

Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria

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Abstract

Solid minerals as natural resource help to grow the economy, create jobs, and generate enduring wealth for the people of Nigeria. Effective mining will transform the Nigerian economy and create a suitable and enabling environment for productive activities to flourish. It is imperative to adopt international best practices as the national benchmark to evaluate the standards of the mining operations and provide accessible financing scheme for local investors and conducive atmosphere to attract foreign investors' participation. However, from the mining sector to thrive and contribute significantly to the gross domestic product, the sector requires the enactment of potent legal instruments and the establishment of virile institutional agencies with a view to regulating the exploration of mining activities and controlling the persistent high level of insecurity, revamping on the worsening power supply for optimum productivity in achieving sustainable development.

Key words: Solid minerals; Economy; Legal; Environment; Financing

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INTRODUCTION

Perhaps there would have been a reasonable level of patronage by foreign investors in the Nigerian

mining industry, if the government provides modern infrastructural facilities, detailed geological surveys and up to date legislation and regulations on mining activities in the country. However, these enviable situations are presently lagging in the solid minerals sub-sector of the economy. Consequently, the efforts of the Nigerian government towards developing the solid minerals subsector have not achieved the desired goals as most multi-national mining corporations have not deemed it desirable to explore solid minerals in Nigeria; thereby leaving its exploitation in the hands of artisanal/informal miners (Akper, 2008). As a result of huge export earnings derived from oil exploration with attendant economic growth and national development, the solid minerals sub-sector of natural resources has remained stagnant, undeveloped and neglected (Obiora, 2007, pp.1-15).

The solid minerals sector began as unorganized and unregulated industry (Odozi, 1997) until the mineral surveys of the Southern and Northern Protectorates in 1903 and 1904 respectively. The first and Second World Wars invariably disrupted the attempts to structure the unit by the government. This sector faced another catastrophe by the impact of the Civil War in Nigeria¹. The sector remained depressed until its preferred counterpart, the oil sector suffered international pricing setbacks and the worldwide glut experienced in the 1980s that brought into national focus the futility and vanity of over reliance on crude oil as the major source of revenue in the country.

1. STRATEGIES AND SPECIFIC MEASURES

Realizing the imperativeness of alternative sources of national wealth and the compelling need to restructure imbalances in the sources of Gross Domestic Product

¹“Nigerian-An exciting New Mining Destination” (2006) in Mining Journal Special Publication, London, February, p.5.

and export earnings² the Federal Government evolved a national policy to re-positioning the mining industry erstwhile neglected-sub-sector. Towards the realisation of this objective, enabling legal instruments and conducive environment were put in place by the repeal of the Nigerian Enterprises Promotion Act of 1989, the enactment of the Nigerian Investment Promotion Act; the Foreign Exchange Monitoring and Miscellaneous Provisions Act, the enactment of the Minerals and Mining Act³, the launching of New National Policy on Solid Minerals 1999, the creation of the Ministry of Solid Minerals Development were some parts of giant strides to revamp the solid minerals subsector that had been albeit abandoned unlike the oil sector, which has attracted and still attracts foreign investors, the solid minerals sector has really not caught the fancy of multi-national companies. Therefore the expected rapid growth in this area is remains unrealizable. The security challenges nationwide with the incessant violent crimes, terrorism and kidnapping have nearly resulted in lack of faith and loss of confidence by foreign investors to search for and to explore solid minerals embedded in some parts of Northern States, South Eastern States and the Niger Delta area.

At the international level the mining operations of solid minerals are currently experiencing a downward trend worldwide without expanding the jurisdictional sphere of new deposits and discoveries⁴. On the other hand, miners are closing their operational sites by limiting their activities to international jurisdictions traditionally recognized for large scale mining activities such as United States of America, Canada Australia and South Africa. Going by the Regional ranking some countries like Ghana, Tanzania, Mali Burkina Faso, Zambia, Botswana, DRC (Congo) South Africa and Zimbabwe as favourable mining destinations in Africa⁵, invariably international

investors and prospective multi-national corporations will continue to invest in these ranked African countries as against with Nigeria that has not been ranked⁶.

2. NATIONAL POLICY THRUST ON SOLID MINERALS

The goal of government policy in the sector is to provide incentives and an enabling environment for private sector investment. The major policy thrust is to ensure the vigorous and orderly exploitation of solid mineral resources in order to generate employment, increase revenues and exports, and provide inputs for local industries⁷. The National Economic Empowerment and Development Strategy, (NEEDS) action plan will vigorously support exploration for base metals and precious and semiprecious stones. Informal sector mining activities will be formalized and supported to encourage sustainable production and create self-employment.

Solid minerals as natural resource must help to grow the economy, create jobs, and generate enduring wealth for the people of this country. Effective mining will transform the Nigerian economy and create a suitable and enabling environment for productive activities to flourish. However, from the mining sector to thrive and contribute significantly to the gross domestic product, the government must succeed in controlling the persistent high level of insecurity and revamping/improving on the worsening electricity supply which has made Nigeria entrepreneurs to turn their business on generation.

Developing the mining sector will indirectly boost the agricultural sector in its role of ensuring food security and massive job creation for the citizens. The creating of the Nigerian Sovereign Investment Authority will immensely contribute to strengthening the nation's fiscal framework. Going by the World Bank ratings, Nigerians were living below the one dollar (\$1) per day poverty threshold. While in 2011, over 70 per cent have fallen below that threshold. The implication of this assessment on the Nigerian economy is that over 40 million people have moved below the poverty link in 13 years and thereby living in 'absolute poverty' level. This is retrogression, at a time

² See The Vision 2010 Committee Report and N.E.S.G (2000): The Report on the Sixth Nigerian Economic Summit, Ibadan: Spectrum Books Ltd., This programme was introduced by the military regime of General Ibrahim Badamosi Babangida, (1985-1993).

³ The Nigerian 2007 National Minerals and Metals Policy. The repeal of the Nigerian Enterprises Promotion Act of 1989; the promulgation of the Nigerian Investment Promotion Act; the Foreign Exchange Monitoring and Miscellaneous Provisions Act; the creation of the Ministry of Solid Minerals Development; the launching of the New National Policy on Solid Minerals 1999; the enactment of the Minerals and Mining Act Cap M12 LFN 2004 and the establishment of the Geological Survey Agency etc, are examples of the reforms that have been undertaken to facilitate reception of foreign investment.

⁴ See generally the National Policy on Solid Minerals 1999 which was recently replaced by the National Policy on Solid Minerals 2006 published by the Ministry of Solid Minerals Development (Now, Ministry of Mines and Steel Development), for a fuller discussion on the Government policies in the Solid Minerals sub-sector since 1999.

⁵ The ranking of Ghana, Tanzania, Mali, Burkina Faso, Zambia, Botswana, South Africa DRC (Congo) and Zimbabwe by the report of the 2004/5 Fraser Institute as favourable mining destinations in Africa only means that investors will continue to prefer these

jurisdictions over and above Nigeria that was not even ranked. See Peter Leon "Creating a Best Practice Legal Regime: A Catalyst for Mining Investment in Africa". A paper presented at the International Bar Association SEERIL Conference, held at Eko Hotel & Suites, Lagos, Nigeria 31st January 2006.

⁶ Reforms are ongoing to tackle some of the problems responsible for the reluctance of investors to venture into Nigeria such as: poor infrastructure, macro-micro economic instability, political instability and policy inconsistency, pervasive corruption, administrative bottlenecks, poor geological information, uncompetitive mining regime, etc.

⁷ The Nigerian government policy thrust on the mining sector is anchored on the need to develop a private sector led mining industry with Government restricting its role to that of an administrator / regulator.

other countries were moving millions of their population away from abject poverty. No doubt, the increasing levels of poverty in the country poses a serious threat to the growing democracy. This is because democracy and economy are intertwined, though as the nation is marking the longest stretch of civilian administration in its history, the full dividend of democracy is yet to be accomplished. As the democratic rule grows, there is no corresponding growth in the living standard of average Nigerians. There is a lull in the Nigerian economy; the level of poverty is rife despite the nation being blessed with natural resources, with large chunk of solid minerals yet to be tapped. It is apposite to point out that a strong and virile economy is essential for a sustainable democracy. The worsening poverty poses a great deal of risk to the democratic process and the security of the nation. In actual fact, only economy driven by the private sector is the key for the attainment of sound democratic structures and processes. Along this line, the Lagos chamber of commerce and industry in its Democracy Day message called on political leaders at all levels to rededicate themselves to the creation of enabling environment for private sector development.

The bane of Nigeria's industrial development efforts since independence have been ad-hoc without a clearly and timelines. It is hoped that by the time the new industrial policy is formulated, a new economic transformation through industrialization will be achieved. The promptings given to the non-oil sector in the last one decade appear to have made a significant impact on the economy, especially in the area of the Export Expansion Grant. Though on small scale, investment in the non-oil sector through the exportation of commodities and minerals such as coal, iron ore have yielded significant proceeds as these commodities are in top demand attracting excellent prices from international buyers. At present, most of the mining activities being carried out in Nigeria are done by artisanal miners in small groups and on individual basis⁸. These informal groups are perceived by the governments as "illegal miners" because their activities are not strictly speaking within the framework of legal instruments governing mining operations; coupled with the fact that these sets of individuals do not conform with the formal guidelines by the institutional bodies established by the government to regulate the mining activity in Nigeria.

⁸ Akper, P. op.cit.p.10.

See Hollaway, J.(1997)"Policies for Artisanal and Small Scale Mining in the Developing World- A review of the Last Thirty Years," in Ghose, A. A Global Perspective Proceedings from the Global Conference on Small and Medium Scale Mining (GCSM'96) held in Calcutta, intermediate Technology Publications Ltd., London cited in Espinosa Bula, D.A. Small Mining: are the Types of Minerals, Their Marketing Conditions And Economic Reality,factors To Consider When Designing Policies To Address the illegality issue. opcit, p. 18.

The National Policy focuses on attracting foreign investors into the mining sector in Nigeria at the expense of boosting artisanal miners operations⁹. A critical examination of the goals sets out in the National Policy reveals that government has failed from these two main objectives. For instance, rather than attracting foreign investments, the operational standards, geological surveys, basic infrastructural facilities and security challenges in many parts of the country where solid minerals are deposited are considered a disincentive to foreign investors and stakeholders in the mining sector. While penal sanctions and strict operational guidelines put in place to checkmate artisanal mining activities have not achieved desired results. Thus from both ends, government have failed in preventing revenue loss through smuggling activities and prevailing serious environmental degradation arising from the large coverage areas of operations in terms of land mass. In recent times, there were reports of lead poisoning¹⁰ among residents of communities where mining of lead have been taken place. Therefore environmental issues relating to health hazards and labour related issues constitute serious challenges to the proprietary of continuing exploration of solid minerals by the unregulated miners in the country. The existing legal and institutions requires for enforcing mining operations are inadequate, inefficient to attaining enviable position in the sector.

As Professor Popoola has suggested project financing can be obtained from offshore banks and International Monetary Organisations such as the World Bank, ADB and the International Finance Corporation (IFC).The World Bank is known to be favourably disposed to projects, which would have the effect of reducing global warming and are environmentally friendly .Syndicated funding by domestic banks is also a viable funding option, especially for small projects (Popoola, 2003).

3. THE LEGISLATIVE FRAMEWORK

The national policy on solid minerals 1999 replaced by

⁹ Tripartite Meeting on Social and Labour Issues in Small Scale Mines. Geneva, 17-21 May 99. <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmssni99/tmssmr.htm> .sited 8/21/01 at 2.39PM, where in apparent recognition of the difficulties associated with the definition of "artisanal" and "small scale" mining, the International Labour Organisation (ILO) observed in one its reports on the sector that "small scale mining means different things to different people. To some, it is dirty, dangerous, and disruptive and should be discouraged. To others it is profitable, productive, or simply the only way out of poverty." See Section 6(1) and Section 26(1) of Cap.M 2 LFN 2004 and the National Policy on Solid Minerals of 1999 which states inter alia that: Mining is illegal where it is carried out on land not under a title under a title but not for mining; under a mining title but in someone else's name in respect of which application for mining lease has not yet been approved.

¹⁰ The NTA News reported incidents of Lead poisoning among residents of some areas in the Northern parts of the country where lead mining operations were taken place.

the National Policy on solid minerals 2006 released by the ministry of solid Mineral Development (now Ministry of Mines And Steel Development) catalogued a detailed objective(s) of the government plans towards making the mining sub-sector as a viable alternative source of revenue and foreign exchange earnings for the country. Towards the realization of this laudable objective, the policy stipulates guidelines for the formalization and regulation of the mining sector of which artisanal mining is not envisaged by this height¹¹. The Federal Government of Nigeria is generally creating an enabling environment that will enable business to flourish. The enabling environment with respect to the mining sector includes the development of a new legislative framework. The legislative framework is embedded in the Mineral and Mining Act 2007 (“the Act”). The Nigerian Minerals and Mining Act 2007 (“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 in Nigeria. The Act contains specific provisions that will enhance private sector leadership in the development of the mining industry in the country.

4. ENVIRONMENTAL IMPACT ASSESSMENT

Like oil and gas explorations, mining is a business venture that requires environment impact assessment to be carried out before the commencement of development work or exploration process. Section 7 1(1) of the Act provides that a holder of a mining lease shall not commence exploitation work until after the submission of environmental Impact Assessment study and mitigation plan report under applicable environmental laws and regulations. The approval by the Mines Environmental Compliance Department must be obtained accordingly. The Act also contains provisions that require applicants for mineral titles to furnish the mining cadastre office with proof of sufficient working capital for the exploration or mining of the area applied for. The inability to meet this requirement may lead to a denial of the application for a mineral titled.

5. TECHNICAL EXPERTISE

¹¹ Thus, because of the high capital intensive nature of solid minerals exploration, coupled with high capital intensive nature of solid minerals exploration, coupled with high standard of operational requirements the artisanal mines cannot reasonably contribute to the growth of the mining sub-sector of the economy.

See also (2002) Presidential Committee on Solid Minerals Development Report on Strategic Action Plan Solid Minerals Development Presented to The then President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, GCFR. November p. 20.

QUALIFICATION REQUIREMENT

The Act further requires applicants for mineral titles to show proof of technical competence to carry out the proposal exploration or mining operation. The requirement envisaged employment of technical experts and specialists like Mining Engineers and Geologists with requisite academic qualifications and working experience in the field of minerals to be exploited. This provision is imperative in view of the likely environmental degradation of the land areas by the mining process. The magnitude of the harm must be envisaged and the appropriate mitigation plans be put in place to walk restoration of the environment to its natural state. By virtue of this requirement, a Mining Lease is only granted by the Minister to companies who have employed a person with adequate professional qualification and experience in mining, the Minister being further satisfied that such expert shall be retained by the company during the currency of the lease. The subsistence of a mining lease upon grant and the carrying out of mining operations is predicated on the retention of a qualified and experienced mining professional in the company’s employ who shall supervise personally the mining operations being undertaken by the company during the period of the lease.

6. ENVIRONMENTAL CONSIDERATIONS AND RIGHTS OF HOST COMMUNITIES

The Minerals and Mining Act 2007 provides for participatory agreement on issues such as corporate social responsibility between promoters of the mining investment and the host community. This agreement must be approved by the Mines and Environmental Compliance Department before commencement of mineral development or extraction process. This arrangement is meant to foster harmonious relationship between the community people and the Mines and invariably forestall conflicts and restiveness experienced in the Niger Delta with oil exploration process. This section prohibits pollution of water course, alterations in water supply and provides that everyone who uses water in connection with mining operation shall ensure that the water in use does not contain injurious substances in quantities likely to prove detrimental to animal or vegetable life. Also, no person shall, in the course of Exploration or mining, carry out operations, in or under any area held to be sacred or permit injury or destruction of any tree or other thing which is the object of veneration. This chapter provides for the winning of materials [such as salt, soda, potash or galena] by host communities in relation to areas covered by mining leases; prohibition of mineral exploration in certain areas; reservation of rights of owner or occupier; payment of surface rents; assessment of various compensations and payment of same; restoration of mines

land; reclamation; Community Development Agreements; Environmental obligations to include preparation and submission of environmental impact assessment statements and participation in the environmental protection and rehabilitation program¹². The Minister shall establish an Environmental Protection and Rehabilitation Fund for the purpose of guaranteeing the environmental obligations of Holders of Mineral titles as provided under the Act. The trustees appointed by the Minister shall operate the fund in accordance with the provisions of the Trustees Investment Act or amendments thereof¹³. As part of the requirements, the Minerals and Mining Act 2007 directs holders of mining leases to submit and obtain the approval of the mines inspectorate department of the details of the work. The essence of this requirement is to allow for effective monitoring of the activities of the holder of mining lease. It also affords government officials an opportunity to graphically supervise the works being carried on by the Miners and ensuring compliance at all stages of project implementation process.

The payment of compensation to users of land in the area to be excavated by the mining lease license in another laudable provision under the 2007 Act as it takes into consideration the interest of prior occupiers of such land. The mandatory compensation must be notified or offered to all occupiers of the land in the mining areas. Issues relating to dispute as to the appropriateness of compensation can be referred to arbitration, where amicable settlement fails. Section 7 1(2) of the Act further provides that, Where the conditions relating to the environmental impact assessment and work programmes are not met or resolved within three years, the mining lease may be suspended.

7. OFFENCES AND PENALTIES

This chapter provides for penalties to offences including [illegal mining, false and misleading statements in applications for mineral title, false or non-declaration of important information, smuggling of minerals, use of false or fraudulent scales, misrepresentation and unlawful interference or obstruction]. Regarding dispute resolution, any dispute arising between the holder of a mineral title and the Government in respect of the interpretation and application of the Act, its regulations and the terms and conditions of mineral titles shall be resolved, in the first instance, on an amicable basis. Where the dispute is in the nature of a bona fide investment dispute, and such dispute is not amicably settled as stated above, it shall be resolved in accordance with the provisions of the Nigerian Investment Promotions Act. Any other dispute not settled within these parameters and any offence under the Act and regulations shall be resolved and tried in the Federal High

Court. It must be noted that the effect of the foregoing entry requirements and operational, conditions are commendable with a view to making the mining industry a virile and sound business concern. However, when considered from the purview of small scale miners, such conditions are too stringent with the potentials of creating hardships in terms of compliance thereby indirectly aiding the growing numbers of illegal mining operations in the country. On the other hand, chapter II of the 2007 Act contains provisions addressing the challenges being faced by small scale miners. Under section 90(i) (a) – (k) government is required to provide institutional support for registered and performing co-operations of small-scale and artisanal miners in most of the conditions stipulated for prospective investors.

8. THE INTERNATIONAL LABOUR STANDARDS

The United States Agency for International Development (USAID) reiterated its position in its publication titled “Minerals and Conflict: A Toolkit for intervention”¹⁴ thus:

Much of the World’s mining activity is poverty driven” and that poor communities increasingly turn to mining in times of crises in order to sustain themselves especially in developing countries.

In the same vein, the International Labour Organization’s report in a study conducted on small-scale mining observed that “access to funds” is a major impediment which accounted for inability of small scale miners to obtain titles, equipment and observe operational health and safety standards¹⁵. Another socio-labour issue in small scale mining operations in the prevalence of child labour fueled by poverty, lack of educational opportunities, unemployment and lack of law enforcement mechanism. Despite the fact that the Labour Act in Nigeria prohibits children from working underground in the mining sector¹⁶, many artisanal and small scale miners make use of their children and wards as labour force. Similarly, lack of financial capability by small scale miners to bring their business ventures within the framework of formal mining sector has tagged their operations with the toga of illegality in many developing economics. Illegal mining refers to

¹⁴ USAID, Minerals & Conflicts. A Toolkit for Intervention USAID Office of Conflict Management and Mitigation; Bureau for Democracy, Conflict and Humanitarian Assistance.

¹⁵ See ILO Child labour in small-scale Mining: Examples from Niger, Peru & Philippines. Sectoral Activities programme, Industrial Activities Branch Working paper SAP 2.78/WP.137 available at <http://www.ilo.org/pulicenglish/dialogue/sector/papers/childmin/137ei.htm> visited 8/13/01 at 2:41 PM.

¹⁶ Section 59 Labour Act provides that an infant under the age of twelve years cannot be employed other than by a member of his family for only light agricultural, horticultural or domestic work approved by the Minister of Labour.

²¹ See the Mining and Solid Minerals Act, 1999, section 10(a) (b) (c) cap M12 LFN 2004.

¹² Sections 97 to 120 of the Act.

¹³ Section 121 of the Act.

the “winning of minerals by people who do not have the sanction of the authority to do so”. Thus non-compliance with formality and regulations governing the operations of mining activity is a legal concern which invariably turns the operations to a criminality. A cursory investigation of many African countries like Zimbabwe, Ghana, Tanzania, Angola and Democratic Republic of Congo revealed that at different times, high prevalent rates of illegal mining existed. Furthermore, in Columbia, a report had it that over 1,000 illegal operations was carried out in the coal sector, with an average of 5-35 employers. In addition, from the report of the United Nations Economic and Social Council, it was remarked that illegality in small-scale mining is increasingly recorded in developing countries and economics in transition. Also, the global Report on Artisanal & Small-Scale mining identified reasons for the prevalence of the practice ranging from lack of knowledge of the national laws traditional and cultural beliefs, lack of incentive support from the government for their operations, high tax burden, limited access to mining titles, bureaucratic bottlenecks in terms of procedure, ineffective sanctions and corruption.

The operational obligations stipulated in the Minerals and Mining Act 2007 are meant to ensure enabling environment for mining operations in the aspect of safety and health devices, social and environment issues. All these conditions have financial implications on the prospecting investors in order to make mining operation a friendly efficient and humane business activity. Data expected from the holder of a mineral title is comprehensive to cover issues relating to geological, mappings and scientific surveys from experts and government agencies for effective utilization of land resources management with payment of prescribed fees, annual real and charges for land usage.

9. SOLID MINERALS DEVELOPMENT AND FINANCING OPTIONS

The Mining Industry is now a global industry with many countries competing for exploration funds. The fierce international competition suggests that mining companies and their investment funds would only go to those countries where the enabling environment would allow the private sector to flourish without hindrance. It is the realization of this fact that is driving the recent efforts of the Federal Government of Nigeria towards the creation of an orderly and sustainable development of Nigeria’s Minerals Resources .In practice, the mining of the solid minerals is capital intensive. It required evidence of huge working capital on the part of investors engaged in prospecting in the sub-sector. Section 10 (a) (b)(c) of the Minerals and Mining Act 1999 stipulated that applicants be enforced in exclusive prospecting licence, mining lease

or mining title must comply with the following¹⁷:

- (a) Proof of sufficient working capital for the development of the mining area applied for;
- (b) A banker’s guarantee as prescribed in form K of schedule I of the Act for such sum s may be determined by the minister;
- (c) A report on the mineral or mining area prepared by the prospect of or any other expert.
- (d) A proposed programme of prospecting or mining operation including detailed programme of progressive reclamation and rehabilitation of lands disturbance.

From the foregoing, the mining of solid minerals constitutes a high level business enterprise with high technology requirements. Prospecting in the mining sector is likely to generate employment, income and alleviate poverty in any country where it is explored and exploited. Due to the stringent working conditions and enormous financial interests to effectively operate the mining business/activity, many countries (including Nigeria) have not been able to attract international corporations for exploration activities; rather the sub-sector is left in the hands of small scale miners. In Nigeria for instance, women and children are involved in mining operations on a low scale level with attendant health hazards implications¹⁸. In spite of huge efforts and the energy sapping involved in the exploitation of solid minerals, the end products are significantly low to be able to have great impact in terms of earnings realized from these ventures. Thus, the reality in this sub-sector is that while small scale mining plays a noticeable role in poverty alleviation and contributes to rural development, the likelihood of achieving sustainable development through this level of operations is doubtful. In developing the Solid Minerals Sector of the Nigerian economy, the financing options available to the nation include, but not limited to, banking intervention, direct budgeting allocation, and sovereign fund intervention and the Public private partnership with local or foreign investors and State/Federal Government equity financing¹⁹. More recently, among other reforms, the country has attempted to modernize and strengthen the banking system. Nigeria is also undergoing political transformation of enormous proportion. All operators shall be granted the following benefits:

Exemption from payment of customs and import duties in respect of plant, machinery, equipment and

¹⁷ Under the Labour Act, a woman like an infant may also not enter into any contract to work underground in the mines. See Section 56(1).

¹⁸ Under the Labour Act, a woman like an infant may also not enter into any contract to work underground in the mines. See Section 56(1).

¹⁹ Nigeria today is in a wave of market reforms in many segments of its economy including the privatisation of government owned companies and mining assets. After years of dithering and being weighed down under squandered oil revenues and rising debt levels, the government finally demonstrated the political will to implement market friendly policies. To this end, Nigeria over the past couple of years deregulated fuel prices began a programme of fiscal and monetary management.

accessories imported specifically and exclusively for mining operations Expatriate quota and resident permit in respect of the approved expatriate personnel; and Personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria. The machinery, equipment and accessories to be imported shall be approved by the Mines Inspectorate Division. The plant, machinery, equipment and accessories imported pursuant to this section may be disposed of by the holder of Mineral Title upon full payment of customs and import duties in respect thereof. The Central Bank of Nigeria (CBN) may permit a holder of a Mineral Title who earns foreign exchange from sale of his minerals to retain in a foreign exchange domiciliary account a portion of his earnings for use in acquiring spare parts and other inputs required for the mining operations which would otherwise not be readily available without the use of such earnings.

The Act also guarantees free transferability of funds through the CBN in convertible currency of - payments in respect of loan servicing where a certified foreign loan has been obtained by the holder for his mining operations. The remittance of foreign capital in the event of sale, or liquidation of the mining operations, or any interest therein attributable to foreign investment. The Act provides a tax relief period of 3 years for any company granted a Mineral Title under the Act. The tax relief period may be extended for a further period of 2 years by the Minister on the fulfillment of certain conditions. The tax relief period commences on the date that the licence holder commences operations. Under the Companies Income Tax Act (CITA) mining companies are only granted a tax relief period of 3 years without an option for an extension. Section 30 of the Act provide for deductibility of environmental cost. It specifically states that:

A tax deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs shall be established by companies engaged in the exploitation of mineral resources, provided however, that the appropriateness of the reserve is certified by an independent qualified person taking into account the determination made under the provisions of this Act:-

- (a) the reserve is recorded in the audited financial statements of the companies.
- (b) tax deductibility will be restricted to actual amount incurred for the purpose of the reclamation; and
- (c) a sum equivalent to the reserve amount is set aside every year and invested in dedicated account or trust fund managed by independent trustees appointed pursuant to the provisions of the Act.

A **tax deductible** amount established in accordance with the applicable rate set out in the Pension Reform Act shall be imposed on mining companies or enterprises, towards the payment of pensions to each employee. Section 32 provides for Annual Capital Cost Indexation. It states that the unclaimed balance of capital cost shall be increased yearly by 5 percent for mines that start production within 5 years from the date of enactment

of the Mining Act. The Act provides that any mineral obtained in the course of exploration or mining operations shall be liable to pay royalty as prescribed in any regulations made under the Act. However, the Minister may also defer the payment of royalty on any minerals for a specific period, on the approval of the Federal Executive Council.

10. THE ROLE OF THE BANKING SECTOR

Most apt for consideration is the role of the banking industry as the most recognized agent of financial intermediation, with the responsibility of sourcing funds from the surplus unit of the economy and channeling it to needy areas. The banking sector is very important to the survival and development of socio-economic system of every nation, including Nigeria. It will be difficult, if not impossible, to conceive a modern life with its intriguing socio-economic intricacies and dynamic complexities in total isolation of banking system. This is why in every nation of the world, government has stepped in with multifarious legislations to regulate banking operations and practice with a view to fostering a congenial atmosphere for banking business. In essence what becomes of a nation's economic welfare and development including her social economic status, to a large extent, is a function of how developed her banking industry. Thus, Banks have the responsibility to nurture small-scale companies to blue chip companies with a multiplier effect on job creation, business for insurance practitioners, research workers, as well as playing some other corporate social responsibility roles within the society. The banks also render many services to their customers such as provision of safety for cash and other valuables, acting as trustees, giving references and rendering international services, just to mention a few. However, it is very doubtful if the Nigeria licensed banks can be of any significant relevance in the development of the solid minerals sector, given the stress the sector had been going through in the last seven years. First it was the forced consolidation exercise which reduced the banks from 89 to 24. The outcome of the exercise left much to be desired. After over a century period of modern banking in Nigeria²⁰ the Nation has not been able to enjoy a stable and strong banking industry. The industry is still wallowing in distress and weakness despite several amendments to its laws, several reforms in the industry and the much pronounced consolidation exercise of the year 2004/2005 which shook the industry to its foundations. Twenty-four²¹ banks emerged from the consolidation exercise continue to be subject of fresh attempts at sanitizing it. Just a few months after the

²⁰ 1893 – 2011 (118 years).

²¹ 1893 – 2011 (118 years).

consolidation exercise, the CBN report²² stated that:

In order to strengthen the industry, protect depositors and creditors, and restore public confidence, the CBN replaced the Chief Executive Officers/Executive Directors of eight banks ... and injected a total of N620 billion into these banks.

An assessment of the state of affairs of the banking sector by the CBN, using CAMEL²³ parameters, indicated that no bank was rated A. Only one (1) bank was rated B, eleven²⁴ banks were rated C, three (Odozi, 1997; Ihomvere & Shaw, 1988)²⁵ banks D and nine (9) banks E. The assessment indicated that twelve²⁶ banks did not exhibit serious weakness that necessitated supervisory concerns while twelve²⁷ other banks manifested debilitating conditions that required supervisory attention²⁸. Twelve months earlier, the CBN had revealed that three (3) banks

²² CBN Governor's press briefing of 14th August, 2009. See also statement by the Governor in , (2009)CBN Annual Report and Statement of Accounts for the year ended 31st December.

²³ Capital Adequacy, Asset Quality, Management, Earning and Liquidity.

²⁴ Akper, P. op.cit.p.10.

See Hollaway, J.(1997)"Policies for Artisanal and Small Scale Mining in the Developing World- A review of the Last Thirty Years," in Ghose, A. A Global Perspective Proceedings from the Global Conference on Small and Medium Scale Mining (GCSM'96) held in Calcutta, intermediate Technology Publications Ltd., London cited in Espinosa Bula, D.A. Small Mining: are the Types of Minerals, Their Marketing Conditions And Economic Reality,factors To Consider When Designing Policies To Address the illegality issue. opcit, p. 18.

²⁵ See also The Vision 2010 Committee Report; also, N.E.S.G (2000): The Report on the Sixth Nigerian Economic Summit, Ibadan: Spectrum Books Ltd.; See Inventory of Solid Minerals in Nigeria, MSMD1999.

²⁶ Tripartite Meeting on Social and Labour Issues in Small Scale Mines. Geneva, 17-2 1 May 99. <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmssni99/tmssmr.htm> .sited 8/21/01 at 2.39PM, where in apparent recognition of the difficulties associated with the definition of "artisanal" and "small scale" mining, the International Labour Organisation (ILO) observed in one its reports on the sector that "small scale mining means different things to different people. To some, it is dirty, dangerous, and disruptive and should be discouraged. To others it is profitable, productive, or simply the only way out of poverty." See Section 6(1) and Section 26(1) of Cap.M 2 LFN 2004 and the National Policy on Solid Minerals of 1999 which states inter alia that: Mining is illegal where it is carried out on land not under an title under a title but not for mining; under a mining title but in someone else's name in respect of which application for mining lease has not yet been approved.

²⁷ Tripartite Meeting on Social and Labour Issues in Small Scale Mines. Geneva, 17-2 1 May 99. <http://www.ilo.org/public/english/dialogue/sector/techmeet/tmssni99/tmssmr.htm> .sited 8/21/01 at 2.39PM, where in apparent recognition of the difficulties associated with the definition of "artisanal" and "small scale" mining, the International Labour Organisation (ILO) observed in one its reports on the sector that "small scale mining means different things to different people. To some, it is dirty, dangerous, and disruptive and should be discouraged. To others it is profitable, productive, or simply the only way out of poverty." See Section 6(1) and Section 26(1) of Cap.M 2 LFN 2004 and the National Policy on Solid Minerals of 1999 which states inter alia that: Mining is illegal where it is carried out on land not under an title under a title but not for mining; under a mining title but in someone else's name in respect of which application for mining lease has not yet been approved.

²⁸ Ibid 2009 CBN Annual Reports and Statement of Accounts.

were rated in B category, eighteen²⁹ in C; two (2) and one (Akper, 2008) in categories D and E respectively³⁰. As if the above is not enough, the CBN Governor, working in concert with the NDIC and AMCON recently revoked the licenses of three of the 24 banks, transferred their assets and liabilities to newly licensed bridge banks, as a result of the precarious situations of the affected banks. These revelations and actions coming from the CBN and other regulatory/supervisory agencies constitute self indictment on or an acceptance or acknowledgment of failure of the 2004/2005 consolidation exercise.

In the last quarter of 2011³¹ the CBN also had course to revoke the licenses of three banks forcefully merged them with other banks, thereby reducing the number of licensed banks to 21. No doubt, the Nigeria populace is currently under baked, and most Nigerians have no easy access to banking facilities. The population of Nigeria is about 150 million with only 24 banks; this is a sharp contrast to USA with 307 million people having over 7000 banking institutions or Ghana that is populated by 24 million people having 26 banks. 21 million people in Australia have access to 52 retail banks, 78 merchant banks, 96 finance companies and 25 building societies. Majority of Nigerians are left at the mercy of micro-finance institutions that provide very poor banking services at a very high cost hovering between 72 and 120% per annum.

South Africa with a population of 49 million people has a vibrant banking sector which comprises 18 registered banks, 12 mutual banks, 13 local branches of foreign banks and 41 foreign banks with approved local representative offices³². It is the only country in Africa that belongs to the Basel Committee³³.

The total shareholders' funds of the five biggest banks in Nigeria (UBN, FBN, UBA Afribank and Zenith) were less than that of Investec, the fifth largest bank in South Africa. The five largest banks in Africa (Standard Bank Group, ABSA Bank Ltd, Nedcor

²⁹ USAID, Minerals & Conflicts. A Toolkit for Intervention USAID Office of Conflict Management and Mitigation; Bureau for Democracy, Conflict and Humanitarian Assistance.

³⁰ One time Minister of Finance, Olusegun Aganga, recently in an open vituperation of anger berated the former CBN Governor, Prof. Chukwuma Soludo "for deceiving the country about the stability and immunity of the Nigerian economy and the banking system in 2008 and 2009 and concluded that in other serious nations where public officers were made accountable, people like Soludo should go to jail". Vanguard Newspapers, 21st February, 2011. "Aganga v. Soludo" Retrieved 29th April, 2011 from the website: <http://www.vanguardngr.com/2011/02/aganga-vs-soludo>

³¹ Thisday Newspaper 19th October, 2011, Ascology news June 6, 2012 from the website <http://ascology.com/news> Intercontinental bank was absorbed by Access Bank Plc, and Oceanic Bank absorbed by Ecobank Plc.

³² Bank Supervision Department. Retrieved on 20th June, 2011 from the website <http://www.resbank.co.za>

³³ The Basel Committee on Banking Supervision was established by the Central Bank Governors of a group of 10 countries in 1974 to formulate broad supervisory standards and guidelines and to recommend best practices in member countries. www.investopedia.com/articles/07/Baselcapital/accord.asp

Ltd, First National Bank Ltd and Investec Group Ltd) are based in South Africa³⁴.

Given the apparent weakness of the few banks in the country and the pressure they are experiencing from the populace and regulatory agencies, they are predominantly engaged in short term lending to traders and salary earners who sure to make monthly repayments. Invariably, the banks in Nigeria majorly finance consumption, and since most of the consumable items of trade in Nigeria are imported, the banks are indirectly financing employment and production in foreign countries, where these items of trade are imported. This is the stark reality of the banking system in Nigeria, which may not favour financing the solid minerals sector that is both long term in nature and capital intensive. Perhaps the CBN, as a big brother and banker to the Federal Government may be of more relevance in financing the solid minerals sector. Recently, the CBN introduced the ECOWAS Trade Support Facility (ETSF)³⁵, an initiative that was intended to leverage on commercial banks to target the development of the non oil sectors of the economy. In the same vein, if the Federal Government considers the solid minerals sector as very important and an alternative to oil mineral sector, it owns the CBN and should direct the CBN to consider the sector a priority in its extra-legislative financing. It is heart-warming to note that the Nigerian Export-Import bank NEXIM has taken into reckoning the solid minerals sector as important in its development finance plan. The visit of a delegation of the Miners Association of Nigeria to the Managing Director of the bank was an opportunity for the Bank's Chief Executive to promise a financing plan of N9bn for the solid minerals sector. According to him:

The bank will do all within its power to provide 16.1%, approximately N9bn of the solid minerals sector's financing requirement by 2015. This will translate to about 0.82% of the sectors GDP by 2015 with the primary aim to create and sustain 2885 jobs within the solid minerals sector through project finance activities."³⁶(34)

The visit also threw light to the importance and imperative of developing the sector. By simple arithmetic if N9 billion would finance N16.1% of the sectors requirement, it means that the total financing requirement is approximately N50 billion, which is a far-cry from the financing exposures of CBN to the manufacturing or aviation sector. The N9 billion projection is also said to have a potential of creating 2885 jobs, and a full finance plan of N50 billion would generate almost 20,000 jobs. Given the all important benefit accruable from the

³⁴ Musa Al-Faki, Director General, SEC, Bank consolidation, challenges to SEC and the capital market being a paper delivered at a Business luncheon organized by the Capital Market Solicitors. June 2005.

³⁵ (2011) Saturday 26th March, <http://www.businessdayonline.com> ... retrieved on 6/06/12.

³⁶ Op cit.

development of the solid minerals sector, which include creation of wealth, enhancement of the Nigerian foreign currency earnings and the widening of the revenue base of the nation, can it be out of place, if the Nigerian government takes a bold legislative step to appropriate N100 billion to develop the sector? Definitely, it would be a step taken in the right direction.

11. INTERNATIONAL BEST PRACTICES FOR SOLID MINERALS MINING

The recently creation of ministry of solid minerals development was a major stimulus to the Nigerian mining industry that would offer viable alternatives to petroleum for foreign exchange earnings³⁷. There is no denying the fact that the solid mineral sector remains crucial to economic development, wealth creation and poverty alleviation in any nation that is blessed with such mineral deposits. The availability of these solid minerals such as kaolin, barite, limestone, iron ore, zinc quartz, feldspar, beryl coal phosphate, among others, opens up the economy in the following areas like exports, use in domestic industry for generation of foreign exchange and internal revenue and increased employment particularly in the rural areas where these minerals are found³⁸. Experts in the industry contend that the sector has the highest chances of solving the country's unemployment problems only if its resolves were properly harnessed. Unfortunately the challenges of poor budgetary allocation and lack of investors have remained strong militating factors against its development. The present security challenges, as well as the activities of illegal and informal mining are worldwide and over the years, with extensive study by a number of international organizations such as the United Nations, the World Bank Group, the International Labour Organization (ILO) and other related bodies, a number of strategies have been developed to assist informal miners to bring their operations within the formal sector³⁹.

11.1 Technology

Technology is a key factor in the mining industry especially with respect to artisanal mining where it has been a major constraint towards the attainment of its full potential. Technology issues as they affect ASM can be discussed under two broad headings- the

³⁷ "The Importance of Solid Minerals in the Development of the Nigerian Economy", Ifeanyi Ikeh, Special Adviser to the Ebonyi State Governor on Solid Mineral Development.

³⁸ See United Nation' Economic Commission for Africa: Compendium on Best Practices in Small Scale Mining in Africa, ECA/RCID'003'02 Addis Ababa, Ethiopia. 2002, p.4. <http://leadership.ng/ngg/articles/26071> accessed on 30-05-2012.

³⁹ See Barnea, J. (ed) (1978) "Important for the Future: Comments and Opinion", Special Issue on the Conference on the Future of Small Scale Mining, UNITAR, New York cited in United Nations Economic Commission for Africa: Compendium on Best Practices in Small Scale Mining in Africa.

mechanistic and social aspects. The Mechanistic features include: Extraction methods, equipment, support, and ventilation in working areas while the social aspects include organization of production and labour. The best practices identified with respect to technology relate to different parameters but only a few will be discussed for the purposes demonstrating the importance of appropriate technology to ASM.

11.2 Access Technology

According to the Compendium, access to technology is a major constraint to ASM because many countries experience poor level of industrialization, economic performance and mining experience. This has been exacerbated by restrictive fiscal terms imposed on importation of technology such as high import duties, sales tax, VAT and others⁴⁰. Furthermore, the desire of most developing countries to attract investments in the large-scale mining sector at the expense of small-scale mining, have resulted in incentives being given, to large-scale operators that include importation of capital equipment free of duty, sales tax and capital allowances for development capital expenditures which are usually not extended to small-scale miners and suppliers of technology⁴¹. The Plant Hire-Purchase scheme which allows ASM to have access to plant hire at local levels where their operations are located with an option to purchase same is what has been identified as best practice in this regard⁴². Although, miners that satisfy the requirements to purchase the equipment can do so, where the equipment or plant is one of high demand, it is usually limited to hiring to enable access to it by those miners without the financial ability to purchase them.

11.3 Solid Minerals Development and Financing Options

The Mining Industry is now a global industry with many countries competing for exploration funds. The fierce international competition suggests that mining companies and their investment funds would only go to those countries where the enabling environment would allow the private sector to flourish without hindrance. It is the realization of this fact that is driving the recent efforts of the Federal Government of Nigeria towards the creation of an orderly and sustainable development of Nigeria's Minerals Resources.

In practice, the mining of the solid minerals is capital intensive. It requires evidence of huge working capital on

the part of investors engaged in prospecting in the sub-sector. Section 10 (a) (b)(c) of the Minerals and Mining Act 1999 stipulated that applicants to be enforced in exclusive prospecting licence, mining lease or mining title must comply with the following⁴³:

- (a) a proof of sufficient working capital for the development of the mining area applied for;
- (b) a banker's guarantee as prescribed in form K of schedule I of the Act for such sums may be determined by the minister;
- (c) a report on the mineral or mining area prepared by the prospect of or any other expert.

11.4 Sovereign Wealth Fund

The sovereign wealth fund is also a veritable source of opening up any vital sector of the economy, such as the solid minerals sector which if developed, will greatly enhance the nation's Gross Domestic Product. This fund in the past years had been controversially shared by the three tiers of government, being the excess revenue accruing from the exportation of crude oil, controversially too, a law has now provided a reservoir of savings, which is now being invested in foreign bonds and banks. Nigeria is one of the 56 countries that set up sovereign investments funds now between 2006 and 2010. The value of sovereign wealth funds globally topped a landmark \$5 trillion⁴⁴ at the end of April, 2012. Two main issues this fund face are creating an investment strategy and finding the right people to run the fund.

In Nigeria, the sovereign wealth law⁴⁵ created the Nigerian Sovereign Investment Authority to establish three and manage three state savings and investment funds. These include

The Future Generation Fund the Nigerian Infrastructure Fund and the Stabilisation Fund. Each has specific mandates to pressure and increase the country's wealth. The act empowers each fund to "invest anywhere within or outside Nigeria in a range of assets including international equity, private equity, real estate, debt and all other asset classes generally utilized by best-in-class investment fund managers"

A fraction of this fund can be claimed through banks for investment in the solid minerals sector, and if properly managed the fund, so invested, would return to the reservoir with earned income.

Also reasonable for consideration is embarking on the exploration of the solid minerals sector jointly by the three tier of government in Nigeria as a joint venture over time, the participating governments would generate income to top-up their internally generated revenue, IGR, as it is the case with the various properties in Abuja and Lagos owned by various governments.

A Private Public Partnership (PPP) approach may also be appropriate and apposite towards the development of the Solid Minerals Sector, such that the Ministry of

⁴⁰ See Popoola A.O. op.cit. 203.

⁴¹ Ibid.

⁴² In Zimbabwe, a good example is the Plant Hire-Purchase scheme operated by the Mining Department from three regional depots in Harare, Gweru and Bulawayo. From these depots Small-scale miners have access to crushers, compressors, stamp mills, concentrating tables, diamond drills, chain blocks, shear legs and other equipment and tools. See ECA: Compendium on Best Practices in Small-scale Mining in Africa supra.

⁴³ See Section 10(a)(b)(c) Cap.M12 LFN 2004.

⁴⁴ Financial news, Thursday 7, June 2012 <http://media4.financialnews.com>.

⁴⁵ The Nigerian Sovereign Investment Authority Act 2011.

Trade and Investment would package equitable interest in partnership with the private sector, such shares could be warehoused for sale to the Nigeria investing public in future. Moreover, government can also harness the large reserve of the pension fund. Since the passage of the new Pension Reform Act, a huge reservoir of fund⁴⁶ running to billions had been lying fallow with the CBN, and later foreign banks. These monies are mostly not available for local banks to invest.

The Mining Association can also access funds from the International Finance Organisations, such as the African Development Bank the International Finance Corporation, which is an arm of the World Bank saddled with the responsibility of parcelling with the private sector in many ways to foster economic development.

CONCLUSION

There is no denying the fact that the solid mineral sector remains crucial to economic development, wealth creation and poverty alleviation in any nation that is blessed with such mineral deposits. The availability of these solid minerals such as kaolin, barite, limestone, iron ore, zinc quartz, feldspar, beryl coal phosphate, among others, opens up the economy in the following areas like exports, use in domestic industry for generation of foreign exchange and internal revenue and increased employment particularly in the rural areas where these minerals are found⁴⁷. Experts in the industry contend that the sector has the highest chances of solving the country's unemployment problems only if its reserves were properly harnessed. Unfortunately the challenges of poor budgetary allocation and lack of investors have remained strong militating factors against its development. The present security challenges, as well as the activities of illegal and informal mining are worldwide and over the years, with extensive study by a number of international organizations such as the United Nations, the World Bank Group, the International Labour Organization (ILO) and other related bodies, a number of strategies have been developed to

⁴⁶ The Nation Newspapers on June 6, 2012 per Muhammad Ahmad, Director General Pension Commission.

⁴⁷ <http://leadership.ng/ngg/articles/26071> accessed on 30-05-2012.

assist informal miners to bring their operations within the formal sector⁴⁸.

Based on legal instruments and institutional agencies that have been enacted and established by the Nigerian government over the years, adopting best practices and mechanisms that have been used by different countries to formalize and regulate mining explorations which include reforms in the mining policy and legislation; access to appropriate technology; health and safety concerns; minerals marketing; institutional capacity; access to credit and finance; provision of technical assistance programmes, ways of ensuring environmental management; addressing sound and labour issues affecting women and children involved in mining are all geared towards attaining sustainable development in the mining sector in Nigeria.

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⁴⁸ See for instance, ILO Manuals 2010.