



# RETHINKING LANDOWNER'S CONSENT AS A PREREQUISITE TO SECURING A MINERAL TITLE IN NIGERIA

## Introduction

Despite widespread occurrences of minerals within the country, Nigeria's mineral sector remains significantly underdeveloped, with its contribution to the nation's GDP at a little over 6% in 2024. The state of the sector is attributable to several factors including insecurity, proliferation of illegal miners in mineral rich states, weak sector regulation and the difficulty in obtaining the consent of landowners prior to the grant of a mineral title.

In this article, we discuss the current legal framework governing the grant of a mineral title in Nigeria with particular focus on Section 100 of the Nigerian Minerals and Mining Act, 2007 ("**Mining Act**"), which creates a requirement for the prior consent of affected landowners and occupiers as a condition for the grant of a mineral title. We also highlight some of the challenges arising from this requirement and propose alternative approaches to resource access, drawing from the current practice in the petroleum sector.

## The Requirement of Landowners Consent Under the Nigerian Minerals and Mining Act

In our previous article on Community Development Agreements (CDAs) in Nigeria ([Click to Access](#)), we extensively discussed the importance of community buy-in and the requirement for the entry into a CDA prior to the commencement of mining operations. To recap, CDAs are required to be executed between

mineral titleholders and their respective host communities *after* exploration activities have been concluded and *prior* to the commencement of operations for the development of the resource. As such, the obligation is on the holders of mining leases, small scale mining leases or quarry leases.

Our focus in this article is on a much earlier stage preceding the grant of a mineral title where the consent of the owner or occupier of land is required as a condition for the grant of a mineral title. Arguably, this is the most decisive condition for entry into the mining sector *moreso*, as the refusal of the owner or occupier of land to give consent to the grant of mineral title in respect of his/her land may result in the outright rejection of the application. Important to note is that the Mining Cadastre Office (MCO), which administers mineral titles, including the processing of applications for title, has no power to intervene or compel the owner or occupier of the land to give his/her consent to an application for mineral title. At best, and where practical, the MCO may only excise such land from the application. This position is clear from the provisions of Section 100:

*“When an application is made for a Mineral title in respect of an area which includes any private land or land occupied under a state lease or right of occupancy, the notice of the application, shall be given in the prescribed manner to the owner or occupier of the land and consent obtained before the licence is granted, otherwise the licence may be granted with exclusion of the private land in question.”*

## Challenges associated with the Prerequisite of Landowners’ Consent

The reality of mineral title applications, however, is that applicants are often compelled to engage in multiple negotiations as several parcels of land within the area of a mineral title application may be owned or occupied by separate persons or communities. This creates a cumbersome and expensive process that is not guaranteed to lead to a satisfactory outcome for the applicant as some of the demands of landowners may be burdensome for investors, who at such early stage would be uncertain as to whether the entire mineral title area would be required for operations, or to what extent the results from preliminary activities would warrant a project or an early abandonment of operations. Moreover, investors have found the interminable delays resulting from such a process, and the huge financial outlay required to obtain landowners’ consent, an impediment to investment.

In effect, the consent requirement inadvertently gives owners and occupiers of land indirect power of approval of mineral title applications. In instances where multiple parties are interested in the same land area, the landowner is invariably decisive as to the eventual licensee over the area, who may simply be the highest bidder, and not necessarily the most qualified applicant.

We also note instances where multiple applicants are granted consent by unscrupulous landowners over the same property thereby creating administrative difficulties for the MCO in resolving conflicts between the applicants and factions in communities. A related issue is the matter of improper consent whereby the applicant secures consent from a person who in actual fact does not have the authority to do so.

The combined effect of these challenges is a protracted and costly application process which is antithetical to investor confidence, given their preference for certainty and clear processes. It is therefore

pertinent that further consideration is given to the question of how the consent condition may be better dealt with, especially given the fact that a disproportionate amount of time is being expended by the MCO on disputes around landowners' consent.

## Land Use Conflicts

It would appear that Section 100 of the Mining Act was intended as a mechanism for resolving land use conflicts. However, the reality is that it runs antithetical to the Federal Government's ownership of, and access rights to the mineral resources, more so as the law does not empower government to intervene in an adverse decision of a landowner or occupier. This "win-lose" approach has not served as an effective land use conflict resolution mechanism, and as discussed above, Section 100 has resulted in a number of challenges that have impacted the development of the mining sector.

The Constitution of the Federal Republic of Nigeria 1999 (as amended) (the "**Constitution**") vests ownership and control of all minerals in, under or upon any land in Nigeria, its territorial waters and exclusive economic zone exclusively in the Federal Government of Nigeria and provides that such minerals shall be administered in accordance with enactments of the National Assembly. This constitutional right is similar to a *profit a prendre*, which is a proprietary interest in the land of another that confers on the holder, the right to take part of the soil, minerals or the natural produce of the land.

There is an implied easement to enter land owned by another person for the purpose of exploiting the resources constitutionally reserved to the state. This easement creates a fundamental conflict between the interest of the state, as the owner of the minerals and, the interest of the owners and occupiers of land, as the owners of the surface area. Both the Constitution, the Land Use Act and the Mining Act seek to resolve these land use conflicts through a number of mechanisms including the payment of compensation to affected owners and occupiers of land.

## Sufficiency of Compensation: Comparison with the Petroleum Industry

The Constitution and the Land Use Act, 1978 recognise that a person's title to land may be revoked or compulsorily acquired based on an *overriding public interest* in certain activities, which includes mineral extraction, provided however, that adequate compensation is paid to the person.

The Mining Act recognises situations whereby title to land may be revoked by reason of the grant of a mining lease, and provides that in such instances the title holder will pay to the government (either at federal or state level) the amount of compensation which the government paid to the landowner by reason of the revocation of the certificate of occupancy. Indeed, written evidence that the title holder has notified, offered or paid compensation to all owners or occupiers of the land on which mining operations are to be conducted in accordance with the Mining Act is an additional condition to the commencement of development activities on a mining lease. The Act, together with its subsidiary legislation, the Nigerian Minerals and Mining Regulations, 2011, prescribe that reasonable and adequate compensation must be paid by all mineral title holders to cover the surface rent of the owner or for disturbances to surface rights and any damage done to the surface of the land. Additionally, compensation must be paid for damage,



removal and destruction of any economic crop, tree, building or work of the landowner or occupier due to mining activities.

The requirement for the payment of compensation to owners or occupiers of land as a prerequisite to the commencement of development operations, failing which the mineral title will be subject to revocation, indicates a legislative intent to protect a landowner or occupier whose property is required for mining activities. Given this protection, it can be argued that the requirement for landowners' consent as a prerequisite to the grant of the mineral title is redundant and this issue may be better addressed by mandating compensation to the landowner, *prior* to the commencement of operations or entry into the land in question.

More importantly, it is our considered position that to the extent that the *pro ante* requirement for the grant of mineral title in Section 100 of the Act creates an unnecessary hold up to the right of the sovereign to exercise a constitutionally reserved right, the provision in Section 100 is inconsistent with the Constitution and is therefore void. **See *Maiwada v Pate* (1995) 8 NWLR (Pt. 412) 191.**

Some inspiration can be drawn from the Petroleum Industry Act, 2021 (PIA) and the Acreage Management Petroleum (Drilling and Production Regulations), 2024, which, together, also recognise the vesting of the entire ownership and control of all petroleum in Nigeria in the Federal Government. Notably, these instruments do not require the consent of landowners to the grant of title for petroleum operations. Rather, they prescribe the payment of fair and adequate compensation to owners and occupiers of land<sup>1</sup> as a precondition to the entry into any private land within a petroleum concession.

We note that the consent requirement has never featured in any of Nigeria's previous mining laws. Both the Minerals and Mining Act of 1999 and The Minerals Act 1946 only required the applicants for exclusive prospecting licences to give notice of the application to occupiers of land within the proposed title area. Under the Minerals Act 1946, affected occupiers were given the opportunity to lodge objections and the Minister was empowered to exclude any portion of the area for any reason he may think proper which may include any objection lodged by a landowner. A similar provision may be suitable for the current regime as it would strike a better balance by relieving applicants from the unreasonable and expensive obligation of seeking the consent of landowners whilst providing the landowners an opportunity to present their concerns to the Federal Government. This approach will also protect the public interest by ensuring that the development of the resources is not constrained pending the consent of landowners, which may never be granted.

## Conclusion

While the rationale behind requiring landowner consent is commendable, the reality is that it has become an issue of concern for both government and investors, and the cause of avoidable disputes. The payment of adequate compensation *prior to the commencement of operations or entry into the affected land* while enabling objections where necessary appears to be a more balanced and effective protection for

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<sup>1</sup> In practice, petroleum concessionaires lease or purchase outrightly, land required for petroleum operations.

landowners as opposed to a requirement for a consent prior to the issuance of mineral title for the early (exploration) phase, without more. This suggested approach should cure the practical challenges associated with landowner consent, moreso in view of the clarity of the Constitution regarding the rights of the sovereign over minerals occurring within Nigerian territory.

***Disclaimer: This publication is intended merely to highlight issues in the mining sector in Nigeria and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or other issues in the Nigerian mining sector, please reach out to one of the contacts provided below.***

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