

THE DETERMINATION OF COMPENSATION PAYABLE IN THE NIGER DELTA FOR COMPULSORY ACQUISITION AND THE NEED FOR A SUSTAINABLE PRACTICE

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ABSTRACT

The right to compensation for the compulsory acquisition of real property is constitutional and most enabling laws prescribe valuation methods to be adopted in determining the compensation payable. This paper aims at ascertaining the implications of the constitutional provisions and its impact on the compensation payable. It reviews some legislation, prescribed compensation rates and a valuation report on the Obite- Ubeta- Rumuekpe (OUR) pipeline acquisition and analyses the valuation method used. When compared with internationally prescribed standards, the paper concludes that the compensation determined does not meet the compensation requirements of adequacy and that the use of predetermined compensation- rates corroborates the inadequate compensation determination and renders agricultural practices unsustainable. It recommends the adoption of valuation methods that indicate compensation sums that are equivalent to market realities to sustain agricultural practices.

Key Words: Compulsory acquisition, Corporate Social Responsibility, Sustainable Development, Valuation methods, Compensation Rates, Pre-determined Rates, and Adequate Compensation.

INTRODUCTION

The Niger Delta with an estimated area of about 70,000km² is one of the World's largest deltas. It is located in the Central part of Southern Nigeria between above latitude 5°33'49"N and 6°31'38"E in the North. Its Western boundary is given as Benue 5° 44'11"N and 5°03'49"E and its Eastern boundary is Imo River 4°27'16"N and 7°35'27"E. The region situated in the southern part of Nigeria, is bordered in the east by the Republic of Cameroun and in the south, by the Atlantic Ocean. Within Nigeria, the region is defined both geographically and politically for revenue sharing purposes. The geographic Niger Delta includes the litoral States of Rivers, Bayelsa, Delta Cross River and Akwa Ibom and has an area of about 67,284 square kilometres with a combined population of 16,331,000 persons. The political Niger Delta includes these and in addition, Abia, Edo, Imo, and Ondo. The land area of the region is 112,110 square kilometres of land as at 2006. The region occupies about 12% of Nigeria's total surface area and is shown in Figure 1.

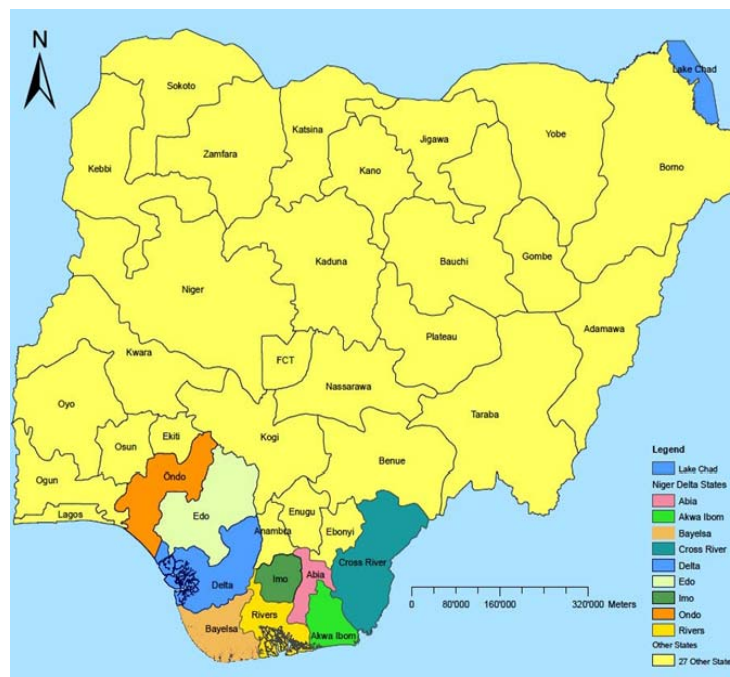


Figure 1: Map of Nigeria Showing the Niger Delta States

Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant (Keith, McAuslan et al. 2008). There are different definitions of this power depending on a country's legal traditions, including eminent domain, expropriation, takings and compulsory purchase. Irrespective of the description, compulsory acquisition is a critical development tool for governments, and for ensuring that land is available when needed for essential infrastructure. Although the compulsory acquisition power is deeply rooted in virtually all legal systems, the establishment of efficient and fair legal and institutional frameworks for exercising this power remains an unfinished business in many countries around the world (Lindsay 2012).

Land has been compulsorily acquired in Nigeria since the colonial era like in other countries, for the provision of public infrastructure like schools, hospitals, roads, railway tracks and other facilities. Since 1958, when crude oil deposits were first discovered in Oloibiri, the Niger Delta region has witnessed regular acquisition of land for oil prospecting and production purposes. Land acquisition in the region has also been performed by successive governments for use for

public purposes, in addition to acquisition for oil exploration and production by International Oil Companies (IOCs) who have been vested with powers of compulsory acquisition by relevant statutes. Compulsory acquisition being statutory relies on the statutory provisions for its procedures.

National constitutions and laws typically refer to compulsory acquisition being used for “public purposes”, for “public uses” and/or in the “public interest.” In some jurisdictions, these terms have distinct if overlapping meanings. In other cases, these distinctions are blurred or non-existent. When it comes to defining public purposes, there is great diversity among national laws in the extent of specificity. In some countries, laws provide an itemized list of land uses that fall within the definition of public purpose. The major compulsory acquisition issues are the definition of public purpose; the extent to which private end-users of property should be allowed to be beneficiaries of compulsorily acquired land; issues surrounding the compensation for losses suffered when government or any acquiring authority acquires land compulsorily and the procedure adopted in effecting the acquisition. The compulsory taking of private property for public purposes, constitutes part of the corporate social responsibility of government which must be exercised in such manner as to render the property developments affected sustainable. This means that whatever compensation that is paid should enable the recipients to replace the acquired property. In this paper, emphasis will be focused on the determination of compensation for losses suffered.

INTERNATIONAL CONVENTIONS

Several regions of the world subscribe to conventions on human rights to property and the protection of such rights. Some examples include

- The American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 1969, (Article 21 Right to Property), which states that: “1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.”
- The African Charter on Human and Peoples’ Rights, 1986: “Article 14. This provides that the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” “Article 21. 1. Provides that all peoples shall freely dispose of their wealth and natural resources. It further provides that in the case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation”.

The FAO-IFAD-ILO (2009), stated that though there is variation between countries, that the constitutions of many countries provide for both the protection of property rights and the power of the government to acquire land without the willing consent of the owner.

Corporate Social Responsibility (CSR) and Sustainable Development:

The European Union in its European Commission’s Green Paper of July 2001, defined CSR as ‘a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis’. (Blowfield and Frynas, 2005) , while the US Social Investment Forum, 2006 defined

it as an open and transparent business practice that is based on ethical values and respect for employees, communities, and the environment as cited by (Lorenz and Lützkendorf 2008). Though targeted at private businesses, the need to consider both social and environmental factors in its dealings with the populace is applicable to governments as any government exists to meet the social and environmental needs of its citizenry. It is therefore necessary for any government policy whether for compulsory acquisition or development to satisfy the aspirations of the governed by ensuring that such policies satisfy the needs of the present and future generations, hence CSR is sometimes referred to as good corporate governance. Sustainable development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs (World Commission on Environment and Development, 1987), while Sustainability is interpreted as the overarching goal or target of having durable balance between the economy, environment and society (Lorenz and Lützkendorf, 2008). This means that sustainability is the process of achieving sustainable development. The inhabitants of the Niger Delta are predominantly farmers and fishermen who develop their land with agricultural improvements and most acquired lands are planted with economic and cash crops. When land is compulsorily acquired, the farmlands are taken by the acquiring authority thereby rendering the affected persons landless. The combined principles of CSR and sustainable development requires that the affected land owners' interests should not only be considered by paying reasonable compensation, but such compensation paid should be such amount that will sustain the affected parties in their occupation as farmers and fishermen. This is in keeping with the principle of compulsory acquisition that requires that the parties should be placed in the same position as they were prior to the acquisition. The current practise of assessing compensation by adopting predetermined compensation rates negates this principle.

COMPENSATION

Several authors have justified the compulsory acquisition of land (Famoriyo 1984, Syagga and Olima 1996, Ogedengbe 2007, Kakulu 2008, Otegbulu 2009, Oluwamotemi 2010, Kakulu and Nuhu 2012). All these authors highlight the basis of assessing compensation payable for compulsory acquisition and emphasise the fact that the process is statutory and that the enabling laws do provide the valuation methods to be adopted.

Larbi, Antwi et al. (2004), state the reasons why governments may acquire land compulsorily as including:-The need to provide social and economic amenities like hospitals, schools, police stations, markets, airports, harbours, roads and highways, open spaces, public parks, waste treatment sites and other uses for the overall benefit of the society, which are unlikely to be privately provided; Existence of perceived economic and social inefficiencies in private market operations in the production of goods and services especially involving the natural environment; and the search for greater equity and social justice in the distribution of land.

Ding (2007) justifies land acquisition in a market economy as a way of correcting the following:-

- Mis-pricing of infrastructure and profit driven private markets often result in urban development patterns that have inadequate provision of public and urban basic services, inadequate provision of open spaces and recreational park, and park facilities, and inadequate protection of natural environmental systems such as wetlands;
- Public goods, interests and services such as schools, hospitals, roads, and easements require governmental intervention in land development by imposing restrictions on privately owned lands;

- Restrictions on the ways land can be used in terms of type and intensity help to achieve social, environmental and cultural goals;
- Urban land development patterns driven by private markets often harm the environment and natural ecological system, hurt the urban poor, and impose social costs on the society;
- Successful implementation of urban and regional planning needs sound land management and policy; and
- The need to address social issues like equity and justice becomes urgent and critical in fast urbanizing economies.

In support of compulsory acquisition, the FAO (2009) stated certain principles that need to be fulfilled when embarking on a compulsory acquisition process thus:

The principle of Equivalence requires the amount of compensation to correspond to the value of the loss in value; the principle of Balance of Interests dictates that the acquisition procedures should safeguard the rights of the people who lose ownership or user rights of their land without jeopardising public interest; the principle of Flexibility requires the procedure to combine appropriate details and ability to derogate from such details in special situations; the principle of Equal Application to De Facto and De Jure Interests ensures that holders of different rights should be subject to similar procedures, while the principle of Fairness and Transparency dictates that the implementation of the procedures should allow equal access to all parties to information and expert representations.

Examples of interests to be compensated include:

The land itself; Improvements to the land, including crops; The value of any financial advantage other than market value that the person may enjoy by virtue of owning or occupying the land in question; Interest on unpaid compensation from the date of possession; Expenses incurred as a direct and reasonable consequence of the acquisition; Loss in value to other land owned by the affected owner due to the project. In some countries, the compensation will be reduced if the retained land increases in value as a result of the project, a condition sometimes referred to as “betterment”; Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents; Costs of moving and costs of acquiring alternative accommodation; Costs associated with reorganization of farming operations when only a part of a parcel is acquired; Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition; Temporary loss of earnings; Personal hardship; Other losses or damages suffered.

A long-standing principle in many jurisdictions is that compensation should be guided by the objectives of equity” and “equivalence”—that is, the adequacy of compensation should be measured against the goal of ensuring that people are neither impoverished nor enriched (Keith, McAuslan et al. 2008). A variation on this standard view argues that it may be appropriate in some cases, particularly where a taking is occurring in the context of a development project or program, to aim beyond equivalence to improving the position of those affected wherever possible. This is the principle articulated in the World Bank Policy on Involuntary Resettlement: “Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher” (OP 4.12). The definition of adequate compensation differs internationally. While USA adopts market value as the just compensation to the dispossessed owners, the UK views compensation to be based on the value to the owner consisting of market value plus

any losses suffered by the claimant (Denyer-Green 2009). Tanzania accepts payment of market value plus disturbance and other losses (Komu 2007).

However, applying the principles of compensation in practice has always been an extremely complex challenge. Appreciation of this complexity has heightened as fuller and more subtle distinction of the rights that people hold over land has taken root in many parts of the world. A comparative analysis of the nature of land rights in many developing countries and the legal approaches developed in the context of Europe or North America, where land rights are generally standardized and well defined, land markets function, and land records are reliable, have shown that any attempt to apply a universal compensation principle will be ill-equipped for dealing with many developing country situations where such characteristics are less common.

Issues Involved in Compensation Assessment

Lindsay (2012) stated that Compensation issues can be conveniently grouped according to two overlapping sets of questions: who should receive compensation for what kind of loss; and how should the quantum and type of compensation be determined?

Private Rights over Land

In some such cases, state ownership is nominal, and private rights over state land are held and transacted for all practical purposes as if the land were privately owned. In other cases, the nature of the retained state interest may be more significant as is the case in the rural Niger Delta where the customary land tenure persists, despite the enactment of the Land Use Act (LUA) 1978. Lindsay (2012) opine that in applying the principles of compulsory acquisition, it is important to focus on the private rights to land that will be terminated as a result of a taking, whether or not such rights amount to a narrow definition of ownership.

Multiple layers of rights

There may be multiple layers of rights held by any number of rights holders. A privately owned parcel may be subject to leaseholds, mortgages, rights of way for utilities or transportation, concessions rights of traditional or other uses, rights to forest products, etc. Ownership of land, trees, buildings and other improvements may all be separately held. In the Niger Delta, customary right holders may lease out their farm land, economic trees are owned by families while the community may own foot paths. Each of these separate interests may represent a significant loss to its holder if the land parcel is acquired by government or anybody with statutory powers of acquisition and the right is terminated. Existing compulsory acquisition laws and practices may not be well adapted to “catching” all relevant interests in a land parcel. Some laws may target land owners without mentioning the array of other potential rights that may also be relevant and affected by the acquisition.

While the principle of recognition of customary rights is proclaimed, the legal framework for such recognition is vaguely articulated and moves towards operationalizing it have been ambivalent. As a result, the situation on the ground is often one where rights remain unclear and vulnerable. Compounding this is the fact that many compulsory acquisition laws on the books pre-date recent land law reforms and are ill-suited to deal with issues such as the valuation and compensation for customary rights

DEFINING THE APPROPRIATE QUANTUM AND FORM OF COMPENSATION

A key consideration that emerges when one surveys the wide variety of economic, social and cultural settings in which takings occur is that there is no universally appropriate method for calculating loss (Lindsay, 2012). Laws from highly developed market economies generally recognize that compensation needs to go beyond the value of land and other assets, and to varying degrees contemplate compensation for losses associated with disturbance, costs related to moving and transition, in some cases harm to business, etc. in the Niger Delta, there has been no agreement or consistency in the composition of the compensation payable under the enabling laws. Different authors interpret the legal provisions differently (see Kakulu, 2008, Ogedemgbe, 2007 and Otegbulu, 2009). Valuation professionals in the Niger Delta mostly adopt predetermined compensation rates as confirmed by these authors and confirmed by the author's field work in 2012. These prescribed rates have now assumed the resemblance of a legal provision and is also used in some developing countries like Tanzania (Komu, 2007). In the bid to appear to placate the land interest holders, different prescribed rates are now in force and been used by valuers both in practice and advising government and IOCs and other parastatals. In a survey conducted in the Niger Delta in 2012 to 2013, questionnaire was administered to 80 firms of Valuers and 61 questionnaires were returned. All the respondents confirmed that they adopt predetermined compensation rates in the assessment of compensation due on acquired properties and reliance on the LUA, 1978, section 29 (4c).

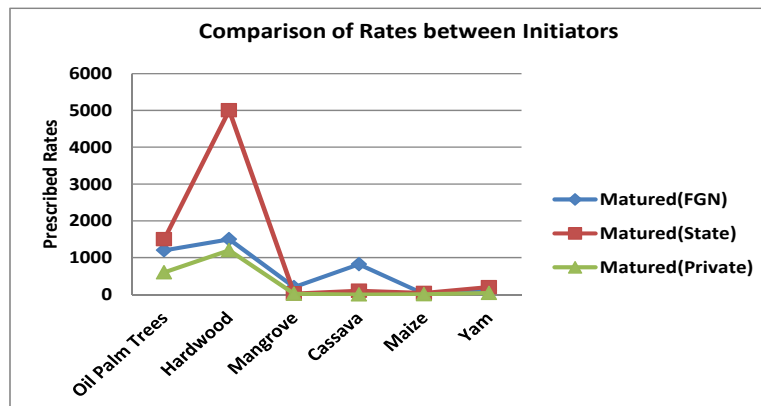
THE CASE STUDY: THE OBAGI- UBETA-RUMUEKPE (OUR) GAS PIPELINE PROJECT

The OUR pipeline project is one of the projects initiated by the IOCs operating in the Niger Delta to convey gas to the Liquefied Natural Gas plant at Bonny in the Rivers State of Nigeria. The width of the pipeline right of way varies along the pipeline from Obagi to Rumuekpe, but there is a Node Junction at Ubeta and Rumuji. This study reviews a section of the pipeline at Rumuji covering a total area of 8.4 hectares of residential and agricultural land which was acquired in 2007. The agricultural land was used to farm crops like cassava, oil palm trees, mango trees, oil-bean trees, staking sticks, plantains, and vegetables. Residential buildings consisted of bungalows roofed with corrugated iron sheets, wooden window and door frames, cement screeded floors. Other structures were farm huts and animal fences.

These different items were valued with rates prescribed by the Oil Producers Trade Section (OPTS) and adjusted by the sponsor of the project. Economic crops like cassava and pineapple were valued at N20 per stand, oil palm trees at N150 per tree, mango trees at N400 per tree, oil-bean trees at N200 per tree and maize at N5.20 per stand. For structures, farm huts were at N2000 per square metre, animal fence at N80 per metre run and the residential buildings at between N16, 000 and N18, 000 per square metre. Land was paid for under loss of use at the rate of N170 per square metre. Combining all these rates, a total compensation of N42, 000, 000.00 approximately was paid.

The professionalism of valuers who value with predetermined compensation rates is minimal as no professional skill is required to enumerate crop composition in the farms and apply the prescribed rates. Consultant Valuers have relied on section 29 of the Land Use Act (LUA)1978 in defence of the prescribed rates as indicated by Kakulu (2008), but as Hezekiah (2012) opined, the provisions in the law were included for the benefit of the government and not to meet any international requirement of equivalence and fairness. It is also in defence of this aim that the Nigerian Constitution merely provides for prompt payment of compensation without any attempt to define what the compensation should be, as done by other national laws on compulsory acquisition. In applying the prescribed rates, valuers have tended to

overlook the fact that the section of the LUA requires the ‘Appropriate Officer’ to specify rates for each acquisition and rather assume that this legalises a schedule of predetermined compensation rates. While the LUA provides for the value of crops to be determined according to values prescribed by the appropriate officer (Sec.29 (4c)), it is submitted that this provision does not legalise the use of any predetermined compensation rates as it is currently being practised. None of the oil related laws provided for any predetermined rates to be used, thus it is doubtful the legality of the OPTS rates being adopted by the oil companies. This is more so when the Oil Producers Trades Section (OPTS) is only a trade group within the Lagos State Chamber of Commerce, Mines and Industry, whose membership is drawn from only the oil companies. None of the rates referred to above, is authorised by any law, though the preamble to the Federal Government rates, stated that “the Appropriate Officer” is charged with the responsibility of determining rates of compensation and to review them from time to time as the need arose, it went ahead to harmonise compensation rates arguing that harmonisation was necessary to establish standards and unify land administration practices across the country (NTDF 2006). The harmonised rates provide for three categories of matured, immature and seedling for each economic crop and tree, with the rates decreasing from matured to seedlings. It also provided for unexhausted improvements to be compensated for on depreciated replacement cost basis. Since there is no harmonised market in the country, it is difficult to justify the harmonisation of compensation for land rights considering the heterogeneous nature land and interests subsisting thereon. While it may be possible to differentiate between a matured crop/tree and a seedling, it is not very easy to differentiate between an immature and matured crop/tree in practice and most are harvested and sold on maturity. When a building is acquired on a depreciated replacement basis and the claimant is expected to replace the acquired property at current costs in the market, the aim of the compensation becomes questionable as it is inadequate to replace the acquired building and place him in the position he was before the acquisition. A comparison of the prescribed rates for some matured economic trees and crops by the Federal Government (FGN), State Governments (State) and Private Operators (IOCs) is shown in Figure 1 below.



The graph above shows that the IOCs pay the least rates when compared to the Federal and State governments. This they justify by adding some payment for loss of use of the land which the government does not though some States in the Niger Delta like the Rivers State of Nigeria, have recently added a flat rate per stated size of land.

Tables 1 and 2 show some sample compensation rates in use, drawn from the comprehensive schedule of rates by the various initiators.

Table 1: Sample Compensation Rates (Trees/Crops)

S/No	Item	Public (Federal)			Public (State)			Private		
		Mature	Immature	Seedling	Mature	Immature	Seedling	Mature	Immature	Seedling
1	Economic Trees Oranges/Tangerines	2000	1000	500	1000	500	250	600	300	150
2	Oil Palm Trees (Wild)	1200	600	300	1500	750	375	600	300	150
3	Mangrove Trees	820	410	205	300	150	75	3000/Ha	1500/Ha	750/Ha
4	Agbono (Bush Mango)	2000	1000	500	400	200	100	680	340	120
5	Hardwood	1500	750	375	5000	2500	1250	1200	600	300
6	Softwood	1500	750	375	2500	1250	625	600	300	150
7	Animal Trap	15000	7500	3750	2500 per meter run			Based on Valuation		
	Cash Crops									
8	Plantain	1000	500	250	1000	500	250	320	160	80
9	Pineapples	200	100	50	200	100	50	20	10	5
10	Cassava	200	100	50	25	12.5	7.00	20	10	5
11	Yam	115	57.50	28.75	200	100	50	40	20	10
12	Maize	20	10	5	40	20	10	5.2	2.6	1.3

Source: Extracted from Published Schedule of Rates, NTDF, 2006; Akwa Ibom State, 2005; OPTS, 1997

Table 2: Sample Compensation Rates (Buildings)

S/No	Construction Costs	Public (Federal)		Public (State)		Private	
		Description	Rate	Description	Rate	Description	Rate
1	Bungalows	CIS Roofing, Asbestos Ceiling, Wooden doors and windows, cement screed/PVC floors	30,000-35,000 Per square metre	45,000/m2		Based on Valuation	
2	Bungalows	Aluminium Roof, Metal Doors and windows, ceramic/marble floors	35,000-40,000/m2	45,000-50,000/M2		Based on Valuation	
3	Storey Buildings	Aluminium Roof, Metal Doors and Windows, Ceramic/Marble Floor.	60,000-70,000/m2	50,000-70,000/M2		Based on Valuation	

Source: Extracted from Published Schedule of Rates, NTDF, 2006; Akwa Ibom State, 2005; OPTS, 1997

Reasons for the Low Compensation:

A major reason for the low compensation paid, is the definition of the compensation paid. The meaning of replacement cost provided in the enabling laws assumes different meaning to different professionals depending on whom they represent as the prescription of rates assumes. Valuers representing claimants assume the compensation should replace the acquired interests and would rely on market data to determine replacement costs.

The World-Bank (2011) define 'replacement cost' as 'the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes for agricultural land. For land in urban areas, it is the pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any registration and transfer taxes. For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labour and contractors' fees, plus the cost of any registration and transfer taxes. In determining the replacement cost, depreciation of the asset and the value of salvage materials are not taken into account, nor is the value of benefits to be derived from the project deducted from the valuation of an affected asset' (OP 4.12, p.7). The IVSC (2007, p. 146) define it 'as the current cost of replacing an asset with its modern equivalent asset less deductions for physical deterioration and all relevant forms of obsolescence and optimisation'. While the IVSC definition accommodates depreciation, the World Bank definition advocates the avoidance of depreciation in determining the replacement cost and is more relevant to the compulsory acquisition process. When the practice in the Niger Delta is compared to these definitions, it becomes obvious that there is a marked difference, though the World Bank recommendation ought to be adopted.

Assessing the Market Value of lost Assets:

Viewed holistically, the payment may appear reasonable as it amounts to about N5, 000, 000 per hectare. Analysing each item of claim reveals a difference between the market values and the prescribed rates. Cassava yields N100 per stand, pineapple yields N300 per stand, oil palm trees at N16, 000 per tree, mango trees at N15, 000 per tree, oil-bean tree at N40, 800 per tree and maize at N50 per stand. The animal fence will cost about N500 per metre run to construct while the residential buildings will cost between N75, 000 and N120, 000 per square metre to construct. These rates are completely at variance with all the prescribed rates in use. The implication of the difference between the market rates and the prescribed rates is that the payment does not meet the requirements of equivalence and fairness as the recipients of the compensation were left worse off than they were before the acquisition, since the compensation could not replace the farm crops or the residential buildings. When building costs average N95, 000 per square metre and claimants are paid at N17, 000 per square metre, it becomes difficult to assume that the claimants would be able to replace the acquired buildings.

A general legislative approach is to define market value as the amount a willing buyer would pay a willing seller on the open market where some choice exists (Lindsay, 2012). There are several reasons this calculation might be difficult to make in a given setting (particularly when it comes to land values as opposed to other non-land assets). Some reasons for this difficulty include the non-existent or extremely thin formal markets, especially in the rural areas; the existence of an active informal land market and the government's refusal to accept market evidence from the informal land markets; the absence of established and independent valuation profession; and the tendency of buyers to understate prices in order to minimise taxation. Though different countries have devised different solutions like assigning values to different categories of land as

done in Ghana and Albania, or determining agricultural land values by applying a multiplier based on the average productivity of the land over a three year period as done in China, these approaches have been said to result in a divergence between legal and actual market values of land.

The Niger Delta practice does not admit any payment for land as the law only provides for refund of rent paid. The IOCs as a gesture of their Corporate Social Responsibility do pay for the loss of use of the land at a chosen rate per square metre, though the World Bank standard recommends payment for land determined at its market value.

Replacement Cost or Market Value:

International norms such as those promoted by the World Bank, IFC and others refer to “replacement cost” as the appropriate benchmark for valuation of assets. Where land markets are robust, replacement cost and fair market value should be roughly equivalent. Fair market value as currently defined at the national level does not ensure that compensation will be adequate to acquire equivalent assets. In such contexts, a focus on “replacement costs” at least in theory should shift attention usefully to the calculation of what it would really take in a given market to replace lost assets. When it comes to non-land assets such as housing and other improvements, a replacement cost approach also ensures that the depreciation of lost assets are not taken into account in the calculation of compensation, and that transaction costs associated with the purchase of new assets are covered.

Land Instead of Cash Compensation:

The complexities associated with assigning realistic monetary values to lost assets and displaced rights is symptomatic of the difficulties of applying a “standard” compulsory acquisition legal framework to social situations in which land is valued differently than it is in functioning market economies. The definition of land rights in rural areas poses a problem as some land rights that are critical to rural livelihoods, such as rights of pasture or access to forest resources, may simply not be susceptible to monetization. The loss may only be genuinely addressed through the provision of alternatives. Where markets for land are weak or severely distorted, cash compensation based on fair market value may be insufficient to compensate for the disruption to livelihoods and social cohesion caused by a taking (Lindsay, 2012).

The offer of alternative land as compensation may also avoid problems that can arise “when financial compensation is paid to people who are unused to handling large amounts of money and who may soon after receiving compensation, find themselves with no land to farm, no income stream to support themselves, and no job skills to compete in a non-agricultural economy.” (Keith, 2008). The World Bank Policy on Involuntary Resettlement stresses the provision of alternative and equivalent land as a preferred solution where livelihoods are land based. There are constraints that limit the application of such an approach, particularly in rapidly changing areas where suitable alternative land may be difficult to find in light of population pressures and in the Niger Delta as in other parts of Nigeria, this approach is hampered by the absence of a land bank and the lack of availability of unoccupied land that may be used for resettlement.

Negotiating Power of Claimants:

In most acquisitions in the Niger Delta, affected owners and occupants often have less negotiating power, experience and skills than the acquiring agency. In the OUR project, most claimants retained Claim-Agents who were not skilled in valuation to represent them in the compensation assessment process. The process did not also afford claimants time to make representations or consult scarce valuers to advise them of their entitlements. This led to their accepting whatever they were offered under pressure.

Valuation Skills:

There is a shortage of valuers qualified to represent claimants in the acquisition process and the rural nature of the area meant that natives did not appreciate the role of valuers in the process hence they relied on claim-agents for representation. Even where valuers were retained, it was difficult to obtain reliable indicators of value as land sales were informal and markets hardly existed for any market data to be collected. There is also no data for the annual value of trees and perennial crops and the maturity period for each so the valuers base their valuations on data that can hardly be defended. There is also a general misconception about the cost of engaging valuers as against claim-agents by the claimants. Valuers find the compensation laws confusing and rely on the dictates of the acquiring authorities to value rather follow their professional training and experience, since the acquiring authorities are more influential than the land owners or user right holders.

CONCLUSIONS

This paper has reviewed the reasons for and practice of compulsory acquisition in the Niger Delta. The standards of assessment by international organisations like the World Bank were compared to the valuation for the right of way acquisition for the OUR gas pipeline project and it was discovered that the land owners involved in the project were paid compensations that do not meet the minimum standard of equivalence as the compensation they were paid fell far short of the cost of replacing what was acquired. Such compensation payments do not meet any sustainability criteria and is likely to destroy the future of agricultural practices.

Among the reasons for the paltry compensation is the non-availability of market information, the misinterpretation of the Land Use Act 1978, the lopsided nature of the enabling law which fails the test of being balanced in the protection of the interests of the parties to the acquisition, the non-reflection of the needs for a sustainable development of the region, the overbearing influence of the IOCs who decide what they want to pay, not seeing the payment of compensation as part of their corporate social responsibility, and do not admit any negotiation in determining the compensation paid. There is a high illiteracy level of the rural communities involved in the pipeline project and their poverty level led to their acceptance of a paltry compensation since they could not pay for any professional representation. Practicing valuers are scarce and those that are available hardly exercise their professional skills in determining values of rural properties and hardly reflect any sustainable development factors in their valuations, since they believe that their professional opinions do not count and thus they accept any guidelines given by the acquiring authorities. As stated by Lorenz and Lu-tzkendorf (2008), "Property valuation and the services that property valuers provide are critical for the functioning of property markets, interconnected financial markets as well as of national economies. Poor property valuation has a domino effect and can lead to corporate financial crises, which can in return result in severe crisis within national economies." The failure of valuers to consider the need for sustainability in compensation determination thus contributes to the economic crises in the Niger Delta.

The compensation paid for the OUR project determined by the use of predetermined compensation rates, does not meet any known international standard definition of value as defined either by the OP 4.12 or IVSC (2007). It also does not meet the requirements of the African Charter on Human and Peoples' Rights 1986 nor meet the FAO (2009) basic principles of equivalence, uniformity and fairness. The acquisition process was not flexible to admit the opinions of the claimants as the IOCs were both the acquirers and the arbiters of the final compensation paid.

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