



PINHEIRO LP



**A REVIEW OF SECTION 19(2) OF THE NIGERIAN
MINERALS AND MINING ACT, 2007:
CRITIQUE, COMPARISON AND RECOMMENDATIONS
VIS-À-VIS PROVISIONS OF THE MINING LAWS IN
SOUTH AFRICA, ALGERIA, LIBYA AND ANGOLA.**

Introduction

The provisions of the Minerals Act have not derogated from the rights enjoyed by dwellers of lands in Nigeria. The Mineral Act also does not affect the common rights of fishery in tidal waters. [Adeshina v. Lemonu (1965) 1 All NLR (Pt.1) 233; Braide v. Adoki 10 NLR 15; Elf (Nig.) Ltd. v. Sillo (1994) 6 NWLR (Pt.350) 258 referred to.] (P. 271, paras. B-C). Shell Pet. Dev. Co. (Nig.) Ltd. v. Amaro (2000) 10 NWLR (Pt. 675) 248, CA.

Mining, be it the mining of solid minerals or oil, has a depreciating impact on the environment and this impact is further exacerbated by irresponsible mining activities of both licensed miners and illegal miners and by declining or sometimes nonexistent environmental and ecological literacy of local communities.

In Nigeria the Nigerian Mines and Minerals Act, 2007¹(hereinafter referred to as the “**Act**”) provides for the establishment of the Mineral Resources and Environmental Management Committee (“**MIREMCO**”) in each State of the Federation with the key function of protecting the environment amongst other functions.

We shall examine the composition of MIREMCO as provided in the Act vis-à-vis a succinct exposition of the mining laws of other mining giants in Africa; to wit: South Africa, Algeria, and Angola to reveal the existence of Committees similar to MIREMCO in those Countries, if at all.

First Nigeria; Nigeria is indubitably richly blessed with mineral resources. Hence, there are several mining activities in every State of the federation, sadly both legal and sadly illegal mining exist side by side despite the continued efforts of regulatory bodies to shut down latter. The reality is that the activities of the latter deprecate the sector leading to the sector’s continued poor contribution to the Gross Domestic product such that the sector only contributed 0.3% to Nigeria’s gross domestic product.² This is further worsened by Nigeria’s continued over reliance on its oil resources.

The Mineral Resources and Environmental Management Committee [MIREMCO]

Section 19(2) of the Act provides for the Mineral Resources and Environmental Management Committee (MIREMCO) in each State. It serves as an interface between the Ministry of Solid Minerals and Development, and stakeholders being the State, the Local Government, the Host Communities and of course all Mineral Title Holders (MTHs).

MIREMCO members are empowered by the Act to advice the Minister in charge of the Ministry of Solid Minerals Development currently being Honorable Dr. Oladele Alake (“the **Minister**”) by proffering solutions to resolve conflicts between stakeholders;³ MIREMCO is obligated to consider issues affecting compensation and to make necessary

¹ Section 19(1)

² https://en.wikipedia.org/wiki/Mining_industry_of_Nigeria

³ Section 19(1) (h)

recommendations to the Minister⁴ whilst equally advising and rendering necessary assistance as required by MTHs in their interaction with the State governments, Local Government Councils, Local Government committees, civil institutions, etc.⁵

Functions of the Committee

A review of the Act reveals that the functions of MIREMCO⁶ in relation to environmental protection include:

- a. To discuss, consider and advise the Minister on the matters affecting pollution and degradation of any land on which any mineral is being extracted;
- b. To advise the Mines Environmental Compliance Department and other 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;
- c. To advise the Local Government Areas and communities on the implementation of programs for environmental protection and sustainable management of mineral resources;⁷

Composition or make-up of MIREMCO

The composition of MIREMCO, just like every committee, is crucial and sacrosanct to its effectiveness. Section 19(2) of the Act provides that MIREMCO in each State must be made up 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 Ministry⁸ 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;
- (g) a representative of the State Environmental Department or Agency;

⁴ Section 19(1) (b)

⁵ Section 19(1) (g)

⁶ Section 19 (3) (a-i)

⁷ Section 19 (3) (a, e and f)

⁸ Federal Ministry of Mines and Mineral Resources.

- (h) a representative of the Federal Ministry of Environment in the State. Additionally, the Act further empowers the chairman to appoint a competent officer from the Mines Inspectorate Unit in the State to be the Secretary of the committee.⁹

An examination of the above as provided in the Act reveals that a minimum of 9 (nine) members shall make up MIREMCO; 6 (six) of whom are to be appointed from Federal Ministries and 3 (three) from the State. We may say that this is expected and understandable given that the exploration of solid minerals is on the Exclusive Legislative list of the Federal Government (although there have been agitations for the removal of mining from the exclusive list by some Governors),¹⁰ however, we must not fail to note that States, specifically the local communities are the direct victims of the environmental challenges posed by mining activities, the amelioration of which is the mandate of the committee.

Additionally, paragraph (f) of the forgoing provision¹¹ provides that 'a representative of the Local Government Council *when matters affecting the said Local Government Area are being considered by the Committee*'. This literally means that a representative of a Local Government Council can join MIREMCO when matters affecting their Local Government Council are being considered. By implication, representation by the host community in MIREMCO is not only limited to one representative but also limited to what is being considered by MIREMCO. These limitations respectfully are not only unwarranted but needless as it is impossible for MIREMCO to discuss any issue that is not affecting one host community or the other taking into consideration the obligations and responsibilities of MIREMCO. Whereas, a minimum of two representatives from each host community where mining activities are occurring in a State ought to be represented in MIREMCO during each of its meetings. The possibility of this is particularly more feasible with the advent of virtual conferencing technology.

Surprisingly the Act does not expressly provide for the body empowered to appoint members of MIREMCO. Is it the responsibility of the Honorable Minister of Solid Minerals Development or the Governor of each State? This lacuna in the Act has led to situations where the Minister constituted MIREMCO in some States¹² while some State Governors have also constituted MIREMCO in their respective States.¹³

It is our humble position that this lacuna in the Act is the major reason why MIREMCO is yet to be constituted in some States since the enactment of the Act despite its strong relevance.

⁹ Section 19(5). Ibid.

¹⁰ <https://www.thisdaylive.com/index.php/2017/11/26/fayemi-calls-for-removal-of-mining-from-exclusive-list>,
<https://pmnewsnigeria.com/2021/03/16/seyi-makinde-wants-mineral-resource-control-removed-from-exclusive-list/>
<https://www.premiumtimesng.com/news/top-news/491689-solid-minerals-control-lagos-ogun-governors-battle-federal-govt.html?tztc=1>

¹¹ Section 19(2) ibid

¹² Kogi and Kaduna.

¹³ Osun, Niger and Gombe

Comparison

It is worthy to note that the provision of MIREMCO as captured in Section 19(2) of the Nigerian Minerals and Mining Act, 2007 is in reality a unique provision regardless of any criticism of same as such a committee does not exist in some jurisdictions.

In South Africa for example, the principal law regulating the exploitation and exploration of mineral resources is the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), together with some regulations, and other laws. Notably also, is the National Environmental Management Act, 1998 (NEMA) such that both MPRDA and NEMA jointly provides for the national environmental management principles which guide the management of the environment in South Africa.¹⁴

By South Africa's environmental management principles, every MTH is required to conduct an environmental impact assessment and to submit an environmental management program or plan to the office of the minister of Minerals and Energy for approval.¹⁵ To that end, the Committee for Environmental Co-ordination (CEC) is provided for under NEMA with the mandate to promote the integration and co-ordination of environmental function by the relevant organs of state and in particular to promote achievement of the purpose and objectives of the environmental implementation plans and environmental management plans.¹⁶

Thus, similar to MIREMCO in Nigeria is CEC in the South African mining sector. However, it differs in its functions as CEC was not established solely for the mining sector, but to oversee and ensure compliance with South Africa's environmental management principles in general.

A review of Algeria's Mining Law, 2014 reveals the nonexistence of a Minerals Resources and Environmental Management Committee although it creates the National Mining Agency responsible for environmental monitoring.

In Angola, there exists a Mining Code (2011) with provision(s) for the creation of a National Agency for Mineral Resources encumbered with environmental responsibilities. It also has Environmental Protection Law (2012) establishing a National Environmental Agency without a body saddled with the responsibilities such as MIREMCO's.

Lastly, the Mines and Quarries Law No.2 of 1971 being the primary governing the mining sector in Libya is devoid of a provision equivalent to the setting up of a similar Committee such as MIREMCO therein.

¹⁴ Section 37 of the Mineral and Petroleum Resources Development Act 28 of 2002, Chapter 1 of the National Environmental Management Act, 1998.

¹⁵ Section 38 and 39 of the Mineral and Petroleum Resources Development Act 28 of 2002.

¹⁶ Sectionn 7(2) of the National Environmental Management Act, 1998.

Recommendations

MIREMCO is therefore a unique provision, but not without its shortcomings. Thus, we make the following recommendations; to wit:

1. MIREMCO should at each sitting discuss issues affecting Local Government Councils thereby ensuring that a representative from each Local Government Council is present at each deliberation.
2. A representative from the office of the State Ministry of Energy and Mineral Resources should be made a member of MIREMCO.
3. A minimum of two representatives from all Local Government Councils where mining activities are being carried out should be members of MIREMCO as distance is no longer a problem with the advent of virtual conferencing technologies. Afterall, MIREMCO exists to serve as an interface between the Ministry, the State, Local Government Councils, host communities and Mineral title holders.
4. All members of MIREMCO from State Agencies should be appointed by the Minister on the recommendation of the Governor of that State.
5. The authority responsible for setting up or constituting MIREMCO be made unambiguous. Most preferably, this should be the Minister subject to the recommendation of the Governor of that State.

We are not unaware that our recommendations impliedly speak to the necessity to amend the Act; but be that as it may, the crux of our succinct recommendation is that MIREMCO should not only be constituted in each state where there are mining activities but should be efficiently constituted to ensure it is enabled to carry out its obligations for the good and preservation of our Nation.

Conclusion

Section 19(2) of the Minerals and Mining Act, 2007 establishes the Minerals Resources and Environmental Management Committee to (MIREMCO), in a nutshell, serve as an interface between the Ministry of Solid Minerals and Development, and stakeholders ; to wit : the State, the Local Government, the Host Communities, and Mineral Title Holders and to monitor environmental impact of mining activities, and to advise the Minister on environmental management whilst also ensuring compliance of stakeholders with environmental regulations and educating host communities on environmental protection. The establishment of MIREMCO as provided in the Act is laudable. Although, the local communities which are often times the direct victims of the environmental challenges posed by mining activities, are not duly represented in MIREMCO.

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