

LEGAL, INSTITUTIONAL AND REGULATORY GAPS IN THE MINING SECTOR AND THEIR IMPACT ON THE ENVIRONMENT.

By
Ihuoma Jane Francis Anyanwu Esq
ihumajane francis@gmail.com / j.francis@lawhubdev.org

1.0 INTRODUCTION

Nigeria, endowed with a rich array of mineral resources boasts of not less than 44 valuable mineral deposits including clay, gold, coal, iron ore, limestone, lead and zinc, phosphate, and tin. These minerals are spread across more than 500 locations which cut across the 6 geopolitical zones of the Country.

As the nation is rapidly increasing its investment opportunities in resource wealth, there's a need for increased resource extraction activities, particularly in the mining sector across the country. While the mining sector provides significant economic opportunities for the country's economic prosperity, the environment where these mining activities operate must not be ignored.

As mineral extraction, production, refining and distribution have an immediate impact on the environments and communities in which they operate, the role played by government permeates all facets of the operational, financial and managerial life of their operations since the countries' mineral resources are treated as national heritage¹ For example, as a colonial legacy, Nigeria, South Africa, Indonesia, India and most of the developing nations, have constitutionally entrusted their mineral ownership to the state.² Conversely, most of the developed countries like Canada, Australia and the United States can manage their resources through individual, provincial and national ownerships.

However, the mining sector in Nigeria faces a myriad of challenges therefore been unable to attract significant investment in the exploration of its mineral resources,

¹ Haysom, N., & Kane, S. (2009). Negotiating Natural Resources for Peace: Ownership, Control and Wealth-Sharing. Geneva: HD Centre for Humanitarian Dialogue.

² Section 44, Land Use Act, 1978

this constraint is traceable to a lack of an attractive environment for private-sector mining, paucity of accurate and up-to-date geological information and the systems to manage the information, outdated or archaic laws, the poor performance of institutions and limited enforcement of regulations, insecurity in the host communities, and insufficient human skills and capacity to effectively manage the sector despite the existence of laws and regulations aimed at governing the mining sector, numerous legal, institutional and regulatory gaps persist. These discrepancies hinder enforcement and compliance, leading to adverse outcomes for communities and the environment.

Hence, there's a need for robust legal frameworks, strong institutions and effective regulatory mechanisms to promote a sustainable mining practice, while protecting and safeguarding the enabling environment for mining activities as mining activities are often in rural locations that are home to poor and vulnerable people,³ hence, there's need for government protection of their right to livelihoods.

1.1 OVERVIEW OF THE NIGERIAN MINING SECTOR

The mining sector in Nigeria, like in other parts of the world, presents a range of environmental challenges that have serious implications for the ecosystem, communities and the economy. The lack of comprehensive mining laws that address contemporary issues and poor management of land resources triggers these environmental problems such as land degradation, soil erosion and pollution, as well as serious social and economic tensions as mineral extraction, production, refining and distribution have immediate impact on the environments and their host communities.

1. **Land Degradation:** Mining operations often involve significant land evacuation and deforestation, leading to the destruction of natural habitats. This land degradation can result in soil erosion, loss of biodiversity, and disruption of local ecosystems.
2. **Water Pollution:** Hazardous chemicals such as cyanide and mercury used in mining can lead to water contamination. Also, runoff from mining sites

³ Kemp, D. (2009). Mining and Community Development: Problems and Possibilities of Local-Level Practice. Community Development Journal, 45, 198-218

can pollute local rivers and groundwater, affecting the water supply for nearby communities harming aquatic life and posing health risks like waterborne diseases to communities relying on these water sources.

3. **Air Pollution:** Dust generated from mining activities, along with emissions from machinery and processing plants, can contribute to air quality degradation. Particulate matter and harmful gases can also pose respiratory problems for both workers and nearby populations.
4. **Loss of Biodiversity:** Mining can lead to habitat destruction, posing a threat to plant and animal species in the affected areas. This over-exploration of natural resources can lead to the extinction of local flora and fauna.
5. **Community Displacement:** Mining activities can lead to the displacement of communities, resulting in social conflicts and loss of livelihoods. Land acquisition for mining can disrupt local agriculture and other economic activities.
6. **Climate Change:** Mining activities often contribute to gas emissions through the use of heavy machinery and fossil fuels. Additionally, deforestation associated with mining also contributes to climate change by decreasing carbon sequestration.

1.2 LEGAL FRAMEWORK OF THE NIGERIAN MINING SECTOR

Nigeria has a complex legal framework for mining, primarily governed by the Nigerian Minerals and Mining Act 2007 (NMMA) and its accompanying regulations. These laws are designed to promote and regulate the mining sector.

1. **Constitution of Nigeria (1999 as amended)**⁴: The constitution vests ownership and control of mineral resources in the Federal Government, establishing the foundation of Mining Laws.
2. **Nigerian Minerals and Mining Act (2007)**⁵: This acts as a legal backbone of the Nation's mining sector, the Act establishes guidelines for mining

⁴ Section 44(3) Constitution of Federal Republic of Nigeria.

⁵ The Minerals and Mining Act No. 20 2007 replaced the Minerals and Mining Act of 1999 and is the principal legislation relating to the management of solid mineral resources in Nigeria.

operations, licensing and mineral exploration and extraction of solid minerals in Nigeria.

3. **Minerals and Mining Regulations (2011)**⁶ : This provides detailed regulations for obtaining mining licenses, managing mining operations and ensuring compliance with environmental standards.
4. **National Minerals and Metals Policy (2009)**: This focuses on the sustainable development of Nigeria's mineral resources while promoting investment in the mining sector.
5. **Mining (Amendment) Acts**: The amendments have been made over the years to address changing industry needs.

Other important legislation that affects the mining industry includes the following:

1. **The Nigerian Investment Promotion Commission (NIPC) Act**⁷: The provisions of the NIPC Act shall apply in relation to mining activities in the event that there is any foreign investment made in respect of any mineral title granted under the NMMA.⁸
2. **The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act**⁹: The Provisions of the Foreign Exchange Act would apply where there is an investment in foreign currency in respect of any mineral title granted under the NMMA.
3. **The Companies and Allied Matters Act, 2020**: Where there arises a need to procure a mining license as a body corporate, such body corporate must be registered at the Corporate Affairs Commission in accordance with the provisions of the Companies and Allied Matters Act.
4. **The Environmental Impact Assessment (EIA) Act**¹⁰: It requires mining companies to conduct environmental assessments before commencing operations thereby minimizing ecological damage.

⁶ The Minerals and Mining Regulations 2011 provide the guidelines for operations in the solid minerals sector.

⁷ CAP N117 LFN 2004.

⁸ Section 29 of the Nigerian Mining and Minerals Act, 2007

⁹ CAP F34 LFN 2004.

¹⁰ The National Mineral and Metals Policy is a policy document

5. **Land Use Act:**¹¹ The Land Use Act is a significant piece of legislation that transformed land management and allocation, it significantly impacts land ownership rights in Nigeria by vesting all land within the state in the Governor, who holds it in trust for the people.
- a. The various tax legislations ranging from the Personal Income Tax Act, the Capital Gains Tax Act, etc. also apply to the taxation of operators in the mining sector.
 - b.

1.3 REGULATORY AGENCIES IN THE MINING SECTOR

1. Ministry of Mines and Steel Development (MMSD):

This is the principal federal agency charged with the responsibility of formulating and implementing policies and regulations relating to mineral exploration and extraction. The agency monitors and facilitates investment in the mining sector. It carries out its function through:

- a. **Mines Inspectorate Department (MID):** The MID has the sole duty of supervising all reconnaissance, exploration and mining operations to ensure that they comply with the provisions of the Act. Other functions of the MID include: supervising and enforcing compliance by mining title holders with all mining regulations relating to health and safety, conducting investigations and inspections necessary to ensure that all conditions relating to the grant of mineral titles as well as the requirements of the Act are complied with, and review programs for controlling mining operations for recommendation to the Minister.¹²
- b. **The Mines Environmental Compliance Department:** This regulatory agency reviews plans, studies and reports required to be prepared by holders of mineral titles with respect to their environmental obligations; monitors and ensures the enforcement of all

¹¹ The Land Use Act No. 6 1978 CAP L5 Laws of the Federation of Nigeria 2004.

¹² Section 17 of the Nigerian Mining and Minerals Act, 2007.

environmental obligations required to be observed by holders of mineral titles; perform periodic audits of the said environmental requirements and make recommendations to the minister where applicable and; liaise with government agency with respect to social and environmental issues involved in mining operations, mine closure and reclamation of land.¹³

- c. **Artisanal and Small-scale Mining Department:** This Department is responsible for assisting and providing support for small-scale and artisanal mining activities in the country as well as the provision of extension services in the country. Other functions of the ASSMD include the provision of extension services to small-scale and artisanal mining title holders, and assisting artisanal and small-scale miners to access the Solid Mineral Development Fund established by the Act.
- d. **The Mining Cadastre Office (MCO):** This department operates under the Ministry of Mines and Steel Development, it is crucial in the management of mineral rights, they are charged with the responsibilities of processing applications for mining licenses, maintaining a registry of all mining license and permits, ensure transparency in the allocation of mineral rights.¹⁴
The licenses/permits which the Mining Cadastre may issue include the following:
 - i. **Reconnaissance Permit:** This permit enables the holder to carry out reconnaissance (exploration of an area to search for the presence of mineral deposits in that area) on a non-exclusive basis.¹⁵ They are, however, prohibited from carrying out drilling activities in the area. This permit upon issuance, lasts for one year and is renewable annually subject to compliance with stipulated terms and conditions.¹⁶

¹³ Section 18 of the Nigerian Mining and Minerals Act, 2007.

¹⁴ Section 5 of the Nigerian Mining and Minerals Act, 2007.

¹⁵ Section 56 of the Nigerian Mining and Minerals Act, 2007.

¹⁶ Section 57 of the Nigerian Mining and Minerals Act, 2007.

- ii. **Exploration License:** This license grants the holder the exclusive right to conduct exploration activities over a certain area of land not more than 200km².¹⁷ It allows the holder to enter upon such land (which is not subject to an existing exploration license, mining lease, scale mining lease or quarry lease) and erect machinery, conduct exploration activities thereon and extract, export, take (to a reasonable extent) and sell samples and specimens of such minerals found in such area.¹⁸ The law also grants the holder of an exploration license the exclusive right to apply for and be granted one or more small-scale mining leases or quarry leases with respect to such areas where it was granted an exploration license.¹⁹ Exploration licenses when granted are valid for 3 years and may be renewed for two further periods of two years each subject to fulfilment of certain requirements.²⁰ In other words, an exploration license can only be valid for a cumulative period of 7 (seven) years.
- iii. **Small-Scale Mining Lease:** The small-scale mining lease permits the holder to conduct artisanal mining operations which does not include the extensive and continued use of explosives, toxic chemicals or agents on an area of land not less than 5 acres but not more than 3km². The holder is not permitted to employ more than 50 workers in a typical workday and is not allowed to carry out underground operations which exceed 7 meters below the surface nor galleries extending over 10 meters from a shaft. Small scale

The Ministry of Solid Minerals Development: The Ministry of Solid Minerals Development (MSMD) is set up to unlock the economic potential of the solid

¹⁷ Section 59(3) of the Nigerian Mining and Minerals Act, 2007.

¹⁸ See Section 59(1) and Section 60 of the Nigerian Mining and Minerals Act, 2007.

¹⁹ Section 61(4) of the Nigerian Mining and Minerals Act, 2007

²⁰ Section 62 of the Nigerian Mining and Minerals Act, 2007.

minerals sub-sector in Nigeria. The MSMD is responsible for identifying the 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.

In recent times, the Ministry of Solid Minerals Development has achieved a tremendous milestone aimed at transforming the mining sector and promoting economic growth. The achievements include:

- i. **Establishment of the Nigerian Mining Corporation:** this aims to enhance Nigeria's position in international mining ventures and improve the management of legacy mining sites while facilitating better collaboration and investment in the mining sector.
- ii. **Creation of Mining Marshals:** This initiative was launched to regulate illegal mining activities, thereby enhancing compliance and governance 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.
- iii. **Community Development Agreements (CDAs):** The ministry approved numerous CDAs, fostering better relationships between mining companies and local communities, which is veritable for sustainable development.
- iv. **Global Outreach and Awareness Campaigns:** The ministry has actively engaged in International marketing efforts to promote Nigeria's vast mineral resources.

2. **National Environmental Standards and Regulation Enforcement Agency (NESREA):**²¹ This agency focuses on environmental management and compliance in the mining sector. Its roles include the establishment and enforcement of environmental regulations applicable to mining industries, conducting Environmental Impact Assessment (EIA), inspections on mining sites and promoting sustainable mining practices to minimize environmental impact.
3. **Department of Petroleum Resources (DPR):** Primarily tasked with regulating the oil and gas sector, the DPR also plays roles in managing coal and other mineral resources related to energy production. Therefore, it regulates the exploration and production of coal and ensures safety and environmental standards while collaborating with MMSD on resource management policies.
4. **State Mining Regulatory Agencies:** This is applicable in 36 states, it oversees the mining activities at the state level, thereby facilitating local community engagement and addressing grievances related to mining.
5. **Mineral Resources Development Fund (MRDF):** This supports the development of the mining sector through financial resources., responsible for funding research and development in the mining sector, supports technology transfer and capacity building and establishing of sustainable mining framework.
6. **Nigeria Geological Survey Agency (NGSA):** It is responsible for geological mapping and resource assessment.

1.4 GAPS IN THE LEGAL AND REGULATORY FRAMEWORKS

The Nigerian Mining sector faces significant legal, institutional and regulatory gaps that adversely affect environmental sustainability and investment potential. These challenges stem from a complex regulatory framework, inadequate enforcement of existing laws, lack of coordination among various governmental

²¹ The National Environmental Standards and Regulation Enforcement Agency (Establishment) Act No. 92 2007.

agencies, inadequate geosciences data and information, industry participants, poorly understood institutions and limited enforcement of regulations, deepening a business-friendly enabling environment and limited engagement, and leverage of industry stakeholders amongst other challenges faced.

1. **Complex Regulatory Framework:** The Minerals and Mining Act of 2007 is the primary legislation governing the mining sector and the associated regulations. However, exhibits several shortcomings which include the cumbersome process of obtaining permits and licenses, involving multiple agencies such as the Department of Geological Survey and the Ministry of Environment. This convoluted structure can prolong application processes and increase costs for investors. Also, the overlapping responsibilities which exist between the federal and State governments, leading to inconsistent policies make it complex and, therefore deter potential investors as they find it difficult to navigate the legal landscape.
2. **Outdated and Archaic:** So far, the principal legislation governing the Mining sector is outdated, Nigeria is still operating under the Mineral and Mining Act of 2007, which to a very large extent doesn't reflect extant realities in the sector. The Nigerian Mining and Mineral laws should be repealed to meet up with contemporary issues such as environmental protection, community rights, and equitable resource distribution.
3. **Weak Enforcement of Regulation:** Notwithstanding, the existing Mining Laws, regulatory agencies frequently face challenges such as corruption and political interference. These issues undermine the effectiveness of existing laws thereby encouraging illegal mining activities to flourish, resulting in significant revenue losses and environmental degradation.
4. **Lack of comprehensive Environmental Compliance:** While the Mining Act mandates environmental protection measures, they are often not specific enough to address the unique challenges posed by the mining sector. Many Mining operations fail to conduct proper Environmental Impact Assessments (EIAs), The absence of comprehensive guidelines on sustainable mining practices has contributed to significant environmental degradation and other adverse environmental consequences.

5. **Land Tenure System:** The Land Use Act of 1978, which is the primary legislation governing the Land tenure system in Nigeria creates complexity and often leads to conflict over property rights. **Section 1** of the Land Use Act, vests all land in the state on the Governor of that state, and such land shall be held in trust in accordance with the provision of the Act and administered for the use and common benefit of all Nigerians also in **Section 6** empowers the local government to grant customary rights of occupancy to individuals or organization for the use of land within their local government area for agricultural, residential and other purposes. However, this legal ambiguity may lead to conflicts between mining companies' local communities and prospective investors.
6. **Fragmented Institutions:** The requirement for permits from various ministries creates inefficiencies. For instance, mining companies must navigate approvals from departments related to finance, environment and local governance. The regulatory landscape in Nigeria's mining sector suffers from fragmentation and lack of coordination among institutions. Various agencies including the Ministry of Mines and Steel Development, the National Environmental Standards and Regulations Environment Agency (NESREA) and State-level mining offices- all play roles in mining regulation. However, the lack of a cohesive framework results in overlaps, miscommunication and delays in decision-making.
7. **Compliance and Monitoring:** There are also gaps in compliance and monitoring in the mining sector, even where regulation exists, compliance is often low due to a lack of monitoring mechanisms. The regulatory bodies, constrained by limited resources and capacity, frequently cannot enforce compliance effectively, allowing operators to flout environmental and safety standards without consequence.

1.5 RECOMMENDATIONS

The mining sector is one of the most promising sectors that can facilitate the diversification efforts of the 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. To address the issue of Legal, Institutional and Regulatory gaps in the mining sector, it is essential to streamline regulatory processes into a “one-stop shop” as the idea of moving from one regulatory agency to another to obtain licenses and permits makes it cumbersome and also causes unjust delay. There’s a need to strengthen enforcement mechanisms for existing environmental laws and regulations. There should be reforms that allow greater State participation in the mining governance while ensuring compliance with federal laws. The Federal Government must as a matter of urgency address the security situation in the northern region of Nigeria which is ore-rich and the Niger Delta region. In recent times, the operation of bandits and terrorist groups in Northern Nigeria and the Middle -Belt region of Nigeria which is rich in mineral resources have affected mining operations and investments. It is advised that the Federal Government intensify its various counter-terrorist onslaught and fight against criminal elements in these regions to pave the way for full utilization of the Nation’s mineral resources. Also, the Ministry’s Mines Surveillance Task Team should collaborate with other security agencies to tackle the challenges of illegal mining and insecurity persistent in some areas, prompting the need for further collaboration with the Ministry of Defence.

“The purpose of this meeting is to work together and find solutions to security challenges, so that mining operations can go on, unhindered,”²²

Defence Minister Abubakar Badaru reiterated the federal government’s commitment to eradicating banditry and other criminal activities nationwide, stressing that efforts have already led to the resumption of mining exploration activities in Zamfara.

“The bandits are already on the run. The military will not rest until the country is fully secured. The President has given us a clear directive to end insecurity in all parts of the country by the end of the year. The National

²² Gov Abdullahi Sule, Nasarawa state Governor. **Reforms in Mining Sector Yielding Results, Febraury,2025.**

Security Adviser (NSA), the Chief of Defence Staff, and our team are working round the clock to actualize that target,”.²³

Privatisation of the mining sector through competitive bidding of existing Federal Government mining properties as a means of kick-starting the sector. There is an urgent need to improve the funding of public mining institutions to ensure effective monitoring and regulation of mining activities. Lastly, there should be strong regulatory and institutional framework which ensures stronger economic and political coordination of minerals and mining policy.

However, addressing these issues could significantly improve both the economic viability of Nigeria’s mining sector and its environmental sustainability.

1.6 CONCLUSION

Mining operations in Nigeria hold significant potential for contributing to the country’s economic development if properly harnessed.²⁴ The Federal Government of Nigeria (“FGN”) is making positive strides towards the growth of the mining sector, which could ultimately boost mining operations in the country. Recently, the Honourable Minister of Solid Minerals Development, Dr Dele Alake (the “Minister”), announced the FGN’s intention to review mining license fees and associated charges.²⁵ This initiative is deemed essential for the comprehensive revitalization of the mining sector and for enhancing financial contributions to the national treasury. Also addressing the legal, institutional and regulatory gaps in Nigeria’s mining sector is crucial for fostering a sustainable and inclusive mining industry. To harness the full potential of its mineral resources, Nigeria must undertake comprehensive reforms that enhance legal clarity, strengthen institutional capacities, and develop robust and enforceable regulations. This move comes in the wake of the FGN's recent effort to enforce regulatory

²³ Minister Badaru Abubakar, Minister of Defence.

²⁴ Mining Review Africa, *Mining in Nigeria: Challenges, Opportunities, and Prospects* (Mining Review Africa, 20 September 2023) retrieved from **Mining in Nigeria: Challenges, Opportunities, and Prospects, Mining Review Africa, 20 September 2023** accessed 24 June 2024.

²⁵ Federal Ministry of Information and National Orientation, *FG moves to Review Mining License Rates* (May 2024) retrieved from **FG moves to Review Mining License Rates, Federal Ministry of Information and National Orientation, May 2024** accessed 1 July 2024

compliance and promote transparency within the mining sector. As part of these efforts, the FGN revoked dormant mining, exploration, small-scale mining, and quarrying licenses due to various infractions, including defaulting on annual service fee payments, maintaining inactive mineral licenses, and engaging in high rates of license racketeering. The Minister also revealed that the FGN is sanitizing the mining environment through the newly unveiled Mining Marshals, who have been conducting operations in parts of the country to protect legitimate miners and combat illegal mining.²⁶ This initiative not only safeguards the interests of lawful operators but also promotes a conducive environment for investment and growth in the sector. It is essential to engage local communities actively in decision-making processes and create pathways for transparent governance in the mining sector. Only through these concerted efforts can we attract foreign investment, ensure sustainable development and alleviate pervasive poverty experienced in the mining communities.

²⁶ Ibid