

**Peer Reviewed*

An Evaluation of Compensation Valuation Practice in Nigeria

Austin Otegbulu¹

¹University of Lagos, Lagos, Nigeria (cotegbulu@unilag.edu.ng)

Abstract

The paper evaluates the practice of compensation valuation in Nigeria in the context of statutory provision and existing Nigerian Valuation standard with a view to determining if the valuation represents a fair and adequate compensation. The study reviewed existing rates in line with economic realities. Case study valuations were undertaken to demonstrate the adequacy or inadequacy of the existing practice.

Findings from the study indicate that the existing valuation practice represents an undervaluation of affected assets, which could lead to dissatisfaction by project affected persons. The practical implication of this is that it could lead to disturbance and delay in project implementation. The study recommends a review of existing statutes and correct application of valuation standard as contained in the statutes and the provisions of the new Nigerian Valuation standard with regard to compensation to enhance fairness in compensation valuation.

Keywords: Compensation; economic-value; rates standards; valuation.

Introduction

In this paper, we are dealing with adequacy of compensation payment arising from compulsory acquisition of land, structures, economic trees and crops. Compensation could arise from loss of assets with spiritual and cultural values like shrines, bad bush, burial grounds, streams and rivers, places with spiritual values, pollution, loss of water rights, economic displacement leading to loss in means of livelihoods, people who suffer hazards and shocks etc. In Nigeria and some other countries compensation valuation is statutory in nature. Situation do arise, where there is a lot of inconsistency in the valuation for compensation claim by different valuers due to wrong interpretation and application of statutory provisions for compensation valuation. Whatever is the case, valuers in every clime must speak with one voice and be guided by specific standards that will introduce consistency, uniformity and reliability in the valuation of assets for compensation. In the absence of standards, the outcome is chaos and anarchy.

It is important that both valuers and acquiring authorities do recognise the importance and sensitivity attached to land and related assets by indigenous communities who in most times depend on natural capital for their survival. Land is a source of wealth and plays a major role in the existence and survival of mankind. Whenever we touch on land, we touch on everything. It means life to many and source of capital to indigenous communities. In consequence we must ensure fair and adequate compensation whenever land is acquired compulsorily.

There will always be a need for government to acquire land for public interests like roads, schools, rail line etc. This must however be carried out in the line with statutory provision because an authority cannot normally, without a clear statutory authorisation, take rights over land. The above statement is buttressed by Lord Denning MR (Master of Rolls as he then was) In the case of *Prest v Secretary of State for Wales*. He stated inter-alia:

That it is clear that no minister or public authority can acquire any land compulsorily except the power to do so be given by Parliament; and that Parliament only grants it, or should only grant it where it is necessary in the public interest. In any case therefore, where the scales are evenly balanced for or against compulsory acquisition, the decision by whomever it is made should come down against compulsory acquisition. I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorized by parliament and the public interest decisively so demands. If there is any reasonable doubt on the matter, the balance must be resolved in favor of the citizen. (Egbenta and UdoUdoh (2018)).

Also, section 44 (1) of the Nigerian Constitution (2018) as amended states as follows:

No moveable or any interest in any 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 law that among other things -

Require the prompt payment of compensation thereof; and gives 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

In the light of the above, it is crystal clear that entitlement to compensation is a legal right enshrined in the constitution of the federal republic of Nigeria. However, taking a deeper look at the provisions of sec 40 (1) of the constitution that any right in property acquired compulsorily must be compensated for but the Land Use Act precludes compensation for interest in undeveloped land. It only allows for a refund of rent (ground rent) if paid. If you have not paid your ground rent on the year of acquisition, no refund or payment will be made to you. Many states including the federal government collect premium (sometimes running in millions of naira) from allottees of land including development levy, without provision for the refund of such a huge amount paid into the government treasury when land is compulsorily acquired. This author submits that there is a need for a judicial interpretation of section 44 of the constitution with respect to payment of compensation for undeveloped land. The question here is, what is the difference between refund and compensation. The occupier or owner of an interest in land pays an annual ground rent for the use of land, the government acquires the land compulsorily, refunds the ground rent paid for that year. The owner is deprived of the use of the land for the unexpired tenure and receives nil compensation for being deprived of the right for continued use of the unexpired interest in his land; What if the land has just been disposed for the sum of 80 million naira and the vendor goes away with the sale proceeds and after one year, the land is acquired compulsorily by the government. The new owner gets nothing. What then is the spirit and purpose of the Land Use Act? To bring hardship and poverty on the citizens?

According to Kasumu (2022), the obligation of the government to compensate for expropriated privately owned land in Nigeria is a major issue affecting fundamental human rights. Compensation should not make a dispossessed person worse off. Can we say that compensation under the Land Use Act is fair and adequate. Odudu (2002) cited in Otegbulu (2005) opines that the Land Use Act is faulty in guaranteeing fair compensation as; it is obvious that the laws as they stand do not guarantee the claimant fair and adequate compensation as provided in Sec 44 of the 1999 constitution of the Federal Republic of Nigeria. Efforts should be made to address this issue constitutionally and under fundamental human rights.

The focus of the study is to evaluate the provision of the relevant laws guiding valuation (including the relevant provision of the Nigeria Valuation Standard) for losses arising from compulsory acquisition, and damage/injurious infection to land with a view to:

- demonstrating their application in compensation valuation by practitioners in the study areas.
- the adequacy of the valuation outcome based on statutory provisions.
- how the provision of the Nigerian valuation standard 2023 can help in enhancing the adequacy of compensation payable.
- to apply Total Economic Value (TEV) concept in the determination of compensation under the existing practice by valuers in the study area.

Literature Review

The need for the government to acquire land for public purposes gives rise to compulsory acquisition which could be described as involuntary displacement. It (compulsory acquisition) is the power of the government to acquire private land for public purposes in violation of the willing consent of the owner Keith (2008 cited in Lindsay 2012). This power is called by different names depending on the country's Legal Systems. They include: expropriation, eminent domain, taking and compulsory purchase. (Lindsay (2012)). It is a useful tool that helps the government to acquire land when needed for public infrastructure and related projects considering the limitation of the existing land market in being able to meet this essential need. Involuntary displacement has a lot of consequences on the affected communities. Whenever people are displaced, they suffer both physical and economic displacements. There is the human cost with regard to disruption to community cohesion, livelihood pattern and way of life, difficulty in adjusting to new environments, dislocation from the sources of means of livelihood etc. Displaced persons must also be adequately compensated in the context of the above.

Relevant Laws

Land Use Act Of Compensation

The principal law guiding compulsory acquisition and compensation in Nigeria is the Land Use Act of 1978 now known and cited as CAP 15 laws of the Federal Republic of Nigeria 2007. The

other laws are Sec. 44 of the Nigeria constitution, Mineral Act No. 24 of 1999 and Petroleum Act CAP 338 of 1990.

Section 29(i) of the Land Use Act states that if a right of occupancy is revoked for the cause set out in paragraph (b) of Subsection 2 of Section 28 or in paragraph (a) or (c) of Subsection (3) of the same section, the holder and the occupier shall be entitled to compensation for the value at the date of the revocation of their unexhausted improvements.

If the right of occupancy is revoked for the cause set out in paragraph(c) of Subsection (2) of Section (28) or in paragraph(b) of Subsection (3) of the same Section, the holder and the occupier shall be entitled to compensation under appropriate provisions of the mineral act or the mineral Oils Act or any legislation replacing the same.

It further states that compensation under this Subsection shall be

The Land — For an amount equal to the rent if any, paid by the occupier during the year in which the right of occupancy is revoked.

Buildings, installations or improvements thereon will be the replacement cost less any depreciation.

Crops and economic trees. An amount equal to the value as approved by the appropriate officer

According to Ajibola 2013 section 29 of the Land Use Act provides compensation for only land, buildings, installation and improvement thereon, and crops, while The Petroleum Act Section 11 (5a) considers compensation for building crops and profitable trees. The aftermath of this undercompensation is dissatisfaction among displaced person and victims of pollution in the oil communities and other parts of the country (Otegbulu 2013, Ajibola 2013, and Egbenta 2010).

Akujuru 2013 is of the view that the major reason for low compensation payment is poor interpretation of the relevant laws in addition to poor understanding of the Concept of Replacement Cost.

The appropriate officers who should guide valuers are often more of the problem than the solution. For the avoidance of doubt the appropriate officer is either the Director of Land in the state or Federal Lands Department. It should also be noted that in almost all the cases the appropriate officer is a qualified Estate Valuer whose practice is regulated by the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON). It has been argued by Otegbulu (2013) that ESVARBON should provide a standard for Compensation practice that will guide the appropriate officer in the discharge of both his Statutory and Legal functions under the Act.

Compensation paid should not place the displaced person in a worse position than he was before the displacement. A general and long standing view is that compensation should be guided by the objective of equity and equivalence. By implication, the adequacy of compensation should be measured against the benchmark or goal of ensuring that people are neither impoverished nor enriched (Lindsay 2014). The author further submitted that:

“Displaced persons should be assisted in their efforts to improve their livelihood and standard of living or at least restore them, in real terms to pre-displacement levels or to levels prevailing prior to the beginning of proper implementation which ever is higher.”

This is important particularly in the rural areas where the livelihood of the people depend on natural capital. When you touch on Land, you touch on their very existence.

FAO (2009) stated certain principles that need to be satisfied in a proper compulsory acquisition and compensation process, which is that the procedure should safeguard the rights and interest of the people who lost their rights or ownership through displacement of their land. There should be equity and transparency.

Adequacy of Compensation

The need for adequacy of compensation particularly for project affected persons is very much highlighted by the World Bank in their policy on involuntary resettlement as contained in OP 4.12. In the document, it is stated that displaced persons should be assisted to improve the livelihoods and standards of living or at least restore them in real terms, to pre-displacement levels existing before the commencement of project implementation. By implication, this involves payment for or provision of alternative accommodation, loss of income and all other costs that will restore the affected person to pre-project implementation level. Under the Land Use Act some claims like land and loss of income or business are not paid for. As earlier mentioned, Akujuru (2013) is of the view that the major reason for low compensation is the definition of the compensation concept and the meaning of replacement cost provided in the enabling laws which is differently interpreted by different professionals depending on whom they represent. If they represent the claimants they will want to insist that replacement cost should not be depreciated while the reverse becomes the case when they are representing the acquiring authority. In the same vein, Akujuru (2013), Otegbulu (2013) and Odudu (2002) state that the application of fixed rates for the valuation of crops and economic trees is not supported by any known statutes but promoted by appropriate officers out of ignorance, hence the need for standardisation of compensation valuation practice. Maraph and Zakariyyah (2020) argued that compulsory land acquisition has generated a lot of crises over the years due to the failure of the acquiring authority to pay adequate compensation on the guise that its operators are guided by the provisions of the law. They further stated in the findings of their study that methods of compensation valuation are inequitable, unfair to the claimants and negates the principle of equivalence which requires that claimants should not be

better off or worse off after acquisition. Without doubt, fair and adequate compensation is a fundamental human right which is clearly entrenched in the African Charter on human rights.

Natural Resource Valuation and Total Economic Value

It is a framework developed to characterise why and how individuals value the benefits received from the environment. The most obvious reason is that we personally found many uses of the natural environment directly (e.g by eating food grown in our fields) and indirectly through process that recycle nutrients in the soil and make them available to crops, now and in the future. This is use value. we also have benefits knowing that the environment we do not currently use will be there if we need them in the future (a bit like an insurance policy). This is option value. It can also be used for the benefits of future generation. This is bequest value and for the sake of nature. This is existence value. The last three are grouped as non use value. Total economic value in this context refers to the sum of use, option and non use value (Ozedemiroglu and Hails, 2016 and Emerton, 2018)

The notion of Total Economic Value (TEV) provides an all encompassing measure of the economic value of environmental assets. It decomposes into the use and non use values. The idea behind the TEV approach is that any good or service is composed of various attributes, some of which are concrete and easily measured, while others are more difficult to quantify. The total economic value is therefore the sum of all these components, not just those that can be easily measured. They include use and non use value ACROS Network (2014). We also have direct and indirect use value.

In the valuation of economic trees in Nigeria, concentration is on the trunk or timber to the neglect of the Non Timber Forest Products which have been defined as those goods, services and amenities obtained from forested areas that derive their worth independent of the economic value of the merchantable timber in the area under consideration. Some of these include; mushrooms, medicinal herbs, edible vegetables, insects, crawling plants, climatic and ecological functions etc.

According to Obot (2002), preliminary ethno botanic surveys in Cross River National Park by Okafor (who carried a survey in the area) indicates that in the village of Okwangwo, for example, a woman spends one day in the forest and collects on the average ten (10) bundles of Okazi

(*Gentum Africanum* and *Gentum Bucholizianum*). She sells these at the Cameroon border village of Obonyi at 100-franc CFA (N14) per bundle (The price today should have gone up to between N1500 to N2000 per bundle).

If we consider the days spent (annually) in the collection exercise and the number of women actively involved and then average over the fifty nine (59) villages within the support zone of the park, the export revenue from this will be substantially higher. Obot (2002) indicated that there are other forest revenue sources from the forest which were not taken into consideration in the studies by Okafor. These include: bush onion (*afrostyrax ludophilus*) bush mango (*irunnigia garbonesis*) and *racinodendrom hedolelotil* (Okpasi in Nigeria and Njasan in Cameroon) which are all exported to the Cameroon; and the value of some 15 seeds, 3 oil seeds, 44 fruits, 13 spices, 25 mushrooms and 69 medicinal plants; collected and utilised by forest dwelling people. It will therefore be obvious that Okafor's estimate of \$300 billion (as the true value of the forests) is conservative as at the time of the survey and more conservative today on the basis of the above illustration. This shows the importance of non-timber forest products in the valuation of natural assets.

Methods

The paper is concerned with evaluating the practice of Compensation valuation by Nigerian valuers in the context of existing statutes, guidelines and standards with a view to determining its adequacy.

The study is based on existing compensation rates as provided by the National Technical Development Forum (NTDF) on land administration and the Oil Producers Trade Sectors (OPTS) an arm of the Lagos Chamber of Commerce and Industry (LCCI). These two bodies produced the rates used in the computation of compensation under the Land Use Act (for public acquisition) while OPTS is used for Oil Industry related compensation activities. Economic Valuation will be carried out to determine if the rates being used are reflective of the economic values of the crops and economic trees.

Data used will be mainly from rates produced by the Federal Ministry of Works and Housing through NTDF and the oil producers trade sector. Prices of crops will also be obtained from the

local farmers and farm gate. Information will also be obtained from the relevant section (Chapter 4) of the revised Nigerian Valuation Standard on compensation. Valuation will be carried out in line with the NTFDF and OPTS rates and compared with the one based on total economic value of the economic trees in line with the Nigerian Valuation Standard.

Findings

We can now look at the rates used for the determination of compensation of crops and economic trees in line with both the recommendation of the appropriate officer and that of the Oil producers Trade Sector. (OPTS). OPTS have their own rate which is now obsolete. Neither of the rates was market derived. They were not based on the economic productivity of the economic trees and crops. The total economic value was not considered.

They also did not take into consideration Non timber forest products (NTFPs) which often command higher value than the timber trees.

Recently, some oil companies have revised their rates by updating them to something near to economic realities, shell petroleum now has a new rate which is a great improvement from the obsolete OPTs rate. This is not, however, considered in this study.

In the old OPTs rates, the following were applicable since 1997 and beyond.

Table 2: Level of maturity and compensation

NTFPs	Mature (N)	Medium (N)	Seedling (N)
Mango improved variety	1000	500	250
Coconut	600	300	150
Orange	600	300	150
Rubber	400	200	100
Bush Mango	680	340	170
Garcinia kola	320	160	80
Camwood	80	40	20

Sources: (OPTS, 1997)

If for example through the activities of the oil company a person suffers the following losses” as in table 3 below

Table 3: Level of maturity and compensation

NTFPs	Level of maturity of NTFP and compensation paid (₦)		
	Mature (₦)	Medium (₦)	Seedling (₦)
Mango (improved variety)	1000	500	250
Coconut	600	300	150
Orange	600	300	150
Rubber	400	200	100
Bush mango (<i>I. gabonensis</i>)	680	340	170
Garcinia Kola	320	160	80
Camwood	80	40	20

Sources: (OPTS, 1997)

If through the activity of an oil company a person suffers the following losses:

Table 4: Level of maturity and compensation

NTFPs	No. of NTFPs lost	
	Mature tree (₦)	Medium-sized tree (₦)
Mango	20	15
Orange	10	20
Rubber	150	100
Bitter leaf	10	6
Camwood	10	4

Sources: (OPTS, 1997)

The valuation will be thus:

Table 5: Mango

Description	Classification	
	Mature tree (₦)	Medium-sized tree (₦)
Rate (N)	1000	500
Quantity	20	15
Compensation (N)	20,000	7,500

Table 6: Orange

Description	Classification	
	Mature tree (₦)	Medium-sized tree (₦)
Rate (N)	600	300
Quantity	10	20
Compensation (N)	6000	6000

Table 7: Rubber

Description	Classification	
	Mature tree (₦)	Medium-sized tree (₦)
Rate (N)	400	200
Quantity	150	100
Compensation (N)	60,000	20,000

Table 8: Bitter kola

Description	Classification	
	Mature tree (₦)	Medium-sized tree (₦)
Rate (N)	320	160
Quantity	10	4
Compensation (N)	800	960

Table 9: Camwood

Description	Classification	
	Mature tree (₦)	Medium-sized tree (₦)
Rate (N)	80	40
Quantity	10	4
Compensation (N)	800	160

Table 10: Summation

NTFPs	Total Communication (₦)
Mango	27,500
Orange	12,000
Rubber	80,000
Bitter	4,160
Camwood	960
Grand total of compensation	124,620

The above compensation is inadequate as will be shown below. It does not discount for the future value of the NTFPs. From our survey, one orange fruit sells for N5 – N20 depending on the size and season. One healthy tree can yield a minimum of 1000 fruits annually.

- (a) Let us assume the basic rate of 5.00/fruit as indicated by our survey.

Total gross income = N500

Less expenses at 30% N150

Net income N350

Using the income capitalization method:

Net income: N3,500

Yield per annum at 10% for 15 years: 5,56659

N19,491.50 x 10

= N194,915.00

Assumptions

Our illustration is based on the following assumptions: (i) 15 years productive life for an orange tree (ii) Opportunity rate of return based on saving account interest rate as there is no market based rate, and (iii) Exchange rate of US \$ = N125/N135.

In the above valuation we considered the fruit product of the orange tree. In the first valuation for orange we applied the OPTS rate produced by the oil companies, and for the matured orange tree, the total compensation value was N600.00 as against N194,915 using market based variables. The different in the two approaches reflects a difference in excess of 3000 per cent.

The same situation prevails with regards to other NTFPs. For instance, for bitter kola, one-piece of the fruit sells for between N5 and N10.00. Apart from being chewed, it has medicinal use. Camwood also has cosmetic use. The point being made is that the full utility of the plant is not considered in fixing the rate by both OPTS and NTDF. The OPTS rate was prepared and has been in existence since 1997.

Other issues in environmental valuation include loss of fishing rights, loss of income from polluted land. The proper approach in the case based on scientific study. The net income so arrived at to be capitalised or discounted.

In valuing loss of fishing right, the likely number of fisherman in the community is determined as a proportion of the population. The income of an average fisherman is also determined. This is also capitalised or discounted for the duration, which may be temporary or permanent. The valuation takes the same process as that of the economic trees.

This calculation was carried out in 2004 using the prevalent rates then. Estate surveyors were gladly using the rates prepared by a body not legally or professionally trained to provide valuation standards like the OPTS

No body queried it including The Estate Surveyors and Valuers Registration Board of Nigeria. Between the years 2006-2008, “the National Technical Development Forum (NTDF) on Land Administration developed a harmonised rate for compensation valuation in the country covering:

South East

North Central

South West

North East

North West

South South

We Shall make extracts on compensation rates for some zones for the purpose of analysis.

Table 11: North Central

NTFPs	Mature (₦)	Immatured (₦)	Seedling (₦)
Banana	1000	600	300
Bush Mango	3000	1800	900
Mango (plantation)	4000	2400	1200
Mango (wild)	3000	1800	900
Oha	500	300	150
Orange (Plantation)	4000	2400	1200
Orange (wild)	3000	1800	900
Palm tree (Plantation)	3000	1800	900
Palm tree (wild)	2000	1200	600

Sources: (NTDF 2006)

Table 12: South – South Geopolitical Zone

NTFPs	Mature (₦)	Immatured (₦)	Seedling (₦)
Banana	800	400	200
Bush Mango	2000	1000	500
Mango (plantation)	2000	1000	500
Mango (wild)	-	-	-
Oha	500	250	125
Orange (Plantation)	2000	1000	500
Orange (wild)	-	-	-
Palm tree (Plantation)	600	300	150
Palm tree (wild)	1500	750	375

Sources: (NTDF 2006)

In the south south geopolitical zone, there is no classification for wild and plantation species with respect to mango and orange. The pricing or measurement of the economic tree seems to be influenced by the principles of scarcity create value. A plant is priced higher in areas where it is not in abundance.

The price per unit of tree within a plantation is higher than the wild one but in real life, organic plant products are priced higher than the non-organic plant products. It is also important to note that some plants have multiple functions hence their value can only be adequately captured through application of their Total Economic value where all the uses are put into consideration. For the avoidance of doubt, Total Economic Value is the value of all economic benefits that a society

derives from a resource. Using a forest resource as an example, the total economic value (TEV) entails well beyond timber and accounts for a large variety of market and non market functions and services provided by a forest system Total Economic Value comprises Use (UV) and Non-Use Value (NUV). Use value is divided into Direct (DUV) and In-Direct Use value (IUV). Non Use Value (NUV) consists of bequest, option and existence value. For our purpose, we are interested in only use value. For example a palm tree provide the following uses:

Broom

Palm oil

Palm wine

Basket

Soap

Palm kernel

Palm kernel shell

In 2009, a study to determine the total economic value of a palm tree was carried out by us for sixty (60) palm trees. The sixty palm trees will yield approximately 600 fresh fruit bunches per annum which will produce 2.5 tones of palm oil, 0.5 tonnes of palm kernel oil at an output rate of 0.22 tonnes of oil and 0.44 tonnes of palm kernel oil per fresh fruit bunch.

The current market price (in 2009) was N36,000 per tonne for palm kernel and N60,000 for oil palm. Each palm tree can produce 5 no brooms and 4 baskets from palm fronds annually. Revenue from soap is about N150 per annum per tree. It should be noted that when a palm tree is being tapped for palm, wine, palm fruit will not be produced.

Income summation/valuation

	N
Income from palm kernel (0.5 x N36,000)	18,000
Income from palm oil (2.5 x N60,000)	150,000
Income from benefits/broom	26,700

Income from soap	9,150

	₦203,850.00
Less production cost/expenditure	
@ 30%	61,155
Net Income	
	N142,695
Yp @ 10% for 30- yrs	9.4269

Capital value for 60 palm trees	N1,345,171.49
Capital value of 1 palm tree = ₦22,419.52 Say ₦22,000.00	
Bequest value	NA
Existence value	NA
Option value	NA
Value of 1 palm tree	----- N 21, 000

The above study was based on the south south and south east average for palm tree. The life of a palm tree is estimated at 30 yrs. Kola nut 30 yrs, coconut 25 years bitter kola 40yrs, okazi regenerates.

From the rates provided by NTDF palm oil tree is N2000 per matured tree in the North central and N1500 in the south south. The difference between the capital value and NTDF rate is wide and alarming in 2023. The economic output of each plant should be the main determinant of the value of any economic tree.

The rates in all the zones have no bearing to the economic productivity of the plants under consideration. For instance, in the south west zone, a stand of Avocado tree is N900.00. What is the price of one Avocado fruit in the market? The farm gate price anywhere in the south or north is more than N100.00. In the open market the price is between N150 to N500 per fruit. A tree can produce 1000 or more fruits in a year. In the North east zone a Mango tree stand is N3,500 for the wild type and N5000.00 for improved type while Banana is N1500.00 per tree stand. What is the price of a Mango fruit and a bunch of bananas consisting of 15 fingers compared to the value of the tree stand. In Abuja a good bunch of bananas (10-15 fingers) is between N700 and N1500 depending on the size while a Mango fruit is between N50 to N150 depending on the species.

Structures

When structures are subject to compulsory acquisition, there is a recommended rate for the computation of compensation value for affected structures like buildings, fences, roads, pavements etc.

The most recent one is the one released by the Federal Deputy Director of Quantity Surveying of the Federal Ministry of Works and Housing in 2018

	Constructive Rate/m ²
(a) Tenement Building	55,000/m ²
(b) Muld Building	30,000/m ²
(c) Storey Building	70,000/m ²
(d) Duplex Building	70,000/m ²
(e) Bungalow/Boup orinten	57,000/m ²
(f) Generator House	92,000/m ²
(g) High Rise Building	148,000/m ²
(h) Fence Wall	18,000/m ²
(i) Paved Areas	7000/m ²
(j) Block of office	65,000/m ²

- | | | |
|-----|---|-----------------------|
| (k) | Lockup shops | 58,000/m ² |
| (l) | Open shops | 45,000/m ² |
| (m) | Uncompleted structures depending
on the completion stage and type of structure | |

The construction rates have a good element of professionalism in them. However, there is need to indicate that the rates should be adjusted where necessary, for instance in cases of where the soil is swampy, rocky or other form of difficult terrain. Variation could also be made where the quality of construction material is outstanding and vice versa. There is a need to review the concept of exhausted improvement as it will be impossible to replace the structure with an old and similar structure. This is very critical when we consider the fact that the government is not paying for land but only structure. There is also the problem of partial demolition where part of a compound is demolished, and compensation is pro-rated. Some properties cannot revert to their original use due to partial demolition particularly where such partial demolition constrains the property from meeting the legal requirements for its original use. How do we resolve this? Directors of land in different states confirmed that this is a major problem, and the consensus is that full compensation should be paid for the entire property.

Valuation for Revocation and Compulsory Acquisition Under ESVARBON Valuation Standard (New Edition)

Standards For Compensation Valuation For Valuers

The Land Use Act is the principal law for compulsory acquisition and compensation in Nigeria. It is expected that all qualified valuers should have good knowledge and mastery of the provisions of this act particularly s.28 (2) (b) or s28(3)(a)(c), respectively and S29.4 (4) which makes provision for what should be compensated, known as the heads of claim S.29 (4) to (b) deals with modalities for computation of compensation. This notwithstanding, valuers must ensure that value determination or measurement is carried out with the highest professional standards. No person or group should direct or provide guidelines for the valuation of asset acquired compulsorily under

this act or any act related to compulsory acquisition outside the standards set by the board (ESVARBON) for the determination of compensation payable. S.29 (4) deals with compensation for buildings, installations, or improvements. The act provides the use of replacement cost less any depreciation together with interest at bank rate for delayed compensation. It further states that the cost may be assessed on the basis of the prescribed method of assessment as prescribed by the appropriate officer. The board shall from time to time working with appropriate bodies or persons provide current construction rates for different regions in the country. For no reason should any valuer adopt an obsolete construction rate in the determination of depreciated replacement cost for buildings, installation and improvement. In situations where no current construction cost is provided the valuer must ensure that the rate used is not obsolete and that his recommended value does not in any way further impoverish the project affected persons (PAP)

S29 (4)(c) deals with compensation for crops and economic trees. The act provides that compensation should be an amount equal to the value as prescribed and determined by the appropriate officer. A valuer should avoid the use of arbitrarily fixed rates for the determination of crops and economic trees. The act never stated that valuers must use Nx per crop or economic tree. The board should assist the appropriate officers in producing economic values for crops and economic trees which should be used by valuers. Valuers must not use rates less than the economic worth of the crops and economic trees. For income producing crops, economic trees or farms, the valuer will discount the loss of income for the duration or economic life of the crops or tree or farm at an appropriate rate of interest.

In the case of contamination of water body, the compensation shall be determined by the annual loss of net income lost by the affected community compounded or discounted at an appropriate rate of interest. When the contamination affects households' source of drinking and cooking water, the valuer should determine the average quantity of water per household and find out the cost of equivalent amount of water from water vendors in the community and multiply the amount per household with the total number of households in the community. The quantum of water loss by the community will be discounted or compounded at an appropriate rate of interest. Whenever the contamination has persisted for a number of years, the loss of money or income will be compounded using an amount of N1 per annum. In situations where the loss or contamination is

just beginning, the likely loss of income should be discounted for the expected period of contamination.

Compensation For Juju, Shrines And Sacred Bushes

Shrines come in different forms as in some communities, trees and water bodies like streams and lakes are worshiped. Shrines can also be in a shelter and in houses or on land decorated with objects and carvings. Some shrines have healing powers, while some are ancestral homes, deities and protector of the people. Valuers must consider the following factors in determining the compensation for shrines, juju and sacred bushes:

1. **Appeasement sacrifice:** the valuer will find what will be purchased for the appeasement of the deity which may include cows, goats, chickens, yams etc
2. **Cost of relocation and restoration sacrifice:** there are costs to be incurred in relocation. After the relocation, costs will be incurred to restore the spiritualities. There will also be communal sacrifice which may involve the elders, custodians of the shrine, priests, women, children, dancers, drum beaters and dance groups, food and drinks for ceremonies.

Determination of Compensation in Projects Funded by Donor Agencies

Valuers may be invited to determine compensation for compulsorily acquired land for projects funded by international donor agencies like the World Bank, International Finance corporation (IFC) etc. The valuer under this situation should adhere to the guidelines for compensation guiding the operations of the funding agency.

Determination of Loss Due to Contamination Illustration: There was a case in Delta State, Nigeria, where emission from a Power Holding Company of Nigeria (PHCN) power station into the river destroyed sea live with the result that the fishermen whose means of livelihood is tied to their work as fishermen could no longer earn a living. The community made their claim 14 years after the commencement of the emission.

If for example there are 200 No fishermen in the community earning N60,000/month per fisherman. There income for one year will be:

$$N60,000 \times 12 \times 200 = N144,000,000.00$$

Gross income = N144,000,000

Less outgoing @ 30% 0.7

Net income 100,800,000.00

Amount of N1. P.a. @

10% for 14 years 7.3667

N742,563,360

If the pollution just commenced a few months ago and we anticipate that it will take 14 years to correct, the compensation will be:

Net Income - N100,800,000

YP@ 12% for 14 yrs 4.7368

N477,49,440.00

Most valuers discount loss in income in all situations irrespective of whether the loss is part or futuristic as in the case above, where the valuer adopted discounting method instead of compounding which should have given the claimants a higher value.

The correct method must be used in each situation to arrive at an appropriate compensation.

Contamination of water bodies can also lead to loss of source of water supply to the community.

If for example there are 500 households in the community and an average household consumes 200 litres of water a week which costs N3000/household through alternative water supplier. This implies that the 500 households will spend:

$$N (500 \times 3000) / \text{week} = N1,500,000$$

For one year it will be:-

$$N1,500,00 \times 52 = N78,000,000$$

The advise here is that government should pay for one year and then provide an alternative water supply for the community.

Compensation For Juju Shrine Sacred Land And Sacred Bushes

Compulsory acquisition and revocation at times affect sites with high spiritual and cultural value, sacred sites, shrine juju and bad bushes. Any valuer confronted with this assignment must familiarise and educate him or herself with the importance and value attached to each of them by the community. He should find out the level of sacrifice and ceremonies required for the relocation of the site taking into consideration all legal actions required by the chief priest, the community or the family in the case of a burial ground.

All over the world, cultural and spiritual values are recognized.

Shrines and related assets may require a lot of sacrifices to be relocated. This may include slaughtering of cows, goats, chicken, yams, drinks, ceremonies etc.

Example:

The following items after investigation and discussion with Chief Priest will be required for the appeasement and restoration of a Juju Shrine:

	N
1. 30 bottles of illicit Gins at N5,000 each	150,000
2. 10 tins of local gin at N10,000 each	100,000
3. 200 Kola Nuts at N300 each	60,000

4. 1 live monkey at N25,000 each	25,000
5. 2 live tortoises at N5,000 each	10,000
6. 10 white cocks at N6,000 each	60,000
7. 2 live cows at N450,000 each	900,000
8. Payment for dance group and entertainment at N150,000 each	150,000
9. 4 tins of honey at N50,000 each	200,000
10. 5 live goats at N80,000 each	400,000
11. 200 cowries at N500 each	10,000
Total	N 2, 065,000

This is the compensation to be paid for the appeasement of the juju shrine. This is in addition to the cost of any structure to be rebuilt. There is no room for undervaluation under this situation unless the valuation is incompetent and in experienced

Other Issues

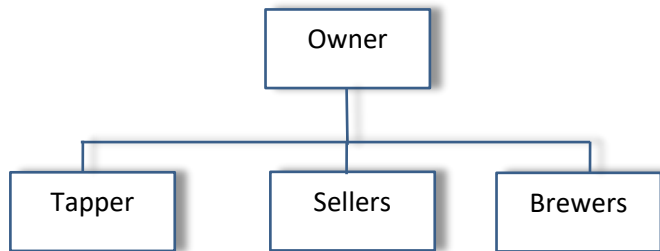
It should be noted that some of the items under consideration during revocation compensation assessment should not be treated in isolation. Some of them consist of several economic activities with associated value chain.

For example a raffia palm tree has an average life span of 25 years and can earn a net income of N15,000 per annum. If we assume 30% expenses we have a net income of N10,500.

Net Income	N10,500
Yp for 25yrs @12%	<u>6.2489</u>
	N65,613
	Say N66,000.

In addition to the above, there are other chains of income activities connected to raffia palm the wine tappers earn their income from it, the vendors earn income too. The product is also used for

the production of local gin which is very popular in the Niger Delta. Those that brews the gin earn a living from it and those that sell the brewed gin earn their own income from it also. There is a chain of economic activities and associated value chain.



Chain of income earners in a Raffia Palm

Summary of Findings

- There is obvious variance in the provisions of Section 44 of the Nigerian Constitution and the provisions of the Land Use Act of 1978 with regard to compensation valuation.
- Rates recommended by appropriate officers for valuation of crops and economic trees are not based on the economic productivity of the items under consideration.
- Preference for trees against Non Timber Forest Products (NTFPs) places displaced persons at economic disadvantage with regard to payment of compensation.
- Most valuers are yet to understand where to use discounting and compounding techniques in dealing with pollution or contamination issues
- Premium paid by allottees are not taken into consideration in the determination of compensation for land.
- OPTS have no business in producing compensation rates as they lack the professional competence to do that

Discussions

It is obvious that the practice of compensation valuation in Nigeria falls short of international best practices leading to undervaluation and inadequate compensation in most cases. The practice lacks equity, transparency and constitutes a breach to the citizens right as provided in the Nigerian constitution and African Charter on Human Right for fair and adequate compensation. The use of arbitrary fixed rates for economic trees and cash crops is not in compliance with any law and can

lead to protests by project affected persons thus disturbing execution of public project. The government rate provides between 1,500 Naira to 2,000 Naira per palm tree while the economic value of a palm tree is about 22,000 Naira in 2009. New projects should promote wealth among citizens and not poverty as the case is presently. Estate surveyors should be more creative in their valuation and adopt appropriate methodology so that the project affected persons will not be further impoverished. Value chain associated with ecosystem should be considered when placing value on them for compensation. The practical implication of inadequate compensation is multidimensional which includes impoverishing affected persons, creating unemployment due to non compensation for loss of means of livelihood, and protests by claimants which could lead to destruction and delay in project implementation.

Recommendations

- There is an urgent need to reflect economic realities in the generation of compensation rates for crops and economic losses and structures
- Compensation for natural capital should put into consideration the total economic value of the asset
- Provision for compensation valuation as contained on the green book should be the guide for compensation valuation in Nigeria
- Directors of land in the country should embrace a uniform standard of practice for consistency, uniformity and reliability as provided in the revised Nigerian Green Book of 2023
- There is need for a compensation valuation manual as a guide for compensation valuation.
- There is an urgent need for the establishment of valuer generals office in Nigeria to be responsible for the generation of appropriate compensation rates and advancement of valuation practice in Nigeria.
- Compensation should be an integral part of project procurement.
- There is need to review the provision of the Land Use Act with regard to compensation valuation practice.
- Depreciation should not be applied in compensation valuation as it constrains the ability of the claimant to build a new house or replace lost assets.

Conclusion

The need for compulsory acquisition and its importance in economic development cannot be underestimated. It is a global practice but its implementation varies from country to country. It should not be a weapon for impoverishing citizens. Depreciating the replacement cost is not right as its impossible to replace the building in its present condition. Under the present situation there is undervaluation and impoverishment of project affected persons. The practice of compensation valuation should wear a human face because claimants are citizens whose means of livelihood is being extinguished.

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