



Compulsory Acquisition and Compensation For Business Owners Due To Infrastructural Development In Port Harcourt Metropolis

^{1*}Ogban M, ²Elenwo E and ³Akujuru V. A

^{1,2,3} Department of Estate Management, Rivers State University, Nkpolu-Oroworukwo, Port Harcourt, Nigeria

*Corresponding author e-mail: eikunegwang@gmail.com

Abstract

Compulsory acquisition is an important development tool for government because it ensures that land is available when it is needed for critical infrastructural development such as rail/road improvement, institutions of learning, sewage works, airport and other similar infrastructures. During this process, human condition suffers as people are forced to move from their place of comfort and stable existence to unknown or new place, increasing costs of relocation. In all this, compensation is usually paid to property owners excluding owners of businesses in the property. This study therefore assesses difficulties encountered by business owners during the construction of Rumuepirikom Flyover, adopting a quantitative approach. 112 questionnaires were administered through random sampling on business owners along the flyover construction site out of which 71 were retrieved. Descriptive statistics was used to analyze the data. The study revealed that the current compensation practice does not accommodate business losses and affected business owners suffer greatly in terms of loss of revenue/income, loss of customer/client, problems of ownership with landlord, problems of securing new business places, loss of business goodwill during the construction period. The study further revealed that there was no refund of rent paid to the property owners neither was any compensation paid for disturbances. The study therefore recommends the adoption of compensation laws that includes business losses and engagement of affected persons in the consultation processes to ensure the meaningful participation in decision making, through a process that is transparent. It further recommends that governments should Relocate/Resettle affected business owners to an alternative accommodation, to continue their operation or pay them Relocation allowances.

Key Words: Business Extinguishment, Compulsory Acquisition, Infrastructure, Development, Compensation.

Introduction

Compulsory acquisition is the power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant (Keith, 2008). This power could sometimes be known as power of eminent domain, expropriation right and compulsory purchase depending on the country's legal tradition. Irrespective of the acronym used, compulsory acquisition is a critical development tool for governments, and for ensuring that land is available when needed for essential infrastructural development. In Nigeria just as in other countries, land acquisition is the tool government used to acquire private properties in order to provide public facilities, tool to assist in the management of a country's natural resources, this tool may be used to help mitigate and prepare against damage from future disaster (both natural and manmade) in the satisfaction of human needs and want via land development (FAO, 2008). The power possessed by the state over all property within the state, specifically its power to appropriate private property for public use. Governments therefore have the right of compulsory land acquisition, with compensation, for the broader public service. The way in which governments exercise this right, especially for urban expansion, undermines tenure security, and because often little or no compensation is paid, also has negative impacts on equity and transparency. The effect is that there is massive encroachment by expropriated owners, as well as land sales by land owners in informal markets at low prices in anticipation of expropriation. Such powers have been used extensively with many undesirable outcomes including massive encroachments, unpaid compensation, change of use of acquired lands as against the purpose of acquisition, divestiture of state enterprises to private entities, etc. However, the exercise of such power is not without effect on business owners. Therefore, this study tends to unravel problems encountered by business owners along Rumuepirikom flyover construction site after Rivers State Government compulsorily acquired the area for flyover infrastructural development.

Study Area

This study was conducted between October and December 2021 along Ada George road in Rumuepirikom Town. Ada George road is a busy commercial neighbourhood within the said Town and predominantly occupied by people from various ethnic groups in Nigeria. Rumuepirikom is located at Latitude 4.825432 N and Longitude 6.9673161 E in Obio Akpor Local Government Area of Rivers State

Compulsory acquisition has always been a topic for debate both hypothetically and in practice despite the fact that it is a basic and very pertinent government authority. This could obviously be related to what humans suffer whenever they are forced to move from a place where comfort and stability existed to an unknown place including cost involved in this movement. This cost is very significant when put together as losing livelihood patterns and existing bonding amongst people in the community may not be fully mitigated.. Fekumo, (2001) opines that “Compensation in cases of compulsory acquisition of land means the sum of money which is to be paid by a public body carrying out some authorized undertaking under statutory powers in respect of; (i) the compulsory acquisition of land which is required for the purpose of the undertaking; and (ii) the injury resulting from the execution of the works to land which is not required for the purpose of the undertaking”. The process of compensation has most times shown to be poorly done and when a process is poorly conceived or implemented, such unavoidable expenses are multiplied, often several times over. Tenure insecurity is worsening, and land markets are becoming more volatile. Investment incentives have been decreased, corruption is made easier, and communities and individuals suffer as a result which makes it possible for people's livelihoods to be ruined. Rowan-Robinson & Hutchison (1995) in their study in Scotland on compensation settlements for business loss following a city centre redevelopment finds that the majority of the claimants in the study were dissatisfied with their settlement and all were dissatisfied with the process leading to the settlement. The study revealed that head of claim to be considered during compensation of business interest should include delay for payment of compensation, blight which refers to depression effect on the value of public sector action and decision, bank charges which include bank charge in claimant disturbance claim, total extinguishment of business, advance payment, redevelopment clauses, refund for capital gain tax paid by claimant if applicable and value of the heritage were necessary.

A study on payment of adequate compensation for land acquisition in Malaysia was carried out by Alias & Nasir (2015) and they revealed that compensation attributes under their present stipulated laws are not adequate to compensate claimants so they opined that there should be a review of the heads of compensation structures by incorporating the practices in other countries like payment of solatium or premium as over and above the total compensation payable. . Their paper concludes that the compensation needs certain proper modification and other better alternative for Government to secure land for the public development.

The law of land acquisition is mainly concerned with compulsory acquisition with the awarding of compensation to the owner. But if the land is acquired against the will of the owner, this can be done only by public interest, not in private interest. This is the law which may be the best way forward to

aid developmental projects but the problem lies with the adequacy of the compensation payable. The adequate compensation has various interpretations in different countries which should be looked at critically as the issues arise.

The payment of compensation for non-legally recognized rights raises difficult policy issues (Lindsay 2012). He further observed that International organizations' policies, squatters and other non-permanent occupiers or users are typically included among people eligible for resettlement assistance, but this is a common area where international norms and standards clash. Different laws apply in different countries. Many governments are opposed to it on the premise that even individuals who are clearly occupying land illegally are entitled to some amount of compensation.

In Nanjing, Hu, Hoonimeijer, Bolt & Sun (2015) conducted a study on unequal compensation and relocation for displaced residents. The central government of China uses two types of land ownership: state owned and collectively held. Compensation for displaced property may take the form of a monetary award in addition to property exchange. Foulsham & Greddes (2018) in their study on compensation to business- compulsory acquisition of land in Westconnex Sydney noted that the market value of the lessee's interest in the land, the special value of the land to the lessee, loss arising from the land being severed or divided as a result of a partial acquisition, and disturbance costs incurred as a result of the acquisition are all factors to be considered in determining compensation payable to a lessee running a business under a lease, according to section 55 of the Act.

In Nigeria citizens have the right to own landed property, although this right is not absolute and is subject to certain rules and restrictions. The Land Use Act of 1978 gave the federal and state governments the authority to own lands in their respective states. These powers also allow the government to take land and landed property without compensation if it so chooses. As much as countries constitutions protect the rights of individuals to own property, they also allow the government to seize land without the owner's consent even though, significant differences exist. Compulsory acquisition is more broadly defined in a few countries, but not so in others. Compensation for compulsory acquisition in Nigeria is usually paid to the owner of the structure excluding the owner of businesses on the building which has also led to a lot of dissatisfaction. Dissatisfactions and objections are the main problems in compulsory land acquisition programs worldwide and because to many such acquisitions affect their lives. Land is an invaluable resource to the lives of many people and their future generations (Kombe; 2010, Mpwehuka; 2012). Sometimes, these dissatisfactions have resulted into delays in the implementation of many proposed projects leading to increased administration overheads as a result of extended project durations.

Nuhu (2008) in his study on compulsory purchase and payment of compensation in Nigeria using the Federal Capital Territory as a case study reveals that compensation of dispossessed landowners are not only delayed but that the current provisions of the law cannot adequately compensate these landowners. Deeyah & Akujuru (2016) revealed that some of the reasons hindering the effectiveness of the compulsory acquisition practice in road infrastructure provision in Rivers state are the statutory provisions of the Land Use Act which was responsible for the inadequacy of the compensation paid out to the inhabitants of the compulsorily acquired land. They observed that the Act only provided for the payment of compensation and not adequate compensation. The authors berated the restrictions on the heads of claims and the non-payment of compensation for undeveloped land- conditions supported by section 29 of the Land Use Act which allows for compensation to be paid only for the following items; a) 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, and; (c). Crops on land for an amount equal to the values as prescribed and determined by the appropriate office. The compensation and relocation varies from place to place so the key to solve this problem is to establish a reasonable mechanism for compensating resettlements by avoiding displacement negotiations. Deeyah & Akujuru (2016) documents that the principle of equivalence is crucial to determining compensation therefore affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition. The authors opined that this principle is articulated in the World Bank Policy on Involuntary Resettlement which states that “displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, which is higher (World Bank OP 4.12). The amount of compensation should be determined by the market, without taking into account the situation of households, such as their income or family size. In the resettlement process, low and middle-income displaced households who are eligible for affordable housing should be given priority to apply. Other households should enter the commercial housing market, instead of being entitled to purchase affordable housing.

Research Methodology

Research philosophy adopted for this study was interpretivist, whereas case study method was employed because of its numerous advantages. The method of data collection was both primary and secondary data. The primary data involve interview and questionnaire, while the secondary data were obtained from relevant literatures from published journals, books and other relevant documents.

A total of 112 questionnaires were administered to business owners along Ada George Road were Rumuepirikorn flyover construction is ongoing, complementing it with interview with 13 affected property owners. Out of the 112 questionnaire administered, 71 questionnaires were retrieved representing 63.47% response rate which was considered adequate for the study.

Result and Discussion

Types of Properties Occupied

Responses from data obtained from the field shows that 59 respondents representing 83.1% said the properties acquired in the study area were mostly commercial properties, 7 respondents representing 9.9% said the properties were recreational properties, only 5 respondents representing 7.0% said they were residential properties. The above analysis clearly shows that commercial properties were predominant along Ada George Road with few recreational and residential properties. Table 1 and figure 1 present the results.

Table 1: Types of Properties Occupied

Options	Frequency	Percent
Recreational Properties	7	9.9%
Industrial Properties	0	0.0%
Residential properties	5	7.0%
Commercial properties	59	83.1%
Total	71	100.0%

Source: Field Survey, 2022

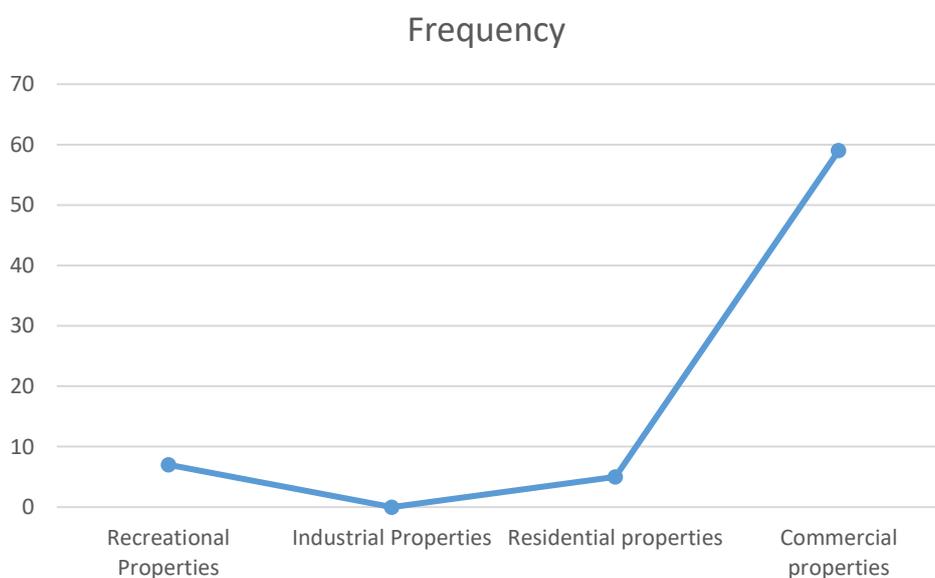


Figure 1: Types of Properties Occupied

Source: Field Survey, 2022

Occupation of Tenants

When respondents were asked to state their occupation, responses from the field indicate that 57 respondents representing 80.3% said they are traders, 11 respondents representing 15.5% said they are public servant, while 3 respondents representing 4.2% were others who could not expressly state their occupation. This shows that the most predominant occupiers of the compulsorily acquired properties are the traders. This clearly indicates that their livelihood depends majority on their trading business.

Table 2: Occupation of Tenants

Options	Frequency	Percent
Trading	57	80.3%
public/civil servant	11	15.5%
Other	3	4.2%
Total	71	100.0%

Source: Field Survey, 2022

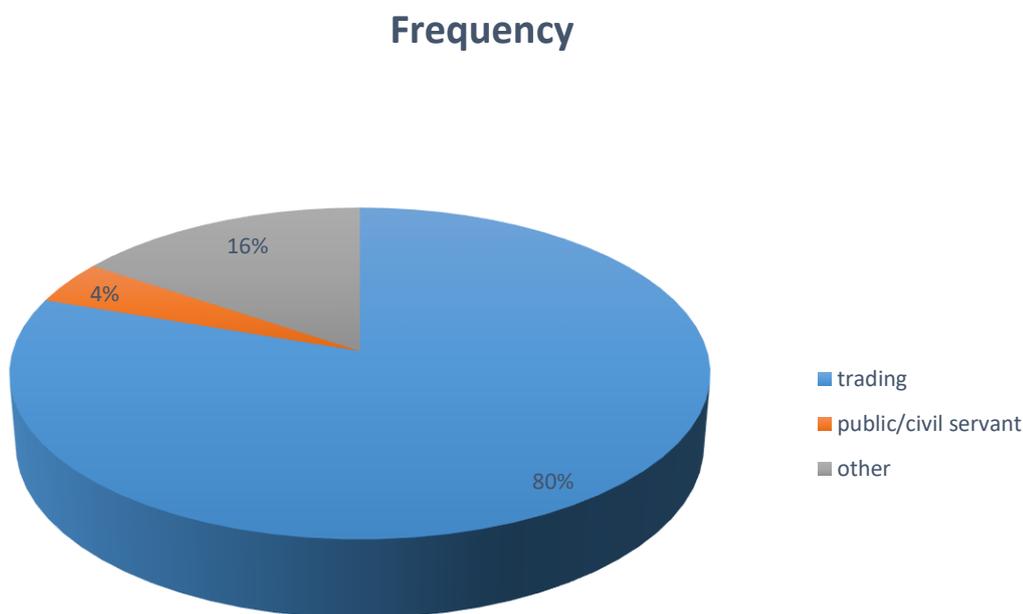


Figure 2: Occupation of Tenants

Source: Field Survey, 2022

Duration of Tenancies in the Neighbourhood

This question seeks to find out how long the tenant have resided in the neighborhood. For this question, frequency count was used to ascertain the duration of stay for a period of 1 – 5 years, 6 - 10 years and for 11 years and above. Results show that 35 respondent representing 49.3% have resided and have been doing business for the period of 6 – 10 for years, while 22 respondent

representing 31.0% stated that they have lived in the neighborhood for a period of 11 years and above, only 14 respondent representing 19.7% said they have live in the place for a period of 1 -5 years. Table 3 and figure 3 presents the result.

Table 3: Duration of Tenancies in the Neighborhood

Option	Frequency	Percent
1 - 5 years	14	19.7%
6 - 10 years	35	49.3%
11 and above	22	31.0%
Total	71	100.0%

Source: Field Survey, 2022

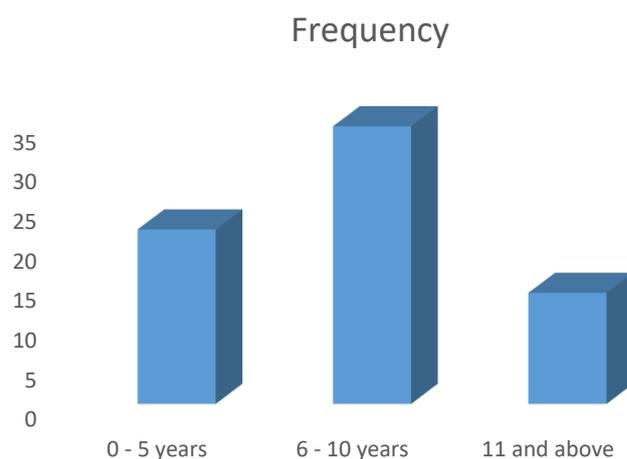


Figure 3: Duration of Tenancies in the Neighborhood

Source: Field Survey, 2022

A combined frequency shows that 35 and 49.3% of the respondents' have lived in the study area between 6-10 years. This implies that majority of the respondents' businessmen and women have carried out businesses in the study area long before the acquisition and must have had a lot of clients and business goodwill which they loss as a results of the compulsory acquisition and demolition of their business premises.

Challenges of Tenants in Business Premises

Compulsory acquisition is not without controversy. In order to capture challenges encountered by tenants, it was thoughtful to find out from them their complaints. About 71 respondents were identified and given questionnaire. However, the ordinal data type gathered showing their levels of agreement was measured using Likert Scale. The weights of this question are 5= strongly agree, 4= agree, 3= neutral, 2= disagree, and 1= strongly disagree. The respondents were asked to rate their answers based on this scale. Table 4 below shows the result.

Table 4: Challenges of Tenants in Business Premises

Options	SA	A	N	D	SD	Sum	mean	Decision
Loss of Revenue/Income	33	15	9	11	3	277	3.90	Agree
Loss of Customer/Client	38	17	7	5	4	293	4.13	Agree
Problems of Ownership with Landlord	25	18	11	10	7	257	3.62	Agree
Problems of Securing new business place	28	19	13	7	4	273	3.85	Agree
Loss of business goodwill	31	14	11	8	7	267	3.76	Agree

Source: Field Survey, 2022

As shown in table 3, majority of the respondents agreed that all the listed items are challenges the faced during acquisition of the property they were occupying with a mean rating above 3.0 being the criterion mean. The listed items are Loss of Customer/Client (4.13), Loss of Revenue/Income (3.90), Problems of Securing new business place (3.85), Loss of business goodwill (3.76), Problems of Ownership with Landlord (3.62).

When the results in table was ranked, Loss of Customer/Client with RII of 0.83 emerged as number one. This could emanate from the general understanding that losing a customer will definitely affect his stream of income because of the uncertainty surrounding getting new customer in the new location. This closely followed by loss of Revenue/Income with RII of 0.78 as second, Problems of Securing new business place with RII of 0.77, as third, Loss of business goodwill with RII of 0.75 as fourth and finally, Problems of Ownership with Landlord with RII of 0.72 as least. Table 5 below shows the result of the ranking.

Table 5: Ranking of Challenges of Tenants in Business Premises

Options	SA	A	N	D	SD	Sum	RII	Ranking
Loss of Revenue/Income	33	15	9	11	3	277	0.78	2 nd
Loss of Customer/Client	38	17	7	5	4	293	0.83	1 st
Problems of Ownership with Landlord	25	18	11	10	7	257	0.72	5 th
Problems of Securing new business place	28	19	13	7	4	273	0.77	3 rd
Loss of business goodwill	31	14	11	8	7	267	0.75	4 th

Source: Field Survey, 2022

When the results of the questionnaire survey were corroborated with the interview responses, all the interviewee 100% (13) said they have lost so much revenue as a result of the acquisition of their paid shops. Explaining their ordeals, one of the interviewee said: “We do not have money to pay for alternative accommodation because they have lost many customers”.Majority of them who deal on

perishable goods said they were not given enough time to relocate, so we can go and look for alternative accommodation before demolition. The affected people claimed that the government had denied them compensation because they said they were landlord forgetting that they own the leasehold interest in the property.

Tenants Expectations in compensation Payments

For this question, the tenants were asked to state their opinion regarding their expectations in compulsory acquisition and compensation. The weights of this question are 5= strongly agree, 4= agree, 3= neutral, 2= disagree, and 1= strongly disagree. The respondents were asked to rate their answers based on this scale. Table 6 below shows the result.

Table 6: Tenants Expectations in Compensation Payments.

Options	SA	A	N	D	SD	Sum	Mean	Decision
Rent refund	30	20	10	7	4	278	3.92	Agree
Compensation for disturbances	36	20	7	5	3	294	4.14	Agree
Relocation/Resettlement	33	13	10	7	8	269	3.79	Agree
No Payment	0	0	13	21	37	118	1.66	Disagree
Payment for business goodwill	25	16	14	11	5	258	3.63	Agree
Refund for breakage of some fragile items	22	18	13	10	8	249	3.51	Agree
Relocation cost	26	20	11	7	7	264	3.72	Agree

Source: Field Survey, 2022

The results in the table indicate that the respondents agreed to six of the listed items. They are Rent refund (3.92), Compensation for disturbances (4.14), Relocation/Resettlement (3.79), Payment for business goodwill (3.63), Refund for breakage of some fragile items (3.51), Relocation cost (3.72). No Payment with a mean of (1.66) was rejected.

In order to find out the most important expectation of the tenants during acquisition and compensation, the result in table were ranked and the RII found. The results of the ranking is shown in table 7 below.

Table 7: Ranking of Tenants Expectations in Compensation Payments

Options	SA	A	N	D	SD	Sum	RII	Ranking
Rent refund	30	20	10	7	4	278	0.78	2 nd
Compensation for disturbances	36	20	7	5	3	294	0.83	1 st
Relocation/Resettlement	33	13	10	7	8	269	0.76	3 rd
No Payment	0	0	13	21	37	118	0.33	7 th
Payment for business goodwill	25	16	14	11	5	258	0.73	5 th
Refund for breakage of some fragile items	22	18	13	10	8	249	0.70	6 th
Relocation cost	26	20	11	7	7	264	0.74	4 th

Source: Field Survey, 2022

As shown in the table, Compensation for disturbances with RII of 0.83 was ranked first. This is followed by Rent refund with RII of 0.78 as second and ranked second, Relocation/Resettlement with RII of 0.76 was ranked third, Relocation cost with RII of 0.74 ranked fourth, Payment for business goodwill with RII of 0.73 ranked fifth, Refund for breakage of some fragile items with RII of 0.70 was ranked sixth, while No Payment with RII of 0.33 was ranked least by the respondents. The result confirms that respondent tenant has not been engaged and consulted in the negotiation and assessment processes. When the results were compared with the interview results, responses indicate that 100% (13) of the interviewee tenants stated that there should be a refund of Rent paid for the property, and also Compensation for disturbances. They said government should find a way to ensure the Relocation/Resettlement of affected persons to an alternative accommodation, or pay them Relocation. Corroborating this, an interviewee said:

“all we want from government any time peoples’ business is been extinguished is to include we the tenants because we are the one that loss so much”.

Also another interviewee said:

“we expect government to refund our rent so that we can use it to look for alternative accommodation.”

Conclusion and Recommendations

This study examined the rate business extinguished along Ada George Road during the acquisition of properties along the Right of Way (RoW) for construction of Rumuepirikom flyover. The study revealed that affected business owners suffer greatly in terms of loss of revenue/income, loss of customer/client, problems of ownership with landlord, problems of securing new business place, loss of business goodwill during the construction period. The study further revealed that there is no refund of Rent paid to the property owners neither was any compensation paid for disturbances. The study concludes that government should find a way to ensure the Relocation/Resettlement of affected business owners to an alternative accommodation, or pay them a Relocation allowances. The current practice does not ensure the sustainability of businesses and the livelihood of business operators. This means that the present practice, while paying for the structures accommodating the businesses does not factor in the sustainability of the livelihood of the business owners, who are displaced by the acquisition. This thus, calls for radical review of head of claims accommodated for compensation under the present acquisition process. To address these challenges, the study recommends the adoption and engagement of affected persons in the consultation processes to ensure the meaningful participation in decision making, through a process that is consistent.

References

African Development Bank and African Development Fund. (2003, November). Involuntary Resettlement Policy. PSDU, pp. 1-42.

Alias, A and Nasir, M. (2015). Payment of Adequate Compensation for Land Acquisitio. Malaysia. Pacific RimProperty Research Journal Vol. 12, No. 3, PP 326-349 (2018).

Daud, A. A. (2001). Payment of Adequate Compensation for Land Acquisition in Malaysia. Pacific RimProperty Research Journal Vol. 12 (3) DOI: 10,1080/14445921.2006.1110421, 326-349.

Deeyah, C.L. and Akujuru, V.A. (2017). Investigating the Sufficiency of Paid Compensation for Compulsory Acquisition in Road Infrastructural Provision in Rivers State. Research on Humanities and Social Science 7(2), pp.20-27.

Deeyah, C.L and Akujuru, V.A (2016) Assessing the Effectiveness of the Nigerian Compulsory Acquisition Practice in Road Infrastructural Provision in Rivers State. Asian Journal of Social Sciences and Humanities.5 (4), 77-88

Fekumo, J. F. (2001). Oil Pollution and the Problems of Compensation in Nigeria.F & F Publishers, Port Harcourt, PP7.

FOA LAND TENURE STIDIES 10. (2008). Compulsory acquisition of land and compensation . Rome: Food and Agricultural Organisation of the United Natios.

Foulsham and Greddes (2018). Compensation to business-compulsory acquisition of land- Westconle 12/32 Marin Pl, Sydney NSW 2000.

Hu, Y., Hooimeijer, P., Bolt, G., and Sun, D. (2015). Uneven compensation and relocationfor displaced residents:The case of Nanjing. Habitat International Vol. 47, 83-92.

<http://www.legalserviceindia.com/article/1257-Process of-Land-Acquisition. htmlclifford>.

Inspection Panel. (2016). *Involuntary Resettlement*. Washington, DC.: The World Bank License: Creative Commons Attribution CC BY 3.0 IGO.

Keith, Mcauslan, Knight, Lindsay, Munro-Faure and Palmer (2008). *Compulsory acquisition of land and compensation*. Rome: Food and Agriculture Organization of The United Nations.

Lindsay, J. M. (2012). *Compulsory Acquisition of Land and Compensation in Infrastructure projects*. PPP INSIGHTS Vol 1(3), 1-10.

Mpwehuka, G. D. (2012). *Managing Compulsory Purchase Objection Cases in Tanzania*, Unpublished M.Sc (Real Estate Dissertation Department of Land Management and Valuation, Archi Univeristy, Dares Salaam Tansania.

Nuhu, M. B. (2008). *Compulsory Purchase and Payment of Compensation in Nigeria: A Case Study of Federal Capital Territory (FCT) Abuja*. Nordic Journal of Surveying and Real Estate Research, Special Series, Vo 3, 102-126.

Kombe, W. S. (2010). *Land Acquisition for Pubic Use, Emerging Conflicts and their social-political implication* international journal of urban sustainable development 2 (1-2) 45-63.

Rowan-Robinson, J., and Hutchison, N. (1995). *Compensation for the compulsory acquisition of business interests satisfaction or sacrifice*. Journal of Property Valuation & Investment; Bradford Vol.13. (1), 44-65

World Bank (2004). *Operational Policies on Involuntary Resettlement*, O.P 4.12