URBAN POVERTY; IMPROVING SOCIO-ECONOMIC STATUS THROUGH ADEQUATE COMPENSATION AFTER PUBLIC ACQUSITION

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ABSTRACT

Public land acquisition in Nigeria is needed for physical development that will be beneficial to the majority of the public. However when this acquisition is done, compensation needs to be paid and is actually being paid. Among the compensable when compulsory acquisition is done are the land, the building and such improvement as agricultural activities. The improvements are of social economic importance which are major sources of livelihood and various compensation being paid on this improvement has being discovered to have reduced the social economic status since the process of assessing is grossly inadequate and has not taken cognizance of the various losses that might have been incurred in the process of the acquisition. Such losses as community value, cultural value coupled with the economic value of which the financial gain is a major which seriously falls below the stipulated expectation in the law backing payment of compensation after public acquisition are never taken into consideration when compensation is being paid. In view of the identified inadequacies a new approach to assessing compensation that will improve the social economic status was therefore suggested.

KEYWORD: Compensation, improvement, cultural values, community values, social economic status.

1.1.0 INTODUCTION

Compulsory purchase or compulsory acquisition is a term that is generally used when a public authority set out to gain access and control of a particular parcel of land through its public policy instrument. Government acquires land compulsory anytime it requires for public purpose. Land acquisition by government is global and government's police power is normally exercised in the process. This activity in most cases is backed by law. Compulsory acquisition is otherwise known as "taking" in America. (Patel, 1995). In Nigeria, government has always acquired land for a series of public purpose such as roads, housing estates industrial use etc. laws are also promulgated to back up such action in Nigeria. In America, the law is known as the "taking clause" and in the Fifth Amendment it states that 'nor shall private property be taken for public use, without just compensation. As government sets to acquire, the issue of compensation payable to the people who are being deprived of their parcel of land must be well assessed and paid.

The states according to UNDP (2002) have the right to acquire land in the public interest and carry out a land reform program. However, an essential per-require in the process of property acquisition by the state is the principle of fair compensation for land and improvements. Even the clearing of land the physical development of soil is an improvement that needs to be given due weight in determining land values.

1.2.0 HISTORICAL BACKGROUND OF COMPENSATION IN NIGERIA

The law that empowers the government to have eminent domain on land it wishes to use for public purpose is the land use decree of 1978, and state land (compensation) Decree No.38 of 1968 etc. the history of land acquisition starts with the public law acquisition Act cap. 167 laws of the federation of Nigeria, 1958, followed by the state lands resumed Decree 38 of 1968, public land acquisition miscellaneous provision Decree 33 of 1976, the land use Decree No.6 of 1978 (now land use act cap 202 laws of the federation of Nigeria, 1990). The mineral act cap 350, laws of the federation of Nigeria, 1990 and the oil pipeline act cap 338 laws of the federation of Nigeria 1990. According to Babatunde (2003) the constitution of the Federal republic of Nigeria 1999 provides for payment of compensation where interest in land buildings improvement or any installation is compulsory acquired. Part iv, section 44 of the constitution of the federal republic Nigeria 1999 provides that "no movable property or any interest in an immovable property shall be taken possession of compulsory and no right over or interest in any such property shall be acquired compulsory in any part of Nigeria except in the manner and for the purpose prescribed by a law that among other things, "Requires the prompt payment of compensation therefore; and give to any person claiming such compensation a right of access for the determination of his interest in the part of Nigeria."

However, Adebayo (2004) observed that the issue of compulsory acquisition dates back to the 17^{th} century during kingdomship days when the traditional rules had absolute powers to run without checks. They had utmost right to acquire properties and the subjects had no objection other than submit to the kings wishes. The kings could acquire land forcefully either for their personal use or for a use that would benefit the entire public. In those days, the victims were not in any way entitled to compensation. Wars were even used to forcefully acquire large expanse of land such as settlements and villages. Compulsory acquisition gained legal or status support shortly after colonization through the imposed public land acquisition ordinance of 1863. It among other things legalized compulsory acquisition. It also made it easy for the governor to acquire land within Lagos territory for public use.

2.1.0 THE NEED FOR COMPENSATION IN ACQUSITION

According to Cornea (2012) compensation is necessary and indispensable for all losses incurred and it is required if the government physically occupies the land by legal instrument. Since acquisition involves displacements which extract wealth, compensation is a resolution of what existed in the past. Compensation may as opined by Trousdale (1998) should be the subject of negotiation, for future actions that will cause drainage or losses to occur. In any event, the legal view of determining compensation is to find the right price for those adversely affected. This price would be amount necessary to make the affected group indifferent to their losses. To put it another way, it is reasonable in a technical sense to assume that compensation should put the effected group in a good position as if no losses were incurred in the first place.

As a good, a position is a relative term that is defined by context and perspective. A fair pragrammatic and responsible approach to compensation should respect history, experience and the years of debate between the land owner or indigenes, the user of land and the different levels of government. Compensation is needed to put the person being displaced in a position in which the values he previously enjoyed the acquisition would be deemed to have been restituted. Adigun (1999).

2.2.0 COMPENSABLES OR ISSUES FOR COMPENSATION IN NIGERIA

According to the Land Use Decree No.6 of 1978, if a Right of Occupancy is revoked for the "purpose of public usage" as set out in paragraph 6 of subsection 2 of section 28 or in paragraph (a) or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value of the date of revocation of their unexhausted improvements and it further states in sect 29 subsection four that compensation under subsection (1) of the section 29 with respect to -

(a) The land for an amount equal to the rent, if any paid by the occupier during the years in which the right of occupancy was revoked.

(b) Building, installation or improvement thereon, for the amount of the replacement cost of the building installation or improvement that is to say, such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer.

(c) Crops on land apart from any building installation or improvement thereon, for an amount equal to the value as prescribed and determine by the appropriate officer.

The intention of this legal instrument is to make provision for adequate restitution or refund in totality. Further explanation on the compensation payable is further outlined in subsection 5, 6 and 7. It must so note that none of the sections mentioned the injury or loss that may occur to the owner of such land except the physical. The other compensable made adequate reference to could be in form of spiritual, or economic or other issues. Trousdale (1998) further said what the resulting legal framework for identifying compensatory loses on Metis settlement in Alberta was articulated in section 118 of the Metis Settlement Act. It explicitly recognizes as compensable the economic and production value as well as intangible cultural, social and environmental values. There are many economic values that are affected by physical development. some values are market based and readily quantified in monetary terms (e.g. value of the standing timber and future timber harvest) other economic values are more difficult to quantify (e.g. the replacement value for the traditional use of wild foods, income from wildlife or the opportunity cost for alternative land uses on distributed land). Despite difficulties with determining economic values, they still represent only a portion of the resources impacted by physical development. Indigenes and landowners have many strong beliefs and values that are normally sold through markets. These values do not easily lend themselves to monetary quantification but they should be calculated for the purpose of compensation. examples include, but are not limited to traditional cultural values (e.g. teaching of traditional skills and knowledge or spiritual values.) community values (e.g.health and safety risks and environmental values (.e.g. ecosystem function values wildlife habitat values). It must however be noted that compensation according to Cornea (2012) is necessary and indispensable for all losses incurred and compensation even at the replacement cost level, is vulnerable to several dyfunctionalities (a) errors in valuation (b) dysfunction in the delivery of compensation payment (complex siphoning off, delay in payment) (c) dysfunction resulting from resettles condition (indebtedness, customary obligations inexperience with cash (d) unanticipated changes in market prices. To all those effects, compensation payments tend to regularly not return to resettlers the real and full values of their asset. Sometime/or many a time they end up worse off impoverished

2.3.0 METHOD OF VALUATION FOR COMPENSATION IN NIGERIA

Section 29 subsection 4 b of which law? states that buildings, installation or improvement thereon. For the amount the replacement cost of the building, installation or improvement that is to say , such cost as may be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation together with interest at the bank rate for delayed payment of compensation. This can be mathematically expressed as

x -Cost of building / to replace the one the site to be acquire.
y - x = depreciation allowance for age, obsolescence and usage
i = interest rate prevalent in the bank
Y+i = compensation payable.

And for economic trees this to be determined by the appropriate officer. It does not have mathematical expression as it is subjective. The method of valuation is known as direct replacement cost as far as the buildings and installation are concerned. Other methods that are applicable to valuation for compensation though not being applied in Nigeria according to Trousdale (2002) are

(i) The income approach

A common approach for valuing resources is to estimate the potential income stream from the exploitation of a salable goods or service and determine its present value. One challenge to employing this method is that a market for the good or service must exist, essentially excluding non-market consideration. In addition, this approach requires many assumption regarding future prices, production level and risks. Consequently, the values derived by this method may be extremely variable. The limit application and difficulty with valuing marketable goods using income approach suggest that it is not complete or viable option for determining a fair compensation structure.

(ii) The substitution approach

This method places emphasis on the value of country foods and assets. One of the primary goals was to understand the value of the subsistence economics. There are difficulty on the question of wildlife population dynamics and true effect of development on wild life plants. Data required to this effect might be expensive, in the end researchers realized that there were so many intangible aspects to wild food consumption that the final currency amounts would be widely inaccurate and dramatically understate the true value of the lifestyle that was associated with gathering and hunting wild foods.

(iii)The price comparison Approach

Another market-based approach might contrast the price of a comparable piece of pristine land that is equal in size and quality to the land that is damaged or going to be damaged by development.

First, this approach assumes that there is a comparable land area and viable market for these lands. It would also require the inclusion of additional cost for personal hardship, lost investment and other disturbances. Besides the unwieldy hypothetical condition required to consider such a comparison, the facts remains that the new land purchase will not have the same value on the open market for many of intangible aspect (e.g. traditional sites, sacred places).

Most importantly, this approach negates the two structure of the compensation question. Blatantly ignoring the context: (in Australia) aboriginal title is inalienable, or can't be sold, transferred or surrendered. The price comparison approach is not realistic for Canadian aboriginal peoples or indigenes as was the case in Ife and places were communal clashes occurred. There are not viable markets or comparable land areas. There would still be many issues related to valuing intangible losses determining and appropriate level of compensation.

(iv) Willingness to pay and willingness to accept approach

Attaching a currency figure to values that are not exposed to pricing through market system is typically through contingent valuation techniques that ask respondents how much they are willing to pay or willing to accept for defined loss. Although these techniques attempt to establish a "market" (Albeit Hypothetical) and attach a current figure to intangible goods, they are not appropriate for determining compensation for indigene values. Firstly, numerous potential bases associated with these methods tend to determine the validity and the reliability of the result. Secondly, they placed excessive cognate (thinking) demands of the respondents. Thirdly, it is difficult to adequately structure compensation questions in order to elicit a well-founded response. Finally, these method force respondent to directly make a tradeoff between money and losses. If the question were framed in terms of willingness to pay many indigenous respondent would certainly be limited, even conceptually, by their own ability to pay. Furthermore, if an aboriginal feels they loss something that was already theirs (e.g. traditional hunting ground then why should they have to pay for it? An appropriate awareness would be a refusal to participate in the valuation.

3.1.0 INADEQUACIES OF THE NIGERIA VALUATION METHOD

Adebayo (2004) opines that present approach adopted by government in the assessment of trees and crops for compensation purpose during compulsory land acquisition is grossly in adequate, circle and bad. The method greatly leads to under assessment of the crops and in turn leads to insufficient compensation payment to the victims. Compensation should at least equal all cost incurred, otherwise the victim would be at loss if compensation paid is less than real cost expended on tree or crop. However, the present approach does not take into consideration future benefit income derivation by the farmer who would loss such opportunity upon the acquisition of the land, for instance, apart from its present income generating capability, an economic tree existence is for reasonable numbers of years with life span and may be a good source of income to farmer for its entire lifetime. If land on which such crop stand is acquired the former is denied all future benefit that is accruable to him. In addition, the period taken between acquisition and compensation payment is always long. The victim suffers a lot within the period and no provision is normally made to take off his suffering during such period. Although, compensation laws make provision for interests' payment, these may be low relative to income realization and are not usually paid.

Furthermore, most farmers, who fall victims of compulsory acquisition illiterates who may not really know the implication, intricacies of the exercise and hence are totally ignorant of what to do when their land is acquired. Some have not up to date received compensation on their land. Crops count/environments are done hurriedly and hence account for improper enumeration. The procedure involve in the compensation payment is long and compensation is delayed to the extent that some of the victim get frustrated before payment is made. Some crops/trees are not included in the list and these usually generate controversy.

The replacement cost method of valuation for building does not encompass other values for which the building is given or attracting to the owner or user of the building are not imputed as a factor whereas, the owner/occupier is being deprived of all the beneficial value both present and future. Thus, the method is devoid of open market value for which the owner might reasonably be expected to give its land away. The clause that the appropriate office will determine bases of the method is another setback to the method; the system is such that any change in the present officer who determines what to do might reasonably be expected to lead to a change in the compensation payable. The implication here is that values or claims are subjective to the whims and caprices of the appropriate officer. Under this Method being applied in Nigeria, some issue that determine the compensation payable may not be considered. According to WAPDA (1994) such things are:

I. Value of the land.
II. Damage sustained by the person interest by taking of any standing crop or tree
III. Damage sustained by the person at the time the collector is taking possession of the land.
IV. Damage sustained by the person at the time of acquisition of land injuriously affecting his other property movable or immovable.
V. If compelled to change his residence and place of business, the reasonable expense incurred for such change.
VI. Damage resulting from diminution of profits of land from declaration to actual taking possession by the public authority. It must however, be noted that compensation payment is fiat, that is the person being paid does not have the option of either accepting cash payment or resettlement to any part. This privilege is at the instance of the military Governor.

3.2.0 Contemporary Methods for Valuation for Compensation. Way Forward.

A new study by Trousdale (2003) proposed a new approach identified value focused on thinking which provides a structured approach to consultation that may help to minimize negotiation time by promoting cross-cultural communication. It has also successfully being employed to establish monetary measures for intangible value in many contexts. The simple approach is as follows:
Step 1: Conduct background research. This may include interviews, community mapping, workshop and site visit with elders or members. Interviews and document review is also essential.
Step 2: Establish a framework for assessing compensation by having the participants identify their values and then petting them into a framework where they can be analyzed. These values to be identified include:

a) Bush value (e.g. wildlife and habitat)
b) Traditional/cultural values (e.g. traditional site)
c) Community values (privacy)

d) Economic values (e.g. direct financial revenue)
Step 3: Develop measures for determining the change in values.
Step 4: Establish the relative importance of each change and quality using monetary measures.
The essence of this method is to:
i) Express intangible values in currency for negotiation or direct monetary compensation
ii) Structure intangible values so they can be included in negotiation to develop long lasting and fair compensation packages.
Other methods as proposed by Adebayo (2004) are:
i) Revenue capitalization approach (RCA).
ii) Summation of discounted net income method (SDNI)

i. Revenue Capitalization Approach

This method relates quite well to the investment method of valuation. It collapse spread income realizable over years into a bulky sum tagged the capital value. Therefore, it entails derivation of series of income realizable and deduction of general cost tagged outgoing to be a reflection of the Net income (NI) to be use. The Net Income will therefore be multiplied by the year'spurchase using appropriate yield rate. The rate is always very low for agricultural properties. An example of citrus would be used to explain furthers.

Life span of tree – 12 years		
Productivity	year 0- 3	600 Oranges
	Year 4-8	800 Oranges
	Years 9-12	1000 Oranges

Yield rate is 4%
Whole sale price of an orange is N3

Solution
Years 1-3

Income 600 orange at N3		=1800
Less income (say) 600		
Net income		=1200
Yp 3 years at 4%	2.7751	=3330

Years 4-8

Income – 200	600
Less outgoing (say)	1000
Net income	5,000.00
Xp years data 3 years	3, 39576 19, 788

Years 9-12

Income 100 oranges at N3		300
Less outgoing (say)		1000
Net income		200
X yp 4years data 8yrs	2:6522	5,304.60
Total		28,422.60

(ii) Summation of Discounted Net Income Method

This method attempts to add together benefits accruable to the farmer per tree. It is assumed here that each stand has been made fit to continue to generate income annually which is almost very certain and secured annually. The method entails discounting individual annual income and deducting net income. Series for the life span of the tree are added together to give the total discounted net income to which the discounted salvage value (DSV) of the stand is added to give a value representing what should be paid to the farmer as compensation. This may be represented by the following formula.

$$C.P = \sum_{i=1} \frac{(y-k)}{(1+1)^n} + \frac{S.V}{(1+L)^n} \quad \text{OR} \quad \sum_{i=I}^{n} \frac{\sum y}{(1+L)^n} - \frac{\sum k}{(1+1)^n} + \frac{S.V}{(1+1)^n}$$

Where C.P = compensation payable

K = cost

Y = income

N = period of year

S.V = salvage value

The above formula may be expended as follows

C.P = (Y1k) PV + (y2k) PV ….. (YnK) PV + (S.V) PV

Where PV = present value of money.

Therefore, using above examples, the solution is as follows

Years	P.V	Net Income	Discounted Net 1
1	.9615	1,200	1153.8
2	.9245	1,200	1109.4
3	.8889	1,200	1066.7
4	.8548	5000	4274.0
5	.8219	5000	4109.5
6	.7603	5000	3951.5
7	.7594	5000	3799.5
8	.7307	5000	3653.3
9	.7026	2300	1615.88
10	.6756	2300	1553.88
11	.6496	2300	1494.08
12	.6246	2300	1436.58
		$\Sigma =$	29,217.6

Total discounted Net Income	N29, 217.6
Add Discounted salvages	625.6
Value	29,842.2

4.1.0 CONCLUSION

The essence of paying compensation is to restitute and not to deprive. It is therefore necessary for the government and all those concern with social economic condition of the urban dwellers to examine the method of compensation and the mode as various past experience in Nigeria has attested to the fact that when acquisition is done many are deprived of their means of livelihood without any alternative provided for the sustenance of those concerned. Compensation must not only be fair and just but must be adequate enough to account for loss resulting from the revocation of the right of occupancy. However, this should not be based on the assessed principles as obtainable in other countries, but should be based on values that can purchase the same property and all other values already identified previously in an open property market within the environment that the acquisition process is being contemplated. The aim of adopting contemporary methods of valuation is to make those whose land is to be acquired receive earnings that will make them if not gain economic social status but not to lose it and become poorer.

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