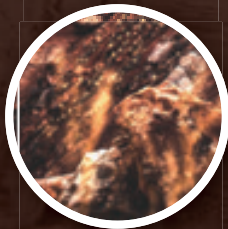
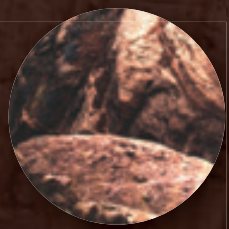
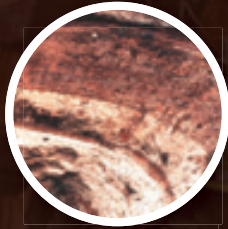
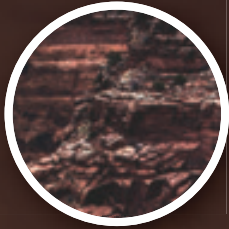


A SYNOPSIS ON THE LEGAL AND REGULATORY FRAMEWORK FOR MINING IN NIGERIA



INTRODUCTION

Nations throughout history have majorly used two types of resources to enhance their development to wit; human and natural resources. The latter is the focus of this exposition. Natural resources exist independent of human interventions, however the process of obtaining and refining them to serve social and economic purposes is very much the work of mankind. For this purpose, nations with these resources have designed frameworks for the maximal optimization of same. Nigeria as one of the leading nations in terms of the volume of natural resources in its territory, has also passed laws and regulations for the operation of the industries involved in extracting and processing these minerals. This paper is a forensic look at the legal and regulatory framework of the mining industry in Nigeria, its prospects, some bottlenecks encountered in the effective exploration of the resources and lastly, some recommendations on the effective exploitation of the rich resources and how it could translate to a viable economy for Nigeria.

In fulfilment of the Omaplex Virtual Internship Program, four interns were instrumental in developing a working paper on mining in Nigeria which has been further developed to this present work.*

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LAWS REGULATING MINING IN NIGERIA

The Nigerian Constitution, 1999: The constitution, being the principal instrument of law in Nigeria only provides a blanket provision regarding mining. Section 44(3) provides thus: “Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon the territorial waters and 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.”

Additionally, mining is in the Exclusive Legislative list of the constitution, therefore only the Federal Government of Nigeria has the power and authority to regulate and collect revenues from the industry.

The Nigerian Minerals and Mining Act: The Nigerian Minerals and Mining Act 2007 (“The Act”) was passed into law on March 16, 2007 to repeal the Minerals and Mining Act, No. 34 of 1999 for the purposes of regulating the exploration and exploitation of solid materials in Nigeria. The Nigerian Minerals and Mining Act is the principal legislation that regulates the mining sector. The Act vests the ownership of minerals in the Federal Government of Nigeria. The Act provides that the entire property 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 territorial waters or constituency and the Exclusive Economic Zones is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.¹

The above provision further empowers the earlier captured provision in the Constitution as regards the ownership of mineral resources in Nigeria exclusively vesting in the Federal Government. However, section 1(3) provides that the property in the minerals shall pass to any person who has lawfully won same in accordance with the Act.

The Minister for Mines and Steels development is generally vested with the authority of administering the Act. Section 4 of the Act provides a plethora of duties the Minister is to carry out in pursuance of the purpose of the Act, some of which include: ensuring the orderly and sustainable development of Mineral resources in Nigeria, developing a well-planned and coherent programme of exploitation of Mineral resources taking into account the economic development, ecological and environmental factors, establishing the procedure for

monitoring development in the solid minerals sector and encouraging private sector investment in Mineral resources development among other things.²

The Minerals and Mining Regulations 2011

The minerals and mining regulations (“The Regulation”) of 2011 was made pursuant to section 21 of the Minerals and Mining Act of 2007 which empowered the Minister of Mines and steel development to make a regulation in respect of any matter required to be prescribed by Regulation under the Act and generally for giving full effects to the provisions of the Act, including prescribing, amending or withdrawing any form that may be required under the Act.

The Regulations generally covers the following aspects among other things:

- i. Defining the processes and procedures for the regulation of exploration and mining operations generally, including acquisition of the titles to engage in such operations;
- ii. Prescribing measures that will protect and ensure the safety of workers engaged in mining operations, the general public and mining environments;
- iii. Prescribing forms to be used for the purpose of applying the regulations to any matters covered by it;
- iv. Regulating the processes and procedures for enforcement and compliance with the provisions of the Act;³

The Companies and Allied Matters Act

The companies and Allied Matters Act of 2004 was repealed by the Companies and Allied Matters Act (“CAMA”), however the provision(s) relating to mining operations are very much the same. Section 50 of the Minerals and Mining Act of 2007 provides that, in order to be eligible for the grant of a Mining License, the Applicant must be a body corporate duly incorporated under the Companies and Allied Matters Act. This effectively limits the exploration and extraction of Mineral resources to Companies duly registered under CAMA. The consequence being that these companies are regulated by the Companies and Allied Matters Act and must operate in accordance with the relevant provisions of CAMA regulating incorporated companies.

REGULATORY BODIES

The Ministry of Mines and Steel Development has the general duty of regulating the mining sector through the following bodies as provided by the Mining and Minerals Act of 2007.

I. THE MINING CADASTRE OFFICE

The Mining Cadastre office is a body corporate with a legal personality, thus having the power to sue and be sued in its corporate name. They are responsible for the administration of Mineral titles and the maintenance of the cadastral registers.⁴ The Mining Cadastre Office is solely responsible for administering Mine titles. They consider applications for mineral titles and permits, issue, suspend and upon the written approval of the Minister, revoke any mineral title. The Office also receive and dispose applications for the transfer, renewal, modification, relinquishment of mineral titles or extension of areas and as a major part of their operation, they maintain a chronological record of all applications for mineral title.⁵

II. THE MINES INSPECTORATE DEPARTMENT

The Mines Inspectorate Department generally supervises all reconnaissance, explorations and Mining operations to ensure compliance with the Act. Some of their responsibilities include; the supervision and enforcement of compliance by mineral titleholders with all mine health and safety regulations prescribed under the Act and any other law in force. The preparation and rendering of records, reports and returns as required by the Minister or as prescribed by Regulations inter Alia. As the Inspectorate Department, they also take custody of mineral resources required by any Court to be forfeited to the Government.⁶

III. THE MINES ENVIRONMENTAL COMPLIANCE DEPARTMENT

The Mines Environmental Compliance Department reviews all plans, studies and reports required to be prepared by holders of mineral title in respect of their environmental obligations under the Act. They monitor and enforce compliance by holders of mineral title with all environmental requirements and obligations established pursuant to the Act, its regulations and by any other law in force. It also periodically audit the environmental requirements and obligations established pursuant to this Act, its regulations and by any other law in force among other things.⁷

IV. THE ARTISANAL AND SMALL-SCALE MINING DEPARTMENT

The Artisanal and Small-Scale Mining Department deals with cooperative societies and small scale Miners as provided for by section 91 of the Act who want to venture into mining operations. It is established in part VI of the Regulation of 2011. The department provides extensive services for Mining

cooperatives and Small scale miners by organizing, supporting and assisting Artisanal & Small Scale Miners on Exploration, Exploitation, Mineral processing entrepreneurial training. They also assist them in accessing the Solid Mineral Development Fund in compliance with section 34(2)(d) of the Act among other things.⁸

MINERAL TITLES UNDER THE ACT

The right to explore and extract mineral resources is granted under the following licenses-

I. THE RECONNOISSANCE PERMIT

A reconnaissance permit is only given to three categories of persons to wit, a Nigerian citizen having legal capacity with no criminal conviction record, a body corporate incorporated under CAMA and a cooperative society. It has a 1-year lifespan renewable annually upon satisfaction of the requirements contained in the Act. The permit is not transferable and does not cover land that is or has become subject to an Exploration License, Small-scale Mining Lease, Mining Lease or Water Use Permit.

II. EXPLORATION LICENSE

The Mining Cadastre Office, upon receipt of a valid application from a qualified applicant, grants and issues to the applicant, an Exploration license within thirty days of the filing of such application. It is not granted on any land which is subject to an existing exploration license, a small-scale mining lease or a quarry lease. It is only granted for lands not exceeding 200 kilometers. A holder of an exploration license has the exclusive right to operate on the land the license covers. Every holder of an exploration lease shall operate in a skillful, efficient and safe manner as contained in the Act. The license is valid for three years and renewable twice for two years each granted the holder complies with the provisions of the Act.

III. SMALL SCALE MINING LICENSE

The area covered by a small scale mining license shall not be less than 5 acres and more than 3 square kilometers. A small scale license is granted for a period of 5years renewable for another 5years without limit. It is granted to a Nigerian citizen with no conviction, a cooperative society, a body corporate duly incorporated under CAMA and a holder of an exploration licenses if they've complied with the requirements of the license as provided by the Act.

IV. MINING LEASE

A mining lease is to be granted within 45 days of Application where the requirements in the Act are fulfilled. It is only granted to corporate bodies duly incorporated under CAMA upon demonstration that resources of a commercial quantity are discoverable in the area in the manner provided by the regulation. It is not granted over an area covered by an exploration license or a small scale mining license except to holders of the mentioned licenses. A mining lease has a lifespan of 25 years renewable after 24 years upon compliance with the provisions of the Act. The holder of a mining lease shall not remove for commercial purposes, any farm produce, plants, animals or other natural resources in the mining area except permitted by a Federal law.

V. QUARRY LEASE

A quarry lease is only granted on a land not exceeding 5 square kilometers and has a lifespan of 5 years unless renewed. It is granted to Nigerian citizens with no criminal records, corporate bodies duly incorporated under CAMA, cooperative societies and persons extracting construction materials for the construction of rails, roads, dams and other engineering infrastructures for public interest. A quarry lease, unless as provided under a water use permit, shall not grant the holder exclusive right on lakes, rivers, streams or any other body of water.

VI. WATER USE PERMIT

A water use permit is only granted to an exploration license, a mining lease or a quarry lease holder at the time the water right granted will be used. It can also be granted to applicants for a mining lease, a small-scale mining lease or a quarry lease if its required to be used.

MINING INCENTIVES PROVIDED UNDER THE ACT

The Government in realization of the potentials the Mining industry has in Nigeria, especially as the country is trying to diversify away from its dependence on oil revenue due to its uncertain economic future decided to lure investors, both local and foreign to the Mining industry through various initiatives, the principal one being the incentives provided for investors in the sector. Some of the incentives as provided by the act are as follows⁹:

I. All investors in the Mining Industry are exempted from paying custom and import duties in respect of any machinery, equipment, plants, and all other accessories imported solely for mining operations.

- II. All operators are giving an expatriate quota and resident permit for their approved expatriates.
- III. Exemption from any tax imposed by any enactment for the repatriation of foreign currency.
- IV. Free transferability of any convertible currency for the servicing of loan obtained for mining operations through the Central Bank of Nigeria.
- V. Remittance of any foreign currency in the event of winding up or sale of the mining operation.
- VI. Tax relief from the commencement of operation which shall continue for three years' subject to the provisions of the Act or any other relevant financial enactment.
- VII. The tax relief granted in (vi) may be extended for two years by the Minister of Steels and Development.
- VIII. The provisions of the Foreign Exchange (Monitoring and Miscellaneous provisions) Act shall apply to any foreign currency used with respect to any Mining title granted under the Act.¹⁰
- IX. The provisions of the Nigerian Investment Promotion Commission shall be applicable to any foreign enterprise established in Nigeria for the purpose of carrying out Mining operations.¹¹

BOTTLENECKS IN THE DEVELOPMENT OF MINING IN NIGERIA

It is discernible from the skeletal look of the Mineral and Mining Act that the regulatory regime of the Mining industry in Nigeria ought to bring progress in the Industry, from the provision of bodies to handle specific matters, encouraging local and foreign investment, providing various titles for wide coverage of mining operations for all types of people to all the incentives provided to attract investment, however, the reality on ground calls for a rethink. The Mining industry has not kicked off in Nigeria. A report made by the Central Bank of Nigeria showed that Mining production decreased by 27.20% in Nigeria in March 2020 compared to the same time in 2019.¹² This is as a result of varying reasons, some of which are outlined as follows:

I. INSECURITY: The Nation has been plagued with immense insecurity for years now, especially in the Northern region where there are more mineral resources. The Schist Belt in Nigeria is mostly in the north. With the ongoing insurgency and banditry in the Northern part of the country, it is hard to see investors head towards Nigeria.

II. ILLEGAL MINING: The majority of Mining activities carried out in Nigeria today is illegal. The regulatory regime and

enforcement mechanisms are too weak to curb the growing menace of illegal Mining in Nigeria.

III. POOR INFRASTRUCTURE: The Ministry of Steels and Development and all other bodies under it established for the purpose of enhancing Mining in Nigeria are suffering from a lack of or inadequate infrastructure to carry out their duties effectively. Companies suffer from poor roads, poor machinery, lack of water and an unstable or even absence of electricity. This is a major factor why foreign investors do not find Nigeria attractive for Mining activities.

IV. OBSOLETE LAWS: The 1999 constitution vesting the complete ownership of all mineral resources in Nigeria further places more burden to the Federal Government amongst other similar burdens in other industries. It needs to be reviewed so states can effectively handle these resources. Also, the Minerals and Mining Act has been in existence since 2007 and the world has moved a lot since then. Failure of these laws to follow the society has made it incapable of effectively regulating the industry to ensure economic dividend.

V. INADEQUATE FUNDING: The bodies in charge of ensuring the effective exploration of Mining resources are inadequately funded thereby making it impossible to effectively carry out their duties.

VI. POLITICAL INCLINATION: The stakeholders in Nigerian Politics today have been unable to adequately diversify the economy of Nigeria in order to exploit its resources. There needs to be a deliberate decision and action towards revamping the Mineral Industry in Nigeria.

RECOMMENDATIONS

I. AN IMPROVED LEGAL AND REGULATORY FRAMEWORK: The Minerals and Mining Act 2007 must be repealed to bring it in consonance with Global best practice and the peculiar realities of Nigeria today. The various regulatory agencies must also be rejigged in order for them to effectively regulate the industry towards prosperity.

II. SECURITY: A safe and secure Nigeria would remove the fear of loss of lives and properties in investors and would see a significant march towards the Mining Industry in Nigeria.

III. INFRASTRUCTURE: Investors would only care about expending resources on the Mining Operations itself and

not have to worry about providing basic utilities like road, water and electricity themselves. With the infrastructures in place, Investors would find it more attractive to come.

IV. LICENSE MONITORING: License holders should be well monitored so as to ensure they use it effectively and a window for withdrawal of same where it's not used effectively should be provided and made implementable.

V. PRIVATIZATION: The offices under the Ministry of Steels and Development would be more effective if they were corporate bodies independent of the Ministry.

VI. ADEQUATE FINANCE: Government should ensure the Ministry of Mines and Steel are well funded so as to enable them carry out their mandate effectively. Similarly, they should create a scheme where miners, particularly small scale miners who have shown industry can access low-interest loans to further their mining business.

VII. PREVENTION OF ILLEGAL MINING: A huge amount of revenue is being lost due to illegal mining activities across the country. Prevention of same would help Government track, measure and regulate mining activities better for the effective exploitation of Mining resources to help boost the economy.

CONCLUSION

Mining revenue has the potential to rival the Oil revenue in the Nigerian economy. The types and volume of resources lying dead waiting to be brought to life across Nigeria is innumerable. Nigeria as it is today, is a heaven of natural resources. However, there has to be a deliberate strategy and plan in place to harness the abundant resources in order for them to translate into economic prosperity. Our Mining laws are in dire need of upgrade to meet our current realities and Global standards. With the right initiatives in place, mining would revitalize the Nigerian economy and drastically reduce its unemployment rate.

ENDNOTES

1. Section 1(1)
2. Section 4 (a)-(u)
3. Regulation 3 of the Minerals and Mining Regulation of 2011.
4. Section 5(2) of The Act
5. Section 5(5) of The Act
6. Section 17 of The Act
7. Section 18 of The Act
8. Regulations 230 & 231 of The Regulation.
9. Part III of the Minerals and Mining Act of 2007.
10. For example, section 15(4) of the Foreign Exchange (Monitoring and Miscellaneous provisions) Act 2004 provides that "foreign currencies imported into Nigeria for the purpose of investment as provided in sub 1 of the Act shall be guaranteed unconditional transferability of funds through an unauthorized dealer in respect of their profits, dividends, debt servicing or proceeds remittance.
11. The Nigerian Investment Promotion Commission Act 2004 guarantees foreign companies from expropriation and nationalization. Section 25(1)(2) guarantees their right of access to Nigerian courts for the determination of their right or interest and any compensation they are entitled to where their enterprise is acquired for national or public interest under any law which provides for same.
12. Nigerian Mining Production, Trading Economics 2020. <https://tradingeconomics.com/nigeria/mining-production>

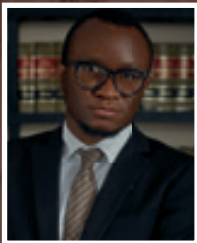
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