

THE PROSPECTS OF SOLID MINERALS INDUSTRY IN NIGERIA*

ALFRED OLUROPO FILANI

ABSTRACT

This study examines the solid minerals industry in Nigeria, its potentials, why and how government of Nigeria has been trying to enhance foreign investment in the industry. Government has made quite commendable efforts to boost foreign investment in the industry. However, taking into consideration the fact that Nigeria is not the only country involved in this race of attracting foreign investment into the industry, there is need for an improvement of this effort, if Nigeria must harness the rich potentials of the industry. The study begins with an introduction which gives a summary of classification of mineral resources, historical development of solid minerals in Nigeria, criteria for attracting investors and statutory framework in the solid mineral industry and why government should invest enough fund in the sector by providing adequate capital for all the bodies that are to oversee the industry.

Introduction

Nigeria is a country that is heavily endowed with rich natural resources.

Minerals are naturally occurring inorganic solid elements or compound with a definite composition or range in composition usually having a regular internal crystal structure¹. They are generally classified as metallic and non-metallic minerals.

Metallic Minerals

Iron ores of diverse quality and origin are found in Nigeria. The purest ores occur in a series of basement ridges. Proven iron ore reserves are at least 200 million tons with a life-span of over 100 years are found in Nigeria. The commercial ore grades range in ferrous (Fe) content from rich ores with over 50% Fe, medium-grades ores (30-50%Fe) to poor ores (25 – 30% Fe). Mining is undertaken by the National Iron Ore Mining Company for the Ajaokuta Steel Plant and the production of super concentrates for the Delta Steel Plant at Aladja near Warri².

* **ALFRED OLUROPO FILANI** is a Lecturer at the Department of Public Law, Ekiti State University, Ado-Ekiti, Nigeria.

¹ Montgomery, C.W. (1992). *Environmental Geology*, Brown Publishers at page 457

² Victor, O "An overview of Foreign Investment in Nigeria" 1960-1995 CBN Research Department Occasional paper No.11.

Non-Metallic Minerals

Crusted rock, gavel, sand and clay are ubiquitous building materials widely used for rural and urban dwellings, and in the construction industry for civil engineering works such as roads, buildings, bridges, and dams. Laterite is a common building and road-surfacing material. River gravel of various sizes are widely available as aggregates and building materials, especially in Akwa-Ibom and Cross River States. Sand of glass making quality has been found in many parts of the country³.

The National Policy on Solid minerals in Nigeria⁴ defined minerals as encompassing a wide variety of endowments going from iron ore to coal, to sand, gravel, some of them found on the surface while others can only be won from the earth through underground mining. Mineralogists world-wide, have identified about 1,500 separate mineral species and about 200 of these were said to be common minerals⁵. They classified them based on their constituents and they include; Native element, Sulfides, Sulfosalts, Oxides and hydroxides, Halides and Borates, Carbonates, Nitrates and Codates, Phosphates, Vanadates and arsenates, sulfates, Tungatates and Molybdates, Silicates etc. In Nigeria⁶, minerals are classified according to their uses and these are mineral fuels, metallic minerals, industrial minerals and Gemstones.

Historical Development of Solid Minerals in Nigeria.

The historical development of solid mineral industry in Nigeria can be categorised in this work under two headings namely: the period before independence and the period after independence.

The Period Before Independence in 1960.

The solid mineral industry requires large capital and efficient technical know-how to venture into. The lack of this large capital and technical know-how of local entrepreneurs in Nigeria resulted in the domination of the solid minerals industry in Nigeria by foreigners in the period before independence. When the Royal Niger Company discovered that Nigeria was blessed with large deposits of various solid minerals, they put in place rules and regulations that reserved all mining rights, especially in the north, to the Company⁷. Thus, foreign mining companies like the Amalgamated Tin Mines (Nig.) Limited, Gold and Base Metal Limited *et cetera*, dominated the northern part of Nigeria with respect to mining activities. They were

³ See Victor, O. Ibid

⁴ National Policy on Solid Minerals, 1999

⁵ Peter, T.A. (2004) "A Critical Appraisal of the Law and Policy Relating to the Development of Solid Minerals in Nigeria (Unpublished) at P. 20

⁶ National Policy on Solid Minerals Op. Cit.

⁷ Kachikwu E.I (1988) *Nigerian Foreign Investment Law and Policy*, Lagos Mikzek Law Publication Ltd. at P. 17

mining minerals like tin, tantalite, columbite and also gold discovered in places like Bauchi, Benue and Zaria⁸.

In the western part of the country, expatriates were in control of the solid minerals industry. They were John Passman, J.L. Hamber and J.B. Clark. They were prospecting gold in places like Ilesha, Egbe and Kabba. In the eastern part of Nigeria, the main solid mineral was coal, and expatriate like C.C. Daniels was in charge as at 1906 in Enugu.

The monopoly of the solid mineral industry by the Royal Niger Company continued till 1900 when the British Government revoked the Charter of the Royal Niger Company and passed a legislation reversing all mineral rights in the land to the Crown⁹. Thus, the British government gave and reserved all mining rights to British companies or their allies¹⁰. In 1946, a new mineral ordinance was promulgated and in 1950, the Coal ordinance was also promulgated. These two became the main pieces of legislation governing mining activities in Nigeria until independence in 1960.

Post Independence Till Date.

This period witnessed a decline in the solid mineral industry. Immediately after independence, the situation in the solid mineral industry did not change until 1972 when there was a change in policy. Government promulgated the indigenisation policies which came into effect during this period¹¹. Based on these policies, it was compulsory for Nigerians to own interest in strategic areas of the Nigerian economy, mining inclusive. Government reversed its earlier policy of non-involvement in this sector and became actively involved and to further its involvement, the Nigerian Mining Corporation was established in 1972¹². However, the Government could not revive the industry to its pre-independence state as petroleum came into the main stream of exportation and foreign exchange.

The Government of Sanni Abacha in furtherance of its interest in this sector, created the Ministry of Solid Minerals Development in 1995 with the objective of harnessing the economic potentials of the Nigerian solid mineral sector¹³. The Solid Minerals Association was founded in 1992 and following restoration of relations with Israel, an economic team was sent to Israel to explore potential opportunities for joint venture. They discovered that even though Israel did not have solid minerals of its own, it still played a big part in the development of its economy, and that most of the minerals were coming from Africa, particularly, Nigeria. In 1999, a new National

⁸ Yakubu, N.A. (1999) "Protecting Foreign Investment in Solid Minerals Sector in Nigeria". Being paper presented at the International Seminar on Protecting Foreign Investment in Nigeria on the 9th of May, 1999.

⁹ The "Mineral Ordinance of 1902" which was amended in 1916 and 1927

¹⁰ Kachikwu E.I. Op. Cit at P. 18

¹¹ The Nigerian Enterprises Promotion Decree 1972 and 1977 together is what is termed the "indigenisation Decrees". They have however been repealed long ago.

¹² See the Nigerian Mining Corporation Act, CAP 317, LFN

¹³ Before then, the Solid Mineral Department was just an arm of the Ministry of Mines, Power and Steel

Policy on solid minerals was formulated and adopted with an enabling legislation focused at providing necessary incentives to investors. Updated relevant data and information on Nigeria solid mineral resources were made available to all investors and also restructured relevant government agencies, such as the Nigerian Mining Corporation and the Nigerian Coal Corporation, in order to make them function effectively in conjunction with the private sector¹⁴.

Thus National Policy on solid Minerals is aimed at a private sector led development of the vast solid mineral resources of Nigeria, with government creating the enabling environment through the provision of basic infrastructure and amenities to the mine fields¹⁵. Government has been trying to woo investors both private individuals and companies to the sector.

Problems facing Solid Minerals Industry

The solid mineral industry is a very peculiar industry. It is a sector that requires a high capital formation for any person that wants to venture into it. These kinds of large capital formation are most of the time not within the reach of local entrepreneurs in Nigeria, hence the need for foreign investors.

The industry is one that requires a high level of technical know-how. High quality machines and other work accessories are required for the proper functioning of this industry. These machines and equipment are most of the times, only found in developed countries. Nigeria, as such, needs these foreigners for the development of this sector.

The long gestation period of this industry is a source of discouragement to local entrepreneurs in Nigeria, who cannot afford to tie their capital down for a very long period of time.

Criteria for Attracting Investors.

The solid mineral industry, being a peculiar industry, has its own criteria that attract investors to it in a particular country. The criteria are as follows:

a. Geological Endowment

The rate of mineral endowment in a country is what first of all attracts a foreign investor to a particular country in respect of investment in solid mineral industry. Mining companies are attracted to countries with proven geological endowment. Hence, the high rate of foreign investors in places like Australia, Canada, United States of America and some developing countries like Botswana, Brazil, Chile, Peru, Argentina, Ghana, etc¹⁶

¹⁴ Solid Mineral Event, 2001, London “An address of the Former Vice President of the Federal Republic of Nigeria, Atiku Abubakar

¹⁵ Ibid

¹⁶ See World Bank/CBN Annual Report Exhibited in the Vision 2010 Report on Solid Minerals Sub-Sector, 1997

b. Political Instability

It is a fact that a stable and peaceful atmosphere in a country will attract investment. The solid mineral industry is also affected by this. Since investment in the solid mineral industry is capital intensive, and has a long gestation period, it is necessary that the political atmosphere in the host country should be stable enough for the investors to reap the fruit of their investment without undue fear, harassment and bottleneck. This factor is responsible for the withdrawal of foreign investors from the solid mineral industry in Nigeria during the civil war¹⁷.

c. Legislative and Regulatory Framework

There must be good legislative and regulatory framework that will attract investors. This includes the methods of granting mineral rights, mining code, transfer of mining rights, etc. An unsatisfactory legislative and regulatory framework will normally scare investors¹⁸.

d. Means of Settling Disputes

The possibility of disputes between a host country and a foreign investor is always there because of the fact that activities of mining in the solid mineral sector takes quite some time. The host country should have an impartial and clear method of settling it.

This can be done through four means namely (i) Settlement by local courts (ii) Settlement by international courts (iii) by local arbitration and (iv) by an international arbitration.

In most disputes that arise out of mineral agreement worldwide, the means of settlement is usually through an International Arbitration. Some of them are the International Centre for Settlement of Investment Disputes (ICSID), the Multilateral Investment Guarantee Agency (MIGA), these are affiliate of the World Bank¹⁹

e. Institutional Framework

To attract investment into this industry, it is necessary for a country to have an efficient government department and agencies that deal specially with this area. For instance, Nigeria has the Ministry of Solid Minerals Development. This Ministry of Solid Minerals Development guarantees effective administration and implementation of policies on the sector.

¹⁷ Nigeria experienced a civil war between 1967 and 1970.

¹⁸ See Odiase – Alegimelen (2006) “An Appraisal of the Legal and Institutional Regime for Foreign Investment Promotion and Protection in Nigeria” in Guobadia, *et al.*, (ed.) Foreign Investment in a Globalised World (Lagos: NIALS) P. 1

¹⁹ Nigeria has signed the treaties of these two bodies

f. Fiscal Regime

Taxation is usually a very sensitive issue to an investor. From the beginning, there is always an agreement on the tax to be paid in Nigeria. The fiscal burden is reduced in Nigeria so as to attract investors.

Statutory Framework in the Solid Mineral Industry in Nigeria.**i. Minerals and Mining Act, 1999**

This is the main legislation governing the solid mineral sector of Nigeria. It consolidated all other pieces of legislation like the Mineral Act, 1990, the Quarries Act and Regulation, 1990, the Tin Act 1990, the Gold Trading Act, 1990. This Act, apart from providing for all issues that relate to the exploration and exploitation of solid minerals in Nigeria, also made provisions for incentives²⁰. These incentives include capital allowance, exemption from customs duty, expatriate quota, retention and use of earned foreign exchange, tax relief and free transferability of funds through Central Bank of Nigeria in convertible Currency.

ii. The Nigerian Investment Promotion Commission Act, 1995 Now Cap 117 LFN, 2004

The main function of this Act as provided in its sections 4 and 5 is to “encourage, promote and co-ordinate investment in Nigeria”. It provides incentives that are favourable to foreign investors generally. It provides for transferability of funds²¹ and guarantees against unlawful expropriation²². The Act also provides for means of settling disputes arising in the course of investment. It emphasises the exhaustion of local remedies before resorting into international arbitration. It is worthy of note that this Act does not discriminate between Nigerian and foreign investors.

iii. The Foreign Exchange Act, 2004

The Act provides for a liberalised system of capital importation and repatriating of profits and dividends through authorised dealers. It provides that investors do not require approvals to invest in any enterprise of security with foreign currency or imported capital²³

iv. Land Use Act, 1978

This Act vests the ownership and control of land and the mineral on the government of either the federation or the state. This has made the acquisition of land for mining easier and less cumbersome for a foreign investor.

²⁰ Now Mineral and Mining Act Cap M12, Laws of the Federation of Nigeria, 2004.

²¹ See Sections 18 to 23 of the Act

²² See Section 24 of the Act

²³ See Section 15 of the Act

v. Companies and Allied Matters Act, 2004

The Act establishes the Corporate Affairs Commission (CAC) which handles the incorporation of companies, business names and incorporated trustees. The Minerals and Mining Act, 1999 provides that no person shall be qualified for the grant of any mining title unless it is a body corporate duly incorporated under the Companies and Allied Matters Act²⁴.

vi. Environmental Impact Assessment Act, CAP E 12 LFN, 2004

This Act stipulates that public or private project that is likely to have significant impact on the environment should not be undertaken until assessment has been carried out. Since mining affects the environment, investors are to carry out assessment based on this Act.

Conclusion and Recommendation

Nigeria has had a mono product system despite the disadvantages associated with the system. The heavy blow dealt on the nation's economy in the early 1980s awakened the minds of both individuals and the government to the fact that there was serious need to diversify the nation's foreign earning, and that there could be no better alternative than the solid mineral industry. It is believed that the industry, apart from being a rich source of revenue and foreign earning to the country can also give employment opportunities even more than what the oil and gas industry is giving.

There is need for an improvement on the part of the government in the following areas:-

- i. the investment climate in Nigeria is still not friendly. The political situation of a country contributes very much in wooing foreign investments. Nigeria needs to be politically stable in order to attract investors. The industry is one with long gestation, political instability discourages investors.
- ii. corruption has been held responsible for the messy economic situation in Nigeria. It has ruined the economy and turned Nigeria into an object of laughter before the international community²⁵. Olusegun Obasanjo, former President of Nigeria, before signing the Anti-Corruption Bill into Law said:

*Corruption has been responsible for the instability
of successive government since the first republic.
Every coup since then has been in the name of
stamping out the disease called corruption*²⁶.

²⁴ Cap C 20, LFN 2004

²⁵ This is one of the sentiments expressed by the Faculty of Law, Lagos State University in the paper titled "Structuring Measures against Corruption for sustainable Development" presented at the Nigerian Association of Law Teachers Conference held at LASU, Ojo, Lagos between 23rd – 25th April, 2002 at P.2.

²⁶ Olusegun Obasanjo: Official Address when signing into Law the Anti-Corruption Act at Abuja, 13th June, 2000.

- iii. Economic and financial crimes such as money laundering and trade malpractices are the twin enemies of investment in Nigeria. In countries transitioning to industrialisation like Nigeria, the criminal influence on the financial system could undermine the transition to industrial and technological revolution and subsequently keep the country under perpetual imports slavery²⁷.

Money laundering is a process by which criminals attempt to hide and disguise the true origin and ownership of the proceeds of their criminal activities thereby avoiding prosecution, conviction of criminal funds.

Trade malpractices constitute a dent on Nigeria's image. They diminish the respect and regard Nigeria commands internationally and contribute to the loss of confidence in the nation by foreign investors and international development partners²⁸.

- iv. Nigeria is presently battling with various terrorist attacks, especially, in the northern part of the country. For instance, the islamist group called Boko Haram killed forty-eight people in Shawa, in Bornu State on the 25th of May, 2014. Recently, the islamist sect equally abducted about two hundred and fifty girls from the Federal Government Secondary School in Chibok, Borno State²⁹.

Overall, it is an indisputable fact that both at home and abroad, the opportunities required for growth and development have been eroded by lack of trust and confidence in business relationships with Nigerians³⁰.

This sends a negative message to foreign investors, particularly providers of financial products and services such as credit cards, e-commerce, online transactions and other modern financial services.

²⁷ Nuhu Ribadu "Implication of Economic and Financial Crimes of the Nation's Economy" being paper presented to Defence Advisers Conference in Abuja on the 10th of September 2004.

²⁸ The following trade malpractices are prevalent: Importation of fake/counterfeit and substandard products, false declaration of goods, smuggling and diversion of "trans-shipped" goods.

²⁹ See The Nation Newspaper, Thursday may 2014 page 1 under the caption "Girls U.S. deploys troops". The United States deployed troops to join search for the over 200 school girls abducted by the extremist Boko Haram Sect in Chibok Borno State. We also have cases of kidnapping of foreign investors in the Niger Delta region of the country.

³⁰ Obitayo, K.M. (2006) "Image building and Investment Generation – Prospects for Nigeria" in Guobadia, *et al.*, (ed.) Foreign Investment Promotion in a Globalised World (Lagos: NIALS) P.51