

## ACQUISITION OF INTERESTS IN LAND FOR THE CONSTRUCTION OF OIL PIPIINES: RIGHTS OF LANDOWNERS

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### **Abstract**

*Oil and gas activities in Nigeria have contributed immensely to the economic growth and development of Nigeria. The economy of Nigeria is heavily dependent on petroleum activities and operations. Oil pipeline is an aspect of petroleum operations which generates part of the revenue that sustains the nation. Enormous hectares of land are needed for construction of oil pipelines and other ancillary installations. The pipeline companies or licensees need to acquire interest in land for pipeline right-of-way and other installations. The exact portions of land or interest in land acquired by the pipeline companies are determined by the survey plan. The proposed route of pipeline is usually surveyed after the pipeline company has obtained the necessary permit to survey. The survey document usually forms the basis for land acquisition. There are areas which the laws consider sacred or venerated and the pipeline licensee is restricted from entry into such land as burial ground or cemetery, grave, grotto, public roads, dam, or building occupied by government. The acquisition of land or interest in land for the construction of oil pipelines appears to be one of the most difficult challenges encountered by the pipeline companies or operators. This may be due to the perceived deprivation of land rights and fear of inadequate compensation to be paid to landowners or lawful occupiers. The regulatory framework of Nigeria grants the power to Government to compulsorily acquire land or interest in land for construction of oil pipelines. Pipeline is included in the list of public utility under which the Governor of a State can revoke the statutory or customary right of occupancy of any landowner or lawful occupier. However, the law does not leave the landowner or lawful occupier without certain rights. This paper enumerated and analyzed the rights made available to a landowner or lawful occupier whose land or interest in land is required for construction of oil pipelines. It provided information as to the rights of landowners or lawful occupiers in Nigeria as they relate to construction of oil pipelines. The paper employed the use of doctrinal research methodology. The paper espoused and analyzed primary data such as constitutions, statutes, cases, regulations, directives and practice manuals. Also, secondary data such as textbooks, journal articles, online materials as well as newspaper publications were not left out. The author found that even though these rights made available to landowners or lawful are commendable, they are not sufficient to guarantee the property rights and payment of adequate compensation to the landowners or lawful occupiers. The author recommended the amendment of the laws to establish some level of protection to the land rights and payment of adequate compensation to the landowners or lawful occupiers.*

**Keywords:** Acquisition, Pipelines, Interest in Land, Land Rights.

### **1.0 Introduction**

One of the various means of transporting oil and other petroleum products from one destination to another is through the use of pipelines. The construction of oil pipeline is strictly regulated by the provisions of law.<sup>2</sup> Pipelines are said to be cheapest, fastest, convenient and most reliable means of oil

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<sup>2</sup> Oil Pipelines Act 2004 Cap 07 LFN.

transportation from fields, or wells to other land destination within a reasonable distance.<sup>3</sup> Most often, a network of pipelines are constructed to move oil and other petroleum products from fields into storage tanks as well as to other states or destination for the purpose of refining.<sup>4</sup>

The construction of oil pipelines, as a matter of necessity, requires the use of massive land that may be owned, occupied or in use by private individuals, communities, family, corporate bodies or even the government. The first step is for the pipeline company to obtain permit in order to conduct survey of the proposed pipeline route. Once the route has been successfully surveyed, the pipeline company is expected to enter into negotiation with land owners to acquire land for pipeline right-of-way and easement. The pipeline operator acquires interests in land for pipeline right-of-way from the landowners or lawful occupiers. There are various methods or ways of acquiring land or interests in land in Nigeria ranging from gift, lease, purchase, exchange, trust, inheritance, first settlement, conquest, customary grant and compulsory acquisition or expropriation.

The acquisition of interest in land for construction of oil pipelines is preceded by an application and a subsequent grant of permit to survey pipeline routes.<sup>5</sup> The survey plans; upon production, guides the operator to determine the total area of land required for pipeline installations, access roads and right of way.<sup>6</sup> These lands are accordingly acquired for the purpose upon which the pipeline licence has been granted.

In Nigeria, private property rights are constitutionally guaranteed.<sup>7</sup> However, all lands comprised in the territory of each state of the federation in Nigeria, are vested in the Governor of the state.<sup>8</sup> Consequently, the maximum interest preserved in an individual or community with respect to land in Nigeria, is a right of occupancy which may either be statutory or customary depending on the location of the land.<sup>9</sup> The governor of a state is empowered to revoke the right of occupancy over any land required for the construction of oil pipelines.<sup>10</sup> Despite the power of revocation exercisable by the Governor and the nationalization of land in Nigeria, the citizens are still providing with certain rights with respect of acquisition of land for construction of oil pipelines.

## 2.0 Rights of the Landowners or Lawful Occupiers in Nigeria

The fact is established that most nations consider oil pipelines as public utility for which the government of a nation is expected to secure the provision of land for. The same laws which make it possible for the government to make land available for the construction of oil pipelines also confer some rights on the landowners or lawful occupiers. Without these rights conferred by law, the effort of the law to protect the land or property right of citizens will prove abortive.

<sup>3</sup> G. Etikerentse, *Nigerian Petroleum Law* (2<sup>nd</sup> edn, Drew Publishers 2004)176.

<sup>4</sup> O.W. Arugu and S.C. Dike, 'An Appraisal of the Law and Policy on Oil and Gas Pipelines in Nigeria for Greater Efficiency' (2018) (2) (2) *Journal of International Energy and Environmental Law*; 120

<sup>5</sup> Oil Pipelines Act 2004 Cap 07 LFN, s.4

<sup>6</sup> J.O Ehiorobo and H Audu, 'Technical and Legal Issues in Land Acquisition for Development of Crude Oil and Natural Gas Facilities within the Niger Delta Region in Nigeria, [www.researchgate.net/publication](http://www.researchgate.net/publication) accessed 19th July, 2021.

<sup>7</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s.43

<sup>8</sup> Land Use Act 1978, s1; *Usman v Ganke* (1999) 1NWLR (pt. 587)466

<sup>9</sup> Land Use Act 1978, ss. 5&6; *Kachalla v Bank* (2006)27 WRN 1; *Savannah Bank v Ajilo* (1989) 1 NWLR (pt. 97) 305

<sup>10</sup> LUA 1978, s. 29

### 3.0 Right of Refusal

Literally, there is no right of refusal granted to landowners or lawful occupiers, but this right is impliedly established by the laws which give landowners, lawful occupier and persons who may be affected by the construction of pipeline, the right to raise objection to the grant of the pipeline licence. If the objection succeeds or is upheld by the hearing authority, the licence to construct oil pipeline may not be granted or the route of the pipelines may be varied.

The Nigeria law does not make express provisions for grounds upon which an objection can be sustained. The laws only exclude the issue of compensation as a ground for objection. It therefore means that going by the maxim of *exclusive unus exclusio ulterous*, every other reasonable issue except compensation can be raised as a ground for objection. However, when raising an objection, the landowner or lawful occupier should explain why he or she believes that their land will be directly or adversely affected by the grant of the pipeline licence. The landowner or lawful occupier may raise issues relating to health and environmental factors, sacred, religious and traditional factors. For instance, the potential impact on the environment relating to soil erosion, destruction of wildlife, agricultural soil structure alteration, deforestation detrimental to ecosystem, noise, air quality, risk from emergency blowout, ground and surface water disturbance, conservation and reclamation of land can be considered as good grounds for objection. Furthermore, an objector may raise concerns relating to contamination of the ground and surface water resources of his family or the proposed pipeline host community. Similarly, providing the health report of individuals who are asthmatic in the family or who suffer any ailment that might be aggravated by the proposed pipeline may also be considered as a valid objection. Objectors are to make out their case and present evidence if any at the hearing of objections. The evidence to submit is determined by the nature of the objection.

In Nigeria, the former position of the law is that the Minister of Petroleum Resources after receiving application for oil pipeline, together with other requirements of the law, appoints persons to hear objections from landowners, lawful occupiers, host communities and other persons who may be affected by the grant of the licence.<sup>11</sup> The objections if any, are received after the pipeline proponent has published its application in the state gazette of each state through which the route of the pipeline passes as well as in newspapers widely circulated in the areas through which the route of the pipeline passes and posted to persons entitled to carry out operations in the areas that would be affected by the grant of the license or areas likely to be affected by the license.<sup>12</sup> The administrative officers in charge of the hearing of the objection and the owners or occupiers of land in the area which will be affected are not left out of this publication.<sup>13</sup> The administrative officers appointed for the purpose of hearing objections, fix the hearing dates and sends same to all parties.<sup>14</sup> Objections are received from any person or persons whose land or interests in land may be injuriously affected by the grant of the licence.<sup>15</sup> Upon the date fixed for hearing of objections, the persons appointed by the minister shall inquire report into any such objection, giving all parties concerned an opportunity to be heard.<sup>16</sup> After hearing all objections, the

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<sup>11</sup> (n2), s. 8(1)

<sup>12</sup> *ibid*, s.8(2)

<sup>13</sup> *ibid*

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*, s.9(1)

<sup>16</sup> OPA, s. 10(1)

administrative officers, send a report to the Minister who considers the report and determines if the license should be granted or not.<sup>17</sup> However, matters relating to quantum of compensation shall not be material grounds for objection under this section.<sup>18</sup> If after considering the report, the minister considers that the license should be granted, he shall inform the President, but if he considers that the license should not be granted, he shall inform the applicant and the objectors.<sup>19</sup> If the license is not granted, the applicant or pipeline proponent will be entitled to receive a permit to survey other route or routes or to submit an application for a license in respect of another route.<sup>20</sup> There is an identifiable flaw in this provision. The minister is given an uncontrollable power to exercise his discretion which must be accepted irrespective of the considered opinions or judgment of the administrative officers who heard the objections first hand. It is not uncommon for the minister being a political appointee to exercise this discretion injudiciously to the favour of his political associates. This legal flaw seems to have been remedied by the Petroleum Industry Act, 2021. The Minister of Petroleum Resources no longer has the sole discretion or even the power to grant pipeline licenses.

By the provision of the PIA 2021, an application for grant of licence to construct oil and gas transportation pipelines is made to the NMDPRA.<sup>21</sup> Such application is made in a manner and form prescribed by regulation.<sup>22</sup> The application shall be accompanied by a prescribed fee together with any other document or documents prescribed by regulation.<sup>23</sup> The application shall also have decommissioning and abandonment plan.<sup>24</sup> The NMDPRA upon receipt of application for a licence to construct oil pipelines shall cause a notification to be published for interested parties to make representations for or against the grant of the licence or permit.<sup>25</sup> Such representations are made within the time frame prescribed by regulations.<sup>26</sup> The NMDPRA considers the application together with the representations made for or against the grant of the permit or licence and makes its decision whether to grant or refuse the grant of the licence and informs the applicant within ninety days.<sup>27</sup> If the NMDPRA decides to grant the licence, it shall publish a notice of its decision in a form and manner prescribed by regulations.<sup>28</sup> If the NMDPRA refuses the grant of the licence, it shall inform the applicant and state its reasons for refusal as well as state a reasonable time within which the applicant may make further representations.<sup>29</sup> Any applicant who is not satisfied with the reasons for refusal given by the Authority may apply to the Federal High Court for judicial review.<sup>30</sup> It should be noted that the NMDPRA only grants licenses to applicants who meet the technical standard required based on international best practices; meets the health, safety and environmental standard as determined by the NMDPRA; if the

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<sup>17</sup> *ibid*

<sup>18</sup> OPA, s.10(2)

<sup>19</sup> OPA, s.10(3)

<sup>20</sup> *ibid*

<sup>21</sup> Petroleum Industry Act, 2021, ss. 135(1) & 175(1)(c)

<sup>22</sup> *ibid*, s. 111(4)(a)

<sup>23</sup> *ibid*, s. 111(4)(b)

<sup>24</sup> (n22), s. 111(4)(c)

<sup>25</sup> *ibid*, s. 112(1)

<sup>26</sup> *ibid*, s. 112(2)

<sup>27</sup> PIA, s. 111(7)

<sup>28</sup> *ibid*, s. 111(8)

<sup>29</sup> (n28), s. 111(9)

<sup>30</sup> *ibid*, s. 111(12)

right-of-way is acceptable by the NMDPRA; and where it provides for the efficient and economic use of the pipeline.<sup>31</sup>

#### 4.0 Right to Compensation

In land law, compensation means payment made to put the owner of land or interest in land in a position that is not better or worse-off than he is if no land had been acquired from him.<sup>32</sup> Compensation is the statutory name given to any payment made for the value of land or interest in land acquired compulsorily or by negotiation and agreement with the land owner.

As earlier stated, there are local, regional and international laws backing the guarantee of the payment of compensation for the acquisition of land or interest in land, especially when such landed interest is compulsorily acquired. Compensation is an entitlement accruing to any person or persons whose land rights is acquired whether compulsorily or not.

In Nigeria, prompt payment of compensation to landowners whose land or interest in land is compulsorily acquired in accordance with any law, is constitutionally guaranteed.<sup>33</sup> Similarly, the LUA 1978 which gives the Governor the powers to revoke the propriety rights of any citizens makes payment of compensation a condition for the validity of the revocation.<sup>34</sup> The LUA further provides that if the revocation of the land right or interest is made in pursuant to the construction of oil pipeline, the provisions of the Oil Pipelines Act (OPA) regarding compensation shall apply.<sup>35</sup>

Section 11 (5) (a) of the OPA<sup>36</sup> provides that compensation will be paid to any person whose land or interest in land (whether or not in respect of which the license has been granted) is injuriously affected by the pipeline license.<sup>37</sup> The Act further empowers the court to fix compensation where the landowners and the pipeline licensee are unable to agree on the quantum of compensation.<sup>38</sup> The PIA<sup>39</sup> also provides that a licence for any midstream or downstream petroleum operations is issued subject to the LUA in respect of compensation for the acquisition of land.

From the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Land Use Act, Cap L5 Laws of the Federation of Nigeria 2004 and the Oil Pipelines Act Cap 07 Laws of the Federation of Nigeria 2004 and the Petroleum Industry Act 2021, holders of a right of occupancy or deemed right of occupancy have a right to receive compensation whenever their land or interests in land is acquired for the construction of oil pipelines. If such land or interests in land is compulsorily acquired by the government, the landowners are entitled to compensation from the government. However, if the land or interest in land is acquired by the pipeline licensee, the latter is responsible to pay compensation

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<sup>31</sup> *ibid*

<sup>32</sup> O.P. Ogochukwu, 'Legal Case for Adoption of Replacement cost model in Assessment of compensation for compulsorily acquired land in Nigeria' in C.C Wigwe, *Reading in Law and Contemporary Issues* (2<sup>nd</sup> edn Faculty of Law, Rivers State University, 2020)29

<sup>33</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s.44

<sup>34</sup> LUA 1978, s.29(2)

<sup>35</sup> *ibid*

<sup>36</sup> Cap 07, LFN2004

<sup>37</sup> *ibid*

<sup>38</sup> PIA, s. 11(5)(c)

<sup>39</sup> *ibid*, s. 115(1)

to the land owners. It should be noted that the law excludes payment of compensation for unoccupied lands.<sup>40</sup>

Landowners or lawful occupiers are also entitled to compensation and remediation for pipelines spills and breakages. Compensation is paid to any person suffering damage (not caused by himself or the malicious act of a third party) as a result of any breakage of or leakage from pipeline or any ancillary installation, for any such damage not otherwise made good.<sup>41</sup>

### 5.0 Right to Alternative Accommodation or Infrastructure

Aside loss of use and payments of compensation, sometimes relocation or resettlement of persons or infrastructure will be necessary depending on the impact of the pipeline projects on the communities.<sup>42</sup>

In Nigeria, land owners are entitled to be provided with alternative accommodation or resettled in certain circumstances as provided by the law, where the continuous use of the land in the pipeline license or adjoining land or infrastructure such as crossing, bridges, culverts or passages will be interrupted by the pipeline project. The pipeline licensee shall make and maintain accommodation for the purpose of making good any interruption to the use of such land or the amenities thereof, or the use of such customary path or track.<sup>43</sup>

In Rivers State of Nigeria, the people of Finima Bonny were relocated to a new site in the 1980's for the construction of Liquefied Natural Gas (LNG) Project.<sup>44</sup> Similarly, the people of Lawrence Kiri in the Cawthorne Channel Rivers State were relocated to pave way for the Associated Gas Gathering (AGG) Project of Shell.<sup>45</sup>

### 6.0 Right to Reversionary Interest in Land

Pipelines licenses are not granted *ad infinitum*. Licenses are granted for a particular duration of time. In Nigeria, the grant of license to construct pipeline is for duration not exceeding twenty years.<sup>46</sup> Even though the Law is silent on the renewal of the license, in practice, renewal is possibly granted.

The holder of a license may at any time during the term of the license determine the license in respect of all or any part of the land include by giving not less than three months advance notice in writing to the Minister of Petroleum Resources.<sup>47</sup> Since pipelines are constructed underneath land upon which the license holder has paid compensation to the land owners, it then becomes very important to determine what happens to the land or interest in the land after the pipeline license is terminated by effluxion of time or determination by the license holder in accordance with the law.

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<sup>40</sup> OPA, s. 20(4)

<sup>41</sup> *Ibid*, s. 11(5)(c)

<sup>42</sup> C.C Wigwe, *Land Use and Management Law* (Mount Crest University Press; 2016), 153

<sup>43</sup> OPA, s.16(1)

<sup>44</sup> (n40)

<sup>45</sup> *ibid*

<sup>46</sup> OPA, s. 17(1)

<sup>47</sup> OPA, s. 17(3)



In Nigeria, the Land Use Act, 1978 vest all land within the territory of each state in Nigeria on the Governor of that state, who holds it in trust for the benefits of Nigerian.<sup>48</sup> The Governor grants statutory right of occupancy to any person in respect of land whether or not in urban areas<sup>49</sup>. The duration of occupancy is contained or specified in the certificate of occupancy which is usually not more than ninety-nine years in practice<sup>50</sup>. The Governor is also given powers to revoke a right of occupancy for overriding public interest which includes the requirement of the land for the construction of oil pipeline.<sup>51</sup> Upon the revocation of the right of occupancy, the title of the holder of the right of occupancy shall be extinguished.<sup>52</sup>

It therefore means that where the land upon which the pipeline is constructed was acquired compulsorily by revocation and compensation is duly paid, the reversionary interest upon the determination of the pipeline license, resides with the State government. Accordingly, the reversionary interest shall reside in the private owner if the land was acquired by way of lease between the license holder and the landowner after the determination of the pipeline license provided the duration in the certificate of occupancy is still valid and unexhausted. Upon the expiration of the pipeline licence, the reversionary interests in the land lies in the landowner in cases where the landowner enjoys a longer duration of statutory rights over the land than the lease agreement with the pipeline operator.

## 7.0 Conclusion

Despite the legal framework that reduced the land interests of Nigerians to mere rights of occupancy with powers of the Governor to revoke land rights for construction of oil pipelines, the land owners or lawful occupiers still enjoy certain rights over the surface of land in occupation or use. These rights as explained above are available to any landowner or lawful occupier of land required for construction of oil pipelines in Nigeria. However, these rights, as expressive as they are, do not give the required assurances and protection to the landowner or lawful occupier whose land is required for construction of oil pipeline. For instance, on the right of refusal, the OPA 2004 gives discretion to the minister to grant or refuse grant after the hearing of objection. This is regardless of what issue raised, argument or evidence produced against the grant of pipeline licence. Even the PIA 2021 gives power to only the pipeline operator who is not satisfied with the reasons for refusal given by the Authority to apply to the Federal High Court for judicial review. Similar power is not given to the landowner or lawful occupier. Also, compensation is hardly adequate as the laws are in favour of compulsory acquisition. The law does not encourage the adequacy of compensation to landowners or lawful occupiers. Furthermore, the fact that reversionary interest in the land compulsorily acquired lies in the government is detrimental and a deprivation of the land rights of citizens owing that compensation is hardly adequate.

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<sup>48</sup>LUA 1978, s.1

<sup>49</sup> *ibid*, s.5 (1)

<sup>50</sup> *ibid*, s. 8

<sup>51</sup> *ibid*, s. 28 (1) (c)

<sup>52</sup> LUA, s.28 (7)

## 8.0 Recommendations

The following recommendations are therefore put forward by this article:

1. Section 115 of the PIA 2021 should be amended to also give powers to landowners or lawful occupiers to apply to the Federal High Court for judicial review where they are not satisfied with decision of the regulatory authority to grant pipeline license to operators on same route for which valid reasons for objections have been canvassed. The NMDPRA should also make guidelines which will provide direction on the specific grounds upon which objections can be raised. This will protect the regulatory authority from objectors who may come to raise baseless and frivolous objections.
2. An inclusion in the Oil Pipelines Act of Nigeria that pipeline licensees must first obtain interest in land before proceeding to construct pipelines. And that such interest in land where needed by a pipeline licensee must be acquired by negotiation between the licensee and the landowner or lawful occupier. This should be one of the requirements for application for license to construct pipelines.
3. An inclusion in the LUA or OPA to the extent that the reversionary interests in any land compulsorily acquired for the construction of oil pipelines in Nigeria shall reside with the landowners or lawful occupiers upon the expiration of the pipeline license.