



COMPULSORY ACQUISITION FOR A DUAL CARRIAGEWAY BY A BENEVOLENT GOVERNMENT: MATTERS ARISING IN AKWA IBOM STATE

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Abstract:

The sides of any major road are densely populated with privately owned properties, crops and economic trees all courtesy of human activities. Consequently, the expansion of such roads or conversion to a dual carriageway, usually witnesses the issue of compensation with its attendant dissatisfaction among affected properties owners. The study examined the causes of dissatisfaction using Uyo-Ikot Ekpen Road as a case study. Questions were asked using a well-structured questionnaire administered to sample opinions of claimants and Estate Surveyors and Valuers involved in the road project. The results revealed that Inadequate compensation value, non-payment for the future value of income derivable from the acquired properties, economic trees and crops, lack of access to the determination of the compensation value, non-payment of interest on delayed payment and non-compliance with the law with respect to issuance of notice of acquisition are the causes dissatisfaction. It recommended for the effective and efficient application of compulsory acquisition and compensation procedure and a radical harmonization of all conflicting laws on compulsory acquisition and Compensation.

Keywords: *Assessment, Compensation, Compulsory Acquisition, Dissatisfaction, Dual Carriageway.*

Introduction:

Assessing compensation for roads dualization on privately owned properties is founded on the provisions of the laws, especially the Nigeria Constitution, (Sec. 44(1) 1999 and the Land Use Act Cap 202 of 1990. Specifically, Sec. 44 (1) of the Constitution states that- No moveable 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 a law that, among other things –

(a) Requires the prompt payment of compensation and,

(b) Gives to any person claiming such compensation a right of access for 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. On its part, Sec. 29(1) of the Land Use Act provides that, “If a right of occupancy is revoked for the cause set out in paragraph b of subsection 2 of Section 28 or paragraph 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”.

The principle of equivalence is crucial in determining compensation: affected owners and occupants should neither be enriched nor impoverished as a result of the compulsory acquisition. Olusegun (2009) asserts that the basic principle of compensation for acquisition is that it should be fair and adequate. It should restore the individual to a state where he is neither better nor worse off at the end of the revocation exercise. Compensation is a recompense for loss and must be approximate, as far as possible, to the money value unto which the owner might have converted his property, had the law not deprived him of it. Commenting on the method of assessing compensation, Olusegun (2009) observes that any method of assessment used by the acquiring authority to determine compensation must sustain the principle of equity under which the property owner is to be left whole in terms of naira and that the requirements for the payment of compensation on acquired lands include the right to compensation and social equity. Nuhu (2006) on his part argues that when land is compulsorily acquired for a just purpose, there should be prompt payment of and adequate compensation. FAO (2008) adds that financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition since in most cases, the money paid may not fully replace what is lost. Commenting on adequacy of compensation in Malaysia, Alias and Daud (2006) state that there is nothing in any compulsory acquisition laws that prescribes the measure or yardstick to apply in assessing the adequacy of compensation. In the

same vein, Ambaye (2009) states that despite the fact that the Ethiopian Constitution, under Article 40(8), provides that just and adequate compensation should be paid to the expropriated; the compensation paid is found to be inadequate. This suggests that compensation should not just be for use goods, it should take account of non-use goods. It is against this background that this study seeks to examine the various issues with respect to compensation using Uyo - Ikot Ekpene Road Project of the State Government as a case study. Specifically, this study seeks to find out whether or not the problem of the quantum of compensation lies with the approach(es) adopted in its assessment and emanates from other areas.

Study Area:

Ikot Ekpene is a city found in Akwa Ibom, Nigeria. It is located on 5^o18' latitude and 7^o71' longitude and it is situated at elevation 89 meters above sea level with a population of 15,548 males and 67,529 females (NPC. 2006) making it the second biggest city in Akwa Ibom. It is the political and cultural capital of Annang ethnic group in Nigeria (Nair, 1972). The town is located on the A342 highway that parallels the coast, between Calabar to the South East and Aba to the West, with the state capital, Uyo on this road to the East. Like most Annang communities, Ikot Ekpene has a tradition of self-improvement from its sons and daughters both near and far.

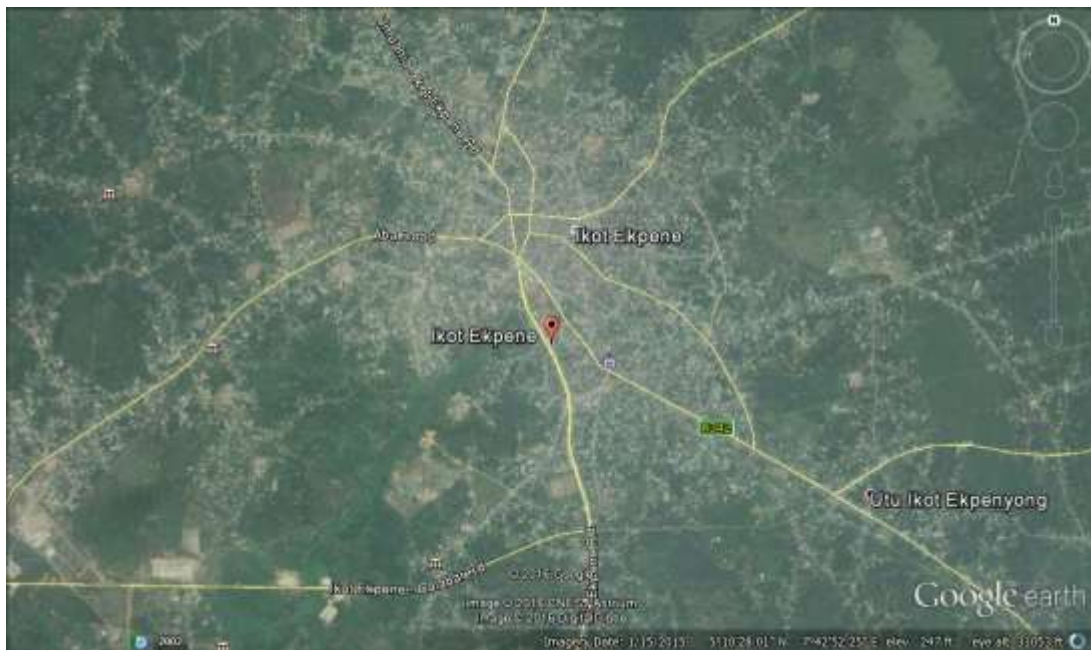


FIG. 1: SATTELITE VIEW OF IKOT EKPENE L.G.A. (Source: Google Earth)

Literature Review:

Several authors have justified 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 emphasize the fact that the process is statutory and that the enabling laws do provide the valuation methods to be adopted. Kortey (2003) and Larbi (2008) suggest that the manner by which the governments in many developing countries exercise the rights of compulsory acquisition undermines tenure security because often, little or no compensation is paid, which then have negative impacts on equity and transparency.

Nuhu (2007) reports that in 1978 indigenes in the Federal capital territory (FCT) of Nigeria faced problems of relocation when the government decided that “the meager funds available should be spent more on development of infrastructure rather than on payment of compensation” hence the ‘integration policy’ which was introduced in 1991, by the democratic government for the incorporation of existing settlements into Abuja. It was then revised to incorporate complete resettlement plans. Some residents were thus slated for this review which was further reaffirmed in 2003. Nuhu, further observes that the LUA is silent on the question of “Disturbance and injurious affection” which implies that dispossessed land owners are not compensated for certain losses such as goodwill. The study though comprehensive and apt for this research adopted a case study survey of only a residential location and tended to focus on applicable policy issues.

Ogedengbe (2007) recommended amongst other issues, the provision of basic infrastructural amenities such as pipe-born water, electricity, clinics, good roads, beside the compensation due, to dispossessed land owners. Ogedengbe further demonstrated that the compensation paid to residents whose lands were acquired was grossly inadequate. The study was however limited to the south western regions of Nigeria- specifically the oil exploration fields in the Niger-Delta region and may not be extended to other areas in Nigeria.

In another study by Nuhu (2008) it was concluded that the implementation of Public Land acquisition and payment of compensation in Nigeria has generated controversies, lapses and disputes in the past. Inadequate revocation notices, Inadequate Compensations, Illiteracy of the Claimants, Inadequate funding of

the Compensation exercise, Non-payment of interest on delayed payments, problems of conflicting Claims, Use of low rates for assessment of economic Trees & Crops, Non-enumeration for some Crops/ economic Trees, problem of identifying claimants (owners), disallowance of Surveyors to represent Claimants, communication problem, non-payment for undeveloped land, corruption of Government Officers etc. were problems identified from the findings in the study.

In Larbi (2008) the conclusions from the study tended to tilt towards policy frameworks in solving the problem and the paper did not solicit information directly from the concerned individuals. Kakulu et al. (2009) identified - ambiguity and lack of clarity of the relevant statutes, unsuitable prescribed methods of assessment, over-valuation and under-valuation of interests, lack of standards and clear definition of the functions of Government Agencies amongst others. Kakulu et al.'s study concentrated heavily on the research procedures employed, and on demonstrating how phenomenology as a diagnostic research could be applied to real estate research using that particular study as a demonstrative tool. There wasn't any empirical application demonstrated. There was no presentation as to the procedures used in analyzing or explaining either the qualitative or numerical data gathered for the study. Further, the authors were interested in disseminating the discrepancies between Real estate professionals' valuation figures and actual values. The conclusions though, seem to support the findings of Ogedengbe above.

In a collaborative research by Nuhu and Aliyu (2009), the study aimed at reviewing the compulsory revocation of communal titles by the governor of Niger state in Nigeria within the realms of statutory procedures for just and fair acquisition of communal land and payment of compensation. It was shown that "private convenience" does not translate to "public purposes" or "public infrastructure uses", thus, the compulsory acquisition of communal lands for private purposes becomes void. It was recommended that a radical harmonization of all conflicting laws on compulsory purchase and compensation should be effected as this would enhance the building of logical and sound valuation basis that would ensure that a person deprived of his property through compulsory purchase is entitled to no more and no less than what he is being deprived of. The study hinged on gathering data from selected

court cases on the subject matter on conflicts on compulsory acquisition and compensation.

However, the results and recommendations from a couple of court cases may not be adequate enough to be generalized across the whole study area. Even outside the realm of a localized context, Rowan-Robinson and Hutchison (1995) set out to establish the purpose of compensation arising from the compulsory acquisition of commercial premises for a city centre redevelopment scheme in Scotland. Findings from the study identified; delays, blight, the loss of goodwill, bank charges as disturbance claims, extinguishment of business, incurred expenses on relocation pending time of compensation payment, amongst key indicators to determine adequacy of compensation. "Most of the claimants expected that, as they were experiencing some loss in the wider public interest, there would be recognition of and sympathy for their plight. However, they were uniformly disappointed." Most of the claimants were dissatisfied with both the process and settlement values. This study though very comprehensive and in-depth, was mainly on compensations on business and commercial concerns from compulsory land acquisitions.

Alias and Daud (2006) reported that the main issue of land acquisition is the quantum of compensation that is perceived by the respondents as inadequate to fulfill adequate compensation notion under the spirit of the Constitution. They conclude that adequate compensation is not defined in the statute of Malaysia. However, one major observation from the study is that the population is not all encompassing as Estate-surveyors and Valuers mainly constituted the sample. Omar and Ismail (2009) elicited information from most of the landowners interviewed in the study, which highlighted the dissatisfactions with the amount of compensation offered to them. The recommendations proposed reviews to include payment of all genuine losses, common agreement on any amount of compensation between landowners and land administrators, no special consideration on land value, date of proposed acquisition, no proposed land use taken into consideration, quick payment, value plantations separately and the payment of solatium to the affected landowners, as more detailed elements of adequate compensation. Solatium is a payment to the affected landowners as an extra payment over the open market value of the land taken excluding the compensation for disturbances (Sarkar, 1998; Omar & Ismail, 2009). The study builds on a previous model on land compensation issues and benchmarks its

methods and findings against it. Most of the respondents surveyed were farmers dispossessed of their plantations. The study did not delve into developed residential lands. Munro-Faure (2009) states that even when compensation is generous and procedures are generally fair and efficient, the displacement of people from established homes, businesses and communities will still entail significant human costs. Where the process is designed or implemented poorly, the economic, social and political costs may be enormous. Attention to the procedures of compulsory acquisition is critical if a government's exercise of compulsory acquisition is to be efficient, fair and legitimate.

From the survey of literature above, there is hardly much review specifically addressing the plight of injuriously affected land owners. Though the Land Use Act of 1978 is silent on the issue, Uduehi (1978) points out that the silence does not infer a non-compensation status.

Methodology:

This study adopted the use of questionnaire to elicit information from some Estate Surveyors and Valuers in Akwa Ibom State who are competent professionals in the aspect of land acquisition and compensation on one hand and some claimants on the other hand. A total of 25 Estate surveyors and Valuers in the state were selected while a total of 120 Claimants whose interests were affected by the Uyo - Ikot Ekpene road dualization and Abak – Ikot Ekpene road dualization were randomly selected from the list of compensation schedule of expropriated owners.

A total of 145 copies of questionnaire were administered for the purpose of this study. Data collected were analyzed and presented with the aid of simple statistical methods.

Data Analysis and Presentation:

Primary sources of data for the study were basically the returned copies of the questionnaire administered on Estate Surveyors and Valuers that represented claimants on the negotiation for compensation in the study area and the returned copies administered on the claimants themselves.

Status of respondents:

To determine the reliability of data collected, the researchers sought information on the respondents' status in their respective establishment as well as their

academic qualifications and other issues bordering on knowing their profiles. The responses for the claimants and estate surveyors and valuers are indicated in Table 1 and Table 2 respectively.

Table 1: Biodata of Respondents

Characteristic(s)	Sub-headings	Frequency	Percentage (%)
Gender	Male	23	92
	Female	2	8
Total		25	100
Age	25 – 30 years	2	8
	31 – 35 years	4	16
	35 – 40 years	5	20
	41 – 50 years	8	32
	Above 50 years	6	24
Total		25	100
Status of Respondent	Principal Partners	18	72
	Partners	5	20
	Branch Managers	2	8
Total		25	100
Years of Experience	1 – 5 years	2	8
	6 – 10 years	3	12
	11 – 15 years	2	8
	16 – 20 years	5	20
	21 – 25 years	6	24
	Above 25 years	7	28
Total		25	100
Highest Professional Qualification	FNIVS	1	4
	ANIVS	22	88
	Probationer	2	8
Total		25	100
Higher Academic Qualification	HND.	5	20
	B.Sc.	19	76
	M.Sc.	1	4
	PhD.	0	0
Total		25	100

Table 1 above reveals that there were more males as practicing estate surveyors and valuers representing clients in the study area (92.0% and 8.0%). Regarding their ages, those within the age bracket of 41 – 50 years were the majority. Furthermore, the analysis in Table 1 shows that most of the estate surveyors had five (5) years practical experience. Twenty-three (23) of the estate surveyors representing 92% were corporate members of the Nigerian Institution of Estate Surveyors and Valuers. Also, the Table reveals the following: Principal Partners 18(72.0%) while 5 (20.0%) estate surveyors were Partners within the estate surveying firms and 2(8.0%) were branch managers. This suggests that the respondents are in a position to give vital information that is germane to the realization of the study. On academic qualifications of responding practitioners, the results show that the prominent level of academic qualification among the estate surveyors were Bachelor of Science (B. Sc) 19 (76.0%) , Higher National Diploma (HND) 5 (20.0%) and Master of Science 1 (4.0%), all in Estate Management. This has clearly shown that estate surveyors in Akwa Ibom State have not given priority to acquisition of higher degrees. Also, the highest professional qualification of most of the estate surveyors is ANIVS (Associate member of Nigerian Institution of Estate Surveyors and Valuers).

Table 2:

Characteristic(s)	Sub-headings	Frequency	Percentage (%)
Sex	Male	90	75
	Female	30	25
Age	25 – 30 years	10	08.33
	31 – 35 years	20	16.67
	35 – 40 years	10	08.33
	41 – 50 years	60	50
	Above 50 years	20	16.67
Marital Status	Married	80	66.67
	Single	30	25
	Divorcee	10	8.33
Years of Working Experience	1 – 5 year(s)	5	4.17
	6 – 10 years	20	16.67
	11 – 15 years	15	12.5

	16 – 20 years	30	25
	21 – 25 years	20	16.67
	Above 25 years	30	25
Higher Academic Qualification	SSCE/FSLC.	40	33.33
	HND.	25	20.83
	B.Sc.	40	33.33
	M.Sc.	10	8.33
	PhD.	5	4.17

Source: Field study by the authors

In Table 2 above, the Claimants interviewed for the cause of this study were 120 with a male – female ratio of 75% : 25%. Regarding their ages, 41 – 50 years formed 50% and 16.67% were above 50 years, while those of a physically productive age of between the range 25 – 30 years, 31 – 35 years and 36 – 40 years were 08.33%, 16.67% and 08.33% respectively. With 66.67% married, 25% still singles and 08.33% divorced.

Furthermore, the analysis in table 2 shows that, most of the claimant(s) years of active working experience fell on a percentage level of 25, 16.67 and 25 for the range 16 – 20 years, 21 – 25 years and 25years above respectively, while others forming the range of 1 – 5 years, 6 – 10 years and 11 – 15 years were 04.17%, 16.67% and 25% respectfully. Also, in terms of academic qualifications, while 33.33% were holders of FSLC/SSCE others were holders of higher qualifications with 5 of them representing 4.17% possessing Doctor of Philosophy (Ph.D.).

Relative Importance Index (RII):

$$\frac{RII = \sum a_i n_i}{\sum x_j}$$

Where: i= response category index

x_j = the sum of j factors 1,2,3N

a_i = constant expressing the weight given to the ith response.

n_i = the variable expressing the frequency of the ith

Table 3: Ranking of Causes of dissatisfaction to property owner(s)

Associated Causes of Discontent	Weight(s)					Total	RII	Ranking
	5	4	3	2	1			
Inadequate Compensation Value	50 <i>a_in_i</i> = 250	20 <i>a_in_i</i> = 80	25 <i>a_in_i</i> = 75	20 <i>a_in_i</i> = 40	30 <i>a_in_i</i> = 30	145 475	3.28	1st
Non payment of Interest on Delayed Payment	27 <i>a_in_i</i> = 135	40 <i>a_in_i</i> = 160	25 <i>a_in_i</i> = 75	13 <i>a_in_i</i> = 26	40 <i>a_in_i</i> = 40	145 436	3.01	4 th
No Notice of Acquisition.	30 <i>a_in_i</i> = 150	18 <i>a_in_i</i> = 72	36 <i>a_in_i</i> = 108	6 <i>a_in_i</i> = 12	55 <i>a_in_i</i> = 55	145 397	2.74	5 th
Non payment of compensation for Loss of Profit during Road Construction.	43 <i>a_in_i</i> = 215	13 <i>a_in_i</i> = 42	15 <i>a_in_i</i> = 45	17 <i>a_in_i</i> = 34	57 <i>a_in_i</i> = 57	145 393	2.71	6 th
Non payment for Disturbance	5 <i>a_in_i</i> = 25	33 <i>a_in_i</i> = 132	27 <i>a_in_i</i> = 81	45 <i>a_in_i</i> = 90	35 <i>a_in_i</i> = 35	145 363	2.50	8 th
Non payment for Injurious Affection	10 <i>a_in_i</i> = 25	25 <i>a_in_i</i> = 36	6 <i>a_in_i</i> = 105	50 <i>a_in_i</i> = 100	54 <i>a_in_i</i> = 46	145 312	2.22	9 th
Absence of Solatium.	20 <i>a_in_i</i> = 100	27 <i>a_in_i</i> = 108	33 <i>a_in_i</i> = 99	15 <i>a_in_i</i> = 30	45 <i>a_in_i</i> = 45	145 382	2.64	7 th
Non Payment for Loss of Goodwill on the Property.	5 <i>a_in_i</i> = 50	9 <i>a_in_i</i> = 100	35 <i>a_in_i</i> = 18	50 <i>a_in_i</i> = 100	46 <i>a_in_i</i> = 54	145 322	2.15	10 th
Non Payment for Environmental Imbalance (Noise and Air Pollution).	0	0	30	40	75	145 245	1.69	11 th

	a ₁ n ₁ = 0	a ₂ n ₂ = 0	a ₃ n ₃ = 90	a ₄ n ₄ = 80	a ₅ n ₅ = 75			
Non-Payment for the Future value of Income Derivable from the Acquired Properties, Economic Trees and Crops.	55 a ₁ n ₁ = 275	15 a ₂ n ₂ = 60	10 a ₃ n ₃ = 30	25 a ₄ n ₄ = 50	40 a ₅ n ₅ = 40	145 455	3.14	2nd
Lack of Access to the Determination of Compensation Value.	56 a ₁ n ₁ = 280	8 a ₂ n ₂ = 32	14 a ₃ n ₃ = 42	24 a ₄ n ₄ = 48	43 a ₅ n ₅ = 43	145 445	3.07	3rd
Mode of Payment of Compensation.	0 a ₁ n ₁ = 0	5 a ₂ n ₂ = 20	20 a ₃ n ₃ = 60	40 a ₄ n ₄ = 80	80 a ₅ n ₅ = 80	145 240	1.66	12th

Source: Author's Field Survey, 2020

Table 3 shows respondents' ranking on causes of dissatisfaction among property owners whose rights have been expropriated. The Table reveals that inadequate compensation value was the major cause of dissatisfaction as it ranked the highest with an RII of 3.28. This was closely followed by Lack of Payment of Present Value of Future Income Derivable from the Acquired Properties, Economic Trees and Crops, with an RII of 3.14 and Access to the Determination of Compensation Value, with 3.07 of RII coming in second and third position respectively. Other causes of discontent among expropriated property owners ranked in order of severity were non-payment of Interest on Delayed Payment (RII = 3.01), No Notice of Acquisition (RII = 2.74), non-payment for Loss of Profit During Road Construction (RII = 2.71), absence of Solatium (RII = 2.64), Disturbance Compensation (Relocation and Inconveniences) (RII = 2.50), Injurious Affection (RII = 2.22), non-payment for Loss of Goodwill on the Property (RII = 2.15), Payment on Environmental Imbalance (Noise and Air Pollution) (RII = 1.69) and Mode of Payment of Compensation (RII = 1.66).

CONCLUSION AND RECOMMENDATIONS

The study attempted to bring to the fore causes of dissatisfaction arising from compulsory acquisition and payment of compensation by acquiring authorities.

Findings from the study have revealed the following factors as being responsible: Inadequate compensation value, non-payment for the future value of income derivable from the acquired properties, economic trees and crops, lack of access to the determination of the compensation value, no-payment of interest on delayed payment and non-compliance with the law with respect to issuance of notice of acquisition.

The study recommends for a radical harmonization of all conflicting laws on compulsory purchase and Compensation as this will enhance the building of logical and sound valuation basis that would ensure that a person deprived of his property through compulsory purchase is entitled to no more and no less than what he is being deprived of. Furthermore, the Compensation code should be reviewed to include possible claim for disturbance. The displaced persons should be resettled as of right and where Claimants are willing to acquire alternative houses; Government should advance loans or provide enabling environment for the Claimant to achieve their desire. It also recommends that government should strictly adhere to the provisions of Section 44(1) of the Constitution in particular which provides that compulsory acquisition must be exercised in the manner and for the purpose prescribed by a law. The purpose has been illustrated by the Land Use Act under section 28(1). Also in public acquisition of land, strict adherence should be focused on the provision of the constitution. The Land Use Act should also provide a statutory definition of the phrase 'public interest' as it affects land usage in Nigeria.

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