FOREIGN DIRECT INVESTMENT: CHALLENGES AND PROSPECTS IN SOLID MINERALS DEVELOPMENT IN NIGERIA

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Mineral development in Nigeria has been highly focused on the oil industry. Nigeria is the largest oil producer in Africa and contributes three percent of global oil production. As a result, the mining industry has been highly neglected, leading to a current contribution of less than one percent to Nigeria's GDP. The Nigerian federal government decided to enhance the role of this sector in the Nigerian economy by using foreign direct investment (FDI). However, taking into account the enormous solid minerals resources yet to be fully untapped, this sector's performance to date is abysmal. In the light of the above, this paper examines challenges and prospects facing the solid mineral development in Nigeria. The findings show that if there is a conducive socio-economic environment- good policies, high incentives, infrastructure, and political stability- FDI is associated with growth of capital, creation of wealth and increase in foreign exchange for Nigeria's economy.

Introduction

Nigeria is an oil producing country also well endowed with solid minerals. Proven solid minerals reserves have been found in over 500 locations across the country.[1] All of the 36 states of Nigeria including the Federal Capital have more than one type of mineral. However, solid minerals exports constitute less than one percent of Nigeria's GDP due to the government's neglect and its concentration on the development of the oil and gas sector which contributes three percent of global production and 95 percent of Nigeria's foreign exchange.[2]

1 Diezani,Alizon-Maduekwe, "Opportunities in Nigeria's Mineral Sector," http://www.developingmarkets.com/dma/wp-content/uploads/2009/05/minister-of-mines1.pdf (accessed August 21, 2010).
2 MBendi Information Services,"Mining in Nigeria – Overview." http://www.mbendi.com/indy/ming/af/ng/p0005.htm (accessed August 11, 2010).

This extremely low share of solid minerals' contribution to GDP is further attributed to the underdevelopment of the mining sector due to inadequate and insufficient policies for solid minerals exploration and development.

Nevertheless, over the past decades, possibilities for growth in the solid minerals sector have been vigorously examined. Based on this, the Federal Ministry of Solid Minerals Development was created in 1995. Also reviewed and amended was legislation guiding mining activities, which led in 1999 to the Minerals and Mining Decree (MMD).[3] All these efforts were structured to provide alternatives to petroleum as a foreign exchange earner and contribute towards the overall economic development of Nigeria.

It is crucial to develop the solid minerals sector for Nigeria's economic growth through foreign direct investment, because these minerals' potential can generate additional internal revenue as well as increase foreign exchange, employment opportunities, capital and technology transfer. Despite this great potential, however, how much has been done to attract investment to this sector? What are the factors hindering the development of the solid minerals sector in Nigeria? Against this backdrop this study has developed the following questions as its roadmap:

Research Questions

1. What are the constraints to foreign direct investment in the solid minerals sector?
2. What are the prospects for prospective investors in this sector?
3. What are the economic initiatives to generate investments in the solid minerals sector?
4. In addition to the improved investment policies to attract FDI in the solid minerals sector, how can Nigeria address key antagonistic socio-economic and political issues in order to realize these policies?

This study will attempt to answer the questions above considering the peculiar socio-economic and political challenges of Nigeria.

3 Anike Mariam Lawal, "Constraint To Small Scale Mining In Nigeria: Policies and Strategies For Development," (2002): 1-27, http://www.dundee.ac.uk/cepmlp/car/assets/images/Nike.pdf (accessed August 22, 2010).

Purpose of Study

The purpose of this study is to analyze how Nigeria's solid minerals sector can attract FDI. Despite being a major oil producer, oil wealth alone has not improved living standards among the Nigerian population. According to the United Nations Conference on Trade and Development (UNCTAD), "FDI has been prominent in oil and gas development."[4] Sectors like solid minerals, however, remain underdeveloped. A lot needs to be done; therefore, this research will assess policies towards Nigeria's foreign investment drive and what can be done for solid mineral development. In addition, this research will address the challenges and prospects in the solid minerals sector and provide policy recommendations.

Objectives of Study

This research will focus on the solid mineral resources in Nigeria. It will analyze the challenges and prospects in this sector, evaluate policies, and evaluate the past and present development agendas of Nigeria's institutions and agencies responsible for the development and promotion of FDI. The three key objectives of this paper are:

1. To articulate the general challenges facing solid mineral development in Nigeria.
2. To highlight the potential and showcase the prospects of investing in solid minerals.
3. To examine the past and present policies and legislations in mining, its forward looking prospects, and the implications for Nigeria's economy. In addition, the paper will constructively discuss and give recommendations for policies and the future development.

Research Methodology

This study adopts the approach of qualitative data collection. Data collection was based on in-depth review and analysis of secondary information (research and data collection) in the form of socio-economic data and information

4 United Nations Conference on Trade and Development, "Investment Policy Review Nigeria (Geneva: UNCTAD, 2009), 1-159.

from journal articles. Also, local, international, and government reports have informed this research.

Significance of Study

The significance of this paper is its contribution of original findings to academic literature in the field of foreign direct investment. While academic scholars, state officials, NGOs, human rights and environmental activists have provided a plethora of scholarly works on FDI in many sectors of the Nigeria economy, for solid mineral resources and its impact on the Nigeria economic development, there is a dearth of research. Therefore, the successful completion of this study will be invaluable to provide insight on these issues.

Literature Review

Definitions and Economic Importance of FDI

According to the US Department of Commerce, FDI "includes all foreign business organizations in which a U.S. Citizen, organization or affiliated group owns an interest of ten percent or more."[5] However, Okomo notes that there are limitations in the scope of the definition, since it considers foreign direct investment solely on shared capital and not ownership by corporate control. On the other hand, the OECD views foreign direct investment in terms of equity and corporate control with the objective of obtaining lasting investment entity by investing in a foreign company with at least ten percent ordinary shares or through voting power of the enterprise. This should be done in parallel with intention of establishing lasting interest in the host economy and long term relationship through significant influence in the management of the firm.[6]

In addition, UNCTAD defines FDI as: "investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI

5 Peter Friday, Okomoh, "The Role of Business in Society: Foreign Direct Investments (FDI) and Their Impact on Sustainable Development in Nigeria," *World Bank Institute* (2004): 1-26. http://info.worldbank.org/etools/docs/library/57480/nigeria_finalist.pdf. (accessed August 23, 2010)..

6 Organisation for Economic Co-operation and Development, *Benchmark Definition of Foreign Direct Investment*, Third Edition (Paris: OECD, 1999).

enterprise or affiliate enterprise or foreign affiliate)."[7] This implies that the investors have significant control or certain level of influence in the operations of the investment in the host economy. Be it incorporated or unincorporated, FDI can be undertaken by business entities or individuals. This paper supports and adopts the definition of the OECD[8] and the UNCTAD.[9]

When securities or bonds are purchased by a foreign investor without controlling the firms, this type of investment is called a portfolio investment. Whether it is a greenfield operation (construction of new production facilities) or the acquisition and control of existing local firm, this type of investment is regarded as direct investment.[10] Once investment is identified by an enterprise, it becomes important to define the form of capital flow from that enterprise to the entities in other countries: because the main characteristic of FDI is anchored on the lasting interest of investor in the enterprise, the capital provided by the investor either directly or through other related enterprises is classified as FDI.

Therefore, capital flow for FDI investment comprises three components. The first is equity capital, the second is reinvestment of profit earnings and third are long-term and short-term intra company loans between the parent investment company and its affiliate enterprises.[11] Alfaro further states that regardless of measurement difficulties, the desire to achieve partial or complete control over a firm in another country distinguishes FDI from portfolio investment.[12] Multinational Corporations (MNCs), which are sometimes referred to as transnational corporations (TNCs), are firms that own and control production or assets generating income in at least two countries.[13] Foreign direct investment is a fundamental feature of MNCs. Based on this theory it can be argued that FDI is not simply an international transfer of capital, rather it is the extension of enterprise from the investor's home country to the host country.[14] This extension involves the flows of capital, technology, entrepreneurial and management skills and practices for improvement and production of goods and services.

Likewise, the OECD states that "a preponderance of studies show that FDI triggers technology spillovers, assists human capital formation, contributes

7 United Nations Conference on Trade and Development, "World Investment Report: Transnational Corporations, Extractive Industries and Development," (New York and Geneva: UNCTAD, 2007): 274.

8 OECD, 1999.

9 UNCTAD, 2007.

10 Laura Alfaro, *Foreign Direct Investment* (Harvard Business School, 2005): 1-12.

11 Alfaro, *Foreign Direct Investment*.

12 Ibid.

13 Ibid.

14 Okimoh, "The Role of Business in Society."

to international trade integration, helps create a more competitive business environment and enhances enterprise development."[15] FDI acts as a catalyst that stimulates economic growth through competition, cutting edge innovation and improvement to export performance.[16] Also, Sjoholm's 1999 study agrees that FDI contributes to economic growth; he notes that "Spillover effects could be observed in the labor market through learning and its impact on the productivity of domestic investment."[17] In this sense, through transfer of technology and spillovers of technology to unaffiliated firms in the host country, MNCs can speed up the development of new intermediate products, raise quality of new varieties, and facilitate international collaborations on research and development (R&D) with new types of human capital. Other authors like Obwona concur with the literature that spillovers of FDI depend on the host economy's ability to absorb foreign technological transfer and investment climate.[18]

Conversely, FDI also has negative impacts such as "anti-competitive and restrictive business practices by foreign affiliates, tax avoidance, and abusive transfer pricing."[19] Moreover, some FDI is seen as transferring pollution. Also, fear exists that FDI may generate excessive power and influence on a host country's economic and internal affairs with negative impacts on genuine industrial development and national security. Alfaro, along with Ogunkola and Jerome, corroborated negative impacts by asserting the critics point that foreign firms tend toward monopolization instead of diffusing their know-how capital and technology which may not have a positive impact on local development.[20] Furthermore, they assert that MNCs' preference for foreign inputs rather than local ones has negative effects on trade balances. In addition, Alfaro maintains the critics' belief that research and development with positive externalities are kept at headquarters, a strategy which limits technology transfer. In the case of international acquisitions, they believe it potentially destroys the local know-how and MNCs are undesirably able to influence patterns of local consumption.

15 Organization for Economic Co-opearation and Development. *Foreign Direct Investment for Development Maximising Benefits, Minimizing Costs* (Paris: OECD, 2002): 5.

16 E.O. Ogunkola, and A. Jerome, "Foreign Direct Investment in Nigeria: Magnitude, Direction and Prospects," in *Foreign Direct Investment in Sub-Saharan Africa: Origins, Targets, Impact and Potential*, S. Ibi Ajayi, ed. 144-176. (Nairobi: African Economic Research Consortium, 2006), http://www.aercafrica.org/documents/books/FDI_papers_booklength_volume.pdf (accessed August 21, 2010).

17 Adeolu Babatunde Ayanwale, "FDI and Economic Growth: Evidence from Nigeria," *African Economic Research Consortium* (2007): 1-42. http://econpapers.repec.org/paper/aerrpaper/rp_5f165.htm. (accessed August 22, 2010).

18 Marios Obwono, "Foreign direct investment in Africa," in *Financing Pro-Poor Growth in Africa* (African Economic Research Consortium Senior Policy Seminar VI. Kampala: AERC): 60-95.

19 Ogunkola and Jerome, "FDI in Nigeria: Magnitude, Direction and Perspects."

20 Alfaro, *FDI*.

Regardless of these concerns, fears of negative impacts are diminishing in light of the positive impacts of FDI. For instance, Mabey and McNally's study as cited in Ogunkola and Jerome argue that the "impacts of FDI on domestic economy are the main reason for the intense political focus on FDI in most countries, which has led to unprecedented levels of public subsidies, diplomatic efforts and promotional activities to attract investors."[21] Further analysis shows that FDI has dramatically grown and now serves as the most stable and largest source of private capital for the developing world and economies in transition; FDI accounted for nearly 50 percent of total capital flows in 2002. This increasing role of FDI is attributed to a change of attitudes in host countries from critical wariness towards the MNCs to sometimes uncritical enthusiasm regarding their role in the development process. Having said this, the domestic policy framework is a fundamental determinant of the net effect of FDI, be it positive or otherwise.[22] In other words, empirical evidence has shown that some countries have been more successful in implementing and designing a policy mix that harnesses and maximizes FDI's potential benefits while minimizing potential negative effects.[23] If FDI is properly managed, it can contribute positively to national economic and political development.

Foreign Direct Investment: The Nigeria Case

FDI in Nigeria is highly concentrated in the oil industry. In 1960, the oil industry was not so independent because there was substantial FDI presence in the Nigerian economy. However, policy design narrowed the scope of FDI. Additioally, subsequent decades of political instability, economic mismanagement, and endemic corruption further reduced Nigeria's chances of attracting and retaining FDI.[24] While oil plays a significant role in Nigeria's economy, poverty is endemic: data shows that over 70 percent of the Nigerian population of about 150 million lives on less than one dollar per day. The manufacturing sector has hardly progressed and only three percent of agriculture is mechanized.[25] FDI in the non-oil sectors had been discouraged by

21 Ogunkola and Jerome, "FDI in Nigeria: Magnitude, Direction and Perspects."

22 United Nations Conference on Trade and Development, *Foreign Direct Investment in Africa: Performance and Potential* (New York and Geneva: UNCTAD, 1999).

23 Ibid.

24 Ibid.

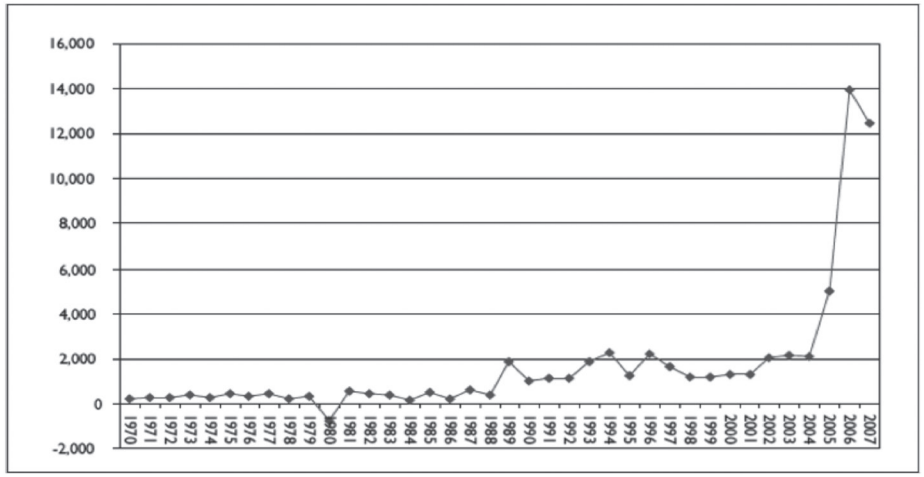
25 Ibid.

restrictions in favor of local and national enterprises until the 1990s. Evidences showed that they were characterized by poor business conditions. By 1995, the Nigerian government had relaxed virtually all restrictions hindering FDI; meanwhile, other countries had moved faster to attract non-oil FDI to include privatization. As a consequence, Nigeria now accounts for only 15 percent of all FDI inflows to Africa in oil and non-oil FDI compared with 30 percent in the 1970s. Nevertheless, Nigeria controls 73 percent of FDI inflows to the Economic Community of West Africa States (ECOWAS).[26]

In 1970 before Nigeria became a member of the Organization of the Petroleum Exporting Countries (OPEC), FDI inflows stood at $205 million and by 1975, FDI reached $470 million. The inflows of FDI into non-oil sectors was affected by various private sector policies adopted in the early 1970s. For instance, figure 2 below clearly indicates that FDI inflows into Nigeria fell immediately after the Second Indigenization Decree — which drove away many TNCs like Citygroup, International Business Machines (IBM), and Barclays Bank.[27] Nevertheless, evidence shows that non-oil FDI is now rising, attributable to the positive effect and improvement of macroeconomic management of the business environment and investors' confidence. Even more so, the oil and gas sector is a complete success story as FDI inflows reacted positively to attractive fiscal terms in 1986. In 1989, despite the reduction in the stake of Nigeria National Petroleum Corporation (NNPC), government owned oil corporations in some TNCs like Shell Nigeria accounted for $1 billion worth of transactions through mergers and acquisition (M&A). Since 1989 FDI inflows to Nigeria never fell below $1 billion per year.[28]

26 Ibid.
27 UNCTAD, 2009.
28 Ibid.

Figure 2: FDI inflows to Nigeria, 1970 – 2007
(Millions of dollars)



Source: UNCTAD FDI/TNC database. Cited in UNCTAD, Investment Policy Review, Nigeria

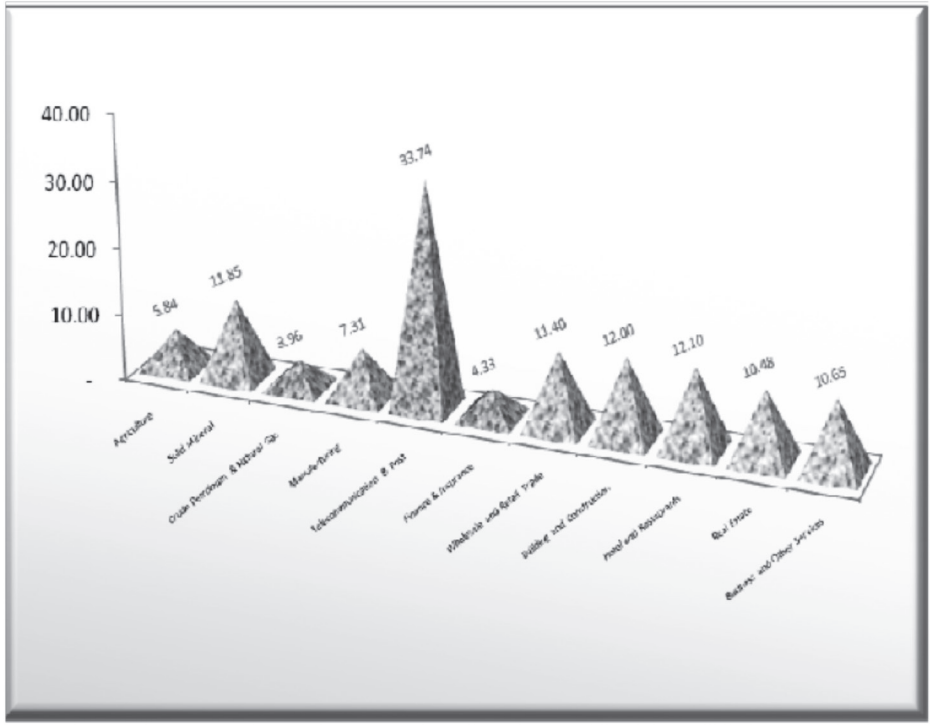
In parallel with the aforementioned analysis, oil accounted for 98 percent of national exports, estimated at $56.3 billion in 2006 and 87 percent of consolidated fiscal revenue. The oil sector was the dominant target of FDI for the past 30 years and has had a large impact on Nigerian economy; nevertheless, it did not have any impact on poverty reduction.

Beyond the oil sector and in the manufacturing sector in particular, foreign affiliates are few and have made no significant developmental impact, though opportunities for FDI have opened in the "backbone" services e.g. communications, and the impact of the FDI in this area, which is recent, is promising.[29] However, not much can be said of solid mineral development which is low despite its huge availability in various parts of the country. According to the National Bureau of Statistics Nigeria 2010 report, solid minerals contributed less than one percent to Nigeria's GDP in 2009 and the first quarter of 2010.

29 Ibid.

At the same time, in sectoral growth by percentage (table 2), solid mineral growth has remained steady, fluctuating between 10.59 in Q1, 2009 to 11.85 in Q2, 2010. Therefore, table 2 indicates that solid minerals are recognized as one of the drivers of the economy. The National Bureau of Statistics does not explain why, but it is possible that the efforts of government to promote solid mineral development are yielding benefits. Nevertheless, the impact of the solid mineral sector is yet to be felt as solid minerals' contribution remains the lowest in among all sectors. It is on this basis of low performance despite an untapped abundance of resources that this research focuses on how solid minerals can be harnessed for national development.

Figure 4: Q2, 2010 Drivers of the Economy



Source: National Bureau of Statistics (NBS), Revised 2009 and Estimates for Q1-Q2, 2010 GDP.

Table 2: 2009 and Q1-Q2, 2010 Real GDP (Constant 1990): Sectoral Contribution & Growth Rate (Percentages)[1]

	2009					2010	
ACTIVITY SECTOR	Q1	Q2	Q3	Q4	Total	Q1	Q2
Contribution to GDP in (%)							
Agriculture	36.34	43.06	45.21	41.17	**41.70**	35.68	42.32
Solid Mineral	0.28	0.33	0.37	0.32	**0.33**	0.29	0.35
Crude Petroleum & Natural Gas	18.94	16.26	15.79	14.90	**16.29**	18.36	15.70
Manufacturing	1.15	3.94	3.48	7.14	**4.17**	1.14	3.93
Telecommunication & Post	3.81	3.86	3.47	3.57	**3.66**	4.70	4.79
Finance & Insurance	4.43	4.30	3.20	3.20	**3.70**	4.30	4.16
Wholesale and Retail Trade	21.84	15.65	16.94	18.57	**18.14**	22.28	16.19
Building and Construction	2.54	1.93	1.52	1.85	**1.92**	2.67	2.01
Hotel and Restaurants	0.60	0.49	0.46	0.42	**0.48**	0.63	0.51
Real Estate	1.89	1.85	1.57	1.55	**1.69**	1.93	1.89
Business and Other Services	1.03	1.01	0.81	0.78	**0.89**	1.04	1.04
Others	7.16	7.32	7.18	6.52	**7.02**	6.98	7.11
Sectoral Growth (%)							
Agriculture	5.46	5.94	5.91	6.06	**5.88**	5.43	5.84
Solid Mineral	10.59	11.84	12.45	12.82	**12.08**	11.60	11.85
Crude Petroleum & Natural Gas	-6.42	3.86	2.53	2.34	**0.45**	4.08	3.96
Manufacturing	6.84	8.13	8.13	7.73	**7.85**	6.42	7.31
Telecommunication & Post	31.74	33.62	34.69	36.08	**34.18**	32.54	33.74
Finance & Insurance	4.21	4.40	4.04	3.38	**4.01**	4.07	4.33
Wholesale and Retail Trade	10.52	11.18	11.89	12.15	**11.48**	9.54	11.40
Building and Construction	13.12	11.82	10.69	12.00	**11.97**	13.15	12.00
Hotel and Restaurants	12.08	11.21	12.29	11.90	**11.89**	12.02	12.10
Real Estate	9.47	10.46	11.77	11.90	**10.94**	9.49	10.48
Business and Other Services	8.49	10.80	8.59	9.63	**9.39**	8.45	10.65
Others	4.57	4.71	5.02	5.57	**5.00**	4.70	4.57
Real Growth (Quarterly & Annual)	**5.01**	**7.45**	**7.30**	**7.67**	**6.96**	**7.36**	**7.69**
Non - Oil Growth	8.10	8.18	8.24	8.67	**8.32**	8.13	8.41

Source: National Bureau of Statistics (NBS), Revised 2009 and Estimates for Q1-Q2, 2010 GDP.

1 Table 2 shows a further breakdown of all the sectors total contribution to Nigeria's GDP in the year 2009, and the first two quarters (January – June) 2010. Analytically, the table indicated that solid minerals contributed 0.33% and (0.29% in Q1 and 0.35% in Q2 2010) which is the least in all the sectors; Agriculture 41.70% (35.68% in Q1 and 42.32% in Q2 2010), Crude Petroleum and Natural Gas 16.29% (18.36% in Q1 and 15.70% in Q2 2010), Manufacturing 4.17% (1.14% in Q1 and 3.93% in Q2 2010), Telecommunication and Post 3.66% (4.70% in Q1 and 4.79% in Q2 2010), Finance and Insurance 3.70% (4.30% in Q1 and 4.16% in Q2 2010), Wholesale and Retail Trade 18.14% (22.28% in Q1 and 16.19% in Q2 2010), Building and Construction 1.92% (2.67% in Q1 and 2.01% in Q2 2010), Hotel and Restaurants 0.48% (0.63% in Q1 and 0.51% in Q2 2010), Real Estate 1.69% (1.93% in Q1 and 1.89% in Q2 2010), Business and Other Services 0.89% (1.04% in Q1 and 1.04% in Q2 2010), and Others 7.02% (6.98% in Q1 and 7.11% in Q2 2010).

Solid Minerals

The Constraints of Foreign Direct Investment

Rhetorically, Nigeria has shown much zeal and is taking many important and far reaching steps to attract FDI. In truth, the progress is slow. In this regard, the Ministry of Mines and Steel Development (MMSD)—formerly known as the Ministry of Solid Minerals Development—established in 1995 by the federal government was designed to explore solid minerals' potential in Nigeria as well as to diversify Nigeria's heavy dependence on oil and agriculture into other economic activities such as development of solid mineral resources. Also, the ministry's functions include advising the government on the formulation and execution of laws and regulations, informing various stages of solid minerals prospecting, quarrying and mining. Its functions also include supervising mining operations within the sector in terms of issuance of permits, licenses, leases the collection of rents and royalties.[30] Its activities are not limited to domestic investors, but is also intended to encourage foreign investment.

Ezekwezili's mandate was to effectively ignite a ministry and sector reforms which would "transform Nigeria into [irresistible] mining destination for global capital."[31] Undoubtedly, this vision would drive activities by "exploiting the minerals spread across the nation for the wealth and peace of all Nigerians" through a number of strategic initiatives.[32] But these lofty objectives are facing some challenges. These challenges are home-grown and they have the potential of scaring away foreign investors from doing business in Nigeria. The issue is the ownership of land that belongs to the government. Section 44 (3) of the 1999 constitution of the Federal Republic of Nigeria vested "the entire property in and control of all minerals in, under or upon any land in Nigeria upon the Federal Government."[33] In other words, all natural resources are under federal authority.

Lawal specifies that prior to the Mineral and Mining Decree of 1999, mining activities were guided by the Mineral Act of 1946: "the old [1946] legislation was based on government-led development of the sector,

30 Obiageri Ezekwezil, "Hand-Over Notes," (Ministry of Mines and Steel Development, 2006): 1-11. http://mmsd.gov.ng/Articles_lectures/handover_oby.pdf (accessed August 28, 2010).

31 Ibid., 1.

32 Ibid.

33 Okechukwu Uche, "A Legal Guide to Investing in Nigeria's Mining Sector," (Paper presented at Mining 2000 Seminar, Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, 2000).

Table 3: Illustrates the locations and spread of minerals throughout Nigeria

Mineral	Location
1. Iron ore	Itakpe, Chakochoko, Ajabonoko, Obajana, Ebija, and Okudu in Kogi State; Muro in Plateau State; Bingi and Maraba in Maru District of N. Nigeria; Ajase in Osun State; Birni Kebbi; and Gusaka in Sokoto State.
2. Ironstone	Dakingari in Sokoto State; Tajimi in Kaduna State; Rishi in Bauchi State; Karfa in Borno State; Ejieja in Benue State; Nsude in Enugu State; Lokoja and Akpanya in Kogi State; Batati and Sakpe in Niger State.
3.. Cassiterite	Jos in Plateau State, Bauchi.
4. Columbite	Plateau, Kaduna, Kano, Bauchi, Ondo, Abuja and Kwara.
5. Tantalite	Plateau, Bauchi, Kaduna and Ondo.
6. Manganese	Mallam Ayuba in Kaduna State, Zaria.
7. Vanadium	Abuja.
8. Nickel	Ife – Ilesha in Osun State.
9. Chromite	Sokoto and Katsina.
10.Molybdenum	Plateau
11.Wolfram	Bauchi, Kano and Kaduna
12.Ilmenite	Plateau, Kaduna, Niger, Osun and Kwara
13. Tourmaline	Plateau, Kaduna and Kwara
14. Zircon	Kaduna
15. Limestone	Nkalagu in Enugu State, Odumoke in Ebonyi State, Mfamoshi and Odukpau in Cross River State, Ewekoro in Ogun State; Igumale, Ogbolokuta and Yandeu in Benue State, Ashaka, Bauchi, Kanawa, Kambiena in Sokoto State, Umu-Obom and Ohafia in Abia State.
16. Marble	Jakura, Ubo and Ajaokuta in Kogi State, Ukpilla in Edo State, Itobe in Benue State and Kankara in Katsina State.
17. Dolomite	Osara and Elebu in Kogi State, Burum and Taka Lafia in the Federal Capital Territory, and Igbetti in Oyo State.
18. Clay	Ozubulu, Ihiala and Nnewi in Anambra State, Enugu, Kankara in Katsina State, Maraba-Rido in Kaduna State, Onibode, Lisabi and Miroko in Ogun State, Jos and Ropp in Plateau State, Biu and Maiduguri in Borno State; Ukwunzu in Delta State, Bende, and Ohaozara in Abia State, Nsu in Imo State, Umuahia in Abia State, Garkidda and Taraba/Adamawa, Dawakin, Minjibar and Tsanyawa in Kano State, Illo and Kaoje in Sokoto state, Ifon and Igbotako in Ondo State.
19. Emerald	Keffi in Plateau State
20. Aquamarine	Keffi in Plateau and Jamaa in Kaduna States
21. Ruby	Kaduna
22. Sapphire	Kaduna
23. Amethyst	Zaria Dala in Kaduna state, Panama Ilemga Hill in Kaduna State,

Source: Onah (2001).

which under various regimes was hardly given enough consideration for development"—a process that negatively affected the mining sector.[34] While the mining legislation regulated mining titles and licenses and penalized miners who defaulted, inadequacies in the legal framework resulted in illegal mining as mining activities turned into free-for-all trade. In fact, Lawal explained that there had been neither a federal ministry nor regulating department solely designated for guiding mining sector activities until 1995.[35]

Certainly, solid minerals exploitation involves acquisition of land. Before 1978, land tenure was based on private ownership, be it individual, families, rulers or even communal land ownership systems. Things changed in 1978; the Land Use Act became the legislation for all land transactions. Under this Act, "all land in the states within the Nigerian Federation is held by the governors of the states in trust of the people of their states."[36] The occupiers such as the traditional owners lack secure land rights and their rights can be revoked by the government for public interest and compensation paid if such discovery occurs.

Because the state governors hold the land in trust for their people, jurisdictional conflicts persisted over the management of the ownership of the solid minerals sector. Tussle over ownership of mineral resources was expressed overtly between the federal and state governments. This action was demonstrated by the establishment of State Ministries of Solid Minerals in breach of Section 44 (3) of 1999 Constitution and likewise Section 1 (1) of Minerals and Mining Decree of 1999 which placed solid minerals, oil and gas on the federal Exclusive List, sending confusing signals to investors.[37] As a result, the National Economic Council (NEC) directed that the ministries should be abolished and relationships should be fostered by the three tiers of government - federal, state, and local. NEC advised that the states should establish State Mineral Resources and Environment Committees (SMREMC). Since then a number of state governors inaugurated committees in their respective states in compliance with the directive.

About a decade ago, government control dominated a Nigeria mining industry monopolized and run by state-owned corporations. This led to decreases in productivity before President Olusegun Obasanjo's administration

34 Lawal, "Constraint to Small Scale Mining in Nigeria."
35 Ibid.
36 O.A. Odiase-Alegimenlen, "New Regime for Solid Mineral Development in Nigeria," (HeinOnline Journal of Energy Natural Resources Law,): 344-363...
37 Ezekwezili, "Hand-Over Notes."

initiated the privatization process of government- owned corporations in 1999. Redundant corporations such as the Nigeria Coal Corporation (NCC), Nigeria Iron Ore mining Company Limited, Nigeria Iron-ore mining Company Limited, Nigeria Mining Corporation (NMC) and its subsidiaries, and the Nigeria Uranium Company Limited (NUMCO) were characterized by "poor investment conditions (low returns on investment, bad management practices and so on) that usually accompany state owned companies which led to inadequate investment in the sector."[38]

Earlier, the Indigenization Decree of 1972 had deepened the constraints of foreign direct investment in the solid minerals sector. Prior to indigenization decree, British companies dominated the mining sector with up to 120 companies that were well-equipped with qualified staff and efficient performance. These made large-sized output and employment opportunities possible. But the exit of the multinational companies and their professional expatriates as a result of the decree left the bulk of mining operations on the shoulders of small-scale miners and led to the decline in the production of metallic minerals.[39]

As a consequence, mining trend shifted to non-metallic industrial minerals for construction and other applications for domestic industries. In addition, the economic downturn affected even the exploration of the non-metallic minerals. Also, inadequate, insufficient equipment, and lack of manpower hindered the inspectorate department of the former Ministry of Mines and Power to carry out surveillances of minefields by ensuring compliance on safety standards as well as manning the exit point of minerals commodities exported. As a result, illegal mining coupled with speculative pegging by legal mining title holders skyrocketed. The problems became compounded with unnecessary and ineffective administrative bureaucracies of mining applications, leading to delays. Onah described the situation of government ownership and control like this:

> Under the existing laws and regulations only the Federal government has the power to authorize any form of mining activity because ownership of all minerals is vested in it. The miner has, however, to process his application through several layers of subordinate authorities. These include local landowner or community for access to the minefield, the local government authority for its consent, the State Department of Agriculture and Forestry

38 Lawal, "Constraint to Small Scale Mining In Nigeria.".
39 F.E. Onah, "Promotion of Economic Activities," *Central Bank of Nigeria* (2001), http://www.cenbank.org/outpublications/occasionalpapers/rd/2001/owe-01-5.pdf (acccessed August 25, 2010).

> for land use evaluations, the State government for authorisation under the Land Use Decree and the State Surveyor General for a final survey plan. This process gives rise to long delays as procedural reports have to be filed in before final approval is granted.[40]

Until 1999, the Minerals and Mining Decree empowered the Minister to make regulations. He was placed in charge of the administration of mining legislation through various sections of the Mining Decree. For example, "Section 146 gives the Minister authority to make regulations for the manner in which application for any license, right or lease under the Decree may be made or withdrawn and the form to be used in the application; the fees, rent, etc."[41] The government as administrator and lawmaker was a big investor and promoter of government mining companies, using funds from the state treasury to compete with other investors in solid minerals exploration. This action is contrary to the principles of fair competition, since the government grants titles to its enterprises but competes with other private operators in the acquisition of such mineral titles.[42]

There is no doubt that the reason the government restricted or completely excluded the private sector from accessing certain minerals was out of national and strategic interest as well as to provide the necessary raw materials for downstream industries. However poor management and negative tendencies undermined the economic advantages behind this purpose. At the same time, policy reversals and policy inconsistencies further characterized the mining industry. For instance, the 1999 decree made it possible for security of tenure in the mineral titles administration. This law assures investors of easy and smooth transfer from prospecting to mining tenures. However, in reality it was not so smooth. Moreover, the decree provides the minister with enough discretionary powers that abuse became a source of great concern to investors, though investors could seek legislative or judicial intervention for relief.

The post-July 2005 mineral sector reform brought changes into the sector. There was a national policy on solid minerals development which clearly defined the role of government and changed its orientation from 'Owner-operator' to 'Administrator-Regulator.' In addition, the policy pursued a continued privatization drive, private sector-led ownership, liberal and

40 Ibid.
41 Uche, "A Legal Guide to Investing in Nigeria's Mining Sector."
42 Ibid.

transparent access in mode of operations, strengthening methods of geological data generation, good investment drive through promotion and marketing and human capacity building. The amendment of the 1999 Mineral and Mining Act was consistent with government policy direction and focused on security of tenure, quick and easy access to mining titles, good and competitive tax regime, autonomous cadastre office, and environmental and community issues.[43]

As a follow up, the 2007 Minerals and Mining Act was enacted. The Act was based on a hybrid of best international practices modeled after competing and successful mining jurisdictions such as Tanzania and Chile among others. Certainly, the act was historic, a good and welcome development for Nigeria's business environment and potential international investors. One of the salient and key provisions addressed in the new act was the upgrading of the Mining Cadastre Office (MCO) in the Ministry of Mines and Steel Development (MMSD) to the sole agency in minerals title administration. Granted, this action "effectively denied a minister access to the process of granting mining licenses. This development was nationally and internationally praised."[44]

Economic Initiatives and Incentives

As part of the efforts to create a conducive and enabling environment for development of various industries through FDI and protect existing investments against competition and encourage domestic expansion of production capacity, the government has developed incentives for different sectors of the economy. The solid mineral sector is one; with the hope that it will holistically revive Nigeria's economy, accelerate national growth and to reduce poverty.

According to the Embassy of the Federal Republic of Nigeria in Washington, DC, the Nigerian government recognizes that the private sector is the key engine of growth and a wealth creator.[45] Therefore, the government's major responsibility is to create an environment where investment can flourish. In this regard, laws that hindered investment have been repealed or amended and the National Council on Privatization (NPC) was established to take care of divestment into private operations in strategic areas like mining, petroleum and

43 Ezekwezili, "Hand-Over Notes."
44 Elor Nkereuwem, "Nigeria Loses Billions in Solid Minerals Revenue," November 14, 2009, http://234next.com/csp/cms/sites/Next/Home/5480354-146/story.csp (accessed September 7, 2010).
45 The Embassy of the Federal Republic Nigeria, Washington, DC, "Investment Incentives in Nigeria," http://www.nigeriaembassyusa.org/invest_incent.shtml (accessed September 11, 2010).

gas, energy (electricity), telecommunications and transport.

These policies on economic liberalization and deregulation have opened new opportunities to investors to invest in any sector of the economy. Government policy now supports every sector of the economy. The protection of lives and properties of the citizen is pursued vigorously through strengthening and re-organization of security agencies. Furthermore, Nigeria Investment Promotion Council (NIPC) was strengthened to "provides services for the grant of business entry permits, licenses, authorizations and incentives in a One-Stop-Shop environment. The services are provided in a co-ordinated, streamlined, efficient and transparent manner to meet the needs of investors."[46] Also, to boost local production, the tariff structure was reformed.

Similarly, Nigeria's One-Stop-Shop Investment Centre (OSIC) became operational March, 2006. The function of the OSIC is to address the "problems related to the multiplicity of agencies involved in various aspects of investment facilitation in Nigeria and the resultant inter-agency rivalry, complicated by conflicting statutory laws/legal frameworks; arbitrary use of discretion in granting approvals; limited transparency; bureaucratization in procedures; and poor service orientation."[47] Furthermore, the study revealed that since the inception of the OSIC, the center has registered more than 2,500 companies.

Equally important, the government introduced a new visa policy to facilitate quick entry to Nigeria for foreign investors within 48 hours of submission of all required documents. The "Expatriate Quota" requirement for foreigners working in Nigeria was replaced with "Work Permit" by NIPC. In fact, since the end of the military regime in 1999, the government has progressively introduced some incentives to facilitate discussed investments.[48]

Conclusion

Nigeria has made bold steps towards the implementation of market-oriented reforms to attract FDI into the solid minerals sector; however, Nigeria has a long way to go. Despite Nigeria's free-market reforms and attractive incentives, not many investors have invested in the solid minerals sector. This is evidenced by the fact that the solid minerals sector, which contributed less than one percent to the 2009 and 2010 GDP (see table 2).

46 Nigeria Investment Promotion Council, http://www.nipc.gov.ng/nipcservice.html (accessed September 12, 2010).
47 UNCTAD, 2009.
48 The Embassy of the Federal Republic Nigeria, "Investment Incentives in Nigeria."

Over time Nigeria has painstakingly laid foundations for economic development through Vision 20:2020 – an economic transformation strategy designed to make Nigeria one of the world's leading twenty economies by the year 2020. The mining industry is part of the blueprint that will serve as a catalyst of transformation of domestic economic growth and thus will help positioning Nigeria as a relevant global player in 2020. In line with the Seven Point Agenda, there is resurgence in international economic relations between Nigeria and the international community. There is rising momentum, impetus, fresh dynamism and imperative for sustainable investment througth FDI.

Within this context of attracting investment in the solid mineral sector, Nigeria is offering good incentives to encourage investment. However, they have not succeeded in reforming the sector. The reasons are because development in Nigeria is tied to many national issues. Nigeria is facing daunting challenges which could negatively affect FDI in the solid minerals sector. Some of these challenges are discussed under recommendations section below.

General Recommendations: Key Issues in Social, Economic and Political Arena

Nigeria has a problem of international image: for instance, different changes have occurred in Nigeria's investment environment and policies, however, the world still views Nigeria with the old stereotypical view of a 'sleeping giant.' Nigeria is crudely viewed in all negative vices. Very little about Nigeria's positive macroeconomic situation and favorable policy environment are known internationally. While an investment drive for economic growth is good, Nigeria has to do more in image-building beyond the 'rebranding Nigeria campaign;' otherwise Nigeria's FDI attracting efforts will continue to be undermined. Another problem Nigeria faces is the perception that the government may be overthrown or destabilized through violent unconstitutional means. In addition, there is frequent internal crisis and conflict in Nigeria, a poor legal system, corruption, inadequate and poor infrastructure, high costs of doing business and lastly, uncertainty in the business environment.

Specific Recommendations: Solid Minerals

The ownership of solid minerals belongs to the federal government, which controls all the mineral resources in Nigeria. Only the government is constitutionally empowered to authorize mining activities. Many authors like Onah have argued that the federal government should consider making a legislative amendment

for joint ownership of minerals resources and land between the federal and state governments in which the latter will have some measures of ownership and control of solid minerals resources in their lands.

Onah cited the situation in the United States for instance, and argued that Nigeria should apply the US model in terms of its political system. As an illustration, the US shares land and minerals between the central government and the states. Besides, resources found within the lands of central government are exclusively owned by the US federal government. However, a certain percentage of the mineral proceeds mined in the federal land in a state is given to that state. Also, mineral resources found outside the territories of the central government belong to the states where they were found. This arrangement, Onah emphasizes, resolves any misunderstandings over resource control and ownership which benefits both parties. In addition to that, this paper advocates for government efficiency and policy directive and consistency – this is shown in the effectiveness of quality of policies in terms of formulation, implementation, and the zeal to commitment and credibility of the government to such policies. Nigeria should be careful of policy inconsistencies, policy somersaults, and policy reversals: "in the fourteen years since its creation, the ministry of mines had at least ten ministers."[49] Continuity in policy was difficult to achieve because each minister had different programs and rarely did a minister build upon or continue with the work of his or her predecessor.

Also frequent changes in mining policies are a further impediment for a developing industry like the mining and exploration sector. This factor critically undermines and often determines the decision of whether a potential investor will set up a mining investment in a country or not.

Investment assurance and incentives is another area of recommendation. Indeed, the solid mineral sector is still undergoing development since Nigeria returned to democracy in 1999. In this sense, the government should continue to guarantee potential foreign investors the safety of their investments by continuing to maintain its Investment Promotion and Protection Agreements (IPPAs) through the NIPC. This is important because we are in an era of global competition to attract FDI. Therefore, based on these IPPAs, the new contracting parties will understand that in the advent of a crisis such as war or revolution, investors are guarenteed their investments and also of compensation for possible dispossession or loss. This agreement should be maintained in the same way the NIPC has guaranteed solid mineral industry incentives, such as three-to-five-

49 Nkereuwem, "Nigeria Loses Billions in Solid Minerals Revenue."

year tax holidays, deferred payments of royalties, development and extension of infrastructure, opportunities for full ownership of foreign investment in the mining sector, and government guarantees of unconditional transferability and repatriation of funds, profits and other incomes to the investor's country.

Another point of concern is illegal mining since this has a negative impact on the mining sector's progress as a whole. In Nigeria, it is impossible to know the exact amount of illegal mining activities in terms of quantity mined and taxable revenue. Offenders should be brought to justice as their activities affect foreign investment and go against the rules of competition and fair play. Nevertheless, small scale miners should be encouraged to gather and benefit from economies of scale. This would improve the production chain since locally mined minerals from small scale miners could be transferred to large scale foreign invested companies for processing.

Finally**,** since it is the function of the federal government to provide geological surveys on Nigeria's minerals resources, the government should strengthen the Nigeria Geological Survey Agency (NGSA) by positioning it to meet the challenges of 21st century geoscientific research and advanced knowledge and information sharing on mineral deposits. Naturally, this would boost mining and encourage foreign investment as NGSA reveals the potential of the mining sector by identifying minerals locations, sizes, quantities, and the nature of occurrences. **PEAR**