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## THE LEGAL FRAMEWORK FOR PROMOTION OF SOLID MINERAL SECTORS IN NIGERIA

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### ABSTRACT

From records and vast research, evidence revealed that mineral resources are available in large quantities and are been distributed across the country for the purpose of generating revenue for the country's economy. Unfortunately, despite this mineral endowment, the Nigerian mineral sector has failed to meet public expectation of driving economic growth and generating employment to the teeming youth. The focus of the research is to scrutinize the laws put in place as a road map to sustainable development of the mineral sector in Nigeria as well as the institutional frameworks set up for its regulation. The work also cut across government strategies towards the achievement of these laws and policies made and the challenges hindering the transformation of the mineral sector as a money spinner for the country. The study highlights the unique nature of the problems facing the mineral sector and the set goal to diversify the economic resources of Nigeria, further suggesting possible solutions to the lacuna in the application of the laws enacted to direct the affairs of the sector. This study renders plausible and detailed unique approaches to tackling these unique challenges upon redefining the regulatory and administrative bodies that seeks to help the plight of the mineral sector in achieving sustainable development in Nigeria. The data collection technique of the work employs information from primary and secondary sources..

*Keywords:* Minerals, Natural Resources, Exploitation, Laws, Nigeria.

## INTRODUCTION

The right to ownership and control of mineral resources under the Nigerian legislative system is constitutional as provided for in section 44 (3) and Item 39 Schedule II of the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>1</sup> Mineral resources are raw materials that are excavated from the soil and its excavation is a pecuniary activity that is as old as man's existence on the earth. Mineral resources are useful earth materials of sufficient quantity and adequate quality to be extracted for human economic benefit.<sup>2</sup>

Over 500 occurrences and deposits of diverse minerals are known to exist within the country with the exploration of some being on a small scale.<sup>3</sup> In Nigeria, the mining of tin dates back to 500 B.C., where the Nok culture of the Benue/Northern Zaria area of Nigeria was recognized for having proficiency in Iron Smelting. Also, the Benin's, chiefly in Ile-Ife were branded for bronze casting around the 1400 A.D under the rule of Oba Ogunta, the sixth King of Benin. Due to the oral traditions, there are no factual and satisfactory accounts of the exploration activities carried out by our forefathers.<sup>4</sup>

Nigeria as the most densely inhabited nation and largest economy in the African continent, it is bequeathed with humungous reserves of economic resource and mineral deposits<sup>5</sup> including gold, iron, lead, zinc, rare metals (SnNbTa), coal and gemstones which could be harnessed for its development. These mineral deposits were formed at different stages in the geological evolution of Nigeria.<sup>6</sup> The enormity of Nigeria's mineral resources cannot and should not be overstressed. We began to explore and exploit her natural mineral resources in 1902 and its prime, the solid minerals sector was

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<sup>1</sup>. CFRN 1999 (as amended) s. 44 (3); Item 39 (II).

<sup>2</sup> M. A. Olade, 'Solid Mineral Deposits and Mining in Nigeria: A Sector in Transitional Change' (2019) (2) (1) Achievers Journal of Science Research; 1.

<sup>3</sup>. C. B. A. Azgaku and O. U. Samuel, 'The Socio-Economic Effects of Colonial Tin Mining on the Jos-Plateau: 1904-1960' (2015) (5) (14) Developing Country Studies (IISTE); 36.

<sup>4</sup>. Akongwale et al, 'Economic Diversification in Nigeria: Any Role for Solid Minerals?' (2013) (4) (4) *Mediterranean Journal of Social Sciences*; 18.

<sup>5</sup>. S. G. Daniel and others, 'Challenges of Harnessing and Development of Solid Mineral Resources in Taraba State, Nigeria' (2017) (35) *Journal of Resources Development and Management*; 27.

<sup>6</sup>. H. A. Ahmed, and others 'Solid Mineral Deposits of Nigeria: Potentials, Challenges and Prospects' (2017) (1) (1) *Society of Economic Geologist Journal*; 1.

one of the principal producers of tin and coal, as well as a producer of a substantial 1.4 tons of gold annually.<sup>7</sup>

Records confirm that organized mining in Nigeria commenced in 1903 and 1904 with the then British Secretary of State for the Colonies commissioning the Mineral Survey teams including lignite at Asaba, lead/zinc ore deposit, tin and columbine. Mining of tin ore (cassiterite and correlated minerals) was introduced by the Royal Niger Company in 1905. The mining of gold started in 1914 in communities within the present Niger and Kogi states.

Coal was first discovered in Nigeria in 1909 at Udi Ridge in Enugu by a British mines engineer, Albert Kitson.<sup>8</sup> Coal mining began in 1916 in Enugu. By 1919, the Geological Survey of Nigeria (GSN) was established as a department of government to take over and continue mineral surveys of the country, its operations and its permanent headquarters was set in Kaduna with a satellite office in Jos so as to hasten its operations in the tin fields. The former vested ownership of all minerals in the British Crown.

The Minister of Mines and Power (now Minister of Solid Minerals Development) was empowered to grant prospecting and minor rights and leases to individual and or corporate organizations on application and payment of appropriate fees.<sup>9</sup>

In the early 1970s before the dawn of black gold- called crude oil, Nigeria was a major exporter of tin, columbine and coal. Prior to 1971, British mining companies dominated the same with up to 120 companies at the peak of tin mining. This led to high level of output and significant contributions to employment. The Minerals Ordinance of 1946 and Allied Regulation which were re-enacted as the Mineral Act of 1959 applied globally to the exploration and exploitation of minerals without any particular distinction to special sets of minerals singly or in groups.<sup>10</sup>

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<sup>7</sup>. O. Shasore, 'Nigeria: Nigeria's Solid Minerals as a Source of Economic Development- Tapping a Latent Resource?' (2018) 1(1) *Africa Law Practice Journal*; 1.

<sup>8</sup>. A. Baiyewu-Teru, 'HISTORY: History of Coal in Nigeria' <<https://www.boell.org/en/2015/12/03/history-history-coal-nigeria>> accessed 4 April 2021.

<sup>9</sup>. David et'al, "An Empirical Analysis on the Contribution of the Mining Sector to Economic Development in Nigeria' (2016) (19) (1) *Khazar Journal of Humanities and Social Sciences*; 37.

<sup>10</sup>. (n. 9) 42.

## CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW

According to Stephanopoulos, concepts are the building blocks of legal doctrine. All legal rules and standards, in fact, are formed by combining concepts in different ways.<sup>11</sup> This research is drawn from a couple of legal concepts and theories that give credence to the diverse strata or Darts of the research. The concepts affecting the subject matter of this essay are hereunder distilled.

### Minerals

Minerals are natural resources that are found in the soil or ground. Statutorily, Section 164<sup>12</sup> of the Act defines mineral to be any substance whether in solid, liquid or gaseous form occurring in or on the earth, formed by or subjected to geological processes including occurrences or deposits of rocks, coal, coal bed gases, bituminous shales, tar sands, any substances that may be extracted from coal, shale or tar sands, mineral water, and mineral components in tailings and waste piles, but with the exclusion of petroleum and waters without mineral content.

Geographically, the term ‘mineral’ is used consistently to mean mineral resources or natural sources, however minerals are part of natural resources of a nation.<sup>13</sup> A mineral is also a naturally occurring solid with a highly ordered atomic arrangement and a definite chemical composition formed by inorganic process.<sup>14</sup> A mineral is a naturally occurring crystalline, organic substance, which has a specific chemical formula and a crystal structure.<sup>15</sup>

Mineral resources are however classified into various categories ranging from available reserve, level of confidence in tonnage,<sup>16</sup> fuel, countries, technologies, types/exploitation, also as in inorganic and organic substances,

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<sup>11</sup> N. Stephanopoulos and T. Ginsburg, ‘Concepts of Law’ (2017) (84) (1) The University of Chicago Law Review; 147.

<sup>12</sup> NMMA 2007 s. 164.

<sup>13</sup> S. C. Dike, *Mineral and Mining Sector. Key to Sustainable Development of Nigeria* (1st edn, Iwuoette Graphic Nig. 2007) 4.

<sup>14</sup> J. P. Shrivastava, ‘Rock and Ore Forming Minerals’, (2009) 1 *National Institute of Sciences Communication and Information Resources*; 48.

<sup>15</sup> U. A. Lar, ‘Geology and Mineral Resources of Nigeria and their Uses’ (2018) *Telpon Environmental Ltd*; 69.

<sup>16</sup> S. C. Dominy and others, ‘Classification and reporting of mineral Resources for High-Nugget Effect Gold Vein Deposits’ (2001) (10) (3) *Exploration Mining Geology*, 215.

renewable and non-renewable energy resources<sup>17</sup> and also metallic and non-metallic mineral resources.<sup>18</sup>

In Nigeria, there are over 40 different types of minerals spread across the country, including gold, barite, bentonite/baryte, limestone, coal, bitumen, iron ore, tantalite/columbite, lead/zinc, gemstones, granite, marble, kaolin, silver, clay, cassiterite (tin ore), beryl (emerald) galena and so on. However, not all minerals are available in commercial quantities in Nigeria.<sup>19</sup> These minerals can be found in almost all the 36 states that make up Nigeria. Coal, bitumen, limestone, iron ore, barites, gold and lead/zinc are designated as strategic, according to the Ministry of Mines and Steel Development, stems from their potential to make significant contributions to Nigeria's economic development.<sup>20</sup> A brief analysis of their various potentials are as follows: Currently, it is that Nigeria (Zamfara and Surrounding areas has more gold than South Africa. Borno State) was California's most expensive mineral on earth.

### **Bitumen**

This is also known as Asphalt or tar sand, it is an important product of petroleum occurrence, with deposits in Ondo, Ogun, Edo, Lagos and Delta State. Bitumen is the viscous mixture of hydrocarbons that may occur as a residue from petroleum distillation. It is classified into three categories with respect to their generation source, which are petroleum asphalt, natural bitumen and coal-tar pitches. Nigeria has bitumen deposits extending around 120km approximately, thus ranking the second-largest in the world's bitumen deposits.

### **Coal**

Coal is one of the foremost important minerals discovered in Nigeria with Eastern States in 1909, particularly the coal City of Enugu state of Nigeria, then regarded as the home of coal deposits. Nigeria has about three billion tons of coal, which are preserved in seventeen fields, and there is about 600

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<sup>17</sup>. (n. 3) 26-32.

<sup>18</sup>. S. A. Nelson, 'Mineral Resources' Physical Geology, Tulane University (2012) <<https://www.tulane.edu/~sanelson/eens1110/minresources.htm>> accessed 6 April 2021.

<sup>19</sup>. Kato Gogo Kingston. The Dilemma of Minerals Dependent Economy: The case of Foreign Direct Investment and Pollution in Nigeria. (2011) (1) (1) African Journal of Social Sciences, 1

<sup>20</sup>. F. Adekoya, 'Energy: Preparing Nigeria for Minerals of the Future beyond oil' The Guardian (Nigeria, 9 September 2020) <<https://www.guardian.ng/energy/preparing-nigeria-for-minerals-of-the-future-beyond-oil/>> accessed 8 April 2021.

tons of coal reserve.<sup>21</sup> Coal can be found in the central, Middle East and South East regions of the country (Anambra, Kogi, Benue and Enugu State). Nigeria holds 379 million tons (MMst) of proven coal reserves as of the year 2016, ranking 44th in the world and accounting for about 0% of the world's total coal reserves of 1,139,471 million tons (MMst). Coal as a mineral resource will contribute in electricity generation if properly harnessed, and the road to sustainable development would be guaranteed.<sup>22</sup> Even though it is now regarded as an environmental hazard.

### **Limestone**

This is one of the mineral deposits in Nigeria that is of great proportion but it is not renewable, and unlike some of these minerals, limestone is processed and quarried by various local and international construction companies in Nigeria. Most lime stones activities are mainly for cement production.<sup>23</sup> It is also used in manufacturing glass and as soil conditioner to neutralize acidic soils.<sup>24</sup> Limestone deposit in Nigeria is majorly deposited in cross river and Ebonyi states it can still be found in a commercial deposit in Abia, Akwa Ibom, Anambra, Bauchi, Bayelsa, Borno, Edo, Enugu, Imo, Ogun, Ondo, and Sokoto, making Nigeria the most richly deposited West African country when it comes to limestone.

### **Iron Ore**

Nigeria among the countries with vast iron ore deposits which can be found in some states in the country, Itakpe in Kogi State is believed to have the purest deposits of iron ore, and other states where it is deposited include Abia, Anambra, Bauchi, Benue, Kwara, Plateau, and Nasawara. Iron ore deposits have been found in various locations in Nigeria but mainly in the North- Central, North-East and South-East regions.<sup>25</sup>

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<sup>21</sup>. Kato Gogo Kingston. *Petroleum Laws of Nigeria: A New Dimension* (First Edition: United Kingdom: Amazon Independent Publication, 2023); ISBN-13: 979-8867821333; Amazon Global ID(ASIN): B0CNQHLJ73

<sup>22</sup>. Kato Gogo Kingston. *Shell Oil Company in Nigeria: Impediment or Catalyst for Socio-Economic Development?* (2011) (3) (7) *Energy Law & Policy eJournal*, Institute for Energy and the Environment, Vermont Law School.

<sup>23</sup>. (n.12) 11.

<sup>24</sup>. S. Udom, 'Limestone Mineral: Suppliers and Importers' *Start Up Daily* (Ondo, June 20, 2018) <<https://www.startupdaily.com/limestone-minerals-suppliers-exporters/>> accessed 8 April 2021.

<sup>25</sup>. (n. 13)

**Lead/zinc**

Nigeria's most important lead-zinc deposit is the Abakiliki field which is made up of primarily four lodes namely Ishiagu, Enyiba, Ameki and Amen in the Lower Benue Trough.<sup>26</sup> They are often associated with copper and silver, lead-zinc is found along the North East and South-west trending belt. The estimated reserve is well over 100,000 tons of lead and 80,000 tons of zinc. Lead-zinc ores are used in the production of batteries, electrical cables, solders glass and even protective coatings for other metals<sup>27</sup>.

**Barites**

In the area of barite natural mineral resources, Nigeria is one of the African countries that can boast of vast deposits. Cross River State has the highest quality and quantity of barite in Nigeria. In 1959, the estimated value of 41,000 tonnes of baryte reserve was found in Nigeria as the Benue valley deposits. In addition, the total of 70,000 tonnes was also estimated by the Nigerian Mining Corporation from the Azara deposit, 98km south of Lafia the capital of Nasarawa State.

**Gold**

Gold is found in some African countries such as Nigeria mostly in the Southwestern part of Nigeria<sup>28</sup> in varying quantities, as a natural resource deposit mainly found in the Northern part of Nigeria. It is prominently located in Iperindo in Osun state<sup>29</sup> and other areas near Maru, Tsohon Birnin Gwari-Kwaga, Gurmana, Anka, Malele, Bin Yauri and Okolom-Dogondaji. Raw Gold was used to settle minor debt in the past but this process has been declared unlawful under the Act 2007. This gives way to Small Scale Mining Guarantee Scheme.<sup>30</sup>

**Non-solid Minerals**

Non-solid minerals (mineralogy) are substances found in a natural environment that does not satisfy the definition of a mineral and is not even a mineraloid. Many nonminerals are mined and have industrial or other uses similar to minerals, such as jewelry. These common nonminerals includes;

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<sup>26</sup> F. B. Fatoye, and others, 'Lead-Zinc-Barytes Mineralization in the Benue Through Nigeria: Their Geology, Occurrences and Economic Perspective' (2014) (5) (2) *Advances in Applied Research*; 87.

<sup>27</sup> (n. 12) 12.

<sup>28</sup> J. A. Adekoya, 'Geographical Distribution of Mineral Resources in Southwestern Nigeria' (2011) (47) (1) *Journal of Mining and Geology*, 9.

<sup>29</sup> A. A. Elueze, 'Prospects for Investment in Mineral Resources of Southwestern Nigeria', (2011) (47) (1) *Journal of Mining and Geology*, 2.

<sup>30</sup> Y. Oke, *Nigeria Energy and Natural Resources Law* (Princeton Press, 2016) 32.

Allingite, Amber, Anthracite, 3eckerite, Burmite, Coprolite, Coquina, Gedanite, Glessite, Jet, Krantzite, Lignite, Opal, Pearl, Obsidian, Rocks, Vulcanite, Stantienite, Synthetic diamond and so on.<sup>31</sup>

### **Mine**

A mine is any place, excavation, or working in or on which any operations connected with mining is carried on together with building, premises, erection, infrastructure, water reservoir, belonging or appearing thereto, above or below the ground for the purpose of mining, treating or preparing minerals, obtaining or extracting any minerals or metals by any mode or for the purpose of dressing minerals ores not included as smelter or refinery.<sup>32</sup> A mine when looked at as a verb, means to intentionally mine minerals, and includes any operations directly or indirectly necessary therefore or incidental thereto, including such processing of minerals as may be required to produce a first saleable product, and “mining” shall be construed accordingly.<sup>33</sup>

### **Mining**

Mining is the extraction of valuable minerals or other geological materials from the Earth, usually from an ore body, lode, vein, seam, reef, or placer deposit. These deposits form a mineralized commodity that is of economic interest to the miner. Mining also includes quarrying operations as provided in Regulation 2 of the Nigerian Minerals and Mining Regulations, 2011.<sup>34</sup> Mining operations usually create a negative environmental impact, both during the mining activity and after the mine has closed. Hence, most of the world's nations have passed regulations to decrease the impact.

### **OWNERSHIP OF MINERALS**

Natural resources naturally embedded in the soil and can only be modified by man for his benefit and use. Aladeitan has described natural resources as ‘a gift of nature and an endowment of comfort that makes the existence of mankind complete.’<sup>35</sup> The ownership and control of natural resources is thus, very important to a country's wealth and well-being and therefore cannot just be treated with levity. In the case of *Abraham v Olorunfunmi*,<sup>36</sup> Niki Tobi JCA

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<sup>31</sup>. Available at  
<<https://www.chemieurope.com/en/encyclopedia/nonmineral.htm>>accessed 23 october, 2021

<sup>32</sup>. (n. 12) 5.

<sup>33</sup>. NMMA 2007 S. 164

<sup>34</sup>. NMMR 2011 reg. 2

<sup>35</sup>. L. Aladeitan, ‘Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy’ (2013) (38) (159) *ThurgoodMarshallLaw Review*; 160.

<sup>36</sup>. (1991) 1 NWLR(Pt. 165) pp. 74-75.



(as he then was) while delivering the lead judgement stated the following as it relates to ownership:

*Connoting a complete and total right over a property. The owner of the property is not subject to the right of another person because he is the owner, he has the full and final right of alienation or disposition of the property and he can exercise the right without seeking the consent of another person because as a matter of fact, there is no other personal right over the property that is higher than his...*<sup>37</sup>

In Nigeria, the ownership and control of natural resources popularly termed ‘resource control’ in terms of crude oil and the natural gas which are produced in the Niger Delta areas of the country has given rise to ethnic agitations and environmental terrorism ‘due partly to a sharp reaction by the oil producing communities, which suffer grievous hardships resulting from the operations of the laws governing the sector.’<sup>38</sup>

### NATIONAL LEGAL REGIME

The Constitution of the Federal Republic of Nigeria 1999 (as amended) section 44 (3)<sup>39</sup> and item 39 schedule II<sup>40</sup> of the Exclusive Legislative list vests the control and management of the natural resources and hydrocarbon operations on the Federal Government for the common good and benefit of the citizens. Prior to Nigeria’s independence, the country and its natural resources were regarded as the property of Great Britain.<sup>41</sup> British colonial administration enacted oil and mining regulations which vested mineral rights in Nigeria on the British government.<sup>42</sup>

The issue of ownership and control of natural resources throws up the question of the legitimacy constitutionality of the concept. It should be clear to the federal authorities that the constitution is the supreme law of the land and no one has the right to alter or suppress its application. The states should,

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<sup>37</sup>. C. C. Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers, 2011) 408.

<sup>38</sup>. F.O. Ayodele-Akaakar, ‘Appraising the Oil and Gas Laws: A Search for Enduring Legislation for the Niger Delta Region’ (2001) (3) (2) *Journal of Sustainable Development in Africa*; 7.

<sup>39</sup>. CFRN 1999 (as amended) s. 44 (3).

<sup>40</sup>. Schedule II, Legislative Powers, Part I, Exclusive Legislative List, item 39, Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>41</sup>. I. Sagay, *Ownership and Control of Nigerian Petroleum Resources: A Legal Angle, Nigerian Petroleum Business: A Handbook* (Victor Erososele, ed.) 8.

<sup>42</sup>. A.O.Y. Raji and T. S. Abejide, ‘The British Mining and Oil Regulations in Colonial Nigeria C. 1914— 1960s: An Assessment’, (2014) (2) (10) *Singaporean Journal of Business Economics and Management Studies*; 64.

in a true federalism, be entitled not only to their constitutional and legitimate shares of the federally collected revenues as at when due but also a considerable measure of control over their revenue resources.

According to Mudiaga Odje, the principle of derivation 'is a constitutional directive which Constitutes a form of preparation for an expropriated interest and cannot be waived or derogated by either the state or federal government'.<sup>43</sup> The principle is the mechanism for revenue location under the Constitution of the Federal Republic of Nigeria 1999 (as amended)<sup>44</sup> Writing on revenue allocation and resource control in the Nigerian Federation, a public affairs commentator has observed as follows:<sup>45</sup>

*The controversy between the Federal and State governments over revenue mobilization and allocation has assumed monumental proportion with the state governments now asserting the right of control over natural resources within their state boundaries and also calling for devolution of powers to the states beyond those provided for in the 1999 Constitution. The federal government took a pre-emptive legal action in mid-February 2001 by filing a suit against the 36 state governments in the Supreme Court over the subject of resource control and offshore oil claims.*

According to Mudiaga Odje, Nigeria's National Assembly contrary to section 162 (2)<sup>46</sup> of the Constitution has failed to enact a new Revenue Allocation Act, under the 1999 Constitution.<sup>47</sup> Arguments have been made that the 13 percent derivation can be increased by an Act of the National Assembly of the Federal Republic of Nigeria without resort to a constitutional amendment.<sup>48</sup> The 1999 Constitution also provides in section 251 (n)<sup>49</sup> that the Federal High court has jurisdiction over matters that pertain to the mineral sector in Nigeria.

<sup>43</sup>. A. M. Odje, True Federalism and Resource Control in Nigeria (Quadro Impressions Ltd) 370.

<sup>44</sup>. CFRN 1999 (as amended).

<sup>45</sup>. R. C. Nwokedi, Revenue Allocation and Resource Control in Nigerian Federation (Snaap Press Ltd, 2001), 123- 126.

<sup>46</sup>. (n.1) s. 162

<sup>47</sup>. A. M. Odje, '13% Derivation, Falling Crude Oil Price and the Constitution (2016)' Vanguard (Nigeria, 18 February 2016) <<https://www.vanguardngr.com/2016/02/13/derivation-falling-crude-oil-price-and-the-constitution/umpl>> accessed 26 October.

<sup>48</sup>. *Attorney-General of the Federation v Attorney-General of Abia State & 35 Ors* (No. 2), (2002) 6 NWLR (Pt. .) 542.

<sup>49</sup>. (n. 1) s. 251 (n).

### **Nigerian Mineral and Mining Act (NMMA) 2007**

In 1999 when Nigeria returned back to democracy, the need to diversify the revenue base of the country became paramount. A new national focus and strategy on mining evolved such that in 2007, Nigerian Minerals and Mining Act (the Act) was enacted to revitalize the Nigerian mining industry. The Act was passed into law on March 16, 2007 to repeal the Minerals and Mining Act, No. 34 of 1999 for the purposes of regulating the exploration and exploitation of solid materials Nigeria. The act became the defense of hope for Nigeria to secure revenue beside oil-the dominant sector. The Act aims to regulate all aspects of the exploitation and exploration of minerals in Nigeria. It also aims at promoting the diversification of the nation's economy and the location of the mineral sector upper in the sustainable development architecture of the broader economic and social development of Nigeria<sup>50</sup>.

The Minister, amongst other things, is saddled with the responsibility of ensuring the orderly and sustainable development of Nigerian mining sector, creating an enabling environment for private investors, both foreign and domestic by providing adequate infrastructure for mining activities and also identifying areas where Government intervention is desirable in achieving policy goals in mineral resources development. The Act also provides for the establishment of the Mining Cadastre Office (MCO) which shall be responsible for the administration of mineral titles and the maintenance of the cadastral registers. It also provides a useful framework for the exploration and exploitation of minerals in Nigeria. The purpose for the promulgation of the Act amongst others includes: achieving a substantial Gross Domestic Profit (GDP) contribution in the mineral sector, increasing the capacity of mineral-based industries thus increasing infrastructure, industrialization policies, funding and greater level of awareness, to attract private sector investment capital in the development of the mineral sector, to generate employment opportunities and create wealth through value addition.<sup>51</sup>

### **Nigerian Mineral and Mining Regulation 2011**

The Federal Ministry of Mines and Steel Development (the 'Ministry') recently issued new mining regulations titled the Nigerian Minerals and Mining Regulations 2011 (the 'Regulations') which is intended to establish a

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<sup>50</sup>. Kato Gogo Kingston and G. O Akolokwu. Cross-Border Unitisation Of Petroleum Production Sharing Agreements: The Need For Adequate Social Stability Clauses. (2018) (8) (1) Prime Journal of Advanced Legal Studies 27

<sup>51</sup>. Kato Gogo Kingston and Z. Adango. The Vacuum In Nigeria's Crude Oil Laws: An Inquiry Into The Decommissioning Of Onshore and Offshore Facilities. (2018) (8) (1) Cranbrook Law Review, 1

more coordinated and accountable solid minerals sector in the country and to stamp out the discretionary grant of mineral titles. The Regulations were issued for the purpose of setting out the rules, procedures and processes for the acquisition of mineral titles, and to give effect to the Nigerian Minerals and Mining Act No. 20 of 2007 ('the Act').

The Regulation is a supportive tool for the realization of the objective of the primary Act which is to transform the mineral and mining sector for economic development of the country. The primary objective of the Regulation is to ease the cost, burden and process of developing the mineral sector for sustainable development of the country.<sup>52</sup> Both the Act and the Regulation aim at promoting the diversification of the nation's economy the location of the mineral sector upper in the sustainable development architecture of the broader economic and social development of Nigeria. However, some of the provisions of the Act overlap with that of the provisions of the Regulation basically issues relating to compensation pursuant to the provisions of regulations 11- 117<sup>53</sup> of the Mineral and Mining Regulation, 2011.

### **Mining and Metal Policy 2006**

The Mining and Metal Policy had earlier been produced in 2006 with the objective of repositioning the sector and reintegrating it with other sustainable development indicators in Nigeria. The government's policy on mineral exploration is geared towards the enhanced exploitation of these resources for sustainable development of the country.

The policy statement includes the provision of friendly enabling mineral law that enhances private sector participation, and it postulates for a quick transparent and unhindered access to mineral rights by all Nigerians via the acquisition of mineral title or license. Some issues covered in the policy include, health and safety of both personnel and environments. The policy equally addresses general equity issues and the sustainability of operation of mineral development. It envisions global partnership and the adoption of best international practices in the mineral sector. The purposes of the policy amongst others include: achieving a substantial increase in Gross Domestic Profit (GDP) contribution, emphasizing the sustainable development of the metal sub-sector with the utilization of metals and alloys of technical and

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<sup>52</sup>. Kato Gogo Kingston and Prince N. Nweke. Management, Remediation and Compensation In Cases Of Crude Oil Spills In Nigeria: An Appraisal. (2018) (8) (1) *Journal of Mineral Resources Law*, 27

<sup>53</sup>. NMMR 2011, reg. 11 0 17

commercial importance, to ensure a transparent licensing regime, achieving poverty reduction through Artisanal and small-scale mining and generating employment opportunities

### **National Energy Policy Nigeria of 2003**

The National Energy Policy Nigeria of 2003 is the overarching policy document on the energy sector development. It captures the government's policy, strategies, and short and long-term development goals for these energy-based minerals. The objectives of this policy amongst others includes: ensuring development of the nation's energy resources, with diversified energy resources option, for the achievement of national energy security and an efficient delivery system with an optimal energy resource mix, fostering international co-operation in energy trade and projects development in both the African region and the world at large, guaranteeing increased contribution of energy productive activities to national income, guaranteeing adequate, reliable and sustainable supply of energy at appropriate costs and in an environmentally friendly manner to various sectors of the economy for national development.<sup>54</sup>

## **NATIONAL INSTITUTIONAL FRAMEWORK**

### **Mines Inspectorate Department (MID)**

The Mines Inspectorate Department (MID) has all-encompassing responsibility as regards the operations in exploration, evaluation, mines development and production.<sup>55</sup> Some of the functions performed by this department by virtue of Part II, section 17<sup>56</sup> of the Nigerian Mineral and Mining Act 2007 include: exercise general supervision overall reconnaissance, exploration and mining operations to ensure their compliance with the Act, to prepare and render records, reports and returns as required by the minister or as prescribed by the regulations, to supervise and enforce compliance by mineral title holders with all mine health and safety regulations which is prescribed under the Nigerian Mineral and Mining Act 2007, to take custody of mineral resource equipped by any court to be forfeited to the government, to discharge such other duties as assigned from time to time by the minister, to review and recommend to the minister and the programs for controlling mining operations.

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<sup>54</sup>. Federal Republic of Nigeria, 'National Energy Policy' (2003)[https://www.rea.gov.ng/wp-content/uploads/2027/09/National\\_Energy\\_Policy\\_Nigeria.pdf](https://www.rea.gov.ng/wp-content/uploads/2027/09/National_Energy_Policy_Nigeria.pdf) accessed 12 December 2021.

<sup>55</sup>. Kato Gogo Kingston & Abbiba Prebo Lilly-Tariah. The Causal Relationship Between Natural Gas Productions and Impotent Regulatory Framework on Gas Flaring In Nigeria. (2019) (9) (1) Cranbrook Law Review 4

<sup>56</sup> NMMA 2007 S. 17

### **Mines Environment and Compliance Department (MEC)**

The basic function of the MEC is to ensure that companies adopt and maintain procedures that are environmentally friendly in their operations. By virtue of section 18<sup>57</sup> of the Act, this department reviews all the plans, studies and reports that are required to be prepared by holders of mineral title in respect of their environmental obligations under the Act, periodically audit environmental requirements and duties that are established under the Act and make recommendations also to the minister, monitor and enforce compliance by holders of mineral title with all environmental requirements and obligations that are established in the Act, regulations and any other law in force, and some other duties conferred on it by the Act.

### **Mining Cadastral Office (MCO)**

The Mining Cadastral Office was established by virtue of section 5 of the Act.<sup>58</sup> It is a body corporate with perpetual succession and a common seal which can sue and be sued in its corporate name and may also acquire, hold and dispose of property, whether movable or immovable. The administration of the MCO is vested in the Director-general as provided in section 5 (3) of the Act<sup>59</sup> who shall be assisted by such officers as shall be required for the efficient functioning of the cadastre system and by section 5 (4)<sup>60</sup>, in order to fulfill its functions under this Act the Mining Cadastre Office shall operate as the sole agency responsible for the administration of mineral titles.

## **EVALUATING THE LEGAL FRAMEWORK FOR THE PROMOTION OF THE MINERAL SECTOR IN NIGERIA**

### **Critique of the Legal Frameworks**

In as much as some of the provisions of the legal framework compliments each other in respect to its provisions and functions, there are still loopholes or conflicts in the provisions of the law. In examining the Mineral and Mining Regulations 2011 alongside the Nigerian Mineral and Mining Act 2007 the conflict between these legislative enactment borders on the issue of compensation. Both the Regulation and the Act provides for compensation payable to the owners and occupiers of the land upon which mining operations are carried upon. The compensation provision in the Regulations is seen in Regulations 11-17<sup>61</sup> whilst, in the Act it is contained in sections 107-

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<sup>57</sup>. NMMA 2007 s. 18.

<sup>58</sup>. (n. 26) s. 5

<sup>59</sup>. NMMA 2007 s. 5 (3)

<sup>60</sup>. *Ibid* s. 5 (4)

<sup>61</sup>. MMR 2011, reg. 11 - 17

113<sup>62</sup>. To an extent the provisions of these laws complement each other however there still exist a level of conflict.

Regulation 11<sup>63</sup> provides that all holders of mineral titles shall fulfill all obligations that concerns the payment of compensation to owners and occupiers of land acquired or used for mining operations. This is also the content of the provisions of section 107 (a) (b) of the Act<sup>64</sup>, compensation here is payable of lands subject to a state lease or right of occupancy for surface rent of the owner for any damage that is done to the surface of the land, damage to economic trees, crops, buildings or work.

Regulation 12<sup>65</sup> provides that to arrive at a just and proper assessment of compensation payable to owners and or occupiers of land covered by a mineral title. This is in line with section 108 of the Act<sup>66</sup> that the amount of compensation payable shall be determined by the Mining Cadastral Office after consulting with the State Minerals Resource and Environmental Management Committee and a Government Licensed Valuer. Secondly, the Regulations must be in tandem with the Act as any conflicting provision is rendered ultra vires and not capable of being enforced at law. The Regulations recognizes this in Regulation 2 (1)<sup>67</sup> which provides that whatever meaning is given in the Act shall retain such meaning in the regulation. Therefore, whenever matters have been covered by the Act, the Regulation is to abide by it and only on matters not provided in the Act can the Regulations make rules which must also be in accordance with the intendments of the Act.

### **Critique of the Institutional Frameworks**

The administration of mineral titles is vested in the institutions set up by the government pursuant to the provisions of the Act. The private sector in administering mineral titles is actually alien and it might contribute to some regulatory burden if it is not checked. This is because the government would independently bear the cost of regulations, monitoring, implanting and enforcing the provisions of the Act.

In developed countries, the government only provides an enabling environment for industries to try where they operate by themselves and when

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<sup>62</sup>. NMMA 2007 s. 107 - 113

<sup>63</sup>. *Ibid* s. 11.

<sup>64</sup>. *Ibid* s. 107 (a) (b)

<sup>65</sup>. MMR 2011 reg. 12.

<sup>66</sup>. (n. 2) s. 108

<sup>67</sup>. (n.5) reg. 2 (1)

this is done, the industries perform better. Unlike Nigeria where there are top-down regulations where the government tells the company what to do and give them some conditions to comply with or not. Over regulations is a situation where the minister has same responsibilities alongside the Mining Cadastral office (MCO) thereby causing a conflict of interest. Aside that, regulatory capture envisions a situation where the regulated capture the regulator.

### **The Solid Minerals Development Board**

By virtue of section 35 of the Act<sup>68</sup> the solid Mineral Development Fund<sup>69</sup> shall be managed by the Solid Mineral Development Board also referred to as the Board. Section 35(2) of the Act<sup>70</sup> provides that the board shall be made up of the following: a chairman recommended by the Minister of Solid Minerals appointed by the president of the federation, a representative of the Central Bank of Nigeria, a representative of the banker's committee, 3 appointees by the minister to represent private mining operations and mineral processors and the secretary of the board. This has to be questioned because the fair thing to do is that the appointees have to be the appointees of the National Assembly obliged to take instructions and order from the minister for the benefit of the whole country. The minister has the dominating power of dictating the members of the Board which is not appropriate. If the criteria for such appointment is based on capacity, competence and intelligence, the minister may likely not heed to these requirements, political consideration and nepotism would thereby govern the appointment.

### **STRATEGIES ADOPTED BY THE GOVERNMENT FOR THE PROMOTION OF THE MINERAL SECTOR IN NIGERIA**

Governments across the world recognizes the need to support natural resource development. Minerals, oil and gas, coal, columbite even diamond all requires huge capital to startup operation. Apart from huge capital, there is demand for high level of technology. The funding alone cannot be provided by the government to develop and explore minerals. The government cannot fund it alone and that is why the government normally seek for multilateral funding from international communities, world bank, international financial corporation etc. In a regulated economy like Nigeria where the government is interested in the development of natural resources. Lots of disadvantages are arising from regulated economy because the

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<sup>68</sup>. NMMA 2007 s. 35

<sup>69</sup>. *Ibid* s. 34

<sup>70</sup>. *Ibid* s. 35 (2).



government is not only a referee but also a player. They do not just enact laws, but they also actively play a role and the consequence is that the government may not be able to regulate the industry very well because it is also a player.

## THE CHALLENGES FACING THE MINERAL SECTOR IN NIGERIA

According to Benjamin Ukwuteyinor, a senior geologist, most local private investors lack the financial capacity to fund mineral exploration, which is the requisite for solid mineral exploration/exploitation. Nigeria Geological Survey Agency (NGSA), among other government agencies, charged with the responsibility to generate geoscientific data are not adequately funded and equipped with sophisticated machineries to execute their statutory obligations, Ukwuteyinor bewailed.<sup>71</sup>

The development of Nigeria's mining sector has been show deep site its huge potentials<sup>72</sup>. To reinvigorate the seemingly comatose sector, successive administrations have taken initiatives aimed at addressing the challenges besetting its development with varying degrees of successes.<sup>73</sup> The domination of the economy by the oil and gas sector in the past are major challenges. The recent economic downturn of the country is also a challenge due to the paucity of the government funds, due to the management of the sector. However, the major challenges facing the sector includes.

- Major stakeholders of the sector
- Project Funding
- Infrastructural Development
- Security
- Noncompliance to the laws governing the sector
- Lack of Market
- Pollution

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<sup>71</sup>. C. Maduabueke, 'Experts list challenges facing solid minerals sector' *The Guardian* (Nigeria, 19 September 2018) < <https://guardian.ng/energy/experts-list-challenges-facing-solid-mineral-sector/>> accessed 01 January, 2021.

<sup>72</sup>. S. G. Daniel and others, 'Challenges of Harnessing and Development of Solid Mineral Resources in Taraba State, Nigeria' (2017) (35) *Journal of Resources Development and Management*, 27.

<sup>73</sup>. P.T. Akper and Laura Ani, Legal and Policy Issues in the Development of Nigeria's Mining Sector: Charting the Way Forward', (2020) :[https://papers.ssrn.com/so13/papers.cfm?abstract\\_id=3563005](https://papers.ssrn.com/so13/papers.cfm?abstract_id=3563005)> accessed 1 January 2021

## **CONCLUSION**

Solid minerals have the potential to contribute significantly to the economic development of a country. Mining can create significant economic benefits which include the direct benefit that come in the form of income and employment, as well as the indirect benefits that come in form of local or international purchase of mining inputs. Enacted laws and established institutions have been effective guides since their existence to ensure the smooth regulation of the mineral sector in Nigeria, however, there seem to be unimplemented policies and loopholes in these frameworks which have to be looked into thoroughly to make sure that the laws put in place to regulate the sector are properly executed. The work therefore detailed some of the approaches that can aid in having head way in the sector and also contribute positively to the expansion of the sector.

## **RECOMMENDATIONS**

Flowing from the above analysis, the researcher attempts to suggest some realizable recommendations which will aid in remodeling a more desirable, satisfactory and effective legal and institutional frameworks mapping the route for sustainable development of the Nigerian economy in vast ramifications. Certain recommendations therefore, are noted by the researcher which includes the following:

- a) The mineral sector should be commercialized rather than being localized to the northern part of the country, where just the northerners know the value of these extracted or excavated minerals and then make good profit out of them through sales without paying tax to the Federal Government.
- b) Competition is expected to be employed in the sector. This can be achieved when private firms control the production and transformation of mineral resources into useable in times even when ownership is restrained by the Federal Government. Laws to protect the tenure of leases granted to the private operators should be formulated in order for them to be aware of their time limit in exploring these mineral resources.
- c) The specified functions of the Minister of Solid minerals and Steels and the Ministry of Solid Minerals and Steels as provided for in the Mineral and Mining Regulations 2011, should be systematized and compatible so it does not take the form of two different entities.
- d) The Mineral sector should be opened to international consortium of experienced world class miners that will encourage the transfer of technology to Nigerian mining companies.
- e) Infrastructural development for transportation of mineral deposits should be improved upon and advanced through private public participation, such as roads, railways, if possible, ships and so on.