

A CRITICAL ANALYSIS OF THE LEGAL AND INSTITUTIONAL
FRAMEWORK FOR THE FORMALISATION AND REGULATION OF
ARTISANAL MINING IN NIGERIA

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ABSTRACT

The study examined how Nigeria can harness the activities of artisanal and small-scale mining for national development. It analysed the essential features and motivations for artisanal and small-scale mining (ASM) and its impact on the people, environment, economy and the development of the mining industry. It further examined the effectiveness of the legal and institutional framework for the formalisation of ASM; appraised international best practices that have been adopted for implementation in Nigeria and proposed the making of special regulations. This was with a view to providing effective institutional support mechanisms as a panacea for making ASM a sustainable economic activity.

The study relied on primary and secondary sources of information. The primary sources included the Constitution of the Federal Republic of Nigeria, 1999, the National Policy on Solid Minerals 1999 and 2006, the Minerals and Mining Act, 1999, the Nigerian Minerals and Mining Act, 2007 and other statutes and subsidiary legislation applicable to the mining industry in Nigeria and other jurisdiction. Secondary sources of information included published books, law journal articles, reports, conference proceedings, newspapers/magazines and the Internet. The primary and secondary sources of information were complemented with information from unstructured interviews conducted with Officials of relevant regulatory authorities and industry practitioners. Study visits were also made to Nasarawa and Oyo States, as well as, Ghana and Tanzania. Information and data obtained from these sources were subjected to content analysis in line with the objectives of the study.

The study revealed that Nigeria had not been able to realise the potentials of ASM because of the inability of artisanal miners to bring their operations within the formal sector and that inappropriate policy and legal regime, the absence of institutional support mechanisms had rendered past efforts to formalise and regulate ASM ineffective. It also revealed that Minerals and Mining Act, 1999 lagged behind international standards on some important criteria in that it did not among other shortcomings expressly recognise ASM; provide a country definition for ASM; make special regulations for ASM and simplify access to mineral rights and titles for ASM considered critical in any competitive mining legislation. While the Nigerian Minerals and Mining Act, 2007 had attempted to address some of these shortcomings by providing for the grant of the Small-Scale Mining Lease and separate country definition for ‘artisanal’ and ‘small-scale mining’, its provisions were not far reaching enough as the study further revealed that the Act apart from failing to make distinct provisions for these classes of miners, it did not take cognisance of the peculiarities of ASM by its capital intensive entry conditions considered unsuitable for ASM operations.

The study concluded that unless ASM activities are formalised through a regulatory regime that takes cognizance of the peculiarities of ASM and is complemented by the provision of appropriate institutional support mechanisms, the strategic objective of re-vitalising the mining industry and re-positioning it as a source of revenue and foreign exchange earnings for the country could not be realised.