



A Question of Compensation

Overcoming the constraints of Nigeria’s Land Use Act

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When routing new utility projects in Nigeria, the priority is to minimize the impact on people while remaining within the acquisition budget. Therefore, during the planning phase, most routes are designed to cross through areas that have little or no development. Yet, because Nigerian citizens only have the right to occupy land—and not own it—complications often arise during the acquisition process.

According to Nigeria’s Land Use Act of 1978, owners are not compensated for their land, but only for the structures, buildings, economic trees and crops that are housed on that land. That means people who do not have any of these—and want to be compensated—will often hurriedly build structures along the right of way in order to receive payment. This practice causes untold project delays and cost overages in a country that desperately needs more infrastructure development.

Growing Demand for Power

Generating more power has remained a major infrastructure challenge in Nigeria, Africa’s largest economy. I have been fortunate to be part of the team engaged in one of the most ambitious power infrastructure development projects ever undertaken in the country, the National Integrated Power Project (NIPP), which is being executed by the Niger Delta Power Holding Company Limited.

To meet the demand for more capacity, the company has delivered the first phase of the project, which is comprised of 10 power stations, 102 transmission lines and substations in 29 lots, 18 gas turbines, technical advisory services, long-term service agreements, as well as gas pipeline and metering stations. For strategic and economic reasons, the NIPP power stations are located in areas that take advantage of their proximity to the vast natural gas reserves required to fire and sustain the natural gas turbine power plants. Such a huge undertaking has required compulsory acquisition of large tracts of land.

The Right to Occupy Land

The Land Use Act, which governs compulsory acquisition of land and property for public purposes in Nigeria, is in dire need of changes. The major criticism is in the area of adequacy of compensation, as this has a major bearing on the social cost of urban renewal, which is particularly heavy on the poor. Under the Act, all lands within the territory of each State in the



Federation are deemed to be vested in the Governor of the State, except lands held by the Federal Government when the Act commenced, which remain vested in the Federal Government. Although the land is vested in the State Governor, the minerals and mineral oils are vested in the Federal Government.

For management and administrative purposes, all lands are categorized into urban and rural areas over which the government issues Rights of Occupancy. The Governor has power to issue Statutory Right of Occupancy for all lands, while the local government issues Customary Rights of Occupancy for lands in rural areas. The rights are basically leasehold interests for a specified term (such as 99 years), and include a reversionary clause and a renewal option on terms to be determined by the Governor. No one is allowed to sell, partition or subdivide land that is the subject of a Customary or Statutory Right of Occupancy without the consent of the Governor.

Under the Act, there is no mention of compulsory acquisition. Instead, it is called a “revocation” of a right of occupancy. This term is deliberately used to emphasize the fact that the landowner only has an occupancy right that can be revoked, while the ownership is vested in the Governor of the State. Sections 28 and 29 of the Act deal with revocation of rights of occupancy for overriding public interest and payment of compensation.

Compensation Expectations

A typical project-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. However, this is not the case in practice, as the Land Use Act only provides for the payment of “compensation,” which is not necessarily “adequate compensation.” This is a very contentious legal point that is further compounded by the method of assessment prescribed in the Act. The method does not recognize the open market value of the property itself, but is based on replacement cost of improvements and crops. It totally ignores the value of the land.

Section 29 (4) of the Land Use Act states:

Compensation under subsection (1) of this section shall be, as respects:

- (a) the land, for an amount equal to the rent, if any, paid by the occupier during the year in which the right of occupancy was revoked;
- (b) building, installation or improvements thereon, 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 value as prescribed and determined by the appropriate officer.

Thus, we can see that the Act totally ignores the value of the land, and only provides for land rent, as all land is ultimately deemed to be vested in the Governor of the State.

Facing the Outcome

To help ensure transparency and give the impacted occupants an opportunity to raise objections and seek adjustments, we conduct prepayment meetings with valuers and agents representing those impacted where we review the values recommended as compensation for their clients, amongst other issues—before it is paid. As can be expected, we face many situations where those affected reject the compensation and seek redress in court. But such court



Property acquisition becomes especially challenging when the landowner rushes to build an “emergency” structure in hopes of maximizing their compensation.

cases are also doomed to failure, as the Act rejects the jurisdiction of courts over issues of adequacy of compensation in Section 47 (2) which says: “No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.”

Support in cases involving adequacy of compensation can only come through arbitration. Section 30 of the Act states that: “Where there arises any dispute as to the amount of compensation calculated in accordance with the provisions of Section 29, such dispute shall be referred to the appropriate Land Use and Allocation Committee.”

It is also important to mention that the Land Use Act does not make provision for injurious affection, disturbance or severance. As a consequence, we must contend with numerous court cases and injunctions, all of which seriously hamper project delivery.

Building Structures for Higher Payments

Because the Land Use Act does not compensate for land alone, people who do not have any structures, buildings or economic agriculture are known to take quick action. They hastily build structures along the right of way in order to receive some compensation for their land. Despite our efforts to select routes where there is little or no development, the problem persists. These emergency structures spring up everywhere and dramatically increase our acquisition costs.

In 2011, our company was prepared to acquire 69 acres of near-virgin land for a proposed power plant. By the time we finished the route, people had built a veritable housing estate on the site. In the end, we abandoned the site for another location. To make matters worse, the owners along the original route went to court to compel NIPP to acquire their site, despite the fact that we no longer needed it!

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For another project, the community built emergency structures in an area they had mistakenly identified as the project route. When they discovered that a different route was selected, they insisted that our company shift the transmission line to pass over the area where they had built their structures! It took several months of delicate negotiations to extricate ourselves so that we could commence with our project.

Pressure on Politicians

You may ask, “Why don’t you refuse to consider the emergency structures?” Our response is that we do reject them, but the politics involved can be very delicate. The elected government officials and other traditional/opinion leaders are not willing to intervene in any matter that seems to deny their people the opportunity to receive money for their property, no matter how contrived. If necessary, people will mount pressure on their leaders to ensure that this opportunity to get a “share of the national cake” does not pass them by. Any politician or traditional leader knows they will be taking a big risk if they are perceived as denying their people of such benefit. Thus, the landowners will refuse to cooperate until their demands are met. The socio-economic factors are understandable when you consider that most of our lines traverse rural areas with poor people who survive on subsistence farming.

We have acquired a treasure trove of experience and solutions for dealing with some of the most volatile communities in Nigeria, all of which will serve us well in future assignments. By reducing the time between the date of actual delineation

of the line and the acquisition date, people will not have as much time to construct new buildings. We are also seeking an amendment of the law to prohibit such construction after the date when notices of acquisition are delivered to project affected persons.

There are compelling reasons to amend the Land Use Act to correct some of its anomalies. However, one must not lose sight of the fact that, for a nation like Nigeria that is in a hurry for infrastructure development to battle its burgeoning population and dwindling revenues, it may be nearly impossible to afford the reparation demanded by landowners and occupants under an open market system of compensation assessment in Nigeria. In this regard, the Land Reform Committee set up by the Federal Government is a very commendable initiative for enthroning equity in our land administration system. In the end, a proper balance has to be achieved between individual interests, social welfare and national development. ✪



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