



GAP ANALYSIS OF THE CONTRACTING REGIME OF NIGERIA'S MINING SECTOR

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**Africa
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ABBREVIATIONS

ACEP	Africa Centre for Energy Policy
AMV	Africa Mining Vision
ASAI	Average Service Availability Index
ASM	Artisanal and Small-scale Mining
ASMD	Artisanal and Small-Scale Mining Department
CIT	Corporate Income Tax
CITA	Companies Income Tax Act
ECOWAS	Economic Community of West African States
EIA	Environmental Impact Assessment
EL	Exploration License
EMDP	ECOWAS Mineral Development Policy
EMMMDA	ECOWAS Model Mining and Minerals Development Act
FG	Federal Government
FIRS	Federal Inland Revenue Service
GDP	Gross Domestic Product
LBMA	London Bullion Market Association
MCO	Mining Cadastre Office
MECD	Mines Environmental Compliance Department
MID	Mines Inspectorate Department
MIREMCO	Mineral Resources and Environmental Management Committee
ML	Mining Lease
MMSD	Ministry of Mines and Steel Development
MNCs	Multi-National Companies
MW	Megawatt
NCS	Nigeria Customs Service
NEITI	Nigerian Extractive Industries Transparency Initiative
NESREA	National Environmental Standards & Regulations Enforcement Agency
NGSA	Nigeria Geological Survey Agency
NIMG	Nigerian Institute of Mining and Geo-sciences
NIWA	National Inland Waterways Authority
NMMA	Nigerian Minerals and Mining Act
NSRMEA	Nigeria Steel Raw Materials Exploration Agency
PAGMI	Presidential Artisanal Gold Mining Development Initiative
QL	Quarry Lease
RMAFC	Revenue Mobilisation Allocation and Fiscal Commission
RP	Reconnaissance Permits
SBIR	State Board of Internal Revenue
S MDF	Solid Mineral Development Fund
SMSTF	Special Mines Surveillance Task Force
UNDP	United Nations Development Programme
WUP	Water Use Permit

EXECUTIVE SUMMARY

Africa is rich in a variety of natural resources and Nigeria is no exception to that. In addition to its extensive oil reserves, there are deposits of about 44 different minerals in around 500 locations all over the country. However, since the oil boom in the 1970s, the minerals sector has been neglected, resulting in it being under-invested and dominated by indigenous small-scale firms that lack formalization. Consequentially, the sector currently accounts for less than 1 percent of the country's GDP.

In an effort to tap the full potential of Nigeria's mineral reserves and maximize domestic resource mobilization, the Nigerian government identified seven of its solid minerals as strategic to the economic and sustainable development of the sector. These are barite, gold, bitumen, iron ore, lead/zinc, coal, and limestone. Following this renewed focus on mineral occurrences, various policy reforms and programmes to increase investments in the sector have been implemented. The goal is to diversify Nigeria's economy, making the country less dependent on oil alone.

Government's increased efforts towards engendering a more profitable mining and mineral sector has in recent years yielded some results. Thus, between 2018 and 2020, the sector's contribution to GDP has increased from about 200 billion naira to 600 billion naira. Irrespective of this progress, the contribution of the sector to GDP remains sub-optimal. For Nigeria to optimize revenue generation from the mining sector and become a relevant player in the global mining business, there is need for a thorough diagnosis of the challenges impeding the sector's growth.

This paper, therefore, analyses the contracting regime of Nigeria's mining sector with the objective of identifying the gaps that hinder an efficient and transparent contracting process as a sine qua non for a productive mining regime. For this study, a qualitative approach was adopted sourcing data from key stakeholder interviews, annual reports, academic and media publications. Additionally, the underlisted key legal, policy and regulatory frameworks were reviewed:

1. *Nigerian Minerals and Mining Act, 2007*
2. *National Minerals and Metals Policy, 2008*
3. *Minerals and Mining Regulations, 2011*
4. *Roadmap for the Growth and Development of the Nigerian Mining Sector*

Some of the key deficiencies in the current contracting regime identified have been summarized as follows:

- a. There exists inadequate geological data on Nigeria's mineral endowments. This affects the quantum of possible investments into the sector and weakens the bargaining power of the Federal Government to optimize its take from mineral exploitation. Financing for

geological data gathering have been inconsistent. For instance, the Solid Mineral Development Fund (SMDF) which was created to finance, inter alia, geoscientific data gathering did not receive all the budgetary allocations required for certain years. This, and the fact that most of the financing received by the SMDF was used on operational costs rather than capital investments, have resulted in an unsatisfactory collection and archiving of geoscientific data.

- b. The artisanal and small-scale mining (ASM) sector accounts for almost 85 percent of mining in Nigeria and provides a livelihood for about 500,000 people. However, it is largely informal and characterized by smuggling. Between 2012 and 2018, about 97 tonnes of gold valued at over US\$ 3billion was illegally smuggled out of Nigeria of which the Federal Government was unable to apply and collect taxes and royalties. The revenue lost to the Federal Government from the illegal operations was estimated to be about US\$928 million from only 2016 to 2018. In comparison, the total government revenue from the mining sector for that same period was US\$9.7million. The possible annual gain for the Federal Government resulting from a successful formalization of ASM operations is computed at US\$175 million in taxes and royalties.
- c. The mining sector depends heavily on a reliable and extensive transport and energy network. Nigeria faces serious challenges in that regard: its core infrastructure stock is valued only at about 40 percent of GDP compared to the 70 percent in most developed countries. Nigeria's grid generates about 4,000MW to 6,000 MW from an installed capacity of 12,522MW. However, the mining industry typically requires around 100,000MW. These shortages have made further exemptions necessary to attract investments in the minerals sector.
- d. There exist multiple regulations such as multiple taxation. That holds the risk of regulatory inconsistency and uncertainties. As a result, the investor's confidence is negatively affected. Further, the sector is prone to illicit financial flows and political patronage, which decrease efficiency and curb the Federal Government's revenue.
- e. The precarious security situation in some mining states is a cause for concern and could potentially affect investment attraction, more so when insecurity in these jurisdictions is linked to minerals and the informal mining sector. With a history of insecurity of expatriate staff in the oil-rich Niger Delta, investors will be wary of similar situations in mining jurisdictions if the security context persists.

In response to these challenges, the following recommendations are proposed to the Federal Government:

- a. The funding gap of the Nigeria Geological Survey Agency must be closed through adequate, timely and regular funding of the SMDF. Also, capital investments should be prioritized in order to effectively advance the objectives of the fund. To monitor its performance the support of civil society organizations and other accountability actors is required. In addition, the government should incentivize the private sector towards enhancing geological data gathering.

- b. The disincentives concerning the formalization and registration of ASM operations need to be reduced. For example, the Nigeria Minerals and Mining Act, 2007 should be amended to cater for the differences of artisanal and small-scale miners. Further, registration should be decentralized to the State and local government areas to make it more accessible.
- c. Investments into robust infrastructure is crucial to the development of a profitable mining industry. Hence, the Federal Government should prioritize these areas and look for ways to make them more attractive to private investment.
- d. The Federal Government should consolidate all fiscal requirements for mining operations into one single law. Additionally, the transparency of contracting should be enhanced by introducing an open contracting mode as default for the allocation of mineral rights, while all mining contracts are to be disclosed and made easily accessible to the public.

Although various challenges persist in Nigeria's mining sector, the modest growth recorded demonstrates a rather positive outlook, especially, if the deficits outlined in this paper are addressed adequately. However, effective stakeholder collaboration, institutional efficiency and coordination and deliberate financing are necessary, if the mining sector really is to become a relevant contributor to Nigeria's GDP and a sustainable aspect of its economic development.

INTRODUCTION

Background

Like most mineral resource-endowed African countries, Nigeria has been unable to optimize the gains from its minerals sector. Notwithstanding reserves of over 150 mineral types, the sector's contribution of less than one (1) percent to GDP in recent years is a pale shadow relative to its contribution between 1960 and 1970, during which an average of between four (4) to five (5) percent of GDP was recorded. The hitherto vibrant mineral sector produced mainly tin, columbite and coal for export. The country's excessive reliance on crude oil production contributed significantly to the abandonment of the mineral sector resulting in its diminished contribution to its gross domestic product (GDP).

Efforts to resuscitate the sector led to the development of a "Roadmap for the Growth and Development of the Nigerian Mining Industry" by the Federal Ministry of Mines and Steel Development in 2016. This road map, through exploratory activities, identified seven (7) of the country's about forty-four (44) mineral resources which are commercially viable as strategic minerals – coal, bitumen, limestone, iron ore, barites, gold and lead/zinc – around which the revival of the sector will commence.¹ These resources present an enormous opportunity to scale up the mining sector's contribution to government revenues from the lowly 0.74% in 2018 to drive development financing efforts and to improve its contribution to total exports from about 0.34%.²

Therefore, this study analyses the contracting regime of Nigeria's mining sector, with a focus on optimizing the contribution of the sector to government revenues and the national economy. Specifically, the study assesses the inherent gaps in the contracting regime, which undermines revenue mobilization from the solid minerals sector, taking cognizance of the Africa Mining Vision (AMV) and subregional protocols such as the ECOWAS Model Mining and Minerals Development Act (EMMMDA). This is opportune following the proposal of a bill to the National Assembly in 2018 to amend the current Nigerian Minerals and Mining Act, 2007 (NMMA) with a focus on creating a new regulatory agency for the sector and providing an artisanal mining-specific lease and licensing process. The findings are expected to feed into policy decisions and actions to create a conducive environment to leverage catalytic investments into the sector.

¹ Ministry of Mines and Steel Development (2017). Nigeria's Mining and Metal Sector, Investment Promotion Brochure. Retrieved from: <https://www.a-mla.org/images/acts/Nigeria-Ministry-of-Solid-Minerals-Investment-BrochureV14.pdf.pdf>

² SOLID MINERALS AUDIT (SMA) 2018 REPORT, FULL REPORT. Retrieved from: https://eiti.org/files/documents/2018_sma_report_finalised.pdf

Methodology

A qualitative approach was adopted to analyse the contracting regime of Nigeria's mining sector. The study relied on both primary and secondary data. Key stakeholder interviews were conducted to elicit primary data whilst secondary sources such as annual reports of key institutions, academic publications, and media publications were employed. The study also reviewed key regional frameworks, such as the African Mining Vision and its associated AMV-Governance Framework and Action Plan, as well as subregional protocols, such as the ECOWAS Model Mining and Minerals Development Act (EMMMDA). These frameworks were selected because they define a vision for Africa's minerals and proffer strategies by which countries on the continent, including Nigeria, can leverage mineral resources to foster industrialization and inclusive development. Besides, these countries are expected to integrate or domesticate these protocols in their respective mining sector frameworks. Validation workshops were organized with Ministries, Departments and Agencies, private investors, and accountability actors to validate the findings of this study.

OVERVIEW OF NIGERIA MINERAL AND MINING SECTOR

Nigeria is endowed with a myriad of natural resources. Over the last four decades, the country has been fixated on the development of hydrocarbons to the neglect of its vast mineral resources. Currently, the country is the leading producer of oil in Africa and the 13th largest in the world.³ Thus, hydrocarbons remain the mainstay of Nigeria’s economy and contributes about 65 percent of total government revenues, and over 85 percent of total foreign exchange earnings.⁴ In 2019 and in 2020, (with the petroleum sector witnessing a global contraction in 2020), hydrocarbons contributed 8.62 percent and 8.16 percent to GDP⁵ respectively.

The story is starkly different from the minerals sector which contributes less than one (1) percent to government revenues, exports as well as GDP. Prior to the oil boom in the 1970s, solid minerals and mining was one of the key drivers of industrialization and development of Nigeria’s economy. The main minerals that were mined included coal, tin, iron ore, and gold. The sector was dominated by foreign Multi-National Companies (MNCs), mainly of British origin and a few indigenous companies. However, production took a nosedive in the 1970s with the review of the minerals policy to ensure government’s direct participation beyond coal production and to control the mining sector. Subsequently, government’s indigenization policy in 1972 to acquire majority shares in MNCs led to the withdrawal of large scale foreign owned companies which accounted for most of the investments in the sector. Thus, the sector has been dominated by indigenous small-scale firms who lack the requisite financial and technical capacity to drive and sustain the growth and gains in the sector, leading to a steady downturn over time.

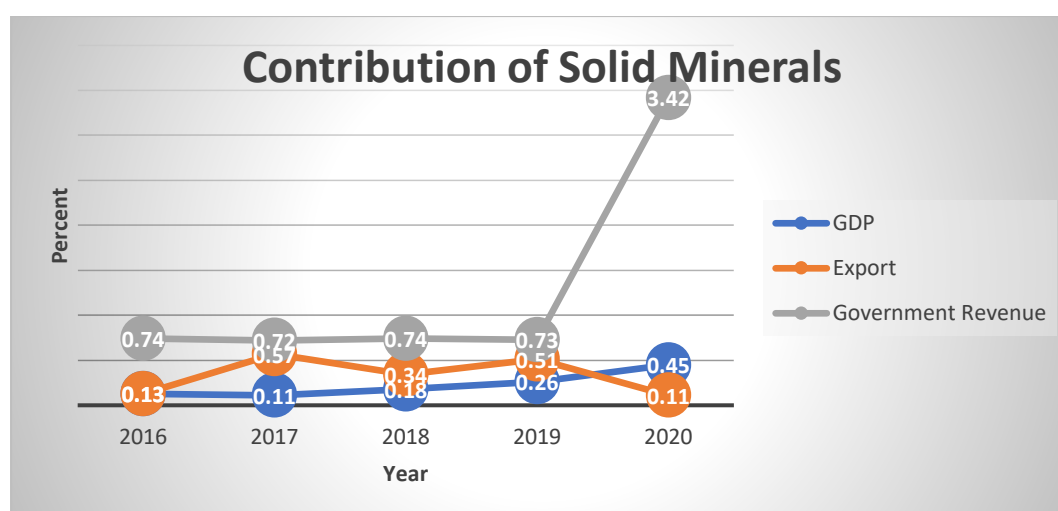


Figure 1: Contribution of the Solid Minerals sector to GDP, Exports and Government revenues from 2016 to 2020.

Source: 2020 Solid Minerals Audit Report, 2022

³ <http://energyatlas.iea.org/#!/tellmap/-1920537974>

⁴ <https://eiti.org/countries/nigeria>

⁵ <https://neiti.gov.ng/cms/wp-content/uploads/2022/03/NEITI-OGA-2020-Report.pdf>

Notwithstanding, there has been a renewed focus on solid minerals as part of efforts to diversify Nigeria’s economy away from its over reliance on oil. The available geological information shows that, the country is endowed with 44 different types of minerals in about 500 locations across the 36 States.⁶ The government has however, designated seven of these endowments as strategic for the development of the sector. These are presented in *table 1*.

Table 1: Mineral deposits in commercial quantities

MINERAL	ESTIMATED RESERVES
Barite	7.5 million tonnes
Gold	50 thousand ounces
Bitumen	42 billion tonnes
Iron Ore	3 billion tonnes ⁷
Lead/Zinc	10 million tons
Coal	600 million tonnes
Limestone	568 million tonnes

Source: EITI.org/Nigeria

Thus, following the return to democratic rule in 1999, successive governments have adopted and implemented various policy reforms and programmes to restore the mining sector through a stable regulatory framework aimed at improving the business climate and increase foreign investments in the sector. These reforms include,⁸ a redefinition of the federal government’s role as the administrator/regulator with the private sector as the operator; enactment of the Minerals and Mining Act 1999 which has been subsequently repealed by the Minerals and Mining Act 2007; adoption of a minerals and metals policy in 2008; creation of key agencies including the Mining Cadastre Office to manage mineral rights allocation, the Solid Minerals Development Fund, and the Nigerian Institute of Mining and Geosciences; as well as the adoption of a second roadmap for the growth and development of the mining sector in 2016. In addition to the policy reforms and initiatives, several incentives have been defined under sections 23 to 28 of the Minerals and Mining Act 2007 and the Companies Income Tax (Amendment) Act (CITA) 2007, for companies engaged in mining activities to increase investment in-flows.

Despite these reforms and incentives, progress towards realizing the objectives for the sector has been slow. The target of improving the sector’s contribution to five (5) percent of GDP by 2025 appears daunting if one considers that between 2016, when the roadmap for the growth of the sector was launched, and 2020, the average growth is 41 percent. The sector is projected to contribute about 0.87 percent of GDP in a business-as-usual scenario using the growth trajectory between 2016 and 2020. Figure 2 presents the growth projections from

⁶ <https://www.resourcedata.org/no/dataset/ogp-gender-library-nga-nigerias-mining-and-metal-sector-investment-promotion-brochure/resource/1ec5964b-c12e-48ea-afec-62ee82438a84>

⁷ Nigeria currently holds the 12th largest iron ore in the world

⁸ Roadmap for the growth and development of Nigerian Mining sector

2021 to 2025. The slow growth trajectory is largely on account of the dominance of artisanal and small-scale players and the prevalence of informal miners in the sector. Other key challenges that undermine the growth of the sector include limited knowledge of resource potential; existence of multiple regulations and taxation; demands by subnational stakeholders with expectations; and underreporting of minerals production that are outside provisions of the law.

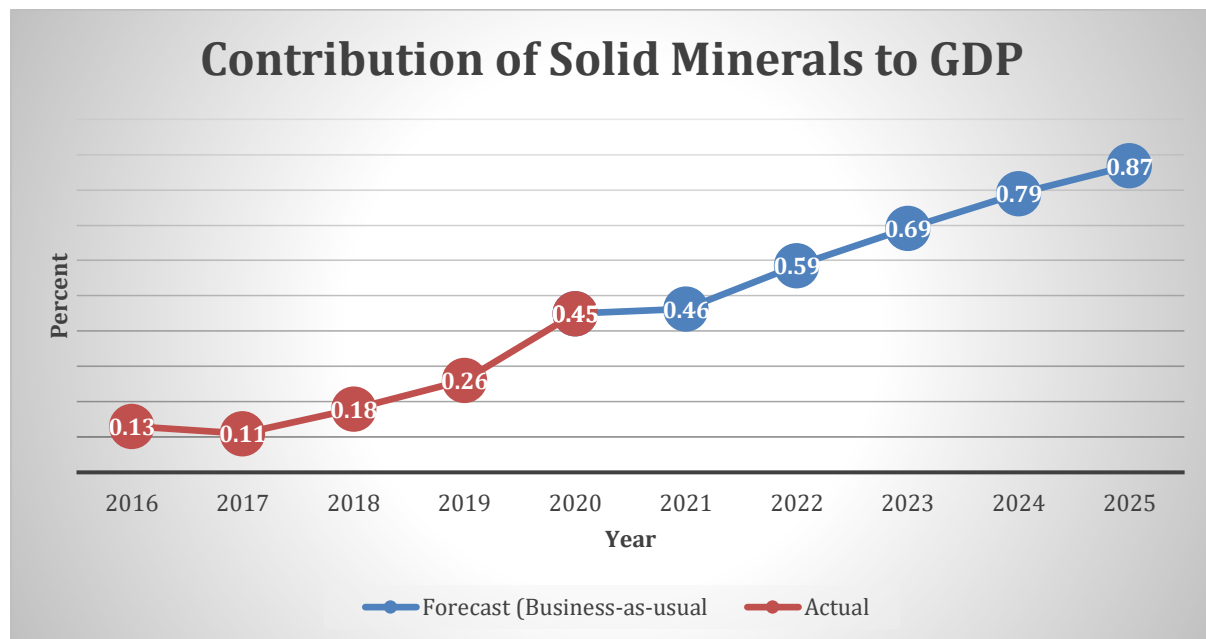


Figure 2: Projected Contribution of Solid Minerals to GDP in a business-as-usual scenario
 Source: 2020 Solid Minerals Audit Report, 2022

Legal and Institutional Framework of the Mining Sector of Nigeria

Nigeria’s mining sector is governed by a set of regulations and institutions that prescribes processes and legal provisions in, for instance, allocation of mineral rights, environmental and social governance, and fiscal governance of mineral extraction within its jurisdiction. Key among these frameworks are described in *table 2* with other complementing regulations presented in *table 3*.

Key legal frameworks for the mining sector

Table 2: Key legal frameworks for the mining sector

Framework	Purpose
Minerals and Mining Act, 2007	Provides the framework for the conduct of mining operations in the country. Among other things, the Act establishes technical institutions for the administration of the minerals sector, the administration of mineral titles, the fiscal framework, the social and environmental obligations of mineral right holders, safety protocols for mining operation and the means to resolve conflicts arising between mineral rights holders and the state, as well as sanctions for violation of any part of the Act.
National Minerals and Metals Policy of 2008	Provides a policy direction in the sector with a view to amongst others achieve substantial increase in GDP contribution, formalize ASM operations, increase capacity of mineral based industries, create wealth through value addition and generate employment.
Nigerian Minerals and Mining Regulation of 2011	The regulations provide a detailed procedure on how the provisions in the minerals and mining Act 2007 shall be enforced. Details on the mineral rights administration processes, mines operation, safety and health practices, environmental management and ASM operations are covered in the regulations.
Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007	Establishes the NEITI and mandates it to create a framework to ensure disclosures to foster accountability of extractive sector revenues paid to the government and other stakeholders. ⁹
Company Income Tax Act (CITA) 2011	This law regulates the taxation of companies in Nigeria.
Environmental Impact Assessment Act 2004	It outlines the general principles, procedures, and methods for the conduct of environmental impact assessments. Section 4 of the EIA Act outlines the acceptable standards for preparing such reports, while section 7 allows the participation of key stakeholders in preparing the EIA reports.

Source: Authors' construct

⁹ Nigerian Extractive Industries Transparency Initiative (NEITI) Act 2007. Accessed from: https://eiti.org/files/documents/neiti_act_2007.pdf

Other complementing regulations

Table 3: Complementing regulations to the key legal frameworks

Framework	Purpose
Nigerian Investment Promotion Commission Act 2004	Promotion of private sector investment in the mining sector.
National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007	Creates the NESREA with the responsibility to protect and develop the environment, biodiversity conservation and sustainable development of Nigeria’s natural resources. Its obligations include the enforcement of compliance to environmental laws, policies, and practices; international agreements and protocols on the ecosystem, handling of hazardous chemicals and create public awareness on sustainable environmental practices. ¹⁰
Guidelines on Mineral Title Application	Outlines the steps used by the MCO in mineral title administration and management. It outlines the types of mineral titles, requirements for application, application fees and duration for the processing of a mineral title.
2016 National Policy on the Environment	Highlights strategies to be used for the protection of the environment. Section 4.12 outlines the policy statements to enhance the protection of the environment as it relates to the mining sector. ¹¹
Land Use Act 2004	Vests authority in the Governor for all land in the territory of each State except for land vested in the Federal Government (FG) or its agencies. It also provides the framework for the institutions responsible for the allocation of land in urban and rural areas and highlights how lands would be administered for mining operations.
National Environmental (Permitting and Licensing System) Regulations, 2009	Enables the consistent application of environmental laws across all sectors of the economy.

Source: Authors’ construct

The Ministry of Mines and Steel Development is the overarching institution responsible for policy formulation and direction, regulation of operations, provision of information to enhance investor interest, and collection of mineral royalties on behalf of the Federal Government. The Ministry is supported by other technical agencies for the attainment of the objectives of the sector. These technical agencies are presented in *table 4* below.

¹⁰ <https://www.nesrea.gov.ng/our-functions/>

¹¹ <http://extwprlegs1.fao.org/docs/pdf/nig176320.pdf>

Key institutions

Table 4: Key institutions in Nigeria's mining sector

Institution	Purpose
Mining Cadastre Office (MCO)	This agency is autonomous, and it is responsible for the administration of mineral titles, processing of mineral titles, maintaining a record of license applications; and a mining cadastre register of awarded licenses (Section 4.2-7, NMMA).
Mines Inspectorate Department (MID)	This statutory department was established by the Mining Act and its mandate includes ensuring compliance of reconnaissance, exploration, and mining operations within the dictates of the NMMA. The institution is supposed to ensure that mineral right holders comply with the health and safety regulations and conduct investigation and inspection visits to ensure compliance with the NMMA and any other law in force (Section 17, a-h NMMA).
Artisanal and Small-Scale Mining Department (ASMD)	This statutory department is charged with overseeing all ASM activities. Its mandate includes the provision of extension services; support services in prospecting, exploration, mineral processing and entrepreneurial training; and training of miners on new mining technologies.
Mines Environmental Compliance Department (MECD)	This statutory department is charged with the responsibility of reviewing plans, reports and legislation regarding environmental obligations; monitor and enforce compliance by miners with all environmental obligations; audit environmental requirements and obligations; and liaise with other Government organizations with respect to social and environmental issues, mines closure and reclamation (Section 18, NMMA).
Mineral Resources and Environmental Management Committee	This committee is supposed to be established in every federal state and its function is to amongst others advise the Minister on issues related to the administration of mineral rights, compensation, environment and mineral development, and resolve conflicts between stakeholders. Their role also mandates it to advise the Local Government Authority on environment and sustainable management of resource (Section 19, NMMA).
Nigerian Geological Survey Agency	This agency is responsible for the generation of basic geoscience data for investors and the general public. It is mandated to systematically acquire, manage, store, interpret and communicate geoscience information to promote investment and development.
Nigerian Institute of Mining and Geo-sciences (NIMG)	This institution is responsible for the provision of the human resource needs for the mining sector. It provides capacity building in short courses, geosciences, extension services, research, and development.

Nigerian Extractive Industries Transparency Initiative (NEITI)	This agency is responsible for creating the framework to ensure transparency and accountability in the management of revenues derived from the Nigerian extractive sector in fulfilment of the EITI charter requirement.
Revenue Mobilisation Allocation and Fiscal Commission (RMAFC)	This institution derives its mandate from paragraph 32 of the 1999 constitution. The RMAFC is mandated to monitor accruals and disbursement from the Federation Account to enhance the proper management of revenues and its distribution to subnational governments. It is noteworthy to mention that the disbursement of extractive revenue always reflects the “Derivation Principle”. This is a constitutional provision that mandates a minimum of 13% of all revenues derived from extractive commodities to be paid directly to the producing state/area as first-line charge.
Federal Inland Revenue Service (FIRS)	Administers the collection of federation taxes such as corporate income tax (CIT), capital gains tax, education tax, value added tax, and withholding tax.
Nigeria Customs Service (NCS)	The NCS is an agency under the supervision of the Federal Ministry of Finance and National Planning with the core responsibility of collecting import and excise duties on behalf of the Federal Government of Nigeria.
Nigeria Steel Raw Materials Exploration Agency	The NSRMEA is a geo-scientific information centre for investors and researchers in the solid minerals sector with particular emphasis on iron and steel industry.
State Board of Internal Revenue (SBIR)	Is responsible for the collection of revenues at the state level.
Local Government	Is responsible for the collection of revenues at the local level.

Source: Authors’ construct

CONTRACTING IN NIGERIA'S MINING SECTOR

Allocation of mining rights to private investors is governed by a set of laws and institutions which detail, inter alia, ownership of the resources, processes to transfer the rights, institutional mandates, and rights and responsibilities of parties to a contract and regulate all aspects of mineral operations in a jurisdiction. In Nigeria, ownership and control of mineral resources is vested in the Federal Government for and on behalf of the citizens.¹² Therefore, the legal framework proscribes undertaking mineral operations without due recourse to the authority vested in the Federal Government. The Federal Government, acting through the Mining Cadastre Office allocates mining rights to investors to exploit the mineral resource endowments of the country.

The Mining Cadastre Office is empowered by the Minerals and Mining Act, 2007 to grant six types of permits, licenses, and leases¹³. The types of permits, licenses and leases include;

- a. Reconnaissance Permits (RP): Empowers an entity to conduct reconnaissance operations in search of mineral resources on a non-exclusive basis. It also precludes the holder from engaging in drilling, excavation, or other subsurface mechanisms. It is granted for a period of one (1) year and subject to renewal if requirements under the Minerals and Mining Act, 2007 and the Minerals and Mining Regulations, 2011 are met. Granting of this license must not exceed thirty (30) days from the date application.¹⁴
- b. Exploration License (EL): Allows a right holder to explore for mineral resources on an exclusive basis. It extends to installing the needed infrastructure, conducting bulk sampling, and conducting trial processing of minerals within a stipulated limit. The maximum land size allocated for exploration activities is two hundred (200) square kilometres. Granting of this right must not exceed thirty (30) days from the date of application and it is for a duration of three (3) years subject to conditional renewal for two (2) terms of two (2) years each¹⁵. Exploration License holders are subject to royalty payment for any mineral acquired and sold during the exploration process (Section 59-63, NMMA).
- c. Mining Lease (ML): This right bestows upon the holder the mandate to exploit minerals in an area under lease in an exclusive basis. It allows the lease holder to, inter alia, install infrastructure that are useful in extracting minerals and to transport and process such mineral resources. The land size for this type of operations does not exceed fifty square kilometres (50sqkm). Granting of this right must not exceed forty-five days from the time of application and it is for a duration of 25 years subject to conditional renewal.

¹² Section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria and Section 1(1) of the Minerals and Mining Act, 2007.

¹³ Section 46(1) of the Minerals and Mining Act, 2007; Regulation 21(1) of the Minerals and Mining Regulations, 2011

¹⁴ Sections 55, 56, 57 and 58 of the Minerals and Mining Act, 2007

¹⁵ Sections 59, 60, 61, and 62 of the Minerals and Mining Act, 2007

- d. Small-Scale Mining Lease (SSML): Based on which a right holder is given the mandate to exploit minerals using low levels of technology or applying methods that do not require substantial expenditure over a land size of between five (5) acres but shall not exceed three (3) square kilometres.¹⁶
- e. Water Use Permit (WUP): This grant right to use water in exploration, mining, and quarrying activities. This permit requires that the applicant at the time of application, is a holder of an exploration license, mining lease or quarry lease.¹⁷
- f. Quarry Lease (QL): This grants the holder a right to remove and dispose of any quarriable minerals specified in the lease. The right is on exclusive basis and the permissible land size is five (5) square kilometres lasting for a maximum period of five (5) years.¹⁸

The Mining Cadastre Office is required by the legal framework to grant licenses and permits using two approaches: through direct negotiations or competitive bidding processes. However, it can be inferred from the wording of the Minerals and Mining Act, 2007 that the default approach for granting mineral titles is through direct negotiations. The legal framework emphasizes the strict application of the principle of “first come first served” in cases of competing applications for the same exclusive area, using registration in the Priority Register as evidence in the determination of the time of application¹⁹. Additionally, the law stipulates that the maximum number of days within which an application for a mineral right must be granted is: thirty (30) days for reconnaissance and exploration licenses; and forty-five (45) days for mining leases. This implies a lack of ample time to implement the specific features that define competitive bidding approaches including prequalification. It is instructive to note that, competitive bidding approaches for granting mineral titles may only be applied to areas that have no valid mineral titles; areas that are known to be endowed with “security minerals”;²⁰ and areas that the Committee²¹ may recommend to the Minister for competitive bidding.²²

To ensure that companies have the right financial and technical capacity to deliver on contract terms, the Mining Cadastre Office is mandated to conduct due diligence by ensuring that companies submit proofs of working capital and technical competency.²³ Additionally, the law proscribes the granting of mineral titles to individuals who have been convicted of criminal offences or in the case of corporate entities, a conviction of a shareholder with controlling interests within five (5) years before the date of the application. The legal framework grants the MCO a window of, at most, 45 days to conduct due diligence if one considers the provision that mining leases must be granted within 45 days of application. These due diligence mechanisms, though very important, is short of action by the Mining Cadastre Office to

¹⁶ Section 90, 91 and 164 of the Minerals and Mining Act, 2007

¹⁷ Section 52 of the Minerals and Mining Act, 2007

¹⁸ Section 77 and 78(1)

¹⁹ Section 8(2) of the Minerals and Mining Act, 2007

²⁰ It refers to a radioactive mineral which contains by weight at least 0.05 percent of uranium, thorium or any combination thereof including but not limited to monazite, sand and other ores containing thorium, carbonite, pitch blend and other ores containing uranium.

²¹ The Minister is mandated under Section 4(1) of the Minerals and Mining Act, 2007 to establish a committee to advise him on areas to apply competitive bidding in mineral title allocation.

²² Regulation 4 of the Minerals and Mining Regulations, 2011

²³ Sections 53 and 54 of the Minerals and Mining Act, 2007

individually verify information submitted by applicants. This gap exposes the contracting process to the risk of infiltration by entities that do not qualify for mineral titles according to the qualification criteria stipulated in table 5 below and who may lack the technical and financial capacity to extract mineral resources optimally. The long-term effect of this weakness is a potentially low benefit generation including sub-optimal revenue mobilization from the sector.

Table 5: Qualification criteria for granting of mineral title

Mineral Title	Qualification Criteria
Reconnaissance permit	<p>An applicant must be:</p> <ul style="list-style-type: none"> a. A citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence; or b. A body corporate duly incorporated under the Companies and Allied Matters Act; or c. A mining co-operative.
Exploration License	<ul style="list-style-type: none"> a. A body corporate duly incorporated under the Companies and Allied Matters Act; or b. A mining co-operative; or c. The holder of a reconnaissance permit granted in respect of the area subject to the application, provided that the applicant has fulfilled all the conditions attached to the reconnaissance permit.
Small-Scale License	<ul style="list-style-type: none"> a. A citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence; or b. A body corporate duly incorporated under the Companies and Allied Matters Act; or c. A mining co-operative; or d. A holder of an exploration license granted in respect of the area subject to the application, provided that the applicant has fulfilled all the conditions attached to the exploration license.
Mining Lease	<p>A body corporate duly incorporated under the Companies and Allied Matters Act or other legal entity that:</p> <ul style="list-style-type: none"> a. Has demonstrated under conditions stated in the regulations that a commercial quantity of mineral resources exists in the area in respect of which application is made; and b. Has fulfilled all the conditions attached to the exploration license in respect of the area subject to the application.
Quarry Lease	<ul style="list-style-type: none"> a. A citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence; or

	<ul style="list-style-type: none"> b. A body corporate duly incorporated under the Companies and Allied Matters Act; or c. A mining co-operative; or d. Any person extracting construction materials for the construction of roads, railway lines, dams and other engineering works or structures of public interest.
Water use permit	<ul style="list-style-type: none"> a. A holder of an exploration license, mining lease or quarry lease at the time that the water right granted will be used; or b. An applicant for a mining lease, small scale mining lease, or quarry lease for which the water right will be required to be used.

Source: Minerals and Mining Act, 2007

The contracting process integrates negotiations between the contracting parties that target optimization of the mineral resource exploitation for the contracting parties. The negotiations border on fiscal arrangements, and environmental and social governance.

The grant of mineral title commits holders to a fiscal responsibility to pay mineral royalties, corporate income taxes, capital gain tax, value added tax, education tax, withholding tax, surface rents and annual service fees. The details of the main fiscal instruments are presented in *table 6* below:

Table 6: Main fiscal instruments in Nigeria's mining sector

Fiscal Instrument	Rate of Tax	Source Law	Note
Royalty	Between 3 percent to 5 percent depending on the mineral type.	Though Sections 33(1) and 63 of the Minerals and Mining Act, 2007 provide for royalties, they do not specify the rates to be applied. The rates are provided in a Ministry of Mines and Steel Development document titled "Reviewed Royalty Rates for Minerals Produced in Nigeria (22 nd April, 2015 ²⁴)	Section 33(2) and (3) grant powers to the Minister to reduce or waive payment of royalty if he is convinced that export of minerals is for analysis or experiment and defer same for a specific period with approval from the Federal Executive Council. Holders of reconnaissance permits, and water use permits are exempted from paying royalties. Royalties are calculated on an ad-valorem basis.

²⁴ The document can be accessed at <https://www.minesandsteel.gov.ng/wp-content/uploads/2016/07/ROYALTY-RATES.pdf>

Companies Income Tax	30 percent	Section 40 (1) of the Companies Income Tax Act (CITA). Notwithstanding the 30 percent rate, section 40(6) of the CITA provides for a 20 percent rate for small mining companies with annual turnover of below one million naira (USD 2,404.83 at a rate of USD1 to 415.83 naira as at 30/01/2022)	
Capital Gain Tax	10 percent	Section 2(1) of the Capital Gain Tax Act, 1990	
Value Added Tax	7.5 percent	Section 34 of the Finance Act, 2019	
Education Tax	2 percent	Section 1(2) of the Tertiary Education Trust Fund (Establishment, Etc) Act, 2011	
Withholding Tax	Interest, Rent, Dividend – 10 percent Hire of equipment – 10 percent Royalties – 10 percent Commission, consultancy, technical and service fees – 5 percent Management fees – 5 percent Construction – 5 percent	Sections 78(2), 79(2), 80(2) of the Withholding Tax Regulations	It should be noted that this is not a separate category of tax; rather, it is an advance payment of income tax. ²⁵

²⁵ 2016 Solid Minerals Audit Report, [https://taxaide.com.ng/files/FURTHER-EXPLANATORY-COMMENTS-ON-WITHHOLDING-TAX-200602%20\(1\).pdf](https://taxaide.com.ng/files/FURTHER-EXPLANATORY-COMMENTS-ON-WITHHOLDING-TAX-200602%20(1).pdf)

	Contracts other than sales in the ordinary course of business – 5 percent		
Surface Rents	Determined by the Minister in consultation with the owner or occupier of the land (Usually, the State where the mine is located)	Section 102 of the Minerals and Mining Act, 2007 and Regulation 100 of the Minerals and Mining Regulations, 2011.	Holders of reconnaissance permits and exploration license are exempted from paying surface rents
Annual service fee	<p>Exploration License:</p> <ul style="list-style-type: none"> • 1st to 3rd year is 1,000 naira each (USD2.41 as at 30/01/2022) • 4th to 5th year is 1,500 naira each (USD3.62 as at 30/01/2022) • 6th to 7th year is 2,000 naira each (USD4.83 as at 30/01/2022) <p>Small Scale Mining Lease is 30,000 naira (USD72.40 as at 30/01/2022)</p>	Section 10b of the Minerals and Mining Act, 2007 and Regulation 98 of the Minerals and Mining Regulations, 2011.	Holders of reconnaissance permits are exempted from paying the annual service fee.

Mining Lease is
250,000 naira
(USD603.30 as
at 30/01/2022)

Quarry Lease is
20,000
(USD48.26 as at
30/01/2022)

Water Use
Permit is 10,000
(USD24.13 as at
30/01/2022)

Source: Authors' construct

The powers conferred on the Minister to waive, reduce or defer royalty payments on mineral exports for analysis or experiment present risks which could undermine the optimization of royalty payment. The risks stem from weaknesses in institutional capacity to independently verify the purity of and concomitant minerals that may present value to the State. A robust institutional mechanism, including investment in assessment infrastructure, is required to plug this gap. Also linked to the waiver of royalty on mineral exports for analysis and experiment is the absence of a maximum threshold permitted by the Minerals and Mining Act, 2007 on the quantum of allowable minerals to be exported for experiment. This has been left to the discretion of the Minister and therefore presents opportunities for corruption and other rent-seeking behaviours. The political undertones of this role could also affect certainty and continuity of policy decisions and by extension, investor interests.

The fiscal regime includes fiscal incentives that are intended to attract investments to the mining sector. Incentives offered investors who undertake mining operations include the accelerated capital allowance of 95 percent of qualifying capital expenditure, exemptions from payment of customs and import duties in respect of plants and machinery, permission to retain foreign exchange earned in a foreign exchange domiciliary account to be used in acquisition of spare parts and other inputs required for mining activities, a three-year tax relief and subsequent two-year extension conditioned on previous performance, and tax deductible environmental costs.²⁶ In addition to these incentives, certain investment attraction indicators including adequate geological information on resource endowments, regulatory certainty and consistency, robust infrastructure and service provision are key requirements that inform investor decisions.²⁷ The case for the aforementioned investment

²⁶ Sections 23 to 32 of the Minerals and Mines Act, 2007

²⁷ <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2020.pdf>

indicators to be strengthened is further heightened by the absence of stability agreements in the fiscal regime for the sector.

Environmental and social considerations are an important part of contracting in Nigeria's mining sector. Key principles guiding issues of social and environmental importance in the contracting regime are informed by the preservation of culture, right of citizens/owners to information and to offer consent, environmental sustainability, right of citizens to compensation for economic and social loss occasioned by mineral operations, and community right to benefit from resource exploitation. These considerations are fundamental to the sustenance of livelihoods. In this regard, the legal framework proscribes carrying out mineral operations in sacred places or in a manner that destroy sacred objects and therefore proffers penalty for entities that are found culpable. Also, applicants for mineral title are obligated, as part of the contracting process, to inform and seek consent of the owner or occupier of the land which is subject to the application for mineral title; enter into a Community Development Agreement with the host community of mining operations; and ensure that mineral operations integrate environmental preservation.

Practice and implications of the contracting regime for improved revenue mobilization

Deficiencies in the fundamentals that are relevant for effective contracting in Nigeria's mining sector have resulted in the inability of the sector to attract large-scale players with the requisite technical and financial capacities and to attract juniors for exploration as well as the prevalence of a largely unregulated artisanal and small-scale mining sector which have been documented by various studies including Environmental Law Institute (2014), NEITI (2015), NEITI (2016) and UNDP (2017). Poor geosciences data, prevalent informal/artisanal and small-scale mining, inadequate infrastructure, the existence of multiple regulations, inadequate financing of private investments in the sector, and a precarious security context²⁸ are some of the deficiencies characterising the sector (NEITI, 2016; UNDP, 2017; Centre for Energy, Petroleum and Mineral Law and Policy, 2020). It is commendable that the government is concentrating efforts on seven (7) priority minerals (coal, barite, limestone, iron ore, lead-zinc, gold, and bitumen) to address these challenges towards attracting investments into the sector.

A comprehensive geosciences data of the mineral resource base is fundamental to efficient contracting and development of mineral sectors. Accordingly, the Action Plan for the AMV recognizes the importance of geosciences data by emphasizing "Improved geological and mineral information systems to underpin investment in exploration and mine development" as the expected accomplishment of the programme cluster "Geological and Mining Information Systems". Similarly, to resolve the challenges constraining the development of

²⁸ <https://www.reuters.com/article/us-nigeria-gold/nigeria-hopes-gold-mining-reforms-can-bring-in-500-million-a-year-idUSKCN24H2EK>

the mineral sector in ECOWAS member states, the ECOWAS Mineral Development Policy (EMDP) identifies the improvement of geological and mineral information as a priority area that needs direct budgetary support from national governments. In the same vein, in its Annual Survey of Mining Companies, the Frazer Institute (2019;2020) established that sixty (60) percent of the decision to invest in a mining jurisdiction is influenced by its mineral potential.

Despite its importance, geological data on Nigeria's mineral resource endowment is inadequate, albeit there have been efforts to improve it. These efforts include the partnership between the Ministry of Mines and Steel Development (MMSD) and the British Geological Survey to retrieve 7000 old colonial geological reports (Okechukwu and Arowosaiye, 2020)²⁹; the conduct of a geochemical mapping project; and the launch of a centralized eGIS web portal and supporting infrastructure that offers real-time information on the sector, as well as submission of licenses, permits and certificates.³⁰ Additionally, the government reconstituted in 2017 the Board of the Solid Mineral Development Fund (SMDF), created under section 34 of the Nigeria Minerals and Mining Act, 2007, to finance, inter alia, geoscientific data gathering, storage and retrieval. The SMDF and the Bank of Industry have since launched a N5Billion (about USD12.1million) fund to provide single-digit interest loans for mining projects (Azobu and Jayeola, 2019). The Federal Government has also achieved a 100 percent aerial geophysical survey of the country, except that this does not provide reliable details of the estimated quantity of Nigeria's solid minerals (Okechukwu and Arowosaiye, 2020).

The inadequate geological data on Nigeria's mineral resource endowment has been attributed to insufficient funds for geological activities. The Federal Government is required by Section 38 of the Nigeria Minerals and Mining Act, 2007 to make budgetary allocations from its share of solid mineral revenues to the SMDF, albeit there was no evidence that these were made for the 2016 and 2019 receipts according to NEITI's Solid Minerals Audit 2018 Report. This challenge continues to persist, as indicated by the Solid Minerals Audit Report published in 2021. Moreover, following section 38(b) of the Act, the SMDF is entitled to a share of a N30billion transfer by the Federal Government to the Ministry of Mines and Steel Development (MMSD) to fund exploration projects that will generate the needed geosciences data and to provide the necessary regulatory framework for the sector's growth. It is intriguing to note that the SMDF did not receive its share of this transfer, according to the 2019 Solid Minerals Audit Report.

This is further compounded by the fact that the SMDF expends more on operational expenditure rather than capital investments needed to boost the realization of its core mandate, which includes funding for geoscientific data gathering, storage and retrieval. According to Lwanda (2017), operational expenditure of the SMDF between 2014 and 2017

²⁹ https://issuu.com/mindiver/docs/mindiver_news_august_2019

³⁰ Sascha-Lee Solomonds (2018). Mining sector in Nigeria has an optimistic future, but challenges need resolution. "Mining Review Africa". Retrieved from: <https://www.miningreview.com/top-stories/mining-sector-nigeria/>

averaged eighty-two (82) percent of the 46 budget lines that received allocations during this period, only four (4) – research and development, training for miners, travel costs related to training and infrastructure – were directly linked to the SMDF’s objectives. It is therefore not surprising that, though the SMDF and the Bank of Industry launched a N5billion (about USD12.1 million) fund to spur developments in the sector, it has been less impactful because not many industry players have been able to access the fund (2018 Solid Minerals Audit Report of NEITI; Azobu and Jayeola, 2019; Okechukwu and Arowosaiye, 2020). Furthermore, commercial funding of investments is low because the sector is necessarily green, so it is viewed as high risk. Compounding this challenge is also the fact that, though the NMMA under Section 43(d) requires operators to furnish the Geological Survey Agency with geoscientific data acquired through mining operations, industry operators often do not comply (Ministry of Solid Mineral Development, 2016). The challenge of inadequate geological data puts the government at a disadvantage in contract negotiations and constrains the government from lowering fiscal takes.

The ASM sector is another area undermining effective contracting in Nigeria’s mining sector. The importance of the ASM sector cannot be overemphasized; it is estimated to account for between 80 to 85 percent of all mining in Nigeria and serves as a significant source of livelihood for over 500,000 people as of 2019.³¹ Though it is dominant, it is largely informal (Ministry of Solid Mineral Development, 2016). The ASM is being employed as proof of concept to attract investments into large-scale mining. Therefore, there have been efforts to address the formalization challenge. One of these efforts is the Presidential Artisanal Gold Mining Development Initiative (PAGMI), under which, among other things, a market has been provided through purchases of artisanally-mined gold to be processed and refined according to the London Bullion Market Association (LBMA) standards by the Central Bank of Nigeria and used for external reserves and export³². In furtherance of this, two privately owned gold refineries were licensed in February 2020³³. Other interventions include access to extension services through mining cooperatives, procurement of vehicles for the Mines Inspectorate Department (MID) for surveillance of informal mining activities and improved inter-agency collaboration (Okechukwu and Arowosaiye 2020). Additionally, the State Mineral Resources and Environmental Management Committee (MIREMCO) and Special Mines Surveillance Task Force (SMSTF) were revived in 2017 to curtail the menace of informal mining activities (Ango et al., 2019).

These efforts notwithstanding, artisanal miners have largely continued to operate informally. Responsible for this phenomenon are factors, including the fact that the law fails to recognise the distinction between artisanal and small-scale mining as different categories of the sector, which then creates entry barriers for artisanal miners as the unique characteristics of the

³¹ 500,000 NIGERIANS INVOLVED IN ARTISANAL SMALL-SCALE MINING (AUGUST, 2019). “PULSE.NG”. RETRIEVED FROM: [HTTPS://WWW.PULSE.NG/NEWS/LOCAL/500000-NIGERIANS-INVOLVED-IN-ARTISANAL-SMALL-SCALE-MINING-OFFICIAL/GN5CSY1](https://www.pulse.ng/news/local/500000-nigerians-involved-in-artisanal-small-scale-mining-official/gn5csy1)

³² <https://statehouse.gov.ng/news/everything-you-need-to-know-about-the-presidential-artisanal-gold-mining-development-initiative-pagmi/>

³³ <https://www.reuters.com/article/us-nigeria-gold/nigeria-hopes-gold-mining-reforms-can-bring-in-500-million-a-year-idUSKCN24H2EK>

artisanal subsector are ignored. Furthermore, artisanal miners are required to register as artisanal miners and as part of a cooperative, both of which come with financial considerations (UNDP, 2017). These arrangements create entry barriers occasioned by financial constraints. Moreover, the requirement to join co-operatives before accessing extension services is a disincentive to the formalization of artisanal miners. This has been identified to constitute a barrier in two ways: dual registration requirements that impose financial and time-consuming burdens that are difficult for many artisanal miners to meet³⁴; and confusion over who is responsible for registering the mining co-operatives (Environmental Law Institute, 2014). Regarding the latter, the confusion stems from multiple agencies engaging in the registration process. For instance, in Zamfara, the State Ministry of Rural Development and Co-operatives is supposed to register co-operatives, but this is being performed by the State Ministry of Environment and Solid Minerals, whilst the Ministry of Mines and Steel Development is also said to be assisting some miners as well (ibid).

The sub-sector is exposed to political patronage risks, where influential persons and politicians often sidestep official political authority and institutional mandates to advance their interests.³⁵ This situation presents the Nigerian mining sector as a space for arbitrariness and regulatory uncertainty, especially within the context of the subsector's presentation as a proof of concept for large-scale investment attraction.

A robust infrastructure is part of the determinants of investment inflows to the mining sector of a jurisdiction (Fraser Institute, 2019; 2020). The relevance of critical infrastructures such as railways, roads and electricity cannot be overemphasized. Transportation infrastructure is essential in the haulage of bulk metals such as manganese and bauxite. Similarly, as anchor consumers, mining companies require investments in a sustainable and reliable supply of electricity to optimize production. In fact, in Zimbabwe, erratic power supplies had an adverse effect on the output of gold production, which dropped from 35 tonnes in 2018 to 20 tonnes in 2020³⁶. Again, to further underscore the importance of electricity to optimum production by firms, Banerjee et al. (2015) indicates that close to half of firms in Sub-Saharan Africa identify unreliable electricity as one of the most significant constraints to doing business. The demand for electricity by mining operations was projected to be between 21.48 gigawatts and 23.44 gigawatts in 2020 (ibid).

Notwithstanding the importance of critical infrastructure to the development of mining operations, the 2016 Roadmap for the Growth and Development of the Nigerian Mining Industry identifies infrastructure as a challenge to the development of its mining sector. Nigeria's core infrastructure stock, valued at 35 to 40 percent of GDP, pales compared to the core infrastructure stock typical of developed countries, valued at about 70 percent of GDP (ibid). Regarding power, Nigeria's grid generates about 4,000MW to 6,000MW from an

³⁴ Artisanal miners are required to register a co-operative at the State level, then to complete the formalization process at the Federal level where co-operatives are required to register with the Ministry of Mines and Steel Development's Central Office in Abuja.

³⁵ <https://punchng.com/godfathers-pressurise-fg-to-free-chinese-arrested-for-illegal-mining/>

³⁶ <https://africanminingmarket.com/zimbabwes-gold-miners-optimistic-of-100-tonnes-per-year/10215/>

installed capacity of 12,522MW, which is woefully inadequate for the mining industry's need of about 100,000MW³⁷ (ibid). To further establish the unreliability of power availability in Nigeria, Atimati et al. (2019) uncovered that the Average Service Availability Index (ASAI) for the Ahoada distribution network and the Egi power distribution network, both in the Rivers State, for four (4) months in 2016 were 64.44 percent and 74 percent respectively which compare unfavourably with the global benchmark of 99.99 percent and established mining jurisdictions such as Ghana which had ASAI of 98.4 percent in 2016³⁸. This implies that mining companies would require private investments to boost power supply to meet the demand necessary to optimize production and, therefore, would increase the cost of operations. This, therefore, could potentially disincentivize investment attraction to the mining sector of Nigeria.

Other weaknesses, such as multiple regulations cum multiple taxations and precarious security context, disincentivize the attraction of investments into the sector. Multiple regulations, for instance, tend to affect investor confidence. Moreover, these laws could potentially contribute to regulatory inconsistency in the sector. A case in point is when States leverage their authorities under the Land Use Act to interfere with legitimate mining decisions made by the MCO (Ministry of Solid Mineral Development, 2016). In addition, though the NMMA 2007 in section 76 proscribes granting of licenses and leases for quarrying for industrial use under any other enactments, the National Inland Waterways Authority (NIWA) grants such licenses and charges royalties because its mandates established under the NIWA Act, 1997.

The precarious security situation in some mining states is cause for concern. It could potentially affect investment attraction, more so when insecurity in these jurisdictions is linked to minerals and the informal mining sector³⁹. With a history of insecurity for expatriate staff in the oil-rich Niger Delta, investors will be wary of similar situations in mining jurisdictions if the security context persists.

Implications for Optimizing Domestic Resource Mobilization

The weaknesses enumerated in the preceding section have implications for the Federal Government's revenue from mineral exploitation. First, inadequate geological data affects the application of competitive bidding for contracting needed to estimate the right value of mineral resource endowments. In this context, mining investors consider the high risks and opt for direct negotiations where the government's bargaining powers are effectively weakened. Investors, in such circumstances, require fiscal concessions by governments to compensate for the high risks they assume. It is therefore not surprising that Nigeria's fiscal framework has incentives which include capital allowance at 95 percent, exemption from

³⁷ <https://www.usaid.gov/powerafrica/nigeria>

³⁸ Refer to the 2020 Edition of the National Energy Statistics published by Ghana's Energy Commission accessible at http://energycom.gov.gh/files/2021%20Energy%20Statistics_Final.pdf

³⁹ <https://www.premiumtimesng.com/news/headlines/324348-breaking-zamfara-violence-nigerian-govt-bans-mining-activities-in-troubled-state.html> ; <https://issafrica.org/iss-today/how-illegal-mining-is-driving-local-conflicts-in-nigeria>

import duties, tax relief/holiday for 3 years subject to 2 years extension, personal remittances quota for expatriate personnel⁴⁰, deferred royalty payments, carried forward losses and expatriate quota⁴¹.

These exemptions also present another layer of revenue losses through illicit financial flows owing to inadequate capacity by State Agencies to verify costs for tax purposes independently. The gap in institutional capacities may result in abusive transfer pricing, trade mis-invoicing, and excessive interest payments, which deny the Federal Government scarce revenues for sustainable development financing.

Secondly, and like the effects of inadequate geological data on government revenues, poor infrastructure delivery affects optimized revenue mobilization by the government from the sector. In a jurisdiction where infrastructure delivery is poor, mining enterprises would require significant investments in infrastructure to optimize mineral production. This would increase the cost of production for the companies and affect their profit margins. The government's approach to assuring companies of optimized returns on their investments is usually, therefore, to grant incentives which have the potential to reduce revenue accruals to the government.

The artisanal and small-scale mining industry is one area that is noted for revenue losses to the government. Between 2012 and 2018, about 97 tonnes of gold valued at over US\$ 3 billion was illegally smuggled out of Nigeria, to which the Federal Government could not apply and collect taxes and royalties⁴². The revenue lost to the Federal Government from the illegal operations was estimated to be about US\$928 million from only 2016 to 2018, compared to about US\$9.7 million accruing to the government from the entire mining sector.⁴³ This emphasizes the importance of the need to formalize ASM operations. Although the Federal Government has taken steps to address the gap regarding the existence of mineral buying centres through the Presidential Artisanal Gold Mining Initiative (PAGMI), illegal purchases and smuggling by Chinese nationals and nationals of ECOWAS countries such as Benin, Mali, Senegal, Niger, Chad etc. continue unabated. Part of the reason behind the smuggling is the favourable tax regime in other West African countries such as Mali. The initiative needs concerted goodwill and strong commitment from government and private players to reduce all forms of gold smuggling and illegal exports. PAGMI only serve as a model for adoption by private operators in a similar fashion as the "Nigerian Anchor Borrowers Scheme" successfully operates in the agricultural sector. Nigeria alone cannot succeed in addressing this issue; it requires bilateral input, especially in relation to stronger cooperation on Customs Service at the borders, notably the Benin Republic being the closest to major gold mineralization areas

⁴⁰ Such remittances are free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

⁴¹ Sections 24 to 33 of the Minerals and Mining Act, 2007

⁴² Refer to <https://statehouse.gov.ng/news/everything-you-need-to-know-about-the-presidential-artisanal-gold-mining-development-initiative-pagmi/>

⁴³ Refer to <https://punchng.com/how-chinese-prospectors-exploit-local-miners-to-cash-in-on-nigerias-gold/> An average annual exchange rate of N380.20 to US\$1 for 2016, 2017 and 2018 was applied.

of Nigeria. It is estimated that the Federal Government of Nigeria could realize an annual average of US\$150million in taxes and US\$25million in royalties from the integration of artisanal mining activities⁴⁴.

It is also worth noting that the mining sector is susceptible to illicit financial flows and political patronage, depriving governments of scarce resources to finance sustainable development. Moreover, the sector is largely prone to secrecy – owing to the arbitrary exercise of discretionary control by high-level politicians, especially in contracting and revenue utilization –, highly technical, has fewer corporate checks and balances due to an absence of competition and vaguely distinguishes between public and private interests. Therefore, for the revenue potential of contracting to be fully optimized, governments need to promote openness and disclosures of mining sector information vis-à-vis institutional reform regarding regulatory agencies governing the sector.

⁴⁴ <https://statehouse.gov.ng/news/everything-you-need-to-know-about-the-presidential-artisanal-gold-mining-development-initiative-pagmi/>

RECOMMENDATIONS AND CONCLUSION

Recommendations

1. The Federal Government must step up efforts to enable the Nigeria Geological Survey Agency to live up to its statutory responsibility of providing relevant and up-to-date geoscience data that will de-risk the sector. Government action is needed to bridge the sector's funding gap through adequate, timely and regular funding of SMDF. This should better position the SMDF to effectively discharge its mandate, especially funding geoscientific data gathering, storage and retrieval. However, the transfers must be monitored to ensure that they are applied to advance the objectives of the Fund. As earlier pointed out, the SMDF spends more on operational expenses than capital investments directly linked to achieving its objectives. The SMDF must, therefore, prioritize the realization of its core mandate, including acquisition and archiving of geological data. This also requires civil society organizations and other accountability actors to monitor the Fund's expenditure to ensure prudence, prioritization, and accountability in the management of the Fund.

Additionally, State Agencies, including the Mining Cadastre Office, the SMDF and the Geological Survey Agency, must develop a plan to explore innovative approaches to financing the collection of geological data and creation of a database which is adequate and meets the basic geological requirements of investment decisions by the private sector. For instance, the Mining Cadastre Officer could consider options such right of first refusal to incentivize the private sector and give preference to such businesses during the auctioning of mineral blocks in the area geological data was generated. Lastly, the Federal Government must allocate resources to strengthen regulatory and oversight institutions' capacity (financial, technical and manpower) to make sure mineral rights holders deliver on their obligations to submit data acquired through mining operations to the State Agencies.

2. To tackle challenges with the formalization of the ASM sector, the Federal Government must amend the Minerals and Mining Act 2007 to distinguish between the two (2) components of the subsector, that is, artisanal miners on one side and small-scale miners on the other. The ECOWAS Model Mining and Minerals Development Act (EMMMDA) could serve as reference material in this regard. The EMMMDA distinguishes between the two (2) as follows:

Table 7: Distinguishing Features of Artisanal Mining and Small-Scale Mining (EMMMDA)

Defining Feature	Artisanal Mining	Small Scale Mining
Entity Involved	Person or Group of Persons	Corporate
Form of Registration	Certificate of registration	Certificate of incorporation and commencement
Deployment of Technology	Use of unmechanized or rudimentary equipment	Use of semi or fully mechanized methods
Land size	Minimum of 3" x 3" semi-cadastre block unit to a maximum of below one (1) regional cadastre block unit defined by 10" x 10" per unit	Minimum of one (1) regional cadastre block unit to a maximum of 150 regional cadastre block unit defined by 10" x 10" per unit
Production method	To be prescribed by the member State	Planned or coordinated open-pit or underground mining method

Source: Authors' construct

Adapting these distinguishing features could reduce the financial burdens associated with registration requirements for artisanal miners who may not have the means to meet the requirements.

Moreover, the Ministry of Mines and Steel Development and the Mining Cadastre Office (MCO) should decentralize registration to the State and District levels such that artisanal miners are not required to travel to Abuja to finalize the formalization of their operations. It is commendable that the MCO has established new operational offices, one each in the six (6) geopolitical zones of Nigeria (i.e., North Central (NC), North East (NE), North West (NW), South West (SW), South East (SE) and South (SS)). These six (6) geopolitical zones have significantly vast landmasses, which could disincentivize formalization if an artisanal miner must travel long distances to formalize his/her mining operations. It is, therefore, imperative that there is further decentralization of registration offices to the local government areas. Moreover, the Federal Government acting through the appropriate state institutions, must streamline institutional roles to address the confusion over where to go for the registration of ASM operations.

Again, the deployment of extension services should be used to incentivize formalization rather than as a punitive measure for failing to formalize operations. The Artisanal and Small-Scale Mining Department must roll out a comprehensive program to map artisanal and small-scale mining jurisdictions and identify miners for the extension services. This approach should subsequently integrate the formalization of ASM operations whilst empowering the Mining Inspectorate Department and the Mines Environmental Compliance Department to monitor operations and encourage communal monitoring and local level accountability.

Another critical area foundational to a successful formalization of the ASM sector is the capacity of State agencies to rein in powerful entities that rely on political control to circumvent processes. Accountability mechanisms must be strengthened to insulate institutions against political interference, including empowering them to act without fear or favour in the country's interest. The sanctions regime must also be strengthened by enhancing the authority of regulatory institutions to sanction perpetrators of unlawful acts that undermine the formalization and proper governance of the ASM operations.

3. On infrastructure development, the Federal Government must prioritize investment toward building a robust infrastructure to meet demand. The approach to close the infrastructure deficit required to attract big players and optimize mineral resource exploitation must begin with a comprehensive plan that includes; a diagnostic of the infrastructure requirements of the mining value chain; the costs of delivering such infrastructure; and a comprehensive financing model to deliver the required infrastructure. Considering that government may lack the capital to deliver such, an alternative financing model could be to integrate infrastructure delivery into mining investments such that investors recover the cost of financing infrastructure against future revenue streams from mineral operations to the government. The success of this financing option will depend on the ability of the resource's potential to pay for the infrastructure; therefore, this must be considered in the decision to finance infrastructure delivery on the back of the resource. A similar approach was adopted in the Simandou III project, where the development of a 650km long railway line to the coast and a new port and associated infrastructure in the Forecariah prefecture was integrated with the project.⁴⁵
4. It is also important that the Federal Government addresses the challenge associated with the existence of multiple laws. Government should harmonize all regulatory and fiscal requirements for mining operations to reduce the complexity and bureaucracy associated with its implementation. Similarly, it is important to synchronize land governance laws and mining legal frameworks to avert complexities associated with conflicting provisions.
5. Transparency of contracting is essential to optimize the revenue benefits accruing to the government. It is necessary to curtail illicit financial flows in their various forms through enhanced monitoring and accountability. Therefore, the Federal Government must adopt contract disclosures as the default approach in allocating mineral rights. Additionally, all mining contracts must be disclosed in readily accessible and machine-readable formats.

⁴⁵ <https://disclosures.ifc.org/project-detail/ESRS/31067/simandou-iii>; <https://www.mining-technology.com/projects/simandou-iron-ore-project-guinea/>

Conclusion

There is a renewed focus by successive governments to diversify Nigeria's economy beyond exploiting petroleum resources. Nigeria's mineral resource endowments have been identified as a key catalyst for improving domestic resource mobilization. Events of 2020 occasioned by the COVID-19 pandemic have proven that overreliance on petroleum resources could be detrimental to sustaining government budgets and economic development of oil-producing African countries such as Nigeria.

Successive governments have revamped Nigeria's mining sector amidst persisting challenges. Chief among them are difficulties with formalizing the ASM sector, which dominates the country's mining sector, inadequate geological data, and poor infrastructure. This is attributed mainly to institutional weaknesses, funding challenges, bureaucratic procedures, and poor monitoring systems. To effectively address these challenges requires effective stakeholder collaboration, institutional efficiency and coordination and deliberate financing to position the sector as a relevant contributor to the country's GDP and sustainable development.

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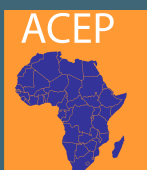
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