

Establishment of Criteria for Standardized Land Valuation Mechanism within the Context of Land Titling and Registration in Nigeria

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Abstract

The topic envisages a discussion on the establishment of criteria for standardized land valuation mechanism within the context of land titling and registration in Nigeria in furtherance of the implementation of the land reform agenda of the Federal government. The imperative to reform the existing land policy in Nigeria presupposes that a more functional, dynamic, development friendly and user/owner security conscious land policy should be articulated. Generally, land valuation mechanism is dynamic and evolves to suit the peculiar motive, time and system in place in a particular society. It is necessary, therefore that methods put in place are such that would ensure success and efficiency in achieving the set objective. It is only through the continuous monitoring and assessment of any existing principle can the long-term favorable strategies be achieved. The work attempts to analyse the different approaches and recommends the most appropriate mechanism towards achieving the set objectives.

Keywords: Criteria, Standardized, Land Valuation, Mechanism, Land Titling, Land Registration

1. Introduction

The current land policy in Nigeria i.e. the Land Use Act of 1978 was ostensibly aimed at distribution of land, easy accessibility to land, reducing land speculation and harmonization of policies in the country. It was in furtherance of this that the Panel set up by the then Federal Military Government took cognizance of the divergent land use policies in place, namely dual operation of customary land tenure and the received English land laws in Southern Nigeria and the then Northern Nigeria Land Tenure Law of 1962. At the end of the deliberations, the panel was split on the recommendations. The majority advocated a continuation of the status-quo with certain interventionary modifications, while the dissenting panel member submitted a separate Report which the Federal Government surprisingly adopted (Okpala, 1984, Emeasoba, 2012). The consequences of which have led to confusions and inconsistencies in land administration in Nigeria since 1978. Experience has shown that the operation of the Land Use Act 1978 since its inception in Nigeria has not been impressive, commendable, positive, and pragmatic or development-friendly. Its implementation seems to have laid bare the whole contents of the Pandora's Box allegations of improper composition of management committees at various levels, abuse of office, unbridled corruption and manipulations, illegal but undocumented land deals, social injustice in land allocation, undue political manipulation, outright disdain for original land owners, etc (Ogbuefi, 1988, Ozigbo, 2012).

Even at that, the question is; does the current economic and development policy of the Federal Government still envisage the continued existence of the Land Use Act. The clear answer is NO. Derrill and Karp (1976) see development as a clearly ordered process whereby structural and functional organization of the system becomes progressively expressed, in other words, an expression of the irreversible flow of events along the axis of time. Although it may sound abstract, it is undoubtedly a valid idea that emphasizes the dynamic and sequential character of the activity or undertaking. Tolba (1988) gives purposefulness or goal orientation to such an activity by seeing development as a broad array of activities intended to satisfy human needs or improve the quality of human life. Within the context of this work, one can argue that development implies a clearly ordered, purposeful and dynamic process of carrying out works in, over, or under any land, or making material change in the use or intensity of use of any land with the aim of bringing them to a more useful state essential for satisfying human needs or improving the quality of human life.

2. Land Ownership and Content

In almost all societies, it is known that land includes everything in and upon the land. In other words, land has both natural and artificial content, though it is its natural content, namely the ground and its subsoil and the things growing naturally on it, that forms its basic element (Nwabueze, 1972). Scholars over the years have tried to interpret the comprehensive meaning of land from various perspectives. Umeh (1972) approaches it from a system of concept which includes physical, economic, legal, abstract, spiritual and socio-political. In this work, more emphasis would be on economic and physical perspectives since the ultimate aim is to achieve a better and more progressive and result oriented land administration practices. Ownership is the most important interest a person has in a thing, particularly land. It comprehends the rights and powers in their entirety, exercisable or capable of being exercised over a thing owned (Ozigbo, 2012). This is also due to the fact that it is the main flank (though not entirely) upon which capacity building rests.

The rights of individuals and communities to the ownership of their lands and the natural patrimonies have at various junctures and epochs in what constitute today's territory of Nigeria been dynamic. It could be said that the proprietary land structure has a strong bearing on

- The areas socio-political history and prevailing conditions
- The socio-political stratification predominant in the area.

This could be seen from the major waves in the Nigeria's proprietary land ownership pattern which could broadly be classified as follows:

- Customary system before Othman Dan Fodio's, Conquest of parts of today's Northern Nigeria
- Between the Dan Fodio's Conquest and the coming of the British Colonial Authority
- The British Colonial Period
- The Post Independence Period up to the advent of the Land Use Act 1978
- The era of the Land Use Act 1978

Each of these eras has far reaching implications on land administration. Most often they were introduced without taking into full consideration the multi-cultural, multi-anthropological and historically diverse society as Nigeria. The underlining objective is to suit the directional intents of the ruling elite at the point in time.

3. Land Ownership and Management

The physical concept sees land as including the soil and everything that is inside it. The degree to which land in its natural state has been developed forms part of the land (Thoncroft, 1976). The economic concept views land as the basis and framework of economic livelihood or the personification of the wealth of the individual, community and the society. Land including minerals, like any other economic commodity, is limited. This creates problem of satisfying the demand for its various requirements. The degree of tact and pragmatism employed in satisfying these various demands determines the success or otherwise of land administration practice. These tact and pragmatism are what have been lacking in Nigeria over the years. An efficient administration of land would therefore involve a good knowledge of land in its ramifications including its concept as a physical and economic commodity. This knowledge would help in appreciating both the apparent and latent potentials of land which in turn would help in expanding the capacity of the people, communities and the society at large. Barlowe (1972) had this in mind in his analytical study of the "highest and best use concept" when he posited that land is the sum total of the natural and man made resources over which possession of the earth's surface gives control.

Economists regard land as a factor of production. All those free gifts of nature in form of land or land resource are a major factor of production. Other factors are capital, labour, management. In recent times, technology has been included as a factor of production because of the critical role it is playing in modern production of goods and services. The importance of land lies in the fact that every producer requires land among other factors of production in order to produce goods and services. This is clearly from the postulation that land is the source of all wealth (Denman, 1978). According to Lipsey (1974), the demand for most goods and services automatically has an indirect demand effect for land which is a factor of production. This indirect demand effect otherwise referred to as derived demand provides a link between the pricing of factors and the pricing of products. It is, therefore, being posited here that a thorough understanding of the economic import of land would not only help in properly articulating the various management indices for efficient land administration but also help the policy makers and traditional land owners better appreciate the best approach in harnessing the land potentials in the

society. It is the failure to properly articulate this concept that has led to the persistent policy failures at the government level and the state of flux in the nation's development initiatives.

The existence of the various Mineral Acts and ultimately the Land Use Act of 1978 has greatly affected the quality of land resources administration in Nigeria. Peoples right to manage their land has been effectively appropriated by the government through these various legislations. The Colonial Authority who first legislated against the exercise of individual and community interest in mineral resources in 1916 did so purely to further their economic interest. It is rather unfortunate that all the subsequent governments since independence in 1960 decided to continue and even aggravate this situation. The people who would have been the natural owners of these resources and implicitly the major stakeholders and beneficiaries watch in bewilderment as the resources are appropriated from their lands with impunity and brazen arrogance. As if those were not injurious enough, Nigerians were told in 1978 that they are all mere occupiers of land and are not fit to be owners of land. The right of occupancy as envisaged in the Land Use Act belongs to the least category of rights of ownership. The statutory right of occupancy even pales in comparison with the leasehold interest. While a leaseholder needs the consent of a freeholder in certain decisions concerning the management of his land, which freeholder he can easily access; the statutory right of occupancy holder can only take certain management decisions concerning land with the consent of the governor who in most situations is very difficult to access. In effect under the Act, Nigerians have been unwittingly converted to mere "land ownership pretenders".

According to Nwabueze (1972), no interest less than a fee simple or a lease with less than five years unexpired term can be registered as a title. Wherein then is the title to be registered under the existing situation. No matter the legal and judicial decisions aimed at polishing the negative aura of the Land Use Act, nothing can extenuate its overall damage to the development of the Country.

The fundamental issue is that the country has been operating a jaundiced economic policy. The country's macro-economic policy is at best suspect. The current economic epistle in Nigeria is deregulation. One wonders the real objective of the government in its policy of deregulation because of certain inherent contradictions. The policy appears to aim at deregulating key sectors of the economy, and the factors of production. This policy is suspicious on the basis that if there must be deregulation, all the factors of production including land, in all its imports, must be deregulated. One cannot regulate one factor (in this case land) and at the same time deregulate the other factors and hope for an economic success. This is contrary to all known economic theories and practices. It would be an economic miracle if this policy succeeds. The sooner the government takes a dispassionate look at the issue of regulation of land in the country's transformation agenda, the better for the nation. The mineral resource which is part of land calls for serious attention. Nigeria needs a paradigm shift in its land administration policy to unleash the real potentials of this vital sector of the economy. A situation where, for example, in the oil sector of the economy the government policy of deregulation is only emphatic on the down-stream area appears suspect. There should be a holistic deregulation of both the downstream and upstream sectors. The question here is "what are the implications of deregulation of the upstream sector of the oil industry or other mineral industries". A radical shift in the country's land administration policy is imperative for best practice management. The federal government should start by repealing all the Laws that gave it right of control over the mineral resources. Traditional owners of the land should be in a position to own and manage such resources, be it oil or any other mineral. It behoves such owners to determine the manner and extent of exploration and exploitation strictly within the confines of the laws including appropriate fiscal policy law. In other words, such management policy should not be detrimental or injurious to other people or even the government. Where a particular community lacks the economic, technical or management capacity to handle the mineral resources in its area, it can seek the help of other experts (local or foreign) and even States of Federal Governments on negotiated terms and conditions. Unless entrepreneurship is genuinely and truly allowed to blossom by concurrent deregulation of both the upstream and downstream sectors of the mineral industry, by allowing the real owners full control of their land resources, the obvious low managerial dedication would persist.

The flip side of this is that the Federal Government would in turn through fiscal policy measures ensure that appropriate revenues accrue to it. Communities and States where such minerals are exploited should be made to pay derivation tax to the Federal Government. This approach would engender competition, incentive and initiative among the different communities, peoples and States to adopt best management practices in the mineral industry; while at the same time unleashing the latent potentials of the land (Ogbuefi, 2004). The Federal Government at the end of the day would even generate more revenue though this approach than is currently being achieved.

4. Land Valuation Mechanism

Ordinarily, valuation implies an estimation of the true market value of a commodity. However, there may be situations where extenuating circumstances may not allow for the estimation of the true market value. Opinions between values vary and the valuation environment and circumstances may also not engender the estimation of true market value.

Valuations, normally being based on market evidence, are more likely to be accurate during stable conditions. These conditions are not only economic but also political, legal and socio-cultural. In unstable conditions, there may be little market evidence or such evidence may rapidly go out of date, and in those circumstances, valuers may not be able to read very closely the trends of the market (Enever and Isaac, 2004).

The argument above pre-supposes the valuation of tangible commodities. However, modern trends in valuation suggest that intangibles that are clearly difficult to denominate in market values come under scrutiny in valuation. So for a valuer, one can say that the valuation should include the estimation of value of both the market goods/tangibles and non-market goods/intangibles in order to arrive at a true value or total economic value of a commodity.

There are basically three internationally recognized methods of land valuation. The methods are not necessarily mutually exclusive since, in principle, they are all based on market comparison. The problem is in the determination of some of the factors at play in arriving at the final market value or total economic value.

The three methods are:

- *Comparative method*
- *Investment method*
- *Replacement cost method*

In the United Kingdom and most commonwealth nations, the above three stated methods are supplemented by two other methods namely:

- *Profit method*
- *Residual method*

Here again, it should be pointed out that in applying all these methods the principle of comparison is fundamental (Wyatt, 2007).

In adopting any valuation method, the valuer must be conversant with both intrinsic and extrinsic factors of the land. The forces at play should be well articulated. These include the motive for the valuation, the motive for the ownership, the prevailing customary and cultural practices of the area, the existing statutory provisions affecting land valuation in the area, the economic indices prevalent at the point in time.

5. Criteria for Standardized Land Valuation

Since the work is on the establishment of criteria for standardized land valuation mechanism, within the context of standardization and integration of land titling and registration, it is necessary to briefly discuss the earlier stated methods of valuation. This would help in suggesting whether all or any of them is appropriate for the set objective.

5.1 Residual Method

The residual method of valuation is sometimes referred to as development method especially when used in the context of viability appraisal. Some scholars treat both residual and development method as the same technique (Lawrence et al., 1975, Umeh, 1977). Residual valuation is used to ascertain the value of an unknown such as an under-utilized piece of land or even vacant land with latent value. It was initially used to determine the value to be paid for a piece of land for the purpose of development. It is also used as an indicator of the highest and best use of a piece of land. Here, various permissible land uses within an area are analyzed with a view to establishing the one that would release the highest latent value. In other words, where the values of the other factors of production viz labour, capital and management are known, the value of the remaining factor which is land can be ascertained quantitatively (Ogbuefi, 2002). Such calculations can be carried out on a capital or a rental basis. On the whole, some key criteria or variables have to be considered in residual valuation of which most of them are very unpredictable. These are: rent, yield, construction cost, development finance, period of development, return for profit, risks, and contingencies. The residual method has some serious inadequacies particularly when viewed in the context of general land valuation. It pre-supposes that there must be an

immediate or proposed development. Also, the method is arbitrary because of the over-bearing subjective professional judgment built into it. Again, the method could be said to be crude because the various constituent components of the cost may be influenced by various factors over a period of time. On the whole, this method is obviously not very appropriate as a standard model for ascertaining the value of land especially fully developed and rural lands.

5.2 Profit Method

In profit method, the conceptual basis is that the hypothetical tenant of land (including buildings) would relate his rental proposal to the probable amount of profit that would emanate from the business undertaking in the land.

This method is obviously not appropriate for a standardized land valuation because of its obvious shortcomings as articulated below. The profit method can only be applied in a situation where elements of monopoly are involved. The primary aim is to determine rental value and not capital value. Even at that, the rental value is adjudged to primarily depend on the profit earning capacity of the land. Profit as a guide to the determination of annual rent would only be applicable in those situations where there is every probability that the profit has direct bearing on the rent which may reasonably be expected. This is critical because one must not equate profit to rent. There are instances where a piece of land can have a substantial annual value even though no profit is being made out of the ownership or occupation. In effect, in some instances, annual values are not affected by the presence or absence of profit drivable from the land. Williams et. al. (1963) submitted that the true rule in the use of profit method is that profits must be regarded as affecting annual value, just as far as those profits would, as a matter of fact, affect the rent which may reasonably be expected.

Profit method also requires the use of accounts of the business going on in the land. This method should be applied with extreme care and is mainly used in property rating valuation; where comparables are frequently not available, as with certain types of property such as theaters, restaurants and hotels (Enever and Isaac, 2004).

This method is obviously not appropriate as a standardized land valuation method for purposes of land titling and registration.

5.3 Replacement Cost Method

The replacement cost method variously referred to a depreciated capital value method or contractor's method is mainly used to value specialist developed properties that are seldom sold or have no evidence of rents. Consequently, there is little or no comparable evidence. A property might be specialist because its use requires it to be constructed in a particular way. The method is employed when existing uses of these sorts of properties need to be valued for purposes of corporate disclosure, rates and insurance valuation (Wyatt, 2007). This method therefore has limited application and should be handled with caution because of so many subjective judgment built into its use.

Its principal usefulness appears to rest on the doctrine that cost of replacement represents a ceiling upon value. This doctrine is valid only under perfect competitive conditions because as has been well established in economic theory, value can be above cost under conditions of imperfect competition (Ifediora, 1993). This method was originally used in the period before the First World War when cost and value were closely related. It involved little more than the application of appropriate percentage to the cost of construction of the buildings and to the cost of acquiring the land of which the property consisted (Williams, et. al. 1963). It was based on this scenario, that the method was then referred to as the "contractor's method".

If this concept were applied today, it would only be valid for a new building in a near static economy. In such a situation, cost estimates may be based on quantity survey of the actual expenditures involved, or unit cost method may be used. The various items which go into the building of a standard structure may be computed on an 'in-place' basis (Weimer and Hoyt, 1966). Where the detailed drawings and a specification of building are available, recourse may be made to the preparation of bill of quantities.

However, whatever the approach used in the determination of the cost of equivalent new building, whether by the use of bill of quantities, square metre or cubic metre bases, the aim is to get the value of an equivalent reinstatement. This can be done after allowing for depreciation due to age, state of repairs and obsolescence. The issue of allocation of depreciation is critical in the use of this method. This is so, since depreciation is not always a correlation of or synonym of 'age' (May, 1968). Ogbuefi (2002) believes that in order to have a fair assessment of depreciation, it must be seen as having physical, functional, economic, locational, technological,

socio-cultural and even political dimensions. After the analysis to obtain the cost of equivalent existing building the valuer would then add the value of the land.

The key issues in the use of this method are that it is only used to value developed properties that very rarely trade in the open market and therefore there is little or no evidence of comparable market prices on which to base value opinions.

Again, as a valuation method, it is generally regarded as a 'method of last resort' because it does not really produce an estimate of market value, at least not the building component anyway. Its use, therefore, as a standard valuation method cannot be of general application particularly for land titling and registration.

5.4 Investment Method

The investment method variously referred to as income method or direct capitalization method is predicated on the assumption that land is an income yielding investment. The value of such an investment using this method is the product of net income and the inverse of the market yield.

The use of this method in valuation pre-supposes that the land in question has {a} income yielding capacity {b} known investment life span {c} determinable discount rate.

The first step in investment method is therefore the determination of the current rental value of the land which requires methodical evaluation and adjustment as may be necessary to arrive at the proper rental income which the subject land may reasonably be expected to generate.

The second step is the determination of the holding period and the content thereof. The third step is the determination of the appropriate rate of interest or discount rate.

Investment method of valuation in its traditional form made sweeping assumptions that took those issues as a matter of course. It assumed in its traditional model that the value of land is the product of net income and years purchase. It is in this vein that Fisher (1930) believed that market value of land would be dependent solely on the two factors, the benefit or return expected by the investor and the market rate of interest by which those benefits are discounted. This argument may be true in a society with non-existent inflation and low interest rate where the primary concern would be the security of the investment in money terms. Ajayi (1988) argued that the use of investment method in its traditional model is only logical and defensible if landed property is more risky and less liquid than fixed interest government securities at the time of valuation and that there is no upward trend in rental terms as this is seen as a positive advantage to minimize the risk of a fall in income. Conventionally, a premium of around 1 – 2% was added to the redemption yield on long-dated gilts to account for property market (Wyatt, 2007).

In this approach, the capital value is arrived at by relating the market rent with all-risks yield (ARY). In other words, any future growth in economic benefits (either rental or capital) is accounted for or implied by the choice of yield. The approach is therefore 'growth-implicit' in that it does not explicitly project the cash-flow beyond the current market rent.

In an inflation-prone economy or a volatile or unstable polity the use of this traditional investment method becomes suspect. In recent times, property investments valuation involves analyzing comparable evidence to determine the appropriate yield which was, in fact, mathematically and logically equivalent to the target rate of return (TRR) (Baum and Crosby, 1995). The increasing diversity in the property investment market has undermined the all-risks yield (ARY) valuation technique because it relies heavily on comparison between relatively homogeneous investment assets and simple adjustments to comparable evidence (Harvard, 2000). This has led to the emergence of investment method of valuation techniques that focus more explicitly on the target rate of return that an investor requires, the expected cash in-flows and out-flows, and capital growth that might be expected from an investment. This explicit model which involves the use of discounted cash-flow (DCF) technique capitalizes or, in the language of investment mathematics, discounts the actual or estimated cash-flows at the investor's target rate of return. The DCF technique requires explicit assumptions, based on evidence, to be made regarding several factors but most importantly the TRR (which should cover the opportunity cost of investment capital plus perceived risks) and expected rental income growth. (Wyatt, 2007). Various variants of this explicit investment models have been canvassed (Marshall, 1976, Crosby, (1983), Ogbuefi 2002, Udo, 2003, etc) depending on the discount factors and time projections.

By way of summary, investment method of valuation whether traditional model or, any of the modern models may not be appropriate as a standardized land valuation technique for purposes of land titling and registration, except in peculiar investment properties with no other alternative method of arriving at the market value.

5.5 Comparative Method

Comparative method often referred to as indirect market comparison involves the determination of the market value of land by direct comparison with prices paid for comparable lands. Comparative method of valuation is recognized as the technique most frequently used by valuers and is at the heart of all valuation techniques (Britton and Johnston, 1980). The principle of comparison is based on the economic concept of substitution, that a knowledgeable and prudent person would not pay more for a piece of land than the cost of acquiring an equally satisfactory substitute (Wyatt, 2007). This implies that, within an appropriate time dimension, the values of properties that are considered to be close substitutes in terms of size, location, desirability and utility tend to be similar, and the lowest price of the best alternative tends to establish the market value. Market value in this context is seen as the price the interest in land would command in open market assuming a capable willing-buyer and an able willing-seller situation (Yahya, 1986). This must be clearly noted as the desire of a prospective purchaser to possess a property and his ability to translate that desire into the actuality of purchasing is critical.

Landed property which is heterogeneous in character poses some difficulty in determining exact comparability, if only because of differences in fixed geographical location of each property. It is possible nevertheless, through study and analysis of market transactions, to adjust for price effects caused by differences in physical characteristics in order to obtain economic equality essential to an accurate estimate of market value using this method. (Ifediora, 1993). The greater the number and the more recent the sales of comparable properties, the higher the accuracy and the more convincing the results obtained. Comparable properties here imply comparable substitutes. Market data approach is based on the principle of substitution which in this method implies that a prudent person will not pay more to buy a piece of landed property than it will cost to buy a comparable substitute landed property.

Comparable landed properties are selected on the basis of their elements of comparison which include the key transaction information such as the date, price paid, market rent and yield, as well as the determinants of value including size, location, use, age, condition and tenure. Value-significant differences between each comparable and subject property must be reconciled before arriving at reliable evidence of value. This reconciliation can be undertaken qualitatively by the valuer, who would have experience and knowledge of the local market or quantitatively by weighing comparable properties, and isolating differences in the elements in order to quantify and adjust the values accordingly (Wyatt, 2007). Ordinarily, combination of qualitative and quantitative approaches would be involved especially when non-use values or environmental values are also involved. Non-use value often called intangibles, passive or intrinsic value is value derivable from economic goods independent of any use and are generally differentiated from use value, which people derive from direct use of the good (Idu, 2010). This value is often sentimental, aesthetic, psychic, socio-cultural and spiritual. It includes values attached to natural habitats, cultural and spiritual environments like shrines, ancestral graves, etc. Scholars have argued that these intrinsic or intangible values should be incorporated in arriving at the final value of land (Umeh, 1967).

In recent times, approaches like Hedonic and Contingent methods are all aimed at addressing the determination of such values. These methods which include the use of regression analysis in Hedonic (Freeman, 1970) and hypothetical responses to questions on value placement on non-use goods by consumers (Kolstad, 2000) can be incorporated into the final analysis of market value determined by the use of comparative method when intrinsic or intangible values are involved.

Ordinarily, direct comparison valuation has two fundamental component parts:

- A store or file of property data to use for comparison.
- The organized analysis of that data to produce a valuation.

The overall objectives can be summarized as; firstly, to record extracts from the various register and/or data from physical surveys on a computerized database and, secondly, to interface the database with statistical analysis packages such as Statistical Package for the Social Science (SPSS) to produce a more orderly valuation (Harper, 1984).

6. Conclusion

It is believed that even though comparative method has its own shortcomings, the approach, if well articulated and executed as discussed, could be the most appropriate option for use in land valuation within the context of

land titling and registration in Nigeria. This is more so when it is widely known that the principle of comparison underpins all other valuation methods (Wyatt, 2007).

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