

Improving Land Governance in Nigeria: The Case of Compulsory Acquisition and Compensation Practice

Timothy Tunde Oladokun

Department of Estate Management, Obafemi Awolowo University, Ile-Ife, Osun State, Nigeria

Abstract: This paper examines land policies on acquisition and compensation practice in Nigeria with the aim of minimizing conflicts in land acquisition and compensation. It further explains the implications of uncoordinated land allocations arising from informal transactions. The paper used self-administered questionnaires on all the fifteen (15) registered estate firms in the 2009 NIESV Directory in Benin City, Edo state to obtain information that helped to determine the fairness of compensation practice and causes of conflict in some communities in the state. The paper revealed that the compensation on acquired landed properties in Nigeria violated the principles of good governance as against what is obtainable in advanced countries. It also observed that inadequacy of compensation paid and delay in payment are the causes of conflict between the acquiring authorities and the affected community/people. The paper concluded that a review of land policies on acquisition and compensation will be a panacea for achieving the principles of good governance.

Key words: Good governance, acquisition, compensation.

1. Introduction

Public land accounts for a large portion of public wealth of both the advanced and developing countries, hence, there is a need for good governance. Good governance is a means of establishing a sound policy regarding how government should intervene in land matters [1]. It deals with the decisions that are made about access to land and its use, the manner in which the decisions are implemented and the way competing interests are managed [2].

Land registration is one of the ways/policies in which government intervenes in land matters. According to Huber et al. [3] and a study conducted by de Soto [4] government intervention in terms of property registration cannot be taken for granted because absence of such intervention results in under-utilization of over twenty-nine billion dollars in Tanzania. Thus, it is logical to assume that without strong property institutions many countries may not achieve economic success.

Right to land has become an important factor in many nations, which implies that assured property right is a fundamental cornerstone for achieving national, social and economic stability. In Nigeria, the existing order of land governance is not in tune with the existing customary laws and traditional attachment because it has proved unable to cope with the demands of rapid urban growth which has negative impacts on urban spatial structure [4].

There are several land use policies in Nigeria, such as: Land Use Decree 1978, Oil Pipeline Cap 338 LFN and Petroleum Act etc. The Land Use Decree of 1978 which supposes to be the arrow head of land reforms for good governance in Nigeria according to Butler [5] has only generated three distinct land markets: the primary market for direct state allocation, the secondary market for statutory land rights documented by official certificate of occupancy, and the third is the market for pre-1978 land rights which has not been converted to statutory rights and where no formal statutory certificate of occupancy exists. These

scenarios further deepen the negative impact of the existing land governance in the country's urban centres. This led to congressional hearing on the activities such as land allocation and demolition decisions by a formal management of FCT (Federal Capital Territory), in Abuja [4].

This mismatch between the existing order of governance and customary laws and customs is major sources of social strife and conflict in Nigeria.

2. Study Area

The State has a land mass of 19,794 km square, lying on 05°44' N and 07°34' N latitudes, 05°4' E and 06°45' E longitudes. Edo State is low lying except towards the north axis where the Northern and Esan plateaus range from 183 m of the Kukuruku Hills and 672 m of the Somorika Hills.

It is so located that it forms the nucleus of the Niger Delta region. It is bordered by Kogi state to the North and Delta State to the East and South, Ekiti and Ondo States to the West. The climate is typically tropical with two major seasons—the wet (Rainy) and the dry (Harmattan) seasons. The wet season lasts from April to November and the dry season December to March [6].

3. Literature Review

3.1 Land Acquisition and Compensation Practices/ Problems

Land acquisition by government is global and government's police power is normally exercised in the process. According to the PRC (People's Republic of China) Thematic Report No. 2 [7] it was revealed that low compensation level is the main reason causing social conflicts in land acquisition in the PRC, and it is the main challenge in the country's land reform. Also, the study showed that the living standards of affected farmers have in fact been degraded after land acquisition. The, basic principle guiding the reform efforts (as stated in the report) must be to ensure that the living standards of those affected do not decline and their long-run livelihoods are safeguarded [7].

For instance, in Papua New Guinea land owners resulted in damaging infrastructure being built on their land or threaten violence due to exploitation traceable to poor record system [8].

It was also revealed that Tanzania is suffering from problems of poor land governance; procedure of registering land and improving land information systems, urban land management, the management of public land, expropriation and dispute resolution [2].

Though the issue of adequate compensation has been addressed in Kenya, they are bedevilled with the problem of decision-making process which leads to process and detail that still beg for attention [9].

In the developed countries of France and United States of America, just compensation for expropriation according to Darling and Wu [10] has traditionally been based on FMV (fair market value) based majorly on comparable sales approach that uses sales data on recent market transactions of similar properties within the vicinity taking into consideration the condition of the property. Thus, in most cases, they were able to put affected persons to the initial position before the acquisition.

In Nigeria, government has always acquired land for a series of public purposes such as: roads, housing estates, industrial use, etc. with appropriate laws to back up such actions. Such laws include Land Use Decree (1978), State Land (Compensation) Decree (No. 38), 1968, Public Land Acquisition (Miscellaneous Provision) Decree No. 33 of 1976 etc. Each of the laws among other provisions makes provisions for assessment of compensation payable to the victims of such actions [11].

Although government pays compensation to original landowners for crops, economic trees and buildings, compensation has been inadequate and more often characterized by considerable delay with inflationary losses owing to devaluation [12]. This is in consonance with Adeleke [13] that revealed further that despite the laudable objective of government on the acquired land, it failed due to factors arising from poor finance, underpayment and so on.

For instance, Nuhu (2006) cited in Nuhu [14], revealed that compensation assessed with respect to the acquisition of site for University of Abuja in 1990 was yet to be paid as at the period of the research in 2006. Again, according to Nuhu (2007) cited in Nuhu [14], the implementation of the Land Use Decree governing public land acquisition and payment of compensation in Nigeria has generated controversies, lapses and disputes because, claimants whose interest had been revoked are always at the losing end and usually left in a position far worse than they were before the revocation.

3.2 Good Governance Principles

A major indicator of good land governance is the ease of access to the records and transparency of the processes and procedures involved together with the time cost of acquiring the land [15]. Effective and fair compulsory acquisition cannot exist without good governance and adherence to the rule of law FAO [16]. But the power of compulsory acquisition can be abused. Unfair procedures for the compulsory acquisition of land and inequitable compensation for its loss which surely negates the ethics of good urban governance according to Nuhu (2008) and can reduce land tenure security, increase tensions between the government and citizens, and reduce public confidence in the rule of law. For instance, it is the lack of confidence according to Owei [4] that made the local land owners in Port-Harcourt prefer selling to individual than to the government. Good governance is therefore necessary to provide a balance between the need of the government to acquire land rapidly, and the need to protect the rights of people whose land is to be acquired [16]. Conflict is reduced when there are clear policies that define the specific purposes for which the government may acquire land, and when there are transparent, fair procedures for acquiring land and for providing equitable compensation [15-17].

Failures in governance according to Nuhu [14] among others could be due to the following six

identified causes;

- Laws which may be poorly designed or implemented, inconsistent or outdated
- Inappropriate policies and procedures
- Complex institutional structures, where mandates are unclear, overlapping or duplicated
- Incorrect or inadequate information, especially spatial data, to support decision making
- Inadequate civil service resources
- Lack of capacity in the civil services

Good governance has eight major characteristics which are: participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law.

Characteristics of good governance according to UNDP [18] are as discussed below:

- Participation

All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

- Rule of law

Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

- Transparency

Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

- Responsiveness

Institutions and processes try to serve all stakeholders.

- Consensus orientated

Good governance mediates differing interests to reach a broad consensus on the best decision on policies and procedures.

- Equitable and inclusive

All men and women have opportunities to improve or maintain their well-being.



Fig. 1 Good Governance. Source: Nabutola [9].

- Effectiveness and efficiency

Processes and institutions produce results that meet needs while making the best use of resources.

- Accountability

Decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organisations and whether the decision is internal or external to an organisation.

4. Theoretical and Conceptual Framework

The concept of governance entails the process of decision making and the process by which decisions are implemented or not implemented and bad governance is believed to be one of the causes of crisis within our society [17]. Moreover, FAO [19] defined good governance as the way in which society is managed and how the competing priorities and interest of different groups are reconciled and it includes formal institutions of government and citizen's participation in governance decision-making process.

Section 29(1) of the Land Use Act provided that if a right of occupancy is revoked for the cause set out in paragraph (b) of subsection (2) of section 28 or (c) of subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value

at the date of revocation of their unexhausted improvements.

Thus, Land Use Act provides for the payment of compensation for right of occupancy revoked to both the holder and occupier for the value of their unexhausted improvement. However, the Act exempted the compensation for revocations made for the purposes of mineral exploitation and provides in Section 29(2) that the appropriate Minerals Act provision shall apply. It is because of this provision that the provision of Oil Pipeline Cap 338 LFN and Petroleum Act were made though not revised to date but are still current.

Section 29(4) specified the basis for computation of compensation for rights of occupancy revoked under Section (28)(2)(b) and Section 28(3)(a) as set out below:

(a) The land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked. Thus, Kalu [20] opined that the law did not specify that it is the rent paid to government, which would have reinforced the earlier assumption that ground rent specified in the certificate of occupancy is what is intended here. This and many other ambiguities have resulted in the numerous criticisms levelled against the Act.

(b) The Act provides that replacement cost of building, installation or improvement shall be the

replacement cost. Kalu (1995) cited in Kalu [20] opined that the law dictates the basis of valuation and the methodology as indicated under Section 29(4)(b) when computing compensation for building which is against the principles of valuation because of costing. A major criticism with specified methodology is the fact that locational attribute of the property is made inconsequential.

(c) Crops on land, apart from buildings, installation and improvements on land, compensation payable is to be an amount equal to the value of the crops as prescribed and determined by the appropriate officer as indicated in the act. But the determination of the value of crops is to be done through investment approach. The practice of using one set of predicament rates for all agricultural belts of Nigeria adopted for either Federal acquisition or State acquisition has no valuation basis. Also, the rates used by Oil Companies, the so-called OPTS rate has no valuation basis although it is higher than the rates used for either State or Federal Government acquisition.

5. Research Methodology

The study used self-administered questionnaires to elicit information from all the 15 practicing estate firms registered in 2009 directory of Nigerian Institution of Estate Surveyors and Valuers recently involved in compensation exercises in some communities in Edo state, Nigeria. The researcher's choice of Edo State being an oil producing state was based on frequency of compensation exercises in oil producing states in Nigeria. The scope of the study was restricted to examining the adequacy of compensation paid on landed properties compulsorily acquired with a view to determining the impact of acquisition on the affected land owners.

5.1 Data Analysis and Interpretation

Different authors have written on similar issues in other states and there is no known work on this subject in the state. The perception of respondent estate firms

on adequacy of compensation paid in Edo state was examined using frequency and percentage. In addition, the frequency of conflict between host communities and the acquiring authority and causes of the conflicts are also examined using frequency and percentage. Features of compensation in Edo State were first examined by looking at the frequency of compensation exercises and the level of participation of respondent firms in the last three years. The data reveal that all the respondent firms were actively involved in compensation in Edo state. This confirms the reliability of our data, banely they are derived from active firms as shown in Table 1

5.2 Perception on Adequacy of Compensation Payment

In a recent survey conducted on adequacy of compensation after acquisition in Edo State, 67% as evidenced from Table 2 were not satisfied with the compensation, while only 33% were satisfied with compensation. This is an indication that the compensation is not fair to most of the affected people, which violated the principle of effectiveness, efficiency and equitability criteria of good governance.

Table 1 Adequacy of compensation experience.

Period of past experience (years)	Frequency	Percentage (%)
1-3	15	100
4-6	-	-
7-9	-	-
Total	15	100

Source: field survey (2011).

Table 2 Adequacy of compensation.

Response	Frequency	Percentage (%)
Yes	5	33
No	10	67
Total	15	100

Source: field survey (2011).

Table 3 Conflict experience between host community and acquiring authority.

Response	Frequency	Percentage (%)
Yes	10	67
No	5	33
Total	15	100

Source: field survey (2011).

Table 4 Causes of conflict.

Response	Frequency	Percentage (%)
Inadequate payment	5	33
Delay in payment	3	20
Others	7	47
Total	15	100

Source: field survey (2011).

Information from Table 3 on respondents' estate firms experience on conflict between host community and acquiring authority revealed that 67% of the firms have experienced conflicts between host community and the acquiring authority. This position further reveals the level of satisfaction of the host communities with the acquiring authority's compensation.

Evidence in Table 4 established that inadequacy of payment and delay in payment which accounted for 53% were the causes of conflict while others such as: omission of some claims, demolition before payment and failure to give relocation time are 47%. This implied that there would be increase in acceptability of compensation if adequacy of payment and delay are given the needed boost.

6. Recommendations

The provision in the Act should make compensation valuation rely on comparable sales as a starting point in determining FMV but may apply other techniques, including replacement costs to ensure adequacy of compensation. Therefore, it is necessary to introduce other methods, most especially those using market information in the compensation valuation in Nigeria.

The conflict situations with indigenous groups who would rather sell off their land to private individuals could be significantly minimised if the compensation put the affected person back to the initial position. Conflicts can also be controlled by ensuring that compensation is paid promptly without delay.

For the objective of acquisition purpose to be achieved and to ensure its smooth execution, there is need for a review of the valuation methodologies in the Land Use Act for compensation valuation to reflect an FMV. This will however reduce the problem arising

from low compensation and conflict with affected community or individual.

7. Conclusion

In conclusion, good governance in acquisition and compensation would encourage improvement in the quality of life of everybody including those affected by the development. Be that as it may, land reform policies on acquisition and compensation should be reviewed to enable enjoyment of its maximum benefits and also eradicate or reduce to insignificant level conflict situations with indigenous groups, and the problems faced by affected citizens of the country. In doing so, the government would enjoy people's support and public projects would have wider acceptability.

References

- [1] Zimmermann, W. 2007. "Good Governance in Public Land Management." *Land Reform* 2: 31-66.
- [2] Kironde, J. M. L. 2009. "Improving Land Sector Governance in Africa: The Case of Tanzania." Paper prepared for the Workshop on "Land Governance in support of the MDGs: Responding to Challenges", Washington DC, March 9-10, 2009.
- [3] Huber, M., Mithöfer, K., Schär, P., Harvey, F., and Mukasa, O. 2009. "Universal Land Registry to Support Independent Economic Development in Tanzania." *International Journal of Spatial Data Infrastructures Research* 4: 52-76.
- [4] de Soto Owei, O., Ede, P., Obinna, V. C., and Akarolo, C. 2008. "Land Market Distortions in Nigerian Cities and Urban Sprawl: The Case of Abuja and Port Harcourt." In *Proceedings of the 44th ISOCARP Congress*, 21 January 2015, pp. 1-10.
- [5] Butler, S. B. 2009. "Improving Land Policy for Private Sector Development in Nigeria: Lessons and the Challenges Ahead." In *Proceedings of World Bank Conference on Land Governance in Support of the MDGs*, March 9-10, 2009, Washington, DC.
- [6] Edo State Government. 2013. Accessed May 18, 2013. www.edostate.gov.ng/geography.
- [7] People's Republic of China (PRC) Thematic Report No. 2. 2008. *Asset Valuation in Land Acquisition and Compensation*. Accessed October 12, 2011. www.adb.org.
- [8] Manning, M., and Hughes, P. 2011. "Acquiring Land for Public Purpose in Papua New Guinea and Vanuatu." *Land for Public Purpose* 12: 235.
- [9] Nabutola, W. 2009. "Compulsory Purchase and Land

- Acquisition in Kenya.” Presented at the 7th FIG Regional Conference, Hanoi, Vietnam, October 19-22, 2009.
- [10] Darling, E., Skillen, L. S., and Wu, M. 2006. “Just Compensation Valuation Schemes.” Seminar on Disasters and the Law, with Professor Daniel Farber, Boalt School of Law, April 28, 2006.
- [11] Adebayo, T. A. 2004. “Need for Improved Economic Trees Assessment during Compulsory Acquisition in Nigeria. Case study of Ibadan Ife Road.” *Journal of Estate Surveyor & Valuer* 27 (1): 73-9.
- [12] Akaninyene, M., Jacob, A., and Beulah, O. 2010. “Analysis of Public Lands Acquisition in Akwa Ibom State, Nigeria.” *J Hum Ecol* 31 (3): 197-203.
- [13] Adeleke, F. G. 2020. “A Study of Factors Affecting the Development of Ajoda New Town Ibadan, Oyo State, Nigeria.” M.Sc. thesis, Obafemi Awolowo University, Ile-Ife.
- [14] Nuhu, M. B. 2011. “Good Governance in Land Tenure and Management of Nigerian Cities.” Accessed October 10, 2011. www.nigeriapropertiesonline.com.
- [15] Ukaejiofo, A. N. 2009. “Perspectives in Land Administration Reforms in Nigeria.” *Journal of the Environment* 2 (1): 43-50.
- [16] FAO. 2008. *Compulsory Acquisition of Land and Compensation*. Rome: Land Tenure Studies 10, Food and Agriculture Organisation of the United Nations.
- [17] Nuhu, M. B. 2008. “Public Land Policy, New Trends: Challenges in Nigerian Institutional Frameworks for State and Public Sector Land Management.” FIG/FAO/CNG International Seminar on State and Public Sector Land Management Verona, Italy, September 9-10, 2008.
- [18] UNDP. 1997. *Governance for Sustainable Human Development*. London: United Nations Development Programme.
- [19] FAO. 2007. *Good Governance in Land Tenure and Administration*. Rome: Land Tenure Studies 9, Food and Agriculture Organisation of the United Nations.
- [20] Kalu, I. U. 2001. *Property Valuation and Appraisal*. Owerri: Bon Publications.