



**NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES
LAGOS, NIGERIA**



**ROUNDTABLE ON THE LEGAL DYNAMICS OF
INVESTMENT IN SOLID MINERALS IN NIGERIA**

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COMMUNIQUE

INTRODUCTION:

The greatest challenge to development which Nigeria faces since the ascendancy of oil as the single most significant contributor to its Gross Domestic Product (GDP) has been the dire need to diversify away from its overwhelming reliance on oil as its major source of revenue. With oil accounting for about 85 per cent of the total revenue accruing to the Federation account, intermittent cyclical fluctuation in oil earnings as a result of perturbations occasioned by oil price shocks in the international oil market, has led to budget deficits hence the need to explore other sources of revenue.

The solid minerals sector is a veritable treasure chest which if optimally managed would cover gaps in public finance and catalyze economic growth and development, generate employment and create an industrial base which has linkages with other sectors of the economy, an attribute which the oil sector does not have because of its enclave nature. Despite the huge resource of solid minerals in Nigeria, the country is regarded as a non mining nation and the contribution of this sector to the economy remains just a potential.

The Roundtable on THE LEGAL DYNAMICS OF INVESTMENT IN SOLID MINERALS IN NIGERIA, which is the sixth and last of roundtables for the first quarter, hosted by the Katsina Alu's Centre for Energy and Solid Minerals, is the Institute's response to bridge the gap in knowledge and International best practices regarding the framework for the optimal husbandry of solid minerals in Nigeria; bearing in mind the need to evolve Legal instruments which will not constitute a disincentive to foreign direct investment and domestic private sector investment in the sector, while ensuring that the nation's benefits from the exploitation of solid minerals is maximized.

Perspective for the Roundtable included: Solid Minerals and Classification; The Institutional and Legal Framework of Minerals and Mining Law; The Dynamics of Natural Resource Development and Exploration of Mineral Resources; Resource Control and Sharing; Government Protection; The Role of the Nigerian Investment Promotion Commission; The Role of the National Assembly and Compensation for exploration of Land and Natural Resources.

Participants were drawn from a cross section of the polity. In attendance were representatives from the Corporate Affairs Commission, Nigerian Institute of International Affairs, Legal Practitioners, the Academia and the mass media.

At the end of deliberations, the following observations were made:

1. The sector is widely regarded as a viable alternative to oil minerals; has the potential to contribute significantly to the revenue and foreign exchange earnings of the country, perhaps beyond oil; has the potential of a great employer of labour and source of empowerment for the women and teaming youth population and acts as a catalyst for industrial development.
2. The Sector is characterized by policy inconsistency (whether it should be public or private sector driven, small scale or large scale mining,) long period of stagnation/ neglect, absence of necessary linkages between minerals and ancillary industries and until recently, governed by an outdated mining code and policy.
3. Nigeria operates State mineral rights as opposed to private minerals rights system and the unilateral Concession regime as opposed to contractual arrangements as operates in other jurisdictions such as Indonesia.
4. There are a lot of factors militating against the development of the sector these include: inadequate funding, manpower development, inadequate geological information/ data.
5. The Country's mining policy and regulatory regime has significantly improved and is competitive against other mining destinations.
6. The legal regime for solid mineral mining in Nigeria necessarily draws from the 1999 Constitution Section 44(3), the Minerals Act, the Land Use Act, Nigeria Investment Promotion Commission Act (NIPC) ; while the Bodies overseeing this sector are the Solid Minerals Commission and Mining Cadastre Office whose function include considering applications for Mineral Titles and permits, issue, suspend and revoke any mineral title upon the written approval of the Minister.
7. An investor investing in a liberalized economy would like to see in place an independent regulator. Such a regulator would be independent in terms of finance, organization and management to ensure there is no government or political interference. It must be accountable, transparent, predictable, have clear roles and requisite powers to perform their functions and have integrity there should be strict rules governing the behavior of decision makers e.g., prohibition against bribes and gratuities of any kind, prohibition of all forms of conflicts of interest and reasonable disclosure of financial interests among others. Such an independent regulator is lacking in the Nigerian regime.
8. The present law is retrogressive and hence does not drive development because instead of creating an enabling environment for investment, the law vests enormous power on the Minister. Contrary to the general role of a Minister which is confined to formulation of policy the Nigerian Minerals and Mining Act at present involves the Minister in the day to day running of the sector which goes beyond policy formulation to policy execution. The role of the regulator is subject to the overriding powers of the minister thereby depriving the regulator of the features of an independent regulator.
9. There is no clarity in the law as to what the royalty rate is. This has grave implication for investment, as no investor would like to invest when he/ she does not know what his / her obligation under the contract would be.
10. The conflicts in the law are a major discouragement to foreign investors as evidenced by the limited number of mining licenses granted in comparison with other African Countries like Ghana and Botswana.
11. The draft Bill presented to the National Assembly took cognizance of best practices internationally however the Act that was eventually passed is fundamentally different from the Bill as presented.
12. Fiscal incentives in themselves do not rank high as major factors determining foreign direct investments; it is rather, the drive to increase market share, favourable government attitudes towards private sector investment in the economy, currency convertibility, political stability and state of private property in the best state and the rate of return on investment.

To move the economy forward and derive optimum value from the solid minerals sector, the Roundtable made the following recommendations:

1. The Nigerian State and people must muster the political will to transform the infinite potentials of the solid minerals sub-sector to catalyze economic growth and sustainable development.
2. As a corollary, there is a need for adequate funding of the solid minerals sub sector by public sector finance, creation of political and macro economic stability to attract foreign direct investment and domestic private investment.
3. Incentives should be provided for small scale mineral prospectors having regard to the low patronage of large scale mining activities in Nigeria.
4. Pursuant to redressing the low indigenous participation in Nigeria's extractive industry generally, there must be a purposive, progressive and continuous development of indigenous technical and scientific capacities in the different domains which encapsulate cutting edge

- technologies and international best practices in the extractive industry.
5. Legal regimes must encapsulate provisions which make it mandatory for maximum value added to oil extractive product.
 6. Equally, the ideal legal framework must encapsulate mandatory ecological rehabilitation of mined areas. Every mining concession must mandatorily provide for an environmental impact analysis which must be a condition precedent to granting of mining lease.
 7. The present law, that is, the Nigerian Minerals and Mining Act 2007 should be amended to curtail the enormous powers vested on the Minister which are beyond those usually assigned.
 8. The Mining Cadastre Office as the Independent Regulator should be invested with powers and authority consistent with its status.
 9. Mineral endowments are neither a blessing nor a curse. It is the extent to which its husbandry is efficient and optimal and how carefully calibrated and planned is the expenditure of external receipts accruing from the export of extractive products that determines whether natural resource endowments is a curse and or a blessing. Consequently, not less than 65 per cent of the receipts from export of extractive products must be dedicated to the development of non extractive trade able stock of national capital which will guarantee continuous stream of external receipts when the stock of minerals would have reached full depletion.
 10. Within the context of intergenerational justice, while the present generation of Nigerians are free to exploit the stock of finite, and non-renewable natural resource endowments; albeit responsibly and in a pattern which is sustainable, they must also reciprocally increase the renewable assets and resources by embarking on strategic investment of the revenue accruing from the export of extractive product.

Signed:
Professor Epiphany Azinge, SAN
Director General