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**OWNERSHIP AND CONTROL OF NATURAL
RESOURCES IN NIGERIA: RUMOR VS.
REALITY**

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Abstract

The paper examined and interrogated the concept of ownership and control as it affects crude oil and solid minerals right vis-à-vis its impact on the current intergovernmental relations between the federal government and the natural resources bearing states in Nigeria. The paper adopted doctrinal research method. The paper examined two extant legislations namely; the Petroleum Act and the Minerals and Mining Act and found that both Acts have extensive provisions that have adequately provided for and vest ownership and control over crude oil and solid mineral resources in the federal government of Nigeria. The work found that institutional agencies such as the Nigerian Security and Civil Defense Corps and other related bodies actually carry out enforcement of the provisions of the Act against crude oil theft and establishment of illegal refineries in the Niger Delta Region. However, the paper also found that the enforcement mechanism of the Minerals and Mining Act by its institutional framework is rather weak. The work, therefore, recommends, among other things, that the federal government of Nigeria should reduce dependent on crude oil exploration and its attendant proceeds to solid minerals exploration because the country does not only have abundant solid minerals, but it is also because solid minerals have a great and wider international patronage than crude oil.

Keywords: *Crude oil, solid minerals, Niger Delta, Ownership and Artisanal Control.*

I. Introduction

For expediency, clarity, completeness and guidance, it is doctrinal to commence this write-up, at this point, by defining some keywords or terms, thematically. Before then, this paper is purposed to interrogate the extant laws on petroleum resources and solid minerals vis-à-vis the current ownership and control contestation between the Federal Government of Nigeria and the State governments (Onyekakeyah, 2020).¹The work adopts doctrinal research method

The term “ownership” defined as, “the bundle of rights allowing one to use, manage and enjoy property including the right to convey it to others” (Garner, 2009).² However, in the case of *March v. Alabama*,³ it was decided that ownership is not always absolute dominion. It was further stated that the more an owner for his advantage, open up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional powers of those who use it. Ownership may be maintained by law. A person may have what is called in law *de facto* possession in that he is in actual possession of the “*res*,” that is, the subject matter, yet the person is not the real or *de jure* owner as recognized by law or will of the state. There are various types of ownerships, which include the beneficial ownership, that is, interest in trust property, the corporeal ownership – that is, actual ownership inland or chattels, the joint ownership – that is, undivided ownership under the right of survivorship, etc.

The word “control” is defined as the power or competent to regulate or govern by law the *res* or subject matter, such as land and mineral deposits thereto (Garner, 2004).⁴ Both words –“ownership and control”, contextually, connote the exercise of power by law, to regulate or govern the use and manage of natural resources such as petroleum and solid minerals in, under or upon the lands in Nigeria.⁵

The Federal Republic of Nigeria is one of the 54 countries in Africa. Nigeria lies on the Western part of Africa. The country gained a Republic status in 1963 from her British colonial master – about three years after she was granted independence in 1960 by the same British colonial master. The present Nigerian states increased in number to 36 federated states in 1996.⁶

The word, “Rumor vs Reality” is taken from the US web-page setup by Chris Krobs – the US Director (of Cyber security and Information Security Agency (CISA), to fight disinformation arising from or touching on the November 3, 2020 US Presidential Election. The choice of the words rumor vs reality, instead of the traditional words “myths and reality”, is to bring currency into this paper and to underpin the importance and timeouts use of the

¹Onyekakeyah, L. (2020). Zamfara: Can states exploit their mineral resources? m.guardian .ng. Retrieved on 29/1/2020. See also The Minerals and Mining Act 2007.

²Garner, B. A. (2009). *Black’s Law Dictionary*, 9th ed. West Publishing Co. A Thomas Reuters Business, USA, p. 1215.

³*March v. Alabama*, 326 US 501 (1946).

⁴*Supra*, Note 2, p. 378.

⁵FRN 1999 Constitution (as amended), S. 144(3).

⁶Nigerian States: This is how the 36 states were created (Article) – Pulse Nigeria. www.pulse.ng/news/loca. Retrived on 29/11/2020.

coinage now, contextually, in Nigeria, much as it underscores its essence in US Presidential Election, 2020.

The people of Nigeria, that is, the aboriginal people of Nigeria, were colonized by Britain and their natural resources exploited, partly to support the British government in Nigeria and on the other part, their resources were transferred to Britain as new materials for use by British home industries.⁷ Arguably, the period of colonization in Nigeria ended in 1960. Paradoxically, while colonialism with its direct control ended in Nigeria, in 1960, internal colonialism took over from 1960 through 1996 – when Nigeria became a 36-state country, with Abuja becoming the Federal Capital Territory, till date (Olawale, 2018).⁸

Nigeria is said to be a federation as evidenced in the Constitution of the Federal Republic of Nigeria.⁹ However, a close reading of the Constitution reveals that there are many provisions therein which make the constitution more of a unitary government, as the powers, functions and institutions of government are heavily centralized with the component states operating as appendages of the central government.¹⁰

There are obvious contradictions inherent in the present Nigerian Constitution. For instance, the skewness of this Constitution to unitary system of government has constrained many well-meaning Nigerians, socio-cultural groups, different geopolitical zones, traditional rulers and religious leaders to demand for the restructuring of Nigeria, in terms of powers devolution from the centre, to the states, alongside a reviewed revenue formula in favor of the states and local governments in Nigeria (Akintola, 2017).¹¹

Like the colonial masters, the federal government takes greater percentage of the federation allocation.¹² In order to concretize the federal government hold on governance and resources at the centre, the government immediately after the first military coup in Nigeria, enacted various laws purportedly in response to the resolutions of both United Nations General Assembly¹³ and the Organization of Petroleum Exporting Countries (OPEC)¹⁴ on permanent sovereignty of states over their natural resources – which required the then colonialists to ensure that they did not continue to deny the colonized countries in Africa, such as Nigeria, the right to benefit maximally from the proceeds of their natural resources – which were being rapaciously explored and exploited by the colonialists. Also, the federal government upon gaining independence and republic status in 1960 and 1963, respectively, established her own national oil company called, the Nigerian National Oil Company (NNOC), in 1971, and at the same time joined OPEC in 1971. In 1977, Nigeria established

⁷Shokpeka, S. A. and Nwaokocha, O. (2009). British Colonial Economic Policy in Nigeria, the Example of Benin Province 1914 – 1954. *Journal of Human Ecology (Delhi, India)*, 28(1), 57 – 66.

⁸Olawale, J. (2018). Top 6 Reasons why Nigeria Adopted Federalism. www.legit.ng. Retrieved on 29/11/2020.

⁹*Supra*, Note 5, Preamble.

¹⁰*Ibid*. See for example in SS. 39(2) – Proviso, 162 generally, 214, 215(6), 237(1), 249(1), 285(1), 2nd Schedule Legislative List Pt. 1, 2nd Schedule, Items 16(6), 11, 12 and 3rd Schedule, Items 14(1) & (2)(a) – (c) and 15(a), etc.

¹¹Akintola, K. (2017). Devolution of Power, Review of Revenue formula Long Overdue – Stakeholders. businessday.ng>article>stake. Retrieved on 29/11/2020.

¹²Allocation of Revenue (Federation Account) Act Cap 16 LFN 2004 S. 6(1), (2) and (3) – where the Federal Government is allocated revenue on monthly basis of 48.5 percent, the State governments 24 percent, the local governments 20 percent, special funds 75 percent and the Federal Capital Territory (Percent of the Federation Account).

¹³Resolution 1803 (XVII) of 14 Dec. 1962.

¹⁴Resolutions of 1969/1971. See OPEC's Objectives. www.opec.org>publication. Retrieved on 30/11/2020.

the Nigerian National Petroleum Corporation (NNPC) to replace the former NNOC (Onyekakeyah, 2020 and Shokpeka & Nwaokocho, 2009).¹⁵

The various laws¹⁶ enacted on ownership and control of petroleum and solid mineral sun mistakably vest title right in the federation of Nigeria. The states and their local governments that bear crude oil and/or solid mineral resources in, under or upon any land in their states or in, under or upon the territorial waters and the exclusive economic zone of Nigeria are being paid at least 13 percent derivation money in line with the constitutional provisions and the extant Act of the National Assembly.¹⁷Of note, the two extant laws, arguably,each operates in the Northern and the Southern parts of Nigeria, with or without equal force. For instance, the Petroleum Act and its regulations are operational currently in the oil and gas exploration in the southern part of Nigeria – where commercial quantity of crude oil has been found from 1956 at Oloibiri and has been exploited continuously to run the economy of Nigeria from the 70s.

The Minerals and Mining Act which is a general law to all states in Nigeria is, arguably, operational in the Northern states but it is mostly in breach due to dearth of political will, with which to enforce this law on the part of the federal government. The North has abundance mineral resources which still remain inadequately tapped by licensed miners. The federal government' policy on diversification from oil and gas to non-oil sub-sectors, is yet to weigh into the exploration and exploitation of other mineral resources abundantly found in all the geopolitical zones of the control This approach is not economically wise though the approach may be politically wise because it is said that political consideration in Africa often overrides economic considerations

II. Rumor Vs Reality: Ownership and Control of Mineral Resources in Nigeria vis-à-vis the Extant Legislation

(a) The Petroleum Act

The Petroleum Act and its extant regulations¹⁸ apply to due acquisition of exploration licenses and leases of oil and gas production in Nigeria as well as administration of the upstream, middle stream and downstream of the oil sector. The Act establishes the NNPC¹⁹ as a federal agency charged with the administration of all the processes relating to petroleum industry and enforcement of all regulatory measures relating to ownership and control of the petroleum sector in Nigeria.

The NNPC operates four refineries currently in Nigeria, for the purposes of refining crude oil for domestic consumption as well as for export. Port Harcourt has two refineries with installed capacity of 210,000bl/pd production, the Warri refinery has 125,000 bopd and

¹⁵Akinjide-Balogun, O. (2020). Nigeria: Legal Framework of the Nigerian Petroleum Industry. *mindag.com*. Retrieved 21/11/2020.

¹⁶(1) Petroleum Act Cap P. 10 LFN 2004 S. 2(1) & (2). (2) Exclusive Economic Zone Act Cap E 17 LFN, 2004 S. 2(1). (3) Minerals and Mining Act No. 20, 2007 S. 1(1) & (2). (4) Constitution Cap C. 23 LFN 2004, S. 44(3).

¹⁷*Supra*, Note 5, S. 162(2) & (3). See also Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004, S. (1) & (2).

¹⁸Petroleum (Drilling and Production (Amendment) Regulations 2019 also see Oil Prospecting Licenses (Conversion to Oil Mining Lease, ETC.) Regulations, 2003, etc.

¹⁹Acts No. 35, 2007, S. 1.

the Kaduna refinery with installed capacity of 110,000 bopd.²⁰ However, due to astronomical growth in the population of Nigerians with heavy dependent on fossil fuel and coupled with hydra-headed corruption in the NNPC and in the country generally, the four refineries have not produced up to one third of their installed capacities. Nevertheless, there has been reported turn-around maintenance works routinely carried on these refineries with billions of naira going down the drain and the refineries have regrettably failed to produce refined products to meet domestic consumption. The federal government of Nigeria resorted to issuance of licenses to individuals to import refined petroleum products to meet the shortfall in the aggregate demand of the products in Nigeria.²¹

The precarious situation of the NNPC in terms of its inability to refine enough petroleum products for domestic use, the crisis of underdevelopment in the oil bearing communities, especially in the Niger Delta Region, and other oil bearing states in the southern part of Nigeria and the alluring economic benefits from crude activities, the jobless youths in the Niger Delta Region decided to set up local and mark-shift refineries to refine crude oil (either stolen from busted pipe lines or bunker fuel) and refine to eke out a living (Balogun, 2015).²²

The refineries set up by the Niger Delta youths have been described as illegal refineries and as a consequent, are destroyed in their numbers. The refineries are said to be illegal because of the sources of the crude oil materials used and the poor methods and standard of refining of such crude oil by these youths. The destruction and/or disposal method of the seized refined products and the equipment used from the “illegal refineries” by the men of the Nigerian Security and Civil Defense Corps (NSCDC) by setting on fire of such products and equipment has attendant climate change implications.

In order to halt crude oil theft and illegal refineries and to create employment in the oil bearing communities, the federal government in 2018 granted modular refinery licenses to about 13 companies with 6 numbers now ready to start operations (Olaoluwa, 2020).²³ One of such modular refineries is the Waltersmith Modular Refinery Limited, which is located in Ohaji, Egbema, Imo State. The refinery is believed to be owned by Abdulrazag Isa, who is the Chairman of Waltersmith Company, the Nigerian Content Development Monitoring Board (NCDMB), holds 30 percent equity and the Africa Finance Corporation, and provides senior secured credit facility. The Waltersmith refinery has initial commissioned module of 5,000, while other modules of 25,000 and 20,000 BOPD respectively, are coming on board soon and that would increase Waltersmith refinery’s capacity to 50,000 BOPD (Reed, 2020).²⁴

²⁰Refinery – Department of Petroleum Resources. [www.dpr.gov.ng>downstream>re...](http://www.dpr.gov.ng/downstream/re...) Retrieved on 30/11/2020.

²¹Ogbuigwe, A. (2018). *Refining in Nigeria: History, Challenges and Prospect in Applied Petrochemical Research*, 192. Link-springer.com. Retrieved on 30/11/2020.

²²Balogun, T. F. (2015). Mapping Impacts of Crude Oil Theft and Illegal Refineries on Mangrove of the Niger Delta of Nigeria with Remote Sensing Technology. *Mediterranean Journal of Social Sciences*, 6(3). See Egbejue, E. (2019). Nigeria’s Refining Renaissance. [www.petroleum-economist.com>ni...](http://www.petroleum-economist.com/ni...) Retrieved on 30/11/2020.

²³Olaoluwa, J. (2020). Six Modular Refineries billed to commence operation, FG says. www.narrametrics.com. Retrieved on 20/11/2020.

²⁴Reed, Ed. (2020). Waltersmith Refinery Ready for October Start. [www.energyvoice.com>africa>wa...](http://www.energyvoice.com/africa/wa...) Retrieved on 30/11/2020.

Other modular refineries that are under construction or completion stages are the Ogbelè Expanded Refinery in the Eastern Nigeria, with 11,000 BOPD, the OPAC refinery in Kwale in the Midwest, with installed refining capacity of 7,000 BOPD, the Edo Refinery, with capacity of 6,000 BOPD and the Dangote Refinery, with capacity of 400,000 BOPD (Ogunson, 2020).²⁵ The policy of the federal government of Nigeria is to ensure that 10 percent of Nigeria's crude oil is processed in modular refineries. To demonstrate the federal government's readiness to match its words with actions, the President shortly after inaugurating the Waltersmith Modular Refinery ordered that crude oil supply be made to Waltersmith Modular Refinery to enable it to start its refining activities.²⁶

(b) Minerals and Mining Acts²⁷

This piece of legislation seeks to regulate solid minerals mining processes from reconnaissance, exploration licensing to mining lease as well as the administration of the entire mining sector in Nigeria. The solid minerals are found in all the states across Nigeria. Nevertheless, these natural endowments are in abundance in the Northern part of Nigeria.²⁸

By the provisions of the Minerals and Mining Act 2007, the right to explore and take away such solid minerals is vested in the federal government of Nigeria.²⁹ The Federal Ministry of Mines and Steel Development, which was established in 1985, as the supervisory ministry, among other functions, is to encourage the development of Nigeria's solid mineral resources, formulates policy, provides information on mining potential and production, regulates operations and above all, generates revenue for the federal and state governments. The core mandates of the Ministry of Mines and Steel Development (FMMSD) are to contribute to the diversification of Nigeria's revenue base, create jobs and broaden the scope of opportunities available to Nigerians for economic advancement.³⁰

For completeness, the functions of the Minister of Mines and Steel Development are spelt out in Section 4(a – u) of the Act. Section 6(1) of the Act establishes Mining Cadastre Office which is the official juristic body charged with the responsibility for the administration of mineral titles and maintenance of cadastre registers. The cadastre office is headed by a Director General.³¹ The mining cadastre office is a body corporate that can sue and be sued with power to hold, acquire and dispose of its movable and immovable property.³²

The functions of the Mining Cadastre Office are contained in Section 6(5)(a – d) of the Act.³³ These functions include: to consider applications for mineral titles and permits to issues, suspend and upon the written approval of the Minister, revoke any mineral title and to

²⁵Ogunson, F. (2020). *Nigeria: Three Refineries Completed, two under Construction*. africaoilgasreport.com. Retrieved on 30/11/2020.

²⁶Buhari Approves Crude Oil Supply to Waltersmith Refinery. sunnewsonline.com. Retrieved on 30/11/2020.

²⁷No. of 2007.

²⁸Yahaya, A. (2009). *Major Mineral Resources in Nigeria: Full List & Locations*(2020). Nigeriaforpedia.com.ng/major-... Retrieved on 1st December, 2020.

²⁹*Supra* 1. S. 24(13), 1(1) & (2).

³⁰www.minesandsteel.gov.ng.

³¹*Supra* Note 27, S. 5(3).

³²*Ibid*, S. 5(2).

³³*Ibid*, 5(a – d).

receive and dispose of applications for the transfer, renewal, modification and relinquishment of mineral titles or extension of areas, etc.³⁴

The Act provides for the creation of a Central Mining Cadastre Office in Abuja as the headquarters. The office has exclusive authority and jurisdiction over the whole of the country. There are also zonal offices of the Central Mining Cadastre Office to be established in the different zones of Nigeria.³⁵

There are different mineral titles created under the Minerals and Mining Act, namely: reconnaissance permit, exploration license, small-scale mining lease, mining lease, quarry lease and water use permit.³⁶ Prior to the present policy of the federal government on solid mineral sector development in Nigeria – where seven or eight solid minerals were prioritized for ease of exploitation by the federal government, most of the activities in the sector were and are carried out under artisanal small scale form by the locals and for their social and economic benefits.³⁷ Under modern solid mineral exploration rights and/or permits, a holder of mineral right is required to negotiate a contract in the form of Community Development Agreement (CDA) with local communities to ensure that the local communities within which mining or quarrying activities are exploited receive economic and social benefits.³⁸ Then CDA is akin to a Memorandum of Understanding (MOU) usually entered into between the international oil companies (IOCs) and the oil bearing communities under corporate social responsibility.

There are many mining firms and workers mostly spread across states in the Northern part of Nigeria.³⁹ Some of the firms are Agropet Nigeria Limited, Eta-Zuma Group Ltd., Golden and Resources International, Multiverse Plc., Palladium Mining Ltd., Red Mining, SBOG Nigeria Ltd., Southfield Com. Nigeria Limited, Greenfield Metals Limited, Julong Dredging and Mining Machinery Co. Ltd., Kinfield Energy Ltd., Kohath Investment Group, Stepstones Global Services Nigeria Ltd. and Western Goldfields Group Ltd.⁴⁰

In the North West, North Central and North East, there are many reported incidents of illegal mining activities being carried out by illegal miners called “Zama Zamas”. These illegal miners are made up of the locals and foreigners. These are local artisanal miners are organized by syndicate bosses to mine solid minerals for them at ridiculous prices. The governments in states like Zamfara, Bauchi and Kebbi, etc., often negotiate with the sponsors of illegal miners in bid to reduce the associated violence conflicts and banditry incidents in

³⁴*Ibid*, 5(a – b)

³⁵Section 6.

³⁶Oladunjoye, O. and Okonkwo, N. (2015). The Mining Sector in Nigeria – KWM. www.kwm.com/insights/the-min... Retrieved on 1 Dec., 2020. See also SS 47, 48, 49, 50, 51, & 52 of that Act.

³⁷Background of Solid Mineral Sector in Nigeria. [www.BankGeneral. Geological Survey of Denmark and Greenland, GECIS \(DK\) in association with Bureau of Minerals and Petroleum \(Greenland\) Minre Associates \(NG\) Meyetty Nigeria Ltd. \(NG\). documents.worldbank.org](http://www.BankGeneral.GeologicalSurveyofDenmarkandGreenland,GECIS(DK)inassociationwithBureauofMineralsandPetroleum(Greenland)MinreAssociates(NG)MeyettyNigeriaLtd.(NG).documents.worldbank.org)>. Retrieved on 1/12/2020.

³⁸Nigeria 2018 Mineral Sector Report-Extractive Industries Transparency. TajudeenBadejo& Co. (2019). Transparency SolidMinerals Audit (SMA) Report – Full Report. Eiti.org/files/documents. Retrieved on 1/12/2020.

³⁹Tersoo, A. (2018). 10 Leading Mining Companies to Extract Gold, Ironand Other Minerals in Nigeria. www.legit.ng. Retrieved on 2/12/2020.

⁴⁰List of Mining Companies in Nigeria – Finelib.com. www.finelib.com/business/mining. Retrieved on 2/12/2020.

the Northern States The federal government in turn often drafts soldiers to quell violence incidents and many arrests have been made occasioned by illegal mining activities across the country. In spite of the existing ban on illegal mining, 80 percent of mining is carried out in the form of artisanal small scale mining (Ogbonna, 2020 and Tukur, 2019).⁴¹

Artisanal small scale mining is no doubt a global phenomenon in the solid mineral exploration subsector. But the practice is fraught with violence and environmental degradation

III. Discussion

From the information and data aforementioned relating to the exercise of ownership and control vis-à-vis the various petroleum laws and their regulations, the federal government appears to exhibit political will by destroying illegal refineries and the equipment used by some unscrupulous youths of the Niger Delta and thereby reducing incidents of crude oil theft in the zone. The federal government has also issued licences for the establishment of modular refineries in a bid to refine crude oil to augment the shortfall from the four refineries outputs in Nigeria. The central government has recently commenced town hall meetings with the governors and major stakeholders, particularly, in south-south geopolitical zone in a bid to wade off rising tensions arising from crisis of underdevelopment, poverty, insecurity and environmental degradation in the country.

In the solid mineral sector, not much has been done to change the olden pattern of artisanal form of mining. The statistics in this work show that the federal government, despite the existent of the solid mineral legal regimes, has not been able to deploy enough political will to curb illegal mining, especially, in the North. This is also the case that in spite of the fact that there is urgent need to shift reliance from crude oil to solid mineral exploitation as a more sustainable path to national growth and development, the federal government has become complacent with crude oil exploration.

Judging also by the attitude of the federal government of Nigeria towards the enforcement of its constitutional and statutory ownership and control rights as it affects the crude oil and solid minerals in the South and in the North, the federal government has obviously indulged the illegal mining activities in the north while the so-called illegal crude oil refiners in the Niger Delta are being arrested, tried and jailed.

The ongoing agitations by most Nigerians across the geopolitical zones for resource control and/or restructuring of the country partly arise from trust deficit between the federal government and its citizens due to alarming and massive inequity and bad governance in the country.

⁴¹Ogbonna, M. (2020). How mega mining is driving local conflicts in Nigeria. Reliefweb.int... Retrieved on 2/12/2020.8 Tukur, S. (2019) Zamfara Violence: Nigerian Govt bans mining activities in troubled state – premier times ng.com. Retrieved on 14 December, 2020

IV. Conclusion

The conversation and interrogation around ownership and control over petroleum and solid mineral resources in Nigeria, arguably, remain in the realm of rumor because the subject matter is in cacophony situation especially so, because most Nigerians are driven and influenced by religious and ethnic sentiments and not by nation building spirit which ought to be propelled by the collective will of the people.

Indeed, it is a reality because ownership and control of crude oil and solid minerals has been formally legalized except that the institutions with which to enforce such title rights under the existing laws are weak. This research work is limited by funds in the area administering questionnaires in North Central and North East Zones of Nigeria, hence, there is a need for further research into the subject matter. The author has no conflict of interest in the subject matter of this write-up.

V. Recommendations

1. The federal government needs to first educate the aboriginal people in the Northern states through the Northern Elders Forum and Arewa Consultative Forum about its mining and steel policy as it affects the Nigerian economy and their social and economic well-being.
2. The investor in solid minerals should honor the spirit and letters of the Community Development Agreements (CDAs) entered into with the local communities in order to dissuade the youth from engaging in illegal mining activities.
3. The state governments should be encouraged to discharge their constitutional functions with a view to ameliorating the socio-economic well-being of the citizens.
4. Zama Zamas sponsors should be dealt with decisively.
5. The federal government needs to quickly look into the agitations by many elite and groups for restructuring of the country with emphasis on devolution of powers from the centre to the states and local governments respectively, with a reviewed revenue formula in favor of the state and local governments.

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Tersoo, A. (2018). 10 Leading Mining Companies to Extract Gold, Iron and Other Minerals in Nigeria. www.legit.ng. Retrieved on 2/12/2020.

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