.* at 25

²⁶ *Ibid.* at 25

²⁷ *Ibid.* at 25

²⁸ *Ibid.* at 25

²⁹ Size Julie and London Jonathan K., 'Environmental Justice at the Crossroads: Sociological Compass' 2 (4): 1331-1354, DOI:10.1111/J.1751-9020.2008.99131 (2008).

³⁰ Martinez-Alier Joan, 'Environmental Justice', Wikipedia (2002)



other rights relating to a healthy environment.³¹ The purpose of the environmental justice movement is to get the attention of relevant agencies to influence right decisions that will bring a positive change to the lives of the people in a particular locality. The global environmental justice movement arises from local environmental conflicts in which environmental defenders frequently confront multinational corporations in resource extraction or other industries.³² Local outcome of these conflicts are increasingly influenced by trans-national environmental justice networks.³³ Environmental justice has also been defined as distributive justice which is the equitable distribution of environmental risks and benefits.³⁴

The United States Environmental Protection Agency defined environmental justice as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin or income with respect to the development implementation and enforcement of environmental laws, regulations and policies.³⁵ Fair treatment is further explained to mean that no group of people, including racial, ethnic or socio-economic groups, should bear a disproportionate share of the negative environmental consequences of human-induced climate change resulting from industrial municipal and commercial operations or execution of Federal, State, Local and Tribal Programmes and Policies.³⁶

The human-induced climate change is causing weather and climate extremes across the globe, putting pressure on already strained food systems and causing mass displacement.³⁷ Human action and consequently human inaction has led us to a triple planetary crisis of climate change, pollution and biodiversity loss which has had a severe impact on human rights which includes access to adequate food, water, education, housing development and life.³⁸ This of course, has widened social and gender inequality leading adversely to violence, marginalization and other planetary crisis which are disproportional.³⁹ Thus, in response to accelerating impacts of this crisis, a global movement has grown, powered mostly by young people and supported by science, urgently demanding action to address the climate emergency.⁴⁰

The United Nations Development Programme (UNDP) believes that these structural inequalities and poverty must be addressed through environmental justice to prevent and eliminate environmental inequalities where the most vulnerable are the most affected.⁴¹ Following the provisions of the Constitution of the Federal Republic of Nigeria, it is provided that the Constitution shall be for the purpose of promoting the good government and welfare of all persons in Nigeria on the principles of freedom, equality and justice and for the purpose of consolidating the unity of all citizens.⁴² Pertaining to environmental welfare for all citizens of Nigeria as earlier noted in this section of the research, it has been provided that the State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria.⁴³ The rationale for this provision is that

³¹ Ibid. at 25

³² Scheidel Arnim, 'Environmental Conflicts and Defenders: A Global Overview'. *Global Environmental Change*. 63, 102104 DOI:10.1016/j.gloenvcha (2020)

³³ Martinez-Alier Joan, et al, Is there a Global Environmental Justice Movement? *The Journal of Peasant Studies*. 43 (3): 731-755 DOI:1080/03066150.2016.1141198 (2016)

³⁴ Schloberg David, et al, 'Moral and Political Reasoning in Environmental Practice'. *Cambridge, Massachusetts: The MIT Press*. ISBN978-0-262-62164-9 (2002) P.79

³⁵ United State Environmental Protection Act (2013) *Environment Justice-Related Terms as Defined Across the PSC Agencies*.

³⁶ Ibid.at 25

³⁷ See Francine Pickup, above n. 23

³⁸ Ibid. at 38

³⁹ Ibid. at 38

⁴⁰ Ibid. at 38

⁴¹ Ibid. at 38

⁴² Preamble of the Constitution.

⁴³ The Constitution, s. 20



matters relating to promoting and sustaining a serene environment and welfare of citizens regarding their co-existence with the ecosystem should be prioritized to ensure environmental justice and sustainability. On the contrary, these environmental policies had also been declared by same constitution as policies that are not justiceable. This research argues that if these policies are not justiceable in such situations where there is a breach, invariably, environmental justice is encumbered. In other words, an aggrieved citizens have no opportunity to ventilate his natural right relating to his natural environment due to the non justiceability of the Directive Principles of State Policies.

For the purpose of promoting the global advancement towards achieving environmental justice, the following five steps were identified as steps needed to attain environmental justice.⁴⁴

I. Global acceleration of environmental rule of law to ensure that Governments respect, protect and fulfil the right to a clean and healthy environment which is key for sustainable development.⁴⁵

II. Strong national legal frameworks to help spur equitable and sustainable management of natural resources, which need to incorporate vulnerable, excluded and marginalized communities to access justice, information and participate in decision making.⁴⁶

III. Accessible justice and human rights institutions to enable vulnerable, excluded and marginalized people and communities to access justice and information and participate in decision making; women and indigenous people are powerful agents of change and environmental justice advocates, if they are allowed the space or platform for their voices to be heard.⁴⁷

IV. Gender inequality in land management; women should have a critical role in the management of land and natural resources and climate action, yet in many Countries' laws and custom limit their freedom to claim and protect these assets.⁴⁸

V. Transformation in the way we think about the rights of future generations and the rights to a healthy environment.⁴⁹ It needs to incorporate wide cross-sections of society in the design of environmental policies and decisions.⁵⁰

The above steps were propounded as steps that could help in promoting global advancement on matters bothering on environmental justice. That being as it were, gender equality appears to be a complex phenomenon as many Countries' land or environmental legislation tend to uphold equality of rights but in reality limit rights and freedom of women to claim and protect their assets. Rule of law should be upheld at all levels and that gender inequality should be discouraged.

2. Legal Frameworks on Overriding Public Interest and Compensation

The vesting power and purpose of the Land Use Act 1978 are contained in its preamble which states that the Land Use Act 1978 is an Act that vest 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 will hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas to individual residence in the State and to organizations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on Local Government.⁵¹ The legal implication of this is that the Governor of each State becomes the Trustee of that State for the purpose of land allocation and development. By virtue of this legal

⁴⁴ See Francine Pickup, above n. 23

⁴⁵ Ibid. at 45

⁴⁶ Ibid. at 45

⁴⁷ Ibid. at 45

⁴⁸ Ibid. at 45

⁴⁹ Ibid. at 45

⁵⁰ Ibid. at 45

⁵¹ Land Use Act 1978, Commencement page



position, the Governor can also require or acquire any land for public use under a proviso known as overriding public interest.

Overriding Public Interest is a proviso that is contained in the Land Use Act, stating to the effect that the Government of Nigeria can compulsorily acquire land anywhere in Nigeria by revoking the right or certificate of occupancy and payment of compensation to whoever is in occupation. The condition qualifying the compulsory acquisition is that the purpose of such acquisition must be for public interest which overrides the interest of a private individual occupant, provided compensation is paid to such individual occupant.

It is pertinent to evaluate sections 28 and 29 in the light of the above provision of the Land Use Act. Section 28 is headed, “Power of Governor to Revoke Rights of Occupancy” and it provides as follows:

- I. It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.⁵²
- II. Overriding public interest in the case of a statutory right of occupancy means;⁵³ the alienation by the occupier by assignment, mortgage, transfer of possession, sublease or otherwise of any right of occupancy or part thereof contrary to the provisions of the Act or any regulation made thereunder;⁵⁴ the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirements of the land by the Government of the Federation for public purposes of the Federation;⁵⁵ the requirement of the land for mining purposes or oil pipelines or for any purpose connect therewith.⁵⁶

While the above framework provides for overriding public interest with regards to statutory right of occupancy, section 3 in the same vein makes provision for customary right of occupancy. Thus, overriding public interest in the case of a customary right of occupancy means:

- III. The requirement of the land by the Government of the State or a Local Government in the State in either case for public purpose within the State or the requirement of the land by the Government of the Federation for public purposes of the Federation;⁵⁷ the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith;⁵⁸ the requirement of the land for the extraction of building materials;⁵⁹ the alienation by the occupier by sale, assignment, mortgage, transfer of possession, sublease, bequest or otherwise of the right of occupancy without the requisite consent or approval.⁶⁰

- IV. The Governor shall revoke a right of occupancy in the event of the issue of a notice by or on behalf of the Head of the Federal Military Government, if such notice declares such land to be required by the Government for public purposes.⁶¹

- V. The Military Government may revoke a statutory right of occupancy on any of the following grounds;⁶² a breach of any of the provisions which a certificate of occupancy is by section 10 of the Act deemed to contain a breach of any term contained in the certificate or in any special contract made under section 8;⁶³ a refusal or neglect to accept and pay for a certificate which was issued in

⁵² Land Use Act 1978, s. 28 (1)

⁵³ Land Use Act 1978, s. 28 (2)

⁵⁴ Land Use Act 1978, s. 28 (2) (a)

⁵⁵ Land Use Act 1978, s. 28 (2) (b)

⁵⁶ Land Use Act 1978, s. 28 (2) (c)

⁵⁷ Land Use Act 1978, s. 28 (3) (a)

⁵⁸ Land Use Act 1978, s. 28 (3) (b)

⁵⁹ Land Use Act 1978, s. 28 (3) (c)

⁶⁰ Land Use Act 1978, s. 28 (3) (d)

⁶¹ Land Use Act 1978, s. 28 (4)

⁶² Land Use Act 1978, s. 28 (5)

⁶³ Land Use Act 1978, s. 28 (5) (a) & (b)



evidence of a right of occupancy but has been cancelled by the Military Governor under section 10 subsection 3.⁶⁴

VI. The revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice thereof shall be given to the holder.⁶⁵

VII. The title of the holder of a right of occupancy shall be extinguished on receipt by him or a notice given under subsection (5) or on such later date as may be stated in the notice.⁶⁶

Sequel to the above provisions of section 28 of the Land Use Act which made ample provisions relating to the power of the Governor of a State to revoke right of occupancy together with the requirement of land for overriding public interest, this research hereinafter examines the compensation provisions as contained in section 29 of the Land Use Act. Accordingly, section 29 of the Act is headed, "Compensation Payable on Revocation of Right of Occupancy by Governor in Certain Cases."

I. If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection 2 of section 28 of the Act or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvements.⁶⁷

II. If a right of occupancy is revoked for the cause set out in paragraph (c) of subsection (2) of section 28 of the Act or in paragraph (b) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals and Mining Act or the Petroleum Act or any Legislation replacing the same.⁶⁸

III. If the holder or the occupier entitled to compensation under this section is a community, the Governor may direct that any compensation payable to it shall be paid to the community;⁶⁹ or to the chief or leader of the community to be disposed of by him for the benefit of the community in accordance with the applicable custom;⁷⁰ or into some fund specified by the Governor for the purpose of being utilized or applied for the benefit of the community.⁷¹

In the same vein, subsection (4) provides to the effect that compensation provided under subsection (1) of section 29 shall be, as respects, the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;⁷² building, installation or improvements thereon, for the amount of the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;⁷³ crops on land apart from any building, installation or improvement thereon, for an amount equal to the value as prescribed and determined by the appropriate officer.⁷⁴

V. Where the land in respect of which a right of occupancy has been revoked forms part of a larger area, the compensation payable shall be computed as in subsection (4) (a) of this section less a

⁶⁴ Land Use Act 1978, s. 28 (5) (c)

⁶⁵ Land Use Act 1978, s. 28 (6)

⁶⁶ Land Use Act 1978, s. 28 (7)

⁶⁷ Land Use Act 1978, s. 29 (1)

⁶⁸ Land Use Act 1978, s. 29 (2)

⁶⁹ Land Use Act 1978, s. 29 (3) (a)

⁷⁰ Land Use Act 1978, s. 29 (3) (b)

⁷¹ Land Use Act 1978, s. 29 (3) (c)

⁷² Land Use Act 1978, s. 29 (4) (a)

⁷³ Land Use Act 1978, s. 29 (4) (b)

⁷⁴ Land Use Act 1978, s. 29 (4) (c)



proportionate amount calculated in relation to that part of the area not affected by the revocation, but of which the portion revoked forms a part and any interest payable shall be assessed and computed in the like manner.⁷⁵

VI. Where there is any building, installation or improvement or crops on the land to which subsection (5) of this section applies, the compensation shall be computed as specified hereunder, that is as respects, such land, on the basis specified in the said subsection;⁷⁶ any building, installation or improvement or crops thereon (or any combination of two or all of those things) on the basis specified in that subsection and subsection (4) of this section, or so much of those provisions as are applicable, and any interest payable under those provisions shall be computed in the like manner.⁷⁷

VII. For the purposes of the provisions contained in this section 29, “installation” means any mechanical apparatus set up or put in position for use or materials set up in or on land or other equipment, but excludes any fixture in or on any building.⁷⁸

In the light of the above, it is crystal clear that the Land Use Act came into force to remedy the challenges of land acquisition and development in every State of the Federation especially land in the urban areas. This research focuses more on the legal framework of sections 28 and 29 that made provisions relating to overriding public interest and compensations for those whose lands or rights of occupancy have been revoked for public use. Section 29 specifically provides for compensations to be paid to holders of certificate of occupancy or right of occupancy that have been revoked for overriding public interest. By necessary implication, where an entitlement to compensation is accorded an occupier of land, such entitlement by law, becomes his legal right which should not be jeopardized in a situation where such right or entitlement is breached.

This research submits that these right of compensation are not protected and safeguarded as they are taken away by the provision of section 47 and thereby making the proviso of overriding public interest oppressive and an infringement on the right to compensation in circumstances where anomaly plays. Thus, section 47 provides as follows:

I. The Land Use Act shall have effect notwithstanding anything to the contrary in any law or rule of law, including the Constitution of the Federal Republic of Nigeria 1999 and, without prejudice to the generality of the foregoing, no court shall have jurisdiction to inquire into any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of the Act;⁷⁹ any question concerning or pertaining to the right of the Governor to grant a statutory right of occupancy in accordance with the provisions of the Act;⁸⁰ any question concerning or pertaining to the right of a Local Government to grant a customary right of occupancy under the Act.⁸¹ Worst still, same section went further to put a clog on the amount of compensation to be paid to the effect that no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act.

Section 47 of the Land Use Act is inconsistency with certain provisions contained in chapter 4 of the Constitution of the Federal Republic of Nigeria 1999 relating the civil rights and obligations of citizens enshrined and guaranteed by the Constitution. Specifically, section 46 under chapter 4 provides that any person who alleges that any of the provisions relating to his fundamental rights is contravened, has the right to apply to a High Court of the State concerned for a redress.⁸² Furthermore, a High

⁷⁵ Land Use Act 1978, s. 29 (5)

⁷⁶ Land Use Act 1978, s. 29 (6) (a)

⁷⁷ Land Use Act 1978, s. 29 (6) (b)

⁷⁸ Land Use Act 1978, s. 29 (7)

⁷⁹ Land Use Act 1978, s. 47 (1) (a)

⁸⁰ Land Use Act 1978, s. 47 (1) (b)

⁸¹ Land Use Act 1978, s. 47 (1) (c)

⁸² Section 46 (1) Constitution of the Federal Republic of Nigeria 1999 (as amended), hereinafter referred to as the Constitution



Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions pertaining to fundamental human rights and may make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this chapter.⁸³

Again, section 36 provides that, in the determination of the civil right or obligation of an individual, including any question or determination by or against any Government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.⁸⁴ Thus, examining these constitutional rights to fair hearing and right to compensation or seek redress in the court of law for the purpose of determining the amount of compensation to be paid in cases of revocation of right of occupancy or compulsory acquisition of land for overriding public interest, it is crystal clear that section 47 of the Land Use Act contravenes the provisions of the Constitution. The Land Use Act contains some restrictive provisions with regards to quantum of compensation payable and on account of properties compulsorily acquired.⁸⁵ The section also restrict the standard for the determination of the quantum of compensation payable on account of compulsory acquisition.⁸⁶ Going by the provision of subsection 2 of section 47 of the Land Use Act, this research argues that it is oppressive and nothing but a miscarriage of justice to the innocent lawful occupants whose rights of occupancy have been revoked due to compulsory acquisition of their land of habitation for overriding public interest.

CONCLUSION

The Land Use Act being a national legislation must regulate the use of land in conformity with the Constitution of the Federal Republic of Nigeria and synergize with other regulatory legislations such as the National Environmental Standards and Regulations Enforcement Agency Act 2007, Environmental Impact Assessment Act, Cap E12 Laws of the Federation of Nigeria 2004, amongst other relevant laws. The enforcement of the vesting power of trusteeship on the Governors is abused and should be redressed as recommended in this research to reflect conformity and sustainability on the use and development of land.

The Land Use Act vests all land in the territory of each State of the Federal Republic of Nigeria in the hand of the Governor of that State and to this extent, the Governor shall hold all such land in trust, consequent upon which the Governor shall act as a Trustee for the purpose of administering such land for the use and common benefits of all citizens. Major ways of carrying out this life-determining responsibility is by grant of right or certificate of occupancy, revocation of right or certificate of occupancy, compulsory acquisition of land for overriding public interest and payment of compensation which are solely determined by the Governor in the case of urban land and Local Government in the case of rural land, depending on the circumstances. With regards to a situation where computation of quantum of compensation is grossly unsatisfactory or mode of acquisition is leading to some anomalies which aggrieved citizens may want to seek a redress for in the court of law, such right is taken away by the provision of section 47 of the Act which ousted the jurisdiction of the court to make any inquiry as to the quantum of compensation payable with regards to compulsory acquisition for overriding public interest, revocation of right of occupancy, or in the determination of the civil rights of citizens as the case may be. It is oppressive to compulsorily acquire land in peaceful possession of a rightful occupant for overriding public interest without adequate compensation that can put such occupant in right footing.

⁸³ The Constitution, s. 46 (2)

⁸⁴ The Constitution, s. 36 (1)

⁸⁵ Lambert Uyi Edigin, 'The Land Use Act 1978 in the Context of the 1999 Constitution in Nigeria, Knowledge Review Volume 21 No.1 2010

⁸⁶ *Ibid.* at 86



In the light of all of the above evaluation, this research concludes that section 47 of the Land Use Act contravenes the provision of the Constitution of the Federal Republic of Nigeria 1999 which provide for fundamental rights of the citizens and also empower the Courts to adjudicate and as well determine the rights of citizens in alleged cases of violation of rights.

Sequel to the forgoing, this research makes the following recommendations:

Right of compensation are not protected and safeguarded as they are taken away by the provision of section 47 of the Land Use Act and thereby making the proviso of overriding public interest oppressive and an infringement on the right to compensation in circumstances where anomaly plays. In this regard, this research recommends a structural amendment to section 47 of the Land Use Act to include compensation right to seek redress in the court of law.

Environmental rights should be enforced as fundamental human rights enshrined in chapter IV of the Constitution of the Federal Republic of Nigeria and not the other way round as provided for in chapter II under directive principles of state policies which are mere declarative principles that cannot be enforced by aggrieved individual whose right has been infringed upon. If these policies are not justiceable in such situations where there is alleged breach, invariably, environmental justice is encumbered. In other words, an aggrieved citizens have no opportunity to ventilate his natural right relating to his natural environment due to the non justiceability of the Directive Principles of State Policies.

Rule of law should be upheld at all levels and that gender inequality should be discouraged.

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