

NATIONAL SECURITY AND THE NIGERIAN SOLID MINERAL RESOURCES: ASSESSING ILLEGAL MINING AND THE NIGERIAN LAWS

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Abstract

This paper assesses the national security implications of illegal mining of the solid mineral endowments of Nigeria within a resurging governmental interest in planning economic development on exploitation of these mineral deposits. The paper finds that there is wide spread illegal mining in the country with its attendant economic loss and that in spite of this organised criminal trend, government's explicit national security policy does not prioritize illegal mining as a national security concern. It also finds that extant laws and institutions established for the protection of the solid mineral deposits of Nigeria are inadequately structured to provide the needed security coverage for these minerals from illegal mining. The paper concludes by suggesting the need to upgrade the security status of the crime of illegal mining so that policies, laws and institutions entrusted with the task of protecting these national assets can be structured and directed to purging the nation of this economic crime.

Keywords: National Security, Solid Minerals, Illegal Mining, Agencies, Statute.

INTRODUCTION

The President Muhammadu Buhari-led government has made the diversification of the Nigerian economy as top priority since the mono-product economy based on crude oil¹ which Nigeria currently operates is not just economically unwise but has proven to be a source of worry from

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¹ About 90% of Nigeria's export earnings come from the sale of crude oil and as such the present low price of crude oil in the world market has impacted gravely on the economic performance of the nation.

national security point of view. Attacks by militants in the Niger-Delta region of Nigeria, much of which is perpetrated by the Niger-Delta Avengers in recent times, has reduced the crude oil production of Nigeria from the height of 2.3 mbd in 2014 to 1.6 mbd in May 2016 and this has further weakened the productive capacity of Nigeria thereby deepening the economic crisis.² It has also reduced government's financial capacity to empower the security apparatus guarding this strategic national resource. Diversification of the Nigerian economy is therefore not solely based on economic common sense but on enhancement of national security for the survival of the nation as a whole.

The solid mineral sector has been targeted by the Nigerian government to lead this agenda of economic diversification as the country has identified forty-four solid minerals minable in commercial quantity.³ However the scourge of illegal mining of these solid mineral is a clear and present danger to the achievement of economic diversification and Nigeria's national security. This is more so as foreigners have been identified to be leading in these illegal activity with Nigerians being *participis criminis*.⁴ The questions which this paper engages are: which body or agency of government is mandated by law to secure these precious mineral resources from the activities of illegal miners and other illegal activities in the mineral and mining sector? What is the national security strategy in place for the achievement of sustainable economic diversification through solid mineral exploitation? To what extent is the office of the National Security Adviser engaged with the Ministry of Solid Mineral Development in an inclusive development of the solid mineral sector and as part of the Nigerian National security strategy? This paper attempts to explore answers to these questions.

THE REALITY OF THE NIGERIAN SOLID MINERAL ENDOWMENT

² Attacks by militants in the Niger-Delta region of Nigeria, much of which is perpetrated by the Niger-Delta Avengers in recent times, have reduced the crude oil production of Nigeria from the height of 2.3 mbd in 2014 to 1.6 mbd in May 2016. See the report of Reuters Africa, 'Militant Attacks have cut Nigerian Oil Output by Half a million Bpd' (Reuters Africa, 7 June 2016) <www.af.reuters.com/article/topnes/id AFKCNOYTOKE.html> accessed 15 December 2016.

³See the Nigerian Investment Promotion Commission, 'Solid Minerals' <www.nipc.gov.ng/index.php/opportunities-by-sectors/solid-minerals.html> accessed 15 December 2016.

⁴ Chinese and Indians have been playing leading roles in illegal mining activities in Nigeria. See the news item, 'Illegal Mining in the Midst of Poverty' (*Peoples Daily*, 12 June 2014) < www.Peoplesdailyng.com/illegal-mining-in-the-midst-of-poverty.html> accessed 15 December 2016.

Nigeria is richly endowed with a variety of solid minerals of various categories ranging from precious metals to various precious stones and industrial minerals.⁵ The sector offers a viable alternative to petroleum for foreign exchange earnings. In spite of the potential accruals of the solid mineral sector, the 2015 NEITI Report reveals that the solid minerals sector is still a minor productive industry with low contributions in the main macro areas.⁶ This report is surprising if put beside the fact that there is not one amongst the 774 local government areas in the country without solid mineral deposits. However, the downside of this Nigerian economic and natural endowment reality is that there is hardly one of these local government areas where these minerals are not being exploited illegally.⁷ The problem is compounded by the fact that there is no sufficient data on illegal mining if it exists at all. It is a free-for-all activity without monitoring, arrest or prosecution of perpetrators to the extent that even foreigners are involved. There is the dangerous trend that uranium, a radioactive mineral, with a huge deposit known to be in some parts of northern Nigeria, is also being mined illegally and smuggled across the borders. The security implication of this is grave not only on Nigeria but the world over when considering the penchant of Islamist terrorist for wanton and large-scale destruction of lives and properties.⁸ Several illegal artisanal operations in Nigeria's solid mineral sector are being sponsored by Chinese and Indian companies but with support from local authorities.⁹ Government acknowledged this unsavory situation when the Minister of Solid Mineral Development, Dr. Kayode Fayemi, recently commented that the country was losing a lot to illegal mining activities, being carried out by some citizens aided by some foreigners.¹⁰

⁵ The report of Nigerian Investment Promotion Commission 'Solid Minerals' <<http://www.nipc.gov.ng/index.php/opportunities-by-sectors/solid-minerals.html>> accessed 24 August 2016.

⁶ Its contribution to GDP is 0.73%; Contribution to employment is 0.3%; Contribution to export is 0.09%. See NEITI's 'Financial, Physical and Process Audit: An Independent Report Assessing and Reconciling Physical and Financial Flows within Nigeria's Solid Mineral Sector 2013' (2015) <http://www.neiti.org.ng/sites/default/files/pdf_uploads/NEITI-SMA-REPORT-2013/2013-SMA-Report-Full.pdf> accessed 24 August 2016.

⁷ See Guardian Newspaper Editorial, 'Illegal miners as killers', *Guardian Newspapers* (Lagos, 25 May, 2015).

⁸ See Adedoyin Akinsulore and Alexander Ekemenah, 'The Boko Haram Syndrome and the Nigeria's National Security Crisis: a Socio-Legal Appraisal' (2015) 16 (1) *University of Benin Law Journal* 199.

⁹ See the news report in the online newsfeed, 'Paying attention to solid minerals – ThisDay' *The Citizen Online* <<http://thecitizenng.com/paying-attention-to-solid-minerals-thisday/>> accessed 15 December 2016.

¹⁰ The Premium Times News Report, 'Nigeria loses 100kg of gold daily to illegal miners – Fayemi' *Premium Times* <<http://www.premiumtimesng.com/news/more->

The acknowledged incapacity of government to protect its national mineral resource from illegal plundering can be interpreted in several ways. It could be that there is the absence of any national security policy on the protection of identified mineral resources or that there is neglect of whatever exists as a policy on mineral resource protection; It could be that there is a lack of synergy and cooperation between the Ministry of Solid Mineral Development and the existing security organisations tasked with the duty of protecting lives and properties in the nation; it could also be that there are lacuna in the extant laws on solid mineral regarding protection of mineral resource whereby there are no statutorily established government institutions, department or agencies created for this critical and strategic task. To lend credence to this assumption, Nigeria Security and Civil Defence Corps (NSCDC) has just recently been tasked to deploy five thousand “Solid Minerals defenders” armed squad to curb illegal mining activities in the country.¹¹ The absence of such a security team for the protection of mineral resource up till then was attributed to negligence and lack of effective regulations or laws to protect the exploration of minerals. This has led to loss of billions of naira in revenue that should have accrued to the Federal government from this sector.¹²

Considering the fact that NSCDC’s mandate is to protect critical infrastructure and national assets against vandals, saboteurs and human scavengers but that hitherto the Corps does not have a unit to protect solid mineral deposits as a ‘national asset’ speaks of the low esteem protection of solid minerals is given as a nation security priority.¹³ For a sustained and meaningful development of solid mineral asset of the nation, there is need to advance a clearly defined and articulated national security strategy that encompasses the solid mineral deposits in Nigeria in a protective shield, constantly made an unsafe activity for illegal commercial interest whether local or foreign. This paper now proceeds on a conceptual explication of the term ‘National Security’ followed by identification of laws establishing bodies that may be tasked with the provision of this essential security ‘coverage’ in the Nigeria’s pursuit of economic diversification through the development of solid minerals.

[news/201196-nigeria-loses-100kg-gold-daily-illegal-miners-fayemi.html](http://www.thisday.com/news/201196-nigeria-loses-100kg-gold-daily-illegal-miners-fayemi.html)> accessed 24 August 2016.

¹¹ See the comment of The Commandant – General of the NSCDC, Abdullahi Gana Mohamadu in the report of Kasim Sumaina, 'Illegal Mining: NSCDC Set to Deploy 5,000 Armed Squad to Checkmate Activities', *ThisDay* (Lagos, 28 February 2016).

¹² *Ibid.*

¹³ See Section 1 (e), (f) (i)-(vi) of the Nigerian Security and Civil Defence Corps (Amendment) Act, 2007.

PRACTICE OF MODERN NATIONAL SECURITY STRATEGY

The issue of national security is one that has been on the top list of the Nigerian government in recent years. It has become a matter of concern, not only domestically, but also on the international plane.¹⁴ In recent times, there has been a growing interest in the understanding of the concept of national security and role of the Office of the National Security Adviser (NSA) in Nigeria in that context. What exactly constitutes National Security? What is the role of the NSA in the national security framework or landscape?

Security is an ambiguous concept. It has different meanings for different people, including decision-makers who formulate national policies. Thus, the question 'What is national security?' opens the floodgates of contending opinions. Generally speaking, national security refers to a package of values that are deemed worthy of protection. But disagreement arises as to what values should be included in this package and how they are to be prioritized in a socio-political entity. Who decides? How is the underlying conflict in value articulation involving the state, its government and those governed reconciled under conditions of scarcity? These questions are critical to any analysis on national security.¹⁵ The term "national security" does not appear to lend itself to any precise definition. This is partly because the nature and concept of national security may vary from one state to the other. Like other contested concepts, the term contains an ideological element which renders empirical evidence irrelevant as a means of resolving the debate.¹⁶

There is no single universally accepted definition of "National Security". The variety of definitions provides an overview of the many usages of this concept. The concept still remains ambiguous, having originated from simpler definitions, which initially emphasised the freedom from military threat and political coercion to later increase in sophistication and include other forms of non-military security as suited the circumstances of the time.¹⁷ While there is no precise universally acceptable definition of national security, it can be safely argued that national security is the aggregate sum of the national security interests as articulated by the government within

¹⁴ Y. O. Ali, 'National Security and Development in Contemporary Nigeria' (1st National Conference of the Al-Hikmah University College of Humanities, May, 2013)

¹⁵ H. Singh, 'Malaysia's National Security: Rhetoric and Substance', (2004) 26(1) *Contemporary Southeast Asia* 1,2.

¹⁶ E. Oshio, 'The Challenge of National Security and Development' (Christian Professional League Seminar on Crisis Management and Nation Building, Asaba, November, 2009)

¹⁷ Ali, National Security (n 14).

the complexity and dynamics of the threat environment be it military, political, economic, social, and other forms of threat. There can be no security without a threat environment or elements of threat. The perception of these threat elements or environments also varies according to the ideological worldview of the subjective political forces or actors (i.e. government and leaders).

While a growing body of scholarly works argues that globalization has weakened the national security state through the major absence of interstate wars, decline in military expenditures, the rise of transnational actors and the proliferation of non-traditional security challenges, it has been argued that this globalization thesis remained in the realm of conjecture because no systematic exploration of its predictions for the national security state has been undertaken.¹⁸ Ripsman and Paul further argue that the globalization school's claims are overstated as states of all types appear to pursue more traditional security policies than those globalization theorists would expect.¹⁹

In addition, in many instances national security states have conformed to the school's expectations, but strategic circumstances rather than globalization seem to be the cause. Moreover, to the extent that globalization has affected the pursuit of national security, it has done so unevenly. States in stable regions have transformed their national security establishments the most to meet the challenges of globalization, whereas those in conflict ridden regions have done so the least. The great powers have adapted to globalization only when it was consistent with their own strategic imperatives. Finally, very weak or failed states such as those in sub-Saharan Africa have had their fragile national security establishments buffeted by the pressures of globalization, adding further impetus for state collapse.²⁰

Umit Cizre draws attention to the danger of elevating national security concept above the need for reform of the democratic institutions that could foster economic development.²¹ Cizre problematizes the increased security concerns, using Turkey as a case study, by demythologizing the concept of national security, stating that the language of national security was being used as a tool to legitimize the need for a military role in civilian affairs and that the term was being utilized by the military establishment and its supporters to convince themselves of the need to prioritize the indivisible

¹⁸ N.M. Ripsman and T. V. Paul, 'Globalization and the National Security State: A Framework for Analysis', (2005) 7 *International Studies Review* 199.

¹⁹ *Ibid.*, 200-201.

²⁰ *Ibid.*

²¹ Umit Cizre, 'Demythologizing the National Security Concept: The Case of Turkey', (2003) 57(2) *Middle East Journal* 213.

and secular character of the regime as more important than the need for democratic reform. It concludes that national security is not an issue that should be left only to the military but that in democracies national security is the job of the politicians.

A national security strategy (NSS) purports to represent a "nation's plan for the coordinated use of all the instruments of state power - non-military as well as military - to pursue objectives that defend and advance its national interest."²² All countries have them, either implicitly or explicitly. Implicit strategy is what we find by observing a country over time as it interacts with its security environment (i.e., with other countries and forces that might threaten it or interfere with its objectives). The game of describing a country's implicit strategy is open to all players. For example, scholars generally agree that U.S. security strategy centered on deterrence during the Cold War. Since the end of the Cold War, however, there has been less consensus.²³

Explicit strategy, our concern here, is something else. It refers to a country's public, authoritative declarations about the manner in which it intends to achieve its security objectives within the international security environment. These are the "official" strategies published by governments. Explicit strategy can be found in a variety of public documents. Many countries refer to their NSS as a "white paper" for defense. After experimenting with such titles as "A National Security Strategy of Engagement and Enlargement" (1994-96) and "A National Security Strategy for a New Century" (1997-99), the United States has settled (since 2002) on what sounds like a "neutral" title for its formal national security strategy, "The National Security Strategy of the United States of America."²⁴

Should a country's official, published strategy be congruent with what experts say about the defense policies and practices actually carried out by that country? In other words, should the strategy in theory be identical to the strategy as practiced? Most would think so. However, as Richard Betts observes, as in most of life, the levels of theory and practice in strategy are not always aligned.²⁵ The NSS cannot be aligned with the views of all experts' interpretations of national strategy, as those interpretations themselves do not

²² R.B. Doyle, 'The U.S. National Security Strategy: Policy, Process, Problems', (2007) 67(4) *Public Administration Review* 624.

²³ Doyle, (n 22)

²⁴ Ibid.

²⁵ Richard Betts, 'Is Strategy and Illusion?' (2000) 25 (2) *International Security* 5; See also Richard Betts, 'U.S. National Security Strategy: Lenses and Landmarks' (2004) 7 <<https://www.princeton.edu/~ppns/papers/betts.pdf>> accessed 15 December 2016.

agree with each other. Moreover, implicit strategy is likely to be much more complex than explicit strategy, as the day-to-day implementation of security policy on a global scale defies the many assumptions underlying declaratory policy. Finally, there is the fact that explicit strategies incorporate intentions as well as implementation. For the most part, they tell the world what a government intends to do, strategically. Whether it consistently acts on these principles is another matter—a question of implicit strategy.²⁶

National security policy formulation is often the concern of the policy elites. Therefore the scope that a national security strategy covers is limited to the extent of the intellectual and anecdotal capacity of these policy elites who identify the requirements necessary to maintain the survival of the state through the use of political, economic and military power.²⁷ Therefore the value orientation of these policy elites at any given point in time is likely to determine the trajectory of the national security strategy of a state. We agree with Oliver and Knuppe that security for a given state can be characterised by how that state's values are to be secured, the specific values being addressed, the degree of the security to be attained, the kind of threats the security must direct itself to, the means for coping with such threat, the cost for doing so and the relevant time period.²⁸ These 'state values' are determined by these policy elites. As we shall see later, the development and evolution of the current Nigerian National Security Strategy was determined more by military outlook on issues of national security with little interest in the insecurity from the economic dimension from national bleed holes such as illegal mining.

Finally, the nexus between 'Security' and 'Economic Interest' is buttressed by a gamut of literature which goes to emphasise that security and development are mutually dependent on each other: the security of one is the development of other.²⁹ In the emerging literature – including the official

²⁶ Ibid.

²⁷ Tim Oliver and Austin Knuppe, 'Britain's Strategic Culture in Context: A Typology of National Security Strategy' in Timothy Edmunds, Jamie Gaskarth and Robin Porter (Eds.), *British Foreign Policy and the National Interest: Identity, Strategy and Security* (Palgrave Macmillan, 2014)205,207.

²⁸ See Oliver (n 27) 208.

²⁹ Maria Stern and Joakim Ojendel: "Mapping the Security-Development Nexus: Conflict, Complexity, Cacophony, Convergence" (2010) 41 (1) *Security Dialogue* 6; Bjorn Hetine, 'Development and Security: Origins and Future' (2010) 41 (1) *Security Dialogue* 31-52; Mark Duffield, 'The Liberal Way of Development and the Development-Security Impasse: Exploring the Global Life-Chance Divide' (2010) 41 (1) *Security Dialogue* 53-76; Stefen Jensen, 'The Security and Development in Cape Town: War on Gangs, Counterinsurgency and Citizenship' (2010) 41 (1) *Security Dialogue* 77-97.

‘report industry’ – there is a seeming consensus that ‘security’ and ‘development’ are interconnected, and that their interrelationship is growing in significance given the evolving global political-economic landscape. The notion of a ‘nexus’ seems to provide a possible framework for acutely needed progressive policies designed to address the complex policy problems and challenges of today. Furthermore, and perhaps most importantly, an ever-growing amount of economic resources and political will is being poured into the ‘security-development nexus’ and the attendant revamping of national and multilateral institutions and actions designed to address it. Hence ‘nexus’ matters.³⁰

NATIONAL SECURITY AND THE NIGERIAN CONTEXT

National security strategy cannot be discussed without relating it to the existing economic reality. Hitherto, the concept of national security has been largely restricted to the narrow concept of security as related to military as well as those formulated by the government. What is hitherto known as national economic interests – for instance the control of the commanding heights of the economy by the State, e.g. the exclusive control of the oil sector and those on the Exclusive Legislative List in the Nigerian case – has now been expanded to include other economic sources of wealth creation for the entire nation.

Even though the Nigerian National Security Strategy from its inception has made copious reference to economic security, it has however not incorporated illegal mining of solid mineral resources or other specific area of activity of the economy (save for the oil and gas sector) as a major threat to the overall national economic security interests viz: threat to environment, and revenue loss in view of avowed declaration that diversification of the economy will be pursued as a policy in view of declining oil revenue and economic recession. This is either as a result of epistemological deficiencies on the part of the policy formulators i.e. limited mental horizon that excludes solid mineral resources as a source of national revenue in times of economic recession, or as a result of the incapacity of the institutional bodies in the solid mineral sector to function in accordance with their mandates to generate revenue from the economic agents operating in this sector.

By reason of over-dependence of the country on oil revenue to the exclusion of other sectors of the economy, the realization is now dawning on government and policy makers that exclusion of other sectors of the economy from the revenue yielding framework has been largely detrimental to national economic security. Indeed, the transition from military rule to civil

³⁰ Maria Stern,(n 29) 6.

democratic rule has opened the floodgate to the consideration of national economic interests as part of national security concept. Thus while we use the term “national economic security” as a theoretical concept in this paper, we are aware that it may still be a loose and inchoate concept that has not been concretized and developed by empirical evidences especially in macroeconomics.³¹

It will be apt at this point to locate the statutory anchor for the formulation of national security policy of Nigeria. The National Security Agencies Act (NSA Act) provides for the creation of three security agencies charged with the conduct of relevant aspects of national security.³² One of the duties these agencies are saddled with, among others, is the prevention and detection of any crime against the internal security of Nigeria.³³ The National Security Coordinator is to coordinate the activities of these agencies for them to be able to achieve their targeted aims.³⁴ Not until recently, Nigeria had no clearly defined explicit National Security Policy. Whatever existed before now was an ad hoc policy formulation that issued out of the security exigencies of the time. No doubt, the crushing of the Boko Haram terrorist group is high in the National Security Agenda of the Buhari-led government and of course the interpretation of the concept of national security is viewed through the narrow prism of the fight against the Boko Haram in the North Eastern part of Nigeria.³⁵

One immediate lacuna observed in the NSA Act is the absence of any express provision conferring the power to formulate clearly defined national security policy on any person or office or any other individual that the president may deem fit. The failure to provide this very strategic function in the Act, preferably on the National Security Coordinator, has been a major reason for the inconsistent, uncoordinated way in which the Nigerian security agencies have so far responded to other national security threat save for the

³¹ Alexander Ekemenah: ‘Central Banking and National Economic Security in the 21st Century’, March 20, 2017 <<http://nextmoneyng.com/central-banking-national-economic-security-21st-century/>> accessed 4 May 2017.

³² Chapter N74, Laws of the Federation of Nigeria, 2004. The three agencies are: The Defence Intelligence Agency, Section 1(a); The National Intelligence Agency, Section 1(b); The State Security Services, Section 1(c).

³³ See generally Section 2 of the NSA Act for the duties of the three agencies but specifically Section 2(3) (a) for the duty referred to above.

³⁴ Section 4 (1),(3)(a),(b),(c) of the NSA Act.

³⁵ See the press release of Femi Adesina, Special Adviser to the President on Media and Publicity, ‘Security, War against Terrorism, Trade and Economic Relations Top Agenda of President Buhari’s Visit to Washington DC (2015) <www.statehouse.gov.ng/index.php/news/1298-security-war-against-terrorism-trade-and-economic-relations-top-agenda-of-president-buhari-s-visit-to-washington-dc> Accessed 20 April,2107.

fight against the Boko Haram terrorist. The effect of this lacuna until recently is that there was no comprehensive national security strategy for the nation. This affected coordination and building of synergy among security stakeholders in addressing the current security challenges.³⁶ This paper reaffirms³⁷ that the NSA Act needs to be amended to confer expressly the duty of providing comprehensive national security strategy in the office of the National Security Coordinator. Therefore, the need to resort to section 4(3)(e) of the NSA Act in order to seek for presidential approval before proceeding to formulate a national security strategy on an ad hoc basis could be avoided.

It was inevitably the emergence of Boko Haram-led insurgency and terrorism that finally compelled Nigeria to adopt, for the first time, a national security strategy, in accordance with global trend in this area of practical endeavor in national security. Before 2011 when Nigeria adopted the National Security Strategy (NSS), the country did not have any articulated form of national security strategy. However, it should be pointed out that a national security strategy is different from national defence strategy (NDS) or policy. While NDS is military-based, NSS is security network-centric in nature, i.e. embracing all aspects of national security. In the 'A National Security Strategy for the Federal Republic of Nigeria, 2011', the new strategic vision for Nigeria was anchored on

*...the most essential function of any government which is to provide peace and security for its people. There can be no development without peace, meaning that security is also an essential pre-condition for delivering on developmental pledges...*³⁸

The focus of the Nigerian National Security Strategy (NNSS), was safeguarding Nigeria's vital interests. These include: maintaining peace and stability within Nigeria; maintaining the territorial integrity of the country; creating an environment conducive to national unity; securing and developing Nigeria's national assets³⁹ Furthermore, according to the NNSS,

³⁶ O. Obafemi, "Transforming the Security Sector in Nigeria: Towards a Comprehensive National Security Strategy", Being a communiqué issued after the Second Eminent and Expert Group Meeting (EEGM), National Institute of Policy and Strategic Studies (NIPSS), Kuru 4-7 December, 2013.

³⁷ See Adedoyin Akinsulore and Alexander Ekemenah A, 'The Boko Haram Syndrome and the Nigeria's National Security Crisis: a Socio-Legal Appraisal'(2015) 16(1) *University of Benin Law Journal* 199-214.

³⁸This comprehensive national security strategy document was made a reality by the former national Security Adviser, General Andrew Owoye Azazi. See 'A National Security Strategy for the Federal Republic of Nigeria', (2011)*Think Security Africa* 4

³⁹ Ibid 15.

there are five major issues that posed threats to Nigeria's ability to secure its vital interests : Political violence; Violent extremism; Communal violence; The Niger Delta; Maritime security and transnational crime.⁴⁰In reality, each of these issues overlap in many important ways. For example, political violence may have an ethnic dimension and vice-versa.

This taxonomic order of threats looked rather to the past than the immediate future. It is noted that the NNSS was fashioned in 2011, a year of general election that was characterized by political violence and was also intermixed with Boko Haram insurgency that had been in existence since 2009. In short, violent extremism of Boko Haram typology should have been on top of the list, followed by maritime security and transnational crime. Niger Delta militancy receded to the background on the scale of national security threats as a result of the amnesty programme but has recently picked up in tempo with the appearance of a group known as Niger-Delta Avengers continuing a spate of bombing and destruction of oil installations in the Niger-Delta region of the country.⁴¹ Political violence only comes in every general election cycle of four years; and the occurrences of communal violence are drops of water in the frying pan of national security volatility. Illegal mining was not considered a national security threat enough to be covered under the NNSS and for this we opine that it is epistemologically deficient as regard the taxonomic order and range of national security threats in Nigeria.

However, in the new "National Security Strategy: Federal Republic of Nigeria, November 2014, launched by former President Goodluck Jonathan in February 2015, a step was taken further to incorporate economic and environmental concerns as part of the overall national security framework. The new security architecture was derived from the national security policy of Nigeria as contained in Sections 14-24 of the Fundamental Objectives and Directive Principles of State Policy of the Nigerian Constitution.⁴² It establishes the strategic vision or grand strategic direction for the administration in power. It provides the "objectives," and the ways

⁴⁰ Ibid 16.

⁴¹ The Niger Delta Avengers (NDA) is a militant group in Nigeria that came into existence in March 2016 and their attacks have caused a fall in Nigeria's oil production to its lowest level in twenty years. See the news report on the Vanguard newspaper, 'Who are the Niger Delta Avengers?' (*Vanguard Newspaper* 15 May, 2016) <<http://www.vanguardngr.com/2016/05/niger-delta-avengers/>> Accessed 16 December 2016.

⁴² Huba Galadima, 'New Security Architecture for Nigeria: A Holistic Approach to Rebuilding the Nation State'(2016) <<https://savannahcentre.org/savannah/wp-content/uploads/2016/06/power-point-of-NEW-SECURITY-ARCHITECTURE-FOR-NIGERIA.pdf>> accessed May 4, 2017.

and means to achieve them.⁴³ It provides the relationship between the foreign and domestic aspects of national security, and is thus the starting point for defining strategic objectives for national security related strategies.⁴⁴

The NSS 2014 provides a long list of threat environment and their assessment. The following were identified as threats to national security: terrorism; transnational organized crimes; crude oil theft/illegal bunkering; undermanned borders; climate change; communal and ethno-religious conflicts; pastoralist/farmers conflicts; politics of federalism in Nigeria; governance; poverty; kidnapping; proliferation of small arm weapon; proliferation of weapons of mass destruction; illegal migration; economic and financial crimes; information technology and cyber security; environmental security. Giving that economic diversification based on the development of the solid mineral sector is major economic trajectory of the Nigerian government, it raises red flag to note that the NSS 2014 did not identify illegal mining of solid mineral resources both by foreign elements and their local collaborators as a threat to national economic interests within the framework of national security strategy. Its discourse on the environmental security did not include the damage done to the immediate environment through illegal mining of solid mineral resources and loss of lives because of lack of official monitoring and use of safety gears in the course of mining. Its discourse on economic security is shallow to the extent that it did not identify the peculiar activities of nationals and foreigners in the economic sector that are detrimental to national economic interests.

What this reveals is that national security policy makers have not come to terms with the entire intellectual environment surrounding the modern concept of national security strategy and its application. This is worrisome to say the least considering the wealth of solid mineral resources in the country, its low contribution to Gross Domestic Product and what the country has lost as a whole to illegal mining over the years.

STATUTORY PROVISIONS FOR THE SECURITY OF SOLID MINERALS IN NIGERIA

a. The Nigerian Minerals and Mining Act 2007 and its Regulation of 2011

A convenient point to begin the search for the laws enacted for the security of Nigeria's mineral resources would be the Nigerian Minerals and Mining Act (NMMA) 2007 and its Regulation of 2011 being the principal law enacted to regulate the minerals and mining sector of Nigeria. Activities in the sector are divided into two:

⁴³ *Ibid* 10.

⁴⁴ *Ibid* 11.

exploration and exploitation stages. Upon identification of commercially viable mineral resource by the Nigerian Geological Survey Agency (NGSA)⁴⁵, interested persons or body corporate may apply to the Mining Cadastre Office (MCO) for appropriate licence so as to proceed with necessary activities at the exploration stage of the mining operation.⁴⁶ While access may be granted to holders of Exploration Licence (EL) to take limited amount of mineral, the object of the EL, for further quality testing and may even sell these specimens and samples obtained from exploration⁴⁷, the law is silent as to which body secures these identified but yet to be exploited mineral apart from the supervisory role of the Mines Inspectorate Department (MID).⁴⁸ The right granted to a holder of an EL to sell specimen and samples is capable of being exploited by unscrupulous investors if not properly monitored - but then who will do the monitoring and enforce the law?

At the exploitation level, the titles granted under the law are the Mining Lease, Small Scale Mining Lease, Quarry Lease and Water Use Permit.⁴⁹ Save for the MID's supervisory role, the law is also silent on issue of mineral resources and mines security. What could be considered of securitorial value is the power granted to the Director of Mines Inspectorate or any of his authorised officials to inspect mines at any time and also on routine interval to ensure that mineral title holder are keeping to the work plan or using the right equipment or following approved mining standard.⁵⁰ Inclusive in this duty is the identification and closure of illegal mines. This department is more or less the policeman of the mineral and mines sector yet there is nowhere in the Act which gives the officials of this department the power to arrest illegal miners or any other person that might have violated the provisions of the Act or its Regulation. While the law imposes on the MID the dangerous task of identification and closure of illegal mines, it does not cloak the department with the right to use arms in the enforcement of the law against a very well-motivated mostly armed illegal miners.⁵¹ The profile of illegal

⁴⁵ See sections 8,9, 12(1) of the Nigerian Geological Survey Agency (establishment) Act,2006.

⁴⁶ The mineral titles granted at this stage are the Reconnaissance Permit (RP) and the Exploration Licence (EL). See Sections 46 (1) and 48 of the NMMA, 2007.

⁴⁷ See section 60(1)(e)-(g) NMMA,2007.

⁴⁸ See 16 (1) (a) of the NMMA, 2007.

⁴⁹ See sections 49, 50,51,52,65 of the NMMA, 2007.

⁵⁰ See Regulation 120,121 and 122 of the Nigerian Minerals and Mining Regulation 2011.

⁵¹Celestin Oyom Basse and Oshita O. Oshita(eds), *Governance and Border Security in Africa* (Malthouse Press Ltd, 2010)302.

mining in Nigeria is that it is an occupation engaged in outside the law and as such to secure their prize, the miners are suspicious of external intrusion, armed with dangerous weapon and readily use force to secure their loot⁵² This observation was admitted by the Minister for Solid Mineral Development, Dr. Kayode Fayemi, in his inaugural speech to the press where he said:

*...the Ministry has undergone significant changes since 2007 but still remains constrained with respect to enforcing existing laws and policies, supervising mines, and leading the provision of geo-sciences data. The Ministry will therefore need to add more technical staff and also upgrade the skill set of the Mining Inspectorate staff as well as other staff in the Ministry and its agencies.*⁵³

If the MID is to meet up with its statutory obligations in relation to the security challenges posed by illegal mining, then there would be need for an amendment of the extant law to allow for the creation of an armed wing of the department. The fact that there are illegal mining activities in the country organised by foreigners attests to the present weakness of the MID. The implication of a weak MID is a lack of security guarantee for legitimate mineral title holders, leading to abandonment of mines and a poor contribution to the economy of the nation.

b. The Nigerian Security and Civil Defence Corps (Amendment) Act 2007⁵⁴

This law establishes the Nigerian Security and Civil Defence Corps (NSCDC) and among other functions is to provide protection, crisis resolution and the protection of public infrastructure at the Federal, State and Local Level nation-wide. The Civil Defence Corps has the following duties: maintain twenty-four hour surveillance over infrastructures, sites and projects for the federal, state and local government; enter and search any premises and seize any material suspected to have been used in vandalism or suspected proceed of vandalism; have power to arrest with or without a warrant, detain, investigate and institute legal

⁵² *Ibid.*

⁵³ See Dr Kayode Fayemi, 'Current State of the Nigeria's Solid Mineral Sector and the Way Forward', December 21, 2015 <
<http://www.news7ng.com/2015/12/current-state-of-nigerias-solid-minerals-sector-way-forward/>>

accessed January 16, 2016.

⁵⁴ This an Act to amend the Nigeria Security and Civil Defence Corps Act 2003 in order to enhance its capacity to provide protection, crisis resolution and security to public infrastructures, and related matters.

proceedings against any person who is reasonably suspected to have committed an offence under this Act; provide intelligence information to the Ministry on any matter relating to crime control generally, subversive activity by members of the public aimed at frustrating any government programme or policy.⁵⁵

When considering matters relating to the protection of solid mineral resources, it can be said that strictly speaking the NSCDC Act does not confer the power to protect solid mineral resources in the Corps. What the Act provides for is the protection of "public utilities" such as power transmission lines, oil pipeline, NIPOST cables and equipment, Water Board pipes etc from vandalism and prosecution of culprits.⁵⁶ The use of the term "syndicated activities"⁵⁷ in describing felonious acts which come within the purview of the Corps is unhelpful as there is no definition of what syndicated activities are in the Act.⁵⁸ At best the Corps' activities that may relate to solid mineral exploitation may be the provision of intelligence information on matters relating to crime generally.⁵⁹ Therefore it would appear that the creation of a special unit for the protection of Nigeria's solid mineral deposits by the NSCDC is outside the statutory powers enshrined in the enabling law. The implication is that if the action of this unit is challenged in Court, there is likelihood for such unit to be declared illegal as their act may not have the backing of law. The intention behind establishing a unit for the protection of Nigeria's solid mineral endowments and through this reduces illegal mining activities is of great strategic security value. However, for the NSCDC to be properly seised of this duty under the law there is need to amend the NSCDC Act to empower the Corps to take up such duty.

c. The Nigerian Police Act⁶⁰

This Law established The Nigerian Police Force as the principal security apparatus for the protection and securing of lives and property within the Nigerian territory.⁶¹ It empowers the police

⁵⁵ See Section 3 of the NSCDC Act 2007.

⁵⁶ Section 3 (f) (vi) NSCDC Act 2007.

⁵⁷ Section 3(h) (iii) of the NSCDC Act, 2007.

⁵⁸ See section 29 of the NSCDC Act.

⁵⁹ Section 3 (u) (i) of the NSCDC Act, 2007.

⁶⁰ CAP P19 Laws of the Federation of Nigeria, 2004.

⁶¹ Section 214 (1) and (2) of the Nigerian Constitution 1999 establishes that no other police operates in any state of the country but the Nigeria Police which is controlled at the federal level.

to investigate, detect and prosecute crime within the country.⁶² The Nigerian Police Force has about three hundred and seventeen thousand men and officers and its jurisdiction covers all the states of the federation as there are no state police.⁶³ In order to carry out its investigative and detective duties, the Nigerian Police is divided into formations and several department. Recruitment into Nigerian Police has been known not to be on the merit but on nepotism, corruption, political influence and the much maligned constitutional concept of “Federal Character”.⁶⁴

Training is poor⁶⁵ and remuneration among the rank and file is negligible. The Nigerian Police are the least paid among corresponding security agencies in Nigeria, a finding that fuels corruption.⁶⁶ The dearth of modern tool to carry out proper police job is obvious to many Nigerian, if one goes by the rickety vehicles the Nigeria police drive within most towns on patrol. The low level of effectiveness of a police force that is grossly undersized and underfunded is ever too obvious to the critically minded.

However in spite of the identified shortcomings of the Nigerian Police Force, it is still a relevant agency of government in the critical task of securing Nigeria’s solid mineral resources. Illegal mining is a crime within the Nigeria territory and therefore within the investigatory range of the police. The gathering of intelligence on criminals engaged in mining, profiling these criminals, their *modus operandi*, location, source of fund for the illegal mine operation, buyers of these illegally mined minerals would help in securing these solid minerals and in turn serve as reassurance to the legitimate prospective investors in the mineral and mines sector.⁶⁷

⁶² Section 4 Police Act.

⁶³ Former Inspector-General of the Nigerian Police revealed this current population strength of the Nigerian Police. See the news report ‘Arase: 317,000 officers can’t secure 170m populace’ *Thisday Newspapers* (Lagos 5 March, 2016).

⁶⁴ Section 14(3) of the Nigerian Constitution 1999 See also Ahmed Babatunde Adeosun, ‘Federal Character Principle and the National Integration: A Critical Approach’ (2011) 2(2) *International Journal of Politics and Good Governance* 1, 10.

⁶⁵ Former Nigerian President Goodluck Jonathan was visibly shocked when he saw the decay at the Police training school in Ikeja Lagos (2013) < <http://www.nigerianwatch.com/news/1163-goodluck-shocked-by-woeful-state-of-ikeja-police-college> > accessed 15 March, 2016.

⁶⁶ Ibeng Isine, ‘Inside Police Shocking Work Condition where Officers are Left Homeless and Paid Peanuts’, *PremiumTimes* (Abuja, 2 June, 2015).

⁶⁷ Nigeria is reported to be losing \$50 billion to illegal mining of gold. See E. C. Maren et al, ‘Assessing the Ecological Effects of Mining in West Africa: The Case of Nigeria’ (2017) 6(1) *International Journal of Mining Engineering and Mineral Processing* 1-19.

d. The Nigerian Customs Service Act

Customs generally play a pivotal role in the economic life of any country. There is hardly any sector of the economy that is not directly or indirectly affected by the activities of Customs. The Nigerian government established the Nigeria Customs Service (NCS) and empowered it with the Customs and Excise Management Act (CEMA) of 1958. The NCS, apart from revenue collection, is equally saddled with the responsibility of facilitating trade i.e. to ensure the seamless movement of cargoes at all entry points. The Service is equally given the responsibility to secure the country, by checkmating the importation (and/or exportation/smuggling) of items that will threaten the nation's security. It is, however, sad to note that the existence of the NCS has shifted from the other three functions mentioned to a revenue collector only.⁶⁸

Situating the role of the Nigerian Customs in securing the solid minerals of Nigeria from cross border dealings that are inimical to the national security interest of Nigeria is also very important particularly when, for example, it becomes an admitted fact from government that eighty percent of Nigeria's gemstone is smuggled out of the country.⁶⁹ The concerns of government has been on smuggling related to the ingress of imported good to the country which has negative impact on the Nigerian economy, particularly the local industries. There is not much focus on the egress of smuggled goods (usually in the form of precious solid minerals such as gemstone, gold, uranium etc.) from Nigeria to other countries. It is as if there is a policy absence on products or goods illicitly flowing out of the country.

Nigerian Immigration Act⁷⁰

This law establishes the Nigerian Immigration Service (NIS) which is entrusted with core immigration duties, mainly the determination of immigration status and issuance of visas. It is also charged with the responsibility of issuance of international passport

⁶⁸ See Editorial Report, 'Beyond Revenue Collection by the Nigerian Customs Service' *Ships & Ports* (Lagos, March 19, 2012).

⁶⁹ The former Minister of Mines and Steel Development Architect Musa Sada admitted this much. See John Ofikhenua, '80% of Nigerian Gemstone is smuggled,' *The Nation* (Lagos, 28 September 2014).

⁷⁰ Immigration Act, 2015 has repealed the Immigration Act CAP I1 Laws of the Federation of Nigeria (LFN) 2004 while Immigration Regulation 2017 operationalized it.

to citizens of Nigeria, issuance of Resident's Permit, Business Permits to and Expatriate Quotas to immigrants, the removal of immigrants where entry is denied and border surveillance and control.

This law brings the Nigerian immigration law in line with contemporary global fight against the scourge of immigration issues like human smuggling/trafficking, trans-national illegal migrant labour and its attendant social ills. Punishment for offences under the Act, especially relating to human smuggling, has been made more severe with intent to deter offenders.⁷¹ However, a disconnect that existed in the Immigration Act, 2015 was that it had no Regulation to operationalize it until March, 2017.⁷² It meant therefore that the Act had no framework for the effective implementation of the intendments of the Act within that regulatory hiatus. It means also that the full effect of the Regulation on the Act is yet to felt within the Nigerian immigration space.⁷³

Perhaps an important perspective to view the functionality of the Nigerian Immigration Act within a national security narrative is the practice of Nigerian 'federalism' which exists more in nomenclature than in political reality.⁷⁴ The Nigerian Constitution puts issues on immigration and emigration from Nigeria on the Exclusive List restricting matters of this nature only to be legislated upon by the federal legislature and acted upon by the federal government to the exclusion of the component states.⁷⁵ This means that considering the size of Nigeria⁷⁶, with its 774 local government areas, only the NIS, being a federal agency, is empowered to monitor activities of immigrants in the whole of the country. There is no room

⁷¹ See Section 65-80 of the Nigerian Immigration Act, 2015.

⁷² Pursuant to Section 112 of the Immigration Act 2015, the Minister is empowered to make Regulations necessary for the full effect of the Act.

⁷³ See generally the comments of Kunle Obebe and Olamide Soetan, 'A Review of the Nigeria Immigration Regulation 2017 -Corporate Immigration Landmines' (2017) <http://www.bloomfield-law.com/Publications/BLP_BRIEFING_A_REVIEW_OF_THE_NIGERIA_IMMIGRATION_REGULATION_2017.pdf> accessed 20 April 2017.

⁷⁴ See I.E. Sagay, 'Anatomy of Federalism with Special Reference To Nigeria,' being a Distinguished Lecture and Luncheon delivered to the House of Lords Broking House Ibadan,2004; See also Eghosa E. Osagha, 'A Reassessment of Federalism as a Degree of Decentralization,' (1990) 201(1) *Publius* 83,85; K.C. Wheare, *Federal Government* (4th edn., Oxford University Press,1963)

⁷⁵ Exclusive List, Part 1, Item 30 Second Schedule, Constitution of the Federal Republic of Nigeria 1999.

⁷⁶ A total area of 908, 890 kilometre square.

for component states within the federation to develop capacities to monitor immigrants (in general) and prohibited immigrants (in particular) within their state territories.

For administrative purpose all state capitals have offices of the NIS with limited amount of officers who carry out most of their immigration activities within the confine of the state capital. When it comes to matter of gathering intelligence information on the prohibited immigrants engaged in illegal mining of solid mineral deposits in the hinterland of states, there is doubt as to the capacity of the NIS to effectively carry out this important national security duty properly on grounds of the geographical spread of the subject of intelligence. The Nigerian Immigration Regulation, 2017 attempts to cure this lacuna by imposing duties of gathering intelligence on citizens who may have cause to deal with foreign immigrants. Therefore, Nigerians involved in hotel business, boarding houses or any other premises where lodging is provided is obliged to maintain a register for foreigners. Such a register is to contain information about the name, occupation, nationality, address, time of arrival and departure of such foreign nationals in the hotel or lodging.⁷⁷ Citizens with houses given out on lease or rent to foreign nationals are also obliged to ensure that the foreign national complies with the Regulation demands to register himself at the NIS office within the state of residence.⁷⁸

For the NIS to be responsive to the strategic issue of safeguarding the solid minerals deposit of the country from the activities of foreigners in illegal mining there is need for massive structural and operational empowerment of the NIS. The provision in the Immigration Regulation for registration of foreign nationals in each state of residence and the need for such foreign national to present the certificate of registration upon demand at any time is a welcome development.⁷⁹ Alternatively, it is proposed that issues on immigration should be removed from the Exclusive List of the Nigerian Constitution thereby allowing component states reasonable legislative inputs and capacity to participate in the matters relating to immigration within their states.

The larger issue however was the absence of a coordinated migration policy which comprehensively covers migration and development, migration and cross-cutting social issues, national

⁷⁷ Regulations 30 & 31 of the Nigerian Immigration Regulations (NIR) 2017.

⁷⁸ Regulation 29 (1) NIR 2017.

⁷⁹ Regulations 22, 23, 33(1) NIR 2017.

security and irregular movement, internal migration etc.⁸⁰ Migration barely features in Nigeria's main development plans such as National Economic Empowerment and Development Strategies (NEEDS), the state and local governments counterparts (SEEDS and LEEDS) as a development factor nor as a national security issue.⁸¹ Therefore, there was no categorical policy impetus to spur migration data collection at the local and national level. The NIS, being a major source of migration data, does not have a comprehensive data base on nation-wide migration as there are other sources where data on migration are kept such as Nigeria's Foreign Embassies and High Commissions abroad or by authorised body on behalf of the Nigerian government in countries where Nigeria does not have a foreign mission.⁸² This has made the quality and quantity of data on migration in Nigeria patchy and generally inadequate even for local use.

The National Policy on Migration 2015 attempts to correct the shortcoming identified above. However under the policy the concept of national security as it is affected by migration is only viewed and limited to the global phenomenon of trans-border terrorism. This is understandably so as the West African sub-region is still reeling from the long wars and the attendant refugee flows that occurred within some of the member states. Valid as this concern of migration-related global terrorism interplay may mean to the existence of community peace and national security, the policy fails to recognize the deleterious effect on national security the unmonitored, unchecked activities of foreign migrant in illegal mining to the Nigerian economy. A weakened economy through economic bleed-hole such as illegal mining implies reduced capacity to empower the necessary sector of the Nigerian state with the task of safeguarding the national security of the nation.

Furthermore, the profile of the foreign migrant envisaged by the 2015 migration policy miscues the profile of the foreign immigrants that are actively engaged in illegal mining.⁸³ Migrants

⁸⁰ The (Nigerian) National Migration Policy was recently adopted in the twilight days of the last administration of President Goodluck Jonathan on 13th May, 2015. See Adejumo Afolayan, *Migration in Nigeria: A Country Profile 2009* (International Organisation for Migration, 2009) 18.

⁸¹ *Ibid.*, 19

⁸² Afolayan (n 80) 93.

⁸³ The profile of foreign migrants envisaged by the policy is that they are mostly from the West Africa sub-region, poor, young, economically disempowered, educationally

engaged in illegal mining are often professionally trained and skilled foreigners (mostly Chinese and Indians), financially endowed and technically competent to engage in illegal geological excavation of precious minerals. It is this set of migrants with capacity to organize people to work at mining sites, co-opt and induce the local administrative and security personnel within the identified illegal mining zone and with the necessary capacity to export the mined minerals illegally out of the country that poses threat to the national security of the nation.⁸⁴ This policy is silent about activities of these particular types of foreign immigrants and the means to curtail their activities from the point of view of a national security challenge. Obviously, creating policy and strategies that would strengthening the NIS and other law enforcement agencies in gathering intelligence on this group of migrants, monitoring their activities and movement all over the nation will be a robust approach to resolving the issue.

ILLEGAL MINING AS NATIONAL SECURITY ISSUE

Security policies are devised to cope with emerging threats from the strategic environment. The outlook on the environment, therefore, is the basis for policymaking.⁸⁵ In the modern world of asymmetric security threats security studies now examines such nonmilitary threats as environmental degradation, overpopulation, uncontrolled migrations, nationalism, organized crime, and terrorism.⁸⁶ The Nigerian solid mineral sector is strategically important as it portends the potential that is capable of extricating Nigeria from the mono-economy based on crude oil which it currently runs. Therefore, any counter activity designed to benefit a few clumps of individual to the detriment of the nation which may jeopardize the achievement of broad based national economic development should attract the attention of the government. Illegal mining falls into this section as it has over the years been in the grasp of few individuals comprising Nigerian and foreign nationals.⁸⁷ The economic implication of this activity has been quite

challenged with little skill sets and are seeking employment within the economic space of the country so as to make a living. See National Migration Policy 2015, 9.

⁸⁴ See the report of Chinese Okafor, 'Chinese, Indian Firms Illegally Mines Nigeria Solid Minerals' *ThisdayLive* (Lagos, 18 December 2012).

⁸⁵ E. Inbar, 'Israeli National Security, 1973-96' (1998) 555 *Annals of the American Academic of Political and Social Science* 63,66.

⁸⁶ Mikhail Rykhtik, 'Asymmetric Threats and Counter-Terrorism Strategies in Russia' in Robert W. Orttung and Andrey Makarychev (eds.), *National Counter-Terrorism Strategies: Legal, Institutional and Public Policy Dimensions in the US, UK, France, Turkey and Russia* (IOS Press, 2006) 165,166.

⁸⁷ The Nigeria Extractive Industries Transparency Initiative (NEITI) has disclosed that Chinese and Indian companies have been involved in illegal mining of Nigeria's

negative to the country.⁸⁸ It has been identified that Nigeria loses about five hundred thousand jobs to illegal miners⁸⁹ and billions of dollars to illegal mining.⁹⁰ This undesirable situation becomes more worrisome from the security point of view when the Nigerian government acknowledges its awareness of this problem but laments its incapacity to deal decisively with the problem or on the other hand proffers puny security measures to tackling it.⁹¹

It is apparent that the Nigerian government appears helpless without any concrete strategy in place to tackle the monumental economic sabotage occasioned by this illegal activity. However, there are deeper structural deficiencies that might be accountable to the present situation. The first is the political structure of the country. Though by nomenclature Nigeria claims to be a federal state the reality is that Nigeria continues to run a unitary system of government where most powers are centralised within the Federal organs of government while the state are left in a weakened dependent status perpetually reliant on the Federal government's allocation to survive.⁹² In line with this centralized federalization, the Nigerian Minerals and Mines Act (NMMA), 2007 confers all powers relating to granting of mineral rights in all parts of the country to the Federal government.⁹³ Components states blessed with abundant solid mineral resources do not have the power by

solid mineral deposits across the country . See NEITI Sector Audit Report, 2014<www.neiti.gov.ng/solid-minerals/category.pdf > accessed 11 November 2016.

⁸⁸ The Nigerian Senate has noted that the country was losing about N4 trillion to illegal mining activities annually and has ordered investigation into the development. See DAAR Communications PLC,'Nigeria loses N4trn to illegal mining – Senate <<http://www.daargroup.com/daar-group/latest-news/vanguardngr-nigeria-loses-n4trn-to-illegal-mining-senate> > accessed 11 November 2016.

⁸⁹ See the news report of Vanguard newspaper, 'Illegal miners deprive Nigeria of 500,000 jobs–Reps,' *Vanguard* agos, September 29, 2016).

⁹⁰ Kayode Fayemi, the minister of solid minerals development has revealed that Nigeria is losing about \$1.54 billion annually to illegal mining of gold. See Ezekiel Enejeta, 'Nigeria Loses \$1.54bn To Illegal Gold Mining Annually' <<http://www.financialwatchngr.com/2016/03/01/nigeria-loses-1-54bn-to-illegal-gold-mining-annually/>> accessed 11 November 2016.

⁹¹ News report of Premium Times newspaper, 'Buhari laments illegal mining across Nigeria, raises special security team,' *Premium Times* (Abuja, 29 May 2016).

⁹² The concept of federation is the method of dividing powers so that general and regional governments are each, within a sphere, co-ordinate and independent of one another. See K.C. Wheare, *Federal Government* (4th edn Oxford University Press, 1963) ; See also Jeremy Waldron, "Separation of Powers in Thought and Practice?"(2013) 54 *Boston College Law Review* 432.

⁹³ Section 1 ,NMMA 2007.

Nigerian law to grant mineral right necessary for its exploitation.⁹⁴ The absence of ownership right holds strong on the states within Nigeria and has not only disenfranchised the states but serves as a demotivating factor to states from securing these valuable mineral resources from plunder.

The centralization of command and control of the Nigerian internal security apparatus has also been a source of government's helplessness in securing the mineral assets of the country which is spread across almost all the states of the federation. States within Nigeria do not have powers to have their internal security arrangement apart from the Federal.⁹⁵ The size of Nigeria and even the remoteness of quite a number of these solid mineral deposits provide a serious challenge to the limited amount of security personnel in Nigeria in securing all the identified solid mineral deposit in the nation. This strategic incapacitation of the security apparatus due to the size of the country's security facilities compared to the size of the nation has provided a loophole that is being exploited by illegal miners in the country.⁹⁶

Lack of accessible government support fund for the exploitation of solid mineral deposit to small and medium scale industry (SMEs) has national security implication for the Nigerian economy. The absence of such fund has discouraged the flourishing of artisanal and small scale mining (ASM) which could be a quick pivot to the development of the solid mineral sector of the economy.⁹⁷ Artisanal mining is already a legal reality in the Nigerian Minerals and Mining Act 2007 but the problem of functionality of the statutorily recognized artisanal mining is that administrative bottle neck embedded in the mining law appears to upscale artisanal mining to the level of large-scale mining thereby obviating this form of mining. It is this scaling up of the artisanal mining without the support of accessible government fund that may justify re-categorizing this sub-sector of the mining industry as 'disposable illegals'.⁹⁸ It has therefore been suggested that for a vibrant solid

⁹⁴ Section 44 (3) of the Nigerian Constitution 1999 provides that that the entire property in and control of all minerals, mineral oils and natural gas in, under and upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation.

⁹⁵ Only the Federal government has power to run the police, immigration, custom, state security services and other security outfit as the powers to establish these security services is contained in the Exclusive List of the Nigeria Constitution.

⁹⁶ For example the Nigerian Police Force has about three hundred and seventeen thousand men and officers and its jurisdiction covers all the thirty six states of the federation and the Federal Capital Territory as there are no state police. Arase (n 63).

⁹⁷ Sabine Luning, 'The Future of Artisanal Miners from a Large Scale Perspective: From Valued Pathfinders to Disposable Illegals?' (2014) 62 *Futures* 67, 69.

⁹⁸ *Ibid.*, 67.

mineral sector that encourages the development of financing for small and medium scale enterprises (in the likes of ASM) there must be

*...demonstrable stability, consistency and harmony in the development and implementation of policies affecting SMEs. The poor implementation of policies including administration of incentives and measures aimed at facilitating SMEs growth and development have unintended effects on the subsector. This had resulted for instance, into confusion and uncertainty in business decisions and planning as well as weakened the confidence by the SMEs on government's capacity to execute faithfully its programme...*⁹⁹

The politics of policy inconsistency, bureaucratic bottleneck and disbelief in the development capacity of SMEs by the government and policy makers amounts to a national (economic) security risk.

Conclusion

The modern conception of what national security comprises in contemporary security environment has gone beyond the traditional life threatening occurrences often resolved through military and armamentary capacities. It has evolved into recognizing economic drain holes such as illegal mining, illegal trading in cannabis, heroin and cocaine, cyber-crime etc. which cannot be resolved and fought by sheer military might alone but by a coordinated strategy founded on the recognition of these latter asymmetric economic illegalities.¹⁰⁰ The earlier Nigeria sees illegal mining as a national security threat that targets the economic viability and sustenance of the state, the sooner should there arise a comprehensive inclusion of the illegal mining in the national security strategy for effective containment. National security being a variant of strategic thinking concerned with the protection of a states, people, interest and way of life demands the protection of the country's economic interest from the pilfering grasp of organized foreign and local interests.¹⁰¹ The solid mineral deposits of Nigeria are of such strategic interest to the nation that it ought to be given the necessary

⁹⁹ A.O. Orifowomo, O. A. Ogunfolu and M.A. Lateef, 'Developing the Legal Structure for Corporate Matters in Small and Medium Scale Enterprises' being a paper presented at the Nigeria Association of Law Teachers' Conference, Keffi Nigeria, May 2016.

¹⁰⁰ Tim Oliver and Austin Knuppe, 'Britain's Strategic Culture in Context: A Typology of National Security Strategies' in Timothy Edmunds, Jamie Gaskarth and Robin Porter(eds.) *British Foreign Policy and the National Interest: Identity, Strategy and Security* (Palgrave Macmillan, 2014) 206.

¹⁰¹ Ibid 207.

policy directive and protection. Therefore the Nigeria's policy elites should wake up from there slumber.