UDO UDOMA & BELO-OSAGIE

Repositioning and Promoting Energy Investments Between South Africa and Nigeria

Exploring the Legal Framework of the Industry

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1. INTRODUCTION

Nigeria and South Africa remain two of Africa's most significant energy markets, with substantial natural resources, sophisticated financial ecosystems, and growing ambitions to lead the continent's evolving energy economy. However, despite their strategic importance, the full potential for cross-border energy investment and collaboration between both jurisdictions remains largely untapped. As Africa navigates energy security concerns, industrialisation, and the global energy transition, stronger regional cooperation between the two countries has become increasingly important.

Recent reforms in both jurisdictions have further strengthened this opportunity. Nigeria's Petroleum Industry Act, 2021 and broader efforts to liberalise its energy sector are aimed at attracting long-term investment across oil, gas, and renewable energy value chains. Similarly, South Africa's ongoing electricity market reforms and renewable energy initiatives continue to reshape its investment landscape.

Based on this premise, this article examines the legal and regulatory frameworks governing energy investments in Nigeria and South Africa, the opportunities and challenges shaping cross-border participation, and how both countries can deepen collaboration to foster a more integrated and investment-friendly African energy market.

2. SETTING THE SCENE: WHY NIGERIA AND SOUTH AFRICA?

Nigeria and South Africa jointly account for one-third of sub-Saharan Africa's GDP, with their GDPs roughly $188 billion and $400 billion, respectively, in 2024.[1] Nigeria holds the largest proven crude oil reserves on the continent — estimated at 37.50 billion barrels — and has a production capacity of approximately 2.19 million barrels per day (mbpd),[2] but currently produces an average of 1.71 million bpd[3]. It is endowed with natural gas reserves of approximately 209.26[4] trillion cubic feet, ranking among the top ten globally. South Africa, although with significant coal deposits, is at the frontier of renewable energy development on the continent, driven primarily by its Renewable Energy Independent Power Producer Procurement Programme (the "**Renewable Energy Programme**").[5] Despite this alignment, bilateral energy investment between our two countries is still in its early stages. The African Union's Agenda 2063 and the African

[1]Council on Foreign Relations, *Economics: Sub-Saharan Africa (2025)* https://education.cfr.org/learn/reading/economics-sub-saharan-africa accessed 13 April 2026.

[2]OPEC, *Annual Statistical Bulletin 2023* (OPEC 2023) <https://www.opec.org/opec_web/en/publications/338.htm> accessed 13 April 2026; Nigerian Upstream Petroleum Regulatory Commission (NUPRC), *Nigeria: Leading Crude Oil Producer in Nigeria (2024)* https://www.nuprc.gov.ng/nigeria-leading-crude-oil-producer-in-africa/ accessed 13 April 2026.

[3] Gwamkat Gwamzhi, "*Oil production recovers to 1.71m bpd average – NNPC",* (April 2026, Radia Nigeria), https://radionigeria.gov.ng/2026/04/08/oil-production-recovers-to-1-71m-bpd-average-nnpc/, accessed 15 April 2026.

[4] Nigerian Upstream Petroleum Regulatory Commission (NUPRC), *Nigeria's Oil and Gas Reserves Soar: NUPRC Unveils Impressive Figures (2024)* https://www.nuprc.gov.ng/nigerias-oil-and-gas-reserves-soar-nuprc-unveils-impressive-figures/ accessed 13 April 2026.

[5]Department of Mineral Resources and Energy (DMRE), *Renewable Energy Independent Power Producer Procurement Programme (REIPPPP): IPPPP Quarter 3 Report* (DMRE/IPP Office 2023) https://www.dmre.gov.za/Portals/0/Resources/Publications/Reports/IPPPP/IPPPP-Quarter3-Report-as-at-31December2023.pdf accessed 13 April 2026.

Continental Free Trade Area (AfCFTA) framework provide the foundation for deeper integration.[6] However, in practice, legal harmonisation, regulatory predictability, and investor protection mechanisms remain significant obstacles. It is these obstacles and how we surmount them that I wish to address this morning.

3. THE LEGAL FRAMEWORKS

3.1. A Review of Nigeria's Regulatory Energy Landscape

3.1.1. The Petroleum Industry Act

One of the most transformative developments in Nigeria's energy sector in recent years is the enactment of the Petroleum Industry Act (PIA) 2021. The PIA consolidated decades of fragmented petroleum legislation, reestablishing the Nigerian National Petroleum Corporation (NNPC) as a commercially oriented entity, the Nigerian National Petroleum Company Limited (NNPC Ltd), and creating the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), as regulators for the industry. The PIA also introduced a revised fiscal regime, gradually replacing the Petroleum Profits Tax with a Hydrocarbon Tax, graduated by terrain and asset vintage, with rates ranging from 15% to 30%.

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[6]African Union, *Agenda 2063: The Africa We Want* (African Union Commission 2015) <https://au.int/en/agenda2063/overview> accessed 13 April 2026; Agreement Establishing the African Continental Free Trade Area (AfCFTA), adopted 21 March 2018, entered into force 30 May 2019 <https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf> accessed 13 April 2026.

The PIA further provides a statutory framework for gas commercialisation, further addressing the longstanding menace of gas flaring through financial penalties and incentive provisions for domestic gas supply obligations, a critical inducement for gas-to-power investment. Additionally, the PIA and its regulations provide for domestic crude supply obligations to serve local refineries and market to satisfy the energy needs of Nigerians.

3.1.2. Electricity Act 2023

Complementing the PIA is the landmark Electricity Act 2023 (the "Act"), which repeals the Electric Power Sector Reform Act, 2005, and consolidates the entire legal and institutional framework for the Nigerian Electricity Supply Industry (NESI). The Act establishes the Nigerian Electricity Regulatory Commission ("NERC") as the apex regulator of the NESI, with expanded powers to license and regulate persons engaged in electricity generation, transmission, system operation, distribution, supply, and trading across the full value chain.

The Act also mandates the Transmission Company of Nigeria (TCN) to incorporate an Independent System Operator (ISO), to be licensed by NERC, to perform market and system operation functions separately from the transmission function, a structural reform designed to improve market transparency and attract private capital into the transmission infrastructure. Critically for investors, section 112 of the Act expressly permits public-private partnerships between Federal and State governments and private companies for investment in the national transmission grid.

For project finance practitioners, the Act introduces distribution franchising arrangements, enabling third parties to operate within a distribution licensee's network under NERC-approved terms, creating a new class of investable opportunity particularly suited to last-mile electrification in underserved communities.

Additionally, the Act gives direct legislative effect to the constitutional reform assented to by President Muhammadu Buhari on 17th March 2023.[7] This amendment deleted the restrictive phrase "not covered by a national grid system" from paragraph 14(b) of the Concurrent Legislative List in Part II of the Second Schedule to the Constitution, thereby conferring on State Houses of Assembly, the unfettered power to make laws for the generation, transmission, and distribution of electricity across all areas within their respective states, including areas already connected to the national grid. The Act operationalises this constitutional shift by establishing the State Electricity Regulators (SERs)[8] as co-regulatory authorities alongside NERC, creating a two-tier regulatory framework for the electricity market for the power sector.

[7] The Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 17) Act, 2023.

[8] Section 2(2)(c) of the Electricity Act, 2023.

3.1.3. The Mini-Grid Regulation 2026

The most recent and consequential regulatory development in the space is the Mini-Grid Regulations 2026[9] (the "Regulation") issued by the NERC on the 10th April 2026 in exercise of its powers under section 226 of the Electricity Act, 2023 representing a significant evolution in the Nigeria's decentralized electricity framework. The Regulation intends to reduce regulatory uncertainty, improve the bankability of mini-grid investments, and accelerate the deployment of off-grid electricity solutions in underserved communities.

A key feature of the Regulation is the introduction of two categories of mini-grid: isolated mini-grids, which operate independently of DisCo networks, with a capacity ceiling of up to 5MW; and interconnected mini-grids, which are connected to and coordinated with existing distribution infrastructure, with a capacity ceiling of up to 10MW. The Regulation establishes clearer rules on tariff setting, cost recovery mechanisms, and compensation structure, reducing prior uncertainties that affected investors' confidence.

The Regulation also provides a more predictable and realistic commercial environment for operators by strengthening licensing and registration processes, clarifying technical and operational standards, and reinforcing consumer

[9] Mini-Grid Regulations 2026 https://nerc.gov.ng/wp-content/uploads/2026/04/Mini-Grid-Regulations-2026.pdf

protection obligations. For example, operators may, subject to the NERC's approval, expand allowable technical and non-technical losses beyond the 4% and 3% allowances, respectively, by providing evidence relating to such losses, and provided such losses fall under any of the allowable justifications.

The Regulation expands regulatory considerations for project development site exclusivity. Notably, developers are expressly prohibited from transferring exclusivity agreements, and the Regulation stipulates the documents and information that must now accompany an application to register an exclusivity agreement, failing which the NERC will not accept the agreement for registration.

3.1.4. Renewable Energy

Nigeria's renewable energy regulatory framework, while still maturing, has developed significantly across three intersecting instruments. The NERC Regulations on Feed-In Tariff for Renewable Energy Sourced Electricity in Nigeria (REFIT) 2015, which entered into force in February 2016, provide a guaranteed price framework for electricity generated from wind, hydro, biomass, and solar photovoltaic sources with a capacity between 1MW and 30MW connected to the grid or distribution network.[10]

[10] Section 4 (ii)(b), Nigerian Electricity Regulatory Commission (NERC), Regulations on Feed-In Tariff for Renewable Energy Sourced Electricity in Nigeria (REFIT) 2015.

The National Renewable Energy and Energy Efficiency Policy (NREEEP), approved by the Federal Executive Council in 2015, constitutes the overarching policy framework. It establishes a target for developing power generation through renewables and energy efficiency, sets out the framework for removing regulatory and economic barriers, and requires the establishment of renewable energy units at both the federal and state levels to coordinate policy implementation.

3.2. A Review of South Africa's Regulatory Energy Landscape

The Electricity Regulation Act 4 of 2006 (ERA) governs the generation, transmission, distribution, import, and export of electricity in South Africa. The ERA establishes the most important energy regulatory framework in South Africa. The National Energy Regulator of South Africa (NERSA) acts as the primary regulatory authority, with jurisdiction over licensing, tariff approval, and compliance monitoring. The ERA was recently amended by the Electricity Regulation Amendment Act 38 of 2024 (ERAA), establishing the framework for a competitive electricity market.[11]

The Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002 governs South Africa's upstream petroleum sector. The MPRDA vests all mineral

[11]Electricity Regulation Act 4 of 2006 (South Africa) Government Gazette 28992 of 5 July 2006, ss 3, 4, 15; See also Mondaq, *The Electricity Regulation Amendment Act And South Africa's New Era of Electricity Market Transformation* https://www.mondaq.com/southafrica/oil-gas-electricity/1585856/the-electricity-regulation-amendment-act-and-south-africas-new-era-of-electricity-market-transformation accessed 14 April 2026.

and petroleum resources in the State of South Africa as a custodianship for the benefit of all South Africans, and as a custodian, the State has the power and right to require that investors obtain reconnaissance permits, technical cooperation permits, exploration rights, or production rights, each subject to a prescribed application process and fiscal obligations.[12]

South Africa's Renewable Energy Programme, launched in August 2011, has been globally lauded as a model for structuring renewable energy procurement. It has successfully channelled substantial private sector expertise and investment into grid-connected renewable energy in South Africa at competitive prices, demonstrating that a well-structured legal and procurement framework can unlock capital at scale.[13]

3.3. The Intersection: ECOWAS Energy Protocol and SADC Energy Frameworks

3.3.1. A structural challenge for South Africa-Nigeria bilateral energy investment is the absence of a shared regional energy treaty. Nigeria sits within the ECOWAS framework, which provides principles on energy trade and investment protection within the West African region, while South Africa operates within the Southern

[12]Mineral and Petroleum Resources Development Act 28 of 2002 (South Africa) ss 3, 69–84.

[13]World Bank Group, *South Africa's Renewable Energy IPP Procurement Program: Success Factors and Lessons* https://openknowledge.worldbank.org/server/api/core/bitstreams/74a79bb1-6b50-5058-a614-7154f6df73df/content accessed 14 April 2026

African Development Community (SADC) framework, governed by the **SADC Protocol on Energy of 1996**, as revised.[14]

3.3.2. It is worth noting that the ECOWAS Energy Protocol is not without teeth. Modelled closely on the Energy Charter Treaty, it provides substantive investment protections – fair and equitable treatment, protection against expropriation without compensation, and critically, access to investor-state dispute settlement. Thirteen of the fifteen ECOWAS member states have ratified the Protocol, and it has entered into force. However, the enforcement architecture remains underdeveloped in practice: the ECOWAS Regional Electricity Regulatory Authority (ERERA) is still in the process of designing binding dispute-resolution and enforcement rules, meaning that investor predictability remains aspirational rather than guaranteed. The Protocol is also now widely acknowledged, including by ECOWAS itself, to require revision to align with more recent instruments such as the AfCFTA Protocol on Investment and to better balance investor rights with sustainable development obligations.

3.3.3. The more fundamental structural challenge, however, is one of jurisdictional design. The ECOWAS Energy Protocol governs investment flows among ECOWAS member states — it was not conceived to regulate cross-regional investment between West Africa and Southern Africa. The SADC Protocol on

[14]SADC Protocol on Energy, signed 24 August 1996, Protocol_on_Energy1996.pdf.

3.3.4. Energy, similarly, operates as an intra-SADC framework and has no mechanism for engaging with non-SADC investors or states. A Nigerian energy company investing in South Africa's renewable sector, or a South African utility seeking to participate in Nigeria's gas-to-power value chain, falls entirely outside the protective scope of both instruments. Such an investor must independently navigate two distinct licensing regimes, local content frameworks, foreign exchange obligations, and dispute resolution pathways — none of which were designed with cross-regional South-South investment in mind.

3.3.5. The AfCFTA Protocol on Investment, although adopted but not yet in force, holds genuine promise as a continental bridge. Once operationalised, it is intended to provide a unified framework for investment protection, market access, and dispute resolution across AfCFTA member states — encompassing both Nigeria and South Africa. However, in the interim, investors operating across both jurisdictions must navigate two parallel regulatory regimes, often with divergent standards on dispute resolution, expropriation, and technology transfer. This gap underscores the urgency of the recommendations I will set out later in this address.

4. INVESTMENT PROTECTION: BILATERAL INVESTMENT TREATIES AND ARBITRATION

4.1. The protection of cross-border energy investments between Nigeria and South Africa is currently governed primarily by the **Nigeria–South Africa Bilateral Investment Treaty (BIT)**, signed in 2000 and in force since 2005.

4.2. The BIT provides for fair and equitable treatment, full protection and security, national treatment, and most-favoured-nation status. Crucially, Article 8 of the BIT provides for international arbitration under the International Centre for the Settlement of Investment Disputes (ICSID) Convention or UNCITRAL Rules in the event of investor-state disputes.[15] Furthermore, Article 6 of the BIT provides against nationalisation or expropriation of investments between the two countries, except for public purposes, under due process of law, on a non-discriminatory basis, and against the payment of prompt, adequate and fair compensation.

4.3. However, South Africa's subsequent enactment of the **Protection of Investment Act 22 of 2015**, which came into operation on 13 July 2018, marked a significant policy shift. South Africa terminated a number of its BITs and now subjects investment disputes primarily to domestic courts, with international arbitration available only by mutual consent at the state-to-state level. This development introduces uncertainty for Nigerian investors in South Africa and calls for careful structuring of investment vehicles.[16]

4.4. The Lagos Court of Arbitration, the Arbitration Foundation of South Africa (AFSA), and the African Arbitration Association (AfAA), established in 2019, have emerged

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[15]Article 8 of the Agreement Between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa for the Promotion and Reciprocal Protection of Investments (signed 2000, entered into force 2005); UNCTAD Investment Policy Hub <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/3615/nigeria---south-africa-bit-2000-> accessed 14 April 2026.

[16]Article 13(5) of the Protection of Investment Act 22 of 2015 <South Africa - Investment Act | Investment Laws Navigator | UNCTAD Investment Policy Hub> accessed 14 April 2026.

4.5. as important institutional arbitration centres for resolving cross-border energy investment disputes across the continent.[17] A crucial way forward would be for both states to rediscuss international relations and the possibility of an updated treaty that takes into account the investment-specificities of both countries since 2000.

5. THE ENERGY TRANSITION IMPERATIVE AND ITS LEGAL DIMENSIONS

5.1. Any discourse on energy investment between Nigeria and South Africa must address the defining challenge of our era: the global energy transition. Both nations are parties to the **Paris Agreement** and have submitted successive Nationally Determined Contributions (NDCs) that set out their respective emissions-reduction commitments.[18]

5.2. South Africa's **Just Energy Transition Investment Plan (JET IP) 2023–2027**, presented to the Heads of Government of the International Partners Group at COP27 on 8 November 2022 and approved by Cabinet on 15 November 2023, outlines an investment requirement of ZAR 1.5 trillion over five years to transition

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[17]Lagos Court of Arbitration Act (No 18 of 2009) (Lagos State); Arbitration Foundation of Southern Africa (AFSA), Arbitration Rules (AFSA 2021); African Arbitration Association.

[18]Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) FCCC/CP/2015/L.9/Rev.1 Arts 2, 4 <https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf> accessed 14 April 2026; Federal Republic of Nigeria, Updated Nationally Determined Contribution (2021) <https://unfccc.int/sites/default/files/NDC/2022-06/NDC%20INTERIM%20REPORT%20SUBMISSION%20-%20NIGERIA.pdf> accessed 14 April 2026; Republic of South Africa, Updated Nationally Determined Contribution (2021) <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf> accessed 14 April 2026.

5.3. away from coal dependency.[19] Nigeria's **Energy Transition Plan (ETP)**, launched on 24 August 2022 by Vice President Yemi Osinbajo, articulates a pathway to achieving net-zero emissions by 2060, anchored by investment needs across five key sectors: power, cooking, oil and gas, transport, and industry.[20]

5.4. For legal practitioners and investors, the energy transition creates both opportunity and legal complexity. The **Climate Change Act 22 of 2024** in South Africa introduces the institutional architecture for carbon budgets, sectoral emissions targets, and a Presidential Climate Commission. This framework will bear directly on energy investment decisions across the mining, power, and industrial sectors.[21]

5.5. The Federal Government of Nigeria has also passed the Climate Change Act of 2021, which introduces a framework for climate change obligations applicable to private and public entities, and Ministries, Departments, and Agencies of the Federal Government. The Climate Change Act also introduces obligations to set a national carbon budget, including the parameters for such a budget, and the possibility of carbon trading.

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[19]Republic of South Africa, *South Africa's Just Energy Transition Investment Plan (JET IP) 2023–2027* (Presidency of South Africa, presented at UNFCCC COP27, Sharm El-Sheikh, 8 November 2022) <https://stateofthenation.gov.za/assets/downloads/JET%20Implementation%20Plan%202023-2027.pdf> accessed 14 April 2026; Cabinet approval of JET Implementation Plan on 15 November 2023.

[20]Federal Republic of Nigeria, *Nigeria Energy Transition Plan* (Energy Transition Office, Office of the Vice President, launched 24 August 2022) <https://energytransition.gov.ng> accessed 14 April 2026; the Plan targets net-zero emissions by 2060 across power, cooking, oil and gas, transport and industry sectors.

[21]Climate Change Act 22 of 2024 (South Africa).

5.6. The government also approved the Carbon Market Activation Policy ("**CMAP**") and the Nigeria Carbon Market Manual of Procedures ("**Manual of Procedures**"). The CMAP establishes Nigeria's overarching policy, institutional, and strategic framework for the development of its carbon market. In particular:

a. it defines Nigeria's approach to participation in both voluntary carbon markets and cooperative approaches under Article 6 of the Paris Agreement;

b. sets out the institutional and governance structure for carbon market activities, including the roles of the National Council on Climate Change ("**NCCC**") and other relevant bodies; and

c. outlines the policy direction for carbon pricing mechanisms, including the potential introduction of an emissions trading system and carbon taxation over time.

5.7. The CMAP also provides a forward-looking implementation roadmap, positioning carbon markets as a key tool for mobilising climate finance, supporting Nigeria's NDCs commitments, and attracting investment into mitigation activities.

5.8. The Manual of Procedures operationalises the CMAP by setting out the detailed rules and processes governing carbon market activities, including project eligibility, approval and authorisation processes, monitoring, reporting and verification, issuance of Internationally Transferred Mitigation Outcomes (ITMOs), and corresponding adjustments.

5.9. Taken together, the Climate Change Act, the CMAP and the Manual of Procedures represent a significant shift from a largely policy-based framework to a more

structured and implementable carbon market regime in Nigeria, although further regulatory instruments may still be developed to provide additional detail over time.

6. CRITICAL MINERALS AND THE ENERGY SECTOR

6.1. The global energy transition is not only a revolution in how electricity is generated, but it is also a revolution in the materials that power that generation. Clean energy technologies are mineral-intensive by design. Lithium and graphite are foundational to the lithium-ion batteries that store solar and wind energy and propel electric vehicles.

6.2. Cobalt stabilises battery chemistry and extends cell life. Copper is the indispensable conductor running through every solar panel, wind turbine, transmission line, and electric motor. Nickel enhances the energy density of next-generation batteries. Rare earth elements, including neodymium and dysprosium, are critical to the permanent magnets that drive wind turbines and EV motors.

6.3. According to the International Energy Agency's *Global Critical Minerals Outlook 2025*, lithium demand alone rose by nearly 30% and global production increased by 35% in 2024, driven overwhelmingly by energy applications, with battery metals now accounting for 85% of total demand growth in the energy sector over the past

two years.[22] In this context, any serious discourse on energy investment between Nigeria and South Africa must now necessarily encompass the critical minerals dimension, particularly given South Africa's established position as a leading mining jurisdiction with significant reserves of key energy transition minerals such as platinum group metals, manganese and chrome[23].

6.4. Nigeria's legal framework for the solid minerals sector is anchored in the **Nigerian Minerals and Mining Act 2007** (the "NMMA"), enacted on 16th March 2007 to repeal the Minerals and Mining Act No. 34 of 1999.[24] The NMMA vests ownership of all mineral resources in, under, or upon any land in Nigeria in the Federal Government on behalf of the people of Nigeria.[25] It establishes the licensing architecture for reconnaissance permits, exploration licences, small-scale mining leases, and full mining leases[26], and provides fiscal incentives including a 95% capital allowance on qualifying expenditure, exemption from customs duties on mining equipment, and permission to retain foreign exchange earnings.[27] The

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[22] International Energy Agency (IEA), Global Critical Minerals Outlook 2025 (IEA 2025) Global Critical Minerals Outlook 2025> accessed 21 April 2026.

[23] Africa Mining iQ 'Mining Industry in South Africa' <https://projectsiq.co.za/mining-industry-in-south-africa.htm#:~:text=This%20resulted%20in%20record%20rand,great%20value%20and%20huge%20opportunities.> accessed 21 April 2026

[24] Nigerian Minerals and Mining Act 2007 (NMMA) <https://faolex.fao.org/docs/pdf/nig92382.pdf> accessed 21 April 2026.

[25] Section 1 of the NMMA 2007

[26] Section 46 of the NMMA 2007

[27] Sections 24-27 of the NMMA 2007

NMMA also mandates Community Development Agreements between mining operators and host communities,[28] a provision that foreshadowed the community engagement frameworks later embedded in the PIA. Notwithstanding this potential, the sector remains underexplored, with limited geological data and relatively low levels of exploration investment compared to peer jurisdictions.

6.5. Nigeria is now actively developing its critical minerals sector as a strategic economic priority. The country hosts occurrences of lithium-bearing minerals (notably in Nasarawa, Kwara, Ekiti, and Kogi States), as well as indications of graphite and rare-earth elements, although most remain underexplored and not yet classified as significant proven reserves. In September 2023, the Minister of Solid Minerals Development stated that Nigeria's unexplored critical mineral deposits are valued at over $700 billion.[29] The Federal Government issued 146 lithium mining licences in 2023,[30] and by May 2024[31], a China-backed facility in Nasarawa had commissioned a 4,000-tonne-per-day lithium processing plant, with

[28] Section 116 of the NMMA 2007

[29] Ministry of Solid Minerals Development, Statement of Minister Dr Oladele Alake on Nigeria's Critical Mineral Deposits (September 2023) https://businessday.ng/news/article/nigeria-mineral-deposits-worth-over-700bn-alake/ accessed 21 April 2026; Veriv Africa, "The Role of Nigeria's Critical Minerals in the Global Energy Transition" (March 2025) <https://www.verivafrica.com/insights/the-role-of-nigerias-critical-minerals-in-the-global-energy-transition> accessed 21 April

[30] Business Post, "Nigeria Issues 146 Lithium Mining Licences" (31 January 2024) <https://businesspost.ng/economy/nigeria-approves-146-lithium-mining-licenses/> accessed 21 April 2026.

[31] Government of Nasarawa State <https://nasarawastate.gov.ng/commissioning-of-the-4000-tones-per-day-avatar-new-energy-materials-co-ltd-lithium-processing-plant-in-nasarawa-local-government-area/> accessed April 21 2026

a further investment of approximately $200 million announced by Canmax Technologies, another China-backed venture, for a second processing facility[32].

6.6. The Federal Government has also introduced a beneficiation policy restricting the export of unprocessed minerals, signalling a deliberate strategy to retain value domestically and move Nigeria up the global critical minerals supply chain."[33]

6.7. For investors in the energy sector, whether in solar, wind, battery storage, or electric mobility, Nigeria's critical minerals endowment is increasingly inseparable from its energy investment proposition. In this context, there is a clear opportunity for collaboration between Nigeria and South Africa, leveraging South Africa's mature mining ecosystem, technical expertise, and capital markets, alongside Nigeria's emerging resource base and expanding energy market, to develop integrated value chains across the critical minerals and energy sectors.

6.8. The alignment of the NMMA's licensing framework with the PIA's gas and power development objectives, and the Federal Government's growing emphasis on domestic value addition in solid minerals, presents a compelling integrated investment thesis for South African and other international partners.

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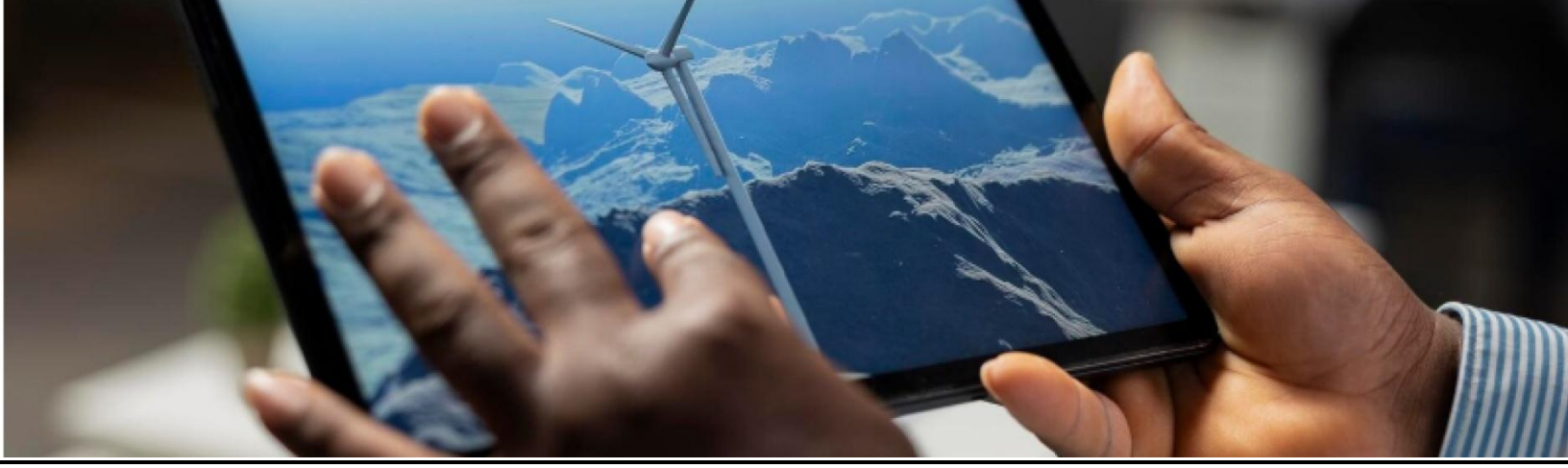
[32] ; Rare Earth Exchanges, "Is This Nigeria's Critical Minerals Moment?" (26 September 2025) https://rareearthexchanges.com/news/is-this-nigerias-critical-minerals-moment/ accessed 21 April 2026

[33]Business Day, "Era of exporting raw materials from Nigeria is over" (23 October 2023) https://businessday.ng/news/article/era-of-exporting-raw-materials-from-nigeria-is-over-dele-alake/#google_vignette accessed 21 April 2026.



7. PRACTICAL CONSIDERATIONS FOR STRUCTURING CROSS-BORDER ENERGY INVESTMENTS

From our experience advising clients in the energy and infrastructure space across both markets, I wish to offer the following practical guidance:

7.1. **Structure through a neutral holding jurisdiction** such as Mauritius or the Netherlands, both of which maintain Double Taxation Agreements (DTAs) with Nigeria and South Africa, to optimise the fiscal and treaty protection profile of cross-border investments.[34]

7.2. **Conduct rigorous regulatory due diligence** to map the applicable licensing requirements in each jurisdiction. In Nigeria, upstream projects require a Petroleum Exploration Licence (PEL) or Petroleum Prospecting Licence (PPL) or a Petroleum Mining Lease (PML) under the PIA; midstream projects require NMDPRA licences. In South Africa, compliance with the MPRDA's broad-based BEE requirements, including the Mining Charter III, is non-negotiable.[35]

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[34]Agreement for the Avoidance of Double Taxation Between the Republic of South Africa and the Republic of Mauritius (1996); Convention for the Avoidance of Double Taxation Between the Republic of South Africa and the Kingdom of the Netherlands (2008); Double Taxation Agreement Between Nigeria and Mauritius (1992).

[35]Nigerian Oil and Gas Industry Content Development Act (No 2 of 2010) (Nigeria), ss 3–16 <https://ncdmb.gov.ng/NCACT.pdf> accessed 13 April 2025; Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter III), Government Gazette No 41934 of 27 September 2018 <https://www.gov.za/documents/mineral-and-petroleum-resources-development-act-broad-based-socio-economic-empowerment> accessed 13 April 2026.

7.3. **Negotiate robust force majeure and stabilisation clauses** in project agreements and concession contracts. The PIA and post-MPRDA jurisprudence have each grappled with the interface between contractual rights and regulatory change, requiring investors to ensure adequate contractual protection against adverse legislative shifts.

7.4. **Leverage Development Finance Institutions (DFIs),** including the African Development Bank (AfDB), the Development Bank of Southern Africa (DBSA), the Bank of Industry in Nigeria, the Africa Finance Corporation (AFC), and the International Finance Corporation (IFC), which increasingly offer concessional capital for clean energy and gas-to-power projects in both countries.[36]

7.5. **Engage proactively with local content requirements.** Nigeria's Nigerian Content Development and Monitoring Board (NCDMB) enforces the ***Nigerian Oil and Gas Industry Content Development Act 2010***, which mandates minimum local participation thresholds across the value chain. South Africa's broad-based BEE framework imposes analogous obligations under sector charters.[37]

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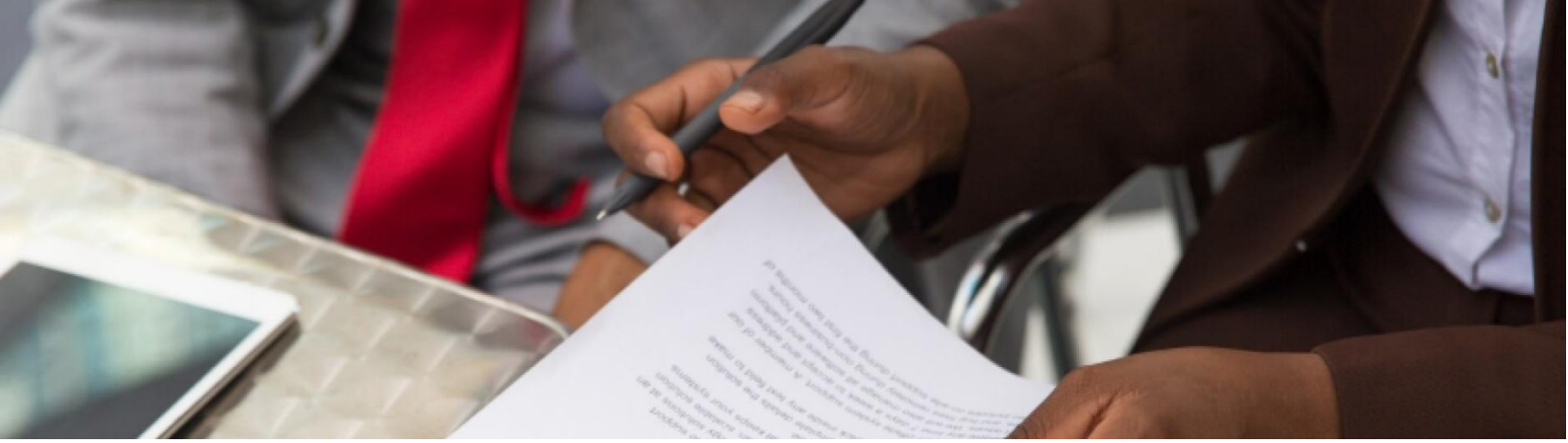
[36]African Development Bank (AfDB), *Energy Sector Policy* (AfDB 2012, updated 2022) <https://www.afdb.org/en/topics-and-sectors/sectors/energy> accessed 13 April 2025; Africa Finance Corporation <https://www.africafc.org> accessed 13 April 2025; International Finance Corporation (IFC), *Infrastructure Financing* <https://www.ifc.org/en/what-we-do/sector-expertise/infrastructure> accessed 13 April 2026.

[37]Nigerian Oil and Gas Industry Content Development Act (No 2 of 2010) (n 22) ss 3–10 (minimum Nigerian content thresholds); see NCDMB, *Nigerian Content Act* <https://ncdmb.gov.ng/nigerian-content-act/> accessed 13 April 2026.



8. RECOMMENDATIONS FOR POLICY HARMONISATION

a. **Negotiate a dedicated Nigeria–South Africa Energy Investment Treaty** that goes beyond the existing general BIT, specifically addressing energy sector investment protection, dispute resolution, and technology transfer in the context of the energy transition.

b. **Establish a Joint Nigeria–South Africa Energy Investment Desk** under the auspices of the African Union or AfCFTA Secretariat, to provide a centralised clearing house for regulatory information, investor facilitation, and dispute early-warning mechanisms.

c. **Accelerate the finalisation and domestication of the AfCFTA Investment Protocol**, which will provide the most durable multilateral framework for protecting and promoting South-South investment flows across the continent.

d. **Develop model project finance documentation** adapted for the Nigerian and South African markets, to reduce transaction costs and increase deal certainty, an initiative that bodies such as the African Development Bank and law associations represented in this room could champion.

9. CONCLUSION

9.1. The energy relationship between Nigeria and South Africa is not merely a matter of commercial interest, but a strategic imperative for African integration and development. The legal frameworks, while evolving in the right direction, require conscious alignment if we are to attract the scale of investment our people need.

9.2. The PIA and the Electricity Act in Nigeria, the Electricity Regulation Act and MPRDA in South Africa, the AfCFTA architecture, and the bilateral investment and taxation treaties together constitute the bones of this relationship. Our task, as lawyers, advisors, investors, and policymakers, is to add muscle, sinew, and ultimately life to those bones.

9.3. UUBO and BOWMAN's strategic alliance, providing Africa-wide, ready-to-be-deployed legal assistance to investors, government and people's groups to unlock value in the energy, infrastructure and critical minerals sector

9.4. We will close with the words of the late President Nelson Mandela, whose vision of African solidarity endures: ***"If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart."*** Let us speak the common language of investment certainty, legal predictability, and mutual prosperity, and in so doing, go to the heart of Africa's energy potential.

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