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APPRAISING THE EQUITY OF NIGERIAN COMPENSATION PRACTICE

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ABSTRACT

Governments are generally responsible for providing Public facilities and infrastructures and use of eminent domain to dispossess individuals, families and communities of their rights/ interests in land/landed Properties and pay compensation to the dispossessed owners. The determination of compensable value for interest in land/landed properties is provided by the Acts, Decrees and other relevant statutory enactments guiding the process. The statute usually stipulates the basis, methods of assessment as well as the procedures, heads of claim and the roles of the parties. Compensation where paid, aims at placing the recipient in the position he/she was prior to the acquisition if it is equitable. This study adopts a case study approach and after reviewing some literatures, surveyed practicing Estate Surveyors and valuers and compensation claimants and finds that the present practice is inequitable and penalizes the recipients in favour of the acquiring authority. It is recommended that professional views on value should be considered and the process made more transparent if the process is to be equitable.

INTRODUCTION

Sustainable development requires the government to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement and protection and restoration of natural environment (FAO 2009). An early step in the process of providing such facilities and infrastructure is the acquisition of appropriate land. The acquisition of land for public purposes is a worldwide phenomenon (Akujuru and Ruddock, 2015). In Nigeria, since the colonial era, land has been compulsorily acquired for the provision of public facilities and infrastructure such as roads, school, hospital, railway tracks, housing and other facilities. The acquisition of land for public purposes has generated serious sentiments with regards to the payment of compensation to those affected or dispossessed by the acquisition. The process of compulsory acquisition of land for development purposes may ultimately bring benefits but it is disruptive to people whose land /landed properties are acquired. It displaces families from their home, farmers from their field and business from their neighborhoods. In all cases, the claimants are always affected. However, if the government carry out compulsory acquisition satisfactorily, they leave the communities and people in equivalent situations while

at the same time providing the intended benefits to the society. The determination of compensable values for interest in land and landed properties is a function of the provisions of the Acts, Decrees and other relevant statutory enactments guiding the process. This framework usually dictates the basis and methods of assessment as well as the procedures, heads of claim and the roles of the respective parties (Kakulu and Viitanen, 2009). In Nigeria, the land Use Act Cap L5, LFN 2004 is the principal legislation guiding compulsory acquisition of land. It provides for compulsory acquisition of land by the government for overriding public interests.

The land Use Act cap L5, LFN 2004 also provides for the payment of compensation to owners of Properties/Unexhausted improvements compulsorily acquired. Deininger (2003) posited that the way in which the government in many developing countries exercise this power undermined tenure security and because little or no compensation is often paid, it has negative impacts on equity and transparency, While, Dalmia (2010) opined that lack of fair and equitable compensation is the main reason for prevalent opposition to land acquisition. Nuhu (2008) agree with Dalmia's view and stated that the inadequacy of the provisions of the law and delayed payment of compensation are the major reasons for the inequity of the Nigerian compensation practice.

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LITERATURE REVIEW

Meaning and Concept of Compulsory Acquisition

According to Mukherjee, Lapre *et al* (1998) as cited by Akujuru (2014), compulsory acquisition is defined as the power of the government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit the society. This power is often necessary not just for meeting the social and economic development needs of local, state or national government but also for the protection of the natural environment against the excesses of private businesses or uses. To the researcher, compulsory acquisition is the process by which the government obtains land and premises from individuals, families and communities for development purposes when they consider this to be in the best interests of the public or community. FAO (2009) defined compulsory acquisition as the power of the government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit the society. This power is possessed in one form or another by governments of all modern nations and variously referred to as land acquisition, compulsory purchase, expropriation, land take or eminent domain. The exercise of the power is essentially for social and economic development and for protection of the natural environment. In all cases, the owners or occupiers are deprived of their property rights for overriding public interests, public purposes or public benefit and are entitled to full, just, fair, equitable and adequate compensation. Compulsory acquisition requires finding the balance between the public need for land on the one hand and the provisions of land tenure security and the protection of private property right on the other hand. To actualize this balance, it is expected that countries should apply the principles that ensure that the use of this power is not limited i.e. it is used for the benefit of society.

Compensation Defined

The term "Compensation" is used in a number of other statutes. When used in the context of deprivation of land, it means "recompense or amend". It means the sum of money which the owner would have got had he/she sold the land or interest on the open market plus other losses which result from the resumption (Alias and Daud, 2006, Plimmer 2008). Compensation has largely been understood to refer to specific measures intended to make good losses suffered by people displaced and/or negatively affected by compulsory acquisition. Compensation usually take the form of a one-off payment, either in cash or in kind and is principally about awards to negatively affected persons. Compensation is most often awarded only to persons in possession of undisputed or unencumbered legal title. According to N. O. Umezuruike cited by Ibagere (2010), "Compensation is placing in the hands of the owner expropriated the full money equivalent of the thing which he has been deprived". Babatunde (2003) stated that the concept of compensation simply means recompense for loss and it involves placing in the hands of the expropriated owner the full money equivalent of the thing of which he has been deprived Whereas Ajibola (2013) further avers that compensation is a recompense for loss and must be appropriate as far as possible, to the money value unto which the owner might have converted his /her property, had the law not deprived him of it. From the foregoing, this study sees compensation in a nutshell as a pay-back to an expropriated owner either in cash or kind to return him/her to the status quo

prior to the expropriation. In general, compensation should be for loss of any land acquired for the reduction in value of any land retained as a result of the acquisition, and for any disturbances or other losses to the livelihood of the owners or occupants caused by the acquisition and dispossession.

Principles of Compulsory Acquisition/Compensation

FAO (2009) stated that the guiding principle of compulsory acquisition/compensation is the principle of "equity and equivalence". This principle is the fulcrum for compensation and it is crucial in determining compensation. It states that affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition of their properties. The finding principles for ensuring equity and equivalence includes:

- **Equivalence:** People should receive compensation that is no more or less than the loss resulting from the compulsory acquisition of their properties. Appropriate measures should ensure that the affected, and particularly the vulnerable are not disadvantaged.
- **Balance of Interests:** The process should safeguard the rights of people who loose ownership or use rights of their land/properties while ensuring that the public interest is not jeopardized
- **Flexibility:** The law should be specific enough to provide clear guidelines, but flexible enough to allow for the determination of appropriate equivalent compensation.
- Compensation should address both defacto and dejure rights in an equitable manner following the principle of equivalence. This implies that compensation should take into cognizance the legal rights of the expropriated owner as well as the rights of occupants who are not recognizable legal rights.
- **Fairness and Transparency:** The negotiating powers of the acquiring authority and the affected persons should be as equal as possible. Negotiation should be anchored on an open exchange of information and the legislation should ensure fair process for determining value and compensation.
- Also, Olusegun (2003) stated that the basic principle of compensation for acquisition is that it should be fair and adequate. It should restore the individual to a state where he was neither better nor worse off at the end of the revocation exercise. He further opined that the method of assessment used by the acquiring authority to determine compensation must sustain the principle of equity under which the property owner is to be left whole in terms of naira and that the requirements for the payment of compensation on acquired lands includes the right to compensation and social equity.

However, a study by Akujuru and Ruddock (2015) asserts that the Nigerian compensation practice does not comply with the above stated principles thus the inequity inherent in the Nigerian compensation practice.

Valuation Methodology for Compulsorily Acquired Interest: The Nigerian Practice

Several authors have justified compulsory acquisition of land (Ogedengbe, 2007, Nuhu 2008, Kakulu, 2008, Otegbulu, 2009, Akinlabi 2012,). All highlighted basis for assessing

compensation payable and stressed the fact, that the process is statutory and that the enabling laws do provide the valuation methods to be adopted where as Lindstay (2012) posited that there is no universally appropriate method for calculating loss. The current compensation practice in Nigeria is hinged on the provision of the Land Use Act Cap L5, LFN 2004. The methodology for acquisition in Nigeria as stipulated by the Act is the replacement cost approach. The replacement cost method of valuation assumes the following:

- Current cost of construction
- Appropriate depreciation.

The Nigerian compensation practice involves the use of predetermined rates which is applicable to buildings and structures affected by compulsory acquisition. The replacement cost method of valuation is based on the assumption that cost is related to value (Nuhu, 2008), cognizance is not taken whether the properties compulsorily acquired are income yielding which could be valued using either the investment or income method of valuation. Also, in the application of the rates, no consideration is given to the terrain within which the acquisition is carried out. Thus, same rates are spread across similar properties irrespective of their different terrain. The resulting value affects property owners in a difficult terrain to the advantage of their counter parts in less difficult terrain, thus, creating doubts of equitability in the valuation and compensation process. The valuation methodology for the valuation of economic trees and crops are dependent on the inputs of the appropriate officer who fix rates without recourse to the life span of the crop/trees, its income yielding potentials and the fruiting capacity. Akujuru and Ruddock (2015) posited that compensation rates prescribed by the appropriate officer for agricultural crops bear no relation to the market value of the economic crops and trees and cannot put the affected claimants in the position they were before the acquisition. The study revealed that the rates used in current Nigerian compensation practice are inequitable.

MATERIALS AND METHODS

The study is aimed at assessing the equity of the present practice and make recommendation in order to ameliorate any defect. A mixed approach involving both the qualitative and quantitative techniques was adopted. The study use questionnaires, semi-structured interview and secondary data sources to elicit information from practicing Estate Surveyors and Valuers in Rivers State involved in compulsory acquisition. The source of the secondary data include journals, articles, internet materials / publications, textbooks etc. The study target population comprises of practicing Estate Surveyors and Valuers in registered Estate Surveying and Valuation firms as well as registered Estate Surveyors and Valuers in public service in Rivers State who are involved in compulsory acquisition valuation. Estate Surveyors and Valuers are considered because they are the only professionals' saddled with the responsibility of determining values of land and landed properties compulsorily acquired. This is provided for in Decree No. 24 of 1975 now Cap E13 (Laws of the Federal Republic of Nigeria, 2007). A sample frame of 20 registered Estate Surveyors and Valuers drawn from directory of NIESV Rivers State branch was considered as the population of study and a semi-structured questionnaire was designed to elicit information from Registered Estate Surveyors and Valuers involved in compulsory acquisition

valuations. The questionnaire contain opinion and rating i.e. Likert style and ranking question and is scaled in ascending order of 1-5, with five the highest and one rated as lowest. This method is best suitable to ascertain the respondent's perception on their assessment of the equity of the Nigerian Compensation Practice. Also, a semi-structured interview was adopted concurrently and the interviewee were asked a similar set of questions, albeit, based on an interview guide. The data collected was analyzed and presented with the aid of simple statistical methods.

DATA ANALYSIS, RESULTS AND DISCUSSION

This study collects its data from 20 registered Estate Surveyors and Valuers practicing in Rivers State and purposively drawn from the directory of the Rivers State branch of NIESV published in 2010. The study also conducted semi-structured interview concurrently with the questionnaire administration to elicit information. Data was analyzed with the use of frequency tables. The questionnaires are rated in a 5-point likert scale arranged in ascending order of 1,2,3,4, and 5 with strongly agree rated as the highest and assigned a value of 5 while strongly disagree is rated the lowest with a value of 1. Using the 5-point Likert scale, a criterion mean of 3.0 was derived. The weighted mean was calculated using the appropriate statistical formula. Thus, a calculated mean of above 3.0 affirms to a question while a calculated weighted mean of below 3.0 implies a non-affirmation to the study's proposition or question. The calculation was aided with the application of statistical package for social sciences (SPSS version 20) and excel software packages.

The details of the analyzed questionnaires are discussed below:

Table 1. Valuation Methods used in compulsory acquisition

Options	Scale X	Frequency F	Percentage %	Σfx
Discounted cash flow method	1	0	0.0	0.0
Comparable sales method	2	2	10.0	4.0
Income capitalization method	3	3	15.0	9.0
Depreciated Replacement cost method	4	4	20.0	16.0
Use of predetermined compensation rates	5	11	55	55.0
Total		20	100	84

Source: Field Survey, 2016

$$\text{Weighted mean } X = \frac{\sum fx}{f} = \frac{84}{20} = 4.2$$

Table 1 above shows 11 (55%) of the respondents determined values of acquired interest using predetermined compensation rates, 4 (20%) uses the depreciated replacement cost method, 3 (15%) adopts the income capitalization method, 2 (10%) used comparable sales method while none used discounted cash flow method. The calculated weighted mean is 4.2 which affirm the use of predetermined compensation rates as the method currently adopted by Valuers.

Table 2. Composition of Predetermined rates

Options	Scale X	Frequency F	Percentage %	Σfx
Strongly Disagree	1	1	5	1
Disagree	2	1	5	2
Undecided	3	0	0	0
Agree	4	6	30	24
Strongly disagree	5	12	60	60
Total		20	100	87

Source: Field Survey, 2016

$$\text{Weighted mean } X = \sum \frac{fx}{f} = \frac{87}{20} = 4.35$$

Table 2 indicates that 12 (60%) of the respondents strongly agree, 6(30%) Agree, 1(5%) strongly disagree and disagree while none is undecided. The calculated weighted mean from the table is 4.35 which confirms that predetermined compensation rates do not capture the life span, yield, expected income and fruit bearing capacity of economic crops/trees compulsorily acquired.

Table 3. Predetermined rates result to inadequate compensation

Options	Scale X	Frequency F	Percentage %	∑ fx
Strongly Disagree	1	1	5	1
Disagree	2	1	5	2
Undecided	3	1	5	3
Agree	4	4	20	16
Strongly Agree	5	13	65	65
Total		20	100	87

Source: Field Survey, 2016

$$\text{Weighted mean } X = \sum \frac{fx}{f} = \frac{87}{20} = 4.35$$

Table 3 shows that a total of 17 (85%) respondents strongly agree/agree, while 3(15%) of the respondents are of the opinion of strongly disagree, disagree and undecided respectively. The calculated weighted mean from the table is 4.35 which is above the criterion mean of 3.00. Thus, it is confirmed that compensation assessment using predetermined rates results to inadequate compensation.

Table 4. Level of Claimant’s Satisfaction when compensated

Options	Scale X	Frequency F	Percentage %	∑ fx
Very satisfied	1	0	0	0
Satisfied	2	1	5	2
Undecided	3	2	10	6
Not satisfied	4	15	75	60
Very dissatisfied	5	2	10	10
Total		20	100	78

Source: Field Survey, 2016

$$\text{Weighted mean } X = \sum \frac{fx}{f} = \frac{78}{20} = 3.90$$

Table 4 above indicates a calculated weighted mean of 3.90 which is above the criterion mean of 3.00. 15(75%) of the respondents are not satisfied when paid, 2 (10%) are very dissatisfied, 2(10%) are undecided, 1(5%) is satisfied while none is very satisfied. Thus, it is affirmed that the claimants are not satisfied when compensated with values derived from the use of predetermined rates.

Table 5. Predetermined compensation rates should be discarded

Options	Scale X	Frequency F	Percentage %	∑ fx
Strongly Disagree	1	0	0.0	0.0
Disagree	2	0	0.0	0.0
Undecided	3	0	0.0	0.0
Agree	4	3	15.0	12.0
Strongly agree	5	17	85.0	85.0
Total		20	100	97

Source: Field Survey, 2016

$$\text{Weighted mean } X = \sum \frac{fx}{f} = \frac{97}{20} = 4.85$$

Table 5 above shows that the 20 respondents representing 100% of the sample agree and strongly agree that the use of predetermined compensation rates for determining values of expropriated interests due to compulsory acquisition should be discarded because it does not reflect the market values of the interests acquired as at the time of acquisition. The calculated weighted mean from the table above is 4.85 which affirms the study’s proposition. Also, adopting the inductive approach, the study collected data from face to face expert interview involving Estate Surveyors and Valuers involved in compensation valuation. The interview reveals that there is inequity in Nigerian compensation practice due to the following factors:

- Adherence to the provisions of the laws/statutes e.g Land Use Act Cap L5, LFN.
- Use of predetermined compensation rates
- Delayed payment
- Non recognition of the principle of equity and equivalence.
- Bad governance that disregards and/or fails to implement the inputs of experienced professionals in valuation and compensation.

Conclusion and Recommendation

The determination of equitable compensation has been a major source of discontent and crisis in the Nigerian compensation practice. When government and its agencies acquire land, they have an obligation to ensure that the process is completed in an equitable and transparent manner. Claimants should not be worse off because their properties are acquired. Equitable and transparent procedures are also needed for economic growth and development. Economic growth and development will only be enhanced if expropriated owners of properties receive fair and equitable compensation that enhances their livelihood. This study concludes that Nigeria compensation practice is presently inequitable due to delayed payment of compensation, use of predetermined compensation rates, adherence to the provisions stipulated by the prevailing laws on compensation, lack of transparency and flexibility to mention but a few.

In order to ensure equity in the Nigerian compensation practice, the study recommends thus:

- professional views of valuers should be considered and the process made more transparent if the process is to be equitable. The legislature/laws should ensure fair process of determining values for compensation. There should be reforms in statutory valuation process in Nigeria and the basis/methodology for determining values should be dictated by the valuers and not the legislations.
- Compensation should be based on the market value of the acquired interest(s) rather than the application of predetermined compensation rates. The use of predetermined rates should be discarded completely.
- To achieve equity, compensation should not only be paid in cash but also in kind i.e resettlement in the case of buildings and structures.
- The need to have a defined time frame within which compensation should be paid after assessment and valuation should be incorporated in the various

legislations. Policy makers should as well implement the payment of interest rates on any unpaid compensation after the time limit.

- The Nigerian Institution of Estate Surveyors and Valuers (NIESV) should ensure that Nigerian compensation practice is benchmark to international regulations and codes which are conformed to the principle of equity and equivalence. This will ensure uniformity in the practice and ameliorate the current inequity in Nigerian compensation practice.

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