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## Judicial Activism as a Pathway to Environmental Justice in Africa's Mining Industry: The Case of Nigeria and South-Africa

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# Judicial Activism as a Pathway to Environmental Justice in Africa's Mining Industry: The Case of Nigeria and South-Africa

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## Abstract

Africa's mining industry embodies the tension between socio-economic development, and environmental protection. On account of their abundant mineral resource endowments, Nigeria and South-Africa constitute Africa's mining hub with the attendant environmental burdens evident in the distortion of natural environmental equilibrium, disruption of ecosystem services and dislocation of the people from their cultural moorings contrary to extant global and regional instruments on development and human rights. Notwithstanding the negative externalities of mining, the incidence of poverty and the absence of basic amenities in many mining communities often combine to frustrate the effort of mining-affected persons to obtain redress for the violation of their environmental rights. The situation is worsened by the prevailing uncertainty in mining regulatory frameworks in Nigeria and South-Africa. For instance, while section 24 of South-Africa's constitution guarantees the environmental rights of citizens, the gaps and uncertainties in the country's Minerals and Petroleum Resources Development Act (MPRDA) 2002 and its regulations undermine the regulatory capacity to hold mining companies accountable. Similarly, while section 20 of Nigeria's constitution provides for environmental rights, its potency is deflected by section 6(6)(c) of the same constitution which makes environmental rights unenforceable in court. The situation is aggravated by the defects in the country's Minerals and Mining Act (MMA) 2007 and its regulations which concertedly undermine citizens' environmental rights. Using the analytical model as methodology and survey of relevant literature and case law as sources of data, this study examines the weaknesses of Nigeria's and South-Africa's mining regulations in relation to citizens' environmental rights. The study found that legislative ambivalence and defective public participation frameworks hold sway in both jurisdictions for which judicial activism, poverty alleviation and improved public involvement in the issuance of mining permits and licenses are recommended for the attainment of environmental justice.

**Keywords:** Environmental Justice, Judicial activism, Human rights, Mining, Development, Regulation.

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