spotlighting the evolving field of mining law, the Roundtable equips practitioners with the knowledge and tools to engage in regulatory reform, public interest litigation and corporate accountability. It also serves as a strategic platform for mentorship, capacity building and policy influence—enabling lawyers to adapt to emerging challenges while asserting their relevance in national development conversations.

ADEBAYO ADELODUN & CO.,

4TH QUARTERLY ROUNDTABLE

TOPIC:
MINING LAW:
UNTAPPED OPPORTUNITIES
FOR LEGAL PRACTITIONERS

HELD ON SATURDAY
15TH DAY OF MARCH, 2025.

Edited by:
Adebayo Adelodun, SAN, FCIArb

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RESOURCE PERSONS

(1) HON. JUSTICE LAMBO AKANBI (RTD)

(2) DR. MRS. OLUWATOSIN B. IGBAYILOYE

within the statutory definition of "minerals" under Nigerian law.

Concerns were raised about the enforceability of Corporate Social Responsibility (CSR) obligations and the issue of *locus standi* in public interest litigation. Clarifications from the panel confirmed that sand is not categorised as a mineral within the current legal framework and that individuals unknowingly involved in transporting illegal minerals are protected under Section 25 of the EFCC Act.

On the subject of Corporate Social Responsibility (CSR), it was strongly affirmed that legal practitioners have a vital role to play in ensuring that companies fulfil their obligations to the host communities. Furthermore, Community Development Agreements (CDAs) should be negotiated by duly verified representatives of the affected communities to guard against the infiltration of impostors and to ensure that such agreements reflect genuine local priorities and needs.

5.0 CONCLUSION

The Roundtable was hailed as an enriching forum that combined academic rigor with practical relevance, highlighting the need for the legal profession to proactively engage with Nigeria's evolving mining sector. The Adebayo Adelodun & Co. Roundtable continues to make invaluable contributions to the legal profession by fostering interdisciplinary dialogue, uncovering underexplored areas of legal practice and inspiring professional growth. By

4.0 CONTRIBUTIONS FROM THE PARTICIPANTS

The Roundtable benefitted immensely from the robust contributions of legal experts and industry stakeholders, whose perspectives enriched the discourse on mining law and its attendant legal implications.

The discussion commenced with a focus on the enforcement role of anti-graft agencies in curbing illegal mining. Attention was drawn to the distinction between exploration and mining licences, with emphasis on the necessity for strict adherence to the specific terms and purposes attached to each category of licence.

Pertinent questions were raised regarding the rationale behind local community support for illegal mining operations and whether the statutory requirement for Environmental Impact Assessments (EIA) renders Human Rights Impact Assessments (HRIA) redundant. Bureaucratic bottlenecks in the licensing regime were also interrogated, with suggestions proffered on how structured collaboration with informal miners could potentially regularise aspects of artisanal operations.

The jurisdictional conflict between federal and state authorities in relation to mining activities was also examined, particularly in cases where state governments seek to halt operations authorised by federal licences. The legal liability of transporters who unwittingly convey illegally mined minerals was discussed, as was the question of whether certain excavated materials—such as sand—fall

TABLE OF CONTENTS

PREFACE/EDITORIAL NOTE

It is with a deep sense of professional fulfilment that I present this edition containing the proceedings of the 4th Adebayo Adelodun & Co. Quarterly Law Roundtable, titled *"Mining Law: Untapped Opportunities for Legal Practitioners"*, which held on Saturday, the 15th of March, 2025. This publication stands as a testament to the power of collective legal inquiry, open intellectual exchange and shared commitment to the advancement of law as a tool for national transformation. It is a proud continuation of a tradition we began with the first edition of this roundtable series — one that seeks to expand the frontiers of legal scholarship, provoke new thinking within the profession and reimagine the place of law in Nigeria's developmental discourse.

The fourth roundtable was convened at a moment of strategic importance to the Nigerian legal and economic landscape. As the nation continues to contend with the imperative of diversifying its economy beyond the oil and gas sector, attention has increasingly turned to the mining industry — a sector historically underdeveloped, often overlooked and yet replete with latent potentials. It is common knowledge that beneath Nigeria's vast territory lie immense deposits of untapped mineral resources: gold, limestone, bitumen, coal, barite, lithium and a host of other solid minerals. However, what is far less recognised and indeed more pressing for us as legal professionals, is that the successful extraction, regulation and commercialisation of these resources cannot occur in a vacuum. They demand a solid legal infrastructure, a clear regulatory regime, enforceable environmental standards and a professional class of legal practitioners equipped to navigate this terrain with competence and integrity.

2. **Policy Reform**: Government should consider revising existing mining legislation to include provisions for Human Rights Impact Assessments (HRIA), better regulation of Artisanal Miners, and improved institutional coordination.

3. **Regulatory Clarity**: There is need to harmonize federal and state roles in mining governance to prevent conflicts and ensure smoother licensing processes.

4. **Community Engagement**: Lawyers should assist communities in negotiating and enforcing Community Development Agreements (CDAs), ensuring these agreements reflect local needs and are implemented transparently.

5. **Enforcement and Litigation**: The judiciary should proactively interpret mining laws to protect public interest and environmental sustainability. Lawyers are encouraged to test controversial areas of the law in court.

6. **Public Awareness**: Legal practitioners, NGOs and the media should collaborate in raising awareness among host communities about their rights and legal remedies.

7. **Institutional Synergy**: There is also the need to strengthen the capacity and collaboration between agencies such as the Ministry of Mines, EFCC and state authorities to combat illegal mining and enforce compliance.

businessman in commercial farming, hospitality, construction, and mining and Dr. (Mrs.) Oluwatosin Igbayiloye, an academic expert in mining law. Their combined experience offered practical and theoretical insights into the legal dimensions of the mining sector.

2.0 OBJECTIVES

The objectives of the Roundtable were to:

1. Explore the legal, economic and human rights dimensions of Nigeria's mining sector.
2. Expose legal practitioners to emerging opportunities within in the mining law practice.
3. To encourage cross-disciplinary engagement and strategic partnerships between legal practitioners, regulatory agencies and affected communities.
4. Identify gaps in the current legal framework and recommend actionable legal and policy reforms.

3.0 RECOMMENDATIONS

The Roundtable presentations and discussions culminated in the following key recommendations:

1. **Capacity Building**: Legal practitioners should build expertise in mining law and related areas such as environmental law, human rights and project finance.

It was with this context in mind that we chose to devote this fourth roundtable to the exploration of mining law — not as a purely academic subject, but as an evolving field of professional opportunity. The decision to focus on this theme was not driven merely by intellectual curiosity. It was driven by conviction: the conviction that Nigerian lawyers, if properly oriented and strategically positioned, can play an indispensable role in unlocking the enormous value embedded in the mining sector. This publication, therefore, is intended both as a scholarly reflection and a professional invitation — an invitation to the Nigerian legal community to reconsider its role in the evolving architecture of extractive industry governance.

The quality and richness of the discussions at the roundtable were, in no small measure, a function of the erudition and insight of our distinguished resource persons: Hon. Justice Lambo Akanbi Rtd and Dr. (Mrs.) Oluwatosin Igbayiloye. Their respective presentations, which form the centerpiece of this volume, brought to bear a wealth of experience, critical insight and forward-thinking analysis that set the tone for the roundtable and framed the issues with clarity and precision.

Hon. Justice Lambo Akanbi Rtd, in his presentation, offered a judicially grounded exposition on the constitutional and regulatory dimensions of mining law. Drawing on years of experience from the bar, the bench and the enterprise he examined the tensions between federal and state control over natural resources, interrogating the legal implications of overlapping jurisdictions, statutory ambiguities and judicial remedies. His paper shed light on the interpretive challenges inherent in Nigeria's dual governance structure as it relates to land and mineral rights, as well as the judicial responsibility to mediate these conflicts within the bounds of the Constitution and statutory interpretation. The paper provided not only a doctrinal analysis but a practical roadmap for legal practitioners engaged in litigation and dispute resolution within the extractive sector.

In complement to this, Dr. (Mrs.) Oluwatosin Igbayiloye delivered a powerful, well informed presentation that addressed the statutory, environmental and community dimensions of mining law. Her paper explored in detail, the implementation of the Minerals and Mining Act 2007, identifying critical gaps in enforcement, compliance and institutional capacity. She further examined the socio-legal implications of mining operations on host communities, with a particular focus on gender impacts, environmental degradation, and access to legal remedies. What emerged from her analysis was a compelling case for a more integrated, participatory and development-oriented approach to mining regulation — one in which lawyers serve not only as corporate advisors but also as advocates for equity, sustainability and justice. Her contribution reflects the growing recognition that the law cannot be neutral in the face of social and environmental realities and that mining law, in particular, must be wielded as a tool for inclusive development.

Together, these contributions formed the intellectual backbone of the roundtable. Yet the richness of the discourse was amplified by the dynamic interventions of participants drawn from across the legal profession — including judges, academics, regulators, public interest lawyers, commercial solicitors and law students. Their diverse perspectives

HIGHLIGHTS OF THE FOURTH ADEBAYO ADELODUN & CO. QUARTERLY ROUNDTABLE HELD ON SATURDAY, 15TH MARCH 2025

1.0 INTRODUCTION

In his opening remarks, the convener, Alhaji Adebayo Adelodun, SAN, emphasized the purpose of the Roundtable as a platform for intellectual engagement and professional development. He noted that the series, now in its fourth edition, has consistently provided valuable insights into topical issues affecting the legal profession. He explained that the choice of this quarter's theme, "Mining Law: Untapped Opportunities for Legal Practitioners," was deliberate, as it reflects a growing yet underexplored area within Nigeria's legal and economic landscape.

Alhaji Adelodun traced Nigeria's historical reliance on oil, particularly from the 1970s to the 1990s. With dwindling oil revenues over the past two decades, there is an urgent need to explore alternative economic sectors. The mining industry, he noted, presents immense opportunities for legal practitioners, especially as traditional legal fields become saturated. He urged lawyers, particularly the younger generation, to embrace emerging areas like mining law, which involves services in land leases, contract negotiation, regulatory compliance and dispute resolution, among others.

He also introduced the resource persons for the day: Hon. Justice Lambo Akanbi (Rtd), a former jurist and

resolution-human-rights-based-approach-natural-resources-governance-ac

Economic Community of West African States' directive on the harmonisation of guiding principles and policies in the mining sector (ECOWAS Directive) C/DIR 3/05/09 of 27 May 2009 https://www.fao.org/faolex/results/details/en/c/LEX-FAOC197515/

Clarissa Escamilla 'The Importance of Mining in Modern Society' 24 June 2024 https://mining.arizona.edu/news/importance-mining-modern-society

International Council on Mining and Metals 'Our Principles' https://www.icmm.com/en-gb/our-principles

enriched the discussions, providing a kaleidoscopic view of the challenges and possibilities that lie within the mining sector from a legal standpoint.

One of the more striking insights that emerged from the roundtable was the realization that mining law, as a field of practice, is profoundly multidisciplinary. It draws upon elements of administrative law, environmental law, constitutional law, commercial law and human rights law. It also requires a familiarity with contract drafting, regulatory compliance, community engagement and increasingly, with international legal instruments on sustainable development and corporate responsibility. The implications of this are far-reaching. Legal education must adapt, Law firms must rethink their practice areas. Bar associations must invest in specialised training and individual practitioners must cultivate new competencies to engage meaningfully with the sector.

The proceedings also surfaced deeper concerns — concerns about regulatory fragmentation, inadequate legal awareness at the sub-national level, poor enforcement of community rights and the persistent marginalisation of host communities in mining contracts and benefit-sharing mechanisms. These concerns are not new, but they take on renewed urgency in light of growing foreign interest in Nigeria's solid minerals and the increasing global scrutiny of extractive practices under ESG (Environmental Social and Governance) frameworks. It is no longer sufficient for lawyers to operate as technicians of the law. We must be strategic actors in shaping how the law is used, interpreted and reformed in ways that serve both public and private interests.

It is worth noting that this roundtable was never intended to be a mere intellectual exercise. It was conceived as a platform for professional reorientation — a space for legal practitioners to learn, unlearn and relearn the skills and mindsets needed to thrive in a changing professional landscape. The goal was and remains, to foster a legal culture that is proactive, informed and responsive to the nation's developmental aspirations.

In presenting this publication, I do so with hope and conviction. I hope that it will spark further inquiry, training and investment in mining law as a legitimate and rewarding field of practice. I hope that it will inspire the law school to introduce mining law into its curricula, thereby preparing the next generation of lawyers for the demands of the future. I hope it will encourage legal practitioners to move beyond conventional practice areas and explore the vast and largely uncharted territories within Nigeria's solid minerals sector. And above all, I hope it will contribute to a broader professional awakening — a realisation that the role of the lawyer is not limited to courtroom advocacy or document drafting, but includes shaping the policy and legal environments in which industries operate and societies thrive.

As Convener of this roundtable, I take this opportunity to express my profound appreciation to Hon. Justice Lambo Akanbi Rtd and Dr. (Mrs.) Oluwatosin Igbayiloye for their time, scholarship and generosity of thought. I am equally grateful to all participants whose contributions animated the discussions and enriched the collective understanding of the subject. I thank my colleagues and staff at Adebayo Adelodun

Adebayo Adelodun & Co., Quarterly Roundtable

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Conclusion: The Future of Mining Law Practice in Nigeria

Mining legal practice in Nigeria has a promising future, as the sector is expected to grow significantly. Legal practitioners have a unique opportunity to help shape a more sustainable and responsible mining business. The demand for specialized legal skills is predicted to skyrocket, opening up a profitable and demanding career path for individuals willing to invest in this subject. Promoting the development of mining law knowledge in Nigeria necessitates a collaborative effort between universities, law schools, professional organizations, and industry partners. By providing opportunities for specialized training, mentoring, and networking, we can help Nigerian lawyers become top specialists in this crucial subject. Legal professionals play an important role in ensuring that mining operations strike a balance between economic development, environmental protection, community well-being, and ethical concerns.

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& Co. for their dedication to excellence and their commitment to the ideals that this roundtable represents.

It is our firm belief that legal practitioners must be at the forefront of national transformation. We must constantly evolve, re-skill and reposition ourselves to meet emerging challenges and seize new opportunities. Mining law is one such opportunity — vast, untapped and waiting for those bold enough to explore it.

As I commend this publication to readers, we are reminded of the words of Justice Niki Tobi, of blessed memory who once observed that "the law must not be a silent spectator in the drama of development." It is in this spirit that *Mining Law: Untapped Opportunities for Legal Practitioners* is offered — not merely as a collection of papers, but as a legal map pointing toward new directions in professional practice and national development.

May this volume serve as a resource, a guide and an inspiration for all.

ADEBAYO OBA ADELODUN, SAN, FCIArb.
APRIL 2025

MINING LAW: UNTAPPED OPPORTUNITIES FOR LEGAL PRACTITIONER

BY

LAMBO AKANBI*

Courtesies

To start with, I will like to thank the organizers of this forum, particularly the office of Oba Adelodun SAN, & Co., for inviting me to present a paper on the subject matter. I am so highly honoured to be part of this historic event.

INTRODUCTION

In recent years, the mining sector in Nigeria has emerged as a pivotal component of the nation's economic landscape, presenting a myriad of untapped opportunities for legal practitioners. Before Nigeria discovered oil, there had been investment in mining, but that was left behind in boom. After the 2014 price drop in oil, the government began looking for ways to diversify, and mining readily came to mind. Nigeria has about 44 types of minerals available for mining, such as Kaolin, Gold, Gypsum, Iron, Oil, Lead, Zinc, Phosphate, Lithium, Bitumen, Limestone, Tantalite, etc.

* Retired Judge of the Federal High Court of Nigeria

Developing Expertise in Mining Law: Education and Training

In order to address the challenges and meet up with the growing demand for legal expertise in the mining sector, Nigerian lawyers need to invest in acquiring specialized knowledge and skills. This can be achieved through the following;

- Academic programs and courses: Universities and law schools should offer specialized programs and courses in mining law to equip students with the necessary theoretical and practical knowledge.

- Professional development opportunities: Workshops, seminars, and conferences provide opportunities for lawyers to stay updated on the latest legal developments, industry trends, and best practices.

- Internships and mentorship programs: Internship and mentorship programs with experienced mining lawyers provide practical experience and guidance, allowing young lawyers to learn from seasoned professionals.

- Networking and building relationships: Networking and building relationships with industry stakeholders, including mining companies, government agencies, and other professionals, is crucial for understanding the practical aspects of mining law and developing a strong professional network.

Challenges and Opportunities for Legal Practitioners in Mining Law

Despite the growing potential of the Nigerian mining sector, legal practitioners encounter several challenges in specialising in mining law:

- **Inadequate awareness:** There is poor awareness of the opportunities in the field.
- **Lack of expertise:** A significant gap exists in the number of Nigerian lawyers with specialized knowledge of mining law. This lack of expertise hinders the growth of the field and makes it difficult to attract skilled legal professionals.
- **Competition from foreign law firms:** Foreign law firms with extensive experience in international mining operations are increasingly active in Nigeria. This competition puts pressure on Nigerian lawyers to enhance their expertise and stay competitive.
- **Need for specialized training:** The complex legal framework and technical aspects of mining require specialized training and education. Nigerian lawyers need to invest in ongoing professional development to keep up with the latest industry standards and legal developments.

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This paper will therefore, explore the revolving legal landscape in Nigeria mining sector, highlighting key areas where legal expertise is not only needed but also presents significant prospects for growth and development in the practice of law.

But before doing that, let me quickly talk on the requirements needed to be a participant in the industry. The Mining Act is regulated by the Minerals & Mining Act 2007, as amended. The Act vests control and ownership of ALL PROPERTIES AND MINERALS in, under or upon any land in Nigeria in the Federal Government of Nigeria. The Act further prohibits the exploitation or exploration of minerals without the grant of the requisite permit. Individual can acquire Mining rights from the Federal Government of Nigeria.

MINING RIGHTS AND TITLE

By virtue of the Constitution of the Federal Republic of Nigeria 1999, and the Nigerian Minerals and Mining Act 2007, the Federal Government has title to all mineral resources beneath or upon any land within Nigeria, including Nigeria's continental shelf, territorial waters and exclusive economic zone.

Private parties can acquire mining rights from the Federal Government. Title to minerals transfers from the Federal Government to the mining rights holders upon the lawful extraction of such minerals from the ground.

REQUIREMENTS FOR APPLICATION FOR MINERAL TITLES- SECTION 46, NIGERIA MINERALS AND MINING ACT, 2007

a) RECONNAISSANCE PERMIT

The Mining Cadastre Office shall, within 30 days of the receipt of application of any qualified applicant and upon the payment of the prescribed fees, grant and issue a Reconnaissance Permit to search for minerals. The permit enables the holder to carry out reconnaissance on non-exclusive basis. The holder of a Reconnaissance Permit is not to engage in drilling, excavation or other sub-surface techniques, and must conduct activities in an environmentally and socially responsible manner and compensate for any damage to crops or property in the course of prospecting. The permit is issued for one year and it is not transferable, but renewable annually as further spelt out in Sections **57** and **56** of the **Nigeria Minerals and Mining Act, 2007** and the **Mining Regulation 2011.**

b) EXPLORATION LICENSE (EL)

(Section 48 and 59 of NMMA, 2007)

The Nigeria Mining Cadastre Office, on receipt of a valid application, is obliged by the law to grant and issue an Exploration License within 30 days.

A license will not be granted over any land that is subject of an existing Exploration License, Mining Lease, Small Scale Mining Lease, Quarry Lease or closed to

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laws and regulations. Lawyers can advise on mergers, acquisitions, and asset financing in mining projects.

- **Environmental law and regulations:** Mining lawyers must be well-versed in environmental law and regulations. They advise clients on obtaining environmental permits, complying with environmental standards, and handling environmental disputes. As the world is shifting towards sustainable mining, legal practitioners can offer environmental and social governance advise and compliance services to mining companies to align their activities with international best practices. They can also guide the companies to perform corporate social responsibility (CSR) obligations to local communities.

- **Land rights and access:** Securing land rights for mining operations is a critical aspect of mining law practice. This often involves navigating complex land ownership issues, resolving land disputes, and ensuring that the mining operations are conducted within legal boundaries.

- **Dispute resolution and litigation:** Disputes in the mining sector can arise from a variety of issues, including contract breaches, environmental violations, and land ownership conflicts. Lawyers specialising in mining law represent clients in mining-related disputes, including litigation, arbitration, and mediation.

- Africa mining Vision (AMV)
- Economic Community of West African States' directive on the harmonisation of guiding principles and policies in the mining sector (ECOWAS Directive)

Key Areas of Legal Practice in the Mining Sector

The practice of mining law in Nigeria encompasses several key areas:

- **Mining contracts and agreements:** Lawyers specializing in mining law play a crucial role in drafting, negotiating, and enforcing mining agreements, joint venture agreements, and community development agreements. This involves ensuring that the contracts are legally sound, protect the interests of their clients, and comply with all relevant laws and regulations.
- **Company incorporation and obtaining licenses and permits:** These include the process of acquiring mining permits, licenses, and exploration rights.
- **Due diligence and legal compliance:** Conducting thorough legal due diligence on mining assets is essential to assess the risks and opportunities associated with a particular project. This involves reviewing legal documents, licenses, permits, environmental permits, and other relevant documentation to ensure compliance with all relevant

prospecting/mining activity (e.g. forest reserves, military areas, government development areas, national heritage area etc).

The duration of an Exploration License is three (3) years, provided that title holder has complied with minimum work commitment/ programme and all other legal requirements.

c) SMALL SCALE MINING LEASE (SSML)

(Section 49 of NMMA, 2007)

The Mining Cadastre Office shall, on receipt of a valid application, grant and issue a Small Scale Mining Lease (SSML) within 45 days. A SSML shall not be granted in respect of any area within an exploration license area, mining lease area or quarry lease area to any person except the holder of an exploration license, quarry lease or mining lease covering the area. The duration of a SSML is five (5) years and is renewable for further periods of five years provided that the minimum work obligations have been met. The area of land for a SSML shall not exceed 15cu 1.e. 3km^2.When the level of operations of Small Scale Mining Lease exceeds any of the criteria established in definition of SSML, the holder shall convert such a lease into mining lease by submitting a written application to the Mining Cadastre Office (MCO).

d) MINING LEASE

(Section 50 of the NMMA, 2007)

The Mining Cadastre Office shall, on receipt of a valid application, grant and issue a Mining Lease within 45 days of the application. The duration of a Mining Lease is 25 years, renewable every 20 years, provided that the holder has complied with minimum work commitments and that all other legal and regulatory requirements have been met.

The lease area shall be determined in relation to the ore body as defined in the feasibility study, in addition to an area reasonably required for the working of the deposit, not exceeding 50Km² (245 CUs).

e) Quarry Lease

(Section 51 of the NMMA, 2007)

All operations for the extraction of construction materials are to be carried out under a Quarry Lease. On receipt of a valid application, the Mining Cadastre Office shall grant a Quarry Lease to the applicant within 45 days. The duration of a Quarry Lease shall not exceed five (5) years and may be renewed every five years as required, provided the renewal application is made within three (3) months before the expiration of the lease. The area of land shall not exceed 5Km². (25 CUs).

At the state level is the State Mineral Resources and Environmental Management Committee (section 19 NMMA)

- The Committee is established in each state of the country to consider matters relating to the development of mineral resources.

International Law

- Sustainable mining practices- This indicates the need for mining companies to adopt sustainable mining practices tending towards sustainable development goals (SDGs) and incorporate Corporate Social responsibility in their policies. e.g. principles by the International Council on Mining and Metals (ICMM).

▶ International laws- these are international agreements and voluntary codes formulated by international organisations to regulate the conducts of MNCs. e.g. Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework (UNGPs) HR/PUB/11/04 2011.

▶ Regional initiatives

- The Resolution on a Human Rights-Based Approach to Natural Resources Governance adopted by the African Commission (the Resolution) ACHPR/Res224 (LI) 2012.

- The orderly and sustainable development of Mineral Resources
- Monitoring compliance with Community Development Agreements (CDA) by industry operators
- Promoting research and ensuring the development of a geo-scientific data bank
- See, generally, Section 4 (a) of the NMMA

The Ministry is structured with the following departments:

- ▶ Mining Cadastre Office
- ▶ Mines Inspectorate
- ▶ Artisanal and Small-Scale Mining
- ▶ Environmental Compliance
- ▶ Finance/Administration
- ▶ Metallurgical Inspectorate and Raw Materials Development Department
- ▶ Steel and Non-Ferrous Metals Department
- ▶ The Nigerian Institute of Mining and Geosciences
- ▶ The Nigerian Geological Survey Agency

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f) Water Use Permit

(Section 52 of the NMMA, 2007)

The area of land in respect of which any water use permit (WUP) is granted shall not exceed the area reasonably required for the purpose of the permit as defined in the regulation. A WUP will remain in force as long as the mining lease, SSML, or quarry lease for which the water use permit was granted remains valid.

Mining titles are primarily granted on a first come, first served basis. However, the Mining Act grants the Minister of Mines and Steel Development (Minister) with the power to designate certain areas where a mining lease or exploration license may be granted further to a competitive bidding exercise.

Holders of mining titles are required to:

- comply with all applicable laws, regulations and conditions imposed on the title;
- ensure that exploration and mining operations are conducted in a safe and skillful manner;
- minimize and manage any environmental impact resulting from their activities;
- rehabilitate or reclaim all disturbed land; and
- Pay rent and royalties that may become due.

In addition, mining lease holders are required to secure an approved environmental impact assessment report and work programme in respect of proposed mining operations; conclude a community development agreement with its host community before the commencement of mine development or extraction; commence mine development within 36 months from the date of the aforementioned approvals in the case of a mining lease for exploiting mineral resources, or within 12 months in the case of a mining lease for exploiting mineral water; and keep in continuous employment a person who possesses adequate professional qualifications and experience in mining to supervise mining operations.

An exploration license confers an exclusive right to apply for a mining lease in respect of any part of a license area. To convert to a mining lease, an exploration license holder must demonstrate a commercial discovery and have fulfilled all the conditions attached to the exploration license. The holder of a small-scale mining lease may also convert to a mining lease provided it meets the qualification requirements for one.

UNTAPPED OPPORTUNITIES FOR LAWYERS:

The minerals and mining Act does not have provisions for certain duties which must be immediately carried out by lawyers. However, there are provisions in the Act which are of specialized nature and have remained largely untapped. Some of these provisions are:-

- Environmental regulations such as:

-*The National Environmental (Noise Standards and Control) Regulations, 2009.*

-*The National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009.*

-*The National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011*

-*The National Environmental (Quarrying and Blasting Operations) Regulations 2013*

- *The Explosives Act and Regulations*
- *The Water Resources Act 1993*

Mining Institutions

- **The Ministry of Mines and Steel Development (NMMA):** the Ministry is saddled with the responsibility for policy making, administration and regulation of Nigeria's minerals and metals sector. The Minister is under obligation to ensure the followings:

- Supervision of administration of the Act
- Formulation and issuance of policies

- ***Nigerian Minerals and Mining Regulations 2011-issued by virtue of Section 21 of the NMMA:*** These Regulations define the rules and processes in respect of matters mentioned in the Act and give effect to the implementation of the provisions of the Act.

- ***National Minerals and Metals Policy 2008:*** The policy aims for a conducive business environment with the Government acting as motivator/moderator to stimulate private sector investment.

- ***Environmental regulations- environmental protection, waste disposal, water use, and emissions:***

  -***Environmental Impact Assessment Act Cap E12 LFN 2004:*** The Act requires the submission of an environmental impact assessment that gives details of the potential impact of a project on the environment.

- Land use and ownership: ***Land Use Act Cap L5 LFN 2004:*** Access to land for mining purposes is regulated by the Land Use Act.

Other regulations

- *The Nigeria Extractive Industry Transparency Initiative Act (NEITI)* which promotes transparency and accountability

Adebayo Adelodun & Co., Quarterly Roundtable

1. REGULATORY COMPLIANCE AND LICENSING

To advise mining companies on requirements for permit and compliance with the Mining Act 2007.

2. CONTRACT DRAFTING AND NEGOTIATION

Joint venture agreement, memorandum of understanding, offtake agreements and equipment leasing and contracts.

3. LAND ACQUISITION AND COMPENSATION

Resolving disputes and drafting C.D.A (Community Development Agreement).

4. ENVIRONMENTAL GUIDELINE

Environmental impact assessment, etc.

5. DISPUTES RESOLUTION AND LITIGATION

Where a dispute or disagreement occurs between a title holder and the ministry. How to resolve same before litigation, weather there are conditions precedent before going to court. Any fulfilment of conditions precedent before resorting to court. State or Federal High court, which has jurisdiction.

6. TAXATION AND INVESTMENT ADVISORY

Advising foreign investors and safeguarding the interest of the title holder and the host community.

7. **SECURITY INTERESTS AND PROJECT FINANCING**

Title holder's assets as collateral for loans.

8. HELPING ARTISANAL MINERS formalized their operations by registering them as a cooperative organization for their operations.

9. Work towards establishing a more transparent and unified land tenure system that clearly distinguishes between Federal and State ownership and usage rights. I will come to that later herein.

10. Encourage cases to be brought before our courts to seek judicial interpretation of ambiguous legal provisions regarding responsibilities in mining activities. This can help set precedents and clarify the law. Lawyers can advocate for a comprehensive review of existing mining laws and land tenure systems to clarify roles and responsibilities. This includes Federal laws like the Nigerian Minerals and Mining Act and State laws governing land use. They can also engage in policy advocacy to promote the development of clear policies that delineate the responsibilities of Federal and State governments in mining. This can involve proposing amendments to existing laws to reduce overlaps and conflicts. By adopting these strategies, Nigerian lawyers can play a crucial role in addressing the complexities of mining governance and land tenure, ultimately promoting sustainable development in the sector.

Adebayo Adelodun & Co., Quarterly Roundtable

resulting in poor health and loss of lives and livelihood. The impacts result in the violation of rights to life, health, water, including safe and healthy environment. These human rights violations can lead to protest by host communities against companies which may lead to torture, cruel and inhumane treatment by company's personnel. These problems need to be addressed through effective policies, collaboration between relevant stakeholders and other measures.

Legal Framework and Regulations

National laws

- **Principal laws**

- ***The 1999 Constitution of the Federal Republic of Nigeria:*** The control of mines and minerals is exclusively under the Federal Government as provided by the Constitution.

- ***Nigerian Minerals and Mining Act No: 20 of 2007:*** The NMMA is structured into six chapters and 165 sections. It covers matters such as ownership and control of minerals; prospecting, mining and quarrying; small scale mining; possession and purchase of minerals; environmental considerations and rights of host communities; offences and penalties as well as miscellaneous provisions. The Act regulates mineral titles like reconnaissance Permit, exploration Licence, small-scale Mining Lease, mining Lease, quarry lease and water use permit

The importance of mining include:

- Manufacturing of products:- Extraction of Minerals and metals crucial for manufacturing other products– e.g. the average smartphone contains over 60 different types of metals and Copper is used for electrical wires
- Economic development:- The mining industry contributes approximately $1.9 trillion to the global economy each year.
- Infrastructural development:- the world's tallest building, the Burj Khalifa in Dubai, required 103,000 square meters of glass and 15,500 square meters of stainless steel—materials all sourced from mining.
- Technological advancement/exchange:- by 2025 the global electric vehicle market is expected to consume over 1.4 million metric tons of lithium.
- Job opportunities

Notwithstanding the benefits and importance of the mining sector to the economy and citizens of the nation, there are challenges plaguing the sector which are consequences of the activities of mining companies in the affected mine communities. They include economic, social, and environmental impacts; displacement of local communities and loss of farmlands, air and water pollution as a result of toxic release, environmental degradation, child labour, etc. These impacts threaten lives and exposes people to harm,

FEDERAL GOVERNMENT AND STATE GOVERNMENTS – (Conflict Of Power over Minerals in the States)

The Federal Government of Nigeria has the Authority to allocate land for mining but States control land use at the local level. This can create conflicts, especially when local communities are involved. Resolving the overlapping responsibilities of Federal and State governments in mining activities in Nigeria, particularly given the unclear land tenure systems, involves a multi-faceted approach. Here are some strategies that lawyers and legal practitioners might consider:

Section 44 (3) of Nigerian Minerals and Mining Act Provides:

I. The entire property in and control of all minerals resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout 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.

II. All lands in which minerals have been found in commercial quantities shall, from the commencement of the Act be acquired by the Government of the Federation.

WHO HAS THE TAXING POWERS?

The Act that provides guidance as to the taxing powers of the various tiers of Government is:-

Taxes and Levies (Approved List for Collection) Act (The Taxes and Levies Act) clearly enumerates the various taxes the Federal, State and Local Governments are entitled to collect. The Act does not state who has the taxing powers for mining royalties. This has been argued on the jurisprudential premise that royalties are not taxes, but consideration paid for the use of an asset such as land as in the case of Mining. In the circumstances aforesaid, it is safe to conclude that since it has been established that ownership of Minerals is vested in the Federal Republic of Nigeria, the Federal Capital Territory has the exclusive powers to collect Mining royalties. See further the Exclusive Legislative List in the Constitution.

The matter has not ended yet though, we need to consider the States perspective. States in times past have misconstrued their authority over Mining royalties particularly due to the provision of section 1 of the Land Use Act which provides: -

> **"Subject to the provisions of this Act, all land comprised in the territory of each state in the Federation is hereby vested in the Governor of that state, and such land shall be held in trust and administer for the use and common**

Adebayo Adelodun & Co., Quarterly Roundtable

covered the Jos Plateau and areas of Enugu State for tin, ores and for coal but the sector later had a decline. Commercial oil was discovered in 1956 and production commenced in 1958.

Due to economic recession which emanated from the fall in the price of crude oil in the international market and from other challenges in the oil and gas sector, the solid minerals industry in Nigeria is currently one of the areas of diversification of the economy. Coal, tin, columbite, gold, iron ore, lead, zinc, bitumen, limestone, and many more mineral resources are abundant in the nation. The need for foreign investment in the mining industry to drive economic growth, poverty reduction and good opportunities became a drive for reforms in the industry- to create a conducive environment for foreign investors.

Nigeria is richly endowed with abundance of mineral resources. About 44 Minerals across the nation, e.g. the Segilola gold mining in Osun State. The Segilola gold mine is regarded as the most advanced gold project in Nigeria with a total reserve of 517, 800 gold ounces grading at 4.02 g/t and now the first Nigeria's commercial gold deposit. The government is focused on attracting significant investment in exploration of her mineral resources. However, the level of development is low compared to other African countries- e.g. South Africa and Ghana. The contribution of the sector to the GDP of the economy is still low-less than 1%.

MINING LAW: UNTAPPED OPPORTUNITIES FOR LEGAL PRACTITIONER

BY

OLUWATOSIN B. IGBAYILOYE MRS.*

INTRODUCTION

This theme explores the growing potential of mining law as a specialised field for legal practitioners in Nigeria. Mining law and practice addresses the legal aspects of mining operations. It includes all of the rules and legislation pertaining to the extraction and exploitation, mining and processing of minerals. The demand for legal expertise in mining law is expected to increase significantly as the sector expands. Potentially, Nigerian lawyers have the opportunity to become leading experts in this field. The discussion on mining law involves different areas, such as property rights, environmental law, dispute resolution, and regulatory compliance.

An overview of mining and its importance

Nigeria has a long history of mining, which can be traced back to pre-colonial times. Historically, past mining activity

* Lecturer, Department of Jurisprudence and International Law, Faculty of Law University of Ilorin, Ilorin, Nigeria.

benefit of all Nigerians in accordance with the provisions of this Act".

That is the provision of the Act the Governors rely upon to assume authority to collect royalties. They ignorantly believe the power/ authority under section 1 of the Land use Act extended to the Minerals beneath the land. This historical misunderstanding has potentially fueled conflicts between State and Federal Government.

While the land use Act vests ownership of land in State Governors in trust for the Nigerian people, it does not expressly grant ownership and control of the minerals beneath the land on the State Governors. One can argue though, that ownership of land and the minerals beneath is vested in the Governor of a State based on the Latin maxim "quid quid plantatur solo solo cedit" which means that what is affixed to the land (including minerals beneath) belongs to the land, hence giving the Governor ownership of Minerals beneath the land. Respectively disagreeing, I am of the firm view that based on the supremacy of the Nigerian Constitution to any other law in Nigeria, that argument cannot hold. This is because the Constitution expressly grants ownership of minerals in the Federal Republic of Nigeria and on the basis of the Constitution's Supremacy over other laws, the argument of the Latin maxim of "quid quid plantatur solo solo cedit" can't hold.

Inspite of this seeming clarity of the Constitution on the limited powers of the States in mining matters, some State

Governors have remained recalcitrant and audacious of the Federal might.

In a decided case of ***CRUSHED ROCK INDUSTRIES LTD –VS- EBONYI STATE GOVERNMENT***, (unreported **but** contained in **the** decision of his lordship, my brother, Ahmed Mohammed of the Federal High Court Sitting in **Abuja**,) decided that the sealing and shutting down of the company operation at Ishiagu by the State Governor was illegal. The court also ordered the Governor to pay 10 Million to the company as damages.

Let me give you the gist of the case. The company challenged the closure of its mining site at Ishiagu in Ebonyi State. The Defendants in the case are the State Government, Federal Ministry of Mines and Steel development, Mining Cadastre, Attorney General of Ebonyi State and others. The Plaintiff urged the court to declare that the illegal entry and unilateral sealing up of its quarry site at Ebonyi without a Court order was illegal. It prayed the court for an order of immediate reopening of its quarry site.

The Attorney General of Ebonyi State filed a Preliminary Objection challenging, inter alia, the territorial jurisdiction of Abuja Federal High Court in respect of the subject matter located in Ebonyi State, opining that it is the Ebonyi division of the Federal High Court that has jurisdiction to entertain the matter.

The mining Cadastre Office, one of the Defendants, agreed with the plaintiff that all activities involving mining in Nigeria

guiding them through these multifaceted issues. By leveraging their expertise in contract negotiation, environmental law, and risk management, attorneys can not only enhance the operational efficiency of mining enterprises but also contribute to more sustainable practices within the industry. As the demand for resources continues to grow, the intersection of law and mining will become increasingly critical, providing legal practitioners with a unique platform to influence the future of this vital sector. Embracing these opportunities will not only advance individual careers but also promote a more responsible and innovative mining landscape.

Finally, I sincerely thank you for creating this annual ritual of a roundtable discussion and be made a discussant herein. I see this annual intellectual gathering as an avenue for creating an environment that nurtures collaboration and inspires innovation. I look forward to future events and a continuation of the conversations sparked here today. May Allah bless us with a long healthy life and keep us safe from every harm and evil.

Ma'a salam.

suit for parties to settle amicably upon studying the processes filed and exchanged by the parties to discover the ground that exist for such. I have done so and I can see that it would not serve any useful purpose making an order for the parties to return to amicable settlement..."

The aforesaid provisions of the Nigerian Minerals and Mining Act apply herein. That being the case, the failure to comply with the said provisions by the 1st and 2nd Respondents was such that the Court could not by discretion waive.

In the result, this appeal succeeds, it is hereby allowed. The case of the 1st and 2nd Respondents is hereby struck out and the Ruling of the Court below is hereby set aside."

CONCLUSION

In conclusion, the mining industry presents a wealth of untapped opportunities for legal professionals, driven by the sector's complex regulatory environment, emerging technologies, and increasing focus on sustainability and social responsibility. As mining companies navigate the challenges of compliance, environmental impact, and community relations, lawyers can play a pivotal role in

is contained in the Exclusive List of the Constitution and as such, only the Federal Government through the Mining Cadastre which has the power to discipline the Plaintiff when the need arises. He further told the court that there was no report whatsoever to their office on any hazardous activity of the Plaintiff at its mining site.

His lordship did not hesitate in dismissing the Preliminary Objection, holding that two of the Defendants have their Head Offices in Abuja. It further held that only the Federal Government of Nigeria, as conferred on it by section 251 of the Constitution that can take any action whatsoever on issues related to mining in Nigeria.

Also of particular interest is the provision of **Section 141 of Nigeria Minerals and Mining Act 2007** (as amended). Legal practitioners are advised to pay attention to this provision. What does it state?

Section 141(1):-

> **"Any dispute arising between the holder of a Mineral Title and the Government in respect of the interpretation and application of this Act, its regulations and conditions of Mineral titles shall be resolved in the first instance, on an amicable basis"**

Section 141(2):-

> **"Where the dispute is in the nature of a bonafide investment dispute under subsection (1) of this section, it shall be resolved in accordance with the provisions of the Nigeria Investment Promotion Commission Act Cap N117.L.F.N 2004".**

Section 141(3):-

> **"Any other dispute between the holder of a Mineral title and the Government shall be resolved in the Federal High Court, if not settled in accordance with the provisions of Subsections (1) and (2)".**

QUESTION:-

I. Is section 141(1), (2), and (3) conjunctive or disjunctive. Put in another way; must an aggrieved title holder satisfy all the requirements of the section or it is just enough to satisfy the first condition of "an amicable basis."

II. Can an aggrieved title holder take advantage of the provision of section 141(3) after having satisfied the condition stipulated in section 141(1) by approaching the Federal High Court to ventilate his grievance? OR- must he, after meeting the first condition in

The issue herein can be likened to that of pre-action notice.

Where non-service of a pre-action Notice is found where the Statute provides for it, the suit is rendered incompetent, the jurisdiction of the Court for that purpose, where other conditions on jurisdiction are not wanting, will be on hold until the condition precedent is complied with. In other words, by the operation of Section 141 (1) and (2) of the Nigerian Minerals and Mining Act, in the instant appeal, the jurisdiction of the Court should be put on hold until the relevant provision of the Act is complied with. See the case of *EZE – Vs- OKECHUKWU & ORS 2002 LPELR-1194 SC.*

One therefore fails, respectfully, to agree with the Court when it stated on page 773 of the Record thus:

"Otherwise, such order would mean shutting out an aggrieved litigant and placing such litigant at the mercy of his adversary. It would hand a pyrrhic victory to the adversary to the chagrin of justice. Therefore, before the Court would make an order striking out the

Act and Regulations 16 and 17 to be clear and unambiguous as it so stated on page 772 of the Record. However, it took the position that judicial discretion could be exercised and it came to the conclusion that to uphold the Appellants' objection on its jurisdiction would not serve any useful purpose as earlier stated.

Respectfully, in my view and humbly, the Court misled itself in the overall analysis of its responsibility under the Nigerian Minerals and Mining Act particularly with regard to the interpretation of the above quoted relevant portion. Was there room in the said provision of Section 141 of the Act for the exercise of judicial discretion as the Court did; the answer is in the negative. Consequently and respectfully, the Court reached a wrong and unacceptable conclusion when it held that Section 141 (1) did not apply.

It is pertinent at this juncture to state that the submission by the 1" and 2" Respondents' learned Counsel on the provision of Section 141 (1) and (2) is unacceptable and cannot hold.

Adebayo Adelodun & Co., Quarterly Roundtable

section 141(1) also necessarily comply with section 141(2) before he can approach the court.

Let us examine one or two cases of our courts on this matter.

In **SS MINERAL RESOURCES Ltd and 2 others –Vs- The Ministry of Mines and Steel development and 1 other** which came up before the Federal High Court Abuja. The Court on 8th May, 2020 overruled the Preliminary Objection complaining about non-compliance with the provisions of subsections (1) and (2), and regulations 16 and 17 and held thus:-

> **"The hostility of the processes filed and exchanged by the parties reveals that this court would be making an order for amicable settlement in vain and the court does not make an order in vain.**
>
> **The court can only make an order for amicable settlement where the possibility exists. It does not exist here. Therefore the provision of section 141(1) does not apply in the circumstances and I so hold."**

The matter went on appeal in Appeal **No.CA/ABJ/CV/354/2020 (Unreported) between the Ministry of Mines and Steel development and 1 other (appellants) –v- SS Mineral Resources Ltd and**

2 others (respondents). This is what the court said, E. D. Williams-Dawodu, JCA delivering the lead judgement:

> **"The Court below found the provision of Section 141 of the Nigerian Minerals and Mining Act to be clear and unambiguous. However, it took the position that judicial discretion could be exercised and it came to the conclusion that to uphold the Appellants' objection on its jurisdiction would not serve any useful purpose.**
>
> **Section 141 of the Nigerian Minerals and Mining Act**
>
> **(1) Any dispute arising between the holder of a Mineral title and the Government in respect of the interpretation and application of this Act, its regulations and conditions of mineral titles shall be resolved, in the first instances, on an amicable basis.**
>
> **(2) Where the dispute is in the nature of a bona fide investment dispute, and such dispute is not amicably settled as provided under subsection (1) of this section, it shall be resolved in accordance with the provision of the Nigerian Investment Promotions**

Commission Act, Cap N117 Laws of the Federation of Nigeria, 2004.

(3) Any other dispute between the holder of a Mineral title and the Government shall be resolved in the Federal High Court, if not settled in accordance with the provision of subsection (1) and (2) of this section.

Regulation 16 thereof provides the steps and procedure for complaints to be made to the Committee where a party is aggrieved. And in particular, Regulation 17 clearly states thus:

Regulation 17

(1) Any person aggrieved by the decision of the Ministry or any of its agencies on any application or matter under this Regulation may within seven (7) days after being notified of the decision appeal to the Minister for review.

(2) The Mineral title holder if not satisfied with the outcome of the appeal to the Minister, may seek redress from the Federal High Court.

The Court below found the above quoted provision of Section 141 of the