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**A NUTSHELL APPRAISAL OF THE STRENGTHS AND WEAKNESSES OF THE LEGAL  
FRAMEWORK OF OIL AND GAS SECTOR IN NIGERIA**

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**ABSTRACT**

Laws propels moral and ethical stability. In order to forestall sanity in the petroleum sector, Nigeria has enacted several laws including, the Constitution of the Federal Republic of Nigeria 1999 as amended, the Land Use Act, Associated Gas Re-Injection Act, Environmental Impact Assessment Act (EIA), Oil Pipelines Act, Hydrocarbon Oil Refinery Act and Harmful Waste Act. All these laws notwithstanding, the oil and gas sector is undergoing a very turbulent era in our history hence the necessity to review some of the laws regulating it. This crises is somewhat related to the agitation of the communities who suffer serious hardship from the operations of the oil and gas companies. The various attempts to suppress this agitation by the use of force and arms have failed woefully, necessitating a need for an entirely different approach that will ensure a fair and equitable legal framework and practices regulating the industry. The goal of this paper was to assess the values of the laws and regulating the oil and gas undertakings in Nigeria and to suggest the way forward for efficiency.

*Keywords:* Petroleum, Laws, Productivity, Nigeria.

**INTRODUCTION**

In order to discuss the strength and weaknesses of the perspectives of the legal framework of Oil and Gas Industry in Nigeria, it is pertinent that we understand the legal framework of the Oil and Gas sector in Nigeria. This may prove a bit problematic in view of the difficulty in determining what the legal framework is all about. It has been said that ascertaining exactly what the Nigerian legal regime is, as it pertains to the Oil and Gas Industry, can be quite confusing.<sup>1</sup> However the Oil and Gas industry being an international business concern is governed by a lot of laws and regulations which set the standards for its operations. Nigeria is not lacking in legislation and rules in this regard, in fact it is said that more than 100 legislation

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<sup>1</sup> Yinka Omorogbe, *Oil & Gas in Nigeria* (Malt House Law Books 2001), 16.

and subsidiary legislation have been passed by various Nigerian governments to deal with various issues arising from the oil and gas industry.<sup>2</sup> These laws stipulate the ways of doing business in the oil and gas sector, including the formation and organization of the business. They also explain the industry transaction, scope of operations and responsibility to government, consumers and most especially Nigerians and the international community. On an examination of the relevant laws as touching the legal framework on the oil and gas sector in Nigeria, it was observed that these laws are not static but fluid as they are promulgated based on the economic exigencies and political interest of successive government. It was also noticed that these laws have gone through series of reviews and amendments.<sup>3</sup>

### **HISTORY OF THE OIL AND GAS INDUSTRY IN NIGERIA**

According to Omorogbe,<sup>4</sup> Nigeria legislation on petroleum had existed for about a decade before exploration was first undertaken. The first oil exploration legislation was the Petroleum Ordinance of 1889, after which we had the Mineral Regulation Oil Ordinance of 1907. These two legislation laid down the basic legal framework for the development of petroleum and its natural resources. By the legislation of 1907, only the British subjects or companies controlled by British subjects would be eligible to explore for oil resources,<sup>5</sup> it provides that:

No lease or license shall be granted except to a British subject or to a British company registered in Great Britain or in a British colony having its principal place of business within Her majesty's dominion, the Chairman and Managing Director (if any) and the majority of the other directors of which are British subjects.

This highly discriminatory provision informed the grant of a concession to Shell D'Arcy Petroleum Development Company (the forbearer of the present Shell Petroleum Development Company (SPDC)) in 1938 giving it a license to explore oil in the entire mainland of Nigeria, an area covering about 375,000 square meters. This resulted in the very slow development of the oil and gas industry in Nigeria as it became very obvious that the British Companies and subjects did not have the financial and technical capacity to develop the sector at the time. However, this set the stage for the subsequent and continuing oppressive legislation and practices in the oil and gas industry.

Oil was first discovered in commercial quantity in 1957 at Oloibiri in the present day Bayelsa State and export of oil product was first achieved in 1958 when Nigerian production capacity rose to about 5000 barrels per day hence the export of the first Nigerian crude oil, this later rose to well over 500,000 barrels per day resulting in the scrambling for the Nigerian space for the exploration of the Oil and gas leading to the concessionary rights review which was done sometime in 1959 to accommodate other companies as players in the Oil and gas Industry in Nigeria. These companies included the Mobil, Gulf (now Chevron), Agip among others. The SPDC has however maintained a dominant role in the oil and gas industry in Nigeria.

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<sup>2</sup> Onyekachi Wisdom Duru, 'An Appraisal of the Legal Framework for the Regulation of Nigerian oil and Gas Industry with Appropriate Recommendations' (2011)

<https://papers.ssrn.com/sol3/papers.cfm?abstractid=2137979> accessed 24<sup>th</sup> June, 2020.

<sup>3</sup> *ibid*

<sup>4</sup> Yinka Omorogbe, *Oil & Gas in Nigeria* (Malt House Law Books 2001), 16.

<sup>5</sup> MROO 1907 s 6 (1) (a).

The arrival of these other players in the oil and gas industry in Nigeria resulted in an increase in oil production from 0.90 b/d in 1970, to 2.9 b/d in 1972. This increase reached its peak of 2.4 million b/d in 1979. This steady increase in oil production in Nigeria conferred her with the status of a major oil producing nation and she has since grown to become the sixth largest oil producing country within OPEC.<sup>6</sup> This came with a price which can be situated at the level of environmental degradation witnessed in the host communities but most importantly the compulsory acquisition of land hitherto belonging exclusively to the indigenous people of Nigeria and denying them of their means of livelihood.

The scurry of activities as stated above made it impossible for the Ordinance of 1907 to provide an adequate legal regime for the regulation of activities in the oil and gas sector necessitating the promulgation of the Petroleum Act of 1969 and the Petroleum (Drilling and Production) Regulation of 1969. The Nigerian government sometime in 1971 decided to have a direct involvement in the oil and gas sector with the promulgation of Nigerian National Oil Corporation Act,<sup>7</sup> and later the Nigerian National Petroleum Company Act.<sup>8</sup> Further, the acquisition of equity participation in the concessions and operating licenses with the International oil Companies (IOC) ranged from 35percent to 55percent as a result of the provisions of the Petroleum Act.<sup>9</sup>

## **THE LEGAL FRAMEWORK**

The legal frameworks relating to ownership and pipelines Operations are discussed herein:

### ***Ownership Laws***

By ownership here we refer simply to ownership of land and its use. Kingston had said that land does not only refer to the soil or the surface of the earth, referring to Blacks' Law Dictionary 2<sup>nd</sup> edition which defined land as, "the soil and everything attached to the soil whether attached by the course of nature. As trees, herbage, 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."<sup>10</sup> Kingston also posited that one of the most comprehensive definitions of land is provided by the English Law of property Act 1925 which provides in its Section 205 (1) (ix) that:

... land includes land of any tenure, and mines minerals, whether or not held apart from the surface buildings or parts of building (whether the division is horizontal vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson and a rent and other incorporeal hereditaments and easement, right privilege, or benefit in, over or derived from land.<sup>11</sup>

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<sup>6</sup> Yinka Omorogbe, *Oil & Gas in Nigeria* (Malt House Law Books 2001), 19.

<sup>7</sup> NNOC Act 1971.

<sup>8</sup> NNPC Act 1977.

<sup>9</sup> PA 1969.

<sup>10</sup> Kingston Kato Gogo and Oke-Chinda, Mercy, 'The Nigerian Land Use Act: A Curse or Blessing to the Anglican Church and Ikwerre Ethnic People of Rivers State' [2016] *AJLC* (6) (1) 147 – 158.

<sup>11</sup> KG Kingston, *Oil and Gas Laws: A guide for International Practitioners*. (2<sup>nd</sup> edn, Mauritius: Lap Lambert Academic Publishers). 25.

The general principle of Common Law which was applicable in Nigeria is that he who owns the land owns everything beneath and above it. This Common Law principle implied that the person who owns the land should own everything on and underneath the said land. By this principle, all substances beneath the soil, other than the royal minerals, that is, gold and silver, which were traditionally owned by the sovereign, belonged to the owner of the land.<sup>12</sup> Property rights in the surface of the land and what lies beneath it may be resident in different persons. It is not uncommon to see a person sell the surface without the minerals underneath or vice-versa. In doing this an instrument of severance would be created stating the extent of rights of the parties to the agreement. This land surface owner's title of underlining minerals was however limited or subject to the right of a State to reserve for herself mineral resources or to statutorily expropriate them.<sup>13</sup> For instance Britain promulgated a law providing that:

The property in petroleum existing in its natural condition in strata in Great Britain is hereby vested in His Majesty shall have exclusive right of searching and boring for and getting such petroleum. The board of trade on behalf of His Majesty, shall have power to grant such persons as they think fit licenses to search and bore and get petroleum.<sup>14</sup>

This was inherited by Nigeria by virtue of its colonial status and the same scenario is applicable in Nigeria where all petroleum and mineral resources are by her laws, the property of the Federal government. This position is known as the principle of eminent domain,<sup>15</sup> which means, the power of the government to convert private lands for public use. Sometimes this power which is primarily an exclusive of government or sovereign state is passed on to public corporation and public utility providers and can be gleaned from four principal Nigerian legislative enactments, viz:

### ***The Constitution***

The Constitution of the Federal Republic of Nigeria 1999 provides that the entire property in the control of all minerals, mineral oil 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.<sup>16</sup>

### ***Exclusive Economic Zone Act***

The Exclusive Economic Zone Act provides that sovereignty and exclusive rights with respect to the exploration of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive Economic Zone shall vest in the Federal Republic of Nigeria and such right shall be exercised by the federal Government.<sup>17</sup>

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<sup>12</sup> Petroleum (Production) Act 1934, s 1 (1); R MacSwinney, *The Law of Mines, Quarries and Minerals*.

<sup>13</sup> Petroleum (Production) Act, 1934, s. 1 (1); Robert Forster MacSwinney, *The Law of Mines, Quarries and Minerals* (5<sup>th</sup> edn, London: Sweet and Maxwell limited)

<sup>14</sup> Petroleum Act 1934 s 2(1).

<sup>15</sup> KG Kingston, *Oil and Gas Laws: A guide for International Practitioners*. (2<sup>nd</sup> edn, Mauritius: Lap Lambert Academic Publishers). 27.

<sup>16</sup> CFRN, s. 44 (3); *Nkwocha v Governor of Anambra State* (1984) SC 542.

<sup>17</sup> EEZ Act 1978 s 2 (1).

### ***Nigerian Petroleum Act***

The Nigerian Petroleum Act provides that the entire ownership and control of all petroleum in, under or upon any lands (including and covered by water) which is(a) 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” is vested in the Federal Government of Nigeria.<sup>18</sup>

### ***Land Use Act***

The Land Use Act 1978 abolished all freehold system and sought to standardize administration of land ownership in Nigeria.<sup>19</sup> We would in discussing the legal framework for land ownership and use in Nigeria concentrate on the land Use Act of 1978. The Land Use Act provides that all lands comprised in the territory of each state in the Federation are hereby vested in the Governor of the state and such land shall be held and administered for the use and common benefit of all Nigerians in accordance with the provision of this Act.<sup>20</sup> This provision makes the governors trustees over the lands (except the lands exempted by provisions of section 49 of the Act which places certain land under the authority and control of the Federal Government) within their State territory and abrogate the hitherto absolute ownership of land otherwise known as freehold and replaced it with equitable interests. This thinking has since been given a stamp of judicial authority in a couple of Supreme Court decisions. The Supreme Court in *Savannah Bank v Ajilo*,<sup>21</sup> held that with the promulgation of the Land use Act 1978, all the unlimited rights and interests Nigerians had in their lands were swept away and substituted with very limited right and rigid control of the use of their limited right by the Military Governor of the State and the Local Government. This view was also held in the case of *Yakubu v Abioye*.<sup>22</sup>

The laws bordering on land tenure, use, acquisition and ownership, have the advantage of easing the process of acquiring land for economic and developmental reasons. It reduces the complexities in land acquisition in Nigeria which, like all African Countries, was very complex and sometimes confusing. Nwocha,<sup>23</sup> has surmised that the purpose of the law is to reduce unequal access to land and land resources a situation that has caused a serious difficulty for the citizenry. He further opined that a massive and unfettered access to land and land resources by the citizenry could stimulate the needed economic growth in an economy that depends so much on agriculture and mineral resources.<sup>24</sup> It also targeted reducing the high cost of land required for industrial development and mechanised agriculture. As well intended as the LUA 1978 would have been and as have been acknowledged by some authors,<sup>25</sup> it has failed in its set objectives. This has been attributed to two reasons, first is the inherent contradictions and second being the lack of political will to equitably implement the law.<sup>26</sup> It has been observed that most of the problems the Act was meant to resolve have remained unresolved and some of

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<sup>18</sup> NP Act 1969 s 1.

<sup>19</sup> Onyekachi Wisdom Duru, ‘An Appraisal of the Legal Framework for the Regulation of Nigerian oil and Gas Industry with Appropriate Recommendations’ (2011) <https://papers.ssrn.com/sol3/papers.cfm?abstractid=2137979> accessed 24<sup>th</sup> June, 2020.

<sup>20</sup> LUA 1978 s 1.

<sup>21</sup> (1989) 1 NWLR (Pt. 97) 305

<sup>22</sup> (1991) 5NWLR (Pt.100) 130.

<sup>23</sup> Nwocha, Matthew Enya, ‘Impact of the Nigerian Land Use Act on Economic Development in the Country’ [2016] *Acta Universitatis Danubius Administratio*, (8)(2). 117 – 128.

<sup>24</sup> Nwocha, Matthew Enya, ‘Impact of the Nigerian Land Use Act on Economic Development in the Country’ [2016] *Acta Universitatis Danubius Administratio*, (8) (2). 117 – 128.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid* 117.

its provisions have worked hardship.<sup>27</sup> For instance, the Act was meant to curb land speculation which is responsible for the astronomical rise in the price of land, especially in the urban area; secondly, it was expected that the implementation of the Act would assist citizens to own comfortable homes. This is so, notwithstanding their position in the social strata; thirdly, it was to help the government acquire land for public purposes without much hassles; and fourthly, it was to help standardise the land tenure system of Nigeria, particularly in the southern Nigeria which was bridled with so much confusion and lack of uniformity unlike in the North where the Land Tenure Act of 1962 had formalised land tenure.<sup>28</sup>

The implementation of the provisions of the Land Use Act of 1978 and other laws or legislation touching on land holding, acquisition, and control in Nigeria has been marred by considerations other than the good of the people of Nigeria. Instead of being a solution, it became a weapon of oppression in the hands of a few, to suppress and oppress the people and take away their land (which is most times their only means of survival) without adequate compensation or consideration of their interest.

### ***Oil Pipeline Act***

By the provision of the Oil Pipeline Act,<sup>29</sup> any person may make an application to the minister in accordance with the provisions of the Act or any other regulations made there under, for the grant of a permit to survey the route for an oil pipeline for the transport or mineral oil, natural gas, or any product of such oil or such gas to any point or destination to which such a person requires such oil, gas or product to be transported for any purpose connected with petroleum trade or operations.<sup>30</sup> Once this application is made indicating the choice of route, the Minister may upon payment of prescribed fees, give such license or refuse to give the license at his discretion. The minister is however under an obligation to notify the applicant in writing of such refusal and advance his reasons thereof.<sup>31</sup> The license or permit to survey, when granted would allow the holder to enter, together with his officers, agents, workmen and other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably close to such route to:

- Survey and take levels of the land;
- to dig and bore into the soil and subsoil;
- to cut and remove such and other vegetation as may impede the purposes specified in this subsection; and
- to do all other acts necessary to ascertain the suitability of establishment of any pipeline or ancillary installation.<sup>32</sup>

It has been observed, flowing from the nature of ownership and use of land in Nigeria, that the governments does not take into consideration, the interest of the citizens in any land that its interested in. Rather, the government grants the use of such land to whomever it chooses and then start taking palliative measures to assuage their grievances.<sup>33</sup> Most often than not the obligation of the grantee would only entail a certain number of days' notice to enable the

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Oil Pipeline Act LFN 1990 s 4 (1).

<sup>30</sup> Ibid s 4 (1), (3)(a) (b).

<sup>31</sup> Ibid s 5.

<sup>32</sup> ibid

<sup>33</sup> Ibid, s. 6.

occupier or affected citizen to remove his valuables where that is possible from the land and deliver vacant possession to the grantee.<sup>34</sup>

By subsection 2 of Section 6, it first appears that the occupier may resist the use of the land by the grantee but a further look at subsections (3), (4) and (5) of Section 6 of the Act would show that all the occupier is entitled to is compensation.<sup>35</sup> This compensation was specifically highlighted in Part IV of the Act. By section 21 of the Act where a claim is made under subsection (3) of Section 6, the Court shall award compensation it considers just in respect of any damage done to any building, crops or profitable trees by the grantee or holder of the permit in the exercise of his right. If the claim is in respect of Subsection (5) of Section 6 of the Act compensation would now include, apart from what is provided for in respect of compensation under Subsection (3), any damage or injury suffered by any person as a result of neglect on the part of the grantee or holder of the permit or his agent, servants or workmen, to protect, maintain or repair any work or structure.

The Act categorically stated that no compensation shall be awarded in respect of unoccupied land as defined in the Land Use Act, except to the extent and in the circumstance specified in that Act.<sup>36</sup> This provision of the Oil Pipeline Act has put paid to the era of speculation as to the compensation or damages payable to an aggrieved person owing to the damage or injury that the activities of the Oil and Gas players may ensue. Emmanuel Opara, has enthused that an aggrieved person under the Oil Pipeline Act must only claim for compensation and not damages.<sup>37</sup> The Court of Appeal, in *Nigerian Agip Oil Company Limited v Onyemaechi Ogbu*,<sup>38</sup> gave a stamp of judicial authority to this position.

Previously, it was a common practice for persons affected by the activities of oil companies to claim specific damages for the desecration of traditional worship centre, fishing net, pollution of the water ways and source of drinking water, fishing ponds and loss of revenue thereof among other claims. Such claims for general damages are even very often than not granted by our courts. This practice was informed by the common law principle of *ubi jus ibi remedium*. In *Nigerian Agip Oil Company Limited v Onyemaechi Ogbu*, the Court of Appeal was of the view that where a statute has provided for certain actions resort must be had to the statute and not to common law remedies.<sup>39</sup> The Oil Pipe Line Act, having superseded the common law remedies, all actions therefore connected with or pertaining to damage or injury as a result of oil exploration, production, installation and related activity must comply strictly with the Oil Pipeline Act, which made provision only for compensation to be paid to aggrieved person and not for any other claims.<sup>40</sup>

The Court of Appeal has made it very clear that the Oil Pipeline Act, in the plenitude of its preamble and section 11 thereof, clearly shown that every claim appertaining damage from oil installation or ancillary installation injurious affection on land or interest in land ... may only

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<sup>34</sup> Ibid.

<sup>35</sup> Ibid, s. 20.

<sup>36</sup> Ibid, s. 20.

<sup>37</sup> Opara, Emmanuel, 'Nigeria: A Claim under the Pipeline Act must be for Compensation and not Damages' (2018) <https://www.mondaq.com/nigeria/oil-gas-electricity/756510/a-claim-under-the-pipeline-act-must-be-for-compensation-and-not-damages> accessed 15 July 2020.

<sup>38</sup> Appeal No. CA/PH/387/1: delivered on Tuesday the 25<sup>th</sup> day of July 2017.

<sup>39</sup> *Harka Air Services(Nig.) Ltd v Keazor* (2011) 13 NWLR (Pt. 1264) 320 at 344.

<sup>40</sup> s 11.

be made under the Act.<sup>41</sup> Being for compensation and not be for damages as claimed according to Opara, means that any claim made for damages as opposed to compensation would be incompetent and the court would lack the jurisdiction to entertain same. Such suit can only be good for striking out by the Court.

## **CONCLUSION**

We have looked at the legal framework of the operations of the oil and gas industries in Nigeria especially as it relates to the basic and fundamental requirement for its existence which is land, its ownership, use and acquisition. We have looked at the principle of eminent domain in respect of four major legislation including the Constitution of the Federal Republic of Nigeria 1999, the Petroleum Act of 1969 and made some efforts to focus a little more on the Land Use Act of 1978 and we are of the opinion that those laws are oppressive and has worked hardship on Nigeria citizens. We therefore suggest that there should be an amendment of the LUA 1978 and indeed other legislation that were made to ensure the ease of acquisition of Land for economic purposes like oil prospecting, exploration and distribution. We recommend that there should be provisions for adequate compensation in respect of both exhausted and unexhausted improvements, including payment for the land itself as a store of value together with the improvements therein.

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<sup>41</sup> *Nigerian Agip Oil Company Limited v Onyemaechi Ogbu*, Appeal No. CA/PH/387/1 at 29.