



MEMORANDUM

December 29, 2006

TO: Nigerian National Stakeholders Working

FROM: Cynthia L. Quarterman
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Under the direction of Goldwyn International Strategies, LLC

RE: Review of Draft Bill before the Federal Republic of Nigeria House of Representatives for An Act to Repeal the Minerals and Mining Act, No. 34 of 1999 and Re-Enact the Minerals and Mining Act for the Purposes of Regulating All Aspects of the Exploration and Exploitation of Solid Minerals in Nigeria and for Connected Purposes, 2006 (H.G. 87)

**SECTION-BY-SECTION ANALYSIS
OF
AN ACT TO REPEAL THE MINERALS AND MINING ACT, NO. 34 OF 1999 AND RE-ENACT THE MINERALS AND MINING ACT FOR THE PURPOSES OF REGULATING ALL ASPECTS OF THE EXPLORATION AND EXPLOITATION OF SOLID MINERALS IN NIGERIA AND FOR CONNECTED PURPOSES**

Chapter I: Minerals, Prospecting, Mining and Quarrying.

Part I: Ownership and Control of Minerals

1.(1) provides: The entire property in and control of all Mineral Resources in, under or upon any landing Nigeria, its contiguous continent shelf and all rivers, streams and water courses through out 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.

Comment:

What are “Mineral Resources” ? Do they include oil and/or gas? If so, is there a conflict with other laws? See definition section below.

1.(2) provides: All lands in which minerals have been found in commercial quantities shall, from the commencement of this Act be acquired by the government of the federation in accordance with the provisions of the Land Use Act.

Comment:

What constitutes “commercial quantities”? How much will the government pay to acquire lands in which minerals have been found under the Land Use Act? Are there any guidelines?

(3) provides: The property in Mineral Resources shall pass from the Government to the person by whom the Mineral Resource are lawfully won, upon their recovery in accordance with this Act.

Comment:

Is it the intention here to pass irrevocable ownership in Mineral Resources to winners of claims?

3.(1)(a) provides: (1) No Mineral Title granted under this Act shall authorize Reconnaissance, Exploration or Exploitation of Mineral Resources on, or in, or the erection of beacons on or the occupation of any land –

(a) set apart for, or used for or appropriated or dedicated to any military purpose except with the prior approval of the President;

Comment:

How and who will determine that land is being used for a military purpose?

(1)(c) provides: (c) occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or situated within fifty metres of a railway, or which is the site of, or within fifty meters of, any government or public building, reservoir, dam or public road;

Comment:

Are the sites listed in this provision defined anywhere? Controversy may be created if, for example, an entity claims a site is sacred after rights have been granted relating to Mineral Resources.

Part II: Administration of the Act

4. provides: Subject to the provision of this Act, the Minister shall --

Comment:

What about audit, oversight and enforcement related functions?

(b) provides: Develop a well planned and coherent programme of exploitation of mineral resources taking into account the economic development, ecological and environmental factors.

- Comment:** Do environmental factors include health and safety? How is economic development defined?
- (f) provides:** **Exercise general supervision over all activities and operations under this Act.**
- Comment:** This provision appears to have been deleted in a later draft.
- (i) provides:** **Establish environmental procedures and requirements applicable to Mining Operations;**
- Comment:** Do environmental procedures and requirements include health and safety?
- 8.(1) provides:** **Where several applications are received on the same area or for overlapping areas 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 the others.**
- Comment:** Priority based on a first to post procedure encourages fraud and corruption; eliminates taking into account other considerations; and favors bigger, more powerful entities.
- 9.(2) provides:** **The Mining Cadastre shall consider competing bids and shall, through an open and transparent method, select the bid which will promote the expeditious and beneficial development of the Mineral Resources of the area; having regard to ---...**
- Comment:** Factors considered in choosing a winner is very subjective and don't include economic benefit to country.
- (11) provides:** **A Mineral Title shall become liable to revocation where the holder thereof has failed to pay the prescribed fees.**
- Comment:** There may be other instances where revocation of a Mineral title is desirable.
- (12) provides:** **In case of default of payment of the annual service fee due to the Mining Cadastre Office, the Mining Cadastre Office shall give a thirty-day written default notice to the defaulting party and, if payment is not offered during that period, the Mining Cadastre Office shall record the default and cancel the Mineral Title.**
- Comment:** There may be occasions when emergency revocation is desirable.

(14) provides: Any notice required to be sent by the Mining Cadastre Office to an applicant for or holder of a Mineral title shall be sent by courier service or registered mail to the last known address in Nigeria of the Mineral Title holder or given in person to an authorized representative of the applicant or Holder of the Mineral Title in Nigeria or published in the Gazette. The notice shall for all purposes be sufficient notice of the subject matter of the notice to the applicant for or Holder of a Mineral Title.

Comment: Notice provision permits publishing in Gazette as first course, which requires constant monitoring by applicants and Mineral title holders.

(15) provides: In the execution of his functions and relationship with the Mining Cadastre Office, the Minister shall, at all times ensure the independence of the Mining Cadastre Office in regard to the discharge of its functions and operations under this Act.

Comment: The Ministry itself cannot be independent when judging its own actions.

17. (d) & (e) provides: The Mines Inspectorate Department shall in addition to any other functions prescribed by this Act and subject to the direction of the Minister –

(d) take custody of Mineral Resources required by any Court to be forfeited to the Government.

(e) with the prior approval of the Minister, dispose of any Mineral Resources forfeited to the Government;

Comment: There is a conflict between taking custody and disposing of Mineral Resources and overseeing operations. These functions should be separated.

19.(2) provides: The Committee in each State shall consist of –

- (a) a representative of the Mines Environmental Compliance Department in the Ministry who shall be the chairman of the Committee;**
- (b) a representative of the Ministry responsible for land matters or mineral related matters in the State;**
- (c) the Mines Officer responsible for the State;**
- (d) a representative of the Ministry of Agriculture or Forestry in the State;**
- (e) a representative of the Surveyor – General of the State;**
- (f) a representative of the local Government Council when matters affecting the said local Government Area are being considered by the Committee;**
- (h) a representative of the State Environmental Department in the State;**
- (i) a representative of the Federal Ministry of Environment in the State.**

Comment: Is there a mechanism for public or interest group input or involvement on the Committee?

(3)(f)-(h) provides: The functions of the Committee are to –

- (f) advise the Departments established in accordance with the provisions of the Act for the supervision of mineral Exploitation and the implementation of social and environmental protection measures:**
- (h) advise and other necessary assistance required by Holders of Mineral titles in their interaction with state governments, local government councils, communities, civil institutions, and other stakeholders;**

Comment: The Committee has too many masters. Who has the ultimate control? Ministry or others?

(4)(b)&8(d) provides:

(4) The Committee shall –

(b) regulate its own procedure;

(8)(d) The Committee shall have the power to determine its own procedure.

Comment:

The Act should set forth some groundrules for operations.

20.(3) provides:

(3) The failure of the Mineral Title Holder to provide access to an officer for the purposes of inspection under subsection (2) shall constitute an offence.

Comment:

What is the consequence of such an offence?

22. provides:

(1) The use of land for Mining Operations shall have a priority over other uses of land and be considered for the purposes of access, use and occupation of land for Mining Operations as constituting an overriding public interest within the meaning of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004.

(2) In the event that a Mining Lease, a Small-Scale Mining Lease or a Quarry Lease is granted over land subject to an existing and valid statutory or customary right of occupancy, the Governor of the state within which such rights are granted shall within sixty days of such grant or declaration revoke such right of occupancy in accordance with the provisions of section 28 of the Land Use act.

Comment:

An absolute priority for mining land use does not take into account any exceptional circumstances or set forth criteria for determining when to vary from preference to mining.

Part III: Mining Incentives

24. provides: (1) Any license holder eligible under the provisions of this part of this Act shall be entitled, in determining its total profits, to deduct from its assessable profits a capital allowance of one hundred per cent of Qualifying Capital Expenditure incurred in the year in which the investment is incurred without any limit; provided however, that of the purposes of the Second Schedule of the Companies Income Tax Act, Cap. C21 Laws of the Federation of Nigeria 2004, Qualifying Capital Expenditure shall include–

(a) all certified exploration, development and processing expenditure, including feasibility study and sample assaying costs; and

(b) ail infrastructure costs incurred regardless of ownership and replacement

(2) The amount of any loss incurred by any person eligible under the provisions of this part of this Bill shall be deducted as far as is possible from the assessable profits of the first year of assessment after that in which the loss was incurred and in so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on without limit as to time until the loss has been completely set off against the company’s subsequent assessable profits.

Comment: Deductions from profits of qualifying capital expenditure and losses would likely result in little or no return to the government for Mineral Resources.

28.(3) provides: The minister shall not extend the tax relief period of a Company in exercise of the power conferred under subsection (2) of this section unless the Minister satisfied as to–

(a) the rate of expansion, standard of efficiency and level of development of the company in operation of mining for which the lease was granted.

(b) the implementation of any conditions upon which lease was granted;

(c) the training and development of Nigerian personnel in the operation of the mineral council.

Comment: What standard must be met for renewal of period?

30. provides: **A tax deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs shall be established by companies engaged in the exploitation of Mineral Resources; provided however, that: the appropriateness of the reserve is certified by an independent qualified person taking into account the determination made under the provisions of this Act–**

(a) the reserve is recorded in the audited financial statements of the companies.

(b) a sum equivalent to the reserve amount is set aside every year and invested in a dedicated account or trust fund managed by independent trustees appointed pursuant to the provisions of this bill; and

(c) income or interest income earned by the investment fund shall be exempt from the payment of income tax, provided however, that any surplus over and above amount required to effect the reclamation shall be subject to income tax.

Comment: Who determines the amount of the reserve account? What are the qualifications of the independent qualified persons?

32. provides: **An annual capital cost indexation, whereby the unclaimed balance of capital costs is increased yearly by five percent, shall apply to mines starting production within five years from the date of enactment of this Act.**

Comment: What is basis of the 5% index on capital costs? Why not use an inflation index?

33. provides: **(1) Any mineral obtained in the course of Exploration or mining operations shall be liable to pay royalty as prescribed in the Regulations made under this Act.**

(2) The Minister may replace or waive royalty on any mineral which the Minister is satisfied is being exported solely for the purpose of analysis or experiment or as a scientific specimen, not being in greater quantity than is reasonably necessary for that purpose.

(3) The Minister may defer payment of royalty on any minerals for a specific period, on the approval of the Federal Executive council.

Comment: Who determines the amount of the royalty? Who is responsible for collection and auditing activities?

34.(2) provides: The Fund shall be utilized for the following–

- (i) development of both human and physical capacity in the sector;**
- (ii) funding for geo-scientific data gathering, storage and retrieval to meet the needs of private sector led mining industry;**
- (iii) equipping the mining institutions to enable them perform their statutory functions;**
- (iv) Solid Minerals Sector contribution to CBN Micro finance Scheme for oil lending to small scale and artisanal Mining Operations;**
- (v) provision of infrastructure in Mines Land.**

Comment: Will there be a fund to clean up abandoned mine lands or purchase lands that cannot be reclaimed?

Part IV: Minerals Exploration

43.(3) provides: Any person who destroys or disposes of core or samples in contravention of subsection (2) of this section shall be guilty of an offence.

Comment: What are the consequences of such an offence?

43.(7) provides: Any person that undertakes or is involved in the search for or exploitation of Mineral Resources in contravention of the provisions of subsection (1) of this section shall be guilty of an offence.

Comment: What are the consequences of such an offence?

45.(1) provides: Any officer or former officer responsible for the administration of this Act who has any confidential information, which if generally known might reasonably be expected to materially affect a Mineral Exploitation activity which–

- (a) such officer acquired by virtue of his official capacity or former official capacity, and**
- (b) it would be reasonable to expect a person in his official capacity or former official capacity and to disclose except for the proper performance of the functions attached to that official capacity.**

Shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

Comment: What are the consequences for misuse of information?

45.(3) provides: **Any officer who fails to comply with the provisions of subsection (1) or (2) of this section commits an offence.**

Comment: What are the consequences of such an offence?

46.(2) provides: **Subject to the exceptions provided in this Act, any person that undertakes or is involved in the search for or exploitation of Mineral Resources without the requisite Mineral Title or authority shall be guilty of an offence.**

Comment: What are the consequences of such an offence?

48. provides: **A qualified application for an Exploration License is–**

(a) a body corporate duly incorporated under the Companies and Allied Matters Act,

(b) a Mining Cooperative,

(c) the holder of a Reconnaissance Permit granted in respect of the area subject to the application, provided that the applicant has fulfilled all the conditions attached to the Reconnaissance Permit.

Comment: Is either of the three qualifications alone sufficient

49. provides: **A qualified applicant for a Small-Scale Mining Lease is–**

A Citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence;

(b) a Mining Cooperative;

(c) a body corporate duly incorporated under the Companies and Allied Matters Act;

(d) the holder of an Exploration Licence granted in respect of the area subject to the application, provided that the applicant has fulfilled all the conditions attached to the Exploration Licence.

Comment: Is either of the four qualifications alone sufficient?

51. provides: A qualified applicant for a Quarry Lease is–

- (a) any individual citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence;**
- (b) a Mining Cooperative;**
- (c) a body corporate duly registered under the Companies and Allied Matters Act;**
- (d) any person extracting construction materials for the construction of roads, railway lines, dams and other engineering works or structures of public interest.**

Comment: Is either of the four qualifications alone sufficient?

53. provides: The Mining Cadastre Office shall not grant a Mineral Title under this Act to an applicant if it is shown that any of the members or directors of the applicant or a shareholder holding a controlling share of the applicant has been convicted of a felony or an offence under this Act.

Comment: What about an officer of the applicant?

54.(2) provides: Where an applicant fails to satisfy the Mining Cadastre as provided in subsection (1) of this section, the Mining Cadastre shall refuse the applicant. The applicant shall submit a new application of the Mining Cadastre Office.

Comment: How does a failing applicant requalify to become an applicant?

55., 58.(2) and 59.(1) provides: **55. Subject to the provisions of this Act, the Mining Cadastre Office shall, within 30 days of the receipt of the application of any qualified applicant and upon payment of the prescribed fees, grant and issue to that person a Reconnaissance Permit to search for Mineral Resources.**

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58. (2) Subject to the provisions of this Act, the Reconnaissance Permit shall not be granted over any land that is or has become subject to an Exploration License, Small-Scale Mining Lease, Mining Lease or Water Use Permit.

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59. (1) Subject to the provisions of this Act, the Mining Cadastre office shall, upon receipt of a valid application from a qualified applicant, grant and issue to that person, an Exploration License within thirty days of the filing of such application;

Comment: What are the limitations placed upon these permits and licenses by the Act?

56.(1)(e) provides: **A Reconnaissance Permit shall be granted subject to the covenants and conditions that the Holder thereof shall–**

(e) compensate users of land for damage to land and property; and pay the prescribed fees.

Comment: Who determines and how is compensation determined from damage to land and property? What happens if these conditions are not met?

56.-58. provides: **56. A Reconnaissance Permit shall be granted subject to the covenants and conditions that the Holder thereof shall- . . .**

* * *

A reconnaissance Permit, confers on the Holder the right to- . . .

Comment: 58. How are competing reconnaissance permit holders to be treated? Surface right holders?

58.(1)(b) provides: **A Reconnaissance Permit, confers on the Holder the right to–**

(b) obtain and remove surface samples in small quantities.

Comment: What constitutes a small quantity?

59. provides: (1) **Subject to the provisions of this Bill, the Mining Cadastre Office shall, upon receipt of a valid application from a qualified applicant, grant and issue to that person, an Exploration License within thirty days of the filing of such application;**

(2) **An Exploration Licence shall not be granted over any land that is subject to an existing Exploration Licence, Mining Lease, Small-Scale Mining Lease or Quarry Lease.**

(3) **An exploration licence shall not be granted in respect of an area exceeding 200 square kilometers.**

Comment: Is an exploration license granted on a first-come, first-serve basis? What about other considerations?

60.(1)(ii) provides: (1) **The holder of an Exploration License shall have the exclusive right to conduct Exploration upon the land within the area of his license and for the purpose may–**

(ii) **employ on the land any number of persons for the purpose of such Exploration, and**

Comment: Unlimited personnel unconstrained by what is reasonable will undoubtedly lead to controversy with surface right holders.

(iii) **provides:** **erect and maintain thereon any machinery and plant and subject to the provisions of this Act, construct such ways as may be necessary for or in connection with his Exploration operations;**

Comment: Unlimited machinery, construction and operations will likely lead to controversy with surface right holders.

(viii) **provides:** **while engaged in exploration, take timber other than protected trees and use water from any lake or Watercourse not the subject of a Water Use Permit for domestic purposes, in accordance with Regulations; and sink or drill shafts or wells and dig holes and trenches.**

Comment: Taking of timber and water may be abused and conflict with surface right holder's uses.

60.(1) provides: (1) **The holder of an Exploration License shall have the exclusive right to conduct Exploration upon the land within the area of his license and for the purpose may–**

Comment: This places few limitations or boundaries on Mineral Resources exploration, which appears to trump all other uses of the land.

- 61.(1)(d) provides:** (1) Every Holder of an Exploration License shall–
(d) maintain and restore, the land that is the subject of the license to a safe state from any disturbance resulting from exploration activities, including, but not limited to filling up any shafts, wells, holes or trenches made by the titleholder, and in compliance with applicable environmental laws and regulations;
- Comment:** Who determines the amount of damage and how compensation for damage to land and property is determined?
- 61.(1)(h) provides:** (1) Every Holder of an Exploration License shall–
(h) allow geological surveys and mapping by government agencies and scientific surveys by educational institutions as provided for in this Act, if such activities will not interfere with exploration operations;
- Comment:** Allows Minerals Resources exploration to trump government use.
- 61.(2) provides:** The Mining Cadastre Office may, upon the application of the Holder and for good cause shown, suspend the obligation to work in respect of the License and may direct that any or part of the period of suspension shall not be reckoned in the currency of the license, if during that time no work is done by the Holder on the lands included in the area covered by the license.
- Comment:** What constitutes “good cause” justifying suspension of work?
- 61.(1) provides:** Every Holder of an Exploration License shall– . . .
- Comment:** Needs further definition of what the limitations are and what the consequences of not meeting them are.
- 63. provides:** The Holder of an Exploration License who sells any Mineral Resources as provided for in of this Act shall be subject to the payment of royalty as if the Mineral Resources sold were obtained under a Mining Lease.
- Comment:** What royalty amount applies? Who determines the amount of royalty?

64.(4) provides: Where the Mining Cadastre is satisfied with the programme proposed by the Mineral Title holder under subsection (2)(c) of this section, it shall approve the application within thirty days of the submission of the application and shall accordingly endorse the Mineral Title with the right or authority to the holder to mine the Mineral discovered; provided however that where the Minerals subsequently discovered are security Minerals–

Comment: What is Section 2(c)?

64.(4) provides: Where the Mining Cadastre is satisfied with the programme proposed by the Mineral Title holder under subsection (2)(c) of this section, it shall approve the application within thirty days of the submission of the application and shall accordingly endorse the Mineral Title with the right or authority to the holder to mine the Mineral discovered; provided however that where the Minerals subsequently discovered are security Minerals–

Comment: Thirty-day approval period may be inadequate. More flexibility is necessary in approval period.

64.(5) provides: It shall be an offence for a Mineral Title Holder or any of his agents or employees to conduct Mining Operations with respect to any Mineral not included in the Mineral Title without complying with the provisions of this section.

Comment: What are the consequences of such an offense?

65.(1) provides: Subject to the provision of this Act, the Mining Cadastre Office shall, upon receipt of a valid application from a qualified applicant, grant and issue to that person a Mining Lease for the purposes required within forty-five days of such application.

Comment: Forty-five day approval period may be inadequate. More flexibility is necessary in approval period.

**65.(3)-(5) and
73.(1)-(3)
provides:**

65. (3) A Mining Lease shall not be granted to any company unless the company has employed a person who possesses adequate professional qualification and experience in mining and the Mining Cadastre Office is satisfied that the company shall, during the currency of the lease, have such qualified person in its employment.

(4) The Mining lease shall remain in force for such time only as the lessee employs a person who possesses adequate mining qualifications and experience to personally supervise the Mining Operations being undertaken by the company during the period of the Lease; or

(5) Where a person with adequate mining qualifications and experience is not available to supervise the Mining Operations being undertaken, the company shall cease operations under a suitably qualified person is available.

73. (1) A mining lease shall not be granted by the Mining Cadastre Office to any company unless the company has employed a person who possesses adequate professional qualification and experience in mining and the Mining Cadastre Office is satisfied that the company shall, during the currency of the lease, have such qualified person in its employment.

(2) Where a mining lease has been granted, the lease shall remain in force during such time only as the lessee employs a person who possesses adequate mining experience and qualification in mining, to supervise personally the mining operations being undertaken by the company during the period of the lease.

(3) Where a person with adequate mining qualification and experience in mining is not available to supervise the mining operations being undertaken under a lease, the company shall cease operations until suitably qualified person is available.

Comment:

What professional qualification and experience are required?

**70.(1)(j)
provides:**

(1) Every Holder of a Mining Lease shall–

(j) compensate owners or lawful occupiers of land for the revocation of their rights to use the land under of this Act;

Comment:

Who determines the amount of compensation and how is compensation for damage for revocation of rights to occupiers of land determined? What are the consequences of not meeting Section 70's requirements?

71.(1)(d) provides: (1) **The Holder of the Mining Lease shall not commence any development work or extraction of Mineral Resources on the Mining Lease Area until after–**

(d) 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;

Comment: Who determines the amount of compensation and how compensation to users is determined?

72. and 101.(3) provides: **72. Subject to the Act and any other enactment, the lawful occupier of any land within an area subject to Mining Lease shall retain the right to graze livestock upon or to cultivate the surface of the land in so far as the grazing or cultivation does not interfere with the Mining Operations in the Mining Lease area.**

* * *

101.(3) Subject to the provisions of section (2) of this Act, the lawful occupier of any land within an area subject to a mining lease shall retain the right to graze livestock upon or cultivate the surface of the land in so far as the grazing or cultivation does not interfere with the mining operations in the area.

Comment: What about other uses of land? What happens when grazing and cultivation conflicts with mining?

74.(2)(c) provides: **Where on the expiration or determination of the lease, a lessee is in default in the payment of any rent, royalty or other payments, and in the case of a lessee who has not removed its property within–**

such further period, if any, as the Mines Inspectorate may allow the plant, building and property of the lease on the land, the subject of the lease, shall become the property of the Federal Government and may be dealt with and disposed of in lieu of the rent, royalty or other payments, as the case may be.

Comment: What if plant, building and property are contaminated or in poor condition? Will the federal government bear the financial burden of removing these things?

Part VI: Quarrying

78.(2)(c) provides: Subject to the provisions of this Act a lease shall confer on the lessee the right to—

erect, construct and maintain such engines, machinery, buildings and workshops and other structures as may be necessary or convenient;

Comment: Permits construction of facilities beyond what is necessary to those that are “convenient.” Why such a broad grant?

Part VII: Roads

81. provides: No person shall, in the course of Exploration or carrying out mining operations, under this Act construct a road, tramway or railway over, on or under— . . .

Comment: It may be necessary to constrain road, tramway or railway on a mining lease area.

82. provides: A person who has constructed a road, tramway or railway in accordance with the provisions of this Act shall not hinder or prevent any other person from having access to using the road, tramway or railway.

Comment: Who mediates disputes about road use?

82.(2) provides: A person who constructs a road, tramway or railway may, if in his opinion, the road, tramway railway is being used by any other person in such a manner as—

(a) will cause appreciable damage to the road, tramway or railway, or

(b) substantially increase the cost of its upkeep, all on the user to contribute to the cost of upkeep.

Comment: Missing indication of what a person who constructs such roads may do.

82.(4) provides: A person who constructs a road, tramway or railway over any part of the area of a mining lease under the provision of this Act may be required by the lessees or holder of the mining lease or mining title who wishes to mine the area covered by the road to divert the road, tramway or railway to some other part of the area of the lease or title and cost of the division shall be borne by the person who constructed the road, tramway or railway.

Comment: Unclear why road builder must pay for diversion of road at own expense because of mining?

82.(6) provides: **The person who constructed a road, tramway, or railway may close it for the purpose of occur by reason of any inadequacy of the road, tramway or railway and shall not be liable to any person who whom the notice is given.**

Comment: Incomprehensible provision.

Part VIII: Inquiry Into Accidents

84.(1)(b) provides: **The holder of mining lease or license shall, if an accident occurs in any mine or in connection with the mining operations conducted under its lease, temporary title or license granted under this Act involving loss of life or serious injury to a person, report of the accident as soon as possible, with full particulars of the accident–**

to the office of the Mines Inspectorate in the State in which the accident occurred

Comment: Why wouldn't the Mining Ministry collect this data and keep mine injury statistics?

84.(2) provides: **On receipt of the report made pursuant to subsection (1) of the accident.**

Comment: Incomplete provision.

84.(3) provides: **Every accident occurring in connection with a quarrying operation and involving loss of life or serious injury to any person shall be reported to the inspector or quarry officer immediately, by the quickest available means of communication.**

Comment: What about accidents outside quarrying operations?

86.(a) provides: **The lessee or holder of the temporary title or license or an agent of the lessee or holder is guilty of negligence or took all reasonable and proper precautions to prevent the accident; and**

Comment: What happens if the death or serious injury was caused by operator negligence?

Chapter 2: Small Scale Mining

90.(1) provides: **The area covered by a small scale and artisanal mining license shall not be less than 5 acres and shall not exceed 25 acres.**

Comment: Is there any oversight of mines less than 5 acres?

Chapter 3: Possession and Purchase of Minerals

93. provides: No person other than an officer of a Ministry authorized in that behalf by the Minister and acting in the execution of his duty, shall possess any mineral unless— . . .

Comment: What happens if an unauthorized person possesses a mineral?

Chapter 4: Environmental Considerations and Rights of Host Communities

98.(1) provides: No person shall, in the course of Exploration or mining, carry out operations, in or under any area held to be sacred or permit injury or destruction of any tree or other than which is the subject of veneration.

Comment: This constitutes a very broad restriction.

98.(3) provides: A licensee or lessee who causes injury or damage to any area, tree or thing mentioned in subsection (1) of this section shall pay fair and adequate compensation to the persons or communities affected by injury or damage.

Comment: Who determines compensation and how is it determined what is fair and adequate?

102.(1) provides: 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.

Comment: Why is there no set surface rent or guidelines?

(2)(b) provides: Require the owner or occupier of the land to state in writing within the period specified by the minister, 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 on in connection with its mining operations.

Comment: Permits owner or occupier of land to set rent.

(3) provides: If within the time specified by the Minister pursuant to subsection (2) of this section, the owner or occupier of the land 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.

Comment: What happens if rent is decreed unfair and/or unreasonable?

102.(6) provides: **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.**

Comment: Is there also separate compensation for damage?

114. provides: **(1) The Minister shall by order require the grantee of a mining lease to restore any area in respect of which mining operation having been, is being, or is to be carried out, on or after the date on which this Act comes into operation.**

(2) Any order made pursuant to subsection (1) of this section may contain all or any of the provisions of the covenants and conditions which may be imposed under the provision of that subsection and upon due service of the order the provisions thereof shall be covenants and conditions of the lease or grant conveyed.

Comment: What will ensure that work will in fact happen? Will there be adequate funds for reclamation at every stage in development?

116.(5) provides: **The Community Development shall be subject to review every 5 years and shall, until reviewed by the parties, have binding effect on the parties.**

Comment: Who are the parties to the Community Development Agreement? How is representation determined? What process will be followed?

120.(3)-(4) provides: **(3) The Mines Environmental Compliance Department may approve or reject an Environmental Protection and Rehabilitation Program submitted by a Mineral Title Holder and shall notify the Holder of the Mineral Title of its decision thereon within sixty days of the submission of the Environmental Protection and Rehabilitation Program;**

(4) If the Mines Environmental Compliance Department does not notify the Holder of a Mineral Title within the period specified under subsection (3) of this section, the Environmental Protection and Rehabilitation Program shall be deemed to have been approved as submitted.

Comment: Sixty days may not be an adequate amount of time to approve an EPR program.

121. provides: **The Minister shall establish an Environmental Protection and Rehabilitation Fund for the purpose of guaranteeing the environmental obligations of Holders of Mineral Titles as provided under this Act.**

Comment: Is the EPR Fund security in case rehabilitation does not occur or is it to actually be used for funding reclamation?

123. and 127. provides: **123. No person shall, in the course of Mining or Exploration for minerals, pollute or cause to be polluted any water or watercourse in the area within the mining lease or beyond that area.**

* * *

127. No person shall make or permit any other person to make, without the permission of the Mines Inspectorate Department, any alterations in the water supply of any land so as to prejudicially affect the water supply enjoyed by any other person or land.

Comment: What are the consequences of water pollution or alterations made to water supply?

125. provides: **The licensee or lessee shall pay compensation to the owner or occupier–**

Comment: Who determines compensation and how is the amount of compensation determined for water pollution?

Chapter 5: Offences and Penalties

131. provides: **A Mineral Title Holder who is guilty of an offence under the provisions of this Act is liable to have his licence cancelled and of liable on conviction at the first instance, to a fine not exceeding ₦20,000,000; and if the offence is a continuing one, whether or not it is a first offence, the person convicted shall, in addition, be liable to a fine of ₦20,000 in respect of each day during which the offence continues.**

Comment: Are there any criminal penalties? What is the effect on license or future licensing ability? Does this provision apply to all provisions mentioning offences?

132.(3) provides: **Where an offence under this section is committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager secretary or other similar officer of the body corporate (or any person purporting to act in any such capacity) he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished accordingly.**

Comment: What is the punishment?

133.(2) provides: **A person convicted of an offence under subsection 1 of this section shall forfeit all minerals obtained by him or if the minerals are such as can not be forfeited, pay such sums as the court shall assess as being the value of the minerals or to imprisonment for a term not exceeding 2 years or to both fine and imprisonment.**

Comment: Are there instances where 2 years would not be adequate punishment?

137. provides: **A person who without lawful authority willfully breaks, defaces or removes or in any other way interferes with any boundary mark, beacon pillar or post erected for any of the purpose of this act or post erected for any of the purpose of this act or the regulations made under it, without necessary approval or authority under this act commits an offence.**

Comment: What are the consequences of the offence?

Chapter 6 Miscellaneous Provisions

147. provides: **A mines officer or a quarry officer may arrest without warrant, any person whom he finds committing or reasonably suspects to have committed an offence under this act or regulations made under it and may—...**

Comment: Who oversees the mine officer's authority to ensure his/her actions are reasonable and not corrupt? Is there an appeal available of the mine officer's findings?

148.(5) provides: **The Mining Cadastre Office shall approve a transfer of a Mineral Title under subsection (1) of this section if the transferee is a qualified applicant, provided that the application for transfer shall be deemed automatically approved if not acted upon by the Mining Cadastre Office within thirty days from official receipt thereof.**

Comment: Is 30 days enough time to make this determination? More flexibility should be available.

148. provides: **Subject to subsections (2), (5) and (6) of this section, a Mineral Title is transferable under this Act subject to the approval of and registration of the transfer with the Mining Cadastre Office as provided in subsections (3) and (4) of this section.**

Comment: How do you determine whether the transferor is acting as a profiteer in trading of mineral rights? Shouldn't you know what the financial terms of transfer are?

150.(2) provides: **A Mineral Title shall only be suspended after thirty days notice of the intention to suspend the Mineral Title containing in detail the grounds thereof is given to the Holder and during the period fixed the Holder has failed to remedy the breach or remove the grounds for suspension within the required period.**

Comment: Is the 30-day notice period too long? What happens in extraordinary/emergency circumstances?

152.(e) provides: **The Holder is declared by a Court of competent jurisdiction to be insolvent or bankrupt or goes into forced liquidation, except as part of a scheme for reorganization, amalgamation or an arrangement with its creditors; or**

Comment: What is the effect of the exception? Is it okay to back out of mining obligations and then hold title to Mineral Resources?

152. provides: **Without prejudice to the power of the Mining Cadastre Office to determine a Mineral Title in any other manner, the Mining Cadastre Office may, revoke any Mineral title if- . . .**

Comment: How is the holder defined? For example, in the case of a corporation do its officers and directors constitute holders?

155. provides: **The failure of the recipient of the notice under section 154 to deliver the said documents, within thirty days of the delivery of the notice shall be an offence under this Act.**

Comment: What are the consequences of such an offence?

160.(6) provides: **In case of abandonment or permanent cessation of production within the title area, the Mineral Title holder shall- . . .**

Comment: Is this the extent of the abandonment obligation?

160.(8) provides: **If the suspension exceeds three months, the Mineral Title Holder shall send a notice to the Mines Environmental Compliance Department stating the reasons for the extended shut down of the mine and indicating the measures taken in respect of site maintenance, or if abandonment is contemplated the measures that will be taken in accordance with the Environmental Protection and Rehabilitation Program established under the provisions of this Act in the eventuality of the title being transferred to a new operator or surrendered.**

Comment: Does this invite miners to merely suspend operations and never return to perform abandonment?

161.(4) provides: **Where an agency of Government or an educational institution undertakes scientific studies authorized under subsections (1) and (2) of this section, compensation shall be paid by the agency or educational institution to the User or Occupier of that land or to the holder of Mineral Title to such land for any damage to the land or any property therein.**

Comment: Who determines the amount of damage and how is the amount of damage determined?

164.(5)(a) provides: **A Small-Scale Mining Lease granted under subsection (1) of this section shall—**
remain in force, subject to this Act, for such period, not exceeding the unexpired period of the mining license or lease which remained at the appointed date, or the period of five years, whichever is lesser; and

Comment: Will this retroactively amend the terms of some small scale mining leases currently valid for more than 5 years?

Definitions:

“Minerals” or “Mineral Resources” means 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, bituminous shales, tar sands, any substances that may be extracted from coal, slate or tar sands, mineral water, and mineral components in tailings and waste piles, but with the exclusion of Petroleum and waters without mineral content.

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

Comment:

“Minerals” excludes petroleum, but would include natural gas such as coal bed methane gas.

“Petroleum” excludes hydrocarbon gases but does not include any substance extracted from coal, shale or tar sands; therefore, coal bed methane gas and oil from shale or tar sands appear to be subject to this Act. Will they be treated consistent with other oil and gas?