DEVELOPMENT OF APPROPRIATE METHODOLOGIES FOR LAND ACQUISITION IN DEVELOPING ECONOMIES: THE CASE OF NIGERIA

BY

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INTRODUCTION

Nigeria is located at the western region of Africa and endowed with vast land mass of approximately 924,768 sq.km with a population of about 144.7million people and an annual growth rate of 2.5%. The country has more than 250 ethnic groups. Nigeria is the most populous country in Africa, and one of the fastest growing countries in the world. It has a Federation of 36 states and the Federal Capital Territory, Abuja. The Federation is made-up of 774 Local Government Councils Area and substantial States Development Area Councils.

The objective of Land policy in Nigeria is to ensure that the all Nigerian have access to Land and ownership of natural resources is preserved, protected and properly managed in a manner that explores all the inherent potentials.

INTRO - -

However, the rights and ownership can be acquired compulsorily for public goods, subject to payment of compensation. The 1917 public Lands Acquisition Ordinance (Public Lands Acquisition Act, Cap 167) provides that the determination and assessment for land compulsorily acquired for public interest shall adopt Open Market Value (OMV) as the basin for assessment for compensation. Sixty – one years after comes Land Use Act (LUA) 1978 that repeals Cap. 167 LUA now supersedes all other laws relating to property and acquisition. LUA vests all land in the government as trustee and compensation is only for unexhausted improvements. Value for bare land is not considered at all and with a dictated method of valuation for compensation payable to the claimants in Nigeria

AN OVERVIEW OF THE CONCEPTUAL FRAMEWORK

The various legal framework and laws that govern compulsory purchase of land and payment of compensation in Nigeria include the followings;

- Public Lands Acquisition Acts Cap 167 of 1917.
- State Lands Acts
- Lands Use Act (LUA) No. 6 of 1978.
- The Oil pipeline Act of 1956
- The Constitution of the Federal Republic of Nigeria

‘APPROPRIATE’ METHODOLOGY FOR COMPENSATION

As against what exist in Nigeria, The Sweden system provides a better methodology for assessment for compensation. In Swedish legislation the property owner who is forced to surrender land shall be compensated for the damage he suffers, and compensation is based on a principle of **indemnification**. However, the rule is that the compensation is to correspond to the **Market Value** of the property, that is, the price which it would fetch in the open market. In addition, if only part of the property is affected by compulsory purchase, the compensation must equal the loss of market value which the compulsory purchase entails. Similarly, if this compensation does not fully cover the economic injury to the property owner, compensation shall also be paid for what is referred to as other damage. Compensation for “Other damage” may come into question, for example, when a property owner has to move house or close down a business conducted on the property. The only exception to the above underlying frame work for compensation corresponding to the market value concerns values based on expectations of a change in land use, for instance development values.

Compensation for development values can be discussed form, perhaps from two perspectives. Firstly, the compensation issue relates to a general principle can be related to so-called “unearned increment”.

Secondly, the compensation issue relates to a general principles of justice, referred to as “equal treatment” of individual.

The foregoing experience form Sweden can be regarded as best practice when compared with developing economies, especially Nigeria. The Nigeria’s legislation provided only three heads of claims for compensation. For land, only an amount equal to the rent, if any, paid by the occupies during the year in which compulsory acquisition or revocation takes place. Meaning that the value for land it self in not considered at all. For crops & economic trees and for buildings and Installations thereto.

Similarly, the method of valuation for compensation provided by the LUA is the amount of the replacement cost of the building, installation or improvement, meaning that determination 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 to any improvement in the nature of reclamation work being such cost thereof as may be substantiated by documentary evidence and proof of the satisfaction the appropriate officer; while, in the case of crops land apart form any building, installation or improvement thereon, for an amount equal the value a prescribed and determined by the appropriate office (LUA, 1978).

The foregoing can not certainly provide good method of assessment for adequate, just and fair compensation, because there exists gaps which included;

i. Lack of legal recognition of land value for compensation
ii. The adoption of DRC in all cases of compensation valuation instead of Open Market Value (OMV).
iii. None recognition of other loss such as goodwill, injuries affection.

DEPRECIATION REPLACEMENT COST (DRC)

Depreciated Replacement cost is defined (RICS, 2005: Glossary) as “The current cost reproduction or replacement of an asset less deductions for physical deterioration and all relevant forms of obsolescence and optimization.”

In outline, a DRC involves the following:

Cost of constructing the building(s) (including fees)	₦		
Plus: Cost of the land (including fees)	₦		
Total Cost		₦	
Less: Allowance for age and depreciation		₦	
Depreciated Replacement Cost			₦

But for compensation payable the cost of the land is ignored

DEDUCTION TO THE REPLACEMENT COST

The LUA assumed that the buildings which are to be valued using a DRC approach are unlikely to be newly constructed, an allowance is made from the "as new" costs. This allowance reflects the effects of age, obsolescence on the building and the efficiency of use and thus on value. The extent to which age (as a matter of principle) can depreciate the value of a building a debatable point; however, allowances for obsolescence (which to some extend will reflect elements of age) are more clearly identified.

Baum (1991) categorizes depreciation thus:

- Incurable – in which no amount of capital investment can rectify the position (for example, building structural flexibility); and
- Curable – where capital investment can bring the building to a state in which the degree of obsolescence is instigated (e.g standards of finishes and services).

Depreciation which is caused by curable obsolescence should be reflected in the estimated future life of the building, as future investment or ‘retro-fitting’ could extend the life of the building. However, obsolescence is, intrinsically unpredictable and the period of time between revaluations of the property may see significant changes in the level of both obsolescence and depreciation.

Allowance for depreciation are normally made for normally made for physical obsolescence, functional obsolescence and economic depreciation.

- Physical Obsolescence
- Functional Obsolescence
- Economic Obsolescence

Applying this to compensation assessment methodology is in my view not pro-adequacy of compensation and will not provide fair and just consideration.

FINDINGS

- From the investigation carried – out, revealed the following findings,
- Inadequate compensation due to unsatisfactory method of determination of compensation payable.
- The LUA compensation provisions is aimed at reducing cost of acquisition and making land easily/cheaply available to government and expropriated owners facing the problem of inadequate compensation.
- The general rating for crops and economic trees fixed by the government/oil producers trading section is lower than the open market value.
- The right professionals are not mostly used in compensation valuation and were used they are constraint by the provisions of the law to adopt the method prescribed.
- Undue delay in the payment of compensation that tempts claimants to accept whatever the acquiring authorities/oil companies offer.
- Difficulties in identifying true owners of land or interest in land due to boundaries demarcation problems.

RECOMMENDATIONS

The following are suggested recommendation:

- There should be reasoned analysis in determining the level of the actual loss by claimant. Open Market Value plus incidental costs suffers should be the basis of assessment/determination for valuation.
- The general fixed rate for crops and economic trees should be discouraged. Valuation of crops/economic trees should be based on the expected yield of a crop's productive life and not on fixed rates.
- The LUA and other statutory provisions should be amended or there should be proper to contain provisions to compensated for; disturbance, severance and injurious affection.
- The government should try to protect her citizens for exploitation by all; government herself and the oil companies. Dishonesty and greed should be discouraged among professionals and government officials.
- Deductions for depreciation should be limited to properties constructed for more than five years and above.

- Government should ensure that only the services of registered estate surveyor and valuer are engaged in compensation issues.
- Prompt payment should be ensured to avoid loss of money value and crisis.
- Government should ensure that all landowners establish community committee to determine clear boundaries to show ownership areas by claimants.
- Apart for compensation being paid to communities for their affected properties, the acquiring authorities should also try to provide basic amenities such as pipe-born water, electricity, clinics, good roads, etc. to improve on their welfare.

CONCLUDING REMARKS

Generally, it is not how far but how well. The present government should be commended for according Land Reform a priority as one of the Seven-point Agenda. The reforms is basically expected to reactive and position transparent Land Policy in Nigeria and to move Land to a level of becoming a commodity and create effective land market, increase investment opportunities, encourage mortgage facilities, empower the citizens, reduce poverty level, assure security of lives and property, and drastically reduce transaction time for property rights and ease of transfer. Better land title means better compensation.

The need to development appropriate methodologies for payment of compensation can not be over emphasized particularly in developing economies. It is a fact, that land policy is country specific, but best practices across the globe can be adopted to achieved desired methods for determination of compensation payable to make it just, fair and adequate.