

# Mineral Mining Licensing in Nigeria: Legal Framework and Challenges

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## ABSTRACT

This work seeks to highlight the regulatory framework of the Nigeria Mining industry and the challenges of mining operations in Nigeria with a view to proffering solutions.

## INTRODUCTION

The subsoil within the Nigerian geographical territory is considerably littered with large deposits of mineral assets. A number of these mineral assets includes but are not limited to the following; iron ore, columbite, bentonite, gypsum, gold, limestone, coal, bitumen, oil & gas, lead & zinc, salt, talc, barite etc. Mineral resources such as coal was adequately mined before the Nation's independence from colonial rule in 1960. However due to the discovery of oil in Nigeria in the 1950s – a mineral which had more economic potential and was a greater source of revenue to the federal government of Nigeria – coupled with some other factors (such as the Nigerian civil war), the coal mining industry in Nigeria experienced a serious decline.

The over concentration of the government on the oil and gas industry also caused a halt, in some instances, and a rather slow-paced development, in some other instances in the mining of other minerals which exist in the Nigerian subsoil. However, following a decline in oil prices over the years, the Nigerian Government has been compelled to look to alternative means of revenue generation. This has led to attempts to revive the mining industry by legislations and policy development aimed at attracting private sector investments in the mining sector of the Nigerian economy.

## LEGAL FRAMEWORK OF THE NIGERIAN MINERAL MINING SECTOR

The ownership of all mineral resources in the Nigerian territory is vested in the Federal Government of Nigeria.<sup>1</sup> Furthermore, the constitution empowered the National Assembly

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1 Section 44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) provides that "...the 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 of the Exclusive Economic zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly".

which is the legislative arm of the Federal Government to make laws on the operation and regulation of mines and minerals in the country.<sup>2</sup>

*Nigerian Minerals and Mining Act (NMMA), 2007*

In the exercise of its powers to make laws concerning mines and minerals, the National Assembly enacted the Nigerian Minerals and Mining Act (NMMA), 2007. Under the NMMA,<sup>3</sup> “minerals” are defined to mean “any substance whether in solid, liquid or gaseous form occurring in or on the earth formed by or subjected to geological processes including occurrences or deposits of rocks, coal, coal bed gases, bituminuous shales, tar sands, any substances that may be extracted from coal, shale or tar sands, mineral water and mineral components in tailings and waste piles, but with the exclusion of petroleum<sup>4</sup> and waters without mineral content.”

This Act operates as the principal legislation which regulates mineral licensing in Nigeria. The NMMA in confirmation of the provisions of the Constitution as regarding ownership and control of mineral resources in Nigeria provides that the mineral resources within the Nigerian territory is vested in the federal government of Nigeria for and behalf of the people of Nigeria.<sup>5</sup> The NMMA further provides<sup>6</sup> that in the event where there are minerals in a commercial quantity in a land, such land would be acquired by the federal government in accordance with the provisions of the Land Use Act.<sup>7</sup> Though the Act does not explicitly state what constitutes ‘commercial quantity’, it would be safe to speculate that commercial quantity would mean where the profits to be realized from the exploitation would far outweigh the cost of such exploitation.<sup>8</sup> This may have informed the decision of the Federal government to place its focus on 7 priority minerals namely: iron ore, gold barite, bitumen, limestone, coal, lead and zinc. The Act further provides that no person shall

2 Item 39 Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

3 Section 164 of the Nigerian Mining and Minerals Act, 2007.

4 It is our opinion that the exclusion of petroleum from the definition accorded to minerals by the NMMA stems from the fact that due to the unique nature of petroleum as the country’s economic mainstay, a special legislation which is the Petroleum Industry Act, 2021 was enacted to regulate the petroleum exploration sector.

5 Section 1(1) of the Nigerian Mining and Minerals Act, 2007.

6 Section 1(2) of the Nigerian Mining and Minerals Act, 2007.

7 For proper context, Section 28 of the Land Use Act of 1978 provides for the revocation of a right of occupancy for the purpose of an overriding public interest and more particularly, where a land is required for mining purposes or any purpose connected therewith.

8 Chigozie Okoronkwo, 'A Review of the Nigerian Minerals/Mining Act 2007 for Economic Transformation' [2017]. 4(1) International Journal of Innovative Research in Education, Technology & Social Strategies 43.

search for or exploit mineral resources in Nigeria or divert/impound water for the purpose of mining except as it otherwise provides.<sup>9</sup>

The provisions of the NMMA clearly communicate that the regulation and control of the mineral mining sector is reposed in the federal government. While ownership of these minerals lies in the Federal Government, natural or artificial persons may apply for and obtain a license from the Federal Government of Nigeria to exploit these minerals. In return, the licensee shall be liable to pay royalty<sup>10</sup> to the Federal Government, in addition to such other taxes which may apply in respect to the exploration of such minerals.

### *Nigerian Minerals and Mining Regulation, 2011*

The Regulation is a subsidiary legislation to the NMMA. The regulation was issued by the Federal Ministry of Mines and Steel Development as allowed by NMMA. The regulation defines the modalities for the regulation of the mineral mining industry, including the acquisition of the relevant mineral titles; it prescribes measures for the protection and safety of workers in the mining industry; environmental safety; provide forms for the purpose of applying the Regulations and any relevant matter covered by it and; provide regulation for compliance with the provisions of the NMMA.<sup>11</sup>

### *The National Minerals and Metals policy*

The National Minerals and Metals policy, 2008 seeks to engineer a private sector driven revolution of the Mining Industry. The Policy promotes investment in quality geological surveys in order to provide and disseminate information and accurate geological data on Nigeria's mineral resources; ensuring transparency in the grant of mineral titles and permits; ensuring compliance with environmental best practices; the promotion of small scale mining activities and the formation of informal mining activities etc.

Other legislations which are instrumental in the regulation of the mineral mining industry include:

- i) *The Nigerian Investment Promotion Commission (NIPC) Act*<sup>12</sup>: The provisions of the NIPC Act shall apply in relation to mining activities in the event where there is any foreign investment made in respect of any mineral title granted under the NMMA.<sup>13</sup>

9 Section 2(1) of the Nigerian Mining and Minerals Act, 2007.

10 Section 33 of the Nigerian Mining and Minerals Act, 2007.

11 Regulation 3 of the Nigerian Mines and Minerals Regulation, 2011.

12 CAP N117 LFN 2004.

13 Section 29 of the Nigerian Mining and Minerals Act, 2007.

- ii) *The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act*<sup>14</sup>: The Provisions of the Foreign Exchange Act would apply where there is an investment in foreign currency in respect of any mineral title granted under the NMMA.<sup>15</sup>
- iii) *The Companies and Allied Matters Act, 2020*: Where there arises a need to procure a mining license as a body corporate, such body corporate must be registered at the Corporate Affairs Commission in accordance with the provisions of the Companies and Allied matter Act.
- iv) The various tax legislations ranging from the Personal Income tax Act, the Capital gains Tax Act, etc also apply to taxation of operators in the mining sector.

## **ADMINISTRATIVE/REGULATORY FRAMEWORK IN THE MINERAL MINING INDUSTRY**

1. *The Federal Ministry of Mines and Steel Development*: The Federal Ministry of Mines and Steel Development is the major agency of government responsible for the mining industry in Nigeria. It carries out its mandate through several departments. These departments are as follows:
  - a. *The Mines Inspectorate Department*: The Mines Inspectorate Department is tasked with performing supervisory roles with respect to all activities in the mining industry and ensuring that the provisions of the NMMA are strictly complied with by stakeholders in the mining industry. These roles range from carrying out investigations or inspections in a bid to ascertain that all necessary prerequisites for grant of a mineral title are adequately complied with. They are also responsible to taking custody of and/or disposing of any such minerals which may be forfeited to the Federal Government by an order of court. They also play an advisory role as they have the responsibility of reviewing and recommending to the minister, programs for controlling mining operations.<sup>16</sup>
  - b. *The Mines Environmental Compliance Department*: It plays the role of reviewing plans, studies and reports required to be prepared by holders of mineral titles with respect to their environmental obligations; monitor and ensure the enforcement of all environmental obligations required to be observed by holders of mineral titles; perform periodic audits of the said environmental requirements and make recommendations to the minister where applicable and; liaise with government agency with respect to social and environmental issues involved in mining operations, mine closure and reclamation of land.<sup>17</sup>

14 CAP F34 LFN 2004.

15 See note 13 above.

16 Section 17 of the Nigerian Mining and Minerals Act, 2007.

17 Section 18 of the Nigerian Mining and Minerals Act, 2007.

- c. *The Small-Scale and Artisanal Mining Department*: This Department is responsible for assisting and providing support for small scale and artisanal mining activities in the country as well as the provision of extension services in the country.
2. *The Mining Cadastre Office*: The Mining Cadastre Office is designated as the sole agency responsible for the administration of mineral titles in Nigeria. It concerns itself with the consideration of applications for mineral titles and permits, issuance of such titles and permits and/or revocation of same. It also receives and disposes of applications for transfer, renewal, modification and relinquishment of mineral titles or extension of areas where an applicant may carry out its mining related activities.<sup>18</sup>

The licenses/permits which the Mining Cadastre may issue include the following:

- a) *Reconnaissance Permit*: This permit enables the holder to carry out reconnaissance (exploration of an area with the aim of searching for the presence of mineral deposits in that area) on a non-exclusive basis.<sup>19</sup> They are however, prohibited from carrying out drilling activities in the area. This permit upon issuance, lasts for a duration of one year and is renewable annually subject to compliance with stipulated terms and conditions.<sup>20</sup>
- b) *Exploration License*: This license grants the holder the exclusive right to conduct exploration activities over a certain area of land not more than 200km<sup>2</sup>.<sup>21</sup> It allows the holder to enter upon such land (which is not subject to an existing exploration license, mining lease, scale mining lease or quarry lease) and erect machinery, conduct exploration activities thereon and extract, export, take (to a reasonable extent) and sell samples and specimens of such minerals found in such area.<sup>22</sup> The law also grants the holder of an exploration license the exclusive right to apply for and be granted one or more small scale mining leases or quarry leases with respect to such areas where it was granted an exploration license.<sup>23</sup> Exploration licenses when granted are valid for a period of 3 years and may be renewed for two further periods of two years each subject to fulfilment of certain requirements.<sup>24</sup> In other words, an exploration license can only be valid for a cumulative period of 7 (seven) years.
- c) *Small Scale Mining Lease*: The small-scale mining lease permits the holder to conduct artisanal mining operations which does not include the extensive and continued use of explosives, toxic chemicals or agents on an area of land not less than 5 acres but not more than 3km<sup>2</sup>. The holder is not permitted to employ more than 50 workers in a typical workday and not allowed to carry underground operations which exceed 7 meters below surface nor galleries extending over 10 meters from a shaft. Small scale

18 Section 5 of the Nigerian Mining and Minerals Act, 2007.

19 Section 56 of the Nigerian Mining and Minerals Act, 2007.

20 Section 57 of the Nigerian Mining and Minerals Act, 2007.

21 Section 59(3) of the Nigerian Mining and Minerals Act, 2007.

22 See Section 59(1) and Section 60 of the Nigerian Mining and Minerals Act, 2007.

23 Section 61(4) of the Nigerian Mining and Minerals Act, 2007.

24 Section 62 of the Nigerian Mining and Minerals Act, 2007.

mining lease is granted for a period of 5 (Five) years and may be renewed for further unlimited terms of 5 (Five) years.

- d) *Mining Lease*: It is granted for use upon such surface area where there exists no prior exploration license or small-scale mining lease unless the applicant is a holder of an exploration license or small-scale mining lease over same surface area. The lease covers an area of no more than 50km<sup>2</sup>.<sup>25</sup> The lease empowers the holder to exclusively use, occupy and carry out mineral exploitation within the mining lease area. The holder of the mining lease also has the right to market, sell, export or otherwise dispose of mineral products resulting from the mining operations.<sup>26</sup> Mining leases are granted for a duration of 25 (twenty-five) years and stands renewable every 24 (twenty-four) years subject to the fulfilment of the required conditions.<sup>27</sup>
- e) *Quarrying Lease*: The grant of this lease covers the mining of minerals which are quarriable such as asbestos, gypsum, marble, limestone, slate, stone, gravel, etc. It is granted over an area of land which is not more than 5km<sup>2</sup> and unless revoked, it stands valid for a period of 5 (five) years.<sup>28</sup> Holders of this title have the right to enter into land within the area of the lease and carry out quarrying operations and remove and dispose quarriable minerals which are specified in the lease.<sup>29</sup>
- f) *Water Use Permit*: Water use permit entails the exclusive right to obtain and convey water and/or occupy land for the purpose of conveyance of water. It is granted to applicants/holders of Exploration License, Small scale Mining Lease, Mining Lease and Quarrying Lease.<sup>30</sup> A water use permit remains valid for as long as the above stated mineral titles remain valid.<sup>31</sup>

The right to exploit mineral resources in Nigeria is premised upon application and obtaining of the requisite license.<sup>32</sup> The licenses are open to private individuals, corporate bodies and co-operative societies. These mineral titles (Exploration License or Mining Lease) may be granted following a competitive bidding process or upon an individual application. In respect of competitive bidding process, the government may consolidate various mineral locations into blocks and offer them to investors with the requisite financial and technical capabilities to carry out mining operations. Upon a successful bidding, the successful investor is granted the mineral title sought. In respect of individual applications to the Mining Cadastre office and upon consideration of the application, a mineral title may be

25 Section 67 of the Nigerian Mining and Minerals Act, 2007.

26 Section 68 of the Nigerian Mining and Minerals Act, 2007.

27 Section 66 of the Nigerian Mining and Minerals Act, 2007.

28 Section 77 of the Nigerian Mining and Minerals Act, 2007.

29 Section 78 of the Nigerian Mining and Minerals Act, 2007.

30 Section 52 of the Nigerian Mining and Minerals Act, 2007.

31 See Section 163(11) of the Nigerian Mining and Minerals Act, 2007.

32 Section 46 of the Nigerian Mining and Minerals Act, 2007.

given. Mineral titles considerations are on a first-come-first-serve basis and so applicant who first make their applications in the proper form would be given priority.

Mineral titles apart from the reconnaissance permit are transferable subject to the approval of the minister and registration of the transfer with the Mining Cadastre Office. Rights which stem from a transferable mineral title can be wholly or partly assigned, sublet, pledged, mortgaged, charged, hypothecated or subject to any security interest. The approval of the Mining Cadastre Office would not be required for an assignment to an affiliate where the obligations of the affiliate are guaranteed by the assignor or by a parent company. All mining titles are not universal in nature. A license only grants approval for the exploration of the mineral which the title holder is explicitly permitted upon approval to explore. If a title holder discovers another mineral on the same license area during his exploration, he may make a further application for the mining of such newly discovered mineral.

## CHALLENGES AND RECOMMENDATIONS

Despite the various legal and regulatory frameworks put in place to ensure a productive mineral mining industry, there are a lot of challenges which have hindered the mineral mining industry from reaching its potential. Some of them are as follows;

### A. Limited geoscience data and information:

Most of the available geological / geoscience data are outdated. This affects the credibility of the resource information and has impacted the bankability of mining projects. To address this challenge, the Nigerian Geological Survey Agency (NGSA) has conducted a high resolution airborne geophysical survey of the country and is collating information on the location and quantity of available minerals for easy accessibility.

### B. Infrastructure development:

A major challenge to the development of the sector is the infrastructural imbalance within Nigeria, particularly adequate electricity supply, and access roads to sites of mineral deposits. However, the privatization of the national utility and reform of the power sector are stimuli for private investment in the sector. As capacity increases with new investments in the generation, transmission and distribution of electricity, the shortages currently being experienced will be overcome. Pending the resolution of the power problem on a national scale, mining investors can meet their power needs by engaging independent power producers for captive generation and supply of energy to the mines. The Federal Government of Nigeria is encouraged to invest in road and rail construction to facilitate product evacuation across the country for export.

C. Security:

In recent times, the operation of bandits and terrorist groups in Northern Nigeria and the Middle -Belt region of Nigeria that is rich in mineral resources have affected mining operations and investments. It is advised that the Federal Government intensifies its various counter-terrorist onslaught and fight against criminal elements in these regions to pave way for full utilization of the Nation's mineral resources. Also, the Ministry's Mines Surveillance Task Team should collaborate with other security agencies to tackle the challenges of illegal mining.

D. Illegal mining and community challenges:

There are still pockets of Illegal mining activities in some of the regions, with attendant risks and community challenges. The Ministry's framework for a single point of engagement with host communities should be made more effective to ensure there is no interference on investor's right to operate by the communities. The Ministry is encouraged to effectively utilize the Mineral Resources and Environment Management Committee (MIREMCO), a statutory body provided for in the Nigerian Minerals and Mining Act, to enhance governance of the sector.

E. Project funding:

Due to the long period of inactivity and the slow implementation of the Federal Government's reform agenda in the sector, multinational corporations have been reluctant to fund major mining projects in the country. The Ministry is encouraged to effectively utilize the intervention fund from the Natural Resources Development Fund (NRDF), and additional funding from International Development Partners through the World Bank. The funds should be targeted towards exploration and research, geosciences data generation and improved mines field security.

F. Lack of robust fiscal framework:

The existing fiscal framework for investors in the mining sector is not friendly enough and does not consider the peculiar nature of the sector, particularly, its long gestation period. Therefore, Nigeria will need to revisit the entire fiscal framework for the taxation of mining operation, in order to attract mining majors and foreign investors.