

# **A CRITICAL OVERVIEW OF THE LEGAL FRAMEWORK OF LAND ACQUISITION AND COMPENSATION BY OIL AND GAS LICENSEE COMPANIES IN NIGERIA**

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## **1. Introduction**

An oil Company cannot successfully carry out its operations without land. Most oil companies though have their oil wells offshore, still maintain several operations like offices, dumping sites for heavy equipment like excavators, temporal and permanent sites and therefore need to acquire land for these operations. More importantly, oil companies need to acquire land to lay pipelines. When a Company is granted license of prospect for oil in a given location, it cannot go underneath the soil to seek for the subject matter, unless it has unrestrained access to the land in that location, and this can only be done by a proper acquisition of the land from the landowners.

## **2. Conceptual Framework:**

This section shall define and explain certain terms and concepts that are related to land acquisition in the Oil and Gas Field-

### **i. Land:**

Land has been defined as an immovable and indestructible three – dimensional area consisting of a portion of the earth’s surface, the space above and below<sup>1</sup> the surface including everything growing on or permanently affixed to it. In its legal significance, land is not restricted to the earth’s surface but extends below and above the surface.

According to the definition as proffered by the Black’s Law Dictionary, 6<sup>th</sup> edition, land was seen not only to confine to solids, but may encompass within its

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<sup>1</sup> A. Garner and others, *Blacks Law Dictionary* (10<sup>th</sup> ed, Thomson West Business, 2014)1008

bounds such things as gases and liquids. Land has also been seen as a free gift of nature<sup>2</sup>. The Webster Dictionary also defined land as the solid substance composing of material part of the earth considered in its entirety. According to Professor James<sup>3</sup>... originally land ... meant the soil and the soil only. An erudite scholar in the subject matter of land, Professor Chris C. Wigwe<sup>4</sup> stated that “at common law, land covers the earth surface, the sub-soil, things attached to the land and other incorporeal hereditaments enjoyed on land”.

According to Sir Edward Coke<sup>5</sup> Land in its restrained sense means soil, but in it’s legal perception, it is a generic term, comprehending every species of ground, soil or earth, whatever, as meadows, pastures, woods, moors, waters, Marshes, furze and heath; it includes also houses, mills, castles and other buildings for which in the conveyance of land, the structures upon it passes also. The Court was not also left out in the definition of land when it held in the case of **Ibrahim vs Tola**<sup>6</sup> where the Common Law Concept was adopted by Macaulay J. in the following terms<sup>7</sup> “According to principles of inherited English Common law, land includes everything up to the sky and down to the center of the earth”.

The Supreme Court in the case of **Salami Vs Gbodolu**<sup>8</sup> also observed, “The word ‘land’ in its ordinary meaning, means any ground, soil or earth or the solid part of the earth’s surface as distinguished from the sea ... the fact is that by its very nature, land ordinarily is an immovable object”.

## ii. **Acquisition:**

Acquisition is the process which allows a government, company or establishment to take over or acquire interest in any particular property through a

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<sup>2</sup> J.F Fekumo, *Principles of Nigerian Customary Land Law* (Port Harcourt, F.F Publishers, 2002)

<sup>3</sup> R.W James, *Modern Land Law of Nigeria* (1973) University of Ife (Now Obafemi Awolowo University Press,)

<sup>4</sup> C.C Wigwe, *Land Use and Management Law* (Mountcrest University Press 2016)

<sup>5</sup> Coke on Littleton – quoted in Jowitt’s Dictionary of English

<sup>6</sup> Law (1977) 2<sup>nd</sup> Ed. Vol.2

<sup>7</sup> (1986) 4 C.A. (pt 1) 98 at P. 115.

<sup>8</sup> (1997) 4 NWLR (pt.499) 277 @ P. 287

constitutionally laid down process, especially land, for the purpose of development and in the overall interest of the people. According to Azuela and Harren,<sup>9</sup> acquisition is defined as that power which allows states to acquire property against the will of its owners in order to fulfill some purpose of general interest.

Land acquisition is therefore a process whereby lands or property belonging to individuals, families or communities are taken over by the Government through its institutions or Companies for either public purpose (if by Government) or private use (Company use).

The process of land acquisition creates tension for the landowners who are threatened with dispossession. However, the focus of this paper is not on compulsory acquisition as such is usually associated with the government, rather the purpose of this paper is on acquisition of land for oil and gas fields which is more or less a voluntary form of land acquisition, which is mostly done by oil companies.

### **3. LEGAL FRAMEWORK ON ACQUISITION OF LAND FOR OIL AND GAS FIELDS.**

#### **i. Constitution of the Federal Republic of Nigeria 1999 (as amended)**

The Constitution of the Federal Republic of Nigeria is the grundnorm of all laws in Nigeria and therefore, the major national legal framework in the field of acquisition of land for Oil and Gas fields. The Constitution<sup>10</sup> gives every citizen of the country the right to own land and other movable and immovable properties anywhere within the territory of the country without any form of harassment or intimidation.

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<sup>9</sup> V.A. Akujumi and U.J. Ogbonda 'Rationalizing the Contemporary issues in land use in Nigeria (2016)(4) *Donnish Journal Research in Environmental Studies*'

<sup>10</sup> Constitution of Federal Republic of Nigeria 1999(as amended) S. 46

The Constitution<sup>11</sup> also provided that no interest in such property shall be taken away from any citizen compulsorily except in the manner prescribed by the law. The constitution also requires the prompt payment of compensation in the event of any acquisition<sup>12</sup>. It further provides any person claiming such compensation, a right of access for the determination of his interest in the property and the amount of compensation, to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

**ii. The Land Use Act 1978. Cap L5 LFN 2004.**

The land use Act is another major law that regulates the acquisition of Oil and Gas field by oil companies in Nigeria. Section 1 of the Act places a duty on the Governor of a state to hold every land in the state in trust, while section 28(1) and (2) (c) gives him the right to revoke deemed granted interest in land for mining purposes or oil pipeline or for any purpose connected therewith. Payment of compensation for subsequent acquisition as provided for in the Act<sup>13</sup> must be in line with the Mineral Oils Act.

However, the Land Use Act does not make adequate provision for compensation relating to such interest in lands earmarked for acquisition. The Act<sup>14</sup> regrettably, did not clearly spell out directions as to how compensation for land or even surface rights should be assessed. More disturbing is the provision of section 47(2) of the Act<sup>15</sup>, which provided that no court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under the Act<sup>16</sup>. What this means is that Nigerians whose lands or interest in land are compulsorily acquired for oil and gas purpose must accept whatever amount that is offered to them as compensation by the oil

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<sup>11</sup> *ibid*, S 44

<sup>12</sup> Constitution of the Federal Republic of Nigeria 1999, S.44(1)

<sup>13</sup> Oil Pipelines Act, Cap O7 LFN 2004, S. 29(2)

<sup>14</sup> *Ibid*

<sup>15</sup> Land Use Act 1978, Cap L5 LFN 2004.

<sup>16</sup> *Ibid*, S 47(2)

companies, especially under the Land Use Act 1978. However, in my opinion section 47(2) is inconsistent with the provision of section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provided access to seek redress in court on issues of compensation, and ought to be declared null and void.

The issue of property rights is an inalienable right and should be treated as such. A landowner has the right to determine the amount of compensation to be paid to him provided such amount has been valued and determined. An aggrieved owner of property should also be at liberty to approach the court where he feels that the amount of compensation paid to him is not adequate considering the nature and extent of improvements on the land.

### **iii. Oil Pipelines Act Cap 01 LFN 2004**

Section 11(5)(a) of the Oil Pipelines Act provides for the payment of compensation to any person whose land or interest in land (whether or not it is land in respect of which the license is granted) is injuriously affected by the exercise of the right conferred by the license for any such injury not otherwise made good.”

Any person having an interest in land or a landowner who could have that interest adversely affected by the activities of a licensee, or an acquiring body is entitled to compensation. When a land is injuriously or adversely affected, the value of the land depreciates. A licensee may wish to acquire land to lay pipelines, construct locations or other facilities directly on the land for which the license is granted. Such activities may affect adjoining lands or other interest either directly or indirectly resulting to injurious affection. The owners of such land are therefore entitled to adequate compensation.

#### **iv. Associated Gas Re-injection Act Cap 12 (L.F.N) 2004**

This Act is aimed at ending the wasteful and destructive flaring of gas by compelling oil companies to develop scheme for utilization or re-injection of all gas produced in association with oil by 2010, except with the permission of the Minister of Petroleum Affairs.

#### **v. Nigerian Mineral and Mining Act. Cap N162 LFN 2004.**

This is an Act of the Federal Republic of Nigeria. It was first enacted as Mineral and Mining Act no. 34 of 1999 but was later re-enacted in 2007 with a commencement date of 29<sup>th</sup> March 2007. The Act regulates all aspects of exploitation of solid minerals in Nigeria.<sup>17</sup> The Act provides that all land in which minerals have been found in commercial quantities shall from the commencement of the Act be acquired by the Government of the Federation.<sup>18</sup> However, the Act ended at that point without making proper provision for compensation for such acquisition by the government.

#### **vi. Petroleum Industry Act 2021:**

In 2021, the Nigerian government signed into law the Petroleum Industry Act (PIA) as a comprehensive legislative enactment that is targeted at resolving the extant issues, including environmental matters in the petroleum industry. Environmental protection is an integral part of developing host communities and achieving sustainable development in the petroleum industry. Thus, the PIA cannot be construed in isolation from environmental concern. Section 202 of the PIA provides that a product distribution license shall be deemed to be granted subject to the duty of the holder to conduct its licensed activities safely and reliably in compliance with any law in force and prescribed by the environmental, health and safety regulations issued under the PIA or any other act of the National

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<sup>17</sup> Mineral and Mining Act 2007, Cap N 162 LFN 2004, S. 15

<sup>18</sup> Ibid, S.1(2)

Assembly.<sup>19</sup> Furthermore, the PIA mandates a licensee or lessee who engages in upstream and midstream petroleum operations to submit an environmental management plan in respect of projects which require environmental impact assessment to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory authority (NMDPRA)<sup>20</sup> authority to arrest the offenders. However, it should be noted that by virtue of section 32(2) of the Act, the police is prohibited from arresting anyone based on a civil wrong or breach of contract.

### **vii. Environmental Impact Assessment Act 1992, Cap E12 LFN 2004**

By virtue of this Act<sup>21</sup>, no person, be it individual or corporate organization shall undertake any activity unless same is assessed and considered safe for the environment and its inhabitants. The Act<sup>22</sup> provides that the impact of such activity shall be studied first, identify all environmental issues before it can be embarked upon. Another vital part of the law is the opportunity given to the masses to express their opinions before the concerned agency can take its decision. **Section 7** of the Act provides that-

*‘Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity’.*

However, the problem with this law is lack of enforcement. The Law is as good as it looks on the paper and nothing more. What is more concerning is the

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<sup>19</sup> Petroleum Industry Act 2021, s.22.

<sup>20</sup> C 1 Chuks-Ezike, ‘Deficient legislation sanctioning oil spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill’ (2018)(7)(1) *International Journal of Environment and Sustainability*: 30-44

<sup>21</sup> EIA Act, 1992, Cap E12 2004, S.1

<sup>22</sup> Ibid, S.3

disregard for public opinion before the approval of projects that are hazardous to the environment. For instance, petrol service stations are not meant to be cited or situated in a residential environment, but in Nigeria, due to high level of corruption, the reverse is the case.

#### **4. INSTITUTIONAL FRAMEWORKS ON LAND ACQUIRED FOR OIL AND GAS FIELD.**

##### **i. The Ministry of Petroleum Resources (MPR):**

The Ministry of Petroleum Resources is a Federal Government Ministry with the mandate of formulating and implementing Oil and Gas related policies in the oil and gas industry in Nigeria. This institution is headed by a Minister who administers the affairs of the Ministry and performs the responsibility of the Ministry through the Department of Petroleum Resources.

##### **ii. Nigerian National Petroleum Company Limited (NNPC):**

The Nigerian National Petroleum Company Limited was formally known as Nigerian National Petroleum Corporation (when it was owned by the Government) until July 2022 when it was privatized and it became the Nigerian National Petroleum Company Limited. However, irrespective of the privatization, the Government still controls 100% its stake. The Nigerian National Petroleum Corporation was formed under the Nigerian National Petroleum Corporation Decree of 1973 and it assumed the responsibility of the Ministry of Petroleum Resources including the regulating department of the Ministry.



### **iii The National Oil Spill Detection and Responses Agency (NOSDRA)**

This Agency was established by the National Oil Spill Detection and Response Act 2006. Its aim is to regulate oil activities and prevent oil spill in the country. Its objective is to put machineries in place for implementation of the National Oil Spill Contingency Plan for Nigeria to ensure safety. The Agency emphasizes on the need for international collaboration, drill exercise, research and interactions with a view to ensuring adequate preparedness for oil spillages in high-risk areas. The agency is also empowered to sanction any spiller who fails to report in writing to the Agency as in the case of NOSDRA vs Chevron Nigerian Limited.<sup>23</sup>

## **5. ISSUES TO BE CONSIDERED DURING ACQUISITION OF LAND FOR OIL AND GAS FIELDS.**

### **i. Identify Restrictions Imposed:**

A license by Regulation 17 (Petroleum Drilling and Production) earmarked certain restrictions in the exercise of its powers concerning entry into land. By that Regulation, a licensee or an Oil Company wishing to acquire land for Oil and Gas field is not authorized to enter the following areas:

- a) Government occupied or acquired areas.
- b) Private lands (unless the Minister permits after the licensee has given him notice containing the size of the proposed land that he has paid for or tendered to persons in lawful occupation or owners)
- c) Sacred Area: This includes juju shrines venerated locations and other places seen to be sacred.
- d) Sites of building, installations, reservoir, public roads or within fifty yards thereof.
- e) Public places, unless permission is granted by the Minister.

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<sup>23</sup> (unreported) suit No: FHC/AK/CS/13/2013

## **ii. Identify the Landlords:**

Any oil company who does not take steps in identifying the real owners or landlords of the land they intend to acquire will definitely be enmeshed in litigation while attempting to acquire an area. However, genuine property owners can be identified through the following ways:

- i) Making inquiries from previous tenants or adjoining landowners.
- ii) Approaching the paramount rulers for assistance
- iii) Through the advice of a field surveyor
- iv) Through proper search at the Ministry of Lands or other relevant agencies (in the case of Rivers State, a visit to the Greater Port Harcourt City office and Rivers State Ministry of Lands and Survey will help).

## **iii. Obtaining a Legal Permit to Survey:**

Before the commencement of oil operation, survey is carried out by a registered surveyor hired by the holder of the license. The law requires that such survey must be made only after the issuance of appropriate permit which is referred to as “Permit to Survey” and without it, survey activities would not be allowed.<sup>24</sup> Such permit to survey shall entitle the holder to survey and take levels of the land, dig and bore into the soil and sub-soil, cut and remove such trees and other vegetations, perform all other acts necessary to ascertain the suitability of the land for the establishment of an oil pipeline or ancillary installation.<sup>25</sup>

The Act<sup>26</sup> also provided that the holder of a permit to survey acting under the authority of section 5 of the Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any building, crops or

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<sup>24</sup> Regulation 1 of the Oil and Gas Pipelines Regulations.

<sup>25</sup> Oil Pipelines act, S.5(1)(2)

<sup>26</sup> Ibid, S. 6 (1)

profitable trees thereof and shall make compensation to the owners occupiers for any damage done under such authority.

**iv. Publication:**

The law requires that an applicant for a license shall deliver to the Minister, an application for the same, stating the terminal points and giving a description of the pipeline and accompanied by a plan of the proposed routs, sufficient enough to identify the effected land<sup>27</sup>

The Minister after the receipt of such application shall set a date to receive or hear any objection. The Minister shall in not less than six weeks, nominate a person who would hear objections and also decide the venue and time, when such exercise would take place.

**v. Identify Area of Dispute:**

Nonidentification of areas in dispute in the process of acquisition of land for oil and gas fields is a very challenging task that can frustrate the project or slow it down, oil companies are advised to identify contentious areas and describe or mark them “disputed” by the surveyor in their final area maps. The process of resolving these disputed areas can continue while the project is in progress<sup>28</sup>. However, where such is not identified, mischief makers who may not even have any interest in the land being acquired can capitalize on the fact that these disputed areas are not identified to cause problems that can frustrate the work of the company in the entire land. Most of them are speculators and troublemakers, who have no business with the area in dispute. This can also lead to deadly hostilities between the communities or individuals in conflict. However, where an area is disputed and no agreement has been reached in

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<sup>27</sup> Oil Pipelines Act, Act, S. 8 (1)

<sup>28</sup> C.C Wigwe, *Land Use and Management Law* (Mountcrest University Press 2016)

such area, a permit to enter, can be signed by the representatives of the parties to enable the project to commence.<sup>29</sup>

**vi. Acquisition:**

Acquisition involves the actual payment for the land and third party or surface rights such as economic trees and crops. However, where the acquisition took place after the commencement of Land Use Act 1978, Cap L5 LFN 2004, the landlords or landowners will be transferring deemed granted rights of occupancy over the land in question and the transaction will be subject to the consent of the Governor as provided in the land Use Act. Also, what is paid for is the improvements on the land. The Act provides that a holder of an empty, vacant land or land without improvements or buildings do not have the right to compensation upon acquisition or revocation of such land. Compensation should enable the affected persons who have lost building landed properties and other improvements to replace same and not perpetually remain deprived of their source of income. The Act has therefore left landowners at the mercy of the acquiring authority or company. However, where the acquisition was done under the Public Lands Acquisition Act 1959<sup>30</sup> the acquiring authority shall pay for the cost of the land and the improvements thereon.

The amount to be paid for land may depend on whether the acquisition is permanent or temporary. However, in either case, the licensee must pay for the economic trees and crops to be cleared in order to make way for the proposed route or location and loss for the use of the land. Also, before a licensee take possession of land, they pay compensation for loss of use and surface rights. What however poses the greatest challenge is the quantum of payment or adequacy of the compensation payable to the landowners.

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<sup>29</sup> *ibid*, 56.

<sup>30</sup> Cap 167 LFN 2004

It is disheartening to note that section 47 of the Land Use Act 1978, Cap L5 LFN 2004 ousted the jurisdiction of courts in Nigeria to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid. This provision places the landowners in a helpless situation in terms of the quantum of payment. However, this provision is in conflict with section 11 of the Oil Pipelines Act which made provision for a licensee to pay compensation to any person whose land or interest in land is injuriously affected by the exercise of the right of the license. The section<sup>31</sup> also provided that if the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court. This simply means that the court lacks jurisdiction to entertain matters relating to adequacy or quantum of compensation paid or payable in land acquired under the Land Use Act 1978 while Oil Pipelines Act gave jurisdiction to the court to fix quantum of compensation payable in acquisition done under the Oil Pipelines Act.

During an assessment exercise, trees are counted while crops are estimated by the size of land each occupies. Compensations are also paid for fish channels, lakes, mills, footpaths, graves, economic crops, water wells, sacred areas or objects, economic trees, fish fences, fish pounds and traps.

#### **vii. Seismic Activity**

This is the process whereby artificial earth tremors are occasioned by the use of explosives such as dynamites. This is done by seismic companies engaged by the oil companies. During this process, trees and other economic vegetations are destroyed and houses are also adversely affected and compensation must be paid. These seismic companies enter the land to ascertain which locations are likely perfect for drilling. However, their

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<sup>31</sup> Oil Pipelines Act Cap 07 LFN 2004, S. 11(c)

assessment does not necessarily mean that such area shall be productive as the oil company can commence drilling only to discover that it is a dry well.

#### **viii. Relocation or Settlement of Claims.**

Where a proposed project will affect the host community or landowners, negatively, it is advisable to relocate them to a safer environment. The perfect time to ascertain a possible relocation or resettlement is when the preliminary survey is done. The surveyors are usually aware when a community would be required to move out of a proposed route or location. The major fact to be put into consideration is the safety of the persons living in such facility. This was the situation in Bonny Kingdom of Rivers State when Finima community was relocated to a new site to make way for Liquefied Natural Gas (LNG) project.

### **6. CONCLUSION**

This research has shown that the Land Use Act 1978 has not adequately addressed the problem of the oil and gas producing communities. A land tenure system that deprived indigene of their natural right to their lands and vest same in the hands of others is unjustifiable and should be abrogated or modified. Furthermore, it was also discovered that both the Land Use Act and the Oil Pipelines Act did not properly address the issue of quantum or adequacy of compensation payable to landowners by these multi-national oil companies thereby leaving the land owners at the mercy of the companies or acquiring authorities.

### **7. RECOMMENDATIONS**

Consequent upon the above observations in this research work, the following recommendation had been proffered.

- I. The model used for the payment of compensation to oil producing communities by multi-national companies based on memorandum of understanding has not resolved the problems of the regions and should be adequately addressed.
- II. The Oil Pipelines Act and the Land Use Act should be reviewed or abolished as it has created more problems than it has solved in the country, to provide for adequate compensations which should be as of right to the landowners as should be determined and ascertain by a joint estate valuer which shall be agreed upon by both the landowners and the acquiring authority.
- III. Section 47 of Land Use Act 1978 which ousted the jurisdiction of courts on matters bordering on adequacy of compensation payable should be declared null and void as same is inconsistent and runs contrary to section 44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).