

# **THE REGIME OF ACQUISITION AND THE CHALLENGES OF EQUITY AND FAIRNESS OF COMPENSATION ON COMPULSORY LAND ACQUISITION IN NIGERIA**

**AGBANA J. O.\***

## **ABSTRACT**

This paper examined the legal Regime of Acquisition and the challenges of equity and fairness of compensation on compulsory land acquisition in Nigeria This was with the view of undertaking holistic appraisal of the legal regime of compulsory land acquisition and payment of compensation to land owner whose land was compulsorily acquired by the government or its agents for overriding public interest for developmental purpose or purposes. The study relied on Primary and Secondary sources of information while the primary source includes the Land Use Act, the Constitution of Federal Republic of Nigeria 1999 (as amended) while the secondary sources includes books, journal articles, conference proceedings, newspapers, Magazines, and internets, data collected will be subjected to content analysis. The study found that compensation paid to land owners whose land were compulsorily acquired by the government is grossly inequitable and in adequate to put him or her in the position he was before the property was acquired.

## **1.0. INTRODUCTION**

The difficulties that would preclude paying fair compensation to landowners or occupants whose land the government had forcibly seized were taken into consideration in this paper. There are certain principles, rules and practices which are recognised as having evolved as requirements of just compensation in compulsory land acquisition. These principles, practices, and rules all govern the requirements for notification and participation of the dispossessed in the acquisition process, the calculation and payment of just compensation, as well as the right of access to court for the determination of the amount or sufficiency of compensation. The provisions of the relevant Constitutions and the Land Use Act, 1978, will be contrasted with equivalent legal provisions of other jurisdictions to see how closely they follow or deviate from the principles, rules, and practices of compensation in compulsory acquisition. This comparative review is necessary to identify challenges and gaps in the constitutions and the Land Use Laws of Nigeria and other nations.

There are just compensation principles in compulsory land acquisition in Australia, India, the United Kingdom, and the United States that attempt to provide financial restitution to the dispossessed in order to put them in the same situation as if their land had not been stolen. The terms of the relevant statute determine the amount payable as compensation in each of the jurisdictions mentioned. The heads could include damages, particular value, severance,

---

\* Agbana J.O PhD. Senior Lecturer, Department of Jurisprudence &Private Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.

injurious affection, disturbance, and compensation for land removed for development projects. The terminology used to determine the amount of compensation payable on the acquired land varies from jurisdiction to jurisdiction. In the United States, just compensation is widely viewed as the fair market value, while in Australia, India, and the United Kingdom, it is the market worth of the land that was taken.

Comparative study of the rules, principles and practices driving compensation assessment and payment in Australia, India, U.K. and the U.S.A. as follows: First, the law of compulsory acquisition accords respect to right of private property within the legal framework of the incidents of right in landed property and other substantive rules aimed at ensuring that no one's land is taken without the payment of just compensation. Second, the interests or rights with respect to which compensation is payable are clearly defined and set out in land acquisition statutes. Third, procedural rules are set out in land acquisition statutes for ascertaining the rights and interests vested, and in whom, with respect to the land to be acquired and when compensation is to be paid or payable. India sets perhaps, the best example in terms of community participation, consultation and due diligence in compulsory land acquisition. Fourth, the processes and procedures for adjudication of the quantum or adequacy of compensation are such that can ensure impartiality.

It is crucial to note that any dispute that might arise regarding compulsory acquisition will not involve a challenge to the government's right to take private land for public use since it is assumed that the state has the power of eminent domain and that the power is only subject to the requirement of paying compensation. However, there will be a right of action if the basis for the acquisition is illegal, that is, where it conflicts with the purposes specified in the land acquisition statutes with regard to which the state is allowed to take private land. In reality, disputes about the amount or sufficiency of compensation and associated concerns come up more often in court. Fifth, the common practice in the jurisdictions surveyed is to determine in the statutes, rules, and principles by which the value of the property is to be seized. This ensures that the dispossessed is awarded the monetary equivalent of his expropriated property. In other words, the law is built with rules and concepts that make it possible to ensure and calculate equitable compensation. It is customary to start with the properties worth when the procedure of forcible purchase is initiated. Because the interests or estates subject to purchase become fixed at the time of computation, it bears special significance.

## **2.0. INADEQUACIES IN THE CONSTITUTION AND THE LAND USE ACT, 1978**

Both the Land Use Act of 1978 and the Federal Republic of Nigeria's 1999 Constitution (as amended) contain thorough provisions for the forced acquisition of land and the payment of compensation, but neither one specifies the sum or timing of the payment and instead leaves that up to the acquiring authority. This analysis found a significant gap that needs to be filled by appropriately amending the relevant clauses to address the issue of adequate remuneration and equity.

### **2.1 Ineffective Enforcement of the Constitution and the Relevant Laws under Military and Civilian Governments**

To ensure impartiality in the administration of justice, a party whose right, obligation, liability, or responsibility will be affected by a legal process or proceeding must be notified

of the initiation or existence of the process or proceeding. Written constitutions are pre-empted by the rule that no one's life, liberty, or property may be taken without first giving them notice and an opportunity to defend themselves. It is a requirement of procedural fairness, justice and equity in land acquisition that the persons whose title to or interests in land are to be compulsorily acquired by the state must be notified.

For a notice of acquisition to be fair, equitable and just, it is not enough that the party whose right of property is to be revoked must be notified, the notice should contain the reason for such revocation. Section 28(6) (7) of the Act which deals with notice of revocation are harsh and terse. It is not necessary to inform the owner of the title or the occupier of the affected land of the grounds for the revocation. There are no measures for involving the person or group whose land is being forcibly taken in the process. There is no provision for a specific amount of time between receiving notification of revocation and the moment the title holder's right is judged to have expired. The title of the holder of a right of occupation expires immediately upon receiving a notice of revocation issued under the Act, unless a later date is specified.<sup>2</sup>

Additionally, there is no requirement in the Land Use Act that an investigation be done to find out if there are any potential multiple conflicting interests over the property that is the subject of the right of occupation and revocation. Once more, it is harsh and unfair to notify the holder of the right of occupation and then promptly remove their title without first consulting them. Sections 28(6) and (7) of the Act, which disregard landowner rights, show its military heritage. The Land Use Act's provisions provide that no one, not even the Governor, may revoke a landowner's right of possession unless the property has been compulsorily acquired for the benefit of the public, such as an overriding public interest. According to the criteria of just compensation, justice, and fairness, the reason for the withdrawal of the privilege of occupation must also be stated in the notification of revocation.

## **2.2 Tenuous Nature of the Independence of the Judiciary**

There are lots of lessons to be learnt from the U.K. on the procedural requirements of the notice of acquisition and related matters. In the U.K., compulsory acquisition may be commenced either by procedure which requires service of notice to treat in which case, the owner of the estate or interest to be acquired would ultimately be required to execute a conveyance in favour of the acquiring authority or it may be by the expedited procedure called the General Vesting Declaration (GVD).<sup>3</sup> When the traditional notice to treat procedure is employed, the owner of the property must transfer the title or the interest in the property to the purchasing authority. According to one argument, reasonable diligence suffices to qualify as diligent inquiry, hence a comprehensive investigation is not required.

If the owner cannot be traced, the notification must be posted on the property or delivered directly to the owner. An agent cannot lawfully obtain a notification, according to a court. In the UK, it is required to serve the notice to treat on a specific group of people who have

---

<sup>2</sup>*Ibid.* section 28(7).

<sup>3</sup>See generally "Compulsory Purchase (Vesting Declaration) Act of 1981 (UK). The use of a general vesting declaration (GVD) simplifies this process as it replaces the notice to treat and the conveyance with one procedure which, on a certain date automatically vests title in the land with the authority. See Denyer-Green, *Op. Cit.*, pp. 84 and 96."

certain stakes in the subject property. A person with a possessory right and a person with an equitable interest in the land as a result of a contract to purchase the property or an option are also entitled to a notice to treat. In *DHN Food Distributors Ltd. v Tower Hamlets London Borough Council*,<sup>4</sup> Every single owner of a land interest, including freehold, lease, sublet, etc., is entitled to a notice in the United Kingdom. Only the tenant for life or the trustees, as applicable, need receive notice of land subject to a strict settlement trust or a trust for sale. This allows the tenant for life or trustees, as appropriate, to sell the property free of the beneficiaries' interests.

Every single owner of a land interest, including freehold, lease, sublet, etc., has the right to notification in the United Kingdom. Only the tenant for life or the trustees, as applicable, need receive notice of land subject to a strict settlement trust or a trust for sell. This allows those who are tenants for lifetime or the trustees, as appropriate, to sell the property free of the beneficiaries' interests. The interest in the land is fixed when notification to treat is delivered. The right to offer the ownership interest to anyone still exists for a landowner who receives a notice to treat.

The person who receives a notice to treat is expected to state his interest in and claim to the land as a matter of procedure. The claimant must provide an explanation of his claim's specifics, provide information about the compensation he is seeking, distinguish between the sums claimed under various headings, and explain how each number was determined. Finding out more about the recipient's interests is one of the aims of a notice to treat, it was decided in the case of *Newham London Borough Council v. Benjamin*. As a result of serving the notice to treat, the purchasing authority is entitled to take possession. Once more, time begins to pass from the date of serving of notice until the day on which a dispute regarding the appropriate amount of compensation should be referred to the Lands Tribunal.

Several weeks, months, or even years may have passed between the date of delivery of the notice to treat and the taking of real possession of the acquired property; during this time, the value of the property to be acquired may have changed dramatically, especially during an inflationary period. The date of valuation is not specified by statute, but case law has helped to shape the law in this area. The case of *Penny v. Penny*<sup>5</sup>the idea that the interest to be purchased must be valued as of the date the notice to treat was given was based on this, and it was considered to be authoritative. In *Birmingham Corporation v. West Midlands Baptist (Trust) Association*<sup>6</sup>, According to rule (5) of the 1961 Act, the date when the claimant can reasonably start replacement in all circumstances is the one used to calculate the cost of reinstatement. It is significant to highlight that the Penny v. Penny approach regarding the date of value is no longer regarded as sound legal precedent in the United Kingdom. The case is still a strong argument in favour of establishing the ownership interests in the property that will be later appraised on the date of the notice to treat.<sup>7</sup>

### **2.3 Weakened Land Market**

---

<sup>4</sup> (1976) 3 All ER 462.

<sup>5</sup>(1868) LR 5 EQ 277.

<sup>6</sup> (1970) AC 874; (1969)3 All ER 172.

<sup>7</sup>Denyer-Green, *Op. Cit.*, p. 169.

Threats to tenure security dramatically reduce the value of land, make it less acceptable as collateral, prevent individuals from investing or preserving their property value.

#### **2.4 Reduced Tenure Security**

Compulsory acquisition could make good laws and policies that support community and individual land rights obsolete. When the government acquires rights to private land without following established procedures or without providing fair compensation, people may feel intimidated by the lack of tenure security. In order to guarantee that the compensation actually given in the instance of the forcible acquisition of private land is based on the principle of equivalent, specific statutes and case law rules on the computation of compensation have arisen over time in the UK. In other words, the policy thrust of compensation computation and payment in the United Kingdom focuses on ensuring that the dispossessed is paid for the property taken based on the principle of financial equivalence.

Certain heads of compensation are given legal recognition in order to guarantee that what is provided as compensation to the dispossessed is equal to the property seized. These heads of compensation include (a) payment for land obtained; (b) payment for severance and/or injurious affections damages when a claimant's land is partially obtained; (c) payment for disruption; and (d) payment for litigation expenses and other fees in addition to home loss payment.<sup>8</sup>

The rise in the value of the purchased property that may be attributed to the acquisition method must be discounted when determining the market value. Special safeguards are put in place to overlook the impact of any changes in market value to the acquiring authority's program and make sure the claimant is neither better off nor worse off as a result. It's crucial to avoid forcing an acquiring authority to pay for the advantage that its program created in this situation. Therefore, the valuer's job is to ascertain the subject land's value under the no-scheme scenario. They need to speculate on what might have transpired and what kind of development might have been possible without the purchase plan.

The Pointe Gourde principle, which prohibits compensation for land seized through forcible acquisition from include a value increase purely related to the acquisition plan, is frequently cited. *Sub-intendent of Crown Land v. Pointe Gourde Quarrying and Transport Company Ltd.*, it was decided that:

The Crown compulsorily acquired lands in Trinidad which were required in connection with the establishment of a naval base nearby. On part of the land was a quarry containing stone which could be used in building the base. The original award of compensation included £15,000.00 which was identified as the value of the increased profits the quarry could make supplying stone to the proposed naval base. The quarry land was not needed for the naval base but the purpose of its acquisition seems to have been to requisition a suitable and convenient source of stone. The proximity of the naval base, and the

---

<sup>8</sup>Denyer-Green, *Op. Cit.*, p. 164.

probability of increased profits from supplying stone to the base, would have given the quarry land an enhanced value, had it not been compulsorily acquired. This enhanced value, or betterment, was said to be due to the scheme of the acquiring authority (construction of a naval base) and was excluded following previously decided cases that had excluded increase value to the acquiring authority.

Given that it deals with determining adequate compensation employing market value—market valuations that would have triumphed regardless of the plan—the Pointe Gourde principle is a judicial notion rather than an appraisal strategy. In the United Kingdom, sections 6 through 8 and Schedule I of the Land Compensation Act, 1961 largely embody the Pointe Gourde principle.

The concept of market value as the basis of compensation for compulsory acquisition of land involves consideration of the price that a purchaser can be expected to pay for the land in its existing use and the price that the land will command when full account is taken of its potential for some more valuable development.<sup>9</sup> In the U.K., land acquisition statutes<sup>10</sup> make provisions for appropriate circumstances when planning permission for certain classes of development are to be assumed when assessing market value for the purpose of compensation. The planning permissions that must be considered in determining compensation are only relevant to the extent that they have an impact on market value. The actual open market value of the purchased land shall be determined in accordance with the six standards set forth in Section 5 of the Land Compensation Act of 1996 and the principles set forth in Section 7 of the Compulsory Purchase Act of 1965. Rule (1) Section 5 of the 1961 Act states that no allowance shall be made because of a compulsory acquisition. This is aimed to end the custom that existed prior to 1919 where valuers would increase the value of the property as compensation for the owner whose property was being taken forcibly<sup>11</sup>.

According to Rule 2, the value of land must be determined based on what a willing seller might expect the land to fetch if it were to be sold on the open market. Rule 2 will not apply in situations where rule 5 will, i.e., when the land or building has been modified for a specialized use to meet unique demands of the owner for which there isn't a general market demand. In essence, rule 2 seeks to substitute a more precise definition of market value for the basic idea of worth to owner.<sup>12</sup> In *Lady Fox's Executors v. Commissioners for Inland Revenue*<sup>13</sup>, the court stated that with respect to open market, one must assume that (i) The hypothetical vendor is an unnamed but fair vendor who approaches the transaction with caution but fairness, seriously negotiating without coming out as either too anxious or unduly unwilling; (ii) the hypothetical buyer is a little less anonymous; and (iii) The hypothetical vendor acted in the same way as sane individuals purchasing and selling such property would most likely act in real life. He is also deemed to have acted decently, asking the right

---

<sup>9</sup>Corfield and Carnworth, *Op. Cit.*, p. 180.

<sup>10</sup> See Parts I and II Land Compensation Act, 1961 (UK).

<sup>11</sup>Cornfield and Carnwath, *Op. Cit.*, p.177. See also Denyer-Green, *Op. Cit* p. 176. 46.

<sup>12</sup>Denyer-Green, *Op. Cit.*, 176.

<sup>13</sup> (1994) cited in Denyer-Green *Op. Cit.* p. 177.

questions about the property and not showing signs of being overly eager to acquire. However, he also serves as a reflection of reality because he personifies whatever the actual demand was for that particular property at the time; (iv) The concept of the open market requires assuming that everyone had the right to submit a bid and then forming an opinion of the best price that would have been realistically attainable under the given circumstances.

Rule (3) states that the special suitability or adaptability of the land for any purpose shall not be considered if such purpose could be applied only in accordance with statutory powers or if there is no market other than the needs of any authority possessing the power of compulsory purchase. In two different situations where a land to be acquired has a special suitability or adaptability for any purpose, this criterion will apply to disregard gains in market value. One is when the objective requires statutory authority or when there is no market for that purpose other than to satisfy the prerequisite of an authority with the right to make compulsory purchases. Two, when there is no market for that purpose other than the necessity of any authority with the ability to make forced purchases. It is not the exceptional appropriateness or adaptation of the products of the land for a particular purpose that is important, but rather the special suitability or adaptability bestowed by the quality and location of the land.

Consequently, the additional value conferred upon a quarry because of the special suitability of the stone obtainable from it for some special purpose is not a factor that falls to be deducted under the rule. However, if that additional element of value arises solely from the additional demand created by the proposed development, it will fall to be ignored as additional value arising from the scheme of acquisition.

In accordance with Rule (4), an increase in the value of land that is attributable to usage of any premises therein that could be subject to judicial restraint, is illegal, or is harmful to the residents' or the public's health is prohibited.

It has been suggested<sup>14</sup> that where premises are situated in a residential area and are known to be the source of nuisance, it could be argued by an acquiring authority that the likelihood of restraint should be taken into account where the market value is assessed on the basis of sales or otherwise comparable property situated where nuisance is unlikely to be caused to the occupiers of neighbouring property. It has also been pointed out<sup>15</sup> that it could be argued that the use of the land is unlawful if development was done without obtaining planning authorization. The rule may be applicable in situations where property is being used in violation of the law's overcrowding provisions, places of entertainment or hotels that don't follow fire safety and escape regulations, workplaces that don't follow workplace health and safety regulations, and properties being used for purposes that cause annoyance that could be stopped by an injunction.<sup>16</sup>

It must be proven that the subject land is used for that purpose and will continue to be used for that purpose prior to the forced purchase. Second, it must be proven that the land in

---

<sup>14</sup>Corfield and Carnwath, *Op. Cit.* p.180.

<sup>15</sup>Denyer-Green, *Op. Cit.*, p. 184.

<sup>16</sup>*Ibid.*

question does not have a market or a sizable demand for the aforementioned purpose. Three: You must genuinely want to start again on a different website. For the rule of equivalent reinstatement to apply, certain conditions must be satisfied.<sup>17</sup> Prior to the forced purchase, it must be established that the subject land is utilized for that purpose and would continue to be used for that purpose. Two, it must be demonstrated that there is no market or widespread demand for the land for the purpose in question. Three: There must be a sincere desire to reinstitute on another website. Four, the adjudicating authority to decide whether this rule is applicable has discretion to apply the rule but the discretion must not be unreasonably withheld from being exercised in favour of a claimant. The date when the claimant can reasonably start reinstatement under all the conditions is the date used to calculate the reinstatement cost.

In the UK, the idea of market value is used as the foundation for compensation for the compulsory acquisition of land. This concept takes into account not only the price that a buyer can reasonably be expected to pay for the land in its current use, but also the price that the land will command when all of its potential for more valuable development is taken into account. To this end, the practice backed by legislation is to base valuation or assessment on the assumption of the types of development that would be permissible within the confines of planning control.<sup>18</sup> The development for which a planning permit is to be presumed is the development that may have been reasonably anticipated to be allowed had there been no dispute about the land being bought by an entity with compulsory purchase authority. The actual goal of these planning approval assumptions is to estimate the land's market value if forcible acquisition hadn't occurred.

Restrictive covenants and adverse rights or interests must be taken into account when determining a land's worth. The freehold interest must be evaluated when the freehold is the subject of leases and tenancies, taking into consideration the terms of any tenancy agreements and whether the tenancy is covered by social legislation.<sup>19</sup> The valuer must therefore, ensure before making a valuation; that he is certain as to what interest he is to value and the terms on which that interest is held.<sup>20</sup>

Disturbance claims are allowed under Rule 6 of Section 5 of the Land Compensation Act of 1961 in addition to the market value of the land. Distress claims are intended to put the dispossessed in the same financial situation as they would have been in had their interest not been acquired as a distinct head of compensation. The rule of the market value alone cannot be applied to the taken land in order to arrive at the benchmark financial equivalent. According to Denyer-Green,<sup>21</sup> The expropriated owner will have to relocate, buy new real estate or other assets, and, if he continues to operate his firm, risk losing clients in the short- or long-term. Ruminating on the principle behind disturbance claim in *Director of Buildings and Lands v. Shun Fung Ironworks Ltd* Lord Nicholls posited that:

---

<sup>17</sup>*Sparkes v. Leeds City Council* (1997) 2 EGLR 163.

<sup>18</sup>*Corfield and Carnwarth, Op. Cit.*, p. 15.

<sup>19</sup>Denyer-Green,

<sup>20</sup> Millington,

<sup>21</sup>Denyer-Green

Of course, a claimant may place a specific value on a piece of land that goes above and beyond what the property would sell for on the open market. In order to receive fair compensation, the land must be valued according to its personal value rather than the value it has to the acquiring authority or the wider public. If he utilizes the property to run a business, its value to him will also reflect the value of being free to conduct business there. The interruption loss should be compensated in addition to the market value of the land itself because the resumption or purchase stops the claimant from operating his company on the property. The business is not acquired by the authority that takes over the land through forceful purchase or resumption. As a result, the claimant forfeits both the land and the specific significance it had as his corporate headquarters. The costs and any losses he incurs in shifting his business to a new location would ordinarily be used to determine the exceptional loss he experiences as a result of losing the land and having his enjoyment of it disrupted. The size of his loss will largely depend on the worth of the company as an ongoing concern if it is impossible to transfer the business and it must close instead due to extraordinary circumstances. Although it is common and practical to evaluate the disruption loss and the property's worth separately, conceptually speaking, these are only two different pieces of the same total as when combined, they represent the owner's value of the land.

Certain guidelines have been developed for claims for disturbance compensation in forced acquisition. First, the loss that can be recovered under this heading shouldn't be too far away. Two, there must be a free link in the loss as well as the dispossession. Third, the obligation to lessen the loss had to be fulfilled.<sup>22</sup> Four, since it will be presumed that the claimant received value for a category of spending in that case, the claimant cannot collect compensation. When this occurs, the claimant is ineligible to obtain reimbursement for those costs. One illustration is when a claimant makes structural changes to the new property, which constitutes certain improvements.<sup>23</sup> Another illustration is when a claimant rents a different space at a higher price but gets better benefits.<sup>24</sup> Loss of goodwill, loss of profits, cost of relocating, relocation-related expenses, legal fees, other costs, personal time spent moving, interest paid, charges, and general interference are all compensable losses under the heading of disturbance.<sup>25</sup>

Charges and expenses incurred by the expropriated owner for establishing, demonstrating, and verifying title, preparing all conveyances of any land, creating and supplying any abstracts and attested copies the acquiring authority may require, and other related tasks are recoverable as additional costs from the acquiring authority in the United Kingdom. Again there are case law authorities for claimable additional cost to meet professional fees of lawyers, valuation surveyors and accountants employed in preparation and sustenance of compensation claims.

In *London County Council v. Tobin*,<sup>26</sup> The costs for legal and accounting services used in counselling the complainant and putting up his claim were held to be receivable as compensation in response to the issuance of a notice to treat. In *Lee v. Minister of*

---

<sup>22</sup>Denyer-Green,

<sup>23</sup>*Bibby & Sons Ltd. V. Merseyside County Council* (1979) 251 EG 757.

<sup>24</sup> See Denyer-Green.

<sup>25</sup>*Ibid.* pp. 269-278.

<sup>26</sup>(1959)1 All ER 649.

*Transport*,<sup>27</sup>The court acknowledged that a surveyor's, valuer's, or agent's expenses for drafting a claim have always been permitted on a compulsory purchase as a separate head of claim that does not constitute part of a disturbance claim.

Compensation for severance and injurious affection are two additional types of compensation in land purchase in the UK. The Compulsory Purchase Act, 1965's Section 7 serves as the legal basis for these other types of compensation. It states: "In determining the amount of compensation to be paid by the acquiring authority under this Act, consideration shall be given not only to the value of the land to be purchased by the acquiring authority, but also to any damage that the owner of the land may suffer as a result of the land being severed from other land of the owner."

In cases of compulsory acquisition, the acquiring authority may only purchase a portion of the dispossessed person's land, and this partial acquisition may have two effects that are crucial for the purposes of valuing the compensation. The retained land may be less valuable because the portion that was acquired made a significant financial contribution to the value of the entire parcel, or it may simply be the case that the acquisition plan's project has had adverse effects on the retained land's value, such as noise, visual intrusion, or other undesirable outcomes. It's also conceivable that the acquisition strategy, decision, or actions increase the value of the land the evicted individuals owned. Any one of such occurrences may give rise to severance or harmful affection claims as additional heads of compensation in several nations.

Severance is the loss of value of the held land when the land acquired from the claimant increases the value of the kept land and is subsequently detached from it.<sup>28</sup> On the other side, there is harmful affection when there is a decline in the value of the land that is still held due to the forced purchase and the projected use for all the land obtained. Even in cases where the land retained and the land acquired are not adjacent, claims for severance and harmful affection may still be filed. The question is whether the land that is being retained and the land that is being purchased are positioned so closely or in such a way that the presence and control of each increases the worth of the others.<sup>29</sup>

Deleterious effect of severance may happen when acquisition takes some of the dispossessed's land and in consequence, leaves the part retained without access, resulting in difficulty or impossibility of obtaining planning permission for the part retained. When dispossessed land is divided into two or more sections, such as a farm by a road, severance could negatively affect retained land. This would result in a decline in the value of the split half due to the higher cost of labor.

The execution of work in the acquisition site may cause harmful affection. This includes the building of an embankment and a public highway, which caused a loss of privacy and affected the nature of the house on the retained land by causing traffic, dust, dirt, and noise. In *Hoveringham Gravels Ltd v. Chiltern District Council*<sup>30</sup>, Roskill L.J. approved the method

---

<sup>27</sup> (1966)1 QB 111.

<sup>28</sup> Denyer-Green,

<sup>29</sup> *Ibid.*

<sup>30</sup> (1977)252 EG 815.

in which the value of the land taken is added to the loss, if any, in value of the land retained as the proper amount of compensation. In the United Kingdom, it is standard practice to value the land that was seized and the land that was maintained as two different interests. Nigerian custom dictates that expropriated land or property be paid its market value.

Damage that might be caused by a planned usage of the authorized works should be considered while determining the appropriate compensation. Two pieces of land were purchased from a school in *Rockingham Sisters of Charity v. R*,<sup>31</sup> but they were barely used when compensation was determined. It was decided that as the purchased land was anticipated to be used lawfully as a railway shunting yard, the school could submit a claim for reimbursement for the value of the land it had retained that had fallen.

Once more, the amount of severance and injurious affection compensation is determined by the depreciation in the value of the remaining land, not by the additional expenses incurred by the owner in maintaining the business that was previously run at the land that is now divided, for example by a road project. The amount of compensation for harmful affection is determined by taking into account the impacts of all the acquiring authority's works, not just the parts that are located on the claimant's land.

The law governing severance compensation is applied to the compensation to be given when the value of the kept land increases after the acquired property is severed. The value of any land kept by a property owner whose land was subject to compulsory acquisition as a result of a plan put in place by the acquiring authority is reduced or deducted from the amount of compensation that must be paid for the seized property<sup>32</sup>. This betterment recoupment is described as the setting off of an increase in value against compensation due.<sup>33</sup> When improvements to retained property are greater than the compensation for land removed, neither the surplus nor any improvements can be recovered from a landowner who has not had any of his land taken.

The experience about the intervention of courts in the cases involving land acquisition and payment of compensation in the UK, Australia, India and USA, indicates a more efficient independence of judiciary in those countries than in Nigeria. The courts in those nations have a solid institutional foundation to resist undue influence.

#### **2.4 Inadequate Compensation, Public Agitations and Violence**

Financial rewards may not be sufficient to provide individuals with the kind of sustainable livelihoods they need after their land has been taken. People could feel underpaid for the loss of the land's cultural, religious, or sentimental components. In Australia, fair compensation is based on the idea of returning the displaced party to their pre-land-acquisition situation as closely as possible.

---

<sup>31</sup> (1922) AC 315.

<sup>32</sup> See sections 7 and 8 of the Land Compensation Act 1961 (UK). See also Highways Act, 1980 (UK).

<sup>33</sup>Denyer-Green,

In Australia, Griffith and Isaac, J.J.'s definition of market value in *Spencer v. The Commonwealth*<sup>34</sup> is said<sup>35</sup> to have been adopted by legislators in various statutory definitions of market value in compulsory acquisition throughout Australia. Griffith and Isaac, JJ defined market value in the following words:

Consider if it was sold instead through a voluntary negotiation between the plaintiff and a buyer who was open to trading, but neither of them was overly eager to do so that he would disregard any normal business consideration. We must also assume that we have complete knowledge of the land and are aware of all factors that could have a positive or negative impact on its worth.<sup>36</sup>

According to the Land Acquisition (Just Terms Compensation) Act, 1991 of New South Wales, which serves as a general guide, the fundamental claim for compensation in Australia, like it does in the U.K., is heavily influenced by the acquisition's effects on the party that was evicted and, in the case of a partial acquisition, the effects of the land taken on the land that the evicted party<sup>37</sup> was able to keep. The types of compensation that may be claimed will depend on the nature of the acquisition, which will also influence how compensation<sup>38</sup> will be assessed. The market worth of the property, special value of the property (where there has been any disruption), severance, and hurtful affection/betterment.<sup>39</sup>are the heads of claim in cases where land belonging to the dispossessed is partially acquired. The market worth of the property, any particular value of the property, disruption, and severance are the heads of compensation when the entire land of the dispossessed is purchased.

Mangioni<sup>40</sup> is concerned that the definition of value in Spencer's case and the notion of worth for a property to a dispossessed person differ in Australia. He is concerned that for certain business and property owners, the acquisition of their assets will force the extinction of their tenement in land, the market worth of which cannot be determined with equal compensation using customary terms and in the context of comparable transactions. This is particularly relevant as the money received might not be sufficient to restore the evicted party's freehold tenement. In Mangioni's own words:

The value component in which a non-willing seller is deemed to be a willing seller in order for the conventional market value definition to be applied to settle acquisition disputes is the critical aspect in the assessment of just terms compensation. Legislators, judges, and land acquisition authorities are working hard to define and reduce all acquired landstakes to a monetary datum for non-commercial landstake resolution. People who possess marginally valuable real estate or properties at the lower end of the market in underdeveloped areas and

---

<sup>34</sup> (1907) 5 CLR 418.

<sup>35</sup>Mangioni.

<sup>36</sup> Culled from Mangioni,

<sup>37</sup>*Ibid.* p. 3.

<sup>38</sup>*Ibid.*

<sup>39</sup>*Ibid.* p. 4.

<sup>40</sup>*Ibid.* p. 7.

are unable to incur further debt to finance the purchase of alternative, more costly properties should be the most concerned about this.<sup>41</sup>

The Commonwealth Government's Lands Acquisition Act, 1989, refers to the acquisition of an interest in land and defines owning an interest in land as having a portion of, or all of, the bundles of rights conferred on a land owner, which include outright ownership of land, a mortgage, an easement over land to be acquired, a lease or license, or an established native title interest. In Australia, once a person's land has been taken over through a legal procedure, they are eligible to file a claim for compensation from the Commonwealth. The fundamental tenet that guides decisions about the amount of compensation granted to dispossessed parties is that they should be fairly and justly compensated for the acquisition. The present market value of the acquired property would be equivalent to this position in Nigeria.

A variety of factors are considered when deciding pay. The first is that the land's market value is utilized to determine its worth. The price that would have been paid for it if it had been purchased at that time under normal circumstances, with neither the buyer nor the seller under any pressure. Rather than its current usage, the potential use of land determines its market worth. The additional monetary value of the land taken is the second factor. This represents the value that the landowner places on it above and beyond what the market would bear. Because the owner owned the interest in the land at the time of acquisition, the additional value is linked to a financial gain that the owner possesses. Personal or sentimental value isn't regarded as extra money worth. Having enough is the third element. Severance, a form of compensation, addresses the drop in the value of the land kept as a result of severing the piece obtained from the dispossessed. The fourth aspect is disturbance compensation. Any loss, harm, damage, or reasonable expenditures that a person who has been displaced can show are a direct result of the acquisition are included in this category, such as removal fees, relocation expenses, and goodwill loss.<sup>42</sup> The fifth factor is claim for reasonable legal or professional costs. Costs for hiring a lawyer and other professional advisers who assist a claimant in complying with the processes of the acquisition are valid compensation claims.<sup>43</sup>

In Australia, the dispossessed have a right to the greater of the market worth (Spencer) or the particular worth to the person who owns it (Pastoral Finance). Significant Australian land acquisition legislation now contain provisions for pastoral finance. According to Justice J.S. Cripps, Pastoral Finance is practically biblical authority in Australia. No Australian land acquisition statute uses language exactly the same as Pastoral Finance, according to Brown's analysis. It has been found that the statutory regulations acknowledge the fact that the market worth of a plot of land can occasionally be the same as the true worth of the property that its previous owner still possess

## **2.5 Corruption and Abuse of Power**

---

<sup>41</sup>*Ibid*

<sup>42</sup>*Id.*

<sup>43</sup>*Ibid.* p. 5-6.

Injustices brought on by a lack of protection and transparency may enrage the populace and call into question the legitimacy of government. In most cases, corruption may be alleged because of inadequate compensation paid to the land owners who, most often, are forced to accept whatever rate the government stipulates as amount payable. These allegations of corruption against the civil servants are proved most of the time. Choosing the appropriate measure of compensation for compulsory acquisition involves selecting among imperfect alternatives<sup>44</sup>. Historically, the decision has been between a subjective assessment based on the owner's valuation of the property and an objective measure specified in terms of market worth.

According to American legal precedent, the government is not required to make up for specific damages that the dispossessed<sup>45</sup> may sustain under the just compensation criterion of the Fifth Amendment to the United States Constitution. There are three types of non-compensable losses. The first is the out-of-pocket costs that the dispossessed suffer and for which the fair market value is insufficient compensation. Among these are attorney fees, transportation expenses, and the cost of replacing expropriated property if the replacement cost is greater than the property's fair market value. When the state utilizes its power of forcible acquisition of private property, which falls under the second category of non-compensable losses, one of the components of reasonable compensation is the right of access to the court for a decision on the amount or adequacy of compensation.

The Land Use and Allocation Committee has the jurisdiction to settle arguments regarding the amount of compensation due for improvements made to land forcedly acquired by the Governor, among other things. The Act thus establishes a peculiar system of compensation adjudication in which the Governor, who is endowed with and exercises the power of revocation, is also authorized to establish his own tribunal made up of individuals of his choosing to determine the amount or sufficiency of compensation to which the dispossessed is entitled. This iniquitous system of adjudication does not actually apply to situations in Australia, U.K. and USA where the judiciary is satisfactory independent to determine convergent issues of acquisition and compensation.

Two fundamental constituent aspects are critical to the rule of natural justice. The first is the idea of *audi alteram partem* (no man should be condemned without first being heard). Every person has the right to know the charges levied against him, as well as the foundations or reason for the charges. The second is the idea that "no one can be a judge in his or her own matter" (*nemo iudex in causa sua*). In *Singh v. State*, it was decided that the hearing must be conducted by an impartial panel, or by someone who has no financial stake in the outcome of the case.

Provisions of the Land Use Act that give the Land Use and Allocation Committee quasi-judicial authority to decide citizen's private property rights violate the right to a fair hearing and access to an impartial adjudicatory forum, especially given that the authority that makes

---

<sup>44</sup>Wyma.O

<sup>45</sup>*Ibid*

up the Committee is invariably a party to the disputes that the Committee is given jurisdiction to decide.

Again, ousting the jurisdiction of the courts<sup>46</sup> on question concerning the amount of or the adequacy of compensation payable takes our law on compulsory acquisition out of the customary norms that signpost democratic governance and a civilized system of law. In practice, it is impossible to find a functioning Land Use and Allocation Committee throughout the federation. Land officials in Ministries with responsibility for land concerns perform land services without the involvement of the Land Use and Allocation Committee. In several states, the Commissioner in charge of land problems virtually always receives authorization from the Governor. In the process, the system fails to offer citizens with any protection against public workers' exploitation, ineptitude, and other forms of corruption. In a serious case like the extinction of a citizen's property right, the right to or access to a fair judicial system must be ensured.

One of the essential freedoms protected by the Nigerian constitution, which includes land, is the right to purchase and possess immovable property. Despite the fact that the state has the absolute authority to forcefully take immovable property, the constitution mandates that the law on forced acquisition have the following provisions:(a) immediate payment of compensation; and (b) granting any individual requesting such compensation the right of access to a court, tribunal, or other body with jurisdiction over that region to determine their rights in the property and the amount of compensation. Therefore, the Constitution establishes the conditions for examining whether the Act complies with the need of justice and equity. It has been argued that the Land Use and Allocation Committee's makeup is a glaring violation of the Constitution's promise of a fair trial given that it is charged with assessing whether compensation is adequate.

## **2.6 Problems of Insecurity in the Country, Land use and Open Grazing**

Conflicts between the migratory herders and the host communities are more likely now because of growth and increases in population, which have put strain on the amount of accessible land. Nigeria has seen various types of insecurity in recent years, especially in the Southern region of the nation, which has led to a campaign against open grazing by the governors of the affected States. These fights between herders and farmers are to blame.

Open grazing is a traditional method of herding ruminant animals around plains, open fields, and other areas in search of vegetation or pastures. This system in the last few years, has triggered conflicts between the herders and farmers leading to several deaths of individuals and massive destruction of property and food shortages due to neglect of farm land and destruction of crops.<sup>47</sup> Other salient problems in Nigeria which bedevil the question of equity, justice and fair play in land acquisition by government include; land grabbing, land speculation, poor economy and poverty.

---

<sup>46</sup>*Ibid.* section 47(2).

<sup>47</sup>*The Premium Times*, Wednesday, August 4<sup>th</sup> 2021.