

LEGAL FRAMEWORK FOR SOLID MINERALS OWNERSHIP AND CONTROL IN NIGERIA*

Abstract

All solid minerals are indisputably the Federal Government of Nigeria's property, according to both the Minerals and Mining Act and the Federal Republic of Nigeria's Constitution. To ensure a just and fair society in Nigeria, the application of this legal stance has remained a contentious topic that needs clarification. While it is important to concentrate on the position's ultimate economic goal, there has been a lot of support for taking the host towns' interests into account as well. This research examines Nigeria's present legal system's provisions governing ownership and management of solid minerals, as well as its effectiveness. Using the doctrinal approach, this research examines the legal framework of solid minerals ownership and control in Nigeria by examining the principal enactment vis-a-vis the position of the amended 1999 Constitution of Nigeria. This research also finds that ownership and control of solid minerals in Nigeria is vested in the federal government. This paper concludes by recommending joint ownership between the state and Federal government and also the rights of host communities be taken into consideration.

Keywords: Solid Minerals, Ownership, Control, Nigeria

1. Introduction

Solid minerals are any naturally occurring resources with an economic value that are found below the surface of the earth, including but not limited to limestone, coal, clay, gold, lead iron ore, and precious metals. The Constitution of the Federal Republic of Nigeria 1999 (as amended), the Nigeria Minerals and Mining Act ("Minerals Act"), the Land Use Act, the Nigerian Mining Corporation Act, the Nigerian Coal Corporation Act, the Environmental Impact Assessment Act, and others are among the laws that pertain to the ownership and control of solid minerals in Nigeria. This research examines the legal framework of solid minerals ownership and control in Nigeria by examining the principal enactment viz a viz the position of the amended 1999 Constitution of Nigeria. This research also finds that ownership and control of solid minerals in Nigeria is vested in the federal government. This paper concludes by recommending joint ownership between the state and Federal government and also the rights of host communities be taken into consideration. The paper is divided into five parts. Part one is on the general introduction, part two examines the Legislative Framework for solid minerals in Nigeria, and part three accesses the Environmental concerns and host community rights. Part four considers the Advocacy for State Ownership of Natural Resources. Part five deals with the way forward and conclusion.

2. Legislative Framework for Solid Minerals in Nigeria

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Matters relating to solid minerals are also listed in the exclusive legislative list, indicating that they fall solely under the purview of the legislative competence of the National Assembly.¹ The Constitution, which is the fundamental legal document in Nigeria, expressly vests ownership and control of all mineral resources located on its territory in the Federal Government, to be managed in a manner prescribed by the National Assembly.² The Nigerian Minerals and Mining Act 2007 was passed by the National Assembly as a result of the exercise of these powers to control the exploration and extraction of solid minerals in Nigeria.³ These constitutional provisions have the effect of prohibiting individual states from regulating the exploration and exploitation of any type of mineral resources inside their borders. However, they retain the right to exploit these mineral resources by way of investment subject to necessary licences and approval from the Federal Government.

It is also pertinent to note that the constitution also saddled the Federal High Court with the jurisdiction to handle matters pertaining and incidental to mines and minerals.⁴ The court have in plethora of cases restated the exclusivity of the jurisdiction of the Federal High Court to sit over matters relating to natural gas, mines, and minerals.⁵ However, Federal High Courts have divisions domiciled majorly in the capital of the States and the Federal Capital territory, which are usually far from the rural communities where the mines are located. Hence, where there is a dispute arising from mines and minerals

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¹ Second Schedule, Part I, Item. 39

² Section 44(3), The Constitution of the Federal Republic of Nigeria 1999(CFRN) (as amended)

³ Long Title, Nigerian Minerals and Mining Act 2007

⁴ Section 251(1)(n) of the Constitution of the Federal Republic of Nigeria, 1999.

⁵ See the cases of *Conso Oil Ltd v. Mobil Producing* 2008) 2 FWLR (pt 419) p. 2403; and *Nigeria Liquefied Natural Gas Limited v. Green*, (2010), All FWLR (pt. 530) p.1300 at 1310 paras. E-G

related issues, the victims may be required to travel to the state capitals for the court sittings and also brief lawyers. It is posited that the exclusive jurisdiction of the Federal High Courts over mines and mineral disputes should be reviewed in order to enable rural dwellers access justice.

Minerals and Mining Act

The Minerals and Mining Act of 1999 was repealed and replaced by this Act. It was implemented, as was already noted, to establish a comprehensive framework for the exploration and extraction of solid minerals in Nigeria. The Act consists of 165 sections arranged within six chapters, addressing majorly: ownership, prospecting, mining, management of minerals, environmental and host communities' consideration.⁶ Several of the key clauses of this Act will be examined in this research:

Solid Mineral Ownership and Control

The provisions of Section 44(3) of the 1999 Constitution are reiterated in Section 1(1) of the Act, which gives the federal government ownership and control over all of Nigeria's mineral resources. Lands on which minerals are found in commercial quantities must be purchased by the government in accordance with the Land Use Act, according to section 1(2). This clause is required to stop the arbitrary purchase of private properties from individuals under the pretense that commercially viable mineral resources have been found on the property. The Act also forbids the exploration and exploitation of Nigeria's mineral resources without a permit from the authorities.⁷ This clause is required to support the federal to prevent arbitrary mining activity, the government monitors the exploration and extraction of its resources.

The Act's Administration

Since he is in charge of everything related to Nigeria's mineral resources, the Minister for Solid Minerals Development might be considered to be the Act's chief administrator.⁸ The Act creates a Mining Cadastre Office, which, with the Minister's consent, is in charge of documenting and approving requests for mineral titles and permissions. You should be aware that these mining rights are awarded on a first-come, first-served basis and occasionally via competitive bid.⁹ Where several applications are received on the same area or for overlapping area from two or more persons on the same business day, the application which is first received in the proper form shall be deemed to have priority over others. The Act gives priority for the use of land for mining over other uses of land and shall be considered for the purposes of access, use and occupation as constituting overriding public interest under the Land Use Act.¹⁰ Mines Inspectorate Department (MID), Mines Environmental Compliance Department (MECD) and any additional departments that may be required for the appropriate administration of the Act must be established by the Minister.¹¹ The MID was created to oversee all reconnaissance, exploration, and mining operations; to enforce all health and safety laws that have been approved by the law on mine sites; and to carry out inspections and investigations required to guarantee adherence to relevant laws.¹² On the other hand, the MECD is normally in charge of ensuring that holders of mineral titles adhere to environmental commitments and regulations.¹³ The establishment of this department is required to protect the environment in Nigeria from dangers related to the discovery and extraction of solid minerals. The Act also mandates the creation of the Mineral Resources and Environmental Management Committee in each of the federation's states to advise the Minister and take into consideration concerns pertaining to the development of mineral resources within the state, including those involving the granting of mining titles, compensation, pollution, and deterioration of mining areas. The main goal of this committee is to establish a body to control how mineral resources are used at the subnational level.

Licenses

The Act describes different permits that are available to investors that want to carry out mining operations in Nigeria. Additionally, it describes the steps involved in obtaining the different licenses as well as the licensees' responsibilities and rights. These permits include a reconnaissance permit, an exploration permit, a mining lease, a lease for small-scale mining, a lease for a quarry, and a water usage permit.¹⁴ Without the necessary mineral title (license), it is typically illegal to explore and utilize mineral resources, according to the Act. If a person has been convicted of an Act violation within the five years prior to application, the Mining Cadastre office is not permitted to give them a mineral title.

Type of Licences Granted under the Act

One of the aforementioned mineral titles confers the following rights to look for or utilize mineral resources under the Act: These licenses are generally given to any member of the following categories of people: Nigerian citizens, legal entities validly constituted under the Companies and Allied Matters Act (CAMA), mining cooperatives, and, if appropriate, holders

⁶ *Ibid*

⁷ Section 2 of the Act

⁸ Section 4 enumerates the functions of the minister

⁹ Section 5 of the Act

¹⁰ Section 8 of the act

¹¹ Section 16

¹² Section 17

¹³ Section 18

¹⁴ Section 46

of the pertinent prior licenses. However, it appears that a body corporate that has been lawfully incorporated under CAMA is the focus in the case of a mining lease.

Reconnaissance Permit: A reconnaissance permit gives its holder the non-exclusive right to gain access to, enter, or fly over any area in Nigeria that is available for mining in order to look for mineral resources. It also grants the bearer the authority to collect and remove modest amounts of surface samples. It is issued for a year and is renewable yearly as long as the requirements of the Act and any rules adopted in accordance with the Act are satisfied. The following are some of the prerequisites for receiving a reconnaissance permit: Non-Exclusivity; Reconnaissance activities do not qualify as land use rights under the Land Use Act since they: Do not entail drilling, excavation, or other sub-surface procedures; Holder is responsible for compensating land users for harm to their property and for paying subscription costs; Do not involve any of the above. Any land that is or has become subject to an exploration license, a small scale mining lease, a mining lease, or a water use permit is not eligible for a reconnaissance permit.¹⁵

Exploration Licence: An exploration license holder has the sole authority to carry out exploration on the territory that is covered by the license. A maximum of 200 square kilometers of land are covered by an exploration license. An exploration license is valid for three years and may be extended twice more for additional durations of two years each.¹⁶ If the holder of an exploration license complies with all of the requirements of the exploration licence, they will have the exclusive right to be granted one or more small scale mining leases, mining leases, or quarry leases in respect of any part(s) of the exploration area.¹⁷

Mining Lease: Except for the holder of the Exploration Licence or Small Scale Mining Licence, no Mining Lease will be given in respect of any area within an Exploration Licence Area or Small Scale Mining Lease. A mining lease has a twenty-five (25) year term and is renewed every twenty-four years as long as the holder fulfills all of his minimal job responsibilities.¹⁸ A mining lease grants the holder, among other rights, the ability to gain entry into the mining lease area, utilize it exclusively, occupy it, and conduct mineral exploration there.¹⁹

Quarry Lease: All naturally occurring quarriable minerals, such as asbestos, china clay, fuller's earth, gypsum, marble, limestone, mica, pipe clay, slate, sand, stone, late nite, gravel, etc., which may also be legally extracted under Mining Leases, are covered by the Act's provisions for quarrying. If not renewed, a quarry lease is given for a 5-square-kilometer maximum land area and is valid for 5 years. The owner of a quarry lease has the authority to conduct quarrying operations on the property covered by the lease, as well as to extract and dispose of any quarriable minerals listed therein.²⁰

Small Scale Mining: A Small Scale Mining Licence is issued for a space that must be at least 5 acres and not more than 3 square kilometers. The Small Scale and Artisanal Mining Department of the Ministry of Solid Mineral Development shall set any additional terms governing the Small Scale Mining Lease.

Environmental Concerns and Host Community Rights

In order to balance the interests of holders of mineral titles with those of host communities and the general public, the Act includes a number of provisions. For instance, it allows host communities and Nigerian citizens in general to mine minerals like salt, soda, potash, or galena from any area as long as they adhere to any rules set forth by the Minister; these minerals were previously obtained by community members prior to the Act.²¹ No holder of a mineral title is permitted to conduct mining operations on a piece of property or cut down a sacred tree in the neighborhood.²² Any title holder who violates this clause is responsible for paying a fine to the host community. This clause is required to protect the host community's religious and traditional values. The holder of the mineral title must also take action to stop environmental degradation caused by mining operations in the host community.²³ This clause is essential to ensuring that the community is not ruined and rendered uninhabitable for the indigenous people after mining operations are over. The Act also made provision for remediation and reclamation of mine sites.²⁴ A lessee is mandated to ensure that mining site is reasonably restored at the cessation of mining operation.²⁵ It is very expensive to reclaim, remedy and restore environments that have been degraded

¹⁵ Section 46(a)

¹⁶ Section 46(b)

¹⁷ Section 46(c)

¹⁸Gbenga Biobaku & Co, 'Mining In Nigeria –The Nigerian Minerals And Mining Act, 2007' (2007) <https://www.gbc-law.com> accessed 20 February 2023

¹⁹ Section 46(d)

²⁰ Section 46(e)

²¹ Section 97

²² Section 98

²³ Section 111

²⁴ Section 115

²⁵ Section 34(2). See also Sule Paul Hakuri, 2021, 'Legal Framework for solid minerals Exploitation in Nigeria'. Retrieved online January 28, 2023 from: https://www.academia.edu/30253910/CHAPTER_THREE_LEGAL_FRAMEWORK_FOR_SOLID_MINERALS_EXPLOITATION_IN_NIGERIA.

due to mining activities. For instance, the Federal Government in 2013 spent over 850 million naira in remediating Zamafara state communities polluted due to lead poisoning emanating to reckless lead mining by artisans in the communities.²⁶ Hence, the Act further provides for environmental rehabilitation under sections 118 and 120. It also provides for Environmental Protection and Rehabilitation Fund (EPRF) which requires all licenses to contribute to the fund which is established to ensure that environmental commitments of holders are actualized under the Act. This EPRF is a laudable innovation introduced by the Act which have been replicated in the Petroleum Industry Act of 2021 (PIA).²⁷

It is imperative to note that section 114 of Act only makes for restoration of out of mine sites when restoration is desirable and subject to the consent/permission of the minister. This provision is hazy, out of mine sites are usually the worst hit parts of environmental issues associated with mining. Secondly, the Act did not also define the meaning of desirability, as same can become an escape root for defaulters. Finally, the giving of power to the minister to determine desirability and also consent to the restoration is arbitrary and can be abused. The minister is charged with a lot of other responsibilities and may not be able to attend to all issues on time due to his overwhelming work schedule. Section 115 deals with reclamation, which the provisions are similar with the provision on restoration under section 114. It is submitted that the above provisions be reviewed for the purpose of clarity and also to eliminate duplicity.²⁸

Transfer of Mineral Title: The Act permits the transfer of a mineral title, but only after the Minister has approved the transfer and the transfer has been registered with the MCO. Under the Act, rights derived from a mineral title or permit that are transferable in whole or in part may be subleased, pledged, mortgaged, charged, hypothecated, or the subject of any security interest. For an assignment to an affiliate if the liabilities of the affiliate are guaranteed by the assignor or by a parent company, the MCO's consent is not necessary.

Renewal of Mineral Title: According to the Act, the present mineral title will be valid while a title renewal application is pending until the date of the renewal or the rejection of the application.²⁹

Revocation of Mineral Title: A mineral title may be revoked under specific circumstances, as listed in Section 151 of the Act. Those situations include when the holder: - is found guilty of a crime by a court of competent jurisdiction; - violates any regulation made under the Act; - is declared insolvent or bankrupt by a court of competent jurisdiction; - in the case of a mining lease or small scale mining lease, the holder completely ceases operations under the lease for a continuous period of six months, etc. A mineral title is revoked upon the written recommendation of the Minister, after the holder has been given 30 day notice of the intention to do so and has been provided with a detailed explanation of the grounds for the revocation, and after the holder has failed to remedy the breach or remove the grounds for revocation within the allotted time.

National Environmental Standards and Regulatory Enforcement Agency (Establishment) Act 2007 (as Amended in 2018)

The National Environmental Standards and Regulatory Enforcement Agency (NESREA) Act was promulgated in 2007 and amended in 2018. The Act created NESREA, an agency charged with the responsibility of maintaining environmental standards and enforcing compliance with environmental regulations in Nigeria, excluding the petroleum sector.³⁰ Section 8 (k)-(i)(ii)(iv)(vi)(xiii)(xiv), (m),(n) & (o) of the Act empowers the agency with specific mandate in relation to collaborations with relevant agencies and ministries in making regulations that patterns to the solid mineral sector. More so, section 29 of the NESREA Act gives credence to the remediation, restorative, sustainability, and polluter pays principles enshrined in the key sections of the NMMA. Also, section 34 gives the Minister of Environment power to make regulations and guidelines geared towards bringing to effect the functions of the Agency and provisions of the Act. Following this power, the Minister in 2009 promulgated the National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations 2009.³¹ The regulations were made to reduce pollution and environmental hazards that associated with mining activities. Regulation 2 provides that lessees must eradicate the use of obsolete mining technologies and translate to modern and more sustainable technologies un a bid to reduce pollution. Part two of the regulation covers community relations, permits, pollution monitoring and mitigation, incentives and enforcement.³² The third part of the regulation deals with matters such as emergency response plans, polluter pays principles, and effluent management.³³ Parts 8 and 9 of the regulations provided for offences and penalties for effluent limits.³⁴

²⁶ A.S. Isakoto, 2017 'An appraisal of the legal and institutional framework for regulating the impacts of mining of minerals on the environment in Nigeria'. Being a thesis submitted to the Faculty of Law, Ahmadu Bello University, Zaira, p. 95.

²⁷ See section 104-109 of the PIA, 2021.

²⁸ Isakoto, *supra*.

²⁹ Section 148

³⁰ Sections 2 and 7, NESREA Act.

³¹ Regulations No. 31 of 2009, Official Gazette, Vol. 96, No. 63 dated 12th October, 2009.

³² Regulations 4-9

³³ Regulations 10-14.

³⁴ Regulation 28-29.

Similarly, NESREA's National Environmental (Noise Standards and Control) Regulations, 2009 is also applicable to mining industry as some mine fields and equipment generate noise.³⁵ The regulation stipulates permissible noise levels for different sectors and area so as to curtail the attendant hazardous effects of noise pollution on the health of humans and animals. Community reading of Regulation 2(9) and the first schedule of the Act shows that the permissible noise limit for quarries and mines is 109dB. However, this limit may be exceeded where an authorized permit is issued.³⁶ Miners and operators of quarries are expected to maintain noise level meters in their sites and are to periodically submit same to the Agency for inspection.³⁷ The regulation also stipulated offences and penalties for defaulters of the regulation, to wit: 50,000 naira fine or a term of imprisonment for individual defaulters and a fine of 500,000 for corporate defaulters. It is observed that this penalty is rather too small to deter big corporations and individuals to indulging in illicit noise pollution that have characterized the activities of quarry sites in Nigeria. Another Regulation relevant to mines and solid minerals is National Environmental (Quarrying and Blasting Operations) Regulations, 2013. The essence of this regulation is to produce and prevent environmental degradation arising from quarry sites in Nigeria.³⁸

Environmental Impact Assessment Act 1992

The Environmental Impact Assessment (EIA) Act was enacted in 1992.³⁹ The Section 1 (a) to (c) of the EIA Act spells out the core aims of the Act which are:

- (a) to establish before a decision taken by any person, authority corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorise the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account;
- (b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas consistent with all laws and decision-making processes through which the goal and objective in paragraph (a) of this section may be realised;
- (c) to encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages.

Onu and Sojinu⁴⁰ submitted that 'the Act provides that at the early stage of every project to be undertaken by either the private or public sector, its environmental effects should be first considered.... The Act requires institutions and agencies (both private and public, except exempted by the Act) to apply in writing to the National Environmental Standards and Regulations Enforcement Agency (NESREA)⁴¹ for the EIA of a project proposed by them at the planning stage.'⁴² Hence, before a lessee for quarry site commences operation, it is expected that such operator must have conducted EIA and the public carried along in the decision making process.⁴³ Mining activities require licence and permit to commence operation in Nigeria, and by virtue of section 13 of the EIA Act, they require EIA.

Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007

The NEITI Act was promulgated to ensure transparency and due process in the extractive industry.⁴⁴ The major aim of the legislation is to eradicate corruption of all sorts that are chronic and system in the extractive sector of Nigeria. The Act therefore created offences and penalties for false information to the Federal government and non-payment of accrued revenue, which to be liable upon conviction to a fine not less than N30,000,000.00.⁴⁵

It is observed that the stipulated penalty is high, and as such good enough to deter persons and companies in the extractive sector from indulging in corruption, false information and declarations.

3. Advocacy for State Ownership of Natural Resources

It is evident from the provisions of the Constitution and the Nigerian Minerals and Mining Act that the Federal Government alone has the authority to permit private entities to explore and exploit these resources for the benefit of the state as a whole. This includes ownership and control of all solid minerals. Nevertheless, there has remained a strong push for particular

³⁵ Regulation 18.

³⁶ Regulations 3 and 7.

³⁷ Regulation 4.

³⁸ Regulation 2

³⁹ Now Cap E12, laws of the Federation of Nigeria, 2004.

⁴⁰ K.O.N Onu & Rebecca Sojinu, 2021 'The Quagmire Of Environmental Impact Assessment Governance In Nigeria: A Review Of The Case Of *HELIOS TOWERS NIG. LTD v. NESREA*'. NIALS Journal of Environmental Law, NJEL vol. VII, p. 147-174.

⁴¹ Section 61 of the EIA Act defined the Agency to mean the defunct Federal Environmental Protection Agency (FEPA). FEPA has been disbanded and all its functions transferred to NESREA. See Section 4(2) of the Interpretation Act and sections 1, 7, 36 and 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007, No. 25. the Act officially commenced on 30 July, 2007 and was Amended in 2018.

⁴² Section 2(4), *Ibid.*

⁴³ Onu and Sojinu (*supra*)

⁴⁴ Section 2.

⁴⁵ Section 16.

states and localities to manage and own their natural resources and pay taxes to the federal government from the money made from their exploration and exploitation. Many people consider it undemocratic and unfair since certain legal restrictions deprive states and communities of ownership and control over the resources located in their region. The Federal Government must have ownership and management of natural resources due to the fact that their proper utilization directly benefits the Nigerian economy as a whole, which justifies the legal provisions establishing these rights. However, it is fair to give each state the ability to enact laws for the control of natural resources within its territorial jurisdiction by including matters relating to solid minerals in the concurrent legislative list in order to strike a balance between the interests of the Federal government and those of host communities. It will raise the likelihood that participation of local grassroots groups in the management of solid minerals discovered there.

4. Conclusion and Recommendations

The federal government continues to own and exercise control over solid minerals pending revision of the Constitution's clauses. Therefore, no state or community may claim a personal ownership interest in these resources without violating the Constitution. There has been a lot of pressure to change this legal situation. A number of political and economic factors that could serve as a starting point for more study will determine whether or not these revisions are implemented. Based on the basis of the research done in this area, the following recommendations may be helpful: that the act should reflect joint ownership of solid minerals between the state and federal governments and to grant state governments a certain amount of control over solid minerals found within their borders, the Constitution and the Minerals and Mining Act may need to be modified. However, this ought to include crude oil as a natural resource. To make sure that host communities are not adversely impacted by mining operations and left stranded, the Minerals and Mining Act's provisions relating to environmental considerations and rights of host communities should be appropriately implemented. In order to provide the communities where these resources are found a sense of involvement in the sharing of the gains from their exploitation, the government needs to devote more attention to their development.