



AN APPRAISAL OF VALUATION AND ASSESSMENT OF COMPENSATION FOR COMPULSORY ACQUISITION OF LAND UNDER THE NIGERIAN PROPERTY JURISPRUDENCE

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ABSTRACT

The focus of this paper is on appraising the mechanism for valuation and assessment of compensation for compulsory acquisition of land in Nigeria. This is a very pivotal aspects of land and property law practice in Nigeria. The paper is quite novel and interesting, it tends to arouse interest of scholars and readers on the subject of research and fills the gap in knowledge. The general provision of compulsory acquisition of land by the government and concept of property compensation as provided in the grund norm were highlighted. Similarly, sections of the constitution of the Federal Republic of Nigeria 1999 (as amended) and the Land Use Act 1978 were x-rayed in relation to compensation and valuation to ascertain the amount payable to the landowners and title holders. The need for valuation and/or proper computation of assets is important, so as to ensure that adequate compensation is made. Assessment of compensation in acquisition relating to petroleum operation was elucidated. Overall, the paper also considered the problems and controversies associated with valuation. The paper ended with a conclusion and suggested some recommendations.

Keywords: *Assessment, Compensation, CompulsoryAcquisition, Land, Valuation.*

INTRODUCTION

Assessment complements valuation under the law and practice of compensation for compulsory acquisition of land. This practice is rooted in the Nigerian Constitution¹ which provides for the right of every citizen to acquire and own immoveable property anywhere in Nigeria.² Similarly, the *grund norm*, further emphasized that no moveable property or any interest in an immoveable property shall be taken possession of compulsorily and no right over or interest in any such

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended)

²CFRN, s43.



property shall be acquired compulsorily in any part of Nigeria³ The Land Use Act⁴ provides for compensation as condition precedent for a valid acquisition of land, thus, ... the holder and the occupier shall be entitled to compensation for the value at the date of revocation of their unexhausted improvement ... shall be assessed....⁵

The foregoing presupposes that the government has power to compulsorily acquire individual property under section 28 of the Act⁶. Be that as it may, processes and procedures must be complied with, to ensure that acquisition is legally valid. One pivotal part procedure is valuation and assessment of the unexhausted improvements on the sought to be acquired. The essence is to ascertain and be pleased on the quantum of compensation that the victims of acquisition are entitled to receive from the acquiring property.

This paper seeks to appraise the process of valuation and assessment of land for compulsory acquisition under the *grundnorm* and the Land Use Act, as it relates to the concept of compulsory acquisition of land. Although, the *grundnorm* neither provided for the procedures of valuation nor did it provide for any means of assessment or steps to achieve the prompt payment of compensation⁷. However, it has been argued that property valuation is the process of estimating the market value of a property, which is the price it would sell for on open market.⁸

³*Ibid.* s44(i)

⁴ LUA 1978.

⁵ LUA 1978 s29(i) and (14).

⁶ LUA 1978.

⁷ LUA s29(i)

⁸ C.I.G Agwor, 'Compensation for Land Acquisitions relating to petroleum operation in Nigeria; An Appraisal, 2018.



Understanding the practice of valuation and factors that affects it are crucial to buyers, sellers and victims of compulsory acquisition.⁹

Furthermore, the procedure for computation generally shall be highlighted especially, the valuation and/or assessment of compensation for land acquisition in relation to petroleum operations are pivotal in this paper. These implies that means or process of determining the amount payable to land owners and title holders are core purpose of this paper. In the same vein, the problem associated with this process of ascertaining or determining the amount payable is also inevitable.

2.0 CONCEPTUAL CLARIFICATION

Assessment

The concept of assessment, broadly speaking, involves the systematic evaluation or estimation of the nature, quality, ability, extent, or significance of something. Assessments are used in numerous fields, including education, health, finance, and law. In Nigerian law, the concept of assessment is integral to various legal processes, including taxation, property valuation, and regulatory compliance¹⁰.

Generally, assessments aim to provide an unbiased and objective evaluation based on defined criteria or standards. This is meant to guide its design and implementation. It could be to measure performance, determine value, ensure compliance, or understand impacts.

⁹ O. Yinusa, Understanding property valuation in Nigeria. Key factor to consider. Accessed 23/05/2024 property valuation, 2023 <<https://www.linkedin.com/pulse/understanding>.

¹⁰ Nigerian Income Tax Act (as amended)](<https://www.nigeria-law.org/Income%20Tax%20%28Amendment%29%20Act,%202007.pdf>)



Compensation

Compensation has been defined by various authors, among which is the definition stated hereunder, to wit;

That equivalence in money which is paid to the owners and occupiers of land taken or injuriously affected by the operations of companies exercising the power of eminent domain. In the constitutional provision for "just compensation" for property taken under the power of the eminent domain, this term means a payment of money. Any benefit to the property of the owner, arising from public works for which a part has been taken cannot be considered as compensation.¹¹

It has also been defined as;

Indemnification; payment of damages; making amends, that which is necessary to restore an injured party to his former position. An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in other that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury.

Ukwayi and *Ors.* defined the term compensation thus; "Compensation *prima facie* means recompense for loss and when an owner is compensated for is deprived of his real property, his pecuniary loss must be ascertained by determining the value to him". Similarly, Black's Law Dictionary with pronunciation sees compensation as, "Indemnification, payment of damages, making amends, making whole, giving an equivalent or substitute of equal value, that which is necessary to restore an injured party to his former position"."

¹¹ Black. H.C, Black's Law Dictionary (2nd edn, St Paul Minnesota West Publishing, 1910)
<<https://thelawdictionary.org/compensation>> accessed 10 August 2018.



From the foregoing definitions, the term compensation is a legal concept which represents the act of recompense, or indemnification. Simply put; repayment for loss suffered, or damages caused on an individual or community property to salvage or put the party(s) back to their original state before the act of deprivation or damage that required the recompense occurred. Emphatically, compensation, when used in the context of deprivation of land will mean a sort of payback. It therefore refers to the pecuniary gain which the owner of the land would have realized if the land was sold in an open market.

Compulsory Acquisition

Compulsory acquisition is the power of government to acquire private rights in lands without the willing consent of both the title holders and occupiers for the advantage of the public, such authority is essential for social and economic development and the protection of the natural environment.¹² Land acquisition can as well be referred to as the acquisition of private land by the government (Local, State or Federal) in fee simple (through purchase or donation).¹³

The implication of the foregoing definitions is that the government can exercise its power to enter upon a vast parcel of land, whether vacant or inhabited by individual, or community or organization and permanently take over same for the interest of the larger society.

It must be noted that government does this using the state machinery and in line with existing legal procedures operational at the material time. In some cases, original owners of land being

¹² FOA Land Tenure Studies Compulsory Acquisition of Land and Compensation" (10 edn, Electronic Publishing Policy and Support Branch Communication Division FOA, 2009) p54-<<https://www.fos.org>> accessed 12 October 2018.

¹³ Konveio, 'Land Acquisition' Planning for Hazard, land use solutions for cororado <<https://www.foa.org>> planning for harzard.com. accessed 20 July, 2018.



acquired may not necessarily give their consent yet the government goes on to acquire the land especially when the purpose of the acquisition is both for industrialization and urbanization of the society or environmental sustainability as may be necessary.

Therefore, it suffices to state that land acquisition is the legally approved method or means of acquiring Interest in land of a community, organization, family or individual by the government, its agents or any other authorized acquiring body for any lawful purpose.

Land

Land is an immovable and indestructible three-dimensional area consisting of a portion of the earth surface, the space above and below the surface, and everything growing on or permanently affixed to it.¹⁴ A judicial definition was given by the supreme court of Nigeria per Adio, JSC, in the case of *Salamiv. Gbodoolu*¹⁵ where the learned justice observed; “The word land” in its ordinary meaning, means any ground, soil or earth or the solid part of the earth’s surface as distinguished from the sea”. Real property, real estate and all that grows thereon, and the right to minerals underneath and the air space over it. It may include improvements like buildings, but not necessarily.¹⁶ Section 78 of the Interpretation Act¹⁷ provides *interalia* “Land” includes any building and any other thing attached to the earth or permanently fastened to anything so attached but does not include mineral. The combined effect of all the definitions reiterated above

¹⁴ Garner B. A. Blacks Law Dictionary, (8th ed. Thomson Business US, 2004) p 892

¹⁵ (1997) 4 NWLR (pt. 499) 277.,

¹⁶ Gerald and Kathleen H., ‘Interest’ legal Dictionary, 2022 <<https://www.dictionary.law.com>>accessed 19 November 2022.

¹⁷ Interpretation Act 1964, Cap. 123 LFN, 2004.



intends to establish the fact that land includes the earth, its surface, underneath, the space above.

This is arguably pointing to the fact that minerals are inclusive.

Valuation

Valuation, in a legal context, refers to the process of determining the economic value/worth of an asset, business, or company. When companies are bought or merged, valuation determines the price at which the transaction occurs. Professional appraisers or valuation experts typically conduct valuations, providing detailed reports to support legal arguments or financial decisions. In legal disputes, courts may appoint independent valuers or rely on expert testimony to resolve valuation issues.¹⁸

The International Valuations Stewards Committee defines market value as;

The estimated amount for which property should exchange on the date of valuation between a willing buyer and seller at arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion¹⁹.

- i. Valuation therefore is the professional process of objectively estimating value of an identified interest or interests in a specific parcel of real estate as of a given date. The inadequacy of the valuation method is due to;

The use of the wrong legislative basis for determining compensations.

¹⁸ (n16).

¹⁹ V A Akujuru, Y Yalaju, 'The Practicability of Applying the Total Economic Value to the Nigerian Compensation Practice (A Conceptual and Legal Analysis)'. (2008). *The Port Harcourt Journal of Business Law*. 1(1) 67-69.



The oil companies hind behind the Land Use Act whereas their operations are contained (guided)in the Oil Mineral Act and Petroleum

- ii. The prescription of unit rates by the Oil Companies or the Federal and State Governments negates the principles of value determination.
- iii. Oil Companies hardly rely on professionally determined valuation and values as they rarely employ professional valuers. Where they engage consultants, they dictate limits to the values that may be recommended by such consultants.
- iv. Most consultant valuers, in the bid to secure their retainership by the oil company, jettison professionalism and adopt unplanned methods in their valuation²⁰.

A Valuer is defined by the IVSC (2007) as a person who possesses the necessary qualifications, ability, and experience to execute a valuation, and shall be a person of good repute who has obtained an appropriate degree at a recognized center of learning, or an equivalent academic qualification; has suitable experience and is competent in valuing in the market and category of the asset; is aware of, understands, and can correctly employ those recognized methods and techniques that are necessary to produce a credible valuation; is a member of a recognized national professional valuation body; pursues a program of professional learning throughout his or her career; and follows the requirements of the IVSC Code of Conduct²¹.

²⁰ n 19.

²¹ *Ibid.*



Kakulu²² delivering an inaugural lecture in Rivers State University defined valuer as; Valuers are trained to systematically predict the future income profile of landed property based on a series of subjective and objective considerations, assumptions, and forecasting skills to arrive at that futuristic value and thereafter discounting this future value to present day reality.

VALUATION AND ASSESSMENT FOR COMPENSATION

Generally, the Constitution²³ provides for prompt compensation of land owners and occupier for compulsory acquisition of their lands. The *grund norm* neither provided for procedures of valuation nor did it provide for means of assessment or steps to achieve the payment of compensation. The computation of compensation is based on the value of the land rights and developments on the land, and on any related costs. The determination of equivalent compensation can be complex, principally when land markets are weak or do not exist, when land is held jointly, or when people have only rights to use the land.²⁴ Compensation should address both *defacto* and *dejuris* rights in an equitable manner following the standard of equivalence. Where occupants have no identifiable legal rights or claim to the land occupied, they may be entitled to relocation relieve and to compensation for assets other than land.²⁵ During valuation, the acquirer and land owners gather information and evidence to support their arguments for the value of compensation they believe to be equitable.²⁶ Responsibility for the valuation of land varies from one country to another. In some countries this is done by or for the

²² I I. Kakulu, 'The Land Use and Value Nexus' 65th Inaugural Lecture in Rivers State University [2019].<<https://www.rsu.edu.ng>>accessed 23 May 2024.

²³ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 44

²⁴ FOA (2008) 24.

²⁵ FOA (2008)25.

²⁶*Ibid*, 36.



acquiring agency while in other countries, assessments are the responsibility of independent commissions. The notice of intention should set a deadline by which each affected title holders or occupiers submit a claim for compensation.

If market value is the basis of compensation, legislation should obviously state what is understood by market value. A common approach is to define market value by the 'willing buyer', 'willing seller' model, that is the amount which a willing buyer would pay a willing seller on the open market where some choice exist. The legislation should ensure that such valuation does not consist of changes in value of the property arising from the process of compulsory acquisition.²⁷

In some nations, like India, the acquirer makes an offer, if this offer is not accepted by the title holder or occupant; the acquiring agency makes an official determination of compensation which can be appealed only in court or to a quasi-judicial body such as a tribunal. In other countries, the acquirer or its agents are required to first negotiate in good faith. Good faith negotiation saves time and money when they produce solutions which leave the owner and occupants satisfied enough with the outcome and thus unlikely to prolong the process by submitting appeals.²⁸

Several legislations on compulsory acquisition largely define equivalent compensation with reference to market value or 'just compensation'. In general, compensation should be for loss of any land acquired, for building and other improvements to the land acquired, for the reduction in

²⁷ n 26.

²⁸ FOA (2008) 28.



value of any land retained as a result of the acquisition, and for any disturbances or other losses to the livelihoods of the owner or occupants caused by the acquisition and dispossession.²⁹

Perfect or accurate assessment is difficult because it is time-consuming and expensive: each land parcel must be inspected to determine the value of the land and improvements. The lack of skilled valuers will increase the time required to complete the work. It may be complex to prepare reliable indicators for valuation when land sales are informal, or where markets do not exist or are just developing. It may be also difficult to monetarily quantify non-economic losses, for example religious, historical or cultural claims to the land.³⁰

Still on assessment generally the Land Use Act has made reference to an appropriate land officer to determine the method including interest at bank rate for the delay of payment. The Land Use Act reveals that both the title holder and the occupier shall be entitled to compensation. Paragraph 37 of the first schedule of the Petroleum Act and 115 of the Oil Pipeline Act also maintained the same view that both land owner and occupier, meaning that both title holder and interest holder are entitled to compensation. However, this study shall focus on assessing compensation with reference to the Oil Pipeline Act. This is due to the reference made in the Constitution and the Land Use Act 1978 respectively, directing issues of minerals and mining to the appropriate statute.

ASSESSMENT OF COMPENSATION WITH REFERENCE TO PETROLEUM OPERATIONS

²⁹*Ibid*, 27.

³⁰*Ibid*, 25.



Section 108 of the NMMA states that, the amount of compensation payable under the provisions of this part of this chapter shall be determined by the cadastre office after consultation with the State Mineral Resources and Environmental Committee and a government licensed valuer.

According to Babawale³¹ Section 11 (5) of the Act further provided that where the amount of the compensation cannot be settled between any such person and the licensee, it shall be fixed by a court in accordance with the relevant Sections of the Act. According to Section 20 of the Act,³²the court may award such compensation as it considers just, having regards to: any damage done to any buildings, crops or profitable trees by the License holder; any disturbance caused by the holder in the exercise of such rights, and any damage suffered by any person as a consequence of any breakage of or leakage from the pipeline or an ancillary installation; and loss (if any) in value of the land or interests in land by reason of the exercise as aforesaid.

Similarly, Section 20 (3) provided that in determining the loss in value of land and or interest in land of a claimant, the court shall evaluate the value of the land or the interest injuriously affected at the date immediately before the grant of the license and shall evaluate the remaining value of the claimant of the same land of interest consequent upon and at the date of the grant of the license and shall determine the loss suffered by the claimant as the difference between the values so found, if such remaining value is a lesser sum. Compensation shall not be awarded for unoccupied land as defined in the Land Use Act, except to the extent and in the circumstances specified in the Act Section 20 (4). Section 20 (5) stipulates that in determining compensation in

³¹ G. K. Babawale, “Emerging Issues in Compensation Valuation for Oil Spillage in the Niger Delta Area of Nigeria”; *Journal of Reviews on Global Economics*, 31<<https://www.>>accessed 23 May, 2024.

³² OPA 1956.



accordance with the provisions of this Section the court shall apply the provisions of the Land Use Act as far as they are applicable and not in conflict with anything in the Act as if the land or interest concerned were land or interest acquired by the President for a public purpose.

Section (29) of the Land Use Act provides for calculation of compensation as follows:

for land, an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked; for building, installation or improvement thereon, the amount of the replacement cost of the building. installation or improvement, that is to say, such cost 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... to the satisfaction of the appropriate officer, from the foregoing, the law relating to compensation for Oil Spillage in Nigeria, while providing specific items for compensation, leaves opened a number of vital issues including the exact 'heads of claim' as well as the basis and the method of valuation applicable. Apparently, the discretion is left to the valuer. and of course, the court, which is the final arbiter³³

The implication of the above position is that assessment of property in land sought to be acquired or damaged by reason of oil mining must not be limited to unexhausted improvement. rather it will include amount of land, buildings, crops, profitable trees, injurious affection and disturbance. The law relating to compensation although provided for some specific items for compensation, but it left vague the exact method and basis for valuation, thereby leaving the decision at discretion of the valuer and the courts.

³³ G. K. Babawale, “Emerging Issues in Compensation Valuation for Oil Spillage in the Niger Delta Area of Nigeria”; *Journal of Reviews on Global Economics*, Department of Estate Management, University of Lagos, Nigeria 2013, 2, 31-45.



The preferential provision of acquisition for petroleum operations is contained in Section 29(2) of the Land Use Act; the provision expects all such valuations to be based on the Petroleum Act. The above provision is unnecessary because from all indications the provisions of the Land Use Act are the only statutory method for the valuation of compensation. Section 20(5) of the Oil Pipeline Act states that compensation should be determined in accordance with the provision of the Land Use Act in matters relating to public acquisitions. The applicable Sections of the Land Use Act are set out below.

The legal basis for the valuation of compensation for acquisition for public purposes in Section 29(1) of the Land Use Act, reads: If a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (3) of the same section the holder shall be entitled to compensation for the value of their unexhausted improvements. "Section 29(3) of the Land Use Act states: "If the holder or the occupier entitled to compensation under this section is a community... Section 29(4) of the Land Use Act provides for compensation with respect to land as follows: "For an amount equal to the rent. If any, ... Section 29(5) makes provision for payment where only part of the land is acquired.

In case of buildings, installations and other improvements, Section 29(4) provides as follows: (b) building, installations or improvements thereon, for the amount of the replacement cost of the buildings, installations or improvements, 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. In the case of crops, Section



29(4) provides: for an amount equal to the value prescribed and determined by the appropriate officer". From the above, there appears to be some confusion as to the correct method to apply during valuation of land acquisition for petroleum operations in the Niger Delta.³⁴

CONCLUSION

The concept of valuation and assessment for compensation for compulsory acquisition as revealed under this study cannot be over emphasized. It is pivotal for acquiring agency to allow the landowner or title holder to engage a qualified valuer to assess and ascertain the quantum or amount they are entitled to. This way, it will be transparent and difficult to allege clarity and/or inadequate compensation.

It must be emphasized that any compensation that can restore the victims (land owners and title holders) to their former state before the compulsory acquisition is on its own inadequate and contradicts the intentions of the provision of the constitution, which propagates that compensation must be prompted and adequate.

RECOMMENDATIONS

The paper suggests the following recommendations.

1. Amendment of section 44 of the 1999 Constitution to provide for a clause defining and determining adequate compensation. This way the challenges and questions associated with whether compensation is adequate or not will be prevented.

³⁴ Kakulu I. I, 'Assessment of Compensation in Compulsory Acquisition of Oil and Gas Bearing Land the tiger Delta Experience (2008) <[https://www.researchgate.net/publication/259969693- The_assessment_of_compensation_in_compulsory_acquisition_of_olland go bearing Jand-accesse](https://www.researchgate.net/publication/259969693-The_assessment_of_compensation_in_compulsory_acquisition_of_olland_go_bearing_Jand-accesse) 23 October 2018.



2. The subsections of the Land Use Act which oust the jurisdiction of the court to entertain questions pertaining to the amount of/or adequacy of any compensation paid or to be paid should be deleted from the Act to checkmate acquiring authorities and allow the aggrieved persons to enforce their legal rights.
3. Enactment of a more effective and compelling legislation on valuation and assessment to strengthen the existing provisions in the LUA, NMMA, and OPA.