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Compulsory Purchase and Payment of Compensation in Nigeria: A Case Study of Federal Capital Territory (FCT) Abuja.

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***Abstract:** The ruling of the Abuja Division of the Court of Appeal (1999) states that the Land Use Act (LUA) does not apply to lands within the Federal Capital Territory (FCT) Ipso facto. The distinction between urban and non-urban Land created by the Land Use Act is not applicable within the territory. Hence only the Federal Capital Development Authority (FCDA) is competent to grant Rights of Occupancy in respect of land within the Federal Capital Territory, Abuja. This paper examines how land may be acquired in FCT with particular emphasis on the payment of compensation; it reveals that, apart from delayed payment of compensation, current provisions of the law cannot adequately compensate dispossessed owners. It recommends that the National Assembly should come to the rescue with a definite legislation that will be applicable to the incidence of land holding in the FCT, Abuja and the establishment of a Lands Tribunal system to deal with compensation valuation issues in all the States of the Federation including Abuja.*

***Keywords;** acquisition, assessed value, claimant, land use act, compensation.*

1 Introduction

The Federal Capital Territory (FCT) Act of 1976 was enacted to establish for Nigeria, a Federal Capital Territory, and Abuja. Section 1 (3) of the FCT Act provides that as from the commencement of the Act, the areas contained in the Capital Territory shall cease to be portion of the State concerned and shall henceforth be governed and administered by or under the control of the

Government of the Federation to the exclusion of any other person or Authority whatever and the ownership of the lands comprised in the FCT shall likewise rest absolutely in the Government of the Federation. This was the setting when the Land Use Act was enacted and became operative on the March 29, 1978. The preamble and section 49 (1) of the Land Use Act (LUA) excludes the application of the Act to the FCT, Abuja. Notwithstanding the existing inconsistency of the LUA with the FCT Act, land holding in the FCT has been administered as though the entire Territory is subject to the LUA. The existing situation from a survey, shows that Federal Capital Development Authority (FCDA), a body established by section 3 (1) of the FCT Act and charged with (among others) the Management of moveable and immovable property (Statutory). The six Area Councils issue Customary Rights of Occupancy in respect of lands within their areas of jurisdiction. This was the position until the establishment of Abuja Geographical Information System (AGIS) in 2003 and in addition to an earlier ruling of the Abuja Division of the Court of Appeal (2005) 5 NWLR (Part 656) 244.

2 Theoretical and conceptual framework

Compulsory purchase compensation in Nigeria dates back to the colonial era when Lands were compulsorily purchased by the Colonial Government for some public purposes. This purpose includes development of Schools, Hospitals, Roads, and other facilities. Legislations were enacted to enable the colonial Government achieve successful compulsory purchase of Land. Odudu, (1978) observed that the Land Use Act is silent on the question of “Disturbance”, which may be defined as molestation or interference with a person’s right to property. Claims for Disturbance in relation to losses, which are the direct result of the compulsory taking or revocation of a claimant’s right of occupancy, which are not remote or purely speculative in nature. He further stressed that loss of profits in connection with a business carried on, on the premises and which will be directly injured by the dispossession of the owner of the business premises should be a permissible subject of claim. Again, where a claimant is displaced from his dwelling house, he should be entitled to claim not only for the “unexhausted improvements” but also for cost of removal, fixtures, incidental expenses etc. Olawoye (1982) reports that: “One of the earliest legislations, introduced by the colonial administration was that dealing with acquisition of Land for public purposes the first of such legislation was the Public Land ordinance of 1876 which was re-enacted with modification as Public Lands acquisition Act of 1917”.

However, the Public Lands Acquisition Act of 1917 was fashioned in line with the already existing British laws followed by the State Lands (compensation) Decree of 1968, Public Lands Acquisition (miscellaneous provision) Decree of 1976 and the Land Use Decree (now Act) of 1978. Thus while the Public Lands Acquisition Act of 1917 provided for assessment of Compensation based on open market value (Adisa, 2000)

other enactments and laws fell short of this provision. The Land Use Act which is the current land policy instrument of the Federal Republic of Nigeria negates the basis of open market valuation for Compensation for Compulsory purchase and provides for a basis of valuation which many scholars including Omuojine (1999) and Adisa (2000) have argued are inadequate.

Valuation for compulsory purchase and payment of compensation in Nigeria is a statutory valuation. In other words, the enabling statute dictates the basis and method of valuation. Thus, while compensation for compulsory purchase of land under common law is based on open market value that of the Land Use Act is calculated on the unexhausted improvement on land based on depreciated replacement cost plus rent, if any, paid by the occupier in the year of revocation of the right of occupancy as provided in section 29 (4) (a) (b) (c) of the Land Use Act. The inadequacy of this basis of compensation would be seen in the later part of this paper. The provision of section 29 (4) of the Land Use Act now forms the basis for assessment of compensation for compulsory purchase since the enactment of the Act (then a Decree) on March 29, 1978. The basis of Compensation otherwise refers to as Compensation heads: (a) Bare land: The Land Use Act provides compensation for land as an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked. (b) Building and installations: The basis of compensation is the replacement cost of the building, installation or improvement, that is to say, such cost as may be assessed on the basis of Replacement cost, less any depreciation together with interest at the bank rate for delayed payment in the nature of reclamation works, being such cost thereof as may be substantiated by evidence and proof to the satisfaction of the Appropriate Officer. (c) Crops and economic Trees: For crops, an amount equal to the value as presented and determined by the appropriate Officer.

Per Scott, (1941) enunciated that the owner compelled to sell his property through Compulsory acquisition has the right to receive a money payment not less than the loss imposed on him in the public interest, but on the other hand, no greater. However, subject to certain provisions, compensation for compulsory acquisition is treated under the 1917 Statutes, and the Nigerian Constitution of 1999 reflected matters affecting fundamental human rights. Section 40 (1) of the same Nigerian Constitution states: "No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by law that, among other things: (a) Requires the prompt payment of compensation thereof; and (b) Gives to any person claiming such compensation a right of access to the determination of his interest in the property and the amount of Compensation to a Court of law or tribunal or body having jurisdiction in that part of Nigeria."

It is significant to note ‘only be paid’ but it should be paid to without unnecessary delay. If there is any dispute, the right of the claimant to refer his case to Court is also guaranteed. Cap.338 of 1990 buttressed that, the Law of Compensation forms part of the general Law of remedies. The remedy consist not only in the payment of the market value for damage or injury occasioned on crops, economic trees, building or the land itself, but also for other elements, such as disturbance and Injurious affection arising from the execution of the works carried – out on the land acquired. Garner, (1999) describe Just compensation as a fair payment by the Government for Property it has taken under eminent domain. The property’s fair market value, so that the owner is not worse-off after the taking. It is also termed adequate compensation; due compensation; or land Damages. While fair market value is regarded as “the price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm’s – length transaction; the point at which supply and demand intersect...”

According to Fekunmo, (2001) “Compensation in cases of compulsory acquisition of land means the sum of money which is to be paid by a public body carrying out some authorized undertaking under statutory powers in respect of; (i) the compulsory acquisition of land which is required for the purpose of the undertaking; and (ii) the injury resulting from the execution of the works to land which is not required for the purpose of the undertaking”.

Taking land compulsorily for public projects, such as roads and airports, is understood and accepted as a proper use of powers of acquisition. There is resistance to the use of these powers where a private undertaking is able to profit from the taking of Land at a price which disregards the value of the Land to the project (Denyer-Green, 2005) and Nuhu (2006) argue that ‘when lands is compulsorily acquired for a just purpose, there should be prompt and adequate payment of compensation that will better the lots of the claimant (s) in order to enhance their livelihood and contributions to the economic and social activities of his society’.

3 Research methodology

Data was collected from the administrative and community members of FCT respectively. The questionnaires were used to obtain the required information as well as to achieve best results. Oral interview were also held with the administrative body of the community i.e. the *Dagaci* (Village head) of the neighbourhood (Gwarinpa II) who gave an in-depth account of the situation in the area. This highlighted the problems and provided a basis of analysis that guided the drawing of conclusion and recommendations.

Data from, FCDA publications, the Survey unit and Federal Housing Authority (FHA) regarding compulsory purchase and compensation of the area were obtained. This helped examine opinions and supplied a background and foundation to this study. Reconnaissance survey was conducted to obtain first hand information on the issues; in addition,

discussions were held with the claimants, estate surveyors and valuers in Abuja etc. Four different sets of questionnaires were designed and administered which includes one to the acquiring authority, second to the claimants, third to the estate surveyors and Valuers from the acquiring authority, Federal Housing Authority (FHA) and fourth to practicing estate surveyors in Abuja, all of which contain both structured and unstructured questions. Table 1 shows details of the number of questionnaires administered and received. Simple random sampling technique but evenly spread and without bias, 60 (sixty) questionnaires were distributed in all (2004). In analyzing the data collected, the use of descriptive statistical tools of analysis was employed. The interpretation of analysis through the uses of percentage was adopted.

Table 1. Number of questionnaires distributed

| Respondent | Number of questionnaires administered | Number of responses | % of responses |
|--------------------------------------|---------------------------------------|---------------------|----------------|
| Acquiring authority (FHA) | 1 | 1 | 1.8 |
| Claimants | 40 | 40 | 71.4 |
| Estate Surveyors and Valuers in FHA | 10 | 7 | 12.5 |
| Practicing estate surveyors in Abuja | 9 | 8 | 14.3 |
| Total | 60 | 56 | 100 |

Source: Field Survey (2004)

4 Valuation methodology

The methodology for the valuation of buildings for compulsory acquisition in Nigeria as stipulated by the law is the Replacement Cost approach or popularly known as the 'Contractor's method'. The Replacement cost method of valuation assumes the following:

- (a) Current costs of construction
- (b) Appropriate depreciation

The replacement cost method of valuation is based on a faulty assumption that cost is related to value. This explains the reason why the method is suitably used for valuing properties of a special nature, which are rarely sold. Some properties compulsorily purchased are income – yielding properties which could best be valued using the investment or income method of valuation. The prescription of the replacement cost method of valuation for the assessment of compensation for all kinds of properties compulsorily purchased or acquired for public purposes is enormous. The valuation methodology for the valuation of crops and economic trees for compensation under the land use act is not spelt out at all. Current practice is based on the arbitrary fixing of prices for crops and economic trees compulsorily acquired by the Land Officer. These prices are grossly

inadequate as would be seen in the case study. Ideally, the market value of Land, which is the Price the Land will be offered for sale in the open market by a willing seller, is the value that adequately compensate for the land. This is the basis in United Kingdom, Zambia, Kenya and other Countries of the world. The Land Use Act attaches no value to land as such the value of land is not added to the Depreciated Replacement Cost of building in the computation of compensation for real property under compulsory purchase. It is pertinent to note that the laws in Nigeria do not recognize sales comparison method in compensation valuation. Section 28 of the LUA provides revocation of rights and compulsory purchase for public interest even against the wish of the owner (s). This contravenes fundamental human rights since the government does not negotiate with the property owner(s) on a price by voluntary agreement which only applies compulsory purchase as a last resort. In other African Commonwealth countries the situations differ with that of Nigeria.

5 Comparative study of other countries

Countries of the Commonwealth, which have based most of their laws on the English law, for instance, Ghana in Western Africa, Tanzania, Uganda and Zambia in Eastern Africa have the laws pertaining to rating, land acquisition rent restrictions etc, respectively, and laws relating to compulsory purchases and payment for compensation.

In Kenya the principle on which compensation is based is that the value to the owner of land taken would be greater than its market value. According to Leach (1963), the only reasonable compensation to a dispossessed owner would be to put him into a position to reinstate him on "other land" so as to be able to carry on his activities substantially unaltered and undiminished. The Kenyan principles of compensation are contained in the Land Acquisition Act, chapter 295, and Land Acquisition (Amendment) Act, 1990, where the compensation is based on

Market value of the land taken;

Any damage sustained or likely to be sustained by reason of severing such land from his other land;

Any damage from loss of profits over the land; and

Additional 15 per cent of market value of land for disturbance.

The entire basis above is contrary to the provision of the LUA as stated earlier above. Section 22 of the Kenyan Land Acquisition Act states that where land is needed for accessibility (Road, way leaves, and easements) compensation will be limited to the damage done to trees, plants, crops and permanent improvements on the land, together with a periodical diminution in the profits of the land and of adjoining land by reason of such use. Unfortunately, the Land Acquisition Act remains vague on the methodology to be used in arriving at the various values that form the basis of compensation. The valuer is therefore left with a choice of valuation methods.

Kenyan Government decides to take over a property without private negotiation. The state has power to compulsorily acquire property for public use without consent of the owner, with a just compensation. Numerous cases exist where the power to acquire Land compulsorily is conferred by an Act of parliament to the government or its Agencies for the benefit of the public. The legislations include; the water Act, and the Electric Power Act, while the Land Acquisition Act (LAA) cap 295 (1968) section 6 empowers the minister for lands settlement to acquire land compulsorily for the following purposes;

Land in the interest of defence purpose, public safety, public order, public morality, public health, town and country planning, promotion of public benefit; and

The necessity, such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land.

LAA (1968) has been amended by the Land Acquisition (Amendment) Act, 1990. the amendment affected the procedures of acquisition rather than the substance. A significant amendment is the establishment of a Land Acquisition Compensation Tribunal (LACT) which was fashion-out in line with the United Kingdom (UK) model and consists of five members including and advocate as Chairman and two valuers as members to determine appeals against compensation awards. A person not satisfied with the decision of the LACT can appeal to the court. The UK Lands Tribunal was established by the Lands Tribunal Act 1949; it replaced the system of official arbitrators' set-up in 1919. The Tribunal consists of a president, a person who has held judicial office or is a barrister, and other members who are barrister, solicitors or valuers. Each member is a person of some standing and experience in the legal or valuation professions.

The Tribunal does not have any inherent jurisdiction and can only exercise such jurisdiction as is conferred by legislation. According to Section 1 of the Land Compensation Act 1961, any question of disputed compensation shall be referred to the Lands Tribunal. But a court retains jurisdiction to consider any question on title or of contractual rights. Pages 139 – 140

In comparison, the United States of America (USA) uses the normal courts settle valuation disputes. Similarly, a law relating to land acquisition in Uganda is contained in Land Acquisition Act (LAA) No.14 of 1965 and applies to freehold and lease hold interests, while the public land on resumption by the controlling authority. The procedures for compulsory purchase and payment of compensation in Uganda are similar to that of Kenya in many respects. Therefore, the basis of compensation is also similar which includes:

- Cost of land or cost of obtaining alternative parcel of land
- Building and crops
- Severance from and injurious affection
- Loss of trade
- Removal expenses

Disturbance allowance (usually 15% of value of the compensation but if notice to quit of less than 6 months is given then 30% is to be added to the amount of compensation). Like in Nigeria, buildings are assessed based on the depreciated cost of construction and not market value basis. Fixed percentage for depreciation is taken usually between 1 and 5 percent per annum, but a common figure of 2 percent is often used for more permanent buildings and a higher rate may be adopted for non-permanent buildings. Valuation for severance and injurious affection, loss trade and removal expenses are based on accepted principle of compensation generally.

In Tanzania, there were two pieces of legislation relating to compensation acquisition until 1990 and they are;

Land Acquisition Act (LAA) 1967; and

Acquisition of Buildings Act, 1971.

All land in Tanzania is deemed to belong to the state; no compensation is paid in respect of vacant land acquired whether in urban or rural areas. Section 3 LAA, 1967 empowers the president to acquire land for any of the following public interests:

For exclusive government use, for general public use, for any government scheme, for the development of agricultural land or for the provisions of sites for industrial, agricultural or commercial development, social services and housing. For or in connection with sanitary improvements of any kind including reclamation. For or in connection with mining for mineral or oil.

For use by the community, or a corporation within a community.

Section 6 of LAA provides that notice of intention to acquire the land must be served on interested parties six weeks before taking possession and that payment for compensation should be made within three months. In addition, an interest rate of 6 percent of the amount of compensation will be paid to the claimant from the date of taking possession prior to formatting compensation formalities. This is at variance with what operate in Nigeria where notice of intention to acquire are sometimes too short and with many cases of delays in payment of compensation due to the absence of appropriate legislation in place to protect property owners in Nigeria against late payment of compensation.

The basis of compensation in Tanzania is:

The grant of another land to the dispossessed person or equivalent value but not exceeding in value to that taken.

Market value of the unexhausted improvement.

Where only part of the land is taken, account must be taken of the enhancement in value of the land left as a result of improvements of the land taken (betterment).

Damage by severance, and

No account shall be taken of the enhancement of the value of the land in future.

The provisions of LAA appear reasonable in comparison with that of Nigeria, however the requirement for offer of alternative land equal of value appears difficult to obtain in actual case with particular reference to towns

where vacant sites may be rare. In the same vein only the unexhausted improvements are taken into consideration in compulsory purchase valuation in Tanzania, evidence exists that in valuation of large farms, the investment method is used (Kingu, 1983). Syagga (1994) insisted that the investment method was used to assess compensation of nationalized farms in 1973 and 1974 due to the fact that the farms were meant to be investment entities. The annual income and the production cost was obtained from available records and the net income capitalized at an appropriate YP. Below is an illustration adopted from Syagga (1994: P. 102).

A sisal farm was producing 1158 tones per annum. The selling price was Shs 2,500 per tones. Production costs estimated @ 60% of gross sales, most investors expected a return of 20% from similar investments.

Valuation:

| | |
|---------------------------------|--------------------------|
| Income receivable (1158 x 2500) | = Shs 2, 897, 000 p.a |
| Less production cost @ 60% | = Shs <u>1, 738, 200</u> |
| Net income | = Shs 1, 158, 800 |
| YP in perp @ 20% | = <u>5</u> |
| Compensation payable | = Shs 5, 794, 000 |

Furthermore, valuation for small holdings where records are difficult to obtain the valuation will then rely on the schedule of price from the ministry of Agriculture, whereas for perennial crops the rate value is per tree, while for annual crops the rate value is per hectare. Again this is at variance with the Nigerian LUA, where compensation for crops and other farm products will be calculated according to prescribe method by the Appropriate officer which is usually the Chief Lands Officers and Federal Land Officer in case of State and Federal government respectively as is seen in the case of FHA (appendix 'A')

6 CASE STUDY: Gwarinpa II Housing Estate Land Acquisition procedure

Compulsory Land acquisition takes a long process in order to be completed in Nigeria, which starts from the conceptualization stage to the payment of Compensation. The acquisition procedure for Gwarinpa II housing estate site was as follows:-

Conceptualization stage;

The site was allocated to the Federal Housing Authority (FHA) by the Federal Capital Development Authority (FCDA) in 1996, in order to take part in the Federal Capital housing schemes, and to provide decent housing accommodation which is the mission of the FHA. The Land Officers (estate surveyor) in the FHA carried out site perimeter survey through reconnaissance survey alongside the FCDA staff, in order to identify the site boundary and to know the extent of the acquisition.

The reasons for allocating the site to the Housing Authority was based on the following factors:-

The site is within the Federal Capital City (FCC).

The proximity of the site to Kado estate which was built by the FHA.

The site allocated derived its impetus from the National Housing Programme at Kado, and was to build on the success of Kado, and It was also allocated due to its strategic location (along a dual carriage Kubwa Kaduna express road).

The site with an undulating topography covers an area of about 1,090.7 hectares. It is bordered by the following satellite settlements: Life camp, Kado and Kubwa / Kaduna express road. The site survey analysis could be seen in the table below;

Table 2. Site survey basic information

| Descriptions | % In Relation to total area |
|--------------------|-----------------------------|
| Structure | 7% |
| Farmland (crop) | 60% |
| Economic Trees | 20% |
| Non valuable crops | 13% |

Source: - federal housing authority (1996)

The survey description of site was prepared for acquisition of the site.

Preparation and service of acquisition notice;

After the allocation and perimeter/site survey, acquisition notice was prepared and executed. It was done in an informal way through their Village heads. The villages were enlightened as to the purpose and benefits of the project (estate) and as to the benefit it would bring to them and the entire Community such as through employment as labourers and artisans in the course of the development of the site. The duration for the notice of acquisition was for about one week.

The villagers (Gwari people) were also made to understand that Compensation (in money) is to be paid to them of their structures, Building and Crops.

An official gazette was published by the FCDA who is the acquiring authority, which included the date the site was allocated, the agency it was given to and the use of the site, which was mainly for reference and record purpose.

Enumeration exercise;

Based on the revocation notice issued in 1996 which determined the Right of Occupancy of the landowners. The acquiring authority carried out an enumeration exercise of building, crops; economic trees (improvement on site) in order to obtain the value of the unexhausted improvement as required by the law for the payment of compensation. The enumeration exercise was mainly done in the harmattan period after crop harvest because the inhabitants valued and adored their farmland.

The Compensation payable on Crops, economic trees, buildings (improvement) at Gwarinpa II estate were determined in accordance with section 29 (4) of the Land Use Act of 1978.

Upon the completion of the field exercise, copies of enumeration forms were duly signed by the Claimant. The enumeration forms issued to the claimant were in duplicate which includes information such as; 1.Name of Claimant, 2.Village/ community name, 3.Size of the farm, 4.Name, types of crop and economic trees, 5. Age, 6.Quantity and rate, 7.Value, 8.Signature, 8.Name of the community representation of Village head, to serve as witness to the above transaction. Passports of the claimant were also affixed in the form. The information above is for economic trees and crops (farms/farmlands) enumeration.

Similarly, in the assessment for structures, building and installation, the following information is included in the form; 1.Name of claimant, 2.Village name, 3. Description of structure, improvement etc., 4. Area of the structure, 5.Rate, 6.Value. Passport of the claimant was also affixed to the form.

The purpose of the enumeration form or Certificate is to show the Claimants, agree to the nature of their claims, and enable them raise objection if any. All structures on the site which included buildings, shrines, burial grounds and any improvement or development (on site) were inspected, measured and valued. The valuation of structures and improvement at Gwarinpa II housing estate was carried out using the stipulated Depreciated Replacement Cost method. The method entails estimating the area of the building or structure which is to be valued to which a multiplier cost was applied to give the estimated cost of putting up a similar but new structure or building. Similarly, some of the structures were valued based on what the surveyors called "on the spot value".

Crops were valued using the approved compensation rates for various crops and trees as provided by the fCDA. The FHA used the rates applicable in Abuja, the Federal Capital Territory (see Appendix 'A')

Title Clearance

At the stage for title clearance the Clan/ Village heads were called upon to identify the real owners of the property and lands that were subject to compensation (will be paid to), this was because they were governed by Customary Law, ably upheld by their values, beliefs and norms. The Authority did not face problems in this stage. Most claimants in the study area, Gwarinpa II estate site got their ownership through conquest, their fore fathers (inheritance) and were 1st settlers.

Mode of payment of Compensation

During the payment of compensation, the claimant was not represented either by lawyers or estate surveyor and valuers. The payment was done in phases. Immediately after a clan was assessed for compensation, payment would follow shortly after. Compensation was paid directly to the claimant

after signing or thumb printing (for those who couldn't sign) indemnity Certificate in the presence of the Village head who also served as witness to the payment, after submitting their enumeration certificates and one passport-sized photograph (for each of the claimant). At this stage, some claimants did not agree as to the amount of compensation paid to them, on the contention that the amount slated was inadequate, the compensation was paid in cash sum. Some of these claimants who are still expecting more payment have refused to leave the site, expecting the Government to get alternative accommodation for them. However, as at the time of the survey, some of the claimants had not been paid any compensation by the FHA, since after the assessment. The Authority believes that development has not reached that area, and that as soon as any development gets there, they will be paid. The inhabitants have also refused to vacate that portion of the site, it is my considered opinion that the Authority has not technically acquired the latter sites; therefore, the natives refusal to vacate is not an issue.

7 Analysis and discussion

The categories of properties that were acquired in Gwarinpa II estate site were mainly farmlands and residential properties. From the questionnaires administered, it revealed that about 25% of the claimants had only farmland which included crops such as yam, maize, sugarcane, guinea corn etc. and economic trees such as locust beans, orange trees, oil palm trees, tobacco and coconut etc. about 15% had building only, while about 50% had both farmland and structures on site, and about 10% undeveloped land (bare site) was also acquired. Some trees were regarded as not having economic value.

The survey shows that the residents of Gwarinpa were mainly – occupiers, who got their ownership on the land as first settlers, or by conquest, inheritance and purchase. Almost all owners did not have any title to land in form of Certificate of Occupancy to show to the authority as an evidence of ownership, which made it very difficult for the authority in the course of acquisition to extinguish ownership. The only evidence of ownership was ascertained by the Heads of Community during the acquisition.

In the response to questionnaire distributed, the acquiring Authority revealed that it gave only one week of revocation notice. However, about 47.5% of the claimants said they were notified as to the revocation, while about 52.5% of the Claimants denied any notification by acquiring authority.

The acquisition Laws of Nigeria (Table 3 shows an analysis of various laws in Nigeria) stipulates that prompt compensation should be paid in the event of compulsory acquisition of moveable and immovable properties, the acquiring authority said it paid immediately after the enumeration exercise. The field survey shows that about 25% of the claimants received compensation within 1-2 years, after acquisition, about 20% received within 2-4years, about 12.5% received theirs within 4-6 years and about 42.5% of the claimants questioned have not yet received their compensation. Study

revealed that Claimants did not receive any extra money or more than what they were expecting from the acquiring Authority for late payment of Compensation.

Claimants were asked if they would have preferred to sell their land instead of it being compulsorily acquired, with their crops, buildings, and farmstead being destroyed. From statistics, about 12.5% said no, about 25% were indifferent about it, while about 62.5% preferred to sell, believing that it would have fetched them more money than what the acquiring Authority paid them.

From the administered questionnaire, about 50% of the claimants revealed that the payment was grossly inadequate, on the basis that their properties, farmland worth more than what they were being paid. About 12.5% said the payment was just fair, while about 37.5% of the claimants said they have not being paid.

Table 3. Analyses of the various laws in Nigeria.

| | Public Lands Acquisition 1917 | Land Tenure Law 1962 | State Lands Compensation Decree No. 38, 1968 | Public Lands Acquisition 1976 | Land Use Decree 1978 |
|-------------------------------|-----------------------------------|---|--|---|--|
| Notice of acquisition | 6 weeks notice | - | - | | - |
| Of claim Compensation payable | -lands - Damage - Severance | - -Disturbance -unexhausted improvement | - land -Unexhausted improvement | -Payable for land -Unexhausted improvement (buildings, fixtures & crops) | -Ground rent is payable for land) - Unexhausted improvement (buildings, fixtures & crops) |
| Method of compensation | Open market value | Depreciated replacement cost method | Depreciated replacement cost method | Depreciated replacement cost method | Depreciated replacement cost method |
| Settlement Compensation | - | - | - | Compensation to be off set against cost of resettlement | Discretionary by the Governor |

Source: Statutory Laws of Nigeria (1917, 1962, 1968, 1976, 1978)

Compensation rates used at Gwarinpa housing estate site acquisition and concept of value approach

The approach adopted for crops and economic trees by the Chief Land Officer, appears to be simplistic and neither professional nor acceptable. It is at variance with the concept of value. Most of the rates used were outdated rates which have not been reviewed. The amount of compensation payable on economic trees and crops should be dependent on their life types and nature. Valuation of crops should be approached from their life span, and capacity of income generation. There are classes of economic trees and crops whose valuation should be approached differently, they include:-

Type A Economic trees that generate annual income e.g. Mango, Cashew, Oil

palm and so on.

Type B Economic trees that generate capital income once in their life time

e.g. Mahogany, Timber and so on.

Type C Annual crops such as yam, guinea corn, maize etc

Type D Biennial crops such as cassava and so on.

The determination of compensation rates or rates for crops and economic trees could be better done as below: - **(i) Proposal of type 'A' crops (orange) Nature (i.e. bearing fruits)** Estimated unexpired yielding life of 20 years

Estimated gross annual income ₦2, 000

Less outgoing @ say 30%

(for weeding, tendering, transport selling and fertilizer and so on) ₦600

Net income ₦1, 400

YP for 20 years @

Say 9% & 3% (No tax) 7.86

Compensation payable ₦11, 000

The rate to be used for matured trees like mangos, oranges and so on.

Within the region should therefore be ₦11, 000 only.

1. Grade 'B' immature (within ages 3-6 years)

Estimated life 20 years

Estimate net income ₦1, 400

YP for 20 years @ 10% & 3% 7.29

PV of ₦1 in year @ 10% 0.69

5.03

₦7, 042

Compensation payable for immature crop could be say ₦7, 050

2. Valuation of type 'C' crop (say maize)

Estimated yield per hectares ₦ 8 bags

Price per bag ₦ 2, 000

Gross income per hectares ₦16, 000

Less outgoing @ say 30%

For transportation, weeding etc.) ₦ 4, 800

Net income ₦14, 200
 Pv of 1 in 6 month @ 11% 0.725
 ₦ 8120.00
 Compensation payable per hectares is ₦8, 200

3. Valuation of type 'D' crop (say cassava)

Estimated yield per hectares 6 bags
 Price per bag ₦2, 000
 Gross income per hectares ₦15, 000
 Less outgoings @ say 30% ₦4, 500
 Net income ₦ 10, 500
 Pv of 1 in 6 month @ 11% 0.855
 ₦ 8, 977.5

Compensation payable for cassava per hectares would be say ₦9, 000 other include

4. Valuation for oil palm Grade A (i.e. fruiting)

Estimated unexpired yielding life 30 years
 Estimated gross annual income ₦ 3, 000
 Less outgoings @ say 30% ₦ 900
 Net income ₦2, 100
 Yp for 30years @ say 9% & 3% 9.00
 ₦18, 900

Compensation payable ₦18, 900

(b) Grade B immature (those within 3-6 years)

Estimated yielding life 30 years
 Estimate net income ₦2, 100
 Yp for 30 years @ 10% & 3% 8.26
 Pv of N1 in 4 year @ 10% 0.68
5.62

Compensation payable ₦11802

Compensation payable for palm (immature) per trees is ₦11, 800

5. Valuation for locust bean (mature)

Estimated yielding life 20 years
 Estimate gross annual income ₦1000
 Less outgoings @ say 30% ₦300
 Net income ₦700
 Yp for 20years @ say 9% & 3% 7.86
 ₦5, 502

Compensation payable says ₦5, 502

NOTE: - other crops and economic trees subject to acquisition should be approached this way in valuing for compensation purposes.

Another way you can approach valuation for crops is by using the formula =
 $y \times (m - n)$

Where y = Net income

M = Length of life of plant

N = initial production life

Therefore (m – n) = unexpired life

However, it is advisable for appropriate agricultural officers to work together with Valuers and surveyors in carrying out valuation for crops and economic trees.

NOTE; 1\$ = ₦ 127.

Valuation for structures

Section 29 (4) of Land Use Act stipulates Replacement Cost Method of Valuation for building, installation and so on compulsorily acquired. However, the FHA adopted this method for valuing structures in Gwarinpa II site. This practice is considered to be unrealistic since it violates the basic principles of valuation for structures with evidence of annually accruable like Residential, Commercial and Industrial properties etc.

Where the properties involved have evidence of accruing annual income, the income method is the best approach to be adopted. However, where the properties involved do not generate income like Shrines, Churches, Mosque etc. the valuer should adopt the valuation approach he considers most appropriate but preferably the Replacement Cost Method (RCM). It is important to note that shrines are usually acquired and compensation payable through negotiation agreement between the Village heads and the Valuers or acquiring authority.

The RCM was adopted for all type of properties affected by the acquisition exercise in Gwarinpa II estate site. Similarly, damages, injurious affection, severance and disturbance that must have affected claimants were not included in the compensation item.

In a more fair and equitable situation, the compensation that could have being paid to Mallam Awaisu using the approached already discussed would be as follows:-

Table 4. Valuations for Economic Trees

| Trees | No | Grade | Rate (₦) | Amount (₦) | Total |
|-----------------|-----------|--------------|-----------------|-------------------|--------------|
| a. oil palm | 10 | Mature | 18,900 | 189,000 | |
| | 10 | Immature | 11,800 | 118,000 | 307,000 |
| b. oranges | 50 | Mature | 11,000 | 550,000 | 550,000 |
| c. locust beans | 10 | Mature | 5,500 | 55,000 | 55,000 |
| Total | | | | | ₦912,000 |

Table 4. Valuations for Economic Crops

| Crops | Average | Rate (₦) | Amount |
|--------------|----------------|-----------------|---------------|
| Cassava | 1 ha | 9,000 | 9,000 |
| Maize | 3 ha | 8,200 | 24,600 |
| Total | | | ₦33,600 |

*NOTE: - you can add labour cost (for land preparation) say ₦20,000
For crops = 33,600 + 20,000 = ₦53,600*

Illustration

Assuming each bungalow commands about ₦800 per month (FR1) with 20 years unexpired, while the owner stays in one of the bungalow. The current rental value at the date of acquisition is ₦1000 per month on FR1.

| | |
|------------------------------|-----------------------------------|
| Rent payable | = ₦800 x 12 months |
| | = ₦9, 600p.a |
| For 3 bungalow | = ₦9, 600 x 3 |
| | = ₦28, 800 |
| Yp 20 years @ 10% | $\frac{8.514}{100} \times 28,800$ |
| | ₦245, 203 |
| Reversion to FRV ₦1000 month | |
| FRV | = 1, 000 x 12 = ₦12, 000p.a |
| For 3 bungalow | ₦12, 000 x 3 = ₦36, 000 |
| Yp in perp def'd 20 years | |
| @ 11% | $\frac{1.128}{100} \times 36,000$ |
| | ₦40, 608 |
| Structures = | ₦245, 203 + 40, 608 = ₦285.811 |
| 1 No barn | <u>₦30, 000</u> |
| | ₦315, 811 |

Compensation payable to Mallam Awaisu in a more realistic situation:-

| | |
|--------------------|---------------------|
| i. structures | ₦315, 811 |
| ii. Economic trees | ₦912, 000 |
| ii. Crops | <u>₦53, 600</u> |
| | ₦1, 281, 411 |

The above is in variance with the actual compensation payable to Mallam Awaisu as at December, 1996 and this is summarized as follows;

| | |
|-------------------|------------------|
| a. economic trees | ₦37,250 |
| b. Crops | ₦22, 000 |
| c. Structures | ₦ 156,000 |
| | ----- |
| Total | ₦ 215,000 |
| | ----- |

In comparison, the total actual compensation payable to Mallam Awaisu is ₦215, 000 as against the compensation that could have being paid to Mallam Awaisu using the appropriate approaches which is ₦ 1, 281,411 with a difference of ₦1,066,411 as a loss to him. This is a significant fit to establish how inadequate payment of compensation is in Nigeria among other problems.

Problems identified

Some problems faced in the acquisition of Gwarinpa estate site are identified as follows.

1. Problems of identifying real Claimants
2. Double counting of Compensation items
3. Conflicting Claims
4. Logistics

5. Method of Compensation
6. Illiteracy of Claimants
7. Inadequate funding of the exercise.

8 Summary of findings

So many problems have hindered the successful implementation of compulsory and payment of adequate Compensation in Nigeria. This originated from the provisions of the LUA No. 6 1978 on compensation for Compulsory acquisition. These have generated feeling of dissatisfaction and resentment which has helped discredit the Compensation procedure in Compulsory acquisition of Land. The following are the findings in the course of the research.

1. Inadequate revocation notice
2. Inadequate Compensation
3. Illiteracy of the Claimants
4. Inadequate funding of the Compensation exercise
5. Non-payment of interest on delay payment
6. Problems of conflicting Claims
7. Use of low rates for assessment of economic Trees & Crops
8. Non-enumeration for some Crops/ economic Trees
9. Problem of identifying Claimants (owners)
10. Disallowance of Surveyors to represent Claimants
11. Logistics
12. Non-existence of Land Tribunal
13. Non payment of some Claimants
14. Communication problem
15. Non-payment for undeveloped Land
16. Corruption of Government Officers

9 Conclusion/recommendation

It can be concluded that the implementation of Public Land acquisition and payment of compensation in Nigeria generated controversies, lapses and disputes in the past. Claimants whose interests had been revoked are always at the losing end and usually left in a position far worse than they were before the revocation. Thus, the aim of compensation has been defeated. The inadequacy in the compensation payable due to the statutory method of valuation provided has been examined in this study. Steps should be taken to remove the LUA from the Constitution of the Federal Republic of Nigeria and the National Assembly should legislate to enact a Law with special provisions to land holding in the FCT, Abuja. Professionals should also be involved in the formation of an effective National Land Policy for Nigeria. Based on the problems militating against effective Land acquisition and payment of Compensation, with reference to its adequacy and fairness, the following recommendations will help to minimize these problems.

1. Open market value as basis Valuation

The issue of Depreciated Replacement Cost (DRC) approach and on the spot value adopted in accessing the value of improvement in the study area was not adequate. Generally, the adoption of the former approach as provided in the LUA is usually not adequate or appropriate in many instances. Properties capable of producing income flow would require the use of investment and cost method of valuation.

Similarly, compensation for all types of economic trees and crops with the capacity of generating annual income, except seedlings, should be determined by the application of investment method of valuation. The valuation of rural and urban land for compensation purposes should be left to the discretion of Valuers who know the most appropriate methods for appraising all types of properties.

2. Payment of Compensation for Bare land

Compensation for Bare site is recommended to reduce the tension normally involved in land acquisition and compensation in Nigeria, and also to ensure equity. In order to ensure adequacy and fairness, other incident expenses such as cost of surveying, cost of clearing the site, preparation of plans and drawings, town planning approvals, and so on, are common expenses normally incurred in a Bare site and which, in the event of an acquisition, should be included in compensation for bare site.

3. Representation of Claimants by Estate Surveyors and Valuers.

Estate surveyors and Valuers or an attorney should be allowed and granted autonomy to act as representation of claimants in the event of acquisition to defend their interest.

4. Payment of their items of Claim

The other items or Heads of claim such as disturbance, severance, injurious affection, abortive, expenditure and so on, which the LUA was silent on, should be include as Heads of claim. This is to ensure that claimants will actually receive what Compensation really is (putting the claimant in the same position he was before the acquisition).

5. Payment of interest on delayed payment

Usually, most acquiring Authorities do not pay interest on delayed payment. It is recommended that FHA should pay interest for compensation which has not yet been paid up till date, at least to satisfy the Claimants which must have been suffering and restricted from carrying out their daily routines like farming.

The government should endeavour that interest on current bank rate is being paid for all delayed payment of Compensation as provided by the LUA, especially in a country with fluctuating inflation period.

6. Establishment of Land Tribunal

Land Tribunal should be established, in all states, so as to handle all cases of disputed quantum of compensation and other Compensation matters. This is

necessary because of the delay in seeking redress in law court and in certain cases impossible to challenge the LUA which is part of the Constitution of the Federal Republic of Nigeria. The LUA failed to define how adequate compensation should be, but only saddle the appropriate officer with a discretionary power.

7. Adequate publicity

Most a times, the duration for revocation notice is normally very short especially with due reference to the case study which was for only about one week. A land policy should state on clear terms the duration for notice of revocation; as it was stated in the in the old public lands acquisition, of 1917 (for 6 weeks).

Acquiring authorities should endeavor that revocation notices get to the grassroots, especially where majority of the claimants are illiterates.

8. Prompt payment Compensation

Prompt payment of compensation as provided by the Constitution of 1999, is recommended. Where acquiring authority defaults in this provision, claimants should be allocated to seek for redress in an appropriated Land Tribunal. This is to ensure that unnecessary suffering imposed on the Claimants is eliminated.

9. Personal consent of holders of special properties

This is where disputes and resentment normally arise when special properties such as shrines, burial ground, churches, mosque and so on, are involved in the acquisition exercise in order to reduce such problems the government can enter into private pact with the holders to such properties to obtain their consent before the government can acquire such properties, whatever is agreed upon can be regarded as basis of Compensation.

10. Enumeration of all Crops/economic Trees

Another problem faced by the acquisition was the non-enumeration of some classes of Crops and Trees which were regarded as not of economic value, and upon which no compensation would be paid. It is recommended that the government should ensure provision is made that all Crops and economic Trees should be enumerated, to ensure adequacy and fairness in payment of Compensation.

11. Allocation of alternative plots to Claimants

Dispossessed person especially those on owner occupier, should be provided with free alternative plots to build their houses or continue their farming activities, while Compensation should paid for development on land.

Consequently, the FCDA should hasten up in the relocation of Gwarinpa inhabitants.

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Appendix 'A'

Approved compensation rates on crops/economic trees

(a) Economic Trees

| S/N | TYPE | GRADE A ₦ | GRADE B ₦ |
|-----|----------------|-----------|-----------|
| 1 | MANGO | 500 | 250 |
| 2 | ORANGE | 500 | 250 |
| 3 | GUAVA | 250 | 125 |
| 4 | CASHEW | 250 | 125 |
| 5 | PEAR | 1000 | 500 |
| 6 | PAW-PAW | 100 | 50 |
| 7 | COLANUT | 1000 | 500 |
| 8 | PALM TREE | 350 | 175 |
| 9 | LOCUST BEAN | 700 | 700 |
| 10 | BANANA | 250 | 125 |
| 11 | SISAL | 60 | 30 |
| 12 | CASTOR BEAN | 250 | 250 |
| 13 | KAYSOK | 150 | 75 |
| 14 | COFFEE | 250 | 250 |
| 15 | CASSIA | 150 | 150 |
| 16 | KANYA | 60 | 30 |
| 17 | EUCALYPTU | 400 | 400 |
| 18 | ACHILI | 900 | 900 |
| 19 | KUKA | 250 | 125 |
| 20 | BAMBOOS (GORA) | 60 | 60 |
| 21 | SHEA NUT | 250 | 250 |
| 22 | PINEAPPLE | 70 | 35 |

| | | | |
|----|--------------------|--------|--------|
| 23 | SILK COTTON | 120 | 120 |
| 24 | DINYA | 120 | 60 |
| 25 | TSAMIYA (KIYA) | 200 | 100 |
| 26 | DATE PALM (DABINO) | 250 | 125 |
| 27 | LIME TREE | 500 | 250 |
| 28 | COCOA | 500 | 500 |
| 29 | GIGINYA | 120 | 60 |
| 30 | PLANTAIN | 250 | 125 |
| 31 | NEEM (DOGONYARO) | 250 | 125 |
| 32 | KOLA NUT TREE | 2, 500 | 2, 500 |

(b). CROPS:

| S/N | TYPE | RATE (per ha) ₦ |
|-----|-----------------------------|-----------------|
| 1 | YAM | 10000 |
| 2 | CASSAVA | 5000 |
| 3 | MAIZE | 4000 |
| 4 | GUINEA CORN/ MILLET | 4000 |
| 5 | RICE | 10000 |
| 6 | PEPPER | 5000 |
| 7 | GARDEN EGG | 2500 |
| 8 | OKRO | 2500 |
| 9 | MELON | 2500 |
| 10 | TOMATOES | 2500 |
| 11 | VEGETABLE | 2500 |
| 12 | SUGAR CANE | 10000 |
| 13 | LABOUR (FOR LAND PREPATION) | 5000 |

(C) STRUCTURES

| S/N | ITEMS | COMPENSATION PAYABLE |
|-----|-----------------------------------|--|
| 1 | THATCHED HUT | 10, 000 |
| 2 | MUD HUT | 30, 000 |
| 3 | MUD BLOCKS, PLASTERED WITH CEMENT | 5, 000/ m ² (PER m ²) |

SOURCE: - FEDERAL HOUSING AUTHORITY (1996)

GRADE; A. Mature, B. Immature or medium state of maturity