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Solid Mineral Mining in Nigeria: Gout and Cataracts in the Lens of the Legal Instruments

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Abstract

The principal legislation for mining and solid mineral development in Nigeria is the Nigerian Minerals and Mining Act 2007. However, this law and Section 44(3) of the Constitution took the entire mineral resources away from state governments and this is a gout on the state governments efforts to properly explore solid minerals within their jurisdiction.. This paper proposes a liberalisation of Solid Mineral Laws to enable state governments explore, control and make laws on solid minerals. This work exposes the importance of state mineral laws in Nigeria and the economic relevance of solid mineral resources. The article noted that Nigeria's oil mono-economy is ruinous and that the quagmire for proper diversification of the Nigerian economy is the exclusive provision of the mineral laws. Most of these laws are obsolete with 'cataracts' thus; need immediate legal surgery to allow Nigerian states to practice a federal system similar to the United States' in which natural resources are the preserve of the state. This work is adopted doctrinal methodology where relevant primary and secondary data are sought.

Key words: Solid mineral, resources control, exploration, environment, mining lease, licence

1. Introduction

In Nigeria, the state governments depend primarily on the monthly federal allocation but many states have potentialities to create their revenues that may lift their standing and perhaps place them on high stand of economic self-reliance in Nigeria. This may consolidate and boost the federal economic stability but the nation's laws have left these states rather dwindling. Thus, effective exploitation of the solid mineral deposits in various states especially Ebonyi State and many others. Obviously, this piece of work here would accelerate the development of these states and leave the nation's economic stand more enterprising. Generally, there is no state mineral law because, minerals (oil and solid) are owned and controlled by the federal government. The only Act governing mining and mineral activities in the state is the federal Mineral Act which in the same way governs the issues of mineral resources extraction in the country. The Act having been the principal legislation that supposedly regulates the Nigeria solid mineral and mining activities, vests the control, regulation and ownership of all mineral resources solely in the Federal Government of Nigeria.

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There is little or no serious literature or research work on this matter to propel for the amendment of these laws or propose for its enactment in these states. Most of the developing states have not witnessed a stringent measure to curb illegal and uncoordinated exploitation activities. This is so as the federal government solely focused on oil minerals thereby promoting this uncoordinated and illegal mining across states of the federation. More so, there were no implementable policies regarding mining or solid mineral exploitation in states rather, state depends mostly with peanuts they collect as revenue (tolls) from mining companies as toll. Thus, this article intends to discuss impacts of the Mineral Act on the administration of solid mineral and its exploration in Nigeria generally and States like Ebonyi in particular. It will x-ray the confusion and ranging conflicts between Mineral Act and Land Use Act vis-a-vis the Nigeria constitution in the matter.

2. Solid Mineral, Mining Law and its Administration in Nigeria

Law plays vital roles in the administration of solid mineral in Nigeria. This dates back to the colonial era[1] when the mineral laws of England were applicable in Nigeria up to her independence in 1960. The same had continued until the present democratic period when Nigeria had began to legislate on her mineral laws. These periods also experienced some military decrees that incorporated some principles of the English legal system into the Nigeria mineral laws. However, the principal legislation on mining and mineral resources in Nigeria is the Nigerian Minerals and Mining Act 2007.[2] This Act seeks to repeal the old Mining Act[3] and re-enacting the Nigerian Minerals and Mining Act 2007 for the purpose of regulating all aspects of the exploration and exploitation of solid mineral resources in Nigeria and for all related purposes. In the exercise of the powers conferred on the Minister by Sections 4 and 21[4] and all enabling powers in that behalf, the Minister of Mines and Steel Development has powers to make regulations regarding the sector.

The Act provides that the Minister shall by regulation determine areas wherein an exploration licence and a mining lease shall be granted based on competitive bidding. Pursuant to the Regulations that may be made by the Minister, the Mining Cadastre Office - MCO shall consider competing bids through an open and transparent method and select the bid which will promote the expeditious and beneficial development of the Mineral Resources of the area. Up until now, it is not established if the presence of this regulation was witnessed across the states especially in Ebonyi State where exploitation and almost the entire activities of this sector are not programmed, legislated or monitored. It must be noted that the Federal Government of Nigeria generally needs to create an enabling environment that will enable business to flourish in the solid mineral sub sector to boast her economy. The facilitating setting with respect to the mining sector includes the development of a new legislative framework, revisiting and coordinating the abandoned solid mineral sector for economic revitalization.

[1] Both English Mineral Act and Statutes of General Application 1900 were applied in Nigeria. Such as the Royal Mines Act of 1688 and its subsequent amendments.
[2] No. 20 which came into force on 29th March 2007.
[3] No.34 of 1999 Cap. M.12 LFN 2004. The Nigerian Minerals and Mining Act No. 20, came into force on 29th March 2007, repealed the Minerals and Mining Act No. 34 of 1999 Cap. M.12 Laws of the Federation of Nigeria 2004.
[4] Nigerian Minerals and Mining Act 2007 supra.

Again, the legislative framework and ministerial roles over the sector are embedded in the Mineral and Mining Act 2007.[5] The Act contains specific provisions that will enhance private sector leadership in the development of the mining industry in the country. But this is prominently centred on the minister who is to administer this sub sector. Even though the Act provides that the minister should have administrative power of the sector with responsibilities for the development of well-planned and coherent programme of exploitation of the mineral resources in Nigeria. This is yet to be felt within Ebonyi State considering the enormity of her solid mineral resource deposits. Specifically however, the Act also establishes a Mining Cadastre Office (MCO)[6] which operates as a sole Agency responsible for the administration of mineral titles with exclusive jurisdiction over the whole country.[7] The MCO is responsible for considering applications for mineral titles and permits and also the issuance, suspension and upon the written approval of the Minister revocation of any mineral title.[8] It is arguable that the enforcement pedigree of this Act and non-presence of MCO across the states had remains an impediment to the success of the solid mineral exploitation in Ebonyi State Nigeria damning the income generation expectancy.

It must be noted that the combination of the provisions of National Minerals and Metals Policy and the Minerals and Mining Regulations[9] regulate the mining sector at the same time. There are specific regulations that these provisions contained regarding issues on royalties,[10] fees[11] and compensation[12] and which are paid by holders of mining rights. Unfortunately however, the practice of the exploration and exploitation takes a different stand. This happens because; execution or implementation of the above is another concern under the present federal legal theory. By and large, administration of the mining industry is vested in the federal Ministry of Mines and Steel Development (MMSD), operating through some departments under this Ministry. These include:

1. Mines Inspectorate Department;
2. Environment and Compliance;
3. Mining Cadastre Office; and
4. Artisanal and small-scale Mining Department[13]

However, there is no similar state department as the above stated departments are federally headed. Thus, it ought to have had sub offices across states of the country including Ebonyi State for easy monitoring, administration and implementation or enforcement of the department's proposed policies and programmes pursuant to Section 5 of the Act. Regrettably, there is none

[5] See again Sections 4 and 21 of the Act.
[6] Section 5 of the Act
[7] See particularly Section 5 (4) of the Act.
[8] Ibid
[9] See Nigerian Mineral and Mining Regulation 2011. Other laws, policies and regulations regulating the mining law in Nigeria as noted above include Minerals and Mining Act LFN 2007; Mines and Quarries (Controls of Buildings, etc.) Act 2004 and Land Use Act 1978 now 2004.
[10] Sections 33 and 63 of the Act
[11] Section 10 of the Act
[12] Sections 107 and 108 of the Act
[13] See generally Sections 16 to 18 of the Act

regional or workable state sub office of these departments outside the federal capital territory. This experience makes administration and implementation of the mineral policies very poor. Unequivocally, these resulted to none acknowledgement and adherence to the solid mineral policies or the law by the mineral mining companies States of Nigeria and in Ebonyi in particular. Thus, the state does not feel the existence of these laws and policies at all. Such dispensable policies should include and not limited to the full implementation of the Environmental Impact Assessment (EIA) but desires full monitoring for total compliance.

Unarguably, non-enforcement or implementation of EIA in Nigeria State by the mines and exploring companies are causing more loss than gain on economy, human and environment across the states of Nigeria. These include the pre-assessment of the site and writing of the EIA before moving into the site. Also, the quarterly assessment of the site and the environs, the nature of the site after stone crushing or mining pursuant to Sections 114 and 115 of the Act are not been considered. As a result, the level of stone crushing for quarry businesses and other mining activities are not monitored or checked and its effects on the economy and environs are enormous. The wells and large artificial streams or dams caused by this exploration are also not chequered.[14] Usually, at the end of the mining or stone extraction, the sites will remain death traps for the communities and villagers.[15] Filling these sites will cost fortunes though such has never been witnessed in the history of mineral extraction in Ebonyi State.

Furthermore, mining exploration in Ebonyi State as noted earlier is generally governed by the Nigeria Minerals and Mining Act of 2007.[16] The National Minerals and Metals Policy prepared in 2008 by the Ministry of Mines and Steel Development provide strategic guidance on the management of mineral resources and metals with its exploitation thereof. It can be considered the strategic basis for the Nigerian Minerals and Mining Act from 2007 and an update of the Seven Year Strategic plan for Solid Minerals Development in Nigeria for 2002 – 2009 and the National Policy on Solid Minerals Development from 1988.[17] As it is apparent from the name, it contains two separate policies, one for minerals and the other for metals. Nigerian Minerals and Mining Regulations 2011 is the document that provides a good interpretation of the Mining Act of 2007 and guidelines for operations in the solid mineral sector.[18] This is operationalized in the National Minerals and Metals Policy approved for the sector in the year 2009.[19] The said Act vested the regulation of the mining sector under the Minister for Solid Minerals Development who has supervisory power on behalf of the Federal Government of Nigeria. The Ministry issues

[14] This is against the positions of Sections 114 and 115 of the Act.
[15] Sections 114 and 115 of the Act ibid.
[16] The Minerals and Mining Decree is the only legislation related to the management of the solid mineral resources in Nigeria. It replaced the 1999 Minerals and Mining Act, which again replaced the Mineral Act of 1946. See also Nigeria Extractive Industries Transparency Initiative (NEITI) ibid.
[17] See World Bank Project on Sustainable Management of Mineral Resources Project, www.documents1worldbank .org/curated/en/84 accessed 10/2/2020.
[18] Ibid.
[19]Ladan M. T., Mineral Resources Law And Policy In Nigeria, NO. 8: (January – March, 2014) PP 6 - 8 Accessed via http://www.academia.edu/7640402/Mineral_Resources_Law_and_Policy_in_Nigeria visited on 20/12/2014.

out licenses to prospective mining operators.[20] The Act also provides more classes of licenses in the mining sector.[21] There are as follows:

a. Reconnaissance Permit
b. Mining License
c. Quarrying License
d. Small Scale Mining License
e. Exploration License

Prospective miners can obtain licenses[22] for exploration or approval of their mining activities from the Ministry. Also, lower cadres of miners or artisans can obtain license for only Reconnaissance Permit, Exploration License[23] and Small Scale Mining License[24] but they are not qualified for mining license.[25] More so, even for these three classes of licenses, artisans may still fail to obtain such licenses because of the requirements which include showing *proof of sufficient working capital* and *technical competence to carry on the purpose as the Act provides*. These provisions have unintended negative consequences one of which have pushed many artisans into illegal and none expert mining of various mineral resources across Ebonyi State when they fail to get a license. In some instances, they do not even attempt to obtain licenses of any nature but move to the site ignorantly both of the fact and the law while some dump their licenses after obtaining it with coordinate. Note again that the issuance and administration of licensing is done by the Mining Cadastre Office as enumerated above.[26] The office is established by the Act as an independent body with the *responsibility for the administration of mineral titles and maintenance of cadastral registers* by Section 5 of the Act. The body is administered by a Director General but more worrisomely, no board is provided for the body for easy administration. As earlier observed, sub offices also need to be created across the states of Nigeria including Federal Capital Territory Abuja to help check illegal[27] and none expert extraction or mining activities and defaulters should therefore be punished accordingly.

No doubt, Ebonyi State is an economic hotbed because of her natural endowments that spot the entire landscape. However, the state is not known as one of the colossi in economic independence in Nigeria but it has viable solid mineral resources to compete with any state in the country. Conversely, the State dwindling approach to solid mineral development can change if the present legal regime is liberalized. Ebonyi State is making efforts to revolutionalise the state solid mineral sector thereby pushing it to become her economic hub for local and foreign investors. Perceptibly, the state is volcanically ambitious to change the economic dependence narrative and make the state's old dream as exemplified in NIGERCEM Nkalagu cement plant to manifest. Therefore, now many states and Ebonyi State in particular have resolved to extract and commercialize their mineral resources, it will create new avenues that would lift their standing

[20] Note that there is no similar role or regulation for states.
[21] See Sections 46 to 62 of the Mineral Act.
[22] See Section 46 of the Act
[23] See Section 55 and 59 of the Act respectively.
[24] Under Section 90 of the Act.
[25] As Sections 65 to 68 of the Act provide.
[26] See Section 5 op cit.
[27] This is in breach of Sections 2 and 76 of the Act.

and possibly place them on a pedestal of economic independence. It will also make the state less dependent on federal allocation and oil and gas sector. The State has, however, been said to have given several incentives to investors in the solid mineral and agro-allied sectors to encourage production. However, the impacts of such incentives are yet to be overtly felt as these solid minerals deposit are still dormant in many areas while few places are partially been mined. Suffice to say that the economic independence can be truncated by legal instrumentality of Nigeria mineral laws. This is because these laws never allowed states right to mineral ownership even when such is found in state land as witnessed in other federated jurisdictions like United States.

Note that Section 2 of the Act provides that "no person shall search for or exploit mineral in Nigeria or divert or impound water for the purpose of mining except as provided in this Act". It continued that "the provisions of this Act in respect of Reconnaissance, exploration and exploitation of mineral resources in Nigeria shall apply to radioactive minerals with such modifications as may be determined by health and policy considerations". The last phrase of this Act gives blank cheques to states and even the local authority to make laws on the subject if such is considered good for public safety or wellbeing. But the inefficiencies application of this section may be responsible for illegal and uncoordinated exploration and exploitation of solid minerals locally across the state to the detriment of the state internal revenue generation and fouling its environment.

Additionally, both the Mineral Act and the National Policy on Mineral resources provided for the establishment of specific units for the Ministry.[28] These are:

i. The Mines Inspectorate Department with responsibility for the enforcement of mining laws and collection of revenues.
ii. The Mines Environmental Compliance Department for the enforcement of global environmental best practices in mining.
iii. Artisanal and Small-scale Mining department for the formalization of the operations of artisanal and small-scale miners and provision of extension services for them. In order to provide support services, there are two types of funds that were created. These include:
    a. The Minerals Development Fund to be utilized for the development of human and physical capacity in the sector; and
    b. Funding geo scientific data gathering, storage and retrieval to meet the needs of private sector led mining industry.
iv. Equipping the mining institutions to enable them perform their statutory functions.
v. Funding essential services to small scale and artisan mining operators and provision of infrastructure in mines land.
vi. The Environmental Protection and Rehabilitation Fund[29] to be funded by contributions by mineral title holders on a yearly basis for the purpose of guaranteeing the environmental obligations of Holders of Minerals title.

[28] See generally Section 16 that established various departments and Sections 17 and 18 provide for the functions of these departments.
[29] See Section 121 of the Act

vii. A provision that aims to compensate mining host communities is the requirement that no license shall be issued without the signing of Community Development Agreement under Section 116 of the Act between the prospective mineral holder and the host community which shall contain *undertakings with respect to the social and economic contributions that the project will make to the sustainability of such community.* The agreement shall address all or some of the following issues relevant to the host community. Such relevant issues relate to the corporate social irresponsibility and have been enumerated as:

a. Educational scholarship, apprenticeship, technical training and employment opportunities for the indigenes of the communities.
b. Financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power projects.
c. Assistance with the creation, development, and support to small scale and micro enterprises or business concerns.
d. Agricultural product marketing; and
e. Methods and procedures of environmental, socio-economic management and local governance enhancement across the host communities.[30]

The above sounds interesting however, it is not made clear under this Act how and with who the community development agreement is to be negotiated and agreed upon. Also, the interests of the immediate land owners did not come to forepart or emphasized under these provisos who ordinarily are land or mineral owners. None specification of these issues in the Act has further created more lacunas on the fair or possible administration of the mining enterprises under this legal regime. More so, the two established funds; The Minerals Development Fund[31] and Funding geo scientific data gathering, storage and retrieval to meet the needs of private sector led mining industry failed to provide its valuation and on how to access it. This is another hole seeking to be filled. The essence of the law is not about law making but its implementation or enforcement and when it fails the aim of the drafter dies. The vague and obfuscation nature of this Act in some important areas especially as it concerns the immediate land owners, the State Government, the host communities[32] and its virile development left its implementation erroneous if not almost impossible.

Thus, such clarification is desirous to prevent some influential interests of the immediate land owners and or the host communities from hijacking or taking over the immediate land owners or community agreement process and its benefits thereof. In some instances, it had resulted to communal crisis and litigations as often occur in Ishiagu in Ivo LGA and Amoffia Ngbo in Ohaukwu LGA, Nkalagu in Ishelu LGA of Ebonyi State.[33] In addition to the community development agreement, it is also proposed that the mineral title applicants must submit both Environmental Impact Assessment Report and Environmental Protection and Rehabilitation Program together to the Ministry or its departments for proper scrutiny. It is been witnessed that

[30] See details in Sections 34 and 121 of the Act respectively.
[31] See 34 of the Act.
[32] See 116 of the Act becomes imperative here that needs legal surgery.
[33] These crisis are not limited to only Ebonyi State but across the States of the Federation.

the above mandatory condition designed to help the inhabitants and their environs have been profusely abused in the state. Thus, the mining companies use these as settlements to some none experts but influential individuals who may influence their agreements to be signed by the immediate land owners. Note as stated earlier, that the Environmental Protection and Rehabilitation program is enshrined to ensure that the mine site is not left degraded at the end of the mining lease under Sections 114 and 115 of the Act. Though, this is provided under the Act[34] but enforcing these companies to comply with this proviso is yet to be felt or witnessed in different States in Nigeria. Again, dormant licenses upon coordinate grant should be revoked. This makes the proposed regional and states offices inevitable for closer watch on the miners' total compliances.

In Nigeria, the birth of Environmental Impact Assessment (EIA) seems to have come through oil exploration guidelines but same has been transferred to other mineral extraction sectors due to its effects on the environment. However, the EIA Act[35] and policy are faced with great challenges. Its regime's major bottleneck is the ability to transform the provisions of the EIA Act, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) into a reality. This would have been positively impacted on other mineral sectors. This was caused by the poor draft of the Act and its implementation in line with best global best standard is derailed. Thus mineral exploitation practices and compliances to the rule became almost impossible especially minerals outside petroleum. However, the difficulty of its implementation and poor draft of these rules make the level of compliance almost impossible. While admitting that there are few regulations on EIA which are aimed at protecting the human environment from mineral extraction impacts, it must be noted that most of these laws are either obsolete been colonial rules transferred into the country upon her independence or few reviewed were not thoroughly drafted. These had led to significant cracks between policies and practices.[36] This is also seen across in many States and particularly in Ebonyi State mineral extraction sites[37] where the issues of EIA is almost or virtually unknown leaving the entire vicinity devastated.[38] It is also common practice in other states of Nigeria thereby abandoning the position of the Mineral Act[39] in restoring or reclaiming mines sites after exploitation of these minerals.

Environmental Impact Assessment (EIA) has an international dimension. This is plausibly called environmental international standard that global multinational mineral corporations usually

[34] See Sections 114 and 115 of the Act.
[35] Environmental Impact Assessment No. 86 of 1992.
[36] See the United Nations Environment Programme (UNEP) Report of EIA regarding oil and gas exploration and production in Ogoniland in Bayelsea State of the Niger Delta Region. It stated that this is a long, complex and often painful one that to date has become seemingly intractable in terms of its resolution and future direction. The UNEP EIA Report on Ogoni was published in 2011.
See http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf visited on 1th of January, 2015. It is evidenced further that in over 50 years of oil and gas exploration, no single EIA has been conducted.
[37] From Amoffia Ngbo in Ohaukwu Local Government Area to Izzi, Ivo, Afikpo, Ishielu, Ezza, Ikwo Local Government Area respectively.
[38] See Section 114 on restoration of mines land. This proviso is never complied across states mining sites by miners and Section 119 on Environmental Impact Assessment. As soon as the prospecting miners go into site, non of this provisos is respected or obeyed. Usually, Community Agreements are signed without in disregards to EIA.
[39] Section 114 supra, See Section 115 on reclamation of mines sites. Also, often the miners exploit some unauthorized areas against Section 98 on prohibition of exploration of minerals in certain areas.

comply with to ensuring that environment is not fouled. Over the past few decades, the rights of nations, corporations, or individuals to own nature and to pollute nature have been slightly delimited by international treaties. These regulations include the Law of the Sea of 1982, the Montreal Protocol on Substances that Deplete the Ozone Layer of 1990, the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal 1989, and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) of 1973 and 1979. In addition, there are a number of bi- and multi-lateral agreements between nations, establishing conditions to reduce their mutual assaults on particular natural environments. Such as the North American Free Trade Agreement (NAFTA), though, deeply flawed but it is, is an example of such contracts. Despite these multi lateral regulations and conventions, EIA provisions are not complied with by most of the local and multinational miners in various localities of Nigeria.

3. The Land Use Act and Constitutional Bottlenecks to Solid Mineral Ownership and Exploration in Nigeria

The Nigerian Minerals and Mining Act 2007 vests control of all properties and minerals in Nigeria in the State and prohibit unauthorized exploration or exploitation of minerals.[40] All lands in which minerals have been found in commercial quantities shall from the commencement of the Act be acquired by the Federal Government in accordance with the Land Use Act. Property in mineral resources shall pass from the Government to the person by whom the mineral resources are lawfully won, upon their recovery in accordance with provisions of the Act.[41] This is unlike the General Mining Act of 1872[42] of the United States authorises and governs prospecting and mining of economic minerals. This law codified the informal system of acquiring and protecting mining claims on public land. Under this law, all American citizens of 18 years and above have rights to locate and lode (hard rock or placer (gravel) mining claims on federal lands open to mineral entry once a discovery of a locatable mineral is made.[43] Mineral lands are also opened to citizens for purchase.[44]

It is curious to note that mining is under the federal exclusive legislative list in the Nigeria Constitution.[45] Note further that mining involves taking over lands in the states when mining licenses are granted. It must also be noted further that the Land Use Act gives a governor of each of the Federal Republic of Nigeria exclusive power of the land within his state.[46] There is confusion here on who it behooves to acquire the land for mining purposes between the federal, state and local governments before a prospective miner or investor comes into site. The seeming confusion is ostensibly deteriorated further where the Land Use Act had earlier stated that where the federal government is interested for any land within the state, that the state governor should

[40] See Section 2 of the Act.
[41] A. Adefulu and O. Adefulu; Nigeria: An Overview of the Nigerian Minerals and Mining Act 2007; http://www.mondaq.com/Nigeria/x/95916/Mining/An+Overview+Of+The+Nigerian+Minerals+And+Mining+Act+2007. visited 23/04/2018.
[42] Sections 21, 22 to 24 General Mining Act of 1872 of United States of America as amended.
[43] Locatable minerals include and not limited to platinum, silver, copper, lead, zinc, uranium and tungsten.
[44] See Sections 21, 22 to 24 and Sections 26 to 33 General Mining Act 1872 as amended.
[45] Constitution of the Federal Republic of Nigeria 1999 as amended. See particularly Part 1
[46] See Section 1, 5, 28 and 29 of the Land Use Act.

acquire such land and reallocate same to the federal government.[47] But what seems to be carrying states and local government authorities sideways in the mineral sector is now unknown.

Principally, since mining is provided for in the federal exclusive list under the Constitution, yet it involves taking over lands in the states or local government, the question of who to acquire became imperative. Note that the Act further provides for the establishment in each state of the federation, a Mineral Resources and Environmental Management Committee. Thus, the legality or otherwise of this proviso may be responsible for none existence or functional of these Committees across the state including Ebonyi State. As he who owns the land supposedly would have owned the mineral underneath and acquire same hence, the mining issues been provided within the federal exclusive list is a twist of state rights over the state land it owns. A reformation is therefore proposed to move issues of mining to concurrent list (Part 2) from federal exclusive list. This will afford the State Houses of Assembly rights to legislate on issues concerning mining and its licenses concurrently with Federal Legislators thus liberalizing the law and the sector.

Again the Act added that the use of land for mining operations shall have a priority over other uses of land and this is to be considered[48] as constituting an overriding public interest within the meaning of Section 28 of the Land Use Act. In the event that a mining lease, a small scale mining lease or a quarry lease is granted over land subject to an existing and valid statutory or customary right of occupancy, the Governor of the state within which such rights are granted shall within sixty days of such grant or declaration revoke such right of occupancy in accordance with the provisions of the aforesaid section.[49]

The right should depend whether the mineral is found within a state owned land or federal controlled land. This should give right to legislate on this between the state and national legislators separately without any inconsistency. The Mineral Resources and Environmental Management Committee would be fused with the State Assembly legislation where such mining involves state land and vise visa. The Mineral Resources Committee Roles as provided by the Mineral Act[50] under discourse include the following:

i) To consider and advise the Minister on issues affecting returns of necessary reports affecting grants of mining titles.
ii) To consider issues affecting compensation and take necessary recommendations to the Minister.
iii) To discuss, consider and advice the Minister on the matters affecting population and degradation of any land on which any mineral is being extracted.

[47] See Section 28 generally. See also C. C. Joseph Croft and I. Samiama; "Environmental Regulation and Pollution Control in the global oil industry in relation to reform in Nigeria", (A Report prepared by Stakeholder Democracy Network (SDN)) Facilitating Community Empowerment. Accessed on 4th of January, 2015 via, http://www.stakeholderdemocracy.org/uploads/images/content_images/fonts/Environmental%20Regulation%20and%20pollution%20Control%20in%20the%20global%20oil%20industry%20in%20relation%20to%20reform%20in%20Nigeria.pdf.
[48] For the purposes of access, use and occupation of land for mining operations. See Section 22 of the Act.
[49] See generally Section 28 of the Land Use Act.
[50] See generally Section 19 of the Mineral Act supra.

iv) To consider such other matters relating to mineral resources development within the states as the Minster may, from time to time, refer to the Committee.

v) To advise the departments established in accordance with the provision of this Act for the supervision of the mineral exploration and the implementation of social and environmental protection measures.

Suffice to conclude here that the provisions of this Act conflicts with the provision of the Land Use Act pursuant to Sections 1, 5, 28 and 29 of the Land Use Act.[51] Unfortunately, both Acts were aftermath of the federal law and both are also fused into the national constitution[52] as existing laws and none should supervene or interrupt the other. Section 315 (1), the constitution palpably postulates thus:

> Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be -
>
> (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and
>
> (b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.
>
> (2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.
>
> (3) Nothing in this Constitution shall be construed as affecting the power of a court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provision of any other law, that is to say-
>
> a. any other existing law;
> b. a Law of a House of Assembly;
> c. an Act of the National Assembly; or
> d. any provision of this Constitution.

Section 315 (5) of the same law continues by stating that nothing or no provision in the Constitution shall invalidate such enactments like:

a. the National Youth Service Corps Decree 1993;
b. the Public Complaints Commission Act;
c. the National Security Agencies Act;
d. the Land Use Act.[53]

[51] L 5 LFN 2004 hereinafter refers to as Land Use Act
[52] See Section 315 of the 1999 constitution of Nigeria as amended.
[53] Section 315 (6) of the constitution

Section 315 (6) of the constitution states, "Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution". In this case, the provisions of the Land Use Act still stand as an independent Act of the National Assembly and thus should not be contravened by any law or proviso of the constitution. It therefore axiomatic to submit here that the decision of the Supreme Court in *AG Federation v AG Abia State* (*supra)* on control and ownership of Nigeria mineral resources needs a revisit.[54]

Thus, the provisions of these enactments as aforesaid "shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of Section 9 (2)[55] of this Constitution". Section 9 (1) of the Constitution states that the National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution however, this is not its sole or legal right as the provisions of the Section 9 (2) went further to say;

> An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

This therefore gives the State House of Assembly legal rights over these issues.

Unarguably, both the Constitution and the Land Use Act share common roles therefore, Section 44 (3) of the constitution seems to be affront, contentious and judgmental to the Sections 1 and 28 of the Land Use Act. It is therefore proposed that the Land Use Act should be expunged from the constitution and matters of land and its administration should be handled by the State Houses of Assembly vis-à-vis the solid mineral mining, its management and matters connected therewith especially where such mineral falls within state's land. This will create a better environment for state mineral productivity, economic strength and promotion of democratic and federal principles. It is only with this process that mineral and land control or management vis-à-vis powers to revoke could be devolved fully to the state through its Houses of Assembly.

In this instance, Section 44 (3) of the constitution and Section 1 of the Mineral Act supra have no ground across Nigeria in respect to all other mineral resources with exception to petroleum. Note that these legal instruments disquiet the rights, ownership, control and management of mineral resources in the country. They provide for the rules for the ownership, exploration and exploitation of mineral resources and gave room for the protection of the national environment and at the same time, make it *non-justiceable*.[56] Mineral Act is also concerns with the possession of mineral resources, small-scale mining and the protection of interests of the host communities.

[54] Though, the author do not wish to delve into this decision in this article
[55] See Section 9 (1) of the constitution generally.
[56] See Section 20 of the Nigeria Constitution and particularly Section 6(6)(c) of the same law.

It also provides incentives for mining operations and defines offences.[57] However, mineral resources in the legislations exclude petroleum but they include water mineral content with establishment of Solid Mineral Development Fund and the eligible persons may apply for reconnaissance permit, an exploration licence, a small-scale mining lease, mining lease, quarry lease or water use permit.[58]

In this manner, this federal legislation directed the land issues in respect to mining to be forwarded to Land Use and Allocation Committee[59] of the relevant state while lease holders shall conclude with the host community a Community Development Agreement.[60] It also provides that the obligations of holders of mining titles regarding the environment and requires holders of permits, licences or leases to carry out environmental impact assessment to such assessment and an Environmental Protection and Rehabilitation Programme to the Mines Environmental Compliance Department.[61] Fund was also proposed for the aims of guaranteeing environmental obligations of the mineral title holder by the ministry. Unfortunately, none of the several obligations of the holders of the mineral titles are been fully acknowledged by the local miners and most of these solid mineral extracting companies. The reason behind this is that, the State is unable to legislate on issues as handed down by the federal legislations regarding the host communities and land use and allocation committee. Moreso, federal ministry of solid mineral is failing on its duty to implement or enforce these laws especially on illegal mining and protection of the environment respectively as provided by Section 119 to 121 and 131, 133, 135 to 140 of the Mineral Act. This has created huge lacuna that needs to be filled with state laws if the exclusive proviso is amended.

At one level, it is pondered on how to bring these tiers of authorities[62] into the process without jeopardizing the chances of prospective applicants having their applications or interests back-balled for purely local reasons. Considering the level of corruption and other inordinate interests by 'stakeholders or political head' vis-à-vis these administrative but legal processes, the following issues are raised:

1. How far to go down the scale of authority to satisfy the lower tiers in their quests for self identification;
2. How far to define the roles so that there would be no conflicts interests and administrative roles between these authorities;
3. How to reduce the waiting time between the submission and approval of the submitted applications;
4. How long will these applications take to be processed became other issues that may be considered by the prospective miners;
5. Also, how to accommodate state governments' agitation for a share in the ownership and control of mineral resources located in their lands based on the constitutional provisions

[57] See Sections 131 generally but, enforcement of this section is not felt across the states of Nigeria.
[58] As the Mineral Act provides in Sections 46 to 57.
[59] See Sections 103 of the Mineral Act
[60] See again Section 103 supra. See particularly Section 116
[61] Sections 120 and 121.
[62] Federal, State and Local authorities

and attitudes of the federal agencies acting for the federal government in execution of the said provisions become conflictual and controversial.[63]

From the above quagmires, more research work is provoked but the writer would appreciate to briefly borrow from the experiences of the United States of America as earlier enumerated in this work just as the Nigeria political system has as well modeled her political and constitutional development from the US model. It is true that the history and pattern of political and economic development of the U.S. differ in some quarters from that of Nigeria. However, there are certain aspects of the former that are desirable and whose replication in Nigeria legal system would make ways for socio-economic stability and promotion of her legal theory to withstand the current and involving trends. Thus, such aspects are the institution of land ownership and control of mineral resources, industrial uses, power development, storage and other purposes.[64]

Note that under the United States' ownership model of land and mineral resources theory, this falls under the concurrent legislative list of the constitution giving both the central and state governments control over mineral management. Thus, they exercise rights over minerals where it falls or found within their respective lands or zones. Central government land is reserved for forestry and wildlife, grazing, military, airfields, reclamation and irrigation, flood control. Therefore, mineral resources found in central government lands are the exclusive property of the Federal Government of the U.S. The U. S. Government surrenders only a certain percentage of the proceeds to minerals mined from its lands to the states within which such lands are located. This devolution gives the state right over whatever mineral resources that are found in lands outside the central government territories which belong to the respective states. This arrangement serves the interest of both the central and state governments and resolves the squabbles over resources ownership and control which had over the years ceased the progress, commercialization and diversifying of the mineral resources sector in Nigeria to boast the country dwindling economy.

4. Conclusion

As acknowledged by the Raw Material Research Development Council of Nigeria (RMRDC) who had produced a corpus of Nigeria's natural resource endowment in 774 local governments and the 9555 wards, The nation is obviously has over 9,000 natural mineral resources lying fallow. These minerals are yet to be reconnoitered by the manufacturing sector as raw materials for finished products.[65] On the other hand, the country has over 500 known mineral deposit sites of over 34 different minerals across the 36 states and federal capital.[66] Such mineral resources like gold, coal, tantalite, sulphur and more are found across in almost in all the Local Government Areas of Ebonyi State. Same are still found across various states of the federation in Nigeria including the federal capital territory[67]and these can give the nation and respective states facelift and economic diversity but exploration is been obstructed due to the nature of the

[63] See AG Abia State v AG Federation and Mineral Act permits the Solid Mineral Minister to make regulations.
[64] See Burns and Peltason, (1957) p. 676).
[65] See Daily Trust Newspaper, Abuja of Tuesday August 28, 2012 at p.17.
[66] Ministry of Solid Minerals Development, Abuja: Making the Earth Work for you profile. www.msmd.gov.ng accessed on 20/7/2017.
[67] Ibid.

controlling legal instruments. While the nature of control, ownership, exploration and exploitation are still been questioned, the federal laws on these minerals have continued to be a legal jigsaw on states who are not authorized to legislate on minerals and other matters connected thereto for easy access to these minerals. This gout and cataract in lens of these legal instruments retard the development of solid mineral resources in Nigeria. The way out of federal allocation dependency is to diversify the economy from the oil microcosm to solid mineral hub and to succeed in this exercise, mineral laws needs to be liberalized. As demonstrated by the present Ebonyi State administration's policy on infrastructure, solid mineral sector in the State can take care of this development if Mineral Act is relaxed.

Finally, the relationship between the mining companies, the immediate land owners, the local communities and the state government in particular will be consolidated. The above proposal will also give swift look on the land owners and local communities' rights over leases and assess the impacts of corporate social responsibility as it concerns the mining operating environment in Nigeria in general. Unarguably, the abandonment of solid mineral sector and the exclusivity provisos in Nigeria Mineral Laws have negatively affected the states' interests to volcanically revamp the sector for better use and national economic stability in general since the oil price convolution. It will immediately change the mindset of states on monthly federal allocation and over dependence on oil by the federal government.