

Realising The Untapped Potentials of Nigeria's Mining Sector: Policy, Legal and Institutional Reform Imperatives for Nigeria

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ABSTRACT:

Nigeria is endowed with 44 different mineral occurrences in about 450 locations in virtually all States of the federation. Despite this huge endowment, Nigeria is not reckoned with as a mining jurisdiction but rather as an Oil and Gas jurisdiction. This is because the mining sector progressively suffered decline since the discovery of Crude Oil and its commercial exploitation. Consequently, the sector's contribution to GDP which stood at 4 per cent in the 1960s and 70s declined to less than 1 per cent in the 1990s. To stem the decline, Government aggressively pursued reforms from 2002 to reposition the Mining sector as a source of revenue and foreign exchange earnings. However, over 2 decades of implementing the reforms, Nigeria is yet to realise the potentials of the mining sector. Deploying the doctrinal research methodology, the paper examines the factors they have been responsible for the decline of the sector. It posits that the untapped potential of the mining sector can be realised by adopting key reforms in the policy, legal and institutional framework. It proceeds to outline the reforms that should be adopted and other strategies to realise the untapped potentials of the mining sector. The paper recommends the articulation of a new Mining Policy that aligns with the African Mining Vision (AMV) to promote inclusive and broad-based development of the sector and concludes that such a policy will determine the type of legislation, regulations and institutions that will be required to invigorate the mining sector.

KEYWORDS: Realising Untapped potentials, Mining sector, Policy and Legal reform

1. INTRODUCTION

Nigeria's mining sector contributes less 1 per cent to GDP despite the huge potentials of the sector to be a major source of revenue and foreign exchange earnings of the country. Statistics indicate that Nigeria is endowed with 44 different types of mineral occurrences in about 450 locations across the country which if sustainably exploited can contribute significantly to the economic development of the country. Historically, between the 1960s and 70s, the solid mineral endowments of the country¹ such as Tin and Columbite contributed about 4 per cent to the GDP. However, this changed dramatically with the discovery of crude oil and its commercial exploitation from the 1970s to date. Since then, the contribution of crude oil exports to the foreign exchange and revenue earnings of the country

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increased significantly to over 86 per cent while that of solid minerals decreased to less than 1 per cent contribution to GDP as a result of the neglect which the sector experienced on the discovery of crude oil.

By the 1990s the structural imbalances created in the economy as a result of the unwholesome reliance on oil as the source of revenue and foreign exchange earnings of the country began to manifest especially with the fall of the price of oil in the international market. As a result, Nigeria could hardly finance her annual budgets and had to resort to borrowings to finance her budgets. The Structural Adjustment Programme which had as its major focus the diversification of sources revenue was introduced. The Mining sector was therefore repositioned as a viable source of revenue and foreign exchange earnings. This policy shift led to renewed interest in the sector and reforms which began with the creation of the Ministry of solid minerals development in 1995 were implemented to reposition the sector. The reforms which reached its zenith in 2002 have now ever not achieved its desired objectives as the untapped potentials of the sector are yet to be realised.

The paper examines factors that are responsible for the decline of the sector. It posits that the untapped potential of the mining sector can be realised by adopting key reforms in the policy, legal and institutional framework. It outlines the reform initiatives that should be adopted and other strategies to realise the untapped potentials of the mining sector. The paper recommends the articulation of a new Mining Policy that aligns with the African Mining Vision (AMV) to promote inclusive and broad-based development of the sector and concludes that such a policy will determine the type of legislation, regulations and institutions that will be required to invigorate the mining sector.

The paper is divided into seven parts including this introduction. Part II contains a conceptual clarification of some basic concepts such as ‘minerals’ and ‘mining’ to engender appreciation of the ensuing discussion. Part III of the paper is an overview of Nigeria’s mining sector where a historical development of the sector is discussed highlighting the different historical epochs and the major developments that took place in the sector. Part IV of the paper highlights the potentials of the mining sector and makes a case for concerted efforts to realise the potential. Part V examines the factors militating against the realisation of the potentials of the mining sector and discusses how these factors can be addressed. Part VI of the paper outlines the recommended reform initiatives that should be adopted to ensure the realisation of the untapped potentials of the Mining sector. Part VII is the conclusion.

2. CONCEPTUAL CLARIFICATIONS

This lecture revolves around two basic concepts: ‘Minerals’ and ‘Mining’. It is, therefore, pertinent to clarify the meaning attached to these concepts to engender a greater appreciation of the lecture.

2.1. Minerals

Minerals are naturally occurring substances derived from the earth’s crust and upper mantle, which are of value to man. Technically, minerals are naturally occurring or naturally formed inorganic substances with a definite composition or range of compositions, usually possessing a regular internal crystalline structure.² To be classified as a mineral, a substance must have an inorganic or non-living origin and a composition that can be expressed by a chemical formula.³

The National Minerals and Metals Policy, 2008 describes minerals as “...naturally occurring inorganic substance, possessing a definite chemical composition and atomic structures. For this purpose, it includes Rocks, such as Coal, Marble, Limestones and Bitumen amongst others.”⁴ This description of minerals highlights the formation of minerals and their chemical composition and contrasts with the National Policy on Solid Minerals 1998 which specifically defined Solid Minerals to “encompass a wide variety of endowments going from iron ore to coal to sand and gravel: some of them found on the surface while others can only be won from the earth through underground mining”.⁵ The definition simply outlined substances that qualify as minerals, their origins and how such minerals are won.

The foregoing notwithstanding, the concept, has been statutorily defined by the Nigerian Minerals and Mining Act, 2007, as:

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any substance whether in solid, liquid, 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.⁶

A cursory reading will reveal that the Act also highlighted the formation and examples of substances that qualify to be called minerals and the ones that do not fit the description. Minerals can be broadly classified into minerals in the energy group, the ferrous group and the non-metallic group. By simple elimination, therefore, solid minerals cover all of the above groups, excluding crude oil, gas and water, but not coal, lignite, uranium thorium and tar sands. It is contended that by this definition, the resin amber and fossil fuels, petroleum, and natural gas are not 'true minerals' since they are formed from organic substances (animal or vegetable matter) that once lived on the earth.⁷

In Nigeria, minerals have been classified by the Geological Survey Agency of Nigeria by use rather than origin. The five main groups are Mineral Fuels, Metallic Minerals, Structural and Building Minerals, Industrial Minerals and Gemstones. Apart from this classification according to use, minerals are also classified as strategic to 'national interest'. These minerals include mineral fuels like coal, lignite etc. Others are classified according to the 'security interest' of the country and they include uranium and fissionable minerals. The third category is the minerals strategic to the 'industrial interest' of the country such as iron ore, gypsum barites etc.⁸

2.2. Mining

Mining is concerned with the selective recovery of minerals and materials other than recently formed organic materials, from the earth's crust or the search for, and extraction of minerals from the earth.⁹ In this respect therefore the site in which minerals are excavated for the production of ore, industrial minerals or coal etc, is called a 'mine.'

The Nigerian Minerals and Mining Act, 2007 in an attempt to clarify the meaning of 'mine,' defines the concept when used as a 'noun' from when it is used as a 'verb'. According to the Act, mine when used as a verb means:

any place, excavation or working in or on which any operation connected with mining is carried on together with all buildings, promises, erections, infrastructure water reservoirs, tailings, ponds, waste, overburden and other dumps, and appliances belonging or appertaining thereto, above or below the ground for the purpose of mining, treating or preparing Minerals, obtaining or extracting any Mineral or metal by any mode or method or for the purpose of dressing mineral ores but does not include a smelter or a refinery.¹⁰ However, when used as a verb, it 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 the "mining" shall be construed accordingly.¹¹

The terminology does not however refer to oil wells and rock quarries. Mining is perhaps one of mankind's oldest activities. It has been the major source of materials from which tools were made, almost from the beginning of the Stone Age about 2.5 million years ago. Thus, from the moment when the predecessors of human beings first began to recover selected rocks from which to dip their tools, mining had begun. It progressively developed from digging the flints or other selected rocks from the ground to the pits and eventually underground mining as the surface deposits depleted. It is reported that the oldest identified underground mine, a mine for red ochre, was at Bomvu Ridge in Swaziland, Southern Africa and that it dates back to 40 000 BC. Surface mining, of course, goes much farther in time.¹²

3. OVERVIEW OF NIGERIA'S MINING SECTOR

Nigeria is reputed to be endowed with 44 different mineral resources in about 450 locations in virtually all of the 36 States of the Federation, including the Federal Capital Territory, Abuja.¹³ Despite these occurrences, Nigeria is not reckoned as a mining jurisdiction, but rather as an oil and gas country.¹⁴ This is understandable because the sector's contribution to Gross Domestic Product (GDP) in the 1960s-70s which stood at 5 per cent of GDP,¹⁵ gradually declined to 0.003 per cent in the 1990s.¹⁶ The decline of the mining sector is largely attributable to the discovery of oil in 1956 and its commercial exploitation, which progressively displaced the solid minerals as a source of revenue and foreign exchange earnings for the country.¹⁷

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Secondly, the 30-month civil war that engulfed the country from 6th July 1967 to 15th January 1970 created an unfavourable operating environment for mining investments, especially around the Eastern field, where coal was mined in commercial quantities. Expatriates who were engaged in the mining of coal withdrew from the country to more favourable destinations. Since mining was essentially private-sector driven, the withdrawal of foreign investors constituted a major setback for the country.¹⁸ To fill the vacuum created by the withdrawal of expatriate miners, the government, in an apparent reversal of its earlier policy of ‘non-involvement in the mining business,’¹⁹ intervened and became an active player in the mining industry. Although the intervention was a welcome development, the expected gains of that intervention did not materialise as the sector continued to experience decline.

Thirdly, the implementation of the government’s Indigenisation Policies, which started in 1972, was not well received by investors. The Policy made it compulsory for Nigerians to own interests in strategic sectors of the economy, including mining.²⁰ It should be noted that when viewed from the perspective of foreign investment attraction and promotion, the Indigenisation policy inadvertently created an unfavourable operating environment for mining investments in Nigeria. It was not well received by foreign mining companies and expatriates who perceived it as a form of ‘creeping nationalism’²¹

Consequently, foreign investors who were not prepared to dilute their investment in existing mining ventures to accommodate Nigerian enterprises as required by the policy closed shop and relocated their mining operations to favourable destinations. Other sundry challenges included the fall in the international price of mineral commodities like tin, which Nigeria was a major producer and net exporter, rendering its commercial exploitation largely unprofitable. Tin mining companies operating in the Northern Field in areas like Jos Plateau were naturally discouraged from continuing with their operations.²² They consolidated their companies to form the Consolidated Tin Mines (CTM) and gave the Nigerian Mining Corporation some equity in the company. Also, the fact that Nigeria continued to rely on the Minerals Act, which was a 1946 colonial Ordinance which had become archaic and no longer in tune with the development priorities of an independent Nigeria to regulate the mining sector was a major disincentive.

The net effect of these policies was the mass withdrawal of foreign investment from Nigeria and the eventual stagnation of the mining industry. Although, the 1971 policy promoted government involvement in the mining sector through the establishment of the Nigerian Mining Corporation (NMC) in 1972²³ as the government’s investment vehicle. The NMC however struggled to develop deposits abandoned by foreign companies and operate the mines profitably. It was glaring that the mining sector was on the decline with a negligible contribution to GDP accounting as of 1996, for a dismal 0.33 per cent of the GDP.²⁴

The rather gloomy picture of the mining sector of the late 1980s and early 1990s progressively changed with renewed attention given to the sector as a result of the structural imbalances in the economy created by the unwholesome dependence on oil (petroleum) as a source of revenue and foreign exchange earnings. Nigeria was finding it increasingly difficult to fund its budget as a result of the fall in the international price of oil.²⁵ As a result of the new economic realities, the solid minerals sector, which had been neglected because of the discovery of oil and its low contribution to GDP, was considered by the government as a viable alternative to petroleum.²⁶

The realisation that the solid minerals sector could be harnessed for national development provided the impetus for renewed interest in the sector. This led to the creation of the Ministry of Solid Minerals Development in 1995 which began consultations with stakeholders in the sector through Conferences and Workshops to address the problems that had militated against the development of the sector. The implementation of sector reforms led to the articulation of a new National Policy on Solid Minerals in 1998 and the enactment of the Minerals and Mining Act of 1999.²⁷ The new policy sought to address the weaknesses of the 1971 Policy and eliminate some of the implementation challenges that had manifested.

The policy highlighted the strategic partnership between the Government and the private sector as it made the development of Nigeria’s mineral endowments a shared responsibility between the state and the private sector. It provided clearly defined roles against which performance could be measured. For instance, the government was saddled with the responsibility of creating and enabling an environment for the development of the sector, while the private sector played a leading role in the development of the sector by undertaking most of the mining activity.

The period witnessed a policy reversal from that of governments' active participation in the sector to private sector-led development that had characterised the pre-independence era. The sector had to be deregulated to attract investments, and state-owned enterprises such as the Nigerian Coal Corporation and the Nigerian Mining Corporation were reorganised, and their enabling legislation was amended²⁸ to remove their monopoly and allow them to operate commercially and compete with the private sector. The Minerals and Mining Act of 1999 was enacted to regulate the sector like its precursors, vested the ownership and control of minerals in the State and enacted other key provisions of the 1998 Policy. It provided a mineral rights system and granted incentives for mining investments.

It is important to observe that these reforms did not meet global standards, making Nigeria lose several waves of super cycles which countries that had reformed to global standards in the 1990s achieved. For instance, countries like Argentina, Madagascar, Papua New Guinea, and Tanzania to mention a few of the countries that reformed their mining sector were able to attract mining investment worth Billions of Dollars.²⁹

The 1998 Policy and 1999 Act were repealed and replaced by the Nigerian Minerals and Metals Policy of 2008 and the Nigerian Minerals and Mining Act of 2007. This was an anomaly as the law was enacted before the policy was articulated. Consequently, the law did not take advantage of the policy as can be gleaned from the almost complete absence of provisions relating to metals. The 2008 Policy identified the government's major policy thrust in the mining sector. First, it identified the mining industry as a global industry with many countries competing for exploration funds; the Government's responsibility is, therefore, to create an enabling environment for the business to flourish. This includes the development of a new and modern legislative framework with specific provisions to enhance private sector leadership in the development of the mining industry. Secondly, it envisaged the separation of the distinctive role of the Government as regulator/administrator from that of the private sector as operator and manager. The policy provides that access to mineral titles will be transparent, flexible and free from undue interference of government officials. The government's role will be limited to articulating policies and their implementation and the collection, collation, storage, dissemination, and archiving of geoscience information and knowledge both for wealth creation and public interest and heritage.³⁰ Thirdly, it seeks to address issues relating to the socio-economic well-being of the people with both direct and indirect contact with the mining industry. The government also defined its role in the sector as that of promoter/regulator, thereby positioning the private sector as the operator and taking the lead in the development of the sector.

This was the renaissance period of the mining sector, as several reform initiatives were implemented. The Ministry of Solid Minerals was restructured for greater efficiency into five technical departments with specialised functions, namely: Mining cadastre, Geological Survey of Nigeria, Mines Inspectorate, Artisanal and small-scale Mining, and Mines Environmental Compliance. Formal recognition was given to Artisanal Miners as the government approved the establishment of Artisanal and Small-Scale Mining Projects, the establishment of Artisanal Mining Cooperatives, the creation of buying centres to assist artisanal miners in marketing their products at a fair price, the provision of extension services etc.

Despite the enactment of the sector's contribution to GDP remained low as a result of the un conducive operating environment occasioned by micro and macro-economic challenges. The Road Map on the Development of the Solid Minerals and Metals Sector was launched in 2012 to ensure the realisation of government developmental objectives in the sector. It identified the challenges to the development of solid minerals to include:

- (a) Inadequate geoscience data needed to support detailed mineral investigation, development and exploitation.
- (b) Inadequate infrastructural facilities such as roads.
- (c) Very high proportion of Artisanal and Small-Scale Miners (ASM) operations deriving mineral exploitation in the country resulting in environmental degradation, and exposure to high risk and health hazards due to the use of unsafe mining and mineral processing practices.
- (d) Lack of adequate legislation, and
- (e) Low institutional and human capacity.³¹

The 2012 Road Map articulated the steps to be taken to address the challenges and reiterated the “need to diversify the economy away from over-dependence on oil as a principal revenue source and transform the minerals and metals into a strategic catalyst of growth”.³² The following targets were set:

- (i) Increasing the sector’s contribution to the nation’s GDP from the current 0.4 per cent to at least 5 per cent by the year 2015 and 10 per cent by 2020;
- (ii) Creating about 3 million direct and indirect jobs by 2015;
- (iii) Facilitating the production of coal needed to fire coal-fired power stations that would contribute 30 per cent of the nation’s power generation by 2020.
- (iv) Revitalising the entire steel sector for the operation and production of 3 million tonnes of liquid steel per annum by 2015 and 12. 2 million tonnes of liquid steel per annum by 2020.
- (v) Becoming a major regional and global producer of aluminium and steel products with a target of 100,000 tonnes per year of primary aluminium and 3 million tonnes per year of steel products by the year 2015.
- (vi) Achieving enhanced capacity to supply 50 per cent of skilled manpower required for all segments of the minerals and metals sector and
- (vii) Producing geological maps on a scale of 1: 100,000, covering the entire nation by 2020.

By 2015, it became obvious that the strategies and performance targets enumerated above were unrealisable, which called for its reappraisal. It was thereafter replaced by the Road Map for the Growth and Development of the Nigerian Mining Industry 2016 (2016 Road Map). The 2016 Road Map identified major hindrances to the development of the mining sector from five primary lenses, namely, Geosciences, Industry participants, Stakeholders, Institutions and governance and Key enablers and proposed solutions to address the challenges.³³ It prioritised activities and leveraged prior roadmaps and initiatives aimed at addressing the deficiencies in the sector. It also detailed activities and a comprehensive set of initiatives that, when implemented, were expected to drive the growth of the sector.

The Ministry was given a new charge by the President to “reposition the mining sector as a frontier of this administration’s economic diversification agenda.”³⁴ In line with the objectives of the Road Map, the Ministry continued with its resolve to “build a world class minerals and mining ecosystem designed to serve a targeted domestic and export market for our minerals and ores”. The Ministry also focussed on improving the sector’s contribution to GDP and creating jobs and economic opportunities for Nigerians.

The Ministry received funds from the World Bank to implement the Mineral Sector Support for Economic Diversification Project (MinDiver) and accessed N30 Billion approved for the sector from the Natural Resources Intervention Fund for the exploration of new minerals and strengthening of the regulatory capacity of the Ministry; the National Council on Mining and Mineral Resources Development (NCMMRD) was established to provide a forum for mining sector stakeholders to periodically meet to develop policy advisory, validation and other interventions, to effectively guide the government in achieving the full implementation of the Road Map and the achievement of its targets. Steps were also taken to reactivate the State Minerals Resources and Environmental Management Committees (MIREMCOs) to ensure greater synergy between the federal and State Governments involved in the governance and operations of the sector.³⁵

The Ministry also intensified efforts to improve the geological information and its prospecting activities as critical success enablers for the sector. In this regard, the ministry in 2017 completed several projects, such as the characterisation of Kaolin in Ekiti State, exploration of gold in Niger State as well as generating the geology and mineral database of 30 States. It also secured the delivery of 26-line KM of Electromagnetic data and carried out the geological mapping of 1:50,000 sheets 53 Maru (NW, NE, SW, SE).³⁶

All these developments were indicative of the strong desire to harness the mineral potential of the country.

4. POTENTIALS OF THE MINING SECTOR

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Nigeria's soil is reportedly rich in mineral resources that harbour tremendous potential for the economic growth of the country.³⁷ The Inventory of Nigeria's Mineral resources shows that Nigeria is endowed with 44 different mineral resources located in about 450 locations across the 36 States of the Federation, including the Federal Capital Territory, Abuja.³⁸ These minerals include gold, iron, lead, zinc, coal, and gemstones capable of catalysing the development of the country.³⁹ Nigeria is also rich in strategic minerals such as coal, iron ore, bitumen, gold, limestone, lead -zinc and barite.⁴⁰

The vast mineral occurrences of the country are envisioned as key in the efforts to diversify the economy, hence the renewed focus on the mining sector. Thus, as the country's hydrocarbon deposits are quickly depleting, attention is shifting to the country's green energy potential.⁴¹ According to Mr Dele Alake, Nigeria's Minister of Solid Minerals Development, "Nigeria currently possesses a deposit of mineral products worth \$750bn...the mining has the potential to contribute a large part of the nation's goal to achieve a trillion-dollar economy".⁴² Similarly, the Nigerian Extractive Industry Transparency Initiative (NEITI) has reported that Nigeria earned a total sum of N 193.59 billion from the solid minerals sector in 2021, representing an increase of N60.32 billion or 51.89 per cent when compared to the 2020 revenue flows of N116.82billion. The report, however, noted that: "this contribution, though a significant increase over past years, is still abysmal considering the potentials of the sector to the Nigerian economy."⁴³

The Nigerian Geological Survey Agency (NGSA) studies have confirmed the availability of energy transition minerals such as copper, molybdenum, nickel, bauxite, lithium, graphite, Rare-Earth Elements, tin, and lead zinc in Nigeria, which have generated interest from local and international investors.⁴⁴ The quest for energy transition around the world has led to significant demand for these minerals, which are in short supply. This presents a tremendous opportunity for Nigeria as its energy transition minerals remain largely untapped. As aptly observed in the Nigeria Economic Summit Group's (NESG) report, "Nigeria's mining industry has the potential to provide some of the critical minerals required to develop and produce some of the renewable energy technologies"⁴⁵ what is required is concerted efforts to link the sector to the industrial sector to facilitate the exploitation and utilisation of Nigeria's energy transition minerals.

Minerals are the basis of industrialisation, which results in the economic development of the country. Nigeria is blessed with vast reserves of "development minerals" (low-value minerals), which include: industrial minerals- barite, bentonite, glass, granite, gypsum, etc; Construction minerals-gravel, limestone, ceramics bricks, construction sand, glass; Dimension Stones- granite, marbles, slate, sandstones etc. These minerals ordinarily do not command high global commodity prices but can be mined, processed, manufactured and used domestically by local industries such as construction, infrastructure, and agriculture.⁴⁶ Nigeria can, therefore, leverage its development minerals like barites and limestone to promote its local industry.

Apart from revenue earnings, the mining sector has the potential to generate employment, especially semi-skilled and unskilled manpower. While education is generally the recognised pathway to job creation and poverty alleviation, the solid minerals sector also creates a huge platform for job creation, irrespective of the literacy levels of individuals. As aptly observed by Tene:⁴⁷

most jobs require varying degrees of specialisation and expertise, the mining sector only requires basic knowledge and brawns rather than brains to mine, thereby creating great prospects for employment generation for the masses of illiterate Nigerians.

Nigeria can, therefore, reduce its present unemployment figures if the mining sector is properly positioned.

5. CHALLENGES LIMITING THE REALISATION OF THE SECTOR'S POTENTIAL

The challenges militating against the realisation of the potential of the mining sector and strategies for addressing them have been duly articulated in the Roadmap for the Growth and Development of the Nigerian Mining Industry of 2016 (Road Map 2016).⁴⁸ However, for this discourse, I have identified a few of the sector challenges that require urgent attention.

5.1 Lack of a Comprehensive Policy Framework for the Mining Sector

A mining policy is an important regulatory instrument as it serves as a benchmark for all other relevant laws.⁴⁹ A sound mining policy must clearly provide guiding principles and directions for the development of the sector and

set clear objectives and strategies for realising them. According to the IGF, a Mining Policy Framework⁵⁰ represents the good practices required for good environmental, social, and economic governance of the mining sector, and the generation and equitable sharing of benefits in a manner that will contribute to sustainable development⁵¹ It is, therefore, important for a country to have a comprehensive mining policy capable of driving the development of the sector.

At the moment, Nigeria's policy framework apart from not being comprehensive is not aligned with the African Mining Vision (AMV) adopted by the African Union (AU) Heads of State and Government in Addis Ababa, Ethiopia, in 2009. The AMV recommends an appropriate policy framework for AU member States, including Nigeria.⁵¹ The AMV aims at inclusive and broad-based development of the mining sector and promotes linkages for the benefit of the peoples of Africa.⁵² The expectation for Member States of the AU is for Country Mining Visions aligned to the AMV to be developed. Nigeria is yet to comply with this important step designed to catalyse the development of the mining sector.

5.2 Inappropriate Legal and Regulatory Framework for the Mining Sector

The legal framework consists mainly of the Constitution of the Federal Republic of Nigeria 1999, the Nigerian Minerals and Mining Act of 2007 (2007 Act) and the Nigerian Minerals and Mining Regulations of 2011.⁵³ The 2007 Act is not aligned with the Mining Policy because the Act was enacted before the policy was approved in 2008. Besides, the Act has been in operation for about 17 years, during which period, its weaknesses have become glaring.

Chiefly amongst the weaknesses of the legal regime is the apparent lack of roles or involvement of the sub-nationals in the governance of the sector, which is responsible for the increasing wave of conflicts between the Federal Government and the States, with states assuming regulatory control over mining activities not constitutionally assigned to them. States have reportedly been banning mining activities over which they have no regulatory control. States often justify their unconstitutional actions on insecurity, environmental degradation, revenue mobilisation (improving their internally generated revenue), and benefit-sharing challenges as factors responsible for their actions.⁵⁴

The Mineral Resources and Environmental Management Committee (MIREMCO), the only body established under the 2007 Act⁵⁵ to foster federal /state relations in the governance of the mining sector, has proved to be unsuitable and ill-equipped to perform its statutory role of coordinating federal-state participation in the governance of the minerals sector because of the deficiencies in its composition, structure and funding. The Committee has not been constituted in some States, and even where constituted, experience has shown that the right calibre of persons with the requisite know-how and experience are not appointed by the Governors.

Although, the Minister in charge of Solid Minerals Development has allowed state governors to appoint the chairpersons for purposes of promoting synergy, some state governments have appointed politicians without the requisite qualifications and experience. Furthermore, the committee is expected to meet at least once every three months (4 times a year). However, due to financial constraints, meetings are held infrequently, negatively impacting the committee's efficiency and effectiveness in considering and recommending remedial actions to the minister. Finally, the committee is merely advisory, leaving the minister to accept or reject their recommendations. Even where the recommendations are accepted, there is no guarantee that they will be implemented.⁵⁶ According to the NESG, the lack of an effective mechanism to foster federal/state relations in the administration of the mining sector is the reason "several states have taken steps to have greater influence over the sector's regulation and development contrary to the express provisions of the constitution, creating policy uncertainties and affecting the investment climate for mining."⁵⁷

Another significant weakness of the policy regime is the absence of an independent sector regulator to effectively administer the Act and regulations, which has led to a host of disorderly activities in the mining sector. Experience has shown that other economic sectors that were deregulated and had independent sector regulators established for them have stimulated investments, growth and development of the respective economic sectors they are regulating. These include: the Nigerian Communications Commission (NCC)⁵⁸ for the Telecommunications sector, the Nigeria Electricity Regulatory Commission (NERC)⁵⁹ for the Power Sector, and recently the Nigerian

Upstream Petroleum Regulatory Commission (NUPRIC)⁶⁰ and Nigerian Midstream and Down Stream Petroleum Regulatory Authority (NMDPRA)⁶¹ in the Petroleum sector.

As a result of the lack of independence, the Technical departments in the Ministry of Solid Minerals Development, namely the Mines Inspectorate, the Mines Environmental Compliance and Artisanal and Small-Scale Mining Departments,⁶² have been unable to properly regulate and enforce the provisions of the Nigeria Minerals and Mining Act, 2007 and the Nigerian Minerals and Mining Regulations 2011 leading to the prevalence of illegal mining and a host of disorderly mining activities that serve as disincentive to investors (local and foreign). Although the technical departments were established to serve as regulatory vehicles of the state, they are not adequately resourced to effectively and efficiently discharge their regulatory functions in addition to the apparent lack of financial and operational independence required of a regulator.⁶³

5.3 Availability of Geoscience Data / Inappropriate Exploration Strategy

The availability of geoscience data is an important consideration for investors in the mining industry, as no investment decision will be made without appropriate geoscience data. This much was acknowledged by Dr Abdulrazak Garba, Director General of the Nigerian Geological Survey Agency, where he observed that:

the availability of credible geoscience data in the development of any country's mining sector cannot be overemphasised...the key purpose of geological surveys is to provide geological information needed to attract investors to the sector...without the geological survey, investments in mining will not come into the country because investors will not have information on mineralogy needed to make investment decisions.⁶⁴

The Fraser Institute Annual Survey of Mining Companies in Canada and around the globe confirms that "more weight is given to the Mineral Potential Index to reflect the importance of attractive geology in investment decisions" while assessing the overall Investment Attractiveness of a particular jurisdiction.⁶⁵ Nigeria has accomplished a lot in terms of geoscience information with the implementation of the National Integrated Mineral Exploration Project (NIMEP) designed to gather geoscience data with respect to gold, PGM, nickel, chromium, cobalt, rare earth minerals, lead zinc, silver, copper, barite and iron ore resources in Nigeria.⁶⁶ The challenge however is how to sensitise investors and relevant stakeholders on the availability of the reports gathered from the NIMEP and how to access the information efficiently.⁶⁷

Closely related to the issue of the availability of geoscience data required to make informed investment decisions, is the exploration strategy that was adopted by the government under the NIMEP. The objective of the project was to generate integrated geoscience information in Greenfield and Brownfield explorations/evaluation (remote sensing Geological, Geochemical and geophysical data) setting which will spur the desired investment into the sector. However, the experiences of other mining jurisdictions indicate that by concentrating on the exploration of old legacy mines, they were able to attract more investments to reopen and work these legacy mines. Consequently, Nigeria should have conducted its exploration in phases by first concentrating on the legacy mines of the Nigerian Mining Corporation generating improved geoscience data, that would have attracted more investments than what has been accomplished by a general exploration (Greenfields and Brownfields) done under the NIMEP. This is because, in most mining jurisdictions, governments only provide regional data and Investors are then left to carry out activities such as drilling on sites.

5.4 Inadequate Infrastructure

One of the weaknesses of the mining sector is inadequate infrastructure for mining and downstream mineral operations.⁶⁸ Mining operations most often take place in rural areas and require infrastructure not only to conduct operations but also to move the mineral resources to processing centres along the entire value chain. Infrastructure such as roads, rail, and power grids have become necessary to ensure effective mining operations. It should be appreciated that for some commodities, infrastructure contributes to the economic viability of the project during the feasibility stage. This includes bulk minerals like iron ore, steel, coal, etc.⁶⁹ However, the mining sector suffers from the general infrastructure inadequacy that has afflicted all other economic sectors.

5.5 Insecurity

The present wave of insecurity in the country has grave implications for the development of the mining industry. Nigeria has in recent times witnessed unprecedented security challenges such as terrorism, insurgency, banditry,

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kidnapping for ransom, farmer-herder clashes, etc. The drivers of insecurity in Nigeria are myriad but have been identified to include ineffective and inadequate security architecture, proliferation of small arms and light weapons, resources control agitations, high incidence of poverty and unemployment, porous borders, access to illicit drugs and psychotropic substances, climate change impacts, inefficient criminal justice systems, etc.⁷⁰ These security challenges impact negatively on mining operations that take place, especially in rural communities that are largely under-policed.

Furthermore, Governments' response to the security challenges in some states is to outrightly ban mining activities perceived to be responsible for the wave of insecurity in the state as was done in Zamfara⁷¹ and Kebbi States.⁷² The point being made is while the government has the primary responsibility to tackle the nation's security challenges, we posit that the banning of mining activities because of security threats cannot be the appropriate response strategy as it affects operations that provide livelihoods for thousands of people with a potential to grow the economy. The government should therefore upscale efforts to tackle insecurity in the country generally and specifically around rich mineral resources states like Zamfara, Kebbi, Borno, Plateau, Nasarawa, Niger and Kaduna States that have experienced heightened security challenges attributable to the activities of illegal miners, bandits and terrorists.

6. REFORM IMPERATIVES FOR NIGERIA

The potential of the mining sector can be realised through the faithful implementation of the following reform proposals:

6.1 Comprehensive Mining Policy that Aligns with the African Mining Vision (AMV)

The point has been made that a country's mining policy signposts the guiding principles and the direction for the development of the mining sector; setting clear objectives and strategies for realising those objectives. Consequently, Nigeria needs to elaborate a comprehensive mining policy to replace the present Nigerian Minerals and Metals Policy 2008 in operation. There is a need to have a consultative process to build consensus among key stakeholder groups in Nigeria about how they envision the mining sector.

The emphasis on the AVM is because it requires stakeholder participation. Furthermore, with the myriad of issues in the industry, stakeholders need to deliberate on the future of the mining industry and their respective roles in developing and reforming the sector. The comprehensive mining policy so developed will provide the pathway for identifying the legal, regulatory and institutional reforms to undertake and their sequencing. It will answer important questions such as the new laws we require, the ones to amend, which institutions to strengthen and the ones to establish. The policy will also define appropriate roles for the sub-nationals and mining host communities.

6.2 Progressive Minerals and Mining Act

The Nigerian Minerals and Mining Act, 2007 has been in operation for 17 years. The operation of the Act has revealed inherent weaknesses that require strengthening to bring it tandem with current realities. Most importantly, the Act needs to be amended to establish an independent sector regulator for the mining sector akin to the regulators established for other economic sectors. The amended Act should also specify clear roles for the sub-nationals in the mineral sector governance framework to address the present jurisdictional conflicts between the federal government and the sub-nationals in the governance of the sector. Furthermore, the legislation should address the extant challenges in the consent provisions of the Act (s. 100); strengthen the provisions relating to Community Development Agreements (s. 116) with the benefit of the Incorporated Communities Trust under the Petroleum Industry Act, 2021 to ensure effective transfer of social and economic benefits of mining investment to the Mining host communities; reform the dispute resolution mechanism to make it more efficient and effective amongst others.

6.3 Restructuring of the Institutional Framework

The Ministry of Solid Minerals Development, the main institutional framework for the sector should be restructured and adequately resourced to effectively discharge of its mandate. The Technical Departments in the Ministry (Mines Inspectorate, Mines Environmental Compliance and Artisanal and Small-Scale Mining) should be excised from the Ministry together with the semi-autonomous Mining Cadastre Office (MCO) to form the nucleus of the Independent Sector Regulator. This will enable the ministry to focus on policy formulation, investment promotion, supervision

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of mining sector parastatals and representation of the country at meetings of international organisations relevant to the sector. The independent sector regulator so created should enjoy financial, management and operational independence, empowered to set standards as required of a regulator to sanitise the sector and make it more responsive to the needs of investors and stakeholders in the mining sector.

6.4 Access to Geoscience Data/Change in Exploration Strategy

The Ministry of Solid Minerals Development should prioritise access to geoscience data for investors in the sector. The Nigerian Geological Survey Agency (NGSA) should organise geoscience data to facilitate easy access by investors in the sector. Furthermore, government should adopt the practice of mapping out areas with sufficient geoscience data for bidding by investors to raise funds and recover part of the exploration expenses. Government should change its exploration strategy from one that focuses on Greenfield exploration of the country to Brownfield exploration that takes cognisance of the legacy mines that existed before the abandonment of the sector and reopening them to attract investors.

6.5 Linkages between the Mining Sector and other Economic Sectors.

Nigeria's mining sector has tended to develop as enclaves without proper linkages (vertical and horizontal) to other sectors to enable the country to benefit from its multiplier effect along the entire mineral value chain. The mining industry should be repositioned to stimulate industrialisation (resource-based industrialisation) where upstream industries that produce heavy machinery used for mining can be encouraged to set up industrial clusters around mines as well as downstream mineral processing facilities (lapidaries) that make use of minerals produced as a feedstock for their industries. This will stimulate economic activities, revenue and employment generation needed to grow the economy. The AMV provides the requisite framework for attaining this objective to ensure inclusive and broad-based development of the mining industry.

6.6 Harnessing of the Energies and Ingenuities of Artisanal Miners for Development

Nigeria's geology is generally conducive to artisanal mining operations since most mineral occurrences are not large enough to attract large-scale operators. The government must evolve a strategy that can effectively harness the energies and ingenuities of artisanal mining for the overall development of the mining sector. Artisanal miners, apart from their prospecting ingenuity, are forebears of the large-scale mines. They often discover mineral occurrences that attract the attention of large scale operators. The government needs to give sufficient attention to artisanal miners by making provisions for their co-existence with large-scale operators under conditions that allow them to thrive. One sure step to the realisation of this objective is to provide for an Artisanal Mining Licence in the mineral rights regime and a District Licensing system that will bring the licensing process closer to the people at the grassroots. Other viable initiatives include simplifying the registration process and facilitating the development of a mining finance ecosystem.

6.7 Tackling the Security Challenges in the Mining Sector

The government should adopt measures to effectively tackle the security challenges in the country in general and particularly around mining communities in Nigeria. This will create an enabling environment for mining activities to thrive in the country in addition to making the country a destination of choice for investors in the mining sector. The effective tackling of the security challenge will further de-risk the sector and attract ancillary investment opportunities for mining host communities with salutary effect on the economy.

7. CONCLUSION

Nigeria can unlock the untapped potential of the Mining sector by adopting the various reform initiatives recommended. The Ministry of Solid Minerals Development, which is responsible for articulating policies for the development of the mining sector should commence consultations with relevant stakeholders to articulate a comprehensive Mining Policy framework for the mining industry that will define the legal and governance framework, establish an independent sector regulator, define roles for the sub-nationals, Mining communities and civil society organisations in the mining sector governance framework in Nigeria.

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