



A PAPER PRESENTED

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Engineering Regulation in the Post Covid-19 Era

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BACKGROUND.

Since the coming into existence of Nigeria by the 1914 amalgamation of the Northern and Southern Protectorates, the practice of engineering remained unregulated until 1970 when the first attempt was made through the promulgation by the Military Government of General Yakubu Gowon GCFR of Decree No 55 , now CAP E11 2004, Laws of the Federal Republic of Nigeria.

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The Decree – Engineers (Registration, ETC) Act (1970, No 55) established the Council of Registered Engineers of Nigeria principally to determine who are engineers and determine what standards of knowledge and skill are to be attained by persons seeking to become registered engineers as well as establish and maintain a register of registered engineers. The new body was also to regulate and control the practice of the engineering profession in all its aspects and ramifications.

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However, realizing that you can't effectively regulate and control the practice of engineering without the full involvement of the other cadres in engineering, the Engineers (Registration) Act was amended in 1992 to admit other cadres of engineering into the fold. Thus the name was amended in 1992 under Decree 27 to Council for the Regulation of Engineering in Nigeria. With this amendment, the Council was enlarged to accommodate engineering technologists, engineering technicians and engineering craftsmen.

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Thus the new COREN became a one-stop regulatory body for the regulation and control of engineering practice in Nigeria. Over the years, the Council has tried to discharge the mandate as contained in the law to the best of its ability.

While the two amendments conferred enormous powers on the Council and created offences, the Council is not enabled to enforce them effectively. This had led to a lot gaps in the implementation of the Act.

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As a Council, COREN lacked enough personnel to fully implement the Act. Working very closely with the Nigerian Society of Engineers particularly and other cadres professional Associations, COREN over the years established what was called Engineering Regulations Monitoring (ERM). The implementation of the new regulation was mainly through NSE branches. The activities of the ERM were resisted and challenged by the industry. In some instances members of the ERM were arrested and charged to court.

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Following the challenges encountered in implementing the ERM, concerted efforts were made by successive leaderships of COREN and professional Associations led by the NSE (Nigerian Society of Engineers) to once again amend the Act to among others confer prosecutorial powers on the Council. Consequently the COREN Act, Engineers(Registration) (Amendment) Act ,2018 was signed into law by President Muhammadu Buhari on 18th Day of March 2019 to amongst other things broaden the powers of the Council and its Registrar and Recognize the Diversity of Engineering Profession.

HIGHLIGHTS OF THE NEW AMENDMENTS

➤ Additional Duties

The new amendment in other to cater for all cadres in the engineering profession uses 'engineering practitioners' to address all the personnel be they engineers, engineering technologists, technicians or craftsmen. It also added additional duties to the Council to include:

- a) Prosecuting any person or firm that contravenes the provisions of the Act in a court of competent jurisdiction
- b) Regulating industrial training schemes in engineering for the training of engineering practitioners and students

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- c) Ensuring capacity building and monitoring local content development in the Nigerian engineering industry through—
 - i. Mandatory attachment of Nigerians to expatriate engineers on major projects to understudy them from inception
 - ii. Ensuring that all foreign engineering firms establish their design offices in Nigeria

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- iii. Granting of compulsory attestation to all expatriate quota applications for engineering practitioners, including turnkey projects, that there are no qualified and competent Nigerians for the job in question at the time of application and that granting of the expatriate quota shall be contingent on training of such number of persons as may be required for the execution of the job

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- iv. Ensuring, that before being allowed to practice in Nigeria, such foreign engineering practitioners granted work permit, register with the Council and obtain such license including practicing license as may be required from time to time

- d) Another duty added to the Council also includes investigating engineering failures.

➤ Council Membership

The new law also expanded the membership of the Council to include representatives, one each from Association of Consulting Engineers in Nigeria, Federation of Construction Industry in Nigeria, Manufacturers Association of Nigeria and Armed Forces in Rotation thus increasing the membership of the Council from 26 to 30. The law provides for election of a president for a single term of four years and no more. It provides also for a vice president.

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The term of the vice president is however not stated. We may need to seek direction from the Federal High court for a direction in this regard. Section 3 of the Principal Act puts the control of the Council on the Minister without defining the minister of which ministry. Traditionally, COREN had been under works ministry when engineering was perceived to be primarily about roads, but with the diversity of engineering disciplines being recognized by this law, clarity as which minister ought to be in control of the Council need to be provided.

➤ Funds

This amendment under the previous Financial Provisions in section 2 (First Schedule) created entirely a new section empowering the Council to establish and maintain a Fund into which shall be paid all revenues accruing to the Council. The sources of revenue to the Council were also expanded to include money appropriated by the National Assembly; subventions, fees, fines, penalties and charges for services rendered or publications made by the Council; gifts, endowments, bequests, loans, donations, grants or aids;

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foreign aids and assistance from bilateral and multilateral agencies, forfeiture surcharge from funds forfeited to the Federal Government of Nigeria by offenders under the Act; engineering development levy from all engineering projects undertaken by the Federal Government of Nigeria and other assets which may accrue to the Council.

This section clearly stated what the Council may apply the proceeds of the Fund for. These include;

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- i. The cost of administration of the Council
- ii. The payment of salaries fees and other remuneration of employees of the Council, experts or professionals appointed by the Council
- iii. Maintenance of any property acquired by or vested in the Council
- iv. The development and periodic revision of the Nigerian Engineering Codes and Standards
- v. The operations of Engineering Regulations Monitoring
- vi. And any expenditure connected with all or any function of the Council under this Act.

➤ **Office of the Registrar**

The new law created the office of the Registrar to be appointed by the Council. The Registrar is the Chief Executive and Accounting Officer of the Council and mandated to maintain registers of engineering practitioners in six categories as against four registers in the old Act. The new additions are; registered engineering consulting firms and engineering firms compiled subject to the provisions of section 10.

The Registrar acts at all times under the direction of the Council and is responsible for the execution of policy and administration of the affairs of Council.

➤ **Registration/Practicing License**

The amended Act makes it mandatory that for a person to be entitled to be fully registered, he must have satisfied the requirements of his professional association and attended a course of training approved by Council in an institution accredited by Council and holds a qualification so approved as well as holds a Certificate of Experience issued under sections 9 and 13 of the Act. The new law effectively is intended to strengthen members' professional associations.

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The new law also legalized the practicing annual licenses not too long, introduced by COREN. It requires that fully registered engineering practitioners shall have their licenses renewed annually ,registered engineering consulting firms shall have their practicing licenses renewed biennially as may be provided for by regulations made under this Act. (meaning once every two years)

➤ **National Youth Service Corps (NYSC)**

The new amendment makes it mandatory that NYSC shall post graduate engineers and technologists to places of relevant professional engineering experience. However, my only worry is that this is in conflict with NYSC law which mandates NYSC to post graduates to areas of need. Since NYSC is part of the Nigerian Constitution, any section of COREN amendment that is in conflict with the NYSC (Constitution) shall be invalid to the extent of its inconsistency with the NYSC Act.

➤ Offences

The new amendment expanded possible offenders to include engineering practitioners and organizations. However the offences by organizations are limited to offences related to engineering consultancy services. In other words, construction and manufacturing companies are outside the regulation of COREN.

➤ **Prosecutorial Power**

News additions- Sections 18A -18D conferred prosecutorial powers on the Council subject to section 174 of the Constitution of the Federal Republic of Nigeria. Section 174, of the Nigerian Constitution vests the Attorney General of the Federation with the power to institute and undertake criminal proceedings against any person before any court, other than a court martial, in respect of any offence created by or under any Act of the National Assembly.

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Legal Officers under the employ of COREN and who are legal officers under the meaning of Legal Practitioners Act can represent the Council in any proceeding against any person or organization. Offences under this Act are to be tried by the Federal High Court.

The law provides that the Council may apply to the court for direction in respect of any matter concerning its duties, powers and functions under this Act. In other words , where the meaning or interpretation of the duties, powers or functions of any body mentioned in the Act is not clear the Council apply to the Federal High Court for direction.

➤ **Engineering Regulations Monitoring**

One good creation of the new law is Engineering Regulations Monitoring (ERM) Department. The law legalized the previous ERM efforts of the Council through insertion of a new section 21 in the Principal Act creating the ERM Department to consist of personnel of all engineering cadres. The ERM team is empowered to have access to all engineering projects sites, manufacturing, engineering education, institution or any site where engineering is being practiced.

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Any person or group of persons, any manufacturing or engineering firm, a construction company who obstructs or threatens violence to any one or on a member of the team commits an offence and is liable on conviction, in case of a firm, company or institution to a fine of N2, 000,000.00 and in case of an individual, to a fine of N500,000.00 or imprisonment for a term of six months

➤ Sources Of Funding

A new schedule was added to the Principal Act as Third Schedule to provide for additional sources of funding for the Council. The sources are:

- i) A surcharge of 30% deductible from funds forfeited to the Federal Government by offenders under the Act.

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- ii) 0.005% deductible from all sums paid on the contract sum for all engineering projects undertaken by the Federal Government of Nigeria as engineering development levy. The engineering projects shall be for the development, construction, reconstruction, rehabilitation and maintenance of roads, railways, airports (including runways), irrigation, dams, power (including generation and transmission), mechanical and electrical services.

WHAT IS REGULATION?

To help us understand the context within which we shall be discussing the topic, it is important we take a little time to explore the meaning of *REGULATION*. According to *National Federation of Independent Business (NFIB)*, people hold strong views about regulation, but do they know what ‘regulation’ means? Although regulation is frequently used, it is a very controversial topic both in law and in politics.

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By nature it is evasive principally due to its abstract nature and opinions about the desirable scope of regulatory powers. People intuitively understand regulation to mean government intervention in liberty and choices-through legal rules that define the legally available options and through legal rules that manipulate incentives.

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The legal concept of ‘*regulation*’ is often perceived as control or constraint. *Black’s Law Dictionary*, defines ‘regulation’ as the “act or process of controlling by rule or restriction”. Similarly, The Oxford English Dictionary defines “regulation” as the “action or fact of regulating,” and to “regulate” as “to control, govern or direct”. In the abstract, government actions are supposed to influence the conduct of individuals and firms.

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Regulation can also be perceived as laws that are intended to serve interest groups. For the sake of this paper, I have adopted the definition of regulation as espoused by Barak Orbach, on page 6, Vol.30:1, 2012 of the Yale Journal on Regulation Online as: “government intervention in the private domain or legal rule that implements such intervention.

The implementing rule is a *binding legal norm created by a state organ that intends to shape the conduct of individuals and firms. Therefore COREN law is intended to shape and control the conduct of engineering practitioners and firms*

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Regulation is therefore a state intervention in our private and corporate affairs arising from human tendency to act imperfectly. Therefore the Council for the Regulation of Engineering in Nigeria is a Federal Government intervention to guide the conduct of individuals, firms, institutions in the training of and practice of engineering profession by the professionals in the sector. COREN therefore is a REGULATOR of engineering profession. Regulators issue guidelines, rules etc. which the operators must comply with in the course of the discharge of their responsibilities.

COVID 19 PANDEMIC

The global COVID 19 pandemic caught the world unprepared and grounded the global economy. Nations closed their borders while inter and intra cities travels were at a point prohibited. Offices and businesses, institutions all were closed. Social distancing entered our Lexicom, face masks became part of our fashion while heightened hygiene is now taken for granted. Sanitizers both real and unreal have become part of ladies' handbags or men's purses. The ways we live our lives and conduct our businesses are being redefined- thanks to COVID 19 pandemic. Activities through virtual means is becoming the new "normal".

ENGINEERING REGULATION IN THE POST – COVID-19 ERA

As the COVID-19 eases off and the global and national economies re-open, virtually all sectors of the economy are impacted most times negatively. Except for the communications, pharmaceutical and food economic sectors, most sectors notably engineering subsector are adversely impacted. The restrictions imposed on the economy due to imposed COVID-19 protocols of social distancing, wearing of face masks and heightened hygiene demand that the engineering regulation in the country should be conducted differently.

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In the past, physical visitation to facilities by COREN officials to either project sites or training institutions used to be the norm. Council and Committees meetings were held in person with the attendant risks to lives apart from costs of transportation and accommodation. Engineering professionals have to physically visit the COREN office for most of their transactions.

➤ **New Skills and Mind Set**

It is obvious that engineering professionals need to acquire new skills in the area of ICT. This skill evidently has improved over the years especially among the young and consulting professionals. Most of the activities of COREN can be conducted from the comfort of our homes or offices. COREN has maintained active web site and all basic information can be found in the site.

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The greatest thing that needs to change is our mind set-on how things should be done . We must accept that things can never be as they were! For instance with more responsibilities clearly added to the Council, a lot of programs COREN used to engage in need to be dropped and new ones started.

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For instance, COREN Assembly that was embarked upon and which has been accepted as “normal” has to give way for more serious workshops in order to discharge the more responsibilities imposed on the Council by the new amendment. Development and periodic revision of the Nigerian Engineering Codes and Standards for instance requires series of engagements with stakeholders to design a framework on how to proceed with the assignment.

➤ **Restructuring of COREN**

The new amended law makes it imperative that the management structure and focus of the Council needs to change and very fast, otherwise we shall be in the same mold as before. More departments need to be created to cope with the added responsibilities. The Act provided for maximum of two terms for membership of Council except if the member is elected president.

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The amended Act designates the Registrar as the Chief Executive and Accounting Officer of the Council. The Federal Government Financial Regulations, Government Notice 291, No.72, Vol.96 under FR 111, defined “Accounting Officer” as the “permanent secretary of a ministry, or the head of extra-ministerial office and other arms of government who is in full control of, and is responsible for human, material and financial resources which are critical inputs in the management of an organization”.

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The Council being a creation of statute is bound by other laws of the federation in exercise of its functions. So knowledge of the interplay of relationships between the COREN Act and other legislations/ government policies will go a long way in building necessary synergy needed for effective implementation of the law. For instance, the Public Procurement Act, 2007, holds the accounting officer personally responsible for any procurement related infractions in the entity whether or not the infraction was committed by him or his subordinates.

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Approval by any entity's Tender Board does not absolve the accounting officer of the liability associated with the infractions. In effect, Engineering Regulations post COVID-19 requires that COREN must work in consonant and collaboration with all other laws and agencies which can impact on effective and efficient implementation of the Act. Building internal institutional harmony based on common shared goal is critical to proper engineering regulations.

➤ **Industrial Training Schemes in Engineering**

COREN is now saddled with the additional responsibility to regulate industrial training schemes in engineering for the training of engineering practitioners and students. This is a huge task hoisted on COREN and I hope we understand the enormity of this mandate. This has empowered the Council to work towards establishing a school and accrediting industries/firms for the sake of industrial training on graduation and others for attachments of students while in school.

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In time a post graduate training school needs to be set up with capacity to admit one and half capacity of the annual intake into faculties of engineering nationwide.

Within this one year of postgraduate training, fresh graduates would be taught the rudiments of engineering practice as well as codes, etc. This will be similar to Nigerian Law School for lawyers and Residency Training for medical doctors.

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For students, COREN would need to identify and accredit consulting firms, manufacturing firms, construction companies where students shall be deployed for their industrial training before they could graduate. COREN should be responsible for the payment of the students allowance for this six months of attachment. The funding will come from the engineering development levy of 0.005% of all engineering projects awarded by the federal government.

➤ **Capacity Building and Monitoring Local Content Development in the Nigeria Engineering Industry.**

COREN is mandated to attach Nigerians to expatriate engineers working on major projects as a way to build local capacity. But the questions that need answers include- where are these expatriate engineers working? What is the threshold definition of a major project? Does this affect private investments/developments where expatriate engineers are involved? How many Nigerians need to be attached to an expatriate engineer? Who pays for the Nigerians so attached to the expatriate engineers?

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COREN therefore has huge responsibility to develop subsidiary regulations to guide the effective implementation of this mandate. Again, COREN needs to quickly engage all stakeholders including the office of the Attorney General of the Federation to develop implementation guidelines and structure that will ensure that foreign firms establish their design offices in Nigeria.

➤ **The Development and Periodic Revision of the Nigerian Engineering Codes and Standards**

Post COVID-19, I would love to see COREN devote a whole lot of its energy and resources in developing a framework for the implementation of this added responsibility. The law presumes there are Nigerian Engineering Codes and Standards. Where are they? To what codes and standards do we design our facilities/ structures or projects? Can we adopt, adapt, and modify existing international codes and standards? How can we develop local standards where none exists for any engineering material, product or service?

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How do we relate with the Standard Organization of Nigeria (SON) in this regard? There are thousands of CODES and Standards in Engineering depending on the discipline. Here COREN must again develop a framework to implement this through focused engagement of technical stakeholders that will involve the academia, industry practitioners, manufacturers and Original Equipment Manufacturers (OEMS) who many times manufacture to standards as may be set by regulatory authorities. This is another huge assignment on the shoulders of COREN.

➤ Investigating Engineering Failures

COREN is now statutorily empowered under another new addition to the responsibilities of Council to investigate Engineering failures. Simple as this looks, this a huge area that can be expanded under subsidiary Regulations to define the standard operating manuals for investigating engineering failures. The cacophony associated with building collapses will be addressed when the engineering failures are properly defined. Collapse of silos in private manufacturing firms, collapse of high tension electric towers, road failures, buildings, dams etc are among many other structures susceptible to investigation. A manual to guide investigations needs to be developed.

➤ **Operation Of The Engineering Regulations Monitoring.**

Perhaps the greatest Engineering Regulation post COVID-19 should be the operation of the Engineering Regulations Monitoring. To cure the defect of the operations of the previous implementations of the ERM, that warranted a group of local builders/contractors to challenge and arrest COREN ERM Inspectors, express provision was made in the new COREN Act specifically creating a department called Engineering Regulations Monitoring (ERM) Department charged with the duties of monitoring firms and ensuring that engineering is practices in Nigeria in accordance with relevant codes of engineering practice.

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To me this is the operations heart of COREN. This department by law shall consist of all engineering cadres. It is expected that the ERM visitation operates in teams and such teams should have access to all engineering project sites, manufacturing, engineering education, institution or any other site where engineering is being practiced. The law criminalized denial of access to sites as well as threat to team members with fines ranging from N2m for a company to N0.5m for individuals. Once again COREN should develop a subsidiary implementation regulations/guidelines after extensive consultation with all stakeholders that must include

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all engineering professional associations, contractors, consultants, chambers of commerce and industry, Manufacturers Association of Nigeria, Office of the Attorney General of the Federation, Federal Ministry of Finance, the Police, the Federal Ministries of Works, Housing, Environment, Petroleum Resources, Niger Delta Affairs, Water Resources, Power, office of Head of Civil Service of the Federation, representatives of States counterpart Ministries and agencies ,Civil Society and the Nigerian Bar Association.

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All these interest groups will review and adopt the implement guidelines for the implementation of the ERM mandate. Because the activities of ERM will virtually touch every aspect of the economy, it is important that those who are to be affected are part of the development of the implementation guidelines. This is a task that may take up to two years to fully develop.

➤ **Communication/Advocacy**

What appears to be missing in all our attempt in the recent years to implement the COREN Act is absence of communication/advocacy strategies. Engineering Regulation requires that Nigerians must be constantly be reminded of the need for professional behavior in the practice of engineering profession. Regularly featuring engineering feats and failures in our national traditional media outfits particularly the television stations will go a long way in keeping engineering in focus as a foremost profession.

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COREN can pay advocacy visits to technical colleges, trade centers, polytechnics, universities to assess the state of their engineering laboratories with a view to making a case for adequate funding by the relevant supervisory Commissions/Ministries. These advocacy visits should be devoid of pomp and pageantry previous associated with such visits in the past. They should be more like fact finding technical working visits to the institutions. Post Covid-19 therefore demands that COREN should be develop communication and advocacy strategies to drum in the powers and responsibilities.

CONCLUSION

The implementation of the Engineering Regulation post Covid-19 era requires that we appreciate the enormous powers and responsibilities vested in the Council following the amendment of the Act in 2018. While the law provides for several sources of funding for the Council, working and collaborating with other institutions of government is critical in ensuring these funds accrue to the Council.

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This however will require that COREN administrative structure needs to be primed to bring harmony between the management and the governing Council with the Registrar as the Chief Executive as provided in the law.

COREN needs to devote some energy and time to change management strategies to enable it transit from the 'old' normal to "new" normal.

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The “new” normal requires deployment of technology to the running of the affairs of the Council, creation of more departments, engagement of external experts/consultants to help the Council draft all implementation regulations for stakeholders endorsement, massive engagement with stakeholders to validate the implementation subsidiary regulations.

The “new” normal will involve greater visibility of COREN within the Nigerian psyche through focused well, organized media outreach.

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The work ahead of Council is enormous and the Covid-19 Pandemic of this year has made it imperative that COREN will depend more on technology in discharging the responsibilities conferred on her by the COREN Act. By the new law ,firms need only renew their practicing license once in two years, meaning that the validity of all licenses issued this year will need to be automatically extended or renewed to expire by end of 2021.

Change has come! Therefore we must become the change we seek!

Thank you and thank you for listening.

THANK YOU!



“Questions and Answers”