

THE CHALLENGES OF COMPLIANCE AND ENFORCEMENT OF MINING LAWS AND POLICIES AND THEIR IMPACT ON THE ENVIRONMENT.

By

Ihuoma Jane Francis Anyanwu Esq

ihuomajane francis@gmail.com / j.francis@lawhubdev.org

1.0. Introduction

The foundation of environmental policy in Nigeria is established in the 1999 Constitution of the Federal Republic of Nigeria. According to section 20 of the Constitution, the State is authorized to safeguard and enhance the environment, protecting essential resources such as water, air, land, forests, and wildlife. This legal framework has led to the creation of various environmental laws, including the Environmental Impact Assessment Act of 1992, the Harmful Wastes (Special Criminal Provisions) Act of 1989, and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007, among others. These laws are supported by relevant institutions tasked with ensuring enforcement and compliance.

Environmental compliance and enforcement in Nigeria is a significant issue that calls for the dedication of all stakeholders, considering the fact that the environment is a crucial aspect of human life and sustainability. For instance, the extensive mining of tin and related minerals in the Jos Plateau has led to considerable degradation of agricultural land, vegetation, and the overall landscape, alongside various environmental challenges. Other regions experiencing severe environmental degradation include the Niger Delta due to oil and gas exploration and extraction; Sagamu, Ewekoro, Ashaka, , Okpella and Gboko as a result of limestone quarrying and the establishment of Portland cement manufacturing companies; and Enugu due to coal mining activities. . The significance of environmental awareness cannot be overstated, as it is a vital gift from nature that must be preserved and protected.

The need for environmental standards often necessitates the establishment of regulatory agencies and its subsequent empowerment to establish regulations and guidelines aimed at achieving the primary goal of environmental protection. However, regulatory agencies in Nigeria have not demonstrated sufficient initiative in enforcing environmental standards, laws, policies, regulations, and guidelines due to the operation of outdated mining laws that cannot address current global and contemporary environmental challenges. The deficiencies identified in existing mining legislation not only hinder productivity and global appeal but also pose serious ecological risks to the environment. Therefore, environmental regulatory agencies should effectively and adequately utilize the enforcement measures outlined in environmental protection laws to foster a culture of environmental compliance and enhance awareness within the Nigerian society. The agencies should clearly state that environmental compliance is crucial for meeting statutory requirements and for the proper fulfilment of mining companies' obligations as stipulated in their licenses and environmental laws. It is also essential to establish current mining regulations that address contemporary issues faced in Nigeria's mining sector. This can be achieved by strengthening existing laws, repealing those that are outdated, and appointing qualified personnel to oversee compliance. Appropriate administrative and legal actions should also be taken against those who violate environmental regulations

2.0 The Legal framework governing the Mining Industry in Nigeria

2.1 The Constitution of the Federal Republic of Nigeria

The 1999 Constitution of Nigeria, as amended, serves as the fundamental legal framework that delineates the regulatory framework concerning mining activities. According to Section 44(3), it states:

"Notwithstanding the preceding provisions of this section, all ownership and control of minerals, mineral oils, and natural gas located beneath or above the territorial waters and the Exclusive Economic Zone of Nigeria

shall be vested in the Government of the Federation, which shall manage these resources in accordance with regulations set forth by the National Assembly."¹

Additionally, the Constitution designates mining within the Exclusive Legislative List, indicating that only the Federal Government of Nigeria possesses the authority to regulate the sector and collect its revenues

2.2 The Nigerian Minerals and Mining Act of 2007, referred to as the “Act,” repealed the Minerals and Mining Act No. 34 of 1999 in order to regulate the exploration and extraction of solid minerals in Nigeria. This framework serves as the principal law overseeing the mining sector within the country. Under the Act, the Federal Government of Nigeria is vested with authority over all mineral resources. It stipulates that ownership and control of mineral resources found in, beneath, or above any land in Nigeria, including its contiguous continental shelf, rivers, streams, water bodies, and areas encompassed by territorial waters or Exclusive Economic Zones, belong to the Federal Government on behalf of its citizens.

The responsibility to implement the Act typically rests with the Minister for Mines and Steel Development. Section 4 of the Act outlines numerous responsibilities that the Minister is required to fulfil, which include:

1. Overseeing the organized and sustainable development of mineral resources in Nigeria;
2. Formulating a strategic and coherent approach for the exploitation of mineral resources that considers economic growth alongside ecological and environmental factors;
3. Establishing protocols for monitoring progress within the solid minerals sector; and
4. Promoting private sector investments in the development of mineral resources, among other duties.²

¹ See S.44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Second Schedule, Part 1 Exclusive legislative list of the 1999 Constitution of Nigeria.

² See S.4 Nigerian Mineral and Mining Act,2007

2.3 The Minerals and Mining Regulations of 2011: As stipulated in Section 21 of the Minerals and Mining Act of 2007, the Minister of Mines and Steel Development is empowered to establish regulations concerning any matters that require regulatory attention under the Act. This includes the authority to prescribe, amend, or revoke necessary forms. The Regulations address several key areas: they outline the processes and procedures for regulating exploration and mining operations, define the requirements for obtaining operational titles, implement safeguards to ensure the safety of mining personnel, protect the general public, and preserve mining environments, specify the forms for use in compliance with the Regulations, and establish processes for enforcing adherence to the Act's provisions.³

3.0 Regulatory Agencies for the enforcement and compliance of Mining Laws

The legal regime on environmental compliance in Nigeria has made provisions for mechanisms through which environmental standards could be effectively enforced by the established regulatory agencies in order to achieve environmental compliance. The provided mechanisms include: inspection and searches; sealing and seizure; arrest; permit, license and certificate forfeiture; criminal prosecution; and civil liabilities. These enforcement mechanisms are there to serve the purpose of effective environmental enforcement in a giving circumstance of environmental violation, and in accordance with the provisions of a particular environmental protection law which is violated. It therefore follows that an environmental enforcement measure can only be relevant in a giving circumstance where an environmental legislation permits the use of such measure for the enforcement of environmental standard that is in violation.

3.1 The Mines Environmental Compliance Department (MECD)

This department functions under the Ministry of Mines and Steel Development. It is responsible for ensuring that mineral title holders adhere to environmental

³ Regulation 3, of the Minerals and Mining Regulation of 2011

standards. They monitor and enforce compliance with all environmental requirements and obligations established by the Act, its regulations, and any applicable laws. Additionally, the department conducts periodic audits of the environmental obligations stipulated by the Act, its regulations, and any other relevant laws, among other responsibilities.⁴

3.2 The Mines Inspectorate Department

This department is responsible for overseeing all reconnaissance, exploration, and mining activities to ensure adherence to the legislation. Their duties include monitoring and enforcing compliance among mineral titleholders with all mine health and safety regulations mandated by the Act, as well as other applicable laws. They are also tasked with the preparation and submission of necessary records, reports, and returns as required by the Minister or stipulated in the Regulations, among other obligations. Additionally, the Inspectorate Department is entrusted with the custody of mineral resources designated for forfeiture to the government by any Court.⁵

3.3 The Federal Ministry of Environment (FMOE): This ministry plays a crucial role in the evaluation of Environmental Impact Assessments (EIAs) for mining projects, ensuring compliance with environmental standards. The main function of the ministry revolves around the following key environmental issues, especially, in the the area of policy awareness, enforcement and interventions on desertification and deforestation, pollution and waste management, climate change and clean energy.⁶

3.4 The National Environmental Standards and Regulations Enforcement Agency (NESREA): This department is dedicated to regulating activities that pose risks to the environment, including the promotion of sustainable mining practices. NESREA Act empowers NESREA as an enforcement Agency for environmental

⁴ S.18 of the Act, op. cit

⁵ S.17 of the Act, op. cit

⁶ Ibid

standards, regulations, rules, laws, policies and guidelines,⁷ to enforce environmental standards on noise, air, land, seas, oceans and other water bodies through compliance monitoring.⁸ The medium of compliance monitoring as expressed by the law to be used by NESREA to enforce environmental standards can only be achieved through environmental enforcement measures such as inspection and searches. The NESREA Act also empowers NESREA to conduct field follow up of compliance, public investigation, and developed monitoring network, all in a bid to ensure effective environmental compliance and enforcement.⁹

3.5 The Mining Cadastre Office (MCO): This office is primarily responsible for overseeing mineral titles and works in conjunction with other agencies to address regulatory matters related to mining activities. As a corporate entity with legal standing, the MCO has the capacity to initiate and defend legal actions in its corporate name. Its duties encompass the administration of mineral titles and the upkeep of cadastral registers.¹⁰ The MCO exclusively manages mineral titles, evaluating applications for mineral titles and permits, as well as having the authority to issue, suspend, or, with the Minister's written consent, revoke any mineral title. Furthermore, the Office processes applications for the transfer, renewal, modification, relinquishment of mineral titles, or extension of areas, and plays a vital role in maintaining a chronological record of all applications for mineral titles¹¹.

3.6 The Ministry of Solid Minerals Development: The Ministry of Solid Minerals Development (MSMD) is set up to unlock the economic potential of the solid minerals sub-sector in Nigeria. The MSMD is responsible for identifying the

⁷ NESREA Act 2007 s. 1(2)(a).

⁸ *Ibid* s. 7.

⁹ *Ibid* s. 8.

¹⁰ *ibid*

¹¹ S.5 of the Act, *op. cit*

nation's solid minerals, advising the government on the formulation and execution of laws and regulations guiding the various stages of prospecting, quarrying, and mining, and handling the sale and consumption of solid minerals in the country, through the issuance of Permits, Licenses, Leases and Collection of rents, Fees and Royalties. The Creation of Mining Marshals by this ministry to regulate illegal mining activities, has enhanced compliance and enforcement within the sector. Since their deployment, the mining marshals have reportedly arrested over 200 illegal mining suspects, with ongoing prosecution for about 133 cases. They have also confiscated illegally mined minerals, which have been forfeited to the federal government. This was achievable due to collaboration with the Nigerian Security Civil Defence Corps (NSCDC), the Police, the Nigerian Customs Service and Defence and other security personnel.

4.0 Challenges of enforcement and compliance in the Mining sector

Mining is a crucial sector for Nigeria's economy, contributing to employment, foreign exchange earnings, and industrial development. Nigeria is endowed with diverse mineral resources which includes gold, tin, limestone, coal, and more. However, the mining sector has faced enormous challenges especially in the area of compliance and enforcement of laws, leading to severe environmental degradation.

4.1 Weak Regulatory Framework: The Nigerian mining sector is governed by various legal frameworks, including the Minerals and Mining Act of 2007 and the Nigerian Minerals and Mining Policy of 2011. However, these laws often lack the necessary specificity, resulting in gaps and ineffective enforcement. The absence of clear regulations permits mining operations to discharge toxic substances, heavy metals, and acid mine drainage into the environment. Insufficient regulatory measures contribute to the degradation of soil and water resources, adversely impacting local ecosystems and human health. The success of any legislation relies on effective compliance and enforcement, which typically necessitates the establishment of a regulatory body. Consequently, it is crucial to recognize the distinction between possessing a law and ensuring its effective

implementation to fulfil its intended purpose. If the regulatory authority is unable to enforce the law effectively, the objectives of the legislation will remain unattained. This challenge has been particularly evident in Nigerian society regarding environmental compliance, despite the existence of multiple environmental protection laws. The persistent failure of regulatory agencies to uphold environmental standards, as stipulated by legislation, is evident in the ongoing environmental degradation, particularly stemming from industrial activities. In this context, it is apparent that achieving environmental compliance is contingent upon the effective enforcement of established environmental standards and regulations.

4.2. **Illegal Mining Activities:** Artisanal and small-scale mining (ASM) is prevalent in Nigeria, particularly in states like Zamfara and Niger. These operations often occur outside regulatory frameworks, leading to unregulated mining and environmental degradation. Also the remote locations of many illegal mining activities pose significant challenges for enforcement agencies to monitor and regulate these operations.

4.3. **Inconsistent Policy Implementation:** Political interference such as changes in government can lead to shifts in mining policies, affecting the consistency and sustainability of enforcement efforts. While lack or poor coordination among different levels of government and between agencies can lead to fragmented approaches to mining regulation.

4.4. **Insufficient Resources for Monitoring:** The regulatory agencies such as the Mines Environmental Compliance Department (MECD) often lack the necessary manpower, training and technical expertise required for effective monitoring of mining activities. While the inadequate presence of inspectors in the field makes it challenging to enforce compliance. Regulatory bodies face budget constraints, however, limiting their ability to conduct regular inspections, enforce regulations, and implement necessary protection measures. As a result, mining companies operate with minimal oversight.

4.5. Corruption and Lack of Transparency: significantly hinder the efficacy of regulatory agencies and compliance efforts in the mining sector. The prevalence of bribery in the issuance of mining licenses allows many to evade environmental assessments and regulations, leading to non-compliance. Furthermore, the absence of transparent processes for granting permits and licenses restricts regulatory agencies from effectively monitoring mining operations. This deficiency in transparency erodes accountability and limits public engagement. Corruption, which undermines good governance, distorts public policy, and leads to the misallocation of resources,¹² is a principal factor contributing to the ineffectiveness of environmental enforcement programs, ultimately resulting in inadequate environmental compliance.

4.6. Inadequate Environmental Sanctions: For an environmental policy to be truly effective and efficient, it is essential to support the legislation with a carefully designed enforcement strategy. Without such a strategy, the intended audience for the regulations may have little incentive to adhere to the rules, making it unlikely that environmental goals will be achieved. More exacting environmental penalties outlined in legislation serve to deter violators more effectively and foster greater compliance with environmental standards. Conversely, poor sanctions present challenges to achieving compliance, as even if regulatory agencies can impose fines, violators may choose to pay minimal fines rather than alter their behaviours. For instance, when a multinational oil company operating in Nigeria is fined 1 million naira for the illegal release of hazardous substances, this penalty may not be sufficiently severe to ensure ongoing adherence to environmental regulations related to such discharges. Similarly, the Environmental Impact Assessment (EIA) Act stipulates fines ranging from fifty thousand naira to one hundred thousand naira for corporate violations, suggesting that a corporation may endanger the environment and public health by proceeding with a project without a proper assessment and subsequently face only a relatively small fine for

¹² T. Lawal and O K Victor, 'Compacting Corruption in Nigeria' [2012](1)(4) International Journal of Academic Research in Economic and Management Sciences, 1.

potentially significant damage. However, numerous environmental protection laws in Nigeria, aimed at preserving biodiversity, similarly suffer from obsolete sanction provisions that do not adequately promote compliance.

4.7. Overlapping Jurisdiction: The mining sector is governed by multiple layer of government federal, state, and the local government which can create confusion, and inconsistencies in enforcement of mining regulations. The lack of clear demarcation of roles and responsibilities often results in regulatory gaps and ineffective oversight. However, the involvement of the State and Local Governments can be statutorily justified. By virtue of Sections 6(3)(d) and 12(1) the Land Use Act, State and Local Governments are empowered to enter or permit the entrance of any person into lands that have not been hitherto covered under a mining lease under the Minerals and Mining Act and use such lands for public purposes or for the extraction of stones, sand, gravel, clay or any other substance not defined as a mineral under the Minerals and Mining Act.¹³ While stones, sands, gravel, and clay are defined as “quarriable minerals” or simply “minerals or mineral resources” under Sections 75 and 164 of the MMA respectively, the question for determination is what is the regulatory implication where the Mining Cadastre Office grants a mining lease/license over a land which hitherto had no covering mining lease/license prior to the State or Local Government’s (permitted) extraction of minerals over the same or part of the land? One argument may posit that where two legalities exists, the first in time prevails. Thus, as the State or Local Government had first gained access or permitted access to the land and its mineral resources before the Mining Cadastre Office of the Ministry of Mines granted a mining lease, the permit of the State or Local Government is most legal and takes precedence in the eyes of the law. The natural counter-position would be that since the CFRN had already granted the ownership of minerals to the Federal Government; and the State or Local Government’s permit for mineral extraction over a land which was not covered by a mining lease/license would be

¹³ The Land Use Act No. 6 1978 CAP L5 Laws of the Federation of Nigeria 2004.

illegal; and the Land Use Act, to the extent that it permits mineral extraction by subnational governments and/or any other person would be null and void under Section 1(3) of the CFRN.

4.8. **Community Resistance and Lack of Engagement: Marginalization of Local Communities**, many mining projects are initiated without adequate consultation with local communities, leading to resentment and resistance. Inadequate Compensation when communities are displaced for mining activities, they often receive insufficient compensation, fuelling conflicts and opposition to mining operations.

5.0 ENVIRONMENTAL IMPACTS OF MINING

Unregulated mining poses risks of harmful substance release into soil, air, and water. The need for government regulation of mining companies and the adoption of advanced technology to mitigate environmental damage is crucial. As new mines emerge in regions with differing environmental protections. Mining activities must adhere to discharge conditions outlined in environmental permits. While the weathering of tailings and mining waste affects surrounding land and water, effective waste management can minimize adverse effects. The assessment of this impact, including its potential harm, is often based on established environmental quality standards, which set legal thresholds for tolerable environmental and human exposure to various elements.

5.1 **Land and Biodiversity:** The diverse environmental consequences of mining operations extend well beyond the immediate alteration of land and resources, leading to significant disruptions of local ecosystems and posing threats to biodiversity. The development of mining sites requires substantial construction activities, which often lead to widespread deforestation and the consequent destruction of essential wildlife habitats. This loss of habitat has a detrimental effect on local biodiversity, as numerous species rely on these environments for their survival.

In particular, open-pit mining can expose long-buried geological structures, potentially releasing harmful environmental hazards. The disturbance of these

geological layers may uncover radioactive materials, asbestos-like minerals, and metallic dust, which pose serious health risks to both human communities and wildlife. During the process of mineral extraction, tailings—consisting of hazardous rock slurries—are produced. If not properly managed, these tailings can leach toxic and radioactive substances into the surrounding soil and groundwater. In Nigeria, extensive mineral and oil exploration, particularly in the Niger Delta region, has led to a significant increase in deforestation.¹⁴ In Northern Edo State, considerable areas of previously untouched land have been cleared for mining, destroying forests that serve as vital habitats and food sources for numerous animal species. This ecological disruption not only results in the migration or extinction of these species but also disturbs the fragile balance of the ecosystem. Moreover, the influx of individuals drawn to mining activities further intensifies these adverse effects, as the associated industrial footprint continues to encroach upon and degrade pristine natural environments.

5.2 Water Pollution: Activities such as acid mine drainage have the potential to pollute water sources, rendering them unsafe for human consumption and detrimental to aquatic ecosystems. Mining operations can influence water quality by discharging water containing metals from runoff and mineral processing. Numerous mines release mining waste into nearby river systems, resulting in extensive and lasting effects downstream. These waste materials often contain hazardous chemicals, including arsenic, lead, and mercury, which can contaminate rivers, lakes, and wetlands utilized by communities for fishing and drinking water. Through a phenomenon known as biomagnification, these toxic substances accumulate in the tissues of fish, impacting other organisms higher up the food chain that rely on fish for sustenance, including humans.

The effects of water discharges are subject to legal regulations and can be mitigated through effective waste management practices and diligent oversight. Surface mining generates substantial amounts of waste materials, releasing harmful substances into both air and water, thereby posing significant health

¹⁴ Ogunwale, A., 2015, Deforestation and greening the Nigerian environment, pp1-8.

risks if they are inhaled or ingested. Additionally, mines can produce acidic water, which is capable of harming marine life and making freshwater unfit for consumption. While underground mining generates less waste than surface mining, it still poses risks to the safety of mine workers.

5.3 Air Pollution: Mining activities release greenhouse gases and toxic aerosols into the atmosphere, impacting the environment and worker health throughout all phases, from planning to closure. Dust generated during operations, such as drilling and blasting, poses significant threats to humans, animals, and vegetation, particularly in areas like Auchi, Edo State, where nearby vegetable gardens suffer from poor conditions. Furthermore, the combustion of fuels by generators and heavy machinery exacerbates carbon dioxide emissions, contributing to the greenhouse effect,¹⁵ which raises global temperatures. Insufficient mitigation measures significantly compromise public health.

Recommendations

The mining sector is one of the most promising sectors that can facilitate the diversification efforts of Government and reposition the Nigerian Economy. To this end, the government is continuously aspiring to diversify the nation's economy using solid minerals as one of the strategic pillars. There urgent need for the government to improve compliance and enforcement of mining laws in Nigeria, there's need to strengthen Regulatory Institutions as to enhance their capacity such as the Mining Cadastre Office and Mines Inspectorate Department to effectively monitor and enforce compliance with mining regulations, promote transparency and digitalization, there is al need to implement an online portal for easier application processes for mineral titles, as initiated by the MCO, to reduce bureaucratic hurdles, encourage artisanal mining formalization, support artisanal

¹⁵ Dzigdodi-Adjimah K. (1996), "Environmental concerns of Ghana's gold boom: Past, present and future," Ghana Mining Journal, vol. 2, pp. 21-26.

miners by facilitating access to legal licenses through cooperatives, thereby reducing illegal activities. Community engagement will foster better relationships between mining companies, host communities, and government agencies through Community Development Agreements (CDAs) that emphasize social responsibility while environmental protection measures will ensure strict adherence to environmental standards by integrating impact assessments into licensing processes and enforcing mine closure plans. This can be done, for example, by improving community consultation processes, ensuring comprehensive mine closure and remediation of abandoned mine sites, and exploring ways to reduce or reuse mining waste.

Conclusion

In conclusion, the challenges of compliance and enforcement of mining laws in Nigeria are significant and have profound impacts on both the environment and economic development. Addressing these issues requires a multifaceted approach that includes strengthening regulatory institutions, promoting transparency, formalizing artisanal mining, enhancing community engagement, and enforcing environmental protection measures.

By implementing these strategies, Nigeria can improve its mining sector's governance, reduce environmental degradation, mitigate social conflicts, and unlock the full economic potential of its mineral resources. Effective regulation will not only attract more investment but also ensure sustainable development that benefits both local communities and the nation as a whole.

