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THE ACCOMMODATION DOCTRINE AND THE COMPULSORY ACQUISITION
OF LANDS FOR OIL AND GAS PROJECTS IN NIGERIA

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ABSTRACT

The power of compulsory acquisition of lands can be misused. Prejudiced processes for the coercive acquisition of land without adequate compensation for its forfeiture do diminish land occupancy security. It could and do escalate tensions between the state and residents, and decrease public trust in the government. Uncertain, capricious and perverse procedures create prospects for dishonesty and victimisation. Reputable authority is vital to offer equilibrium between the yearning of the government to acquire land hastily, and the necessity to safeguard the rights of people whose land is to be compulsorily taken. Conflict is minimized when there are adequate and fair guidelines that explains the precise purposes for which the government may compulsorily procure lands, and when there are clear and rational procedures for acquiring such lands and for providing reasonable compensations. It is against the backdrop of the preceding concerns that this article seeks to evaluate the magnitude if any, to which the Nigeria's legal regime violates or sustain the common law doctrine of due regards in relation to crude oil, land use and the host communities. The article suggests that Nigeria should pass the Surface Damages Act to control the scope of rights to which the surface and minerals owners should possess.

Keywords: Accommodation doctrine, Land Use, Oil and Gas, Nigeria.

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INTRODUCTION

The concept of compulsory acquisition of lands is deeply rooted in the theory of eminent domain which states that the government or the monarch of a country can compulsorily acquire the lands of private persons for public use with or without compensation. The implication of the theory is that, the government can enact coercive legislation to back its desire to seize any land from private persons for any purpose it may classify as public good. In Nigeria, the prominent coercive statutes that empower the eminent domain are: The Land Use Act 1978; The 1999 Constitution FRN (as amended); The Exclusive Economic Zone Act 1978; and, The Petroleum Act (PA) 1969. Section 1 of the PA provides as follows:

... to the effect that the entire ownership and control of all petroleum in, under or upon any lands, including and covered by water) which is: (a) is in Nigeria or (b) is under the territorial waters of Nigeria, (c) forms part of the continental shelf; or (d) forms part of the Exclusive Economic Zone of Nigeria.

By the same token, Section 44(3) of the 1999 Constitution FRN (as amended) provides *inter alia*:

.... entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic zone of Nigeria shall rest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

According to Munro-Faure³ “compulsory acquisition is the power of government to acquire all the private rights in land without the willing consent of its owner or occupant in order to benefit society. It is a power possessed in one form or another by governments of all modern nations.” Governmental powers are vital to drive various facets of national development and for the safeguard of goods, services and the natural environs. Land is an important part of national heritage and, very necessary for investments and infrastructure including roads, railways, Quays, harbours, airports, schools, hospitals, telecommunication facilities, electricity, water etc. In Nigeria, section 28(1) of the Land Use Act⁴ provides *inter alia*:

It shall be lawful for the Governor to revoke a right of occupancy for overriding public interest.” However,

³ Paul Munro-Faure. *Compulsory Acquisition of Land and Compensation*. Published by the Food and Agriculture Organization of the United Nations; Rome, 2008.
Available at: http://www.fao.org/nr/lten/lten_en.htm (retrieved 20 November 2018)

⁴ The Land Use Act came into force in 1978 through a Military Decree but was adopted as the Act of the National Assembly in 1999.

revocation can only be valid in the face of overriding public interest including but not limited to the purpose of exclusive government use; development for public good; and on the grounds of preservation of public safety.

In harmony with section 44 of the Land Use Act, notice of revocation must be given in the name of the Governor or by his proxy hence, the notice is invalid.⁵ Similarly, the notice of revocation of land rights must be given to the statutory right holder.⁶ Section 28(7) explains that once the personal service of the revocation notice is affected, there arise the presumption that the title and interests in property of the statutory rights holder has terminate. The Land Use Act 1978 was re-enforced by the provision of section 315 (1) of the 1999 Constitution (as amended) which states as follows:

Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be⁷ an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws⁸; and a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.⁹

In view of the significance of lands,¹⁰ for compulsory acquisition to be fair, some developed countries including the United States and Canada often finds the equilibrium between the public interest, (common good) and the rights of private land owners. Hence, the developed nations do adopt the principles that guarantee that compulsory acquisition is the last option. This is because:

Compulsory acquisition is inherently disruptive. Even when compensation is generous and procedures are generally fair

⁵ See: *Nigerian Eng. Works v A.G. of Rivers State* [2001] 12 S.C.N.J. 251; and, *Ugochukwu v. COOP & Commerce Bank* [1996] 6 NWLR (Pt. 48) 524

⁶ Personal service is recommended. In *Osho v. Foreign Finance* [1991] 4 NWLR (Pt. 184) p. 157, it was held that publication of revocation notice in place of personal service was void. There must be evidence of service of the notice as stated in *A. G. of Lagos State v. Sowande* [1992] 8 NWLR (Pt. 261). p. 601.

⁷ At Section 315(1)

⁸ At Section 315(1)(a)

⁹ At Section 315(1)(b)

¹⁰ Black's Law dictionary 2nd edition defines land as: The soil and everything attached to the soil, "whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences ... land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance."¹⁰ Therefore, "land is defined as a real property. Land is also an area of ground with defined boundaries, including minerals or resources below the surface and anything growing on or attached to the surface" (see: T. O Elias. *Nigerian Land Law* 4th edn., Sweet & Maxwell London, 1971)

and efficient, the displacement of people from established homes, businesses and communities will still entail significant human costs. Where the process is designed or implemented poorly, the economic, social and political costs may be enormous.¹¹

Amongst other provisions, section 47 of the Land Use Act is contentious in that, it unequivocally striped courts of the rights to arbitrate on all claims arising from any provision of the Act. For example, section 47(1) provides as follows: “Act shall have effect notwithstanding anything to the contrary in any law or rule of law including the Constitution of the Federation or of a State and, without prejudice to the generality of the foregoing, *no court shall have jurisdiction* to inquire into:

- a) any question concerning or pertaining to the vesting of all land in the Governor in accordance with the provisions of this Act: or
- b) any question concerning or pertaining to the right of the Military Governor to grant a statutory right of occupancy in accordance with the provisions of this Act; or
- c) any question concerning or pertaining to the right of a Local Government to grant a customary right of occupancy under this Act.”¹²

Similarly, section 47(2) states: “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 this Act.” However, section 29(2) provides that, where the reason for the revocation of statutory right of occupancy is for the exploration and extraction of minerals resources, the right holder is entitled to compensation under the suitable provisions of the “Minerals Act or the Mineral Oils Act or any legislation replacing the same.”¹³ Despite the easily available statutory powers of governments to compulsorily acquire private lands, there exists the accommodation doctrine¹⁴ by which the ‘victim’ of property being forcefully acquired could be entitled to additional remedies irrespective of the financial compensation thereof.

THE ACCOMMODATION DOCTRINE

Accommodation Doctrine originated from the common law. The doctrine is based on the theory of due regard. The accommodation doctrine, is also referred to as the "alternative means".¹⁵ The doctrine was devised in *Getty Oil Company v. Jones*,¹⁶ the fact of the case was that, the height of the oil pumps installed by Getty impeded the sprinkler system used by Jones

¹¹ *ibid*

¹² Kato Gogo Kingston. *Oil and Gas Laws: A Guide for International Practitioners* (Second Edition) (Mauritius: Lambert Academic Publishing, 2018)

¹³ [n. 11]

¹⁴ This is a common law doctrine

¹⁵ [n. 11]

¹⁶ 470 S.W.2d 618 (Tex. 1971)

to supply water to his property, and as a result much of his land could not be used to grow crops. Jones wanted Getty Oil to either install different pumps or to dig “cellars” to lower the height of the pumps.¹⁷ The Supreme Court of Texas held that Getty Oil had to “reasonably accommodate”¹⁸ Jones’ use of the surface, irrespective of Getty being the mineral interest owner. The court observed that “the rights implied in favour of the mineral estate are to be exercised with due regard for the rights of the owner of the servient estate.”¹⁹ In essence, the mineral right owner may be required to accommodate the surface owner when: (a) there is an existing use of the surface; (b) the mineral owner’s use of the surface precludes or impairs the existing use of the surface; and (c) under the established industry practices, there are alternatives available to recover the minerals.²⁰ Simply put, the use of the land must not breach the accommodation doctrine.²¹ In *Buffalo Mining Co. v. Martin*,²² the court said: the mineral interest owner’s use of the surface must exercise care and use appropriate skills which are “reasonably necessary for the extraction of the mineral” and “without substantial burden to the surface owner.”

The case of *Chartiers Block Coal Co., v. Mellon*²³ highlights the circumstances where there are multiple mineral interest owners, the rule implies that, “... against the owner[s] of the surface each of the several purchasers would have the right...to go upon the surface to open by way of shaft, or drift or well, to his underlying estate...” In *Dewey v. Great Lakes Coal Co.*,²⁴ the court stated: “when the soil belongs to one person and the mine another, the right to work the mine carries with it the use of so much of the surface as is strictly necessary and reasonable.”²⁵ There is however, the complicated hurdle of proof which was outlined by the court in *Merriman v. XTO Energy, Inc.*,²⁶ the court laid out the requirements for proof of violation of the accommodation doctrine. To prove breach of the accommodation doctrine, the surface owner must first show that: (a) The Lessee’s use completely precludes or substantially impairs the existing use; and, (b) There are no reasonable, customary, and industry-accepted methods available to the Lessee that will allow recovery of the minerals and also allow the surface owner to continue the existing use.

Generally, the doctrine obliges the mineral rights operator to act with caution and to have due care and regard for the welfares of the surface owners in the exercise of the right to use the surface of the land to explore, prospect and produce minerals. The contemplation of the doctrine is that the land surface owners should be able to seek for redress from the mineral leaseholder in the event that: (a) the mineral interest owner have recklessly and negligently use of the surface causing harm to the claimant; and (b) there is the existence of other rational options by which the defendant ought to have adopted in the course of the conduct of the mineral activities in the premises. The doctrine is only applicable where the surface interest owner is different from the mineral interest owner. There are several case laws that re-affirms

¹⁷ [n. 11]

¹⁸ *Haupt Inc. v. Tarrant County Water*, 870 S.W.2d 350 (Tex. App. Waco 1994)

¹⁹ [n. 11]

²⁰ [n. 11]

²¹ [n. 11]

²² 267 S.E.2d 721 (W.Va. 1980)

²³ 152 Pa 286, 25 A 597 (1893)

²⁴ 84 A. 913 (Pa. 1912)

²⁵ [n. 10]

²⁶ 407 S.W.3d 244 (2013)

the crucial nature of accommodation doctrine as follows: In *Amoco Production Co. v. Carter Farms*,²⁷ it was held that the defendants must exercise with due regards for the claimant's surface rights and the failure to do so attracted judicial remedies. In *Hunt Oil Co. v. Kerbaugh*,²⁸ it was held that: "...the owner of the mineral estate must have due regard for the rights of the surface owner and is required to exercise that degree of care and use which is a just consideration for the rights of the surface owner...". It was the same outcome in other cases for example, in *Flying Diamond Corp. v. Rust*,²⁹ it was held that: The mineral owner and surface owner both have the rights to use and enjoy their properties without interference. Also in *Diamond Shamrock Corp. v. Phillips*,³⁰ the court held that, the "mineral owner must make reasonable usage of the surface and is liable for damages caused by any unreasonable use". The same outcome was reached in *Buffalo Mining Co. v. Martin*,³¹ where the court declared that the mineral owner's use of surface must be "reasonably necessary for the extraction of the mineral" and "without substantial burden to the surface owner." In *Gillespie v. American Zinc & Chemical*,³² the court avowed the grant of an injunction which ordered the well location originally designated by the mineral titleholder. The planned location would have "interfered" with the surface owner's use and development of land.

THE EFFECTS OF ACCOMMODATION DOCTRINE ON CRUDE OIL ACTIVITIES IN NIGERIA

Section 43 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) states, *inter alia*: "... every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria;" also, section 44 (1) provides that:

No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things - (a) requires the prompt payment of compensation therefore and (b) gives to 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.

However, there are currently no case laws in Nigeria that specifically invoke the protections provided by the accommodation doctrine. However, several of the cases have typically been championed through the human rights angle of the surface rights holders. One possible reason for the missing usage of the doctrine is based on the erroneous belief that the

²⁷ 703 P.2d 894 (N.M. 1985)

²⁸ 283 N.W.2d 131 (N.D. 1979)

²⁹ 551 P.2d 509

³⁰ 511 S.W.2d 160

³¹ 267 S.E.2d 721

³² 93 A. 272 (Pa. 1915)

rights of the surface rights holder have been reduced to such extent that he is just an occupier of the surface without some degree of ownership and, that the government is the overlord. The misconception flows from the interpretation of section 1 of the Lands Use Act which provides that:

All lands comprised in the territory of each state in the federation are hereby vested in the Governor of that state and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

Although, the provision inevitably created a trust of land in each state of the country by making the State Governors the trustee of the lands for the Federal Government. It did not preclude the overall interests of the surface owners. It must be noted that in *Kachalla v. Banki*,³³ and in *Ezennah v. Attah*,³⁴ the court held that the highest legal rights an individual can acquire over lands in Nigeria is the right of occupancy. The restricted right is provided in Section 5(1) of the Land Use Act. So far as the right of occupancy of the surface, there is the existence of accommodation doctrine by which breach of same could attract remedies, *ubi jus ibi remedium*.³⁵

The proof of the rights to claim remedies for breach of accommodation doctrine lies in section 5 and section 6 of the Land Use Act. Pursuant to section 5, private surface rights are conferred by the governor's grant of *statutory right of occupancy*, where the land is situated in the urban area. Section 6 of the Act empowers the local governments to grant *customary right of occupancy* on non-urban lands to applicants for residential and agricultural uses. However, Section 6 (2) specifies the maximum size of land that the local government can grant customary right of occupancy for agricultural purposes. It specifically states *inter alia*:

No single customary right of occupancy shall be granted in respect of an area of land in excess of 500 hectares if granted for agricultural purposes, or 5,000 hectares if granted for grazing purposes, except with the consent of the Governor.

The provision of section 34(2) simply imply that, all owners of properties that are already developed before the commencement of the Land Use Act shall be regarded as being granted the right of occupancy (deemed granted). However, such persons may wish to regularize such rights by applying for the issue of certificate of occupancy. Sadly, the provision of section 34(5) is not very comforting to owners of lands that were not developed prior to the commencement of the Land Use Act.³⁶ However, section 6(3) violates accommodation doctrine in that it permits the "local government [authorities] to enter upon, use and occupy for public purposes any land within the area of its jurisdiction." Section 34(2) provides as follows: "Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Act as if the holder of the land was the

³³ (2006) All FWLR (Pt. 309) p. 1420

³⁴ (2004) All FWLR (Pt. 202) p. 1858 at 1884

³⁵ Latin maxim meaning, where there is a wrong, there must be a remedy.

³⁶ [n. 11]

holder of a statutory right of occupancy issued by the Governor under this Act.” The effects of these provisions of the Land Use Act are that: The accommodation doctrine should apply to all urban lands to which the private surface rights owners have the *statutory right of occupancy*; to all urban lands to which the surface rights owners are granted the *customary right of occupancy* and, to all rural lands that were developed prior to the enactment of the Land Use Act in 1978.³⁷

Where compulsory acquisition of private lands violates the statutory occupancy rights, the aggrieved should be entitled to fair hearing under section 36(1) of the Constitution of the Federal Republic of Nigeria.³⁸ “It is important to remember that in where revocation is enforced, no state governor is permitted to revoke statutory right of occupancy of one individual or group for the purpose of granting it to another private individual or group.” The rights to fair hearing were highlighted in *Dantsoho v. Mohammed*³⁹ and in *Foreign Finance v. L.S.D.P.C.*⁴⁰

Accommodation doctrine and the Oil rights of Way

Internationally, the general rule is that the owner or holder of the minerals interest in land can use the surface to gain access to the minerals. It means that the minerals interest owner has an automatic easement that is implied and attached irrespective of the lack of express permission by the surface owner as stipulated in *Harris v. Currie*.⁴¹ In *Empire Gas & Fuel Co. v. Texas*,⁴² the Supreme Court of Texas clarify as follows: “This common law right was created because a grant or reservation of minerals would be wholly worthless if the grantee or reserver could not enter upon the land in order to explore for and extract the minerals granted or reserved.”⁴³

Despite the legal frameworks in Nigeria that have reduced the land rights of private citizen to such extent that crude oil is the property of the government, the rights to the land surface are still being held by private citizens by way of statutory and customary rights of occupancy. This presents a complicated situation for the oil firms because, they need to gain access to the oil and gas facilities by using the surface to convey heavy equipment and other logistics. The question therefore arises as to whether the oil firms can gain such access without violating the surface rights of the private citizens?

The case of *Babcock Lumber Company v. Faust*,⁴⁴ where the Pennsylvania Supreme Court held that the mineral rights⁴⁵ holders are entitle to the right of way⁴⁶ which are servitude

³⁷ *ibid*

³⁸ The section provides as follows: “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

³⁹ (2003) 6 NWLR (Pt.817)457 2 (2003) 2 S.C 42 3

⁴⁰ [1991] 4N.WL.R. (Pt. 184) p. 157

⁴¹ 176 S.W.2d 302, 305 (Tex. 1943)

⁴² 47 S.W.2d 265, 268 (Tex. 1932)

⁴³ Lisa Vaughn Lumley. The Balance of Power in Accommodation Doctrine Disputes After Merriman v. XTO. A paper presented at the Oil, Gas and Mineral Fundamentals and Institute, March 27 – 28, 201, Houston, TX

⁴⁴ 156 Pa. Super. 19, 39 A.2d 298 (1944)

appurtenant to the acreage of the minerals. The court however, stated that the rights of way of the mineral rights holders does not authorise them recklessly “subject any part of the surface through occupation at their pleasure. Therefore, the use of the surface by the minerals rights holders should be constrained to reasonable and justified “both as to place and mode of user by an apparent and direct relationship between the occupation of the surface and the economic prosecution of the mining and related activities.”⁴⁷

One crucial principle laid down in *Babcock Lumber Company* is that the mineral rights holder and the surface rights owner should make efforts to arrive at an agreed settlement reasonable enough to comply with accommodation doctrine to enable both the surface and minerals rights holders to benefit from their property rights.⁴⁸ Also, in *United States v. Minard Run Oil Co.*,⁴⁹ the court acknowledged the claims which cause of action was based on the accommodation doctrine. The fact of the case was that the disputed surface land was owned by the government and the defendant oil company owned the mineral rights including oil, gas, and several other minerals. The government sought a preliminary injunction to control the operations of Oil firm pending the final determination of the case of breach of accommodation doctrine. The court approved the injunction and restrained the defending oil firm from the clearing of the bushes, construction of roads, and laying of pipelines without the express consent and approval of the surface rights owners. Consequently, the court found that the defendants were liable for irreversible damages to the surface of the land to the detriment of surface rights owners (the claimants). In essence, the damages were done without notice and without the prior agreement of the parties.⁵⁰ In *Dewey v. Great Lakes Coal Company*,⁵¹ the court propounded three tests by which the defending oil firm must satisfy in order to prove that its surface use is reasonable. The tests are:

- (a) That it was absolutely necessary to use the surface without the need for cooperative agreement with the surface owners (the necessity test);
- (b) That the tradition and custom of the country allows the use of the surface with without the consent and agreement of the surface rights holders (the norm test); and,

⁴⁵ In Nigeria, the rights are Oil exploration licence; Oil Prospecting Licence and Oil Mining Lease contained in Section 2(1)(a) to 2(1)(c) of the Petroleum Act, respectively.

⁴⁶ Easement

⁴⁷ R. D. Davis Jr *et. al.* The Accommodation Doctrine in Pennsylvania P.C.: 60-4 CAIL Annual Institute on Oil & Gas Law § 4.04. The Institute for Energy Law of the Center for American and International Law's 56th Annual Institute on Oil & Gas Law.

⁴⁸ For more of similar decisions see: *Pennsylvania Water and Power Company v. Reigard*, 127 Pa. Super. 600, 193 A. 311 (1937); *Bowers v. Myers*, 237 Pa. 533, 85 A. 860

⁴⁹ 1980 U.S. Dist. LEXIS 9570 (W.D. Pa. Dec. 16, 1980)

⁵⁰ “In making its decision, the court held that the parties were required to exercise due regard for the rights of the other and to attempt to reach a reasonable accommodation so that each could reasonably enjoy its respective property rights. The court determined that while an owner of mineral rights has unquestioned right to enter upon the property for the purpose of access and extracting his minerals, he nevertheless is required to exercise such rights with a recognition of surface rights and taking appropriate action to prevent unnecessary disturbance to the owner of the surface” (Adapted from R. D. Davis Jr *et. al.* The Accommodation Doctrine in Pennsylvania P.C.: 60-4 CAIL Annual Institute on Oil & Gas Law § 4.04. The Institute for Energy Law of The Center for American and International Law's 56th Annual Institute on Oil & Gas Law).

⁵¹ 236 Pa. 498, 84 A. 913 (1912)

- (c) That the breach of surface rights had been consistent and, that the surface rights holders have never resisted for a very long period of time (the acquiescence test).

Notwithstanding the formulated tests, *United States v. Minard Run Oil Co* is a land-breaking case with regards to the accommodation doctrine. The implication of the principle of the case is that, the oil companies must exercise their minerals rights with reasonable care and with due regard to the holder of the surface rights. They must reasonably accommodate the rights of the surface owners. This also calls into focus the need for negotiations and amicable settlements irrespective of who holds each of the land rights.⁵² The oil firms are thus obliged to give the surface rights holders advance written notice of their intention to use the surface including but not limited to the ground plans and the maps of the proposed course of exploration and other related activities.

In the event that the surface rights owner/holder seeks to pursue a cause of action against the minerals interests owner, he must show that the three-level tests specified in *Dewey v. Great Lakes Coal Company* has not been met by the defendants. Also, it must be noted that in *Humble Oil & Ref. Co. v. Williams*,⁵³ hence, “A person who seeks to recover from the lessee for damages to the surface has the burden of alleging and proving either specific acts of negligence or that more of the land was used by the lessee than was reasonably necessary;” this because the general rule permitting the minerals owner to use the surface to gain access to the minerals with or without the permission or agreement of the surface interests owner/holder is limited by the “*doctrine of reasonableness*.”⁵⁴

Also closely attached to the doctrine of reasonableness is the need for *alternative use* which simply means that:

Where there is an existing use by the surface owner which would otherwise be precluded or impaired, and where under the established practices in the industry there are alternatives available to the lessee whereby the minerals can be recovered, the rules of reasonable usage of the surface may require the adoption of an alternative by the lessee.⁵⁵

Similarly, in *Valence Operating Co. v. Tex. Genco, L.P.*⁵⁶ the court stated that: “If the mineral owner has reasonable alternative uses of the surface, one of which permits the surface owner to continue to use the surface in the manner intended and one of which would preclude that use by the surface owner the mineral owner must use the alternative that allows continued use of the surface by the surface owner.” In *SERAC v. Nigeria*,⁵⁷ it was decided that Nigeria government failed to protect the Ogoni people from the activities of Oil Companies operating

⁵² See: *Gillespie v. American Zinc and Chemical Co.*, 247 Pa. 222, 227 (1915)

⁵³ 420 S.W.2d 133, 134 (Tex. 1967)

⁵⁴ See: *Diamond Shamrock Corp. v. Phillips*, 511 S.W.2d 160 (Ark. 1974); *Amoco Prod. Co. v. Carter Farms Co.*, 703 P.2d 894 (N.M. 1985), abrogated by *McNeill v. Burlington Res. Oil & Gas Co.*, 182 P.3d 121 (N.M. 2008); *Flying Diamond Corp. v. Rust*, 551 P.2d 509 (Utah 1976); *Buffalo Mining Co. v. Martin*, 267 S.E.2d 721 (W.Va. 1980).

⁵⁵ *Getty Oil Co.*, 470 S.W.2d at 619-20, at 622

⁵⁶ 255 S.W.3d 210, 216 (Tex. Ct. App. 2008)

⁵⁷ Communication No. 155/96 (2001) § 44-47, 57

in the Niger Delta in contrast to fulfilling its state obligation under International Human Right Law to respect, protect, promote and fulfil these rights to ensure advanced realisation of the rights of people. The African Commission avowed that the surface rights of the lands of the Ogoni people were violated and therefore demanded that the Nigerian government should guarantee that adequate compensation be paid to the victims.

In the United States, the controversy of access to minerals lands and the rights of the surface owners have been partially addressed through enacted laws. For example, the *Surface Damages Act* in Oklahoma was the basis of the decision of the court in *Schneberger v. Apache Corp.*,⁵⁸ where it stated that, the aim of the *Surface Damage Act* is to offer suitable reparation to the surface owners for damages resulting from the activities conducted by oil and gas companies.⁵⁹ In *Compton v. Davis Oil Co.*,⁶⁰ the court observed *inter alia*:

It cannot be said that the surface of the land constitutes a less vital resource to the State of Oklahoma than does the mineral wealth which underlies it. The surface supports development for business, industrial and residential purposes. It also supports our vital agricultural industry. The passage of the surface damages act guarantees that the development of one industry is not undertaken at the expense of another when the vitality of both is of great consequence to the well-being of our economy.

CONCLUSIONS AND RECOMMENDATION

In Nigeria, all persons from the age of 21 years old can acquire, possess, own and deal in landed properties in accordance with section 7 of the Land Use Act, 1978 and section 43 of Constitution of the Federal Republic of Nigeria 1999 (as amended). In the preceding treaties, it has been shown that, the right of persons to acquire property in Nigeria can be terminated by way of compulsory revocation in accordance with section 28 of the Land Use Act.

The preceding discourse has illustrated the intricacies involved in the revocation of land rights with regards to the accommodation doctrine where the revocation is for crude oil and related projects. One of the defences available to the authorities conducting revocation is that they must show that the revocation is for the purpose of “overriding public interest including but not limited to the purpose of exclusive government use; development for public good; and on the grounds of preservation of public safety.”⁶¹ However, the public interest clause provided in the Land Use Act does not preclude liabilities for breach of accommodation doctrine; this is because the doctrine is rooted in equity and justice. Hence, it is irrelevant as to

⁵⁸ 1994 OK 117, 14, 890 P.2d 847, 853-54.

⁵⁹ L. Mark Walker, Note, Oil and Gas: Surface Damages, Operators, and the Oil and Gas Attorney, 36 OKLA. L. REV. 414, 414 (1983).

⁶⁰ 607 F. Supp. 1221 (D. Wyo. 1985)

⁶¹ Section 28(1) of Land Use Act 1978; and, Section 28(2) Defines overriding public interest as: “(a) the alienation by the occupier by assignment, mortgage, transfer of possession, sublease, or otherwise of any right of occupancy or part thereof contrary to the provisions of this Act or of any regulations made thereunder; (b) the requirement of the land by the Government of the State or by a Local Government in the State, in either case for public purposes within the State, or the requirement of the land by the Government of the Federation for public purposes of the Federation; (c) the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith.”

whether there was substantial compensation received by the parties whose lands have been revoked. No amount of compensation paid on either a part of whole of the land can disengage the minerals interests' owner, the obligation to comply with the accommodation doctrine.

It is important to point out that accommodation doctrine though is of common law origin, is strengthened by Nigerian legislation and enshrined in the Petroleum Act,⁶² at Paragraph 37 of the First Schedule which states inter alia:

“The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.”

It is hereby recommended that, Nigeria should enact the *Surface Damages Act* which should expressly regulate the extent of rights to which the surface and minerals owners should possess. Without such a law, the possibilities of frequent legal actions challenging the oil firms are very high considering the growing awareness about some of the existing rights that are attached to the surface of the lands where oil and gas are being captured.

⁶² CAP P10 LFN 2004