

The Challenges Of Speculative Developments To Right Of Way Acquisition And Incorporating Its Valuation For Compensation (Egbema – Owerri Transmission Line By Niger Delta Power Holding Company Limited)

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Abstract: Speculative developments are often encountered during the field assessment to determine structures affected by a right of way route. Adopting a mixed method approach, interviews, questionnaires observation were employed to collect relevant data which revealed that speculative developments result in bloated acquisition budgets and in some cases abandonment of the project and community hostilities. It is recommended that compensation for heads of claim should be expanded to include land and the adopted valuation methodology be changed to open market approach for all heads of claim.

Keywords: Speculative Developments, Challenges, Right of Way, Acquisition, Valuation and Compensation.

I. INTRODUCTION

The essence of right of way acquisition is to achieve sustainable public infrastructure provision Otanu (2016), a developed economy, is that which can boast of massive infrastructure of good roads, railway networks, constant supply of water and electricity, good airports and marine services, affordable houses for the people, mechanized agriculture, adequate security of lives and properties, provision of high level equipment for educational institutions and a well-trained manpower that could put these factors together in achieving maximum infrastructural transformation of society. Infrastructure provision is necessary for economic growth and development of any region as well as for competitiveness and sustainable development. Kombe (2007), driven by the demand for economic development and improvement of the well being of its citizens, governments in every country maintain and exercise the power to compulsorily acquire private properties for public purposes. Right of way acquisition is the power of government to

acquire private rights in land without the willing consent of the owner or occupant in order to benefit the society A fundamental prerequisite to this is the availability and provision of land. Land as a factor of production is characteristically fixed and limited in supply and this sometimes poses a constraint in the development process. Lands for specific projects may not be available, and where such lands exist, they may be in private domain. FAO (2009), compulsory land acquisition as a process is attended by the payment of compensation to cover losses incurred by land owners who surrender their lands in favour of a public project.

Compensation determination requires sufficient valuation skills and the use of appropriate techniques to yield fair and adequate amount payable Wilfred and Amia (2011), the practice of valuation for compulsory acquisition of landed property is governed by legislative statutes that vary from one country to another. The assessment of compensation which is described as statutory valuation is usually influenced by local and national statutes, enactments or laws that provide the basis upon which existing professional standards and methods may

be applied. This process introduces some difficulty into the practice of valuation for compensation that is not usually associated with other forms of valuation Viitanen and Kakulu (2008), proper valuation process is the most important step for the claimant, which Ndjovu (2003), pointed out as the way to reach adequate compensation. However, the process of valuation for compensation in compulsory acquisition of land takes place within distinct legal, cultural, socio-economic, political and historical environments which influence the delivery of the practice by key actors in it. Kakulu, Byrne and Viitanen (2009), compensation valuation is statutory and claims must therefore meet the statutory requirements if they are to succeed. Kakulu (2007), asserts that valuation for compensation is not only expected to satisfy professional standards of valuation but in addition, constitutional provisions and international requirements for just, fair, adequate and equitable value must be met. This is not always the case, which was why Nuhu (2007), attributes the controversies connected with compensation in Nigeria perspective to the provisions of statutory methods of valuation contained in the Land Use Act (LUA). Compensation for right of way acquisition under the Land Use Act (LUA) 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 28(4)(a) of the Land Use Act. This contradicts the basis of open market valuation and provides for a basis of valuation which Omuojine (1999) and Adisa (2000), established as inadequate. 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. 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. Therefore, this research intends to find out the reasons for speculative developments on right of way acquisition and incorporating its valuation for compensation. This study is based on a case study of Egbema – Owerri Transmission Line project by Niger Delta Power Holdings Ltd.

II. LITERATURE REVIEW

A. COMPENSATION

Akujuru (2005), stated that “compensation simply means to place in the hands of the owner expropriated the full money equivalent of the thing of which he has been deprived. Compensation prima facie means recompense for loss, and when an owner is to receive compensation for being deprived of real or personal property his pecuniary loss must be ascertained by determining the value to him of the property taken from him. It cannot be less than the money value into which he might have converted his property had the law not deprived him of it. You do not give him any enhanced value that may attach to his property because it has been compulsorily acquired by the governmental authority for its purposes. Equally you exclude any diminution of the value arising from the same cause. The hypothesis upon which the

inquiry into value must proceed, is that the owner had not been deprived by the exercise of compulsory powers of his ownership and of his consequent rights of disposition existing under the general law at the time of acquisition.” It is generally believed that compensation should be a measure of the loss suffered by a person whose interest on land been compulsorily acquired. Onuorah (2005), called this measure Open Market Value. Open Market value is “the estimated amount for which a property should exchange on the date of valuation between a willing buyer and seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion” According to Sonoiki (1978), the right to compensation for any property acquired (voluntarily or compulsorily) is a basic proprietary and human right particularly where such acquisition is compulsory, an owner is entitled to no more and no less than that which he is deprived of. To ensure land acquisition is done fairly, Kotaka (2002), reasoned that adequate compensation must fulfill three conditions namely: payment of losses incurred as agreed during harmonized negotiation in arm’s length transaction, consideration of the physical factors as well as non sentimental value during payment.

B. RELEVANT LAWS GOVERNING RIGHT OF WAY ACQUISITION

The power for right of way acquisition as exercised by government is backed by legislations. Prior to promulgation of the Land Use Decree of 1978, now known as Land use Act Cap 1.5 LFN 2004, there had been other legislations to regulate right of way acquisition and compensation in Nigeria amongst which include Public Land Acquisition Act of 1917(Cap 167), State Land Decree No. 38 of 1968, Public Land Acquisition (Miscellaneous Provision) Decree 33 of 1976, Land Use Decree of 1978 and now Land use Act Cap 1.5 LFN 2004, the Oil pipeline Act Cap 07 LFN 2004, the Petroleum Act 1967 now Cap P10 LFN 2004 and Electric Power Sector Reform Act No. 6 2005

a. PUBLIC LAND ACQUISITION ACT OF 1917(CAP 167)

According to Uduehi (1987), this law derived its principle from the English Law whose one of its obligation is that the Acquiring Agent should publish acquisition notice/issuance for at least six weeks as stipulated in the Act, (see section 8) and also pay adequate compensation for acquired land. Section 3 of this Act authorizes the Acquiring Authority to acquire lands for an Estate in fee simple or for a term of year as it thinks proper. Once the land is acquired, it became vested in the state as its land. Section 15 of the Act set out the principle of assessment of compensation on the basis of open market value. There is also provision for loss of rent, damage from severance and injurious affection.

b. PUBLIC LAND ACQUISITION (MISCELLANEOUS PROVISION) DECREE NO. 33 OF 1976

Ogunba (2013), this Decree abrogated Cap 167 and State Land Decree of 1968. The Decree clearly states the various purposes for which a land could be compulsorily acquired and also new compensation provisions. The main attribute of the Decree is that it fixes the prices of land for compensation according to zones as stipulated in section 2 of the Decree. Dispute arising from compensation paid by any party is referred to Land Tribunal established under section 12 of the Decree. In section 4 the decree distinguished between developed and undeveloped land.

c. LAND USE DECREE NO. 6 OF 1978(LAND USE ACT CAP 1.5 LFN 2004)

The Land Use Act was promulgated in order to streamline the problems encountered by the land tenure system practiced in the country. The act vested privately owned land in the hands of the governor who shall administer same for the benefit of all Nigerians. The Act provided procedures through which land can be acquired and mode of compensation therein. The Act is however silent on the issue of injurious affection and disturbance. In section 28(6) of the Act states that the revocation of a right of occupancy shall be signified under the hand of a public officer duly authorized in that behalf by the Governor and notice therefore shall be given to the holder. Section 29(4) provides for compensation for an amount equal to the rent paid if any by the occupier during the year in which the right of occupancy was revoked. Building, installation or improvement thereon, for amount of the replacement cost...together with interest at the bank rate for delayed payment of compensation. Crops on land for an amount equal to the value as prescribed and determined by the appropriate officer.

C. VALUATION AND RIGHT OF WAY ACQUISITION

For rights of way acquisition to achieve sustainable public infrastructure provision, there must be a well developed criteria and process without which sustainable development becomes unachievable. The method of valuation and or assessment is one of those criteria that result to inadequate compensation. Nuhu (2008), the methodology for the valuation of buildings for compulsory acquisition in Nigeria as stipulated by the law is the Replacement Cost Approach. 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.

III. RESEARCH METHODOLOGY

The interpretative research philosophy paradigm was adopted and the study was based on a case study method. The case study will offer insight that might not be achieved using other approaches. The primary data for this work consisted of oral interview, personal observations and questionnaires. The secondary data was collected through seminar papers, journals, project reports and textbooks. Data was analyzed using both quantitative and qualitative approaches. Study participants interviewed and questionnaires administered to, include the land owners who were affected in the Transmission Line acquisition, the practicing Estate Surveyors and Valuers who participated as individual and community representative, the consultant Estate Surveyors and Valuers to the Acquiring Authority(NDPHC) and the staff of the NDPHC. The selection of these people was based on the fact that they were involved in the right of way acquisition.

A. CASE STUDY

The study has two area setting of Ohaji/Egbema local government and Owerri, the capital of Imo state that were affected in the transmission line exercise. Ohaji/Egbema is an oil rich local government of Imo State with headquarters in Mmahu-Egbema. Egbema has an area of 890km² and a population of 182, 538 as of 2006 census. Egbema belong to the vegetation zone in Nigeria known as Rain Forest. In Egbema, the wet season is warm, oppressive and overcast, it commences around March and end around November and dry season is not muggy and mostly cloudy. Over the course of the year the temperature varies from 68⁰F to 88⁰F. Owerri is a city in South Eastern Nigeria. It is capital of Imo State and is set in the heart of Igboland. Owerri has a population of about 403, 425 as of 2016 census conducted by National Population Commission with an area of 100km². Owerri has GPS coordinates of 5⁰ 28' 34.716" North and 7⁰ 1' 33.0708" E. Elevation is 71m. Rain falls for most months of the year starting around February and ending around November having a brief dry season. The average temperature is 26.4⁰C.

IV. ANALYSIS AND RESULTS

A. REASONS FOR SPECULATIVE DEVELOPMENTS ON PROPOSED RIGHT OF WAY

Infrastructure provision is necessary for economic growth and development of any region as well as for competitiveness and sustainable development. For such development to take place requires land which may be in private domain. Land however can be acquired compulsorily by government with power of eminent domain and compensation paid to owners.

In a 5 point likert scale with a criterion mean of 3.0 being the minimum acceptable mean of responses, respondents land owners were asked the reasons for speculative developments on proposed right way Table 4.1 The expressions from the respondents indicate a mean score above criterion mean of 3.0, meaning that the respondents were all in agreement. The Estate surveyors and Valuers and the acquiring authority interviewed agreed that the non-payment for land, cost incurred in improving property and inadequate compensation and monetary benefits are the reasons for speculative developments.

S/N	ITEMS	5 SA	4 A	3 U	2 D	1 SD	Total score	N	- X	SD
1	Non-compensation for land, non-admittance of cost insured in improving property,	285	9	-	-	-	1,461	294	4.97	0.17
2	inadequate compensation and monetary benefit	282	12	-	-	-	1,458	294	4.96	0.19
3	The various legislations backing right of way acquisition Incomprehensive valuation of heads of claim on right of way acquisition enhance speculation development on purposed right of way	242	16	-	-	-	1,370	294	4.66	0.65

Source: Field Survey 2019

Table 4.1: Reasons for Speculative Development on Proposed right of way acquisition

B. THE IMPACT OF SPECULATIVE DEVELOPMENT ON THE PROVISION OF INFRASTRUCTURAL PROJECTS

To further investigate the impact of speculative development on the provision of infrastructural projects, Table 4.2 shows that speculative development on right of way will affect the budget of the acquiring authority, cause insecurity of infrastructure, hinder project realization and engender community hostility. The response rate from respondents is above the criterion mean 3.0.

S/N	ITEMS	5 SA	4 A	3 U	2 D	1 SD	Total score	N	- X	SD
1	Speculative development on right of way acquisition will affect the budget of acquiring authority, cause insecurity of infrastructure, project not realized and community hostility.	244	28	22	-	-	1398	294	4.73	0.23

Source: Field Survey (2019)

Table 4.2: Impact of Speculative development on proposed right of way acquisition

C. INCORPORATING SPECULATIVE DEVELOPMENT IN VALUATION FOR COMPENSATION

Respondents were asked whether speculative developments should be valued and incorporated in valuation for compensation. Table 4.3 revealed that the respondents have their divergent views on the items, the statistical tool used for the analysis shows a mean above the criterion mean of 3.0. It indicates that the respondents were in agreement and accepted that Speculative Developments should be valued and incorporated in valuation for compensation. Estate Surveyors and Valuers, including staffs of NDPHC interviewed collaborated that Speculative development though an illegality, should be valued and incorporated in valuation for compensation on the ground that the method of valuation, which is statutory does not give claimants adequate compensation for land, buildings, economic trees and also the cost in improving land such as survey fees, registration of land, leveling cost etc. There is also the issue of delay in payment i.e time factor in determining the effect of inflation on the amount payable between the time of enumeration and payment.

S/N	ITEMS	5 SA	4 A	3 U	2 D	1 SD	Total score	N	- X	SD
1	Speculative developments on proposed right of way should be valued and incorporated in valuation for compensation.	244	15	13	4	18	1,345	294	4.57	1.07
2	In arriving at the value for claims cognizance was not taken of abortive expenses, injurious affection, location, economic activities and service / function, therefore speculative development should be incorporated in valuation for compensation	242	7	20	4	21	1,327	294	4.51	0.15
3	Pre- determined rates without recourse to market rates contribute to under payment and inadequate compensation	286	8	-	-	-	1,457	294	4.95	0.17

Source: Field Survey, 2019.

Table 4.3: Incorporating Speculative Development in Valuation for compensation

D. MEASURES TO STEM THE EMERGENCE OF SPECULATIVE DEVELOPMENT

Table 4.4 shows that the respondents were in agreement that to discourage speculative development on proposed right of way, that compensation for land, open market valuation and comprehensive valuation of all heads of claim should be upheld. The response rate shows acceptance mean above the criterion mean of 3.0. Professional Estate Surveyors and Valuers, including staffs of the NDPHC interviewed said that immediately after the reconnaissance survey and rights revoked that the acquiring authority should not delay further in conducting field assessments to forestall speculative development. On the other hand that Land Use Acts of 1978 should be amended to enable land owners benefit from such acquisition by compensating claimants for their land. They also said that the method of valuation should be based on the open market valuation and that with these measures that claimants will have a near adequate compensation that will discourage speculative developments.

S/N	ITEMS	5 SA	4 A	3 U	2 D	1 SD	Total score	N	- X	SD
1	Compensation of land, open market valuation, and comprehensive valuation of heads of claim will stem the emergence of speculative development on proposed right of way for public project.	212	41	26	10	5	1,327	294	4.51	0.79

Source: Field Survey, 2019

Table 4.4: Measures to stem the emergence of speculative development

V. CONCLUSION AND RECOMMENDATION

A. CONCLUSION

The inability to develop the criteria for the efficient and equitable process of right of way acquisition is one of the major reasons for the failure to achieve sustainable public infrastructure provision. This study examined the legal framework backing right of way acquisition, incomprehensive heads of claim for compensation, the method of valuation and or assessment that result to inadequate compensation and leads to speculative development. The findings revealed that speculative developments should be valued and incorporated in valuation for compensation. Speculative developments though an illegality, land owners see it as a window of getting compensated for loss of land compulsorily acquired without compensation backed by legislative act.

B. RECOMMENDATION

Relevant international bodies guidelines and policies on right of way should be adhered to when it comes to acquisition and compensation such as World Bank, ADB and FAO. The practice of expropriation in Nigeria is far behind the international practice and main reason for speculative developments on proposed right of way. The analysis carried out in this study gave rise to the recommendations:

- ✓ Government should zone the area mapped out for acquisition to enable her pay to the land owners or the community as to discourage speculative developments
- ✓ All legislative acts/legislations should be amended to accommodate location and market value of land meant for acquisition. Also, the open market valuation of assessment should be adopted as the method of valuation for unexhausted improvements as against the pre-determined rates.
- ✓ For every right of way acquisition, the acquiring authority should make provision in their budget for speculative developments
- ✓ Comprehensive valuation of all heads of claim.

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