

ASSESSING THE EFFECTIVENESS OF THE NIGERIAN COMPULSORY ACQUISITION PRACTICE IN ROAD INFRASTRUCTURAL PROVISION IN RIVERS STATE

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ABSTRACT

This study examines the effectiveness of the current acquisition and valuation practice. The paper is focused on the existing process and practice of compulsory land acquisition in road infrastructure and investigates the adherence of existing practice to international best practices. After reviewing provisions being applied internationally, a survey of Practicing Estate Surveyors and Valuers and some Landowners, complementing the survey, with face-to-face interviews were done. Findings indicate that there is unfairness and absence of transparency which are the benchmark of international best practices. The study recommends that best practices be adapted and effectively implemented to ensure that affected persons are placed in the position they were before the acquisitions.

Keywords: compulsory acquisition, assessing, acquisition and valuation practice, infrastructure, international best practices.

INTRODUCTION

In Nigeria like other developing countries, urban infrastructures require land within and around major cities. Unavailability of enough land to accommodate the required infrastructure as a result of urban growth becomes most of the fundamental challenges which necessitate the government to use compulsory land acquisition power (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. Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society (FAO, 2009). This power is necessary for social and economic development and the protection of the natural environment. Land must be provided for investments such as roads, railways, harbours and airports; for hospital and schools; and for the environmentally fragile areas. Government cannot rely on land market alone to ensure that land is acquired when and where it is needed, compulsory acquisition of such land is the only option in most countries where the state deems the acquisition to be beneficial to the society (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. 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 complication into the practice of valuation for compensation that is not usually associated with other forms of valuation (Vitanen and Kakulu, 2008). Nuhu (2007) attributes the controversies associated with compensation to the provisions of statutory methods of

valuation contained in the Land Use Act Cap L5 LFN 2004. The Land Use Act Cap L5 LFN 2004 is the main statute governing Land acquisition and assessment of compensation in Nigeria. Compensation for compulsory Land Acquisition under Common law is based on open market value; that of the Land Use Act Cap L5 LFN 2004 is calculated on the unexhausted improvement on land based on depreciated replacement cost plus ground rent, if any paid by the owner in the year of revocation of right of occupancy (Nuhu, 2008). Kakulu (2007) argues that the replacement cost method of valuation is based on a faulty assumption that cost is related to value. Kalu (2001) observed that the methodology which appears to be depreciated replacement cost approach to valuation is a valuation method applied where there is no comparable rental evidence. This explains the reason why the method is suitably used for valuing specialised properties, which rarely exchange hands. Some properties compulsorily acquired are income-producing 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 acquired for public purposes in Nigeria is contentious (Nuhu, 2008). Compulsory acquisition of urban properties for infrastructural developments such as road expansion should undergo a public examination that ensure the balance between the public need for land and the protection of property rights is properly considered, and that compensation reflects the profit potential of the land to be acquired. Therefore, this research will examine effectiveness of the current practice of compulsory acquisition and valuation in road infrastructural provision and to investigate if it adheres to world best practices. The study is based on the Elelenwo/Akpajo road expansion/upgrading in Port Harcourt as a case study, where the Government of Rivers State acquire plots with buildings and paid compensation.

REVIEW OF RELATED RESEARCHES

There are massive body of empirical evidence gathered over the years that the compensation determined under the Land Use Act cap L5, LFN 2004 cannot solve the task of restoring income and livelihood to their pre-project levels.

Okolo (2000) observed that the problem of inadequate compensation that characterised our compensation practice in Nigeria is rooted in the various laws that govern compulsory acquisition and compensation in this country. He concluded that these laws need to be reviewed in order to reflect the current circumstance.

Kakulu (2007) reveals that ambiguity, lack of clarity, inconsistency in content and interpretation of enabling statutes (Land Use Act Cap L5 LFN, 2004) are partly responsible for inadequate compensation. The research further reveal that the application of multiple standard, procedures and methods of valuation results in alarmingly wide discrepancies in compensation values over the same interest in land. The paper concludes that the assessment process could be improved considerably by the introduction of a compensation valuation code in Nigeria. It also suggests that such a code should be guided by international standards of valuation for compensation.

Udoekanem (2013) in his study analysed data from cases of environmental assets severely damaged by gas flare and the estimate of compensation based on the provision of Nigeria's land Use Act, which is the country's Land Policy document. Result shows that compensation determined based the basic valuation methods were far higher than those determined on the provisions of the Land Use Act Cap L5 LFN 2004. The paper argues that compensation paid for compulsory acquisition provided in Section 29 of the Land Use Act is inadequate.

Nuhu (2008) reveals that, apart from delayed payment of compensation, current provision of the law cannot adequately compensate dispossessed owners. The study recommend that the enactment of a definite legislation that will be applicable to the incidence of landholding in the FCT, Abuja and establishment of Lands Tribunal system to deal with compensation valuation issues in all the states of the Federation including Abuja.

Ajoku (2000) notes that compensation assessment for the purposes of payment in accordance with the provisions of the enabling laws would always result to inadequate compensation due to obvious gap in these provisions. He focused on compensation generally under the Land Use Act without specific interest in the Niger Delta.

Otubu (2012) submitted that the process under the Land Use Act has changed the equilibrium that existed between private property rights and compulsory acquisition and produced a skewed and unfavourable result to the detriment of private property rights and national economy. It finally proposed a new equitable arrangement to the quagmire. The paper recommends legislative reform particularly in the area of a unified law and Policy on the subject.

Akujuru and Ogbonda, (2016) opined that the current statutory provision of the Land Use Act raise certain contemporary issues ranging from conflict of statutory provision with constitutional requirements, proper definition of property right, use of statutorily dictated valuation methods which results in the payment of inadequate compensation that fails to restore the beneficiaries to their *status-quo-ante*.

REVIEW OF RELATED LITERATURE

Acquisitions Procedure in Urban Properties in Nigeria

The various steps involved in compulsory acquisition and compensation in Nigeria according to Ibagere (2010) are: i) Inspection of a selected parcel of land by the professionals from the Ministry of Lands and Survey, ii) Issuance of notice of intention to acquire land to the disposed owner in government gazettes, daily papers or by pasting the notice on the trees or nearest buildings, and to yield up possession within 6 weeks, iii) Property identification, iv) Receiving of petitions, objections and complain over compensation.

Ifediora (1988) cited in Akinlabi (2009) summate the procedure for acquisition in Nigeria as follows: i) Notice of Acquisition, ii) Procurement of Brief, iii) Claim Survey, iv) Assessment for compensation, v) Valuation Report, vi) Payment of compensation, vii) Professional fees.

The procedure for compulsory acquisition requires adequate notice to be given to the owner, compensation to be paid and the acquisition must be for public purpose (Nuhu and Aliyu, 2009). Ibagere(2010) argues that six weeks is too short a time for computations of adequate claims to be made. He note that the issuance of notice of acquisition through government papers, gazette or pasting on trees and buildings on or near the land makes it difficult in most cases for actual owners who are illiterate to become aware of any intention to acquire their land which in turn gives loopholes for fraudsters to cash in and reap when they did not sow.

Components of Compensation and Valuations Procedure under the Land Use Act

Section 29(4) of the Land Use Act provides that compensation should be paid in respect of the following:

- (a) The Land, for an amount equal to the rate, if any, paid by the occupier during the year in which the right of occupancy was revoked;
- (b) Building, installation or improvement therein, for the amount of the replacement cost of the building, installation or improvement, that is to say such cost as may

be assessed on the basis of the prescribed method of assessment as determined by the appropriate officer less any depreciation, together with interest at the bank rate for delayed payment of compensation and in respect of any improvement in the nature of reclamation works, being such cost thereof as may be substantiated by documentary evidence and proof to the satisfaction of the appropriate officer;

- (c) Crops on land, apart from any building installation or improvement thereon, for an amount equal to the values as prescribed and determined by the appropriate office.

There is no compensation for bare land undeveloped irrespective of whatever cost incurred at acquiring the land either from the state or the community. Otubu (2012) notes that the valuation is done by the state without input by the victims in terms of representation and or raising objections against the whole process. Compensation recoverable for unexhausted improvement on the land is pegged at replacement cost less depreciation, meaning that the compensation payable will be insufficient to replace the installation a new.

Gap analysis of Land Use Act and ADB requirements for acquisition and compensation

In an attempt to identify the gaps in compulsorily acquisition between countries and institutions, the Nigerian legislative requirement for compensation and the Agricultural Development Bank (ADB) Policy is reviewed to determine which of them offers more favourable compensation to dispossessed land owners.

<i>Compensation issue</i>	<i>Nigerian legislative Requirement</i>	<i>ADB Policy</i>	<i>Gap</i>
Timing of Acquisition and Compensation payment	No Provision	Acquisition timetable is prepared for any displacement and relocation.	LUA does not stipulate time frame in acquisition and compensation. There is no consistency as requirement in payment.
Calculation of compensation	Assessment of compensation that is not fare and adequate	Valuation procedure for assessing compensation and rates are transparent and cash compensation should be sufficient to replace the lost asset or equipment to estimated net loss.	LUA stress on predetermined rates by government, and does not have regards to the locational attribute of the property.
Components of compensation	Ground rent, buildings, and crops on land.	Land, compensation for loss of structure, compensation for loss of crops, compensation for common property resources, compensation for loss	LUA has restricted number of heads of claims, and ignores the value of Land.

Methods of valuation	Depreciated replacement cost.	due to displacement of communities	Comparable site income approach, contingency, valuation method, Gross market value , Average annual yields, Replacement cost.	ADB policy recognizes that replacement value should be equal to market cost plus transaction cost such as preparation, transfer and registration fees and tax provided that information about market is reliable.
Participation	No specific provision	Affected persons should be fully consulted about what is involved in compensation package and should have basic access to mechanism for enforcing their entitlement.	ADB requires that all affected persons be given full participation and the acquisition process.	

RESEARCH METHODOLOGY

Several sources of data and methods of data collection were used in this study. This strategy is used to minimize the degree of specificity of certain methods to particular bodies of knowledge. The research made use of basically primary and secondary data to get the required evidence. Gallimore (1996) cited in Akujuru (2014) stress that to investigate valuers perception of the stages of the valuation process and in particular the stages that involve decision, about the selection of comparable, we can use postal questionnaires or with small samples, conduct an interview. In this study, we adopt interview, questionnaire, and observation to achieve the research objective and to answer the research question. Questionnaires were mostly closed questionnaires and were pre tested before issued to the respondents.

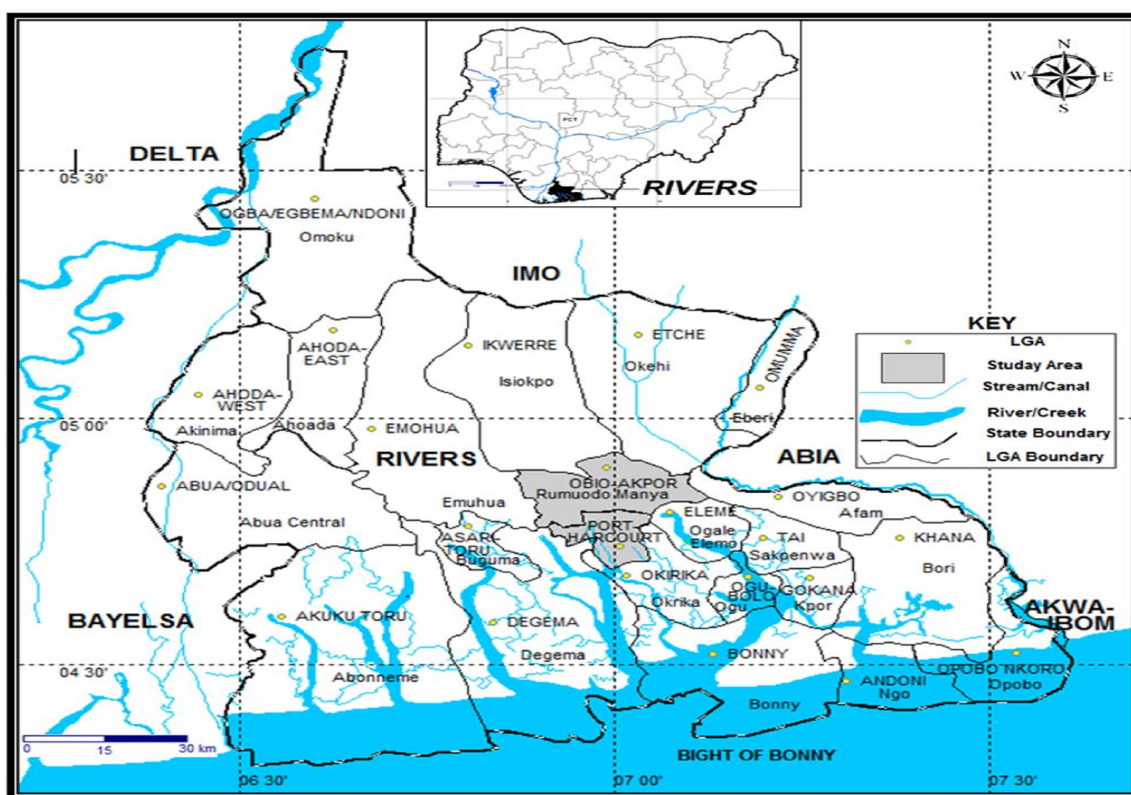
The nature of the sample requires these members of the sample be: Practising Estate Surveyor and Valuers in Rivers State and Land owners (claimant) from the study area. Because of the nature of case study, the research questions and objective of the study different sampling methods were used; these are Snowball, and Purposive sampling. The Snowball sampling method was used to select respondents from the affected land owners. In order to get affected land owners, the researcher managed to get one land owner who led the researcher to get the next land owner for interview. These trends continued uniformly for the rest of the affected land owners' hence purposive sampling.

Accordingly, the sampled practising estate surveyor and valuers in Rivers State were identified from the directory of the Nigerian Institution of Estate Surveyors and Valuers in Rivers State (2010). These professionals were selected purposively based on years of experience. A sample size of 42 practising estate surveyor and valuers was considered

appropriate and were given questionnaire which will help to supplement data from interview. The selection of professionals is restricted to Rivers State because the case study (Eledenwo/Akpajo Road) is in Port Harcourt that serves as the capital of Rivers State. Questionnaires were mostly closed questionnaires and were pre tested before issued to the respondents.

CASE STUDY

The study is restricted to Eledenwo/Akpajo road expansion project in Eledenwo, a suburb in Port Harcourt where land acquisition took place. Port Harcourt is located between latitude $4^{\circ} 45' N$ and latitude $4^{\circ} 55' N$, and longitude $6^{\circ} 55' E$ and longitude $7^{\circ} 05'$ in Rivers State. It is a city in the Niger Delta region of Nigeria. Port Harcourt is one of the fastest growing centres in Nigeria. Based on the 2006 census, the population of Port Harcourt was estimated to be 1,382,592 with a growth rate of 5.8%. Currently the population size of the town is estimated to be 1,947,000. The town is covering a total land area of about 239.6km^2 .



Source: Adapted from Akukwe T.I., and Ogbodo C. (2015)

Figure 1: Map of Rivers State showing Port Harcourt metropolis

ANALYSIS AND RESULTS

Acquisition process and procedure in Rivers State

Acquisition procedure requires notification of affected land owners of government intention to acquire. Possible sources of such information are through government gazette notice; radio, television and newspaper; notice on trees and nearest buildings; community leaders; and meetings. Respondent land owners were asked to state how they get information about government intention to acquire their land. Figure 2 shows the descriptive analysis of the responses which indicate that the majority of the respondent 15(50%) got their information from gazette notice, 6(20%) of them said Radio, Television and Newspaper, 4(13.3%) said

notice on trees and nearest building. Only 3(10%) and 2(6.7%) got their information about government intention to acquire from meetings and community leaders respectively.

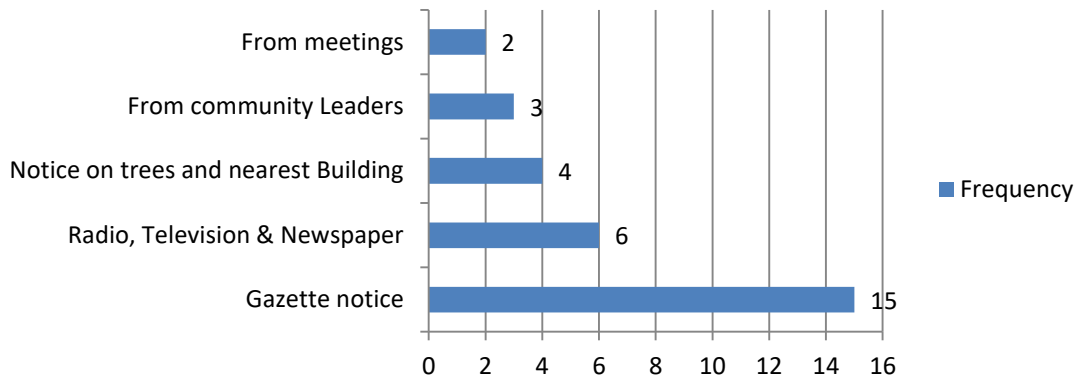


Figure 2: Notification of Land owners

Source: Field survey, 2016

To further investigate process of acquisition respondent land owners were asked state how much time they were given to relocate before acquisition. Responses reveal that 24 (80%) of them said the time given was between 1-6weeks. This is clearly shown in the figure 3 below.

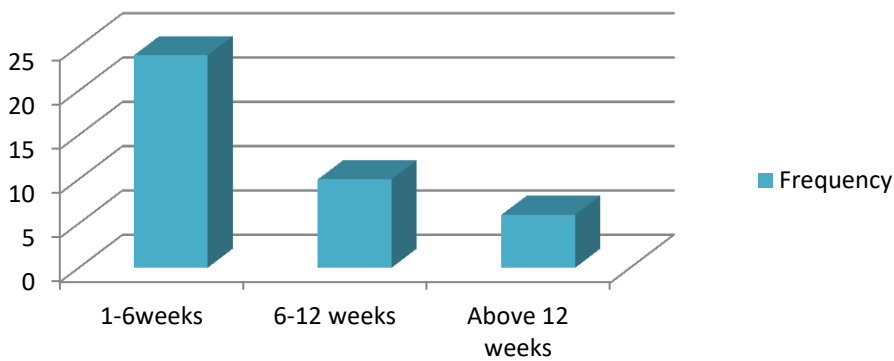


Figure 3: Timing of Acquisition Source: Field survey, 2016

However, to further investigate the process and procedure of acquisition, respondent were asked to indicate whether they were aware of the items to be compensated for. Figure 4 below shows that majority of the respondents 22(73.3%) are not aware of the item to be compensated when their properties are compulsorily acquired. However, only 8(26.7%) agree that they were aware.

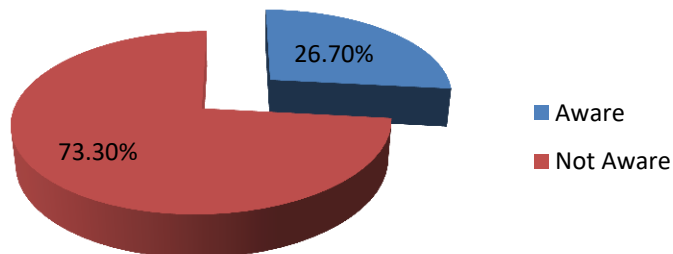


Figure 4: Awareness on the Item to be compensated

Source: Field survey, 2016

Similarly, the affected land owners were also asked about how their views were reflected in the assessment of compensation. Figure 5 below gives a clear explanation.

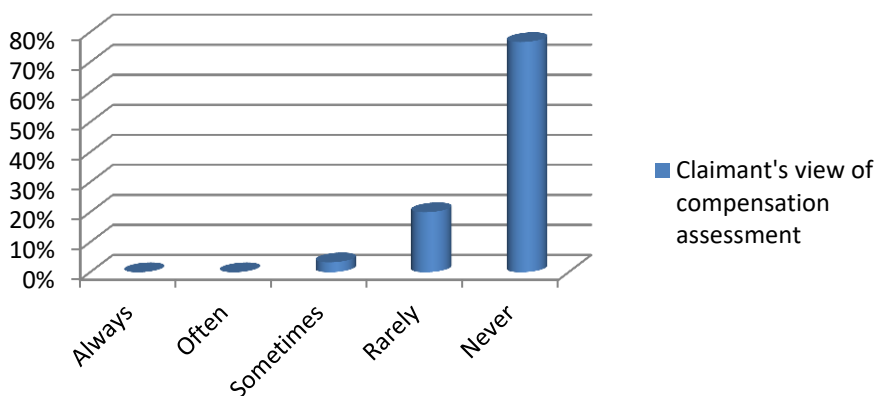


Figure 5: Claimants' view of compensation assessment

Source: Field survey, 2016

In their response, 76.7% representing 23 respondents said their views were never reflected in the compensation process, 6(20 %) said their views were rarely reflected; 1(3.3%) said their views were sometimes reflected. The responses show clearly that claimant views were not reflected in the compensation process. Further, an interviewee Valuer from valuation firm engaged in the valuation of the case study corroborates these findings when he said:

"...of a truth, these land owners were not given any opportunity to express their concern. Most of them suspected our compensation amount"

Adherence of existing practice to international best practices

Having established that there are best practices and the need for existing practice to conform to such standard. It was necessary to find out whether the current practice adhered to it. To compare the existing practice with best practices, the various responses are averaged and the mean determined as shown in table 1 and 2 below. The mean summarizes data by a representative value for purposes of comparison (Nworuh, 2004).

Table 1. Adherence to land acquisition best practice criteria

Items	Land Acquisition Best Practice Criteria	Mean
1.	Develop and implement clear and transparent land acquisition procedure	3.17
2.	There should be timely notification and consultation with land and property owners	3.0
3.	Affected persons should be given opportunity to be heard and to have their concerns acknowledged and addressed by acquiring authority.	3.02

Legend: 5 = Always Adhere; 4 = Often Adhere; 3 = Rarely Adhere; 2 = Unsure; 1 = Never Adhere.

Table 1 above shows the general ranking of existing practice against statements of land acquisitions best practices criteria of the World Bank and ADB. It indicates that the existing practice of land acquisition in Rivers State rarely adhere to best practices. All the feelings

expressed by the respondent in the list have scored a mean score of more than 3.0 but less than 4.0 meaning that existing practice rarely adhere to world best practice of land acquisition.

Table 2. Adherence to compensation payment best practice criteria

<i>Items</i>	<i>Compensation Payment Best Practice Criteria</i>	<i>Means</i>
1	Compensation should be made to all affected persons including those without title to land	1.50
2.	Pay in kind and/or in-cash in time before relocation and civil work start.	3.12
3.	Pay compensation at replacement cost for the cost of restoration in time	1.31
4.	Encourage disclosure of information and the use of negotiation or arbitration procedure	1.76
5.	Ensure regulation are specific enough to provide clear valuation guidelines, but flexible enough to allow room to determine equivalent compensation in all situation.	1.69

Legend: 5 = Always Adhere; 4 = Often Adhere; 3 = Rarely Adhere; 2 = Unsure; 1 = Never Adhere.

To further investigate adherence of existing practice to international best practices, Table 2 above itemized 5 listed statements of best practices on compensation payment. Respondent indicates that existing practice never adhered to all the statement of best practices on compensation payment with a mean score less than 2.0 except item 2 (M = 3.12) which respondents indicated that they rarely adhered

DISCUSSION OF FINDINGS

The acquisition process and procedure for acquisition of urban property for road infrastructure as currently practiced in the case study is discussed as follows.

Poor Publicity and Notice Delivery

The source of how people get information about government intention to acquire as shown in figure 2 clearly indicates that gazette notice is the main source of communication by government which rarely gets to the people. However, some affected persons get to know about the government intention to acquire through radio and newspaper, notice on trees and buildings. It is interesting to note that people that stay away from their land hardly get information when notice is placed on trees and buildings. This shows that there was poor consultation with the people due to poor notice delivery. Findings deduced from the way people perceived notification for acquisition can be likened to a classroom situation where people are taught and made to comprehend every procedure of acquisition.

Inadequate Time for Relocation

The Land Use Act Cap L5 LFN 2004 did not provide specific time to be given the people to relocate before acquisition. Result of the survey in figure 3 indicates that majority of the affected land owners were dissatisfied with the time given. Discussion with land owners shows that the time given was not sufficient enough to allow the affected landowners prepare ahead to the acquisition of their land and attached properties to avoid any injurious affection likely to occur during demolition of the buildings.

Lack of Transparency in the Compensation Assessment

Lack of transparency in the assessment of property values for compensation was one of the common problems revealed by the study, where majority (73.3%) 22 of the affected landowners were not aware of the items to be compensated (Figure 4). The study also established that views of the affected persons were not reflected on the compensation process (Figure 5). The confidentiality of the compensation assessment process led to suspicion of claimants about the compensation amount.

Non Adherence to Good Practices

The World Bank (WB) and Asian Development Bank (ADB) project reports of different countries have shown that there are several best practices criteria (Worldbank, 2001; ADB, 1998). These best practices criteria were identified in the reviewing of provisions being applied internationally and used to benchmark existing practice of acquisition and compensation in the case study. Findings of the study showed that existing practice are not satisfactory enough to meet the needs of the affected landowners and on the other hand, the existing practice is rarely or not in adherence to the best practice criteria. From the results of the study in (Table 1), it shows that existing practice of land acquisition rarely adhere to the best practice while that of compensation in (Table 2) is not in adherence to the best practice criteria.

CURRENT ISSUES AND CONCERNS

The statutory provision of the Land Use Act raises a lot of issues and concerns especially when such acquisition is for urban properties. Some of these issues include:

- (a) **Inadequate Compensation:** Kakulu (2008) reasons that provisions of Section 29 of the Land Use Act are grossly inadequate for the purpose of achieving fair or adequate compensation because of its restrictions on the number of heads of claims as well as non-payment for undeveloped land. Commenting on the above provision, Ezeanwa (2016) notes that a typical – affected person naturally expects to receive money that will enable them buy a new plot of land, build a new structure and take care of all the attendant losses and relocation expenses. He argues that the Land Use Act only provides for the payment of compensation which is not necessarily “adequate compensation”.
- (b) **Non-inclusion of Just terms compensation principle:** the provision for compensation under the Land Use Act does not mention neither the principle of just terms compensation or value to the owner. The ‘Just Compensation’ principle aims at providing disposed groups with adequate financial compensation
- (c) **Basis and Methods of Assessment:** The method does not recognise the open market value of the property itself, but is based on replacement cost of improvements and crops. Akujuru (2016) argues that the use of pre-determined rate to determine the depreciated replacement cost of a building can hardly yield a compensation that will enable the dispossessed replace his building, thus raising some issues of inequity.
- (d) **Undefined Interest in Land:** There are many interests that can be held in land for example freehold, leasehold, and easements are common interest in land. In land acquisition, including compulsory land acquisition, it is an interest in land that is actually acquired. The LUA assumes that only the occupier of an acquired land has an interest to be compensated while it is accepted that the radical title to land is vested

in the governor. This multiplicity of interests poses practical valuation problems for valuers.

CONCLUSION AND RECOMMENDATION

This paper has discussed the existing process and practice of compulsory land acquisition in road infrastructure and has investigated the adherence of existing practice to international best practices. According to the survey results, existing practice of compulsory acquisition in urban land indicate that there is unfairness, inconsistencies, absence of transparency, diminished trust of the affected land owners in the acquisition, suspicion on the compensation amount and non-adherence to international best practices. To ensure people are not impoverished and their right to land adequately protected when government compulsorily acquire urban land for road infrastructural development, it is necessary that best practices are adapted and effectively implemented to ensure that affected persons are placed in the position they were before the acquisitions. Pre-requisite for this are appropriate legislation with clear and transparent acquisition procedure that ensure people know their rights throughout the process.

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