South Africa-Nigeria Forging Ahead with Solid Minerals

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A couple of weeks ago South African President Jacob Zuma was in Nigeria on a state visit where he had the honour of being the first African leader to address a joint sitting of the National Assembly since the return of democracy in 1999. I was privileged to attend The South Africa-Nigeria Business Forum at the Transcorp Hilton with a good number of South African and Nigerian businesses extremely well represented. Mr. Foluso Phillips, Chairman of the Nigeria-South Africa Chamber of Commerce gave an eloquent speech in which he said 'let us define the philosophy of our engagement by finding unity of purpose in the economic aspirations of both our countries.' This President Zuma did through his speech which was particularly impressive and one came out feeling that finally, South Africa and Nigeria will indeed form a partnership for the common good of both countries and the continent as a whole. The relations between the two countries he said, will be managed through a Binational Commission which will be chaired by President Buhari and himself and they will take full responsibility for managing relations between the two leading economies on the African continent. He further congratulated Nigeria on the measures that have been put in place to promote the ease of doing business and to revive some sectors of the economy. For example, the implementation of the Nigeria Industrial Revolution Plan, which provides actionable industrialisation plans in specific sectors such as agro-processing, mineral beneficiation also the oil and gas sectors. That the Industrial Development Corporation (IDC) has been set up to promote economic growth and industrial development to support commercially sustainable industrial development and innovation to benefit both South Africa and the continent as a whole. With respect to Nigeria, the IDC is in discussions with the Ministry of Solid Minerals Development on future collaboration to develop the mining sector in Nigeria. The abundant mineral wealth in our continent which is making other continents richer, must improve the lives of Africans. It must help us defeat poverty, disease and helplessness amongst our peoples he noted. The South Africa-Nigeria Business Council will be formalised to assist in managing and advancing the economic relations between the two countries. A positive outlook indeed which I believe must be assiduously and consistently pursued by both countries.

This therefore means that we must cash in on this reinvigorated relationship with South Africa and collaborate in taking the solid mineral sector to its rightful position. Only last week the House of Representatives mandated its Standing Committee on Solid Minerals Development to invite all stakeholders involved in the process of mapping, licensing, mining and exportation of solid minerals in order to determine the extent or otherwise of compliance with the Mining Act 2007. Also last week the law firm of Aluko and Oyebode partnered with the Ministry of Solid Minerals in a roundtable on 'Removing Legal and Regulatory Obstacles to Mining Investment in Nigeria'. A well attended roundtable ensued which had in attendance Abubakar Bawa Bwari, Minister of State, Solid Minerals Development, Bauchi State Governor Muhammed Abubakar, Nasir el-Rufai, Governor, Kaduna State, Senator Joshua Dariye, Chairman, House Committee on Solid Minerals Development, Attorneys General and Commissioners for Justice Kaduna State Amina Dyeris-Sijuwade, Kano State Hon. Mohammed Haruna Falaki and Plateau State Jonathan Mawiyau, Commissioners of Commerce & Industry of Zamfara State Fatima Umar-Shinkafi, Bimbo Ashiru Ogun State, Mohammed Bello Sokoto State, Commissioner of Solid Minerals Development and Olawale Fapohunda former Attorney General of Ekiti State, Oyo and Kogi States were also represented, among a host of others in the industry.

While mineral potential is obviously a critical consideration in encouraging or dissuading mining investment, the impact of government policies also plays a significant role. The reality of the decline in precious minerals places an added consideration on investors to search for countries with attractive geology and competitive policies. To put this into perspective, according to data from the World Bank, commodity prices for metal and minerals in 2015 have decreased by almost 40% since 2011. The decline for precious metals—gold, platinum and silver—during the same period was just over 30%. In particular when prices are low and the market is uncertain, as it is now, onerous costs and uncompetitive policies can discourage investment in exploration endeavours, thereby diminishing the chances that a viable deposit will be found and eventually developed into a producing mine.

In the 2014 Annual Survey by the Fraser Institute of the Mining Industry, Nigeria was ranked among the 10 least attractive jurisdictions in the world for mining investment. Along with Hungary, Kenya, Honduras, Solomon Islands, Egypt, Guatemala, Bulgaria and Sudan. Nigeria did not feature in the 2015 survey of the Institute because of insufficient response to its survey. That in itself speaks volumes about the state of mining in Nigeria.

The Roundtable on Removing Legal and Regulatory Obstacles to Mining Investment in Nigeria was convened in furtherance of the consultative process around developing a practical road map for the sector. The roundtable agenda included: a review of the existing legal and regulatory regime for the mining sector. Here participants identified the strengths of the existing framework as well as deliberated on issues of uncertainty concerning the administration, interpretation, or enforcement of existing laws and regulations; discussed uncertainty concerning environmental regulations (stability of regulations, consistency and timeliness of the regulatory process and regulations not based on science); regulatory duplication and inconsistencies (including federal/state, inter-departmental overlap, etc.); the Legal system (achieving legal processes that are fair, transparent, non-corrupt, timely and efficiently administered) and the taxation regime (including personal, corporate, payroll, capital and other taxes and complexity of tax compliance) Also on the agenda was discussion on practical approaches for de-risking the mining sector for local and foreign Investment. The discussion further included ways to enable legal certainty and clarity for investors (proposals for a Memorandum of Agreement between the Federal Government and relevant States) and a review of proposals and modalities for joint venture arrangements. Suggestions for a legislative agenda for the Mining Sector were equally entertained as were those examining possible roles for the National and State Houses of Assembly in enabling the appropriate climate for mining investment. The Minister, of State, Solid Minerals Development, Bawa Bwari, noted that the roundtable was convened in furtherance of the process of developing a road map for the sector. Specifically because it is an important component of the consultation process embarked on by the Ministry of Solid Minerals Development to ensure that the concerns, expertise and experience of important stakeholders are all included in the development of the road map.

He further added that the Federal Ministry of Solid Minerals Development is determined to reverse this perception and that as soon as the report of the Road Map from the Committee is received they we will begin an aggressive implementation of key areas of intervention. I have no doubt that the discussions and the report from this roundtable will go a long way in enhancing the quality of the roadmap. It is necessary that we partner with the states because all developments begin with the states. It is worthy of note that the Committee is on course and will submit its roadmap in a couple of weeks. The Governor of Bauchi State adjudged this roundtable as timely, especially since the Federal government is looking at diversifying the nation's economy. The Ministry, however he observed does not though recognise other tiers of government in practice and states usually receive little or no revenue from mining in their territory. This he gave as the reason that legislation regarding the Solid Minerals Ministry needed to be revamped, especially since there is traceable commitment from the part of the federal government, in collaboration with the current Minister.

Mr. 'Gbite Adeniji, a discussant at the roundtable noted that there have been 7 ministers since the 2007 Minerals and Mining Act, stating that there cannot be a lasting policy if there are incessant changes in the ministers as it shows an unstable environment. He gave the following reasons for why the sector was static namely: i) A poorly implemented sector reform programme ii) Failure of the Government to maintain the momentum on sector reform iii) Frequent changes of sector leadership iv) Exploration costs too high in Nigeria relative to competing countries; v) Absence of buy – in by related regulatory agencies (Customs and Immigration especially) vi) The business environment not friendly to investment and vii) The country's reputation for civil strife, corruption, environmental degradation, fraud and poor infrastructure.

A lead discussant Olasupo Shasore (SAN), former Attorney General of Lagos State noted that there is indeed a clash between the industry and the country. The industry does not always want what the country wants, in the sense that the industry's interest with profit clashes with the state's interest in revenue and the industry's interest in extraction conflicts with the state's interest to protect. The issue he said borders on the relationship between these two entities namely:

- The sector does not need a revolution but to look at the cycle of evolution to determine the stage at which Nigeria is vis-à-vis the stages of other countries;
- Over concentration of power in the federal government (centralism); this has become synonymous with poverty: the authority of the centre over mining should be reduced to bring the states in;
- Uncertainty in the real ownership of land;

Solutions he noted are:

- Memorandum of Agreement between the state and federal government (differentiate between federal government and national; where federal government refers to the administration at the centre, national refers collective ownership by every citizen of the nation);
- Create heads of agreements which must represent the national interest and will elicit the cooperation expected of both state and federal government operatives that is currently lacking, also ensuring that said cooperation is based on the fiscal interest;
- Joint Venture Mechanism: biggest fear of investors is policy u-turn (better it is not stated than it is stated and then withdrawn). There should be a state joint venture (not state controlled but a state participating joint venture).

All in all the core agreements at the Round Table were i) that a practical session should be had in which all the states will come together to discuss modalities on a federal and state agreement on developing the mining sector in the states; ii) the purpose of the meeting is to achieve a consensus on whether or not a Constitutional amendment is required and the nature of such amendment if required and iii) to agree on a legislative agenda for the state and National Assembly.

As one digs deep into the mining sector in Nigeria a particular minister whose tenure was short lived but who left a legacy worthy of acknowledgement was Oby Ezekwesili, who was appointed the Minister of Solid Minerals (Mines and Steel) in June 2005 and during whose tenure the sector experienced a vibrant and wide ranging reform programme. The chopping and changing style of governance will indeed need to be reconsidered.

Another area of grave concern is in the sorry state of government agencies and regulators, which boils down to poor funding. The role of these statutory functionaries does not appear to be properly appreciated and as such, how then can they be expected to be independent? Until such regulatory agencies are financially, functionally and administratively independent, we cannot attract genuine private investors to these sectors.