

A Review of the Nigerian Minerals/Mining Act 2007 for Economic Transformation

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Abstract

Minerals are naturally occurring substances beneath the earth. They are the property of the Federal government of the country where they are found. Laws are enacted to regulate all aspects of the exploration of all solid minerals in Nigeria with the sole aim of shepherding the proceeds therefore for the development of the country. Unfortunately however, the Minerals Act No. 20 Laws of the Federation of Nigeria (2007) leaves much to be desired. This study examined the provisions of the Act. It reviewed the sections of the act particularly concerned with ownership, licenses, mining/quarrying and valuation of mineral property. The study concluded that the myriad of problems being entertained at the Mining Cadastre Office (MCO) and the Ministry of Mines and Steel (MMS) is a result of the haphazardness of the laws guiding the mining industry as well as the orchestrated policy somersault of successive administrations of governance in Nigeria. The study recommends an assemblage of technocrats and bureaucrats to harmonize the mining laws to attain international standards such that the mineral resources of the nation could be utilized for rapid economic development.

Keywords: *Minerals, Mining, Valuation, Ownership, exploration.*

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Background to the Study

The earth is the home of all minerals. A study of the earth is important in learning about minerals. Geology is the study of the dynamics and physical history of the earth, the rock of which it is composed, and the physical, chemical and biological changes that the earth has undergone or is still undergoing.

Minerals are of different types and appear in different shapes and sizes. They have different colours and composition. The nature of their composition most of the time determine their content and appearance. They could be of one element or a composition of elements and compounds. Generally however, minerals could be categorized in eight broad platforms viz:- Silicates, Quartz, Sulphates, Carbonates, Oxides, Halides, Sulphides, Phosphates, Elements and Mineral oils.

Nigeria is a country blessed beyond compare. The country is blessed with human and material resources in unimaginable proportion and endowed with variety of minerals found in more than five hundred locations in the country. According to Sada (2012) each of the thirty six (6) states of the Federation and the Federal Capital territory has more than one mineral type.

Literature Review

Minerals are property and owned legally by the federal government. They are found below the earth and therefore belong to the class of property to possess the dead rent syndrome. The rent is regarded as dead because the minerals must be mined before they are regarded as being valuable. Minerals may be solid, liquid or gaseous. The Nigerian Mining/Minerals Act No. 34 of 1999 defines minerals or mineral resources as;

“substances 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, bituminous shale, tar sands, any substances that may be extracted from coal, slate or tar sand, mineral water, and mineral components in tailings or waste piles, but with the exclusion of petroleum and waters without mineral content”

The Act also defines petroleum as

“any naturally occurring hydrocarbon or any naturally occurring mixture of hydrocarbons whether in a gaseous, liquid or solid state and any other substance already named that has returned to natural reservoir, but does not include coal, bituminous shale, tar sand any substances that may be extracted from coal, shale or tar sand or any other stratified deposits from which oil can be extracted by destructive distillation.”

From the foregoing and in accordance with the act, minerals exclude petroleum but would include natural gas such as coal bed methane gas. It would be proper to notice here that petroleum excludes hydrocarbon gases but does not include any substance extracted from coal, shale or tar sand. Therefore, coal bed methane gas and oil from shale and tar sand appear to be the concern of this act.

Mineral title, mining lease, quarry lease, prospecting license, exploration license, prospecting rights and others are rights and interests that could be granted to qualified persons. Except the mineral title which can only be granted to corporate bodies, mining cooperatives and holders of prospecting license all other rights and interests could be granted to individuals. Different types of permits and licenses are given/granted by the Ministry of Mines & Steel, and the Mining Cadastre office.

A reconnaissance permit confers on its holder a non-exclusive right to access, enter on, or fly over any land within the territory of Nigeria (which is available for mining purposes) to search for mineral resources. Reconnaissance permits cannot be transferred. These permits are granted for one year and renewable annually provided that the requirements of the NMMA and the Nigerian Mining Regulations 2010 are met.

Exploration license confers an exclusive right of exploration. The area of land covered must not exceed 200km². Exploration licenses are granted for three years, renewable for terms of two years, provided that the holder has complied with the minimum work commitment and all other legal and regulatory requirements. The term, including all renewals, must not exceed seven years.

Small scale mining lease confers an exclusive right to carry out mining operations on an area that must not exceed 3km². They are granted for a period of five years and are renewable for further periods of five years, provided that the minimum work obligations have been met. There is no maximum limit on the number of times for its renewal. Mining lease confers the exclusive right to carry out all mining operations within the mining lease area. The lease area cannot exceed 50km². A mining lease is granted for a term not exceeding 25 years and is renewable for further periods not exceeding 24 years, provided that the holder has complied with the minimum work obligations/programme and all other legal and regulatory requirements. There is no maximum limit on the number of times a mining lease can be renewed.

The area of land covered by a quarrying lease cannot exceed 5km². Quarrying leases are granted for five years and can be renewed for further periods of five years. The application for renewal must be made three months before the expiration of the initial lease.

Methodology

The methodology adopted in this study is a simple critical analysis. This method employs the statement of the section of the act that requires review and a thorough discussion of the circumstances surrounding the provisions of the act that qualifies it for review. In carrying out this study, an examination of other laws concerning/bothering on minerals in Nigeria was undertaken. These laws include Nigerian Mineral and Mining Act 2007, Mineral and Metal policy 2008 and Nigerian Mining Regulations 2010. The Nigerian Mineral and Mining Act 2007 vest ownership and control over all mineral resources in the Nigerian Government and provide for various types of titles that can be acquired for mining activities. They also contain provisions on mineral title administration, health and safety in the mines and environmental management.

Other relevant legislations include the Nigerian Investment Promotion Commission Act 2004, Companies and Allied Matters Act 2004, Immigration Act 2004, Companies Income Tax Act 2007 and Personal Income Tax Act 2007.

Discussions

Under the Nigerian Minerals and Mining Act 2007, all the property rights and the control over mineral resources in, under or on any land in Nigeria is vested in the Nigerian Government for and on behalf of the people of Nigeria. This is as stated in Section 1(1)

“The entire property in and control of all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and water' courses throughout Nigeria, any area covered: by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.”

Additionally, all lands in which minerals were found in commercial quantities before the commencement of the act have been acquired by the Nigerian Government on commencement of the act.

The government grants titles to search for or exploit mineral resources. According to Adornimye and Ovie (2015) the property of mineral resources passes to the person(s) who are granted such titles under the act on the recovery of such mineral resources. A mining title can be granted to an individual, a company or a co-operative. However, no mineral title will be granted over any land occupied by any town, village market, burial ground or cemetery, ancestral, sacred and archaeological sites, railway sites, public buildings, reservoir, dams or public roads and any land used for, appropriated or dedicated to any military purpose except with prior approval of the President of the Federal Republic of Nigeria (Section 3(1)©

The act goes on to state that all land where minerals are found in large quantities remain acquired by the government of the federation of Nigeria in accordance with the provisions of the Land Use Act. Though the act did not categorically state what is meant by commercial quantities, it is assumed to be that quantity which value will exceed all costs associated with the development, exploration and exploitation of the mineral.

According to Section 11 of the act,

“Mineral title shall be subject to revocation where the holder thereof has failed to pay the prescribed annual service fee to the Mining Cadastre Office (MCO) who shall record the default and cancel the mineral title after the expiration of 30 days written default notice to the defaulting party”

Unfortunately however, the Act did not specify the nature of the revocation be it either temporary until the default is ameliorated or permanently whether the default is ameliorated or not.

In Section 70(1)(d) of the act, the need for compensation of all those whose rights to the use of the land is expropriated through the grant of mineral rights was made clear as it states unequivocally that

“Every holder of a mining lease shall compensate owners or lawful occupiers of land for the revocation of their /rights to use the land under this Act”

Section 71(1)(d) of the act provides that the holder of a mining lease

“shall not commence any development work or /extraction of mineral resources on the Mining Lease Area until after the holder has duly notified, compensated, or offered compensation to all users of land within the Mining Lease Areas as provided for under this Act or in the event of a dispute, after the matter has been resolved by arbitration”

Though the act did not state who should determine the amount of compensation or how the assessment shall be carried out, it is assumed that the duty rests squarely on the shoulders of the Estate Surveyor & Valuer in accordance with the relevant sections of the Land Use Act Cap. L5, Laws of the Federation of Nigeria 2004. Notwithstanding the foregoing, it seems right that the Federal government who owns all minerals in all parts of the federation undertake the responsibility of paying compensation upon revocation of rights since the government also grants the mining lease as well as receive royalties and other forms of tax from mineral. It does not seem right to push the responsibility of compensation to grantees of mineral rights.

The matter of surface rent requires to be addressed appropriately. Section 102(1-5) of the act vests the authority to determine and or fix rent on the owner or occupier of the land and the minister in the event that the owner fails or neglects to fix the rent.

1. “The lessee of a Mining Lease shall pay rent, in advance without demand being made of it, at such rate per annum as shall be determined by the Minister for all lands /occupied or used by it in connection with its mining operations.
2. The Minister shall, before granting a Mining Lease on any private or any State land-
 - (a) Cause the owner or occupier of the land to be informed of the intention of the /Minister to grant the lease; and
 - (b) Require the owner or occupier of the land to state in writing within the period specified by the Regulations made under this Act, the rate of annual surface rent which the owner desires should be paid to him by the lessee for the land /occupied or used by it for or in connection with its mining operations.
3. If within the time specified pursuant to subsection (2) of this section, the owner or occupier states the rate of the rent he desires should be paid, and the Minister is satisfied that the rent is fair and reasonable, the surface rent payable in respect of the land of the owner or occupier shall be the amount specified and the rent shall be notified to the lessee as soon as possible.
4. The rate of the surface rent, whether fixed by the owner, occupier or by the Minister, shall be subject to revision by the Minister at intervals of five years.
5. In fixing the surface rent payable, the Minister shall take into consideration the damage which may be done to the surface of the land by the mining or other operations of the lessee, for which compensation is payable.”

Again, this is absurd. The constitution of the Federal Republic of Nigeria and in particular the Estate Surveyors & Valuers Registration Act (Cap. E13, Laws of the Federation of Nigeria 2007) is very clear on the matter of whose responsibility it is to determine and assess the value/worth of property in Nigeria. It is obvious that government needs to tidy its laws to avoid duplication of responsibility.

Conclusion

It is therefore right to conclude that the Minerals/ Mining Act Cap. 34 of 1999 as amended operate under the auspices of the Land Use Act Cap. L5 Laws of the Federation of Nigeria 2004 and cannot be treated in isolation. It has been established in practice that mineral titles are granted according to the whims and caprices of the President acting through the appropriate officer which in most cases is the Minister of Mines and Solid Minerals. Factors considered in choosing the winner of a lease are very subjective and do not consider economic benefits to the country as Section 9 of the act portrays.

Recommendations

- a) There are currently no plans for changes to the legal and regulatory framework for mining of minerals in Nigeria. However, this is encouraged as there are many areas where changes and reviews are required to actualize the economic potential of mineral exploration, extraction and administration for the benefit of the country.
- b) A review of some of the contents of the act is necessary to bring the law in tandem with democratic principles in a developing country like Nigeria. Areas concerning the fixing and determination of rent, compensation and arbitration must be fine tuned. Sections concerning the grant of leases –mining leases, quarry leases and exploratory licenses ought to be critically revised to remove ambiguities and usher transparency.
- c) The administration of mining leases is the preserve of the Mining Cadastre Office (MCO) to whom the act vests powers and authority. It is recommended that the Mining Cadastre Office (MCO) employ Estate Surveyors & Valuers or at best retain the services of consultant Estate Surveyors & Valuers to assist them appropriately.

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