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"When we import goods, we export jobs"

An in-depth analysis of the laws and practices related to land expropriation for the Lekki Free Trade Zone in Lagos, Nigeria

By
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Section 1: Introduction

This article sheds light on a series of events that triggered escalating tensions over land and resources in the coast communities of Lagos, Nigeria. This article provides an in-depth analysis of Nigeria's laws on expropriation and the processes of acquiring land and compensating landholders in the Lekki Free Trade Zone (LFTZ) case. Specifically, the analysis addresses the following research questions:

1) Do Nigeria's laws comply with internationally recognized standards on expropriation and compensation?
2) Did the government follow international standards on expropriation and compensation in the LFTZ case?
3) What measures can be recommended to the Nigerian government to the balancing of property rights with the public interest, thus ensuring the sustainable development of both affected communities and the general public?

Proposing law reform as a solution to the recurring issue of insufficient compensation, this article answers research question (1) by assessing Nigeria's laws on expropriation and compensation to determine whether they comply with internationally recognized standards as established by the Voluntary Guidelines on the Responsible Governance of Tenure (FAO 2012). To conduct the analysis of Nigerian laws and practices related to land expropriation and compensation, the authors utilized the legal indicators on Nigeria from the Voluntary Guidelines on the Responsible Governance of Tenure dataset available on Land Portal.[6] This dataset measures national expropriation laws against international standards and is publicly available on the Land Portal (Tagliarino 2016, 2017).

Answering research question (2) entailed conducting a desk review of primary and secondary sources on the LFTZ case as well as surveying 140 households from 10 communities that were affected by the LFTZ. The survey questions asked about the type of compensation, resettlement, and other entitlements granted to affected communities, the process by which compensation was calculated and land was expropriated, and whether the amount given was sufficient to cover income and other livelihood losses. Interviews were also conducted with local NGOs, government bodies, and the private sector to better understand the various viewpoints on the LFTZ case. Research question (3) was answered by using the findings from the legal analysis and LFTZ case study to develop a set of evidence-based recommendations for legal reform of the LUA.

Section 1.1: Background on the LFTZ case

In 2004, the Lagos State Government (LSG) set aside 16,500 hectares of expropriated land for the development of the LFTZ (LSG 2016).[7] Still under construction and designed to be the largest free trade zone in Africa, the LFTZ is intended to create jobs, optimize manufacturing and industrial development, and attract foreign direct investment (BBC Africa Business Report 2016). The former Lagos State Governor, Babatunde Raji Fashola, stated that the LFTZ would address the public concern that importing foreign goods means exporting jobs

[6] See www.landportal.info

[7] The LFTZ was initiated through a joint venture between a state-owned company called Lekki Worldwide Investments (LWI), the LSG, and a Chinese consortium of companies led by the China Civil Engineer Construction Corporation (CCECC). This joint venture resulted in the establishment of the Lekki Free Zone Development Company (LFZDC). The Chinese consortium owns sixty percent of the LFZDC equity, LWI holds 20%, and other Nigerian investors hold 20% (Mthembu-Salter
2009).

(BBC Africa Business Report 2010). Even though the LSG justified the expropriation as serving the "public interest" of creating jobs for Nigerians and stimulating local economic growth, the LFTZ is tax-free for foreign investors. Foreign companies can bring their own employees into the LFTZ and take profits back to their home countries (BBC Africa Business Report 2016). Since most of the LFTZ has not yet been built, it remains to be seen whether Nigerians will reap significant economic benefits from the project (Hoops 2017).

Regardless of whether the LFTZ serves a genuine "public purpose", the process of developing the LFTZ indicates poor compliance, in law and in practice, with internationally recognized standards on expropriation, compensation, and resettlement. The land acquired for the LFTZ was historically used by indigenous communities for farming, grazing, collecting firewood, retrieving medicinal plants, and engaging in customary practices. In response to losing their rights and access to farmland, affected communities[8] demanded compensation, alternative land, jobs, and equity shares from the companies involved in the LFTZ. In 2007, the LSG, Lekki Worldwide Investment Limited (LWIL), and nine affected communities signed a legally binding Memorandum of Understanding (MOU). The MOU promised compensation, alternative land, jobs, healthcare, and educational opportunities to the communities affected by expropriation. However, an independent fact-finding tribunal, commissioned by the LSG, found in 2016 that the majority of entitlements listed in the MOU still had not been granted to affected communities (LSG 2016). To further study the LFTZ case, our research group interviewed affected communities, government agencies, and private sector entities in August and September 2017. Our findings show that the majority of compensation and other entitlements listed in the MOU still had not been granted to affected communities. As discussed in Section 3, most of the households we surveyed were still waiting for compensation and other promised benefits, while continuing to live without land to grow crops or means for sufficient income to sustain their livelihoods. Among those who actually received compensation, none believed that the amount granted was sufficient to cover the losses they incurred from the expropriation.

The LFTZ case illustrates how weak expropriation laws that fail to meet international standards can enable land expropriation without sufficient compensation.[9] We argue that the legal provisions in Nigeria's Land Use Act 1990 (LUA) are in desperate need of reform, primarily for the following reasons:

1. The LUA does not establish a clear legal definition of "public interest" to allow for judicial review of government expropriation decisions;
2. The LUA does not require the government to follow clear, robust and transparent methods of calculating compensation;
3. The LUA does not establish a deadline by which compensation must be paid;
4. The LUA does not respect the indigenous right to Free Prior and Informed Consent (FPIC) by incorporating community negotiation and consultation into expropriation and compensation processes (UN 2013);
5. The LUA neither obliges the government to grant alternative land to affected populations nor does it establish protections against corruption pertaining to compensation payments.

[8] "Affected communities" for purposes of this article are defined as communities whose land tenure rights were affected by the expropriation for the LFTZ.

[9] "Compensation" for purposes of this article is defined as the payment, in cash or in kind, made by governments or acquiring bodies to landholders affected by expropriation. Compensation "in kind" may include alternative land, equity share in project, jobs, vocational training educational scholarship, or other entitlements.

Due to the LUA's inadequacies, the LSG and the private sector actors were able to acquire vast tracts of land without first consulting affected populations or ensuring that the expropriation did not leave them worse off than before their land was taken.

This article is divided into four sections:

- **Section 1** provides an introduction to the case study and analysis
- **Section 2** provides an analysis of whether Nigeria's laws comply with international standards on expropriation and compensation.
- **Section 3** provides an analysis of whether the LSG's actions in the LFTZ case comply with international standards on expropriation and compensation.
- **Section 4** draws conclusions from the analysis and presents a set of evidence-based recommendations for reforming the LUA to ensure compliance with international standards on expropriation and compensation.

Section 2: Comparison of Nigerian Laws with International Standards on Expropriation and Compensation

International standards on expropriation and compensation are established in Section 16 of the Voluntary Guidelines on the Responsible Governance of Tenure (VGs) (FAO 2012). The VGs are the first internationally recognized guiding principles on land tenure. The VGs are globally applicable soft law which aim at protecting the land tenure rights of all people, particularly the vulnerable and marginalized. The VGs were endorsed by all 193 members of the UN Committee on World Food Security (CFS), in 2012 (Kropiwnicka 2012). This article's legal analysis is primarily based on Section 16 of the VGs highlights of which are given:

Table 1 – Highlights from Section 16 of VGs

According to Section 16 of the VGs, States should:

- Provide a clear definition of "public purpose" in law to allow for judicial review
- Only acquire the minimum resources necessary
- Be sensitive where proposed expropriations involve areas of particular cultural, religious, or environmental significance, or where the land is important to the livelihoods of the poor and vulnerable
- Identify, inform, and consult affected populations at all stages of the expropriation process
- Pay fair and prompt compensation to all legitimate tenure rights holders based on objectively assessed values
- To the extent that resources permit, provide productive alternative land and adequate housing

Section 2.1: Nigeria's Legal Framework on Expropriation

The Constitution of Nigeria (1999) states that no property can be acquired except for purposes prescribed in a law that grants "prompt payment of compensation" and "gives to any person claiming such compensation a right to challenge compensation decisions in court" (Section 44, GON 1999). This constitutional provision is implemented through Section 28 of the LUA, which permits State Governors to acquire statutory and customary rights of occupancy for the "overriding public interest" (Section 28, GON 1990). Initially passed as a Presidential Decree in 1978 during Nigeria's era of military rule, the LUA eventually became legislation in 1990. Widely considered by scholars and practitioners in Nigeria to be outdated and inadequate, the LUA has undergone several failed attempts at amendment (Ako 2009).

The LUA vests all land to State Governors in trust to be administered "for the use and common benefit of all Nigerians" (Section 1, GON 1990). Individuals and communities are not legally permitted to own land in Nigeria. Under sections 5 and 6 of the LUA, State Governors are authorized to grant statutory rights of occupancy to landholders in rural and urban areas (GON 1990). State Governors can also grant customary rights of occupancy to any person for agricultural, residential, grazing, and other purposes. However, the LUA does not explicitly grant legal rights to landholders of unfarmed, undeveloped land (Section 6, LUA; Wily et al. 2016). The LUA also states that "no single right of occupancy shall be granted…in excess of 500 hectares if granted for agricultural purpose, or 5,000 hectares if granted for grazing purposes" (Section 6(b)(2), GON 1990).

Under section 36, customary occupiers or holders who used land for agricultural purposes prior to passage of the LUA are considered lawful possessors of their agricultural land "as if a customary right of occupancy had been granted to the occupier and holder." In section 51, the LUA defines customary rights of occupancy as "the right of a person or community lawfully using or occupying land in accordance with customary law." The Local Government, if it is satisfied that an occupier or holder is entitled to possession, and upon the production of the occupier's sketch, diagram, or sufficient description of land, may register the holder or occupier and grant a customary right of occupancy (Section 36(3), GON 1990). However, State Governors retain broad discretion to revoke customary rights of occupancy for the "public interest", as was done in the LFTZ case (Section 28, GON 1990).

Section 2.2: Clear definition of "public purpose" in law to allow for judicial review

The FAO Handbook states that an exercise in compulsory acquisition is more likely to be considered legitimate if land is taken for a purpose clearly identified in legislation (FAO 2008). However, Nigeria's LUA contains a vague, open-ended legal definition of "public purpose," ostensibly granting State Governors broad discretion to establish a public purpose justification for the compulsory acquisition of land. Section 51 of the LUA states that "public purpose" includes "for exclusive Government Use or for general public use", use by any corporate body (if government is a shareholder), or for mining purposes or "economic, industrial or agricultural development" (Section 51, GON 1990). Since Section 51 states "public purpose *includes*…", the list of purposes is not exhaustive, suggesting that the State Governor can expropriate for other purposes not listed in the Act. The vaguely defined purposes in the LUA are problematic for a number of reasons. Since there are no checks in place to ensure corporate parties granted expropriated land would serve the public interest, this provision could allow expropriation to be used exclusively for private economic gain

without benefitting the public. Moreover, the LUA does not limit the State Governor's authority to acquire land under the pretext of a public purpose and transfer such land to private companies, even when the actual purpose will not promote local economic development or otherwise serve a public purpose.

Both statutory and customary rights of occupancy can be revoked for the "public interest" (Section 28, GON 1990). Statutory rights can be acquired when land is needed for "public purposes within the State", including when land is needed for mining or the construction of oil pipelines (Section 28(2) GON 1990). Similarly, customary rights can be acquired for public purposes, mining purposes, the extraction of building materials, and other purposes (Section 28(3) GON 1990).

The LUA does not explicitly subject the State Governors' decision on what constitutes a "public purpose" to oversight by the judiciary, though it can be presumed that Nigerian courts may overrule a State Governor's decision if there is a violation of the "public purpose" provisions. But it is unclear under what circumstances such a violation would arise. The LUA does not provide guidance to allow for judicial scrutiny of "public interest" decisions. The LUA's vagueness opens the door for potential misuse and abuse of expropriation power by the Governor; there is no statutory basis on which courts can keep this power in check. In practice, Nigerian courts rarely overrule expropriation decisions made by the State Governors. In our legal review, we found only one instance in which the Lagos High Court ruled that the State Governor's decision to expropriate land for development purposes was unconstitutional (Totaro 2017). However, this High Court ruling did not focus on the "public purpose" issue, but rather held the expropriation and forced eviction of communities were unconstitutional because there was no resettlement plan in place (BBC 2017).

Section 2.3: Only acquire the minimum resources necessary. Be sensitive where proposed expropriations involve areas of particular cultural, religious, or environmental significance, or where the land is important to the livelihoods of the poor and vulnerable.

The LUA does not require State Governors to minimize the amount of land acquired to the amount necessary to achieve a public purpose. There are no restrictions in the LUA on the type of land that the Governor is permitted to acquire. The LUA does not oblige the Governor to respect the indigenous right to Free Prior and Informed Consent prior to initiating development projects (United Nations 2013). Furthermore, the LUA does not oblige State Governors to be sensitive to areas of cultural, religious, or environmental significance or areas held by the poor and vulnerable groups such as indigenous and rural communities.

Section 2.4: Identify, inform, and consult affected populations at all stages of the expropriation process

The LUA does not require the government to survey affected landholders, provide information on the project, or consult landholders prior to expropriating land for development projects. Section 28(7) of the LUA merely states that rights of occupancy shall be extinguished "on receipt by him of a notice or on such later date as may be stated in the notice" (GON 1990).

Section 2.4: Pay fair and prompt compensation to all legitimate tenure rights holders based on objectively assessed values

In addition to Section 16, several other provisions in the VGs and other international guidance documents suggest that compensation should cover the loss of economic activities as well as intangible values (e.g., cultural, spiritual historical value), and not be limited to the market value of crops and improvements made on the land.[10] However, under section 29(1) of the LUA, when land is expropriated, holders and occupiers are entitled to compensation based only on the land's "unexhausted improvements" (GON 1990). "Unexhausted improvements" are defined in section 51 of the LUA as "anything of any quality permanently attached to the land, directly resulting from the expenditure of capital or labour by an occupier…and includes buildings, plantations of long-lived crops or trees…but does not include the result of ordinary cultivation other than growing produce" (Sect 51, GON 1990). In other words, compensation is limited to the improvements and crops on the land, but does not cover the value of the land itself. This provision effectively precludes holders of unfarmed, undeveloped commons from obtaining any compensation when their land is expropriated. Additionally, the LUA does not require that compensation reflect the loss of economic activities, spiritual or cultural values, and other livelihood needs.

According to a Nigerian lawyer at Lekki Free Zone Development Company (LFZDC) we interviewed, the Lagos Lands Bureau, which acts on behalf of the State Governor on land-related matters, has broad discretion to value compensation for crops and has often used arbitrary, outdated assessment methods resulting in insufficient compensation rates. Since the LUA does not contain clear legal provisions that ensure compensation addresses all land values and livelihood losses and is adjusted to reflect inflation and current market rates, landholders may have little recourse or ability to hold the Lands Bureau accountable if they are dissatisfied with compensation decisions. Even if affected landholders challenge compensation decisions in court, the LUA does not provide adequate guidance for judges to follow when determining whether compensation decisions violate the law. Overall, the LUA fails to prevent the Lands Bureau from engaging in arbitrary, ad-hoc decision-making on compensation, and thus leaves Nigerian landholders vulnerable to expropriation without sufficient compensation.

Although the term "negotiation" does not appear in Section 16 of the VGs, it can be argued that compensation negotiations between affected communities and governments are necessary to obtain objectively assessed values. Fair and transparent negotiations can help break down barriers between the acquiring agency and affected communities, and permit each party to better understand the needs of the other (FAO 2008). Without a right to negotiate compensation, affected communities may be more likely to be dissatisfied with compensation decisions made by governments behind closed doors.

[10] For example, section 9.7 of the VGs establishes that "States should, in drafting tenure policies and law, take into account the social, cultural, spiritual, economic and environmental values of land." Section 18.2 of the VGs also states "Policies and laws related to valuation should strive to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable. The FAO Handbook on Compulsory Acquisition and Compensation also states that "the value for compensation should include more than the value of the land and improvements. The disturbance accompanying compulsory acquisition often means that people lose access to the sources of their livelihoods. This can be due to a farmer losing agricultural fields, a business owner losing a shop, or a community losing its Compulsory acquisition of land and compensation. Valuation, compensation and taking possession traditional lands. Compensation may be awarded for the disturbance or disruption to a person's life under certain conditions. Some countries allow for additional compensation for personal distress in recognition that the sale is not voluntary and people may be deeply emotionally, culturally, or spiritually affected by the loss of their land" (FAO 2008)

The LUA does not grant affected landholders the right to negotiate compensation. As discussed above, the Lands Bureau is granted broad discretion to determine a fair rate of compensation without a system of checks to ensure objective assessment. Without a procedure by which affected landholders can participate in compensation decision-making, it is unlikely that the Lands Bureau will be equipped to fully comprehend the magnitude of the livelihood losses that result from expropriation. The LUA's "take it or leave it" approach to providing compensation arguably forces the affected landholder into the unfavorable position of having to choose between no compensation and insufficient compensation.

Although section 44 of the 1999 Constitution of Nigeria requires "prompt" compensation, the LUA does not require compensation to be paid prior to the taking of possession of the acquired land (GON 1990, 1999). The LUA does not even establish a deadline for payment of compensation. Presumably, compensation may be paid at any time after the acquisition of land, meaning that affected landholders may be forced to wait for years for compensation payments.

Section 2.5: Provide productive alternative land and adequate housing

The LUA partially complies with this provision because it permits alternative land to be granted to affected landholders if their right of occupancy is revoked. However, the Governor has discretion to offer alternative land, but he is not legally obligated to do so. The LUA grants affected landholders either monetary compensation or alternative land, but not both. Moreover, there is nothing in the LUA requiring that alternative land be productive, suitable, or of the same status as the land acquired. Section 33 of the LUA provides that the "Governor…may in his or its discretion offer in lieu of compensation…resettlement in any other place or area by way of reasonable alternative accommodation (if appropriate in the circumstances)" (GON 1990). This provision does not guarantee suitable alternative land for affected landholders.

Section 3: International Standards and the LFTZ Expropriation Case

This section examines the actions taken by the LSG in the LFTZ case to determine if the LSG complied with international standards on expropriation and compensation. The findings from the research reveal that the LSG did not comply with several key international standards, particularly those calling for transparent and participatory expropriation processes and prompt payment of compensation.

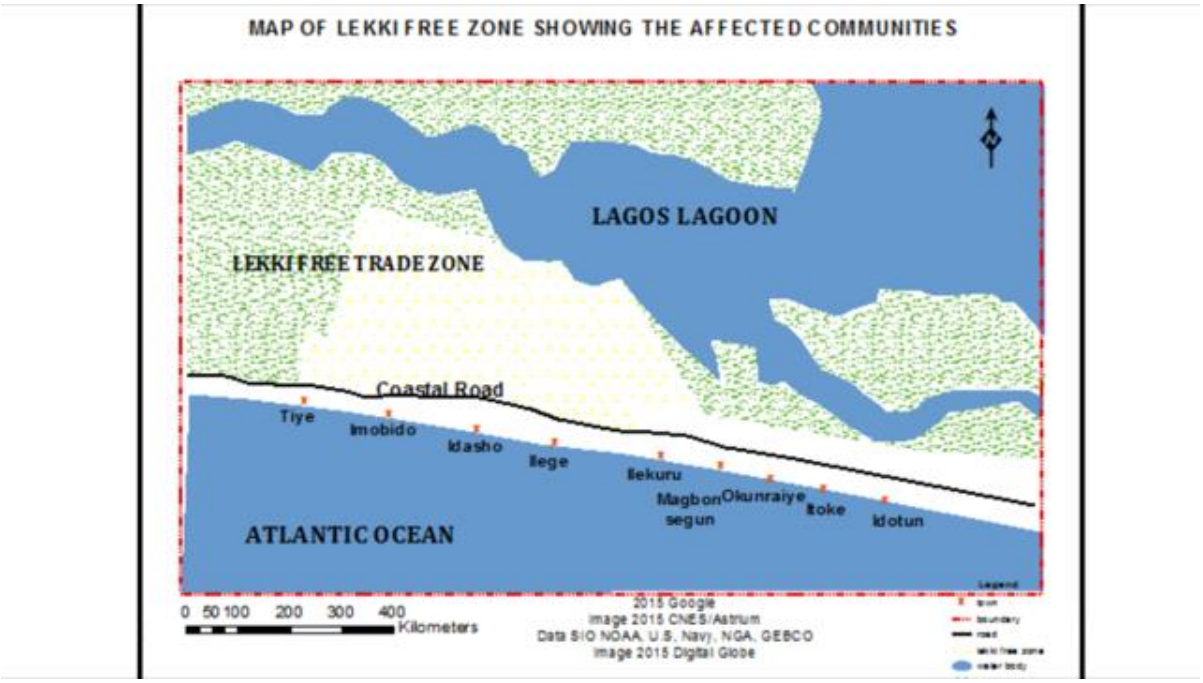
Section 3.1: The 2007 MOU

According to a lawyer we interviewed at Social and Environmental Rights Action Center (SERAC),[11] the LSG did not consider compensating affected communities or providing alternative land until SERAC began advocating on behalf of the communities in 2007. A series of meetings led to the development of an MOU in 2007 between the LSG, the Ibeju-Lekki Local Government Council, nine affected communities, and Lekki Worldwide Investment Limited (LWIL). The nine communities that are parties to the MOU are:

1. Idasho

[11] SERAC is a Nigerian human rights organization that represented nine affected communities when negotiating the MOU with the Lagos government and interested companies.

2. Idotun
3. Ilege
4. Imobido
5. Itoke
6. Okunraiye
7. Ilekuru
8. Tiye
9. Imagbon-Segun



Source: Oluwo. D. 2015.

Although SERAC represented nine communities in the MOU, there may be as many as 26 communities actually affected by the LFTZ, according to the SERAC representative. The MOU states that the LFTZ must comply with all applicable national and international legal standards. The MOU obliges the LSG to provide a number of compensation entitlements to affected communities, including:

- A 2.5% equity share capital in LWIL;
- Workforce development initiatives such as skills training, job creation, and capacity building;
- Access to educational opportunities at primary and secondary schools;
- Access to health care and recreational services;
- Prompt payment of compensation for all genuine claims made by members of affected villages;
- No less than 750 hectares of unencumbered land for the resettlement of communities displaced by the project; and
- Certificates of occupancy covering the 750 hectares of unencumbered land.

The MOU further provides that the Lagos state government shall not displace the three communities (Idotun, Itoke, and Okunraiye) whose land is identified for a proposed seaport

and, if such seaport is developed, shall provide no less than 170 hectares of unencumbered land. These communities have not yet been displaced; however, the seaport is currently under construction and is likely to cause displacement soon. In their interviews, some communities alleged that they had been threatened to vacate by company officials involved in the seaport's construction.

While at first glance, the MOU appears to provide adequate entitlements to affected communities, a closer examination reveals serious flaws. Firstly, the MOU does not provide specifics regarding where the resettlement land must be located, how many jobs must be provided, how many schools and healthcare facilities must be built, and how much compensation must be paid.

Secondly, there is no deadline by which MOU entitlements must be honored, meaning they may be paid at any time. As discussed below, the lack of a deadline enabled the LSG and LWIL to proceed for the past ten years without honoring the provisions of the MOU.

Thirdly, the MOU lumps all entitlements into one pot to be given to all nine communities, and thus ignores inter- and intra-community differences, such as different socio-economic and demographic profiles, endowments of land, crop yields, income levels, and more. According to the MOU, the 750 hectares promised as resettlement land are supposed to be shared by all nine communities. As discussed below, the implementation of this MOU provision led to a convoluted situation in which overlapping claims and competing interests prevented affected communities from actually taking possession of resettlement land.

Fourthly, the MOU designates a Resettlement Committee[12] as the entity responsible for implementing the provisions of the MOU, but it fails to establish specific obligations that the Committee must fulfill. There is no requirement in the MOU stipulating how often the Committee must meet and the MOU does not prescribe a timeframe for fulfilling the various provisions. The MOU further states that the Committee must ensure that "members of the affected villages and communities have free and effective access to information relevant to their understanding and participation in the LFTZ." The MOU states, in the event of a dispute regarding the MOU, parties can appoint mediators and, if that fails, can settle the dispute through arbitration. However, the lack of clear deadlines and other obligations imposed on the Resettlement Committee makes it difficult for affected communities to find grounds on which to challenge decisions taken by the Committee and otherwise hold the Committee accountable for ensuring compliance with the MOU.

Section 3.2: Implementation of the 2007 MOU

The research findings discussed below are based on surveys conducted in August 2017 with 140 households from 10 different affected communities. Interviews were also conducted with Social and Environmental Rights Action Center (SERAC)[13], the Lekki Free Zone Development Company (LFZDC), the Lands Bureau, Lagos Ministry of Commerce, Industry and Cooperatives, and Lekki Worldwide Investment Limited (LWIL). Public records, including the 2007 MOU and the 2016 "Government White Paper on the Report of the Tribunal of Inquiry into the Cause of Civil Disturbances at the Lekki Free Trade Zone on

[12] The Resettlement Committee is charged with implementing the MOU and must be comprised of representatives from the Ibeju-Lekki Local Government Council, LWIL, and affected communities. The LSG must ensure that affected villages and communities constitute no less than 30% representation of the Resettlement Committee.
[13] SERAC is a Nigerian human rights organization that represented nine affected communities when negotiating the MOU with the Lagos government and interested companies.

October 12, 2015" (hereinafter "Government White Paper") were also reviewed. [14] The evidence provided here is also supported by secondary sources including news articles.

In August 2017, we surveyed 140 household heads from 10 affected communities, nine of which signed the MOU through their representatives, to determine whether they had received compensation, alternative land, or other entitlements promised by the MOU. The randomization of the sample was not possible because we had to comply with communities' customary norms. In particular, in order to conduct the surveys, we had to first obtain permission from each community chief. Once the chiefs consented, they would then call members of the community to come and participate in the survey. Under customary norms and practices of the communities, the male heads of household have sole authority to speak on behalf of the household. In a few cases, widows also participated in the survey as can be seen in table 3. Respondents had to be selected for the survey based on whether they were willing to participate in the community meetings during which we were allowed to administer the questionnaire. Furthermore, any sampling stratification would be highly speculative, since there is no official register or list of all those living within the affected communities, so the total population of affected communities and their socio-economic and demographic composition is unknown. When asked how many households and individuals lived within each community, the chiefs and other community members were only able to give us a rough estimate of total households. With these limitations in mind, we estimate that our sample represents around 12% of the total number of households in the 10 communities based on the estimated total number of households in each community as shown in table 2.

[14] The Government White Paper was published in response to a clash between affected communities and police that ensued after communities barricaded the entrance to LFTZ in protest of the project. The incident resulted in the death of the Managing Director of the Lekki Free Trade Zone (LFTZ), Tajudeen Disu (LSG 2016). Disu reportedly died from a gunshot, but there were conflicting accounts of who fired the shot. The police subsequently arrested Okunraiye community members believed to be responsible for the death (LSG 2016). Meanwhile, community members stated in a sworn affidavit that a stray bullet fired by police killed Disu (LSG 2016).

Table 2 – Sample composition: respondents by community

Community	No. of respondents (household heads) [A]	Share (%) of resp. in the sample [B]	Estimated[15] Total No. of households [C]	Respondents / total No. of households (%) [D]
Idasho	20	14.29	110	18.18
Idotun	23	16.42	80	28.75
Ilege	6	4.29	120	5.00
Imobido	6	4.29	100	6.00
Itoke	21	15.00	90	23.33
Okunraye	17	12.14	250	6.80
Ilekuru	11	7.86	50	22.00
Tiye	17	12.14	100	17.00
Imagbon-Segun	9	6.43	150	6.00
Oke-Segun	10	7.14	40	25.00
Total	**140**	**100.00**	**1090**	**12.84**

[15] Estimates made by community chiefs

Table 3 – Sample composition: main socio-economic and demographic features

GENDER		
SEX	N	%
Male	123	87.86
Female	17	12.14
Total	**140**	**100.00**
AGE		
AGE GROUP	N	%
25-34	34	24.29
35-44	42	30.00
45-54	27	19.28
55-64	3	2.14
65+	34	24.29
Total	**140**	**100.00**
LITERACY		
LITERACY LEVEL	N	%
Cannot read and write	41	29.29
Can sign (write) only	3	2.14
Can read only	3	2.14
Can read and write	93	66.43
Total	**140**	**100.00**
EDUCATION		
HIGHEST GRADE COMPLETED	N	%
None/never attended school	27	19.29
Pre-primary/kindergarten	1	0.71
Primary	49	35
Secondary	50	35.71
Higher	13	9.29
Total	**140**	**100.00**
EMPLOYMENT STATUS		
CURRENT EMPLOYMENT STATUS (LAST WEEK)	N	%
Worked for pay (salary, wage, self-employed, …)	51	36.42
Worked without pay (apprentice, family business, …)	39	27.86
Did not work but have a job (sick, vacation, seasonal, ...)	3	2.14
Did not work but looked for a job	13	9.29
Did not work and didn't look for a job (unemployed, retired…)	34	24.29
Total	**140**	**100.00**

3.3 Access to information and participation during the land acquisition process

After publishing a notice in an Official Gazette, the Government acquired 823 Sq. Kilometers of land through expropriation in 1993 (LSG 2016). In 2004, 16,500 hectares of this land was set aside for the LFTZ.

As shown in table 4, our survey research coupled with our interview with SERAC indicates that the LSG failed to adequately survey, inform, and consult many of the affected communities living in the vicinity of the LFTZ prior to the acquisition of 16,500 hectares of land in 2006. The vast majority of households interviewed responded that the government and private companies did not inform or consult them regarding the LFTZ prior to taking possession of the land (Table 4). Overall, the results from the survey suggest that the level of participation of local communities during the land acquisition process was very low, and communities were granted little to no information on the LFTZ project as shown in table 5.

Table 4 - Participation and information of local communities affected by the LFTZ

Question	Yes		No	
	N	%	N	%
Were you informed about the LFTZ project before the project began?	34	24.29	106	75.71
Before the project began, were you consulted about the implications of the project on your community?	5	3.57	135	96.43
Were you informed about the expropriation before the project began?	21	15.00	119	85.00
Were you given an opportunity to give input in the expropriation plans?	4	2.86	136	97.14
Were you made aware of any environmental/social impact assessment conducted for the project?	3	2.14	137	97.86

Table 5 - Level of information by community

	WERE YOU INFORMED ABOUT THE LFTZ PROJECT BEFORE THE PROJECT BEGAN?		WERE YOU INFORMED ABOUT THE EXPROPRIATION BEFORE THE PROJECT BEGAN?	
COMMUNITY	**NO**	**YES**	**NO**	**YES**
Idasho	18	2	18	2
Idotun	22	1	22	1
Ilege	4	2	5	1
Imobido	1	5	1	5
Itoke	19	2	20	1
Okunraye	13	4	15	2
Ilekuru	5	6	6	5
Tiye	15	2	16	1
Imagbon-Segun	1	8	8	1
Oke-Segun	8	2	8	2
Total	**106**	**34**	**119**	**21**

Section 3.4: Compensation paid for crops

Between 2010-2013, the LSG paid compensation for crops and buildings but not for empty land, even though the MOU entitles affected communities to compensation for land (LSG 2016, Heinrich Bol Stiftung 2016). Based on the evidence available, it is not clear exactly how much total compensation was paid or how the compensation was calculated. According to a Government White Paper, "the scale used by LSG for compensation in 2010-2013 was drawn up in 2000, at least a 10 year gap. That scale has by reason of inflation and depreciation of the Naira become obsolete and should have been revised upwards" (LSG 2016). The LFZDC, LWIL, the Lands Bureau, and Ministry of Commerce were unable to provide us with records of compensation payments or details on the methods used to calculate compensation.

Table 6 shows that 59% of households surveyed were promised compensation, but only 2% claimed they were given an opportunity to negotiate compensation. Only 7% were told how compensation was calculated only 38 respondents out of 140 (27%) stated that they actually received any compensation (Figure 1), and the vast majority of them (97%) felt that this compensation did not cover all of their losses (Figure 2).

Figure 1 - Actual compensation and level of satisfaction

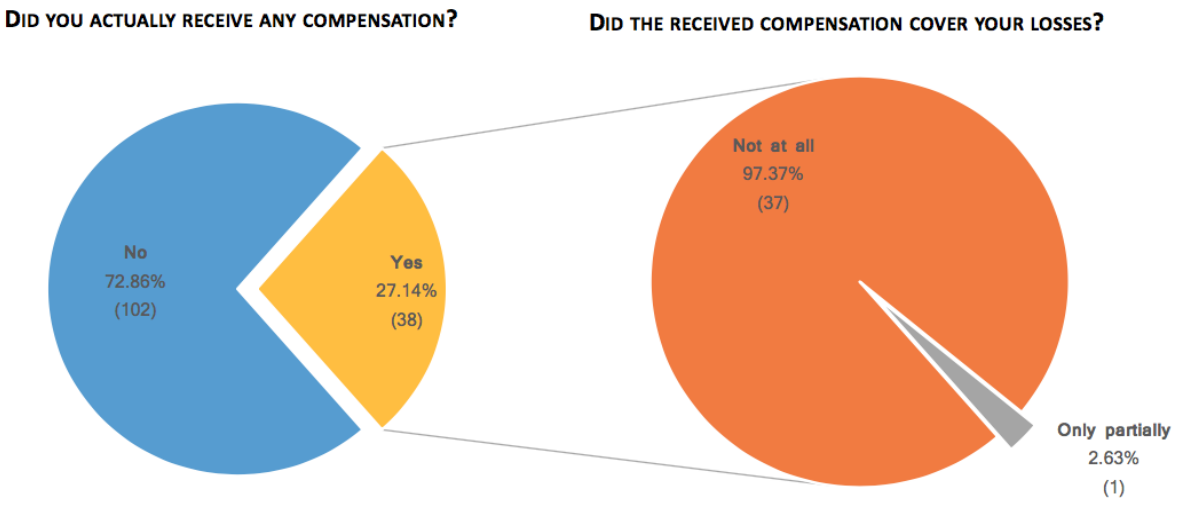


Table 6 – Promised Compensation

QUESTION	YES		NO		DON'T KNOW	
	N	%	N	%	N	%
Were you promised any compensation for the expropriation?	83	59.29	56	40.00	1	0.71
Were you given the opportunity to negotiate compensation? [Only if answered YES to previous question]	1	1.79	55	98.21	0	0.0
Were you told how compensation was calculated? [Only if answered YES to the first question]	4	7.14	52	92.86	0	0.0

In a few cases, only a lump sum payment for all crops was granted, but it was unclear to the households surveyed how exactly this payment was calculated. Affected communities stated that compensation was, in some cases, as low as 10,000 Naira (27 USD) for all crops. Results from the survey suggest that the calculation of the amount of compensation to be paid for the loss of crops was often discretional. Indeed, respondents frequently reported different levels of compensation for the very same crop, even inside the same community. The Government White Paper states that "when their people are paid sums of money in the range of N10,000 – N300,000 (approximating 27 – 800 USD) they feel short-changed, disgruntled and bitter."

Section 3.5: Possible Corruption

The Lands Bureau was unable to provide documentation of how much compensation has been paid to communities. However, a local newspaper reported that Lagos State Governor Ambode paid an initial 66 Million Naira to affected communities (approximately 183,500 USD) (The Guardian Nigeria 2016). In 2016, Ambode approved an additional 740 Million Naira (approximately 2 million dollars) in compensation for the affected communities (The Guardian Nigeria 2016). Presumably all of the compensation was sent to the Resettlement Committee, which, under the MOU, is charged with allocating compensation and other entitlements among the affected communities. According to the Guardian article,

> "Ambode said that an initial N66 million had been paid to owners of Parcel A lands, which houses the Dangote Refinery and some other companies while the new compensation approved was for host communities of Parcel B, comprising Yegunda and Abomiti zones" (The Guardian Nigeria 2016).

If this is true, there is a noticeable difference between the amount that the LSG reportedly paid and the amount that surveyed communities claimed they received. If compensation has not trickled down to the household level, then it is possible that intermediaries, including those involved in the Resettlement Committee, may have taken significant portions of the compensation payments. Intermediaries could have also included chiefs or other community "elites" involved in the negotiation around the MOU. The LUA provides that compensation may be paid to "the community, the chief, or leader of the community to be disposed of by him for the benefit of the community in accordance with…customary law", or into "some fund specified by the Governor" (Section 29(3), GON 1990). The Government White Paper does not thoroughly investigate crimes of theft or embezzlement, but states "the revelation at the Tribunal was that beneficiaries of compensation were paid in cash and sometimes through proxies in circumstances which facilitate diversion of money, theft, embezzlement, manipulation, and fraud…it is no wonder that some of the alleged beneficiaries denied receiving stated amounts of money shown against their names" (LSG 2016).

Section 3.6: Alternative land

According to our interview with the SERAC representative, a certificate of occupancy for 750 hectares of resettlement land was provided to the Resettlement Committee in 2009 (Heinrich Bol Stiftung 2016). This resettlement land was intended to be shared by all affected communities. However, it encroached on land held by three other affected communities, so three more affected communities were added to the MOU (Heinrich Bol Stiftung 2016).

In 2014, a certificate of occupancy of 375 hectares was provided to the Lekki Coastal Development Association, which is a legal entity managed by the Resettlement Committee (LSG 2016). The Government White Paper found that this constituted a breach of the MOU

since it is only half of what was promised by the MOU. Moreover, the alternative land was not clearly demarcated, making the boundaries unknown. According to our interview with the Illekuru community, roughly 96 hectares were sold to a third party, and the remaining portion is largely uncultivable swampland. When interviewed, Ilekuru community members claimed they were unable to access the resettlement land for farming and other subsistence purposes because the land is far away from their homes and widely considered to be uncultivable swampland.

Section 3.7: Jobs and Equity Shares

None of the affected households we surveyed were employed by LWIL, even though jobs were promised in the MOU. According the Government White Paper, "LWIL insists that members of the communities have been favoured with jobs," but affected communities disagree. Without records showing that jobs were allotted to communities, it is the word of one against another (LSG 2016). Additionally, none of the affected households we surveyed received equity shares in the LFTZ. Regarding the 2.5% equity share promised by the MOU, the Government White Paper found these "entitlements have been and are still being denied to the affected communities" (LSG 2016).

Section 3.8: Recommendations of the Government White Paper

The Government White Paper recommends that the Ministry of Commerce, Industry and Cooperatives, in conjunction with the Lands Bureau and the State Valuation identify the communities that have not been resettled and complete the resettlement processes (LSG 2016). Furthermore, the Government should endeavor to pay compensation before possession and the Lands Bureau should give priority of Certificate of Occupancy to excised land (LSG 2016). The Paper states that those who have not been paid compensation ought to be paid promptly using a revised scale for valuing crops (LSG 2016). It also states that the Resettlement Committee should be empowered to vigorously monitor the MOU to ensure compliance because the LSG and LWIL have "sidelined" the Resettlement Committee and by implication sidelined representatives of the affected communities. Lastly, the Paper recommends that the LASG should only acquire land that is reasonably required for "overriding public interest" and "not deprive indigenes of the right of possession of land and means of livelihood whilst their land is being allocated to private persons" (LSG 2016).

Section 4: Conclusion & Recommendations

The evidence provided by this article indicates that the LSG failed to adequately inform, consult, compensate, and resettle communities whose tenure rights and livelihoods were affected by the development of the LFTZ. Through our interviews and research, we found that the government did not follow a transparent and participatory process when acquiring land and compensating communities, and overall did not comply with international standards.

Several profound lessons can be drawn from the events that unfolded in Lekki since the early 2000s. The primary takeaway is that, without a sufficient legal framework and effective implementation of the law, there is a risk that land may be acquired without payment of compensation sufficient to cover the losses. Moreover, failing to consult and incorporate landholders into decision-making processes and excluding them from benefit-sharing arrangements can trigger protest and resistance among landholders. In 2015, for example, Lekki community members staged a protest and blocked the LFTZ project; a clash ensued between communities and police, and this incident resulted in the death of the Managing Director of LWIL (LSG 2016). In many other documented land disputes, displacement and insufficient compensation trigger conflict which poses significant financial, reputational, and security risks for project developers (RRI and TMP Systems 2017). After speaking with several affected communities, we found that community tensions appear to be approaching a boiling point, and more protests are likely to occur in the future. Perhaps the anger and frustration of communities should not come as a surprise. Investments in the LFTZ have reportedly surpassed $100 billion (Premium Times 2017), and yet, affected communities continue to have barely enough income and food to sustain their livelihoods while they wait for the MOU to be fulfilled. As stated by the Government White Paper, "the contribution of displacement, impecuniosity, unemployment and youthful exuberance is a predictably potentially explosive cocktail capable of causing a serious break down in law and order" (LSG 2016).

Honoring the provisions of the MOU should be a top priority for the LSG and LWIL. But what can be done to ensure that future expropriations in Nigeria do not leave landholders worse off than before their land is acquired? Reforming the LUA would be an essential first step. Reforms to the LUA should include provisions that:

1. Provide a clear definition of public purpose to allow for judicial review of State Governor's expropriation decisions. State Governor's should be obliged to conduct a "proportionality test," which entails examining a proposed expropriation project to determine (a) whether the expropriation project is necessary to serve a public purpose (there are no less intrusive alternatives), (b) whether the project is suitable (reasonably likely to achieve the intended public benefit), and (c) whether the benefits deriving from the expropriation are proportionate to costs borne by affected populations and the environment (Hoops 2017). The State Governor's decision on whether a project satisfies the proportionality test should be subject to oversight by the courts.
2. Require assessors to consider both the value of land as well as improvements, crops, economic activities on the land when calculating.
3. Base the calculation of compensation on the "replacement cost" where land is expropriated in areas where land markets are weak or non-existent and thus "market value" is difficult to ascertain.
4. Require that compensation must be paid prior to the moment at which the government or private companies take possession of the land. In cases where possession is taken

before compensation is paid, require the government to pay interest based on the delay.

5. Require the government to provide affected communities with productive alternative land where available.
6. Require investment and benefit-sharing arrangements whereby companies must allow affected landholders to own equity in the company and invest in the education, healthcare facilities, and other amenities.
7. Establish an independent valuation board with expert valuers charged with consulting and compensating affected landholders. These expert valuers should consider adopting the principles established in UN-Habitat's Guide to Valuation of Unregistered Lands (UN Habitat 2017). The process for valuing land and crops should be well-documented and transparent, and valuers should reflect current market rates for the average amounts of crops and livestock found on the land.
8. Establish a fair consultation and negotiation process whereby affected landholders must be surveyed and consulted about their land and loss of livelihoods.
9. Recognize the indigenous right to Free Prior and Informed Consent and require the government to be transparent and ensure meaningful community participation in expropriation, compensation, and resettlement decision-making.
10. Require that compensation must be granted directly to households and establish monitoring committees to ensure compliance and prevent elite capture by chiefs and other intermediaries.

As a consequence of population growth and resource scarcity, the number of development projects in Nigeria and other countries is likely to increase in the future. However, development projects initiated without proper consultation, compensation, and resettlement will continue to harm the livelihood and wellbeing of affected landholders. Without strong legal rights to compensation, resettlement, and participation in project decision-making processes, affected landholders in Nigeria will continue to be subjected to severe risks, including landlessness, joblessness, and food insecurity (Cernea 2008). Fair and robust expropriation and compensation procedures established in the LUA, coupled with effective implementation by the Nigerian government, are therefore indispensable to ensuring development projects stimulate inclusive growth and development, while not leaving those affected worse off and without the means they need to sustain their livelihood.

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