

# Mining for Economic Growth

The new Sustainable Development Goals (SDGs) came into effect on 1st January 2016 with 17 goals and 169 targets which Nigeria adopted along with several other nations at the 70th United Nations General Assembly (UNGA) in New York in September 2015. This new set of goals target tangible improvements in critical

socio-economic areas such as the elimination of hunger, water and sanitation, economic growth, climate change, human settlements, livelihoods and employment, inequalities, energy, infrastructure and industrialisation. All are laudable and achievable goals however Goal 8, 'promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all' stands out as very important because if we as a nation want to succeed with this particular goal a good percentage of all the other goals will fall into place naturally as a knock on effect. President Buhari has quite rightly highlighted agriculture and mineral resources as two specific sectors that he will be focusing on and one can readily see the great potential effect these sectors could have on the nation's economic growth, providing massive employment opportunities, investments, industrialisation, social development and hopefully a broadly better standard of living.

The drastic fall in oil prices may someday be looked upon as a blessing in disguise as we as a nation are now forced to look inwards for our sustainability. Take the mining sector for example, nearly every state can account for mineral deposits of some sort. Therefore the government's plan to diversify its mineral resources and its revenue base is a most welcome, albeit well overdue development. In re-strategising and reforming the mining sector, the government has shown focus by seeking the assistance of the United States to determine the quantity and quality of solid minerals deposits available in the country. Data collection of the solid mineral deposits is key and the right direction to go in as the Solid Mineral Ministry makes headway in its reforms.

The recent statement by the Minister of Solid Minerals Dr. Kayode Fayemi encouraging states to exploit their mineral resources by either setting up their own investment corporations or by going into partnership with the private sector, notwithstanding the federal government's exclusive right to mine minerals, is a giant stride by this administration in the right direction. He however advised that the states go about such exploitation in a legal manner that will not interfere with allocations already given to other stakeholders.

While this policy statement from the Minister is encouraging and does represent the present administration's expressed support for the development of the Solid Mineral industry in Nigeria, it also shows intent by the Federal Government to collaborate with the States. However, the practical implications of the Minister's statement is that the government is challenged by legal hurdles including item 39 of the Exclusive Legislative List of the Constitution which covers mines and minerals...oil mining, geological surveys and natural gas, the Mines and Minerals Act 2007 and the Petroleum Act 1969 which vest

the control, regulation and ownership of all mineral resources in the federal government while land ownership is exclusive to the state governments. The combined effect of these laws is that the federal government is the sole approving authority for mining licences and the regulation of the industry. This has far-reaching implications for the purposeful development of a solid mineral policy in the states.

To take an unprecedented step, which will then set the current administration apart from previous expressions of intention about the Mining Industry, the Federal Government should take the bold step of amending item 39 of the Exclusive Legislative List. The Constitutional amendment is simple enough to avoid any major partisan arguments regionally or across party-political lines.

There is no gainsaying that if states were allowed to exploit their mineral deposits there would be less dependence on allocations from the federal government. What is required is a framework whereby the states and the federal government can effectively collaborate in this regard. For example before the oil boom, the Nigerian economy was dependent on agriculture and mining. Coal from Enugu alone was enough to power railways and generate electricity. Currently coal is found in some 13 states of Nigeria but is not being commercially exploited in any of them. Nigeria was also a major producer of tin and columbite mainly found in Jos. Gold found in Oyo, Osun, Kogi, Niger, Kaduna and Sokoto is a huge potential source of internally generated revenue for these states. Appropriate legal frameworks will need to be ironed out to ensure there are fair and reasonable mutual benefits. The sharing formula of taxes accrued must be agreed and tax incentives should be considered, as double taxation is a burden suffered by most legitimate companies. Furthermore joint monitoring of the mines and registration of all levels of mining concerns right from the small scale upwards will be important.

Other countries have introduced models where the state and federal government share ownership of resources. In Australia the relevant state/territory owns almost all the mineral resources in that state/territory and is the authority that grants mining licences. In the United States of America the federal, state and local governments control about 1/3 of all mineral rights but in special circumstances rights are split between 'surface owner rights' and 'mineral estate rights'. Some states with 'split estate' systems are Texas, Oklahoma, New Mexico, Pennsylvania, Colorado, Louisiana and New Mexico. Therefore rights to a particular piece of land can be owned by two separate parties; the party who controls the mineral rights can develop and extract any subsurface resources. On the other hand, 'fractional ownership' refers to a situation where the surface owner owns about half of the mineral rights beneath their property, probably sharing with other family members, a company, or a government entity. In 'severed ownership', the homeowner has no mineral rights because ownership is vested in the federal government.

Another reason why states should be granted

more control over their solid minerals is that they would be in a better position to stop artisanal mining also known as illegal mining which has contributed to the loss of earnings from the mining sector. The reformation of this sector will require the protection of the community against environmental degradation caused by indiscriminate mining. For example in Ogun State in Igun-Ijesha over 2,000 pits have been dug by miners in their search for gold. The miners proceed to sell the gold they extract at prices well below global levels and in continued, unchecked violation of s. 94 of the Nigerian Mineral and Mining Act 2007, which states that the purchase of minerals without an officially issued license is prohibited. With joint collaboration the state government can have an effective mineral and environmental monitoring committee which should advise the Ministry of Environment on environmental degradation and the effects on climate change such as loss of land to natural causes through flooding and erosion. With that the ministry stands a better chance of fulfilling its supervisory and monitoring obligation under s. 17 of the Minerals and Mining Act. Similarly, in Ebonyi state illegal mining activities in Afikpo, Ivo, Ohaukwu and Ezza LGAs have resulted in adverse environmental impact for the host communities including health hazards and the destruction of their homes. The issue of reclamation of excavated areas has to be seriously considered to restore such areas to their former use as farmland, a win, win situation.

Looking back at several mining projects that have not been completed by the Federal Government which could have been beneficial to the mining sector we cannot but mention the Ajaokuta Steel Mill in Kogi, the former Nigerian Mining Corporation and the Aluminium Smelting Company at Ikot Abasi, Akwa Ibom. The situation of the Ajaokuta Steel Mill is particularly painful because it is the largest integrated steel company in West Africa and it cost approximately 5 billion Naira then. It was reported that the project reached about 98% completion before it was stopped in 1992. There have been several attempts to complete the plant and render it functional but these have all been unsuccessful. In 2004, President Olusegun Obasanjo's administration concessioned the plant to Global Infrastructure Holdings Limited (GIHL), an Indian firm. Unfortunately the complex was not properly run by GIHL, leading to the cancellation of the agreement by the Umaru Yar'Adua Administration, GIHL took the government to the London Court of Arbitration where the case and the fortune of the plant is now held down. According to industry experts, there is space for expansion into the 2nd and 3rd phases of the plant. It was reported that there was a three phase commissioning sequence which was adopted for implementing of the project. At the first phase the company was expected to produce 1.3 million tonnes of steel per year and to progress to 2.6 million tonnes of steel per year in the second phase. In the third phase the company was expected to produce 5.2 million tonnes of steel per year. According to the management, phase one was



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estimated to be technically ready by 1994; that meant that 98% of the equipment and steel structures had been erected before the GIHL contract was terminated. Reviving the Ajaokuta Steel plant will not only ensure the employment of indigenes of the state but will be a major source of foreign investment.

The preceding paragraphs make a very compelling argument for the amendment of the 1999 Constitution and other relevant laws such as the Mines and Minerals Act 2007 and the Petroleum Act to give full backing to the joint exploitation of mineral resources by the federal and state governments.

At the heart of the discourse about the development of the solid minerals sector in Nigeria is the question, 'who controls the exploitation of these resources in the state?' There are a number of ways to address this question and we begin with the legal position on the issue.

The crux of the issue and the main argument states have always held against actively pursuing the exploitation of mineral deposits within their boundaries revolves around item 39 of the Second Schedule of Legislative Powers Part I - Exclusive Legislative List in the Constitution. Section 4 of the Constitution defines the Legislative authority of the Nigerian Federation and constitutes this authority in the National Assembly and specifically section 4(3) excludes the Houses of Assembly, the state legislative authorities, from legislating on matters within the Exclusive Legislative list in the Second Schedule to the Constitution. Furthermore Section 4 (3) stipulates that 'The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.' The legal significance of this is therefore that states cannot formulate a state-centric policy on the mining of solid minerals, nor does any state have the proprietary right inherent in mineral resources (solid or otherwise).

As the foundation is being built to reform the mining sector, apart from the call to amend the Constitution accordingly, there should be well spelt out (and funded) coordination between federal and state agencies that have jurisdiction over mining. This should go beyond just profit sharing but sharing of knowledge, best practices, and capacity building so that the state can actually do its job at the local level to facilitate a strengthened mining environment and meet the development needs of its citizens. For example, the federal government can provide value added to states by recognising that the state must balance economic, agricultural, land, water, labour and safety issues etc. and help them to deal with these issues as they arise (funding, expertise, other in kind support).

I would also suggest in the area of incentives that building in concrete local content targets can help sweeten the deal for getting states engaged in the mining sector with the federal government: e.g. financial in the form of grants or other incentives that make it advantageous for local companies (within the bounds of fair competition and constitutional restrictions) to participate in everything from actual mining to mining related services.



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