Protecting Community Rights

within the Institutional, Legal and Regulatory Framework for mining Activities in Nigeria

Preface

This book attempts to address gaps in the promotion and protection of host community rights in Nigeria's solid mineral industry. It provides an overview of the Nigerian institutional legal and regulatory framework on mineral extraction, its social, environmental and human rights impacts, and discusses the protection of community rights within this framework.

It is our hope that this document will provide a platform for conversations between stakeholders on the reforms necessary in Nigeria's extractive industry and act as a compass for the protection of host community rights.

The need for this project became apparent in the course of the aftermath of the gold mining disaster that resulted in the deaths of 400 children from lead poisoning in Zamfara state between 2010 and 2013. We dedicate this work to them and express our sincere hope that this will strongly contribute towards the prevention of related incidents in the future.

Our special thanks to Mr. Tunde Ajala for his stellar contribution to drafting this book; to Ms. Lien De Brouckere, Global Rights Director, Natural Resources and Human Rights and Ms. Kathleen Cornelsen, Global Rights Fellow, who both devoted hours to reorganizing and formatting this work; Ms. Mary Wyckoff, who provided invaluable direction; Mr. Bayo Okeowo, Global Rights Program officer and Mr. Yinka Oguntade, Global Rights Admin. Officer who made sure it was 'logistically possible.'

We are grateful to civil society organizations and host communities in Zamfara state for providing host community perspectives in the course of our consultations with them.

Our earlier drafts were assessed by a group of experts who provided invaluable advice and we sincerely thank: Mr. Leslie Adogame, Sustainable Research and Action for Environmental Development; the law firm of Aluko & Oyebode; Mr. Obiora Azubike, Director, Artisanal and Small Scale Mining Department, Federal Ministry of Mines and Steel Development; Ms. Victoria Ohaeri, Spaces for Change; Amb. Joseph Ayalogu, ETA Zuma Group; Mr. Bayo Badejo, CISLAC; Dr. Godwin Uyi Ojo, Executive Director, Environmental Rights Action; Mr. Dieter Ahmed Bassi and Mr. Mohammed Baba, NEITI; Mr. Celestine Odo Oxfam Nigeria;and the National Human Rights Commission.

Our very special thanks also goes to Mr. Joseph Gitari, Ford Foundation Program Officer who believed in this project and our ability to make change happen.

Abiodun Baiyewu
Nigeria Country Director

Authors: Babatunde Ajala; Abiodun Baiyewu
Editor: Abiodun Baiyewu

Global Rights with generous support from Ford Foundation

September 2013

Table of Contents

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ADR	Alternative Dispute Resolution
AU	African Union
BPP	Bureau of Public Procurement
CAC	Corporate Affairs Commission
CAMA	Company and Allied Matters Act
CBN	Central Bank of Nigeria
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CSR	Corporate Social Responsibility
ECOWAS	Economic Community of West African States
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
FEPA	Federal Environmental Protection Agency
FIRS	Federal Inland Revenue Service
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICSID	International Centre for Settlement of Investment Dispute
MCO	Mining Cadastre Office
MECD	Mines and Environmental Compliance Department
MIREMCO	Minerals and Environmental Management Committee
MMSD	Ministry of Mines and Steel Development
NGSA	Nigerian Geological Survey Agency

NEITI	Nigeria Extractive Industries Transparency Initiative
NESREA	National Environment Standards and Regulation Enforcement Agency
NIPC	Nigerian Investment Promotion Commission
NSWG	National Stakeholders Working Group
RMAFC	Revenue Mobilization and Allocation and Fiscal Commission
SERAC	Social and Economic Rights Action Centre
SSMIMS	State Solid Minerals Information Management System
UDHR	Universal Declaration of Human Rights
VAT	Value-Added Tax

INTRODUCTION

Nigeria is endowed with large quantities of solid minerals across virtually every state in the nation. Like oil and gas, solid minerals are integral to the development of the country due to their manifold utility. They have the potential for generating employment for millions of individuals while also offering an opportunity to generate much needed revenues through taxes and royalties. In addition, solid minerals are of immense use in the manufacturing sector as inputs for finished products, and international trade in solid mineral resources has served as a critical source of foreign exchange earnings and a major contributor and mainstay of many economies. If properly harnessed and leveraged through the right legal and regulatory framework, which is transparently and responsibly implemented, solid mineral extraction could support broad-based and sustainable national development promoting the welfare and human rights of citizens.

Like communities in the Niger-Delta region which have suffered tremendously from the exploitation of hydro-carbons, small-scale mining has had disastrous consequences on resource-rich communities, such as in Zamfara State. Industrial-scale development of solid minerals have also posed significant dangers to the lives, lands, livelihoods, health and physical environment of communities hosting mining activity. While in the past decades hydrocarbon development has been the driver of the Nigerian economy, the Nigerian government has taken steps over the past few years to diversify the economy, in particular by developing its solid mineral resources, and modernizing the industrial mining laws to make them more investor-friendly. International organizations and foreign governments have also indicated commitment to the development of Nigeria's solid mineral sector. For instance, the governments of Australia, Canada and the World Bank in a joint statement in July 2013, uncovered their plan to jointly support the Ministry of Mines and Steel Development in a two year program to strengthen infrastructure in the sector.[1]

This document first sets the context of mining activity and minerals in Nigeria, and then (1) gives an overview of the Nigerian laws and regulations on mineral extraction and managing the social, environmental and human rights issues around mining activity, (2) identifies human rights risks of communities related to mining activity, (3) identifies areas of adequate and inadequate protection of those community rights in the legal and regulatory framework, and (4) presents actionable recommendations for engaging with government to ensure it is accountable for its duty to respect, protect and fulfill the fundamental human rights of affected communities, for engaging with companies to ensure they respect human rights in their activities, and so ensure that communities directly and indirectly affected by potential mining activity have a voice in determining if and how that activity takes place.

Context of mining activity and minerals in Nigeria

A variety of mining activity occurs across virtually all of the states of Nigeria, including the Federal Capital Territory, Abuja. A large variety of minerals are mined across the nation, and a correspondingly diverse group of mining operations can be found in the states. Most mining activity within the country is artisanal in nature, performed by local miners without the benefit of the cutting-edge technology of large conglomerates. However, such corporate mining operations are also present in Nigeria; for example, Dangote cement has the largest limestone quarries in Nigeria, and companies

[1] http://businessdayonline.com/2013/07/wbank-australia-canada-roll-out-plan-for-nigerias-mining-sector-reforms/

such as Savannah Gold Retel and Karing Five Limited have licenses to operate in the gold mining sector.

Such companies mine a variety of solid minerals. Within Nigeria, there are numerous deposits of thirty-four different metals, with seven designated as being of strategic importance by the government. The chart below highlights the main areas in which the various solid minerals can be found, but it is not intended as an exhaustive list.

Clay	• Abuja • Akwa Ibom • Anambra • Bayelsa • Benue • Borno • Edo • Kaduna • Lagos • Ogun • Ondo • Oyo • Plateau • Rivers • Sokoto	Lead	• Abuja • Abia • Akwa Ibom • Anambra • Bayelsa • Bauchi • Benue • Cross River • Ebonyi • Enugu • Kano • Niger • Plateau • Taraba	Clay	• Abuja • Akwa Ibom • Anambra • Bayelsa • Benue • Borno • Edo • Kaduna • Lagos • Ogun • Ondo • Oyo • Plateau • River • Sokoto
Coal	• Akwa Ibom • Anambra • Bauchi • Benue • Enugu • Ondo • Plateau	Gold	• Abuja • Abia • Ebonyi • Edo • Kaduna • Kebbi • Kwara • Niger • Oyo • Sokoto • Zamfara	Phosphate	• Anambra • Edo • Imo • Ogun • Sokoto
Limestone	• Akwa Ibom • Anambra • Bayelsa • Benue • Borno • Cross River • Edo	Kaolin	• Borno • Delta • Ekiti • Kaduna • Katsina • Kogi • Ogun	Marble	• Abuja • Benue • Delta • Edo • Katsina • Kogi • Kwara

	• Imo • Ogun • Ondo • Sokoto		• Ondo • Oyo • Plateau • Sokoto • Taraba		• Oyo • Plateau • Rivers
Iron Ore	• Anambra • Benue • Delta • Edo • Kogi • Kwara • Nasarawa	Tantalite	• Kano • Kogi • Kwara • Nasarawa • Oyo • Plateau	Talc	• Kogi • Nasarawa • Niger • Osun • Oyo
Barites	• Benue • Nasarawa	Diatomite	• Borno	Bentonite	• Adamawa • Borno
Tantalite	• Kano • Kogi • Kwara • Nasarawa • Oyo • Plateau	Dolomite	• Abuja • Edo • Kogi • Nasarawa • Oyo	Granite	• Ekiti • Ondo • Osun • Plateau • Sokoto
Bitumen	• Lagos • Ogun • Ondo	Mica	• Kaduna • Kwara • Nasarawa	Gypsum	• Enugu • Kogi • Sokoto
Bismuth	Plateau	Fluorite	Plateau	Kyanite	Kaduna
Feldspar	• Kwara • Nasarawa • Ogun • Ondo	Manganese	• Bayelsa • Cross River • Kaduna	Quartzite	Nasarawa
Wolfram	• Plateau	Limenite	Nasarawa		

CHAPTER 1: OVERVIEW OF NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

This section provides an overview of the national legal and institutional framework in Nigeria for solid mineral extraction, and managing the social, environmental and human rights impacts of that activity. Importantly, the functioning of this legal framework should be understood within the broader governance framework. As one indicator, Nigeria is one of the lowest performers in Africa on the Mo Ibrahim Index of African Governance, scoring 42 out of a possible 100.[2] Nigeria also ranked low on the Resource Governance Index recently published by Revenue Watch Institute, with a weak score of 42, indicating a lack of transparency and reporting in most aspects of the mining industry.[3]

The Nigerian government implemented new legislation and reforms to govern the solid minerals sector beginning in the mid-2000s. This section summarizes a wide range of applicable laws and regulations, as well as the institutions and agencies responsible for their implementation. The 2007 Minerals and Mining Act is the main piece of legislation regulating the mining industry; the Act vests significant power in the Ministry of Mines and Steel Development as well as implementing new regulations to govern the industry.[4] Among other provisions, the Act provides that the use of land for mining operations has priority over other uses and provides incentives for mining investment.[5] Altogether such regulations work to reform the mining sector in order to make it more investor friendly without necessarily increasing transparency or good practices.

A. Constitution and Federal Committees

Constitution

The Constitution of the Federal Republic of Nigeria gives the Federal Government control of all minerals in Nigeria.[6] This in turn implies that there is no private ownership of solid minerals in Nigeria. Furthermore, the National Assembly has the exclusive power to make laws with respect to mining in Nigeria.[7] Effectively, the Constitution gives the Federal Government exclusive power over solid minerals and mining concerns in the country.

---

[2] *43rd/52 Nigeria*, MO IBRAHIM FOUNDATION, http://www.moibrahimfoundation.org/interact/ (last visited Aug. 27, 2013). The Index statistically assesses good governance practices in a nation in order to provide both a potential governance tool and a framework with which stakeholders can assess the delivery of public goods and services and policy outcomes. *The Ibrahim Index of African Governance*, MO IBRAHIM FOUNDATION, http://www.moibrahimfoundation.org/ilag (last visited Aug. 27, 2013).

[3] *Nigeria*, REVENUE WATCH INSTITUTE, http://www.revenuewatch.org/countries/africa/nigeria/overview (last visited Aug. 27, 2013).

[4] KPMG, Nigerian Mining Sector 4 (2012).

[5] This is supplemented by the nation's tax laws. For example, the CITA offers various tax holidays and other capital allowances for mining operations. *Id.* at 12.

[6] CONSTITUTION OF NIGERIA (1999), S 44(3) ("[T]he entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.").

[7] *Id.*

With such significant power in the hands of the government, it is important that there are corresponding duties for the fundamental rights of Nigerian citizens. Solid mineral mining, in Nigeria and around the world, frequently has a host of human rights effects as various negative environmental impacts result in violations of the right to life, the right to a healthy environment, and a range of other socio-economic rights.[8]

Section 14(1) of the Constitution states that, "the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice."This is further strengthened in Section 16 (1 and 2) of the 1999 Nigerian Constitution. Section 16(1) a, b, c and d, provides that, "*The state shall, within the context of the ideals and objectives for which provisions are made in this constitution - Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy; Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity; without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy; Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.*" Section 16(2) states that, the state shall direct its policy towards – The promotion of a planned and balanced economic development; That the material resources of the nation are harnessed and distributed as best as possible to serve the common good; That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group. This presupposes that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

The Nigerian Constitution also guarantees the fundamental rights of Nigerian citizens. Chapter IV of the Constitution includes a wide range of human rights guarantees, including the right to life and the right to a fair hearing. Within this chapter there are key protections of basic fundamental rights such as the right to freedom of expression and peaceful assembly.[9] The Constitution also contains protections for minorities with its exclusive non-discrimination provision which provides for non-discrimination on the basis of ethnicity, sex, religion, or political opinion.[10] Beyond these basic rights, the Constitution additionally contains some provision for the protection of socio-economic rights. It expressly guarantees the right to private and family life as well as the right to acquire and own immovable property, yet at the same time the document vests the control of all solid minerals in the Federal Government.[11]

Finally, the Constitution also contains rights guarantees that are very relevant to the solid minerals extraction industry. First, there is a guarantee that "[t]he State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria."[12] Secondly, there is the assurance that the "exploitation of human or natural resources in any form whatsoever for reasons,

---

[8] ACTUALIZING HUMAN RIGHTS THROUGH GOOD GOVERNANCE IN NATURAL RESOURCES MANAGEMENT 1, *available at* www.globalrights.org/site/DocServer/Zamfara_Factnotes.pdf?docID=13883.
[9] Constitution of Nigeria (1999), SS 39, 40.
[10] *Id.* S 42.
[11] *Id.* SS 37, 44.
[12] *Id.* S 20.

other than the good of the community, shall be prevented."[13] Together, these provisions appear to provide human rights guarantees against some of the adverse effects engendered by mining operations.

The Constitution of the Federal Republic of Nigeria 1999, being the preeminent legislation in Nigeria, is the superstructure on which the entire structure of the legal and institutional framework of the solid minerals sector is erected. It guarantees civil and political rights in Chapter four, which contain the fundamental rights provisions of the Nigerian Constitution.[14] Consequently, if any of the rights of individuals in host communities with respect to the foregoing chapter, (such as the right to life, right to freedom from discrimination, right to dignity of human persons, right to prompt and adequate compensation where property is compulsorily acquired, or right to freedom to peaceful assembly and association) is breached, an aggrieved person may approach the High Court of the relevant State for redress.[15]

The Constitution also recognizes economic, social and cultural rights under fundamental objectives and directives of state policy embodied in chapter two. Conventionally they were not enforceable against the Federal Government of Nigeria.[16] However, there seems to be some progress on the road towards actualizing them in Nigeria, through the ratification and increasing recognition of the African Charter on Human and Peoples' Rights.[17] For example, in the case of *Georgina Ahamefule v Imperial Medical Center and Another*,[18] the Court relied on article 14 of the African Charter to find a violation of the right to health. In another case of *Gbemre v Shell,*[19] the court enforced the right to a healthy environment contained in the Constitution by interpreting the right to life and dignity as enshrined under sections 33(1) and 34(1) of the Constitution to include the right to a clean, poison free, pollution free and healthy environment. In thiscase, the Court found a violation of the rights to life (including the right to a healthy environment).

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (The African Charter)

The African Charter not only guarantees civil and political rights, but more significantly, it also guarantees a variety of economic, social and cultural rights such as the right to work,[20] right to health,[21] right to education,[22] right to participate in the cultural life of the community; [23] freedom from all forms of discrimination against women and the rights of the child.[24] It also provides for a third generation human rights or solidarity rights such as the right to development;[25] and the right to an environment

[13] *Id.* S 17(1)(d).
[14] Constitution of the Federal Republic of Nigeria 1999.
[15] Constitution of the Federal Republic of Nigeria 1999, S.46 (1).
[16] Constitution of the Federal Republic of Nigeria 1999, S. 6(6)(c).
[17] See African Charter on Human And Peoples' Rights (Ratification And Enforcement) Act, Cap A9, Laws of the Federation of Nigeria.
[18] *Unreported suit No ID/1627/2000.*
[19] *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* (2005) AHRLR 151 (NgHC 2005).

[20] Id. at Art 15.
[21] Id. at Art 16.
[22] Id. at Art 17(1).
[23] Id. at Art 17(2).
[24] Id. at Art 18(3).
[25] Id. at Art 22(2).

favourable to development.[26] Art. 1(1) makes the provision of the Charter enforceable in Nigeria. It states as follows:

"As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria."

The enforceability of the Charter in Nigeria has also received judicial imprimatur in a number of cases. A notable one is the case of *General Sani Abacha and Others v. Chief Gani Fawehinmi* [27] where the Supreme Court held that the African Charter forms part of the laws of Nigeria and must be enforced like all other laws. The Supreme Court opined that the Charter bestows upon citizens of member states of the Organisation of African Unity (now the African Union) enforceable rights and obligations. The right to a healthy environment was the right that fell under the spectrum in the foregoing case.

The enforceability of rights beyond civil and political rights as enshrined in the Charter has also been affirmed by the Community Court of Justice of the Economic Community of West African States and the African Commission on Human and Peoples' Rights in a number of cases.

The landmark case which vividly illustrates the status of the African Charter is the case of *Social and Economic Rights Action Centre (SERAC) & Anor v. Nigeria* heard before the African Commission on Human and Peoples' Rights. Although the case pertained to the oil sector, since it affirmed the obligation of the Nigerian government to promote the right to a healthy environment (a right guaranteed by the Charter) the principle holds true even in the mining sector. It affirms the principle that the Nigerian Government by virtue of having ratified the African Charter is obligated to protect and uphold the right to a healthy environment.

Case: SERAC vs. Nigeria[28]

As mentioned above, this case was ground-breaking with respect to the enforcement of the obligations of African governments in respect of economic, social and cultural rights. In 1996, the plaintiff, the Social and Economic Rights Action Centre (SERAC) instituted a case on behalf of the Ogoni people at the African Commission on Human and Peoples' Rights against the Federal Government of Nigeria. SERAC claimed that the military government, through its business relationship with Shell on oil exploitation had conducted its operations in violation of the right to a healthy environment and the right to health of the host community – the Ogoni people. The consequence of the exploitation was the devastation of their environment

Even though the case of SERAC v. Nigeria is solely related to oil and petroleum extraction, the same principles enunciated by the African Commission are applicable to the solid mineral industry

[26] Id. at Art 22(2); OC Ruppel 'Third-generation human rights and the protection of the environment in Namibia' http://www.kas.de/upload/auslandshomepages/namibia/HumanRights/ruppel1.pdf(accessed 22 January 2013) p.103.
[27] [2001]5 1Weekly Report of Nigeria 29.
[28] Social and Economic Rights Action Centre (SERAC) and Anor v. Nigeria (2001) AHRLR 60 (ACHPR 2001), Communication 155/96, Decided at the 30th ordinary session, Oct 2001 (environmental degradation and health problems caused by oil production).

and widespread pollution. These had a serious impact on food production and occasioned adverse health consequences on the Ogoni People, in the absence of additional environmental or health safeguards. In addition, the Nigerian state was alleged to have unleashed its armed forces on Ogoni protesters for challenging the oil company's reprehensible practices.

In Paragraph 52 of its statement on the Merits of the case, the Commission made the following submission:

"The right to a general satisfactory environment, as guaranteed under article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in article 16(1) of the African Charter and the right to a generally satisfactory environment favourable to development (article [24]) already noted, obligate governments to desist from directly threatening the health and environment of their citizens. The state is under an obligation to respect these rights and this largely entails non-interventionist conduct from the state; for example, to desist from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual"

The Commission took into consideration the fact that the Federal Republic of Nigeria had domesticated the African Charter and assimilated it into its domestic law with the implication that all the rights contained in it could be invoked in Nigerian courts including those violations alleged by SERAC.
Predicated on the foregoing, the Commission subsequently:

- Found the Federal Republic of Nigeria in violation of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter on Human and Peoples' Rights;
- Appealed to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland by, amongst other things:
    - Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and
    - Providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.
    - Significantly, the Commission also affirmed that collective rights, environmental rights and economic and social rights are integral elements of human rights in Africa.

In light of the explicit provision of the Charter and the foregoing judicial endorsement as enunciated above, the hesitant attitude of Nigerian courts with respect to giving effect to economic, social and cultural rights is perplexing. It is unjustifiable and a breach of Nigeria's treaty obligations under International Law. Clearly, host mining communities have an invaluable leeway to enforce violations of their human rights under the Charter.

Federal Executive Council

The Federal Executive Council is the supreme executive body in Nigeria comprising of the President of Nigeria and Ministers appointed by him. It initiates both the policies and programmes of the Federal Government of Nigeria and ensures their proper implementation after passage into law by the legislature. The Mining Act recognizes the Federal Executive Council's role in relation to payment of royalty in respect of mining activities. Specifically, the Act subjects the discretionary power of the

Minister of Mines and Steel Development to defer payment of royalty on minerals for a specific period to the approval of the Federal Executive Council. The Council also receives an annual report from the Solid Minerals Development Board through the Minister of Mines and Steel Development.

Senate Committee on Solid Minerals

The legislative powers of the Federal Republic of Nigeria's are vested in the National Assembly, consisting of the Senate and the House of Representative, with the former occupying the superior position in the hierarchy. Both the Senate and the House of Representatives carry out most of their functions through committees and sub committees. The committees provide thorough consideration to a proposed measure as well as affording a platform where the public is given an opportunity to be heard. Committees also provide a vehicle for the performance of oversight functions.

The Senate has a Committee which focuses on solid minerals called the Senate Committee on Solid Minerals. The Committee was established pursuant to Order XIII rule 98 (50) of the Senate Standing Orders 2007 (as amended) and is appointed at the commencement of the life of the Senate.

The jurisdiction of the Committee covers explosives; geological surveys and investigation; exploration mines, minerals and quarry (other than petroleum); and consideration and appropriation of annual budget estimates of related institutions.

House of Representatives Committee on Solid Mineral Development

As stated above, the Constitution of the Federal Republic of Nigeria 1999 empowers both the Senate and the House of Representatives to form committees in pursuance of theirs law-making and oversight functions. Accordingly, the House of Representatives has a committee that handles issues pertaining to the solid minerals sector called the Committee on Solid Mineral Development. This Committee has a Chairman, a Vice-Chairman and its membership is limited to a maximum of forty members who are appointed at the commencement of the life of the House of Representative. The jurisdiction of the Committee covers the following areas: geological surveys and minerals investigations; exploration, mines, minerals and quarrying; investments in mining activities; explosives; Nigerian Mining Corporation; Coal Corporation of Nigeria; Bitumen projects; Miferugui-Nimba Iron Ore; Uranium project (Guinea and Niger); Bauxite Ore, Guinea; Nigeria Mining and Geo-Science Society; Association of African Geological Surveyors; Commission of Geological Map of the World; International Geological Sciences; International Geological Congress; Commonwealth Committee for Mineral Resources and Geology; Nigerian Uranium Mining Company; and annual budget estimates.

Revenue Mobilization Allocation and Fiscal Commission's Solid Minerals Committee

The Revenue Mobilization and Allocation and Fiscal Commission is provided for in S.153 (1)(n) of the Constitution. The Commission is empowered and tasked with the responsibility of monitoring the accruals to and disbursement of revenue from the Federation Account; periodically reviewing the revenue allocation formulae and principles in operation to ensure conformity with changing realities; advising the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased; and discharging such other functions as are conferred on the Commission by this Constitution or any Act of the National Assembly.

Significantly, the Commission has a Solid Minerals Committee. The primary responsibility of the Solid Minerals Committee is to ensure that the Federal Government of Nigeria and all its beneficiary governments get equitable deals from foreign partners and all those entities involved in the exploitation of crude oil and solid minerals in Nigeria both onshore and offshore.

Furthermore, the Committee also carefully studies and analyses agreements such as Memorandum of Understanding (MOU); Joint Operation Agreement (JOA); Production Sharing Contract (PSC) with Shell; as well as PSC with Chevron and others; Joint Venture Cash Calls (JVCC); Sole Risk Contracts (SRC) to ensure their fairness to the Federation of Nigeria. Furthermore, while it evaluates and certifies Profit Sharing Arrangements, it also determines the fairness and transparency of the cost items constituting the JVCC. The Committee also scrutinizes and justifies all such budgets that involve payments from beneficiaries of the Federation Account.

B. Mineral Extraction Laws and Agencies

Nigerian Mineral and Mining Act 2007

The Nigerian Minerals and Mining Act is the principal legislation regulating the Nigerian mining sector, and, like the Constitution, it vests all regulation and ownership of the state's mineral resources with the Federal Government of Nigeria. With its emphasis on mining incentives and the priority of land use for mining, the Act reflects the government's desire to encourage private sector development in the Nigerian solid minerals industry. The Act provides for, among other incentives, the possibility of capital allowances, exemption from customs, and a tax relief period for mining companies.[29]

Importantly, the Act vests the administration of the mining industry in the Ministry of Mines and Steel Development (MMSD), which has four departments. The Mines Inspectorate Department has overall responsibility for operations in exploration, evaluation, mine development, and production; the Mines Environment and Compliance Department works to ensure that companies adopt and maintain procedures that are environmentally friendly; the Mining Cadastre Office focuses on issues of mining titles and permits; and the Artisanal and Small-Scale Mining Department organizes and supports small scale mining while working to improve the sustainable livelihood of their communities.[30]

National Minerals and Metals Policy 2008

Instituted shortly after the 2007 Nigerian Minerals and Mining Act, the Nigerian government intended the National Minerals and Metals Policy to act as a guide to accelerating Nigeria's economic, social, and political development through the development of the mining industry. It consists of two main sections: one addressing solid minerals and the other intended to govern metals policy.

The minerals section first asserts that regulatory neglect of the mining and minerals industry contributed to ecological degradation, loss of revenue, and other adverse effects in the socio-economic realm. Because of this, the policy seeks to ensure an "efficient and effective" utilization of Nigeria's resources in order to "exploit the mineral endowments . . . for the creation of wealth for all Nigerians,

[29] Nigerian Minerals and Mining Act (2007), SS 24, 25, 28.
[30] KPMG, *supra* note 3, at 6-7.

and generating employment, reducing poverty, promoting rural economy and significant contribution to our Gross Domestic Product."[31]

Beyond this mission, the mineral policy discusses the various departments of the MMSD, reiterates the legislative framework of the sector, focuses on capacity building, and examines promotion, marketing, researching, and development of minerals.

The metals policy follows a similar outline as it explains that it seeks to achieve accelerated development within Nigeria, but its mission statement focuses on increased industrialization within the state. Subsequently, it recognizes the allocation of responsibilities to two critical departments – the Steel Department and the Metallurgical Inspectorate and Raw Material Development Department. This is followed by an outline for action and strategies for achieving its mission; such strategies include promotion of locally produced metal products, providing appropriate governmental policies, developing an institutional framework, and creating an investor-friendly environment.

Minerals & Mining Regulations 2011

These most recent regulations are designed to define the rules and processes regarding the Minerals and Mining Act in order to assist in giving full implementation to the Act. Generally, the Regulations set forth procedures and processes for regulating exploration and mining, prescribe measures to enhance the general protection of the mining environment and workers' safety, and regulate processes and procedures for the enforcement and compliance with the provisions of the Minerals and Mining Act.[32]

The Regulations indicate the same type of licenses contained in the Minerals and Mining Act, but they volunteer more detailed information in addition to stipulating procedures on how to obtain licenses.[33] The Regulations accomplished this by identifying ways by which mineral exploration license or mining lease can be obtained and recognizing financial capability and technical competence as key criteria.[34] The Regulations also contain other important provisions on the payment of compensations, assessment of compensations by Mining Cadastre Office in consultation with MIREMCO and the owner or occupier, minimum work obligations, social obligations, relinquishment and enlargement of small-scale mining lease area, transfer and assignment of mineral titles, the reporting requirement, payment of royalties, dispute resolution, and sanctions for breach of mining laws.[35]

Ministry of Mines and Steel Development

Since, the entire property and control of all mineral resources in Nigeria is vested in the Federal Government of Nigeria, holding it in trust for its people;[36] the Federal Ministry of Mines and Steel Development as an agency of government headed by the Minister of Mines and Steel Development,

---

[31] National Minerals and Metals Policy (2009), SS 7, 10.
[32] Minerals and Mining Regulations (2011), S 3.
[33] *Id.* at S 20(2).
[34] *Id.* at SS 24, 25.
[35] *Id.* at SS 11-13, 15-17, 18, 52, 53.
[36] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.1(1).

("The Minister"), administrates and manages all solid mineral resources in Nigeria.[37] The Ministry through the Minister is tasked with the responsibility of policy-making, administration and regulation of the mining sector in Nigeria.[38] It also administers the Minerals and Mining Act 2007, which along with the Regulations made there-under constitute the principal legislation governing mining in Nigeria.

The Minister is charged with a number of responsibilities which includes ensuring the orderly and sustainable development of Nigerian's mineral resources,[39] monitoring compliance with Community Development Agreements;[40] creating an enabling environment for private investors, both foreign and domestic by providing adequate infrastructure for mining activities, in addition to identifying areas where Government intervention is desirable in achieving policy goals in mineral resources development;[41] establishing environmental procedures and requirements to guide mining operations;[42] stipulating measures geared at ensuring the general welfare and safety of those engaged in mining operations, etc.[43]

The Mining Act makes provisions for the establishment of four departments, identified below, under the Ministry of Mines and Steel Development which will see to the proper administration of the provisions of the Act.[44]

- ***Mines Inspectorate Department***

Established under S. 16(1) (a) Minerals and Mining Act 2007, the functions of the Mines Inspectorate Department include:

- General supervision of all reconnaissance, exploration and mining operations to ensure their compliance with this Act;
- Supervision and enforcement of compliance by mineral title holders with all mine health and safety regulations prescribed under this Act and any other law in force;
- Preparing and rendering records, reports and returns as required by the Minister or as prescribed by regulations;
- Taking custody of mineral resources required by any Court to be forfeited to the Government;
- With the prior approval of the Minister, disposal of any mineral resources forfeited to the Government;
- Carrying out investigations and inspections necessary to ensure that all conditions relating to mineral titles and the requirements of this Act are complied with;
- Discharging such other duties as may be assigned from time to time by the Minister;
- Reviewing and recommend to the Minister, programmes for controlling mining operations.

- ***Mines Environmental Compliance Department***

[37] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4.
[38] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4.
[39] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(a).
[40] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(c).
[41] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(f).
[42] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(h).
[43] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(j).
[44] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.4(p).

The Mines Environmental Compliance Department was established under S.16 (1)(b) Minerals and Mining Act 2007. Its main functions are to:

- Review all plans, studies and reports required to be prepared by holders of mineral title in respect of their environmental obligations under the Act;
- Monitor and enforce compliance by holders of mineral title with all environmental requirements and obligations established pursuant to this Act, its regulations and by any other law in force;
- Periodically audit the environmental requirements and obligations established pursuant to the Act, its regulations and by any other law in force and make recommendations thereon to the Minister;
- Liaise with relevant agencies of Government with respect to the social and environment issues involved in mining operations, Mine closure and reclamation of land.

This department is expected to work in sync with the Ministry of Environment to ensure full compliance with Environmental Impact Assessment requirements.

- ***Artisanal and Small-Scale Mining Department***

The Artisanal and Small-Scale Mining Department is tasked with the responsibility of:

- Regulating artisanal and small-scale mining operations, in addition to organizing, supporting and assisting them;
- Administering mining cooperatives and mineral buying centres.

In addition, it is expected to render extension services to mining cooperatives in relation to exploration, mineral processing, entrepreneurial training, health and safety issues, etc.

- ***Mining Cadastre Office (MCO)***

This was established under the Minerals and Mining Act 2007 as the sole agency charged with the responsibility of administrating mineral titles in Nigeria.[45] It is established as a body corporate with perpetual succession and a common seal, with the power to sue and be sued in its own corporate name.[46] The agency is headed by a Director-General who is assisted by such officers as necessary for the efficient functioning of the agency.[47]

It is empowered under the Act to amongst other responsibilities, consider applications for minerals titles and permits; issue and suspend titles and permits granted; and where necessary, revoke minerals titles subject to the written approval of the Minister of Mines and Steel development.[48]

In respect of certain areas as designated through regulations by the Minister of Mines and Steel Development, applications and grant of minerals title by the MCO shall be done on the basis of open, transparent and competitive bidding, with a crucial criterion for success being a bid which will have the potential to foster the expeditious and beneficial development of the mineral resources of the

[45] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.5 (1)&(4).
[46] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.5 (2)(a) & (b).
[47] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.5 (3).
[48] Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.5 (5).

particular area from which the minerals will be extracted.[49] The principle of first-come-first-served is applied by the MCO where there are several applications received on the same business day with respect to the same or overlapping mineral title area.[50]

The MCO shall collect a fee for processing applications for mineral titles and an annual service fee established at a fixed rate per square cadastral unit for administrative and management services rendered by the Cadastre.[51] A mineral title shall become liable to revocation where the holder fails to pay the prescribed fees.[52] The MCO is also responsible for the maintenance of cadastral registers.[53]

State Mineral Resources and Environmental Management Committee

Since the Minerals and Mining Act vests exclusive ownership and control of all minerals in Nigeria and the Exclusive Economic Zone in the Federal Government of Nigeria, the Act, mindful of the need for collaboration in the governance of the sector by States and other key bodies, offers a viable platform for legitimate participation of states in mining issues in Nigeria through the establishment of State Mineral Resources and Environmental Management Committees.(MIREMCOs)[54] This body is provided for in S.19 of the Minerals and Mining Act 2007.

Membership of the Committee consists of a representative from the Mines Environmental Compliance Department who shall also be the Chairman of the Committee;[55] a representative of the relevant ministry responsible for land matters or mineral-related matters in the State concerned;[56] the Mines Officer for each State;[57] a representative of the Ministry of Agriculture or Forestry in the particular State;[58] a representative of the Surveyor-General of the particular State;[59] a representative of the Local Government Council where matters affecting a particular Local Government Area are being considered by the Committee;[60] a representative of the State Environmental Department or Agency;[61] and a representative of the Federal Ministry of Environment in the State.[62]

The functions of the Committee as outlined by the Act are as follows: considering and advising the Minister on issues pertaining to returns of necessary reports having a bearing on grant of mining titles;[63] considering issues relating to compensation and making necessary recommendations to the Minister of Mines and Steel Development;[64] discussing, considering and advising the Minister of Mines and Steel Development on matters pertaining to pollution and degradation of any land on which

49 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.9.
50 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.8
51 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.10.
52 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.11.
53 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.7.
54 Minerals and Mining Act 2007, Cap M12, Laws of the Federation of Nigeria, S.19.
55 Minerals and Mining Act, Cap M12 Laws of the Federation of Nigeria 2004, S.19(2)(a)
56 Minerals and Mining Act, Cap M12l LFN 2004,S.19(2)(b).
57 Minerals and Mining Act, Cap M12l LFN 2004, S.19(2)(c).
58 Minerals and Mining Act, Cap M12l LFN 2004,S.19(2)(d).
59 Minerals and Mining Act, Cap M12l LFN 2004, S.19(2)(e).
60 Minerals and Mining Act, Cap M12l LFN 2004, S.19(2)(f).
61 Minerals and Mining Act, Cap M12l LFN 2004,S.19(2)(g).
62 Minerals and Mining Act, Cap M12l LFN 2004,S.19(2)(h).
63 Minerals and Mining Act, Cap M12l LFN 2004,S.19(3)(a).
64 Minerals and Mining Act, Cap M12l LFN 2004; 19 (3)(b) & S.108.

any mineral is being extracted;[65] considering other matters pertaining to mineral resource development within the particular State as may be referred to them from time to time by the Minister of Mines and Steel Development;[66] advising the Departments established in accordance with the provisions of the Minerals and Mining Act 2007 for the supervision of mineral exploitation and the implementation of social and environmental protection measures;[67] advising the Local Government and communities on implementation of programs on environmental protection and sustainable management of mineral resources;[68] rendering advice and other necessary assistance needed by mineral title holders in their interaction with State and Local Governments, communities, civil institutions and other stakeholders;[69] advising the Minister in resolution of conflicts between, stakeholders;[70] and advising the Minister of Mines and Steel Development on matters relating to implementation of the Minerals and Mining Act 2007.[71]

The Committee is expected to meet at least once every three months in addition to such times the Minister may deem necessary.[72] Where circumstances demand it and the Committee desires to seek advice from host communities or any other individual, the Committee may co-opt a representative of the particular host community or any individual as its member for any period that it deems fit.[73] However, such a person shall not be entitled to vote, neither shall attendance of such a person count towards determination of quorum.[74]

Despite this invaluable platform provided for in the Act, the startling reality is that, the first of such committees was only just inaugurated April 2012 in Bauchi State by the Minister for Mines and Steel Development.[75]As at September 2013, only 6 of the 36 states of the Federation and the Federal Capital Territory had activated their MIREMCO boards[76]. The common reason given for the non-activation of state MIREMCO by most states consulted in the course of writing this book was that the law establishing state MIREMCOs failed to make provision for their funding.

Mineral title and mining accident dispute resolution

Federal High Court

The Minerals and Mining Act envisages that disputes arising between a mineral title holder and the Government in respect of the interpretation and application of the Act, its regulations and the terms

---

[65] Minerals and Mining Act, Cap M12l LFN 2004, S.19(3)(c).
[66] Minerals and Mining Act, Cap M12l LFN 2004, S.19(3(d).
[67] Minerals and Mining Act, Cap M12l LFN 2004, S.19 (3)(e).
[68]Minerals and Mining Act, Cap M12l LFN 2004, S.19 (3)(f).
[69] Minerals and Mining Act, Cap M12l LFN 2004, S.19 (3)(g).
[70] Minerals and Mining Act, Cap M12l LFN 2004, S.19 (3)(h).
[71]Minerals and Mining Act, Cap M12l LFN 2004, S.19 (3)(i).
[72]Minerals and Mining Act, Cap M12l LFN 2004, S.19 (4)(a).
[73]Minerals and Mining Act, Cap M12l LFN 2004, S.19 (7).
[74]Minerals and Mining Act, Cap M12l LFN 2004, S.19 (7).
[75] Nigerian Tribune 'FG set to bolster revenue base from mineral resources' (16 April 2012) http://tribune.com.ng/index.php/news/39298-fg-set-to-bolster-revenue-base-from-mineral-resources(accessed 19 January 2013); Blueprint 'FG inaugurates Bauchi State Mineral Resources and Environmental Management Committee' (24 April 2012) http://blueprintng.com/2012/04/fg-inaugurates-bauchi-state-mineral-resources-and-environmental-management-committee/ (date accessed).
[76] Bauchi, Gombe, Cross Rivers, Ogun, Kano and Ebonyi states.

and conditions of mineral titles shall at the first instance be resolved on an amicable basis. In a situation where it is a bona fide investment dispute that cannot be settled amicably, the dispute shall be resolved in accordance with the provisions of the Nigerian Investment Promotions Commission Act.

The Constitution of the Federal Republic of Nigeria 1999 makes the Federal High Court the appropriate forum for resolution of disputes of a civil nature.[77] Also, where offences are committed in violation of the Minerals and Mining Act and the Regulations made there under, the Federal High Court is made the court of first instance for prosecution of such offences.[78] The Minerals and Mining Act also bestows power on the Federal High Court to hold an inquiry when an accident occurs in a mine.[79]

Court of Appeal

The Court of Appeal has both original[80] and appellate jurisdiction[81] to hear cases that are brought before it. The Court of Appeal plays an important role in the mining sector through the exercise of its appellate jurisdiction. As already stated above, the Federal High Court has jurisdiction over mining matters. Where the verdict of the Federal High Court in a criminal or civil matter is the subject of an appeal, the Court of Appeal in the exercise of its appellate jurisdiction has the constitutional power to determine such appeals.[82]

Supreme Court of Nigeria

The Supreme Court is the apex court in Nigeria. In relation to the mining sector, circumstances may arise where the Supreme Court may hear matters in its original jurisdiction where a dispute arises between the Federal Government and a state; and also in the exercise of its appellate jurisdiction where the verdict in matters heard at first instance by the Federal High Court, was appealed against at the Court of Appeal and subsequently brought on appeal to the Supreme Court.

Other National Laws and Institutions

***Survey Co-ordination Act*:** The Minerals and Mining Act provides that the Mining Cadastre Office shall prior to the grant of a lease, require the area specified in the application to be surveyed in compliance with the provisions of the Survey Coordination Act.[83] This implies coordination with the office of the Surveyor General of the Federation, as this office alongside its state counterparts are responsible for monitoring and implementing the Act. However, surveyors in 2012 called for a review of the Act as it did not take into account political and technological developments since the 1970s. [84]

[77] S.251(1)(n) Constitution of the Federal Republic of Nigeria 1999
[78] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria, 2004, S.142.
[79] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria, 2004, S.88.
[80] S.239 Constitution of the Federal Republic of Nigeria 1999.
[81] S.240 Constitution of the Federal Republic of Nigeria 1999.
[82] S.240 Constitution of the Federal Republic of Nigeria 1999.
[83] Minerals and Mining Act (2007), S 79.
[84] http://www.thisdaylive.com/articles/surveyors-seek-review-of-coordination-act/124283/

Nuclear Safety and Radiation Protection Act The Minerals and Mining Act makes the Nuclear Safety and Radiation Protection Act applicable with respect to the discovery of radioactive mineral. The Minerals and Mining Act places an obligation on a mineral title holder to notify the Mines Inspectorate Department on discovery of any radioactive mineral or any mineral reasonably expected to be radioactive.[85] This implies coordination with the Nigeria Nuclear Regulatory Authority.

Harmful Waste (Special Criminal Provisions) Act criminalizes the pollution of the atmosphere in a way that makes it noxious to the health of individuals in general dwelling or carrying on business in the neighborhood. Given the propensity for solid mineral mining tailings and processing to be environmentally unfriendly, this Act, becomes crucial to protecting the rights of host communities.

The Criminal Code[86] contains provisions for the prevention of public health hazards and for environmental protection thereby criminalizing acts that result in same**.** **Section 245** of this Act criminalizes the corruption of water bodies, while Section 247 recognizes the pollution of the atmosphere, making it noxious to human health as a misdeamenour.

The Company and Allied Matters Act (CAMA) institutes the Corporate Affairs Commission which is an integral part of the legal, institutional and regulatory framework of Nigeria. It is an important institution in the framework because it is the body charged with administering the Company and Allied Matters Act and regulating the activities of registered cooperative societies and companies operating in the mining sector.

Nigerian Customs ServiceThe Minerals and Mining Act reserves a role for the Nigerian Customs Service with respect to making declarations of minerals to be exported. The Act requires an exporter of any minerals prior to the entry of such mineral for export to declare on the appropriate customs entry form, the State from which the mineral was extracted.[87] Furthermore, on demand by the prescribed authority, an exporter is obligated to furnish the foregoing information within the time frame and in the manner required.[88] The designated officer of the Nigerian Customs Service has the discretion to refuse the entry of any mineral for export where he is satisfied that the provision relating to declaration has not been complied with.[89]

Nigerian Investment Promotion Commission The Nigerian Investment Promotion Commission was established by the Nigerian Investment Promotion Commission (NIPC) Act with the objectives of promoting, coordinating and monitoring all investments in Nigeria.

The Commission is tasked with the following mandates:[90]

- Co-ordination, monitoring, encouragement and provision of aid and guidance for the establishment and operation of enterprises in Nigeria;

---

[85] *Id.* at S 44.
[86] Chapter 77, Laws of the Federation of Nigeria 1990.
[87] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.143(1)(a).
[88] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.143(1)(b).
[89] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.143(3).
[90] Nigerian Investment Promotion Act, Cap N117, Laws of the Federation of Nigeria 2004 S.4.

- Initiation and support of measures targeted at enhancing the investment climate in Nigeria for both Nigerian and non-Nigerian investors;
- Promotion of investments in and outside Nigeria through effective promotional means; in addition to the collection, collation, analysis and dissemination of information on investment opportunities and sources of investment capital, in addition to provision of advice on request on the availability, possibility or suitability of partners in joint-venture projects;
- Registration and keeping records of all enterprises to which the NIPC Act legislation applies;
- Identification of specific projects and invitation of interested investors for participation in them; in addition to initiation, organisation and participation in promotional activities like exhibitions, conferences and seminars targeted at stimulating investments;
- Maintenance of liaisons between investors and Ministries, government departments and agencies, institutional lenders and other authorities involved with investments;
- Provision and dissemination of updated information on available incentives to investors;
- Provision of assistance of incoming and existing investors by providing support services;
- Evaluation of the impact of the Commission on investment in Nigeria and recommendation of suitable remedies and further incentives;
- Provision of advice to the Federal Government on policy matters, including fiscal measures designed to promote the industrialization of Nigeria or the general development of the economy;
- Performance of such other functions as are supplementary or incidental to the attainment of the objectives of NIPC Act.

The NIPC Commission therefore regulates investments made in the mining sector and as such is an important institution in the regulatory framework of solid minerals mining in Nigeria.

Regional Guidance and Frameworks

Economic Community of West African States (ECOWAS) Mining Directive

Nigeria is a member of ECOWAS, a sub-regional group formed in 1975 which consists of fifteen West African states.[91] However, there is presently no common legal, institutional or regulatory framework for mining within ECOWAS despite the fact that the organization has been working on putting one into place since 2008.[92] The organization's first steps towards such a framework consisted of the release of the Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector (the ECOWAS Directive). This Directive envisaged the eventual implementation of a second

[91] Other ECOWAS member states include Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Senegal, Sierra Leone and Togo.
[92] MAYER BROWN, RECENT LEGAL DEVELOPMENTS IN THE MINING SECTOR OF WEST AFRICAN STATES 1 (2010), *available at*http://www.mayerbrown.com/files/Publication/a10390b1-79cb-4dee-b6bb-16bd5af12d96/Presentation/PublicationAttachment/653da675-bc14-439a-bc79-87abeb85ccbb/NEWSL_MINING_JAN10_BULLETIN_WEST_AFRICA.PDF.

document known as the Common Mining Code, but there has not yet been any movement towards this plan.[93]

Adopted in May of 2009 in Abuja, ECOWAS Mining Directive was developed by the ECOWAS Commission, with contributions from governments, Civil Society Organizations and communities impacted by mining activities. The Directive does not impose any obligations or grant any rights to corporate bodies or individuals, but member nations are expected to take all necessary steps to ensure compliance by July 1, 2014.[94] Generally, the ECOWAS Directive seeks to harmonize the guiding principles and policies of the mining sector frameworks of member nations, aiming to ensure accountability, promote human rights and transparency, and protect host mining communities.[95] At the same time it seeks to promote development, especially ensuring the creation of a mining environment that is responsive to macro-economic sustainable development and balances the need to provide requisite incentives to attract investors while protecting states' revenue and resources.[96]

The ECOWAS Mining Directive addresses a number of issues including:

- Ownership of Mineral Resources: Recognizes state ownership of mineral resources with the expectation that the resources will be administered for the good of the citizenry.[97]
- Acquisition or Occupation of Land for Mining Purposes: Provides for the acquisition of land for mining purposes while recognizing that compensation for such should take into account a number of factors, such as immovable assets lost.[98]
- Acquisition of Mineral Rights: Requires the grant of valid mineral right by a competent authority while mandating transparency and international best practices regarding the criteria for acquisition of mining rights.[99]
- Protection of the Environment: Provides a host of environmental protections, such as the requirement of adopting appropriate legislation in the member states.[100]
- Localization of Policy Mining Operations: Makes provisions on localizing mining operations to ensure that host communities derive maximum benefit from mining operations being conducted in the community.[101]
- Access to Information: Makes provisions on the need to maintain access to information, particularly the necessity of maintaining records and a reachable address.[102]
- Transparency, Good Governance and Public Access to Information: Provides that records and information submitted should be accessible to the public, and this accessibility should encompass information on revenues.[103]
- Human Rights Obligations: Asserts that Member States, mining rights holders, and mining-related businesses have an obligation to respect and promote human rights, especially those of

[93] Id.
[94] *Id.* at 2.
[95] Council of Ministers, Directive C/DIR.3/05/09 on the Harmonization of Guiding Principles and Policies in the Mining Sector (May 2009), at art. 2.1, *available at* www.comm.ecowas.int/sec/en/directives/ECOWAS_Mining_Directives.pdf.
[96] *Id.* at art. 2.2.
[97] *Id.* at art. 3.2.
[98] *Id.* at art. 4.3.
[99] *Id.* at art. 5.3.
[100] *Id.* at art. 6.2.
[101] *Id.* at art. 11.
[102] *Id.* at art. 12.
[103] *Id.* at art. 13.

host communities. This includes making adequate provision for the progressive actualization of economic, social and cultural rights.[104]

- Sustainable Development and Local Community Interests: Expects holders of mining rights to conduct their mining operations in a manner that respects the right to development and the right of host communities to ownership, development, occupation, control, protection and use of their lands, other natural resources, and cultural and intellectual property.[105]

The ECOWAS Directive involves a number of different institutions. These include the various Member States, the ECOWAS Commission itself, the ECOWAS Community Court of Justice, the Council of Ministers, and the African Court of Justice and Human Rights.

Member States are expected to develop National Action Plans based on the directive and submit an annual report on progress in fulfilling the mandate of the Directive and generally made in their national mining sector to the President of ECOWAS, and make to this report available to the public.[106] Sadly, Nigeria is yet to submit any such report in spite of the fact that the Directive requires all member States to have fully adopted the principles advocated in it by July 2014.[107]

African Mining Vision

Adopted by the Heads of State of the African Union in 2009, the African Mining Vision intended to address the contradiction of Africa's great mineral endowment existing simultaneously with pervasive poverty.[108] In response to this, the African Mining Vision seeks to serve as a pathway towards Africa's long-term development goals regarding mineral extraction. It is primarily a developmental mining approach that asserts that the route to growth is by creating economic and social linkages that benefit Africa; it articulates how mining can be utilized to drive development across the continent. Furthermore, the Vision advocates for a better integration of mining into development policies at local, national, and regional levels.[109]

The Africa Mining Vision operates on several levels. Locally, it addresses how mining can make a better contribution to local development by ensuring that workers and host communities derive sustainable and tangible benefits from large-scale industrial mining while still ensuring that the environment is protected.[110] At the national level, it aims to ensure that each African nation has the capacity to negotiate agreements with mining multinationals that yield fair resource rents while providing for the use of local inputs in operations.[111] Finally, at the regional level, the African Mining Vision advocates for the integration of mining into industrial and trade policy. However, there are several key elements articulated in the Vision which operate across multiple levels:

---

[104] *Id.* at art. 15.
[105] *Id.* at art. 16.
[106] Id. at art 19 (3).
[107] Id. at art 22.
[108] *About the Africa Mining Vision*, AFRICA MINING VISION, www.africaminingvision.org/about.html (last visited Aug. 30, 2013).
[109] Id.
[110] Id.
[111] Id.

- Mining sectors will become integral elements of a diversified, robust and globally competitive industrializing African economy;
- Mining sectors should be safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by host communities, sustainable, properly governed, and effectively able to garner and utilize rents earned;
- Mining sectors should maximize Africa's natural resource endowments while also incorporating high value and lower value industrial minerals on both industrial and small-scale levels;
- Mining sectors will harness the potential of artisanal and small-scale mining towards the stimulation of local and national entrepreneurship, the improvement of livelihoods, and the advancement of integrated rural, social, and economic development;
- Mining sectors will be major players in vibrant and competitive national, continental and international capital and commodity markets;
- Mining sectors that catalyze and make contributions to the diversified growth and development of a single African market.[112]

Laudable as the objectives of the African Mining Vision are, the instrument has however been criticized in some quarters as favouring foreign investment to the detriment of the livelihoods of local artisans.

To effectively protect host communities and nationals of extractive rich countries in Africa, a revision of the Mining Vision should be considered by stakeholders to adequately deal with issues which have and continue to adversely affect mining host communities such as the need for prompt, adequate and effective compensation for loss of property and of livelihoods – directly and indirectly impacted by mining activities; social impact assessments to protect host communities from the harmful effects of mining activities apart from environmental effects; and developing a template for what prior, free, informed consent should constitute.

C. Revenue Laws

Nigeria Extractive Industries Transparency Initiative (NEITI)

The Nigeria Extractive Industries Transparency Initiative (NEITI) is the body entrusted by law with the mandate of promoting transparency and accountability in the management of revenues from Nigeria's oil, gas and mining sector.[113] The NEITI is a major part of the nation's on-going anti-corruption reforms and the local version of the Extractive Industries Transparency Initiative (EITI), which is a global initiative targeted at ensuring that extractive resources promote sustainable development.[114]

---

[112] AFRICA MINING VISION (2009), *available at* http://www.africaminingvision.org/amv_resources/AMV/Africa%20Mining%20Vision%20english.pdf.

[113] Nigeria Extractive Industries Transparency Initiative ' About NEITI' http://www.neiti.org.ng/pages/about-neiti (accessed 20 January 2013).

[114] Nigeria Extractive Industries Transparency Initiative ' About NEITI' http://www.neiti.org.ng/pages/about-neiti (accessed 20 January 2013).

The body was inaugurated in February 2004 by former President of Nigeria, Olusegun Obasanjo, when he established the National Stakeholders Working Group (NSWG).[115] The NSWG is tasked with the oversight of the activities of NEITI, and its membership is drawn from representatives of government, extractive companies and civil society.[116] NEITI commissioned the first comprehensive audit of the petroleum industry of Nigeria covering the period 1999 to 2004.[117]

The NEITI Act

Passed into law in 2007 as a demonstration of Nigeria's commitment to the global Extractive Industries Transparency Initiative (EITI), the Nigeria Extractive Industries Transparency Initiative (NEITI) Act is intended to promote transparency and accountability of revenues received by the Federal Government of Nigeria and statutory recipients from the extractive sector. The NEITI Act accordingly identifies four main objectives:[118]

- Ensure due process and transparency with respect to payments made by all extractive industry companies and the Federal Government;
- Monitor and ensure accountability as regards revenues received by the government from extractive industry companies;
- Eliminate all forms of corrupt practices in determination, payments, receipts and posting of revenue accruing to the government from extractive industry companies;
- Ensure transparency and accountability in the application of revenues received from companies operating in the baseline from which the breadth of the territorial waters of Nigeria is measured.

Due to the passage of the NEITI Act, Nigeria is considered to be compliant with the larger global Extractive Industries Transparency Initiative.[119]

Significantly, NEITI's inaugural audit report on the solid minerals sector released on 13th of December 2012 revealed that Nigeria loses royalties of about 4.048 billion naira annually.[120] The report covered the period 2007-2010.[121] The losses were attributed to illegal mining and lack of capacity to monitor production in the quarries by the regulator, the Ministry of Mines and Steel Development.[122] The report further revealed discrepancies between government receipts and operating firms payments in the period covered. The losses are however understated as the audit excluded production by artisanal and small miners and focused primarily on the operations of about 78 firms majorly engaged in

---

[115] Id.
[116] Id.
[117] Id.
[118] Nigeria Extractive Industries Transparency Initiative (NEITI) Act (2007), S 2.
[119] *Nigeria,* EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, eiti.org/Nigeria (last visited Aug. 30, 2013).
[120]The Nation 'Nigeria loses N4b to illegal mining, says NEITI' (14 December 2012) http://thenationonlineng.net/new/business/nigeria-loses-n4b-to-illegal-mining-says-neiti-2/(accessed 20 January 2013).
[121] Leadership Newspaper 'NEITI Report Exposes inadequacies in mines sector' (14 December 2012) http://www.leadership.ng/nga/articles/42554/2012/12/14/neiti_report_exposes_inadequacies_mines_sector.html (accessed 20 January 2013).
[122]The Nation 'Nigeria loses N4b to illegal mining, says NEITI' (14 December 2012) http://thenationonlineng.net/new/business/nigeria-loses-n4b-to-illegal-mining-says-neiti-2/(accessed 20 January 2013).

construction which were active in the sector across the country.[123] Chinese and Indian firms were fingered in the report to be involved in illegal mining.[124] They were accused of sponsoring several illegal artisanal operations in collaboration with local authorities.[125]

The report also indicted Federal Government agencies saddled with regulating the sector, particularly the Mines Inspectorate Department and the Ministry of Mines and Steel Development, of negligence and disregard for the laws enacted to guide operations in the solid mineral sector.[126] It also revealed that most of the companies audited did not submit their annual tax returns to the Federal Inland Revenue Service (FIRS) as required by law.[127] In addition, it uncovered a lack of synergy between the Mining Cadastre Office and the State mines inspectorate which allowed illegal mining to thrive.[128]

A challenge with NEITI in spite of this report is that it has largely concentrated its effort on tracking the financial flow within the hydro-carbon to the detriment of the solid mineral sector. It is hoped that the agency will make true the promise made by its Executive Director in September 2013 to track funds in the solid mineral sector[129] and improve fiscal transparency within the sector. NETI should specially pay attention to revenues derived from artisanal and small scale mining sectors.

Solid Minerals Development Fund

Section 34 of the Minerals and Mining Act establishes the Solid Minerals Development Fund. The same section lays out the function of the Fund as follows:

(a) Development of both human and physical capacity in the sector;
(b) Funding for geo scientific data gathering, storage and retrieval to meet the needs of private sector led mining industry;
(c) Equipping the mining institutions to enable them perform their statutory functions;
(d) Funding for the extension services to small scale and artisanal mining operators; and
(e) Provision of infrastructure in mines land.

Unfortunately this Fund which is essential to the development of the sector is yet to become active as at the time of writing this book.

Solid Minerals Development Board

This board is charged with the responsibility of managing the Solid Minerals Development Fund.[130] Membership of the board comprise of a chairman appointed by the President of Nigeria on the

---

[123] Id.
[124] Blueprint Nigeria 'Illegal mining: NEITI accuses Chinese, Indian firms' (1 January 2013). http://blueprintng.com/2013/01/illegal-mining-neiti-accuses-chinese-indian-firms/(acceesed 20 January 2013)
[125] Id.
[126]The Nation 'Nigeria loses N4b to illegal mining, says NEITI' (14 December 2012) http://thenationonlineng.net/new/business/nigeria-loses-n4b-to-illegal-mining-says-neiti-2/(accessed 20 January 2013).
[127] Leadership Newspaper 'NEITI Report Exposes inadequacies in mines sector' (14 December 2012) http://www.leadership.ng/nga/articles/42554/2012/12/14/neiti_report_exposes_inadequacies_mines_sector.html (accessed 20 January 2013).
[128] Leadership Newspaper 'NEITI Report Exposes inadequacies in mines sector' (14 December 2012) http://www.leadership.ng/nga/articles/42554/2012/12/14/neiti_report_exposes_inadequacies_mines_sector.html (accessed 20 January 2013).
[129] http://dailytrust.info/index.php/business/5676-neiti-to-track-solid-mineral-fund.
[130] Minerals and Mining Act , Cap M 12, Laws of the Federation of Nigeria 2004, S,35(1).

recommendation of the Minister of Mines and Steel Development; a representative of the Central Bank of Nigeria, a representative of the Bankers' Committee, three representatives of private mining operators and mineral processors appointed by the Minister of Mines and Steel Development; and the Secretary of the Board.[131]

The functions and powers of the Board under the Act include the following: monitoring the operation and evaluation of the progress of the Fund;[132] advising the Minister of Mines and Steel Development on changes needed for improving the operation of the Fund;[133] receiving and considering the report of the management agent appointed under the provision of the Minerals and Mining Act and advising the Minister of Mines and Steel Development on it;[134] publication of the names of defaulters of loans granted under the Minerals and Mining Act;[135] performing other functions in relation to the Fund as assigned by the Minister from time to time.[136]

The board has however been dormant, according to the Minister, due to lack of funds.[137] The Minerals and Mining Act deems the Central Bank to have been appointed as the Custodian of the Solid Minerals Development Fund.[138]

Central Bank of Nigeria (CBN)

The role of the Central Bank of Nigeria in the legal, institutional and regulatory framework of solid minerals sector is recognized under the Minerals and Mining Act 2007. The Central Bank of Nigeria (CBN) is empowered under the Act to permit a mineral title holder who earns foreign exchange from the sale of minerals exploited to retain in a foreign exchange domiciliary account a part of his earnings with a view to using it to acquire spare parts and other required inputs for mining operations which would otherwise not be readily available without such a facility.[139]

Furthermore, the Act recognizes the role of the CBN with respect to the guarantee of free transferability of funds. [140] Accordingly, the CBN provides convertible currency for foreign loan servicing secured for mining operations.[141] This provision could also be needed for remittance of foreign capital where mining company is to be sold, liquidated or participated in through foreign investment.[142] The CBN also has a representative on the Solid Minerals Development Board, the body charged with the management of the Solid Minerals Development Fund.[143]

---

[131] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.35(2)(a)-(e).
[132] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.36(a).
[133] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.36(b).
[134] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.36(c).
[135] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.36(e)
[136] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.36(h).
[137] http://www.ngrguardiannews.com/national-news/130571-lack-of-funds-cripple-solid-minerals-sector-reform (date accessed)
[138] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.37.
[139] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.26.
[140] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria, S.27.
[141]Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.27(a).
[142] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.27(b).
[143] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria S.35(2)(b)

Gleaning from the examples of other countries where the Central Bank acts as a buying center for mineral resources, (*In the Philippines and Ethiopia, the National Banks or central banks purchase gold produced by artisanal miners. The National Bank of Ethiopia (NBE) purchases gold from miners at a price 5% higher than the daily global market gold price to attract miners sell the gold to the NBE instead of other channels or individuals.*[144] *The Philippines' Central Bank purchases gold with the same world gold market price.*) we think that the CBN can become more active and vested in the regulation of the sector.

Federal Inland Revenue Service (FIRS)

Since mining is a matter on the exclusive legislative list, the Federal Board of Inland Revenue Service is the body empowered to collect revenue on behalf of the Federal Government in the form of taxes from mining companies, taking into consideration the allowances and reliefs granted under the Mining Act in the determination of the tax liability of mining companies.

Accordingly, the FIRS is entitled to collect such taxes like Value-Added Tax, Capital Gains Tax, Companies Income Tax, etc. This function makes it an integral institution in the legal, institutional and regulatory framework of mining in Nigeria.

Other Revenue Laws

There are a variety of revenue laws that govern the solid mineral extractive industry in Nigeria. As a whole, these laws are generally intended to promote mining activities in Nigeria while simultaneously increasing the revenue the sector produces. Below are a few of the most relevant laws.

***Capital Gains Tax Act*:** This Act is applicable to mining companies with respect to capital gains accruing to a company on the disposal of chargeable assets, and it requires the payment of capital gains tax at a rate of ten percent.[145]

Companies Income Tax : The Act requires the payment of the companies income tax at the rate of thirty percent of the taxable profit of mining companies operating in the sector.[146]

Value Added Tax (VAT): Mining companies are required to register for the value-added tax within six months of commencing business, payable at five percent on all taxable goods and services.[147] Calculation of the tax is based on an aggregate value of items such as cost, insurance and freight, customs duties and other charges on imported machinery or equipment.[148] Taxable persons such as mining companies are also required to render a return on all taxable goods and services purchased or supplied to the Federal Board of Inland Revenue.[149]

Education Tax Act: This Act imposes education tax on all companies in Nigeria, including companies operating in the mining sector, and it sets the rate for this tax at two percent of assessable profit of companies registered in Nigeria.[150]

---

[144] http://www.2merkato.com/news/alerts/919-national-bank-of-ethiopia-receives-first-request-for-gold-purchase
[145] Capital Gains Tax Act (1967), SS 1, 2.
[146] Companies Income Tax Act (1990) Cap. 60.
[147] Value Added Tax (1993), S 2, 5.
[148] *Id.* at S 6.
[149] *Id.* at S 15.
[150] Education Tax Act (1993), S 2(1).

Pension Reform Act: The Minerals and Mining Act 2007 made the Pension Reform Act applicable to solid minerals sector in Nigeria, providing a tax-deductible amount established in accordance with applicable rates.[151]

Possession, Sale and Purchase of solid minerals

Section 94 of the Minerals and Mining Act forbids the purchase of any mineral without an officially issued license to do so. Section 95 then provides for proceeds recovered under a small-scale mining lease to be sold to a licensed Mineral Procurement Centre and valid sales receipts obtained.

Section 93 of the same Act provides that only an officer of the Ministry of Mines and Steel Development authorized by the Minister and acting in the execution of his duty, shall possess any mineral with the exception of:

1. Persons in possession of mineral won from a mineral title area of which they are the holder and which entitles him to explore and exploit the minerals; or
2. Persons who hold permits to possess or purchase minerals; or
3. Persons who are duly authorized agent or employee of any person permitted above to possess that.

Unfortunately, these provisions failed to take into account artisanal miners. In any case, these provisions have not been actively implemented, leaving minerals in the hands of persons prohibited under these section. The danger in this is that these minerals may be used as money laundering conduits.

D. Land Use Laws and Agencies

Land Use Act

The Land Use Act vests the ownership, management and control of all lands within the territory of each state of the Federation of Nigeria, except land vested in the Federal government or its agencies, in the Governor of each State.[152] Land may only be allocated with his authority for residential, commercial, agricultural and other purposes. Therefore, individuals may only acquire a right of occupancy for a term of 99 years.

The Mining Act of 2007 references the Land Use Act with respect to prioritizing the use of land for mining purposes over all other uses, in line with the doctrine of overriding public interest within the meaning of S.28 (2)(c) of the Land Use Act. Therefore, by virtue of the provisions of the Land Use Act, a Governor may revoke an existing right of occupancy where land within the territory of the state is needed for mining purposes.[153] This power is required to be exercised within 60 days after the grant of a mining lease, and the consent of the landowner must be obtained before a mining title can be

[151] Minerals and Mining Act (2007) Cap. 12, S 21.

[152] Land Use Act (1978) Cap L5, S 1 (Nigeria). Lands that contain mineral deposits in commercial quantities may be acquired by the Federal Government in accordance with the provisions of the Land Use Act. *Id.* at S 1(2).

[153] *Id.* at S 28.

granted over an area of land that is occupied under a right of occupancy. In the event that consent is not obtained, the mining title area will exclude the land in question. This is crucial for the purposes of securing access to land for mining operations.

Given that it was enacted in 1978 under a hasty military government decree, many of the provisions of this law are archaic and incompatible with the current realities in the country. It is believed that the reason for the lack of subsequent amendments lies in vested oligarchy benefits and interests. For example, all lands in a State are vested in the Governor, and many times this power is wielded arbitrarily.[154] There are, however, advocacy movements seeking a review of the Land Use Act. This will be a tedious task because the Land Use Act has been codified into the Constitution; and will therefore require the same procedure of amending the Constitution to have the Act reviewed.

Land Use and Allocation Committee

This is a committee provided for under the Land Use Act to be established in each State.[155] Under the Land Use Act, the Committee is tasked with the following responsibilities: advising the Governor of their respective states on the management of land in urban areas;[156] advising the Governor of each state on matters pertaining to resettlement of persons affected by the revocation of rights of occupancy under the principle of overriding public interest;[157] and determination of disputes relating to the amount of compensation payable for improvements done on land.[158]

The Act provides for membership of the Committee to be of such number as the Governor of the state may determine,[159] provided that not less than two persons have qualifications approved for appointment to the civil service as estate surveyors or land officials who have held such qualifications for not less than five years.[160] In addition, the membership of the Committee must include a legal practitioner.[161]

The Minerals and Mining Act makes the Land Use and Allocation Committee a part of its framework for regulation of the mining sector by providing that the Committee should be consulted for the determination of certain questions.[162] The Act entrusts the Committee with the responsibility of determining any question relating to the size of land occupied or used by the lessee of a mineral title area;[163] the date on which the lessee started or ceased to occupy or use a mineral title area;[164] and the portion of the surface rent payable to individuals entitled to receive any portion of the surface rent.[165] The report of the Land Use and Allocation Committee on the foregoing questions shall be taken into consideration by the Minister of Mines and Steel Development.[166]

---

[154] *E.g.*, *id.* at S 5.
[155] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(2).
[156] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(2)(a).
[157] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(2)(b).
[158] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2 (2)(c).
[159] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(3).
[160] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(3)(a).
[161] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.2(3((b).
[162] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.103.
[163] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.103(a).
[164] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.103(b).
[165] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.103(c).
[166] Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004, S.103.

E. Environmental Laws and Agencies

Environmental Impact Assessment (EIA) Act

Enacted in 1992 as a demonstration of Nigeria's commitment to the Rio Declaration, the EIA's preeminent purpose is to ensure that before a decision with the potential to significantly impact the environment is taken, an environmental impact assessment is conducted.[167] The Minerals and Mining Act then later required a mineral titleholder to submit to an environmental impact assessment, which is an assessment of the potential impacts (positive and negative) of a proposed project on the natural environmental.[168] The conduct of this assessment is governed by the Environmental Impact Assessment Act, and the Federal Ministry of Environment is charged with the responsibility of administering the Act.

The EIA Act prohibits the public or private sector of the Nigerian economy from embarking on or authorizing projects or activities without prior consideration of their environmental effects at an early stage.[169] Where the extent, nature or location of a project being proposed has the likelihood of significantly affecting the environment, the EIA Act mandates the undertaking of an environmental impact assessment exercise.[170] This is aimed at addressing likely environmental problems,[171] with a view to devising appropriate mitigation measures to address how they will be handled throughout the project cycle.[172] The minimum content of the report and the factors to be considered are specified in the EIA Act and the Sectoral Guidelines for Mining of Solid Minerals.[173]

Prior to making a decision on an activity to which an environmental impact assessment report has been produced, the Federal Ministry of Environment is obligated to invite comments from certain persons such as government agencies, members of the public, experts in any relevant discipline, and interested groups.[174] Where after such consultation process, it is ascertained that the project might have a significant adverse effect on the environment which cannot be mitigated, or where public concern about the environment necessitates it, the project may be referred to mediation or a review panel for resolution in accordance with S.35 of the EIA Act.[175] The eventual outcome would be either to adopt the project in its entirety, or where it may permitted, it may be permitted to be carried out wholly or partially, with or without conditions.[176]

As noted with other laudable laws, the problem with the EIA law is its implementation and strict enforcement.

National Environmental Standards and Regulation Enforcement Agency (NESREA)

The National Environmental Standards and Regulation Enforcement Agency (Establishment) Act of 2007 (NESREA) changed the landscape of environmental protection in Nigeria as it became the major statutory instrument governing environmental matters within the state. This Act established the

---

167 Environmental Impact Assessment Act (1992) Cap. E12, S 1(a) (Nigeria).
168 Minerals and Mining Act (2007) Cap. 12, S 71, 119 (Nigeria); *see* Minerals and Mining Regulations (2011), S 136.
169 Environmental Impact Assessment (EIA) Act (1992) Cap. E12, S 2(1).
170 *Id.* at S 2(1), 2(2).
171 *Id.* at S 3.
172 *Id.* at S 4(e).
173 *Id.* at S 4.
174 *Id.* at S 7.
175 *Id.* at S 21(1)(b); *see also* S 25(a), 26, 29-38.
176 *Id.* at S 39.

National Environmental Standards and Regulation Enforcement Agency (NESREA) as the agency for the enforcement of environmental standards, rules, laws, policies and guidelines aimed at protecting and developing the environment and other related matters in Nigeria. The NESREA Act repealed the Federal Environmental Protection Agency Act Cap F 10 LFN 2004.

Under the Act, the Agency is empowered to make regulations, and it creates a number of offenses which it makes punishable with fines, imprisonment, or both. Most importantly, the Agency is empowered to make regulations setting specifications and standards for the protection and enhancement of the quality of Nigeria's air resources in order to promote the public welfare, development, and the productive capacity of the nation.[177] In particular, the Agency may make regulations relating to the following issues:

(a) Minimum essential air quality standards for human, animal, marine or plant health;
(b) the control of concentration of substances in the air which separately or in combination are likely to result in damage or deterioration of property or of human, animal, marine or plant health;
(c) the most appropriate means to prevent and combat various atmospheric pollution;
(d) control of atmospheric pollution originating from energy sources, including that produced by aircraft and other self-propelled vehicles, industries, factories and power generating situations or facilities.[178]

In addition to these, the Act gives the Agency power to set up monitoring stations or networks to locate sources of atmospheric pollution and ascertain their actual or potential danger.[179] These violations are in turn punishable by enumerated fines and convictions.

The Agency is tasked with the responsibility for protecting and development of the environment, conservation of biodiversity and sustainable development of Nigeria's natural resources in general and environmental technology, including coordinating and liaising with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Significantly, the Agency has a Governing Council, with a representative not below the rank of Director from the Federal Ministry of Mines and Steel Development.

The functions of the Agency are contained in S.7 of the Act, which states as follows:

a. enforce compliance with laws, guidelines, policies and standards on environmental matters;
b. coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
c. enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force;
d. enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;

177 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, (2007), Cap. N164, S 20(1).
178 *Id.* at S 20(1).
179 *Id.* at S20(2).

e. enforce compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
f. enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
g. enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector;
h. enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector;
i. ensure that environmental projects funded by donor organisations and external support agencies adhered to regulations in environmental safety and protection;
j. enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector;
k. conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
l. create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions;
m. carry out such activities as are necessary or expedient for the performance of its functions."

The Agency also has a wide range of powers which include the power to prohibit processes and use of equipment or technology that negatively impact environmental quality; carry out field follow-up compliance with set standards and take procedures prescribed by law against any violator; subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities set up mobile courts to expeditiously dispense cases of violation of environmental regulations; conduct public investigations on pollution and the degradation of natural resources, with the exception of investigations on oil spillage; submit for the approval of the Minister of Environment, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector including - atmospheric protection, air quality, ozone depleting substances, noise control, effluent limitations, water quality, waste management and environmental sanitation, erosion and flood control, coastal zone management, dams and reservoirs, watershed, deforestation and bush burning, other forms of pollution and sanitation, and control of hazardous substances and removal control methods.

Other powers of the Agency include the power to: formulate environmental monitoring networks, compile and synthesize environmental data from all sectors other than in the oil and gas sector at national and international levels; collaborate with other relevant agencies and with the approval of the Minister of Environment, establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources; and the power to do such other things other than in the oil and gas sector as are necessary for the efficient performance of the functions of the Agency.

National Policy on the Environment

Introduced in 1999 with the goal of achieving sustainable development in Nigeria from an environmental perspective, the policy made specific references to minerals and mining. It noted that mining and its related beneficiation activities should be conducted in an environmentally sound manner. Additionally it stressed the need for an environmental impact assessment to precede approval of a mining project. The Policy also advocated for mechanisms to be put in place to realize the following objectives:

- Facilitation of the orderly development of minerals for real economic growth, improvement of the standard of living of the people, and the enthronement of a more favourable investment climate through judicious use of the national mineral resources and adoption of rational conservation measures;
- Prevention of haphazard opening of mines with a view to minimising soil erosion, land degradation and unbridled damage to vegetation, wildlife and water resources;
- Prescription of operational standards aimed at reducing dust and noise pollution from open mines as well as the reduction of the effect of dust on vegetation, surface and groundwater and people;
- Minimisation of environmental degradation arising from beneficiation and refining of minerals;
- Prescription of minimum safety standards to be observed in the development of mines and the use of protective equipment by persons;
- Setting of stringent standards for proper discharge of effluents from mines and monitoring of compliance;
- Ensuring there are workable mine safety contingency plans and making available first aid facilities at the mines;
- Monitoring the health condition of mine workers and those engaged in mineral beneficiation and protection of miners from excessive exposure to dust and other dangerous matter within and outside mines, in addition to making provisions for proper treatment of mining-related diseases;
- Prescription of stringent regulations for the piling up and eventual disposal of mine and beneficiation tailings and dumps in a manner that guarantees their long term stability;
- Prescription and monitoring of compliance with approved procedures for land reclamation and restoration;
- Maintenance of regular environmental audit with a view to stimulating adoption of environmentally sound practices and technologies in all facets of mining operations;
- Promotion and strengthening of small-scale miners with a view to discouraging illegal mining activities.

Other significant issues advocated by the Policy are water quality criteria, ambient air quality standards as well as noise standards. It also contains a section on public participation, but the actions it prescribes appear to portray an informing process rather than a participatory one, thereby weakening its objectives.

Federal Environmental Protection Act of 1988 *as Amended*

This legislation established the Federal Environmental Protection Agency (FEPA) and made provisions on the functions the Agency was to perform. The Agency was saddled with the responsibility of encouraging states and local governments to establish their own environmental protection bodies. The Agency has now been superseded by the Federal Ministry of Environment (FME) in 1999.

Pursuant to the provisions under the Act, a number of regulations were enacted to protect the environment. Some of these regulations are outlined below:

- *National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Waste) Regulations*: These were enacted in 1991 and it specifies parameters for effluent limitations according to industry. Further, it contains a section on the mining and metallurgy industry, in addition to a limited number of parameters for waste and gaseous emissions.
- *National Environment Protection (Effluent Limitation) Regulations* : These regulations were enacted with a view to curbing the release of hazardous or toxic substances into the environment. These regulations also compel any industry that releases effluents into the environment with constituents beyond permitted limits to apply for a waste discharge/disposal permit. It also makes provisions for the demand of an environment audit from existing industries and environmental impact assessment from new industries.
- *National Environmental Protection (Management of solid and hazardous waste) Regulations*: This legislation was designed to facilitate identification, recording, monitoring and disposal of solid and hazardous waste. The legislation has an annexed schedule containing the list of all chemicals categorized as hazardous and a number of specified waste sources. Although these regulations do not specifically refer to the mining sector, the inclusion of surface impoundments and waste could be interpreted as tailings storage facilities and waste dumps, with the implication that it is therefore also relevant to the mining industry.
- *National Guidelines on Environmental Management Systems*: These are guidelines enacted to establish the requirement for an Environmental Management Service (EMS) in all organisations/facilities in Nigeria. In addition, they provide for an annual audit of the EMS or as many times as may be deemed necessary by the FEPA (now Federal Ministry of Environment). They also stipulate the key elements for an EMS and also the requirements of the audit mentioned above.
- *National Guidelines on Waste Disposal through Underground Injection*: These guidelines were introduced to control the disposal of oilfield and industrial waste underground. Industrial waste is classified as hazardous and non-hazardous. Though the guidelines are intended primarily for the hydrocarbon industry, but the inclusion of industrial waste arguably makes them relevant to the mining industry.
- *National Guidelines and Standards for Water Quality:* These contain a comprehensive list of parameters for water quality designed to safeguard public health and welfare in addition to enhancing water quality. The Guidelines are based on water quality standards and guidelines from other countries because of a lack of background data in Nigeria. The Guidelines address the utility of water for drinking; recreation; freshwater aquatic life; agricultural purposes; and use in industry. While the industry specific standards do not include the mining industry, the provision of the Nigerian Minerals and Mining Act 2007 on Water Use Permit, makes the guidelines relevant to the mining sector.
- *National Guidelines for Environmental Audit:* These guidelines were designed to function as a reference for compliance with the Environmental Audit Requirement of the Federal

Environmental Protection Agency Act. The Guidelines also makes it compulsory for a company to conduct an audit every 3 years or at the discretion of the Director General of FEPA. The Guidelines also list the types of audit to include Regulatory Compliance Audit; Process Safety Audit; Occupational Health Audit; Product Quality Audit; Liability Audit; and Management Audit.

Federal Ministry of Environment

The Federal Ministry of the Environment was established in June 1999 to ensure effective coordination of all environmental issues, which prior to its establishment, were fragmented and resident in different Ministries.[180] The motive behind its creation was the need to ensure that environmental matters are properly mainstreamed into all development activities.[181]

The mandate of the Ministry include the preparation of a comprehensive national policy for protecting the environment and conserving natural resources, including procedure for environmental impact assessment of all developing projects; and the monitoring and enforcement of environmental protection measures.[182]

It administers environmental legislations that apply in the mining sector, such as the Environmental Impact Assessment Act and the sectoral guidelines. A representative of the Ministry in each state is also expected to be a member of the State Mineral and Environmental Management Committee.[183]

A major hindrance to the effective performance of the Federal Ministry of Environment has been its lack of manpower and skills capacity. Worse still, it has had insufficient funding released for its activities by the government.[184]

Nigerian Geological Survey Agency

The Nigerian Geological Survey Agency (Establishment) Act 2006 established the Nigerian Geological Survey Agency (NGSA). The NGSA ascertains the location, extent and spread of mineral resources the country is endowed with.

The membership of the Board of the Agency is drawn from ministries and agencies of government whose activities are related to the solid minerals sector like the Ministry of Petroleum Resources, Ministry of Water Resources, Ministry of Environment, Ministry of Science and Technology, Surveyor-General of the Federation, and Nigerian Mining and Geo-Sciences Society.[185] Among a range of other functions set out in the Act, the Agency is tasked with undertaking in-depth geological investigations, including analytical and laboratory works, photo geology and other interpretations, core drilling, well-logging, geo-statistics and other mineral calculations as estimations, and valuation; production of geological, geophysical and geo-chemical maps of Nigeria on various scales; promotion

---

[180] Federal Ministry of Environment of Nigeria 'About the Ministry of Environment' http://environment.gov.ng/about-moe/profile/ (accessed 19 January 2013).
[181] Id.
[182] Id.
[183] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.19(2)(f).
[184] http://dailytrust.info/index.php/environment/3588-donor-agencies-doubt-nigeria-s-ability-to-deliver-on-environment-projects (dated accessed).
[185] *Id.* at S.3.

of the search for and exploitation of minerals in Nigeria; carrying out research in the field of geo-sciences and mineral resources in Nigeria; serving as national depository of all geo-science information relating to the earth, the marine environment and geo-magnetic space; and studying of the use of the surface and sub-surface of the land, and from geo-scientific viewpoint, advise government institutions and the general public on the judicious and safe use thereof.[186]

NGSA's functions include carrying out comprehensive geological investigations, geo-statistics and other mineral calculations as estimations and valuation; produce geological, geophysical and geo-chemical maps of Nigeria on various scale; promotion of the search for and exploitation of mineral resources in Nigeria; promotion of investment in Nigeria's solid mineral and cooperation with both local and foreign investors and organisations; maintenance and update of solid minerals statistics and database for promotion of investment and also production of periodic and annual reports of mineral statistics.[187]

The Agency is empowered under NGSA Act and subject to the Land Use Act, to acquire any land and utilize such land for the purpose of discharging its functions. The Agency may survey such land in relation to any geological or mineral exploration and carrying on of drilling and excavation activities. Prior to entering into or acquiring the foregoing land, the Agency is obligated to serve a written notice to the occupier of the land, which notice describes the character of the work intended to be carried out on the land. In addition, the Agency is also required to restore the environment and effect the payment of compensation where damage is done to any building, crops and economic trees.[188]

F. Labour Laws

The Labour Act[189] is applicable in the mining sector in Nigeria and makes laws directly applicable to it. For example, it places certain restrictions on employment of women and persons under the age of sixteen with respect to working underground in a mine.[190]

The Labour Act prohibits women from being engaged in night work (with the exception of nurses and women in management positions).[191] Women therefore are denied engagement in mining activities past the hours of 10pm and not before 5am while their male counterparts are not barred from such activities. Section 56 of the same law prohibits women from participating in manual labour in mines. The effect of these provisions is that women are denied equal right to employment as men. It also hints that the Nigerian labour law does not recognize the equality of men and women before the law.

Section 59 (5) of the Labour Act forbids underground employment for persons younger than 16 years. The Section also prohibits industrial work for children less than 15 years old. However, the same section makes exception of employment by family for light work. The effect of this is that children can be involved in artisanal mining as long as it is 'light work'. While this form of work might be light, it

---

[186] *Id.* at S 8(a)-(g) For more information on the various functions see section 8 of the Act.
[187] Nigerian Geological Survey Agency (Establishment) Act 2006,S.8.
[188] Nigerian Geological Survey Agency (Establishment) Act 2006, S.36.
[189] Labour Act, Laws of the Federation of Nigeria Cap 198.
[190] *See* Labour Act Cap 198 Sections 56(1), 59(5).
[191] Labour Act Section 55

might be hazardous especially where mercury and other chemicals are used. Considering the lead poisoning episode in artisanal gold mining in Zamfara state, there should be an outright ban on children in all mining activities.

CHAPTER 2: HUMAN RIGHTS IMPACTS OF MINING ACTIVITY

Solid mineral extraction can cause a wide range of human rights issues and concerns. Broadly speaking, mining causes three main changes: an influx of people, an influx of cash, and environmental effects. People's experience of such changes depends on their relationship to the project, their values and interests, and their own histories. Because of this, the changes mining brings may be positive or negative across a variety of different dimensions: socio-environmental changes, socio-cultural changes, and economic changes. Each of these changes caused by mining activity, whether small - or large - scale, has the potential to negatively affect communities' human rights, as discussed in this section, which draws on examples from mining activity impacts around the world.

A. Socio-Environmental Changes

Environment

Mining activities result in a variety of adverse impacts to the local environment. Such mining-related changes affect water and waste management, disturbance of environmentally sensitive zones, land subsistence, noise and dust pollution, impacts on biodiversity, and deforestation. These in turn cause substantial human rights impacts. These acts include:

- Environmental degradation and pollution leading to the destruction of livelihoods and way of life, widespread pollution of water sources, destruction of land, and other violations of economic, social, and cultural rights.[192]
- Dumping mine waste in bodies of water, contaminating the water and leading to various other health impacts.[193]
- Threats to natural and protected areas.[194]
- Construction of mining camps and infrastructure may unbalance the eco-system and may also violate economic, social and cultural rights of host communities
- Inflows of industrial activities leading to spikes in environmental insecurity for mining communities.

Access to Resources

Changes in patterns of resource access often result from mining activities' increasing monopolization of resources. These frequently result in significantly reduced community access to key resources such as water, land, farmland, and grazing lands for livestock. Lack of access creates human rights impacts such as:

- Threats to livelihoods resulting from the monopolization of land and other resources used by rural and indigenous populations, forced relocation away from traditional livelihoods, and the taking of farmland.[195]

---

192 Valentin Barta, An Institutional Framework for a More Efficient Use of Natural Resources, 22 MINERALS & ENERGY – RAW MINERALS RPT. 53, 48 (2007).
193 *Id.* at 51.
194 Lisa Laplante and Suzanne Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 YALE HUM. RTS. & DEV. L.J. 69, 75 (2008).

- Loss of forests, farmlands and waterways results in the deprivation of livelihood, deprivation of right to sustained economic existence, and threat to cultural beliefs.[196]
- Displacement of local communities or indigenous populations.[197]
- Forcible ejection from lands leading to the expropriation of community lands and ejection without adequate compensation or other arrangement.[198]

Physical Infrastructure

The advent of mining activities in a region frequently produces many alterations to the area's physical infrastructure.[199] Mining companies may create new roads, reroute, or obstruct existing roads, changing the region's infrastructure. Artisanal miners may destroy or block established roads or pathways or entire topography of an area. The visual amenity of the area may be impacted as mining operations decrease the visual quality of the area. All of these result in various human rights impacts, such as:

- Disruption of livelihoods
- Health hazards
- Deprivation of the right to privacy
- Deprivation of the right to dignity
- Cruel and degrading treatment

Free, Prior, Informed Consent

A right that is often infringed upon in mining activities is the right of a community to decide if they want mining activities within their vicinity, or to proffer modalities for this engagement. The Mining Act provides for Community Development Agreements (CDAs).[200] The CDAs basically seeks to compensate mining host communities rather than seek their consent on mining activities is problematic and infringes on their right to be self determinant.

Even where CDAs are reached, host communities are often rural groups with low literacy levels, incapable of comprehending the impact of mining operations and so are often short changed in the process. The Act also fails to spell out what would constitute an acceptable CDA, who the appointed community representatives the CDAs should be reached with, and who should provide oversight functions for these agreements.

---

[195] David Fig, Natural Resource Extraction and Human Rights-Based Abuses in Africa: Opinions, Problems, and Perspectives (2008).
[196] Lisa Laplante and Suzanne Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 YALE HUM. RTS. & DEV. L.J. 69, 74 (2008).
[197] L.M. Graham and N. Friederichs Indigenous Peoples, Human Rights, and the Environment (2011).
[198] *E.g.*, CHRIS BALLARD, HUMAN RIGHTS AND THE MINING SECTOR IN INDONESIA: A BASELINE STUDY 18 (2011), *available at* www.rimmrights.org/Documents/indonesia_hr_baseline.pdf.
[199] Valentin Barta An Institutional Framework for a More Efficient Use of Natural Resources, 22 MINERALS & ENERGY – RAW MINERALS RPT. 53, 48 (2007).
[200] Nigeria Minerals and Mining Act Section 116

B. Socio-Cultural Changes

Population

Mining activities frequently result in a host of changes to local structures and infrastructure. Mining brings an influx of new populations, often men, into mining communities. This frequently results in stressed infrastructures in addition to an increase in prices for commodities and services as an influx of cash results in a rise in prices. This has several results:

- Influx of new populations employed at the mines since the local population often do not have the required skills.[201]
- Pressure on societal amenities such as housing, water and health resources.[202]
- Influx of cash and affluent populations result in spikes in prices for commodities and services, which host community members who are not involved in mining activities cannot afford.

Community Health and Safety Concerns

Changes caused by mining operations often adversely impact the health and safety of host communities. Some of these impacts include:

- Health problems may result from mining operations pollution (e.g. of air and waterways) and other environmental impacts they cause.[203]
- Population influxes may result in health issues as new populations may import communicable diseases which hitherto were absent from the community.[204]
- Rise in alcoholism, prostitution, and other social concerns.[205]
- Mining companies' security personnel are frequently found culpable for human rights violations.
- Mining companies' security infrastructure may become health and security hazards for host communities. For example, electric fences may fatally hurt playing children and illiterate community members who are unable to understand caution signs where they exist, stray livestock or domestic animals
- Mining operations often attract illegal miners and some crime syndicates which may further jeopardize the safety of host communities.

Social Infrastructure

Extractive activities in the mining sector have a tendency to engender conflict among various entities. This could be between host communities and mining companies, host communities and the

---

[201] *E.g.*, CHRIS BALLARD, HUMAN RIGHTS AND THE MINING SECTOR IN INDONESIA: A BASELINE STUDY 18 (2011), *available at* www.rimmrights.org/Documents/indonesia_hr_baseline.pdf.
[202] Id.
[203] *E.g.*, CHRIS BALLARD, HUMAN RIGHTS AND THE MINING SECTOR IN INDONESIA: A BASELINE STUDY 34 (2011), *available at* www.rimmrights.org/Documents/indonesia_hr_baseline.pdf.
[204] Lisa Laplante and Suzanne Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 YALE HUM. RTS. & DEV. L.J. 69, 74 (2008).
[205] Id.

government, or some other type of conflict.[206] Regardless, these conflicts typically result in rights violations such as:

- Forcible ejections and displacements
- Assault
- Restrictions in movement
- Cruel, inhuman and degrading treatment
- Sexual violence
- Loss of life
- Loss of livelihoods
- Lack of avenues for participatory governance

Vulnerable Groups

Vulnerable populations, including women, children, persons living with disabilities, indigent people and other minorities, are more likely to have their rights impacted upon negatively by mining operations. Mining operations increase the vulnerability of these groups to abuses and they are often excluded from benefits while still bearing the negative impacts of mining.[207] For example, due to patriarchal communities in Nigeria, women are often left out when CDAs are being negotiated, and persons living with disabilities and children are also rarely represented at such discussions. Therefore, their interests are left out when discussing royalties, compensations and local content employment opportunities. Hardships peculiar to these groups in mining communities are rarely addressed. Persons living with disabilities for instance may have to travel longer and more stressful journeys which may necessitate climbing stairs and newly formed slopes. Resources at local schools and clinics become stretched especially when miners or mining supply chain personnel move into the communities with their families. The withdrawal of men from their traditional forms of livelihoods – especially agriculture may result in greater burdens for women who would then have to take over these in addition to their traditional roles as primary care givers and other means of subsistence they were engaged in. Pollution of waterways may mean that these vulnerable groups may need to travel longer distances to fetch clean potable water for their families. In most countries, women are precluded from owning land and they are left without compensation or alternative livelihoods when they are displaced from farms and their prior livelihoods, thus fostering female dependence on men, and exacerbating poverty and gender inequalities .[208] Gender based violence is often associated with mining populations. Persons living with disabilities are also especially vulnerable to violence and indignities meted out on mining host communities.

Cultural Identity

The influx of new populations, practices, and goods that result from mining frequently has a tangible impact on the culture and norms of host communities. Mining operations and the associated workers frequently bring their own practices to the region, which frequently is in contest with existing culture.

---

[206] Lisa Laplante and Suzanne Spears, Out of the Conflict Zone: The Case for Community Consent Processes in the Extractive Sector, 11 YALE HUM. RTS. & DEV. L.J. 69, 72 (2008).
[207] *E.g.*, Human Rights Watch, Out of Control: Mining Regulatory Failure and Human Rights in India 51 (2012).
[208] *See* NOMOGAIA, A METHODOLOGY FOR HUMAN RIGHTS IMPACT ASSESSMENT 14 (2011), *available at* http://www.nomogaia.org/HRIA/Entries/2011/1/1_A_Methodology_for__Human_Rights_Impact_Assessment_files/Methodology%20for%20HRIA%202.0.pdf.

The often sudden contrast and challenge to existing norms is often grounds for friction and sometimes result in conflicts and human rights violations.

C. Economic Changes

Employment

The mining sector has acquired notoriety in a number of countries for its poor working conditions and poor pay. Many mining companies do not permit their works to join trade unions or engage in other forms of collective bargaining.[209] Additionally, as earlier noted, there are fewer opportunities for women working in the mining sector.[210] Because of the influx of new populations, mostly men, changes in employment patterns, increase in security concerns, and the introduction of chemicals and machines which are hazardous to workers, the following issues are often encountered:

- A rise in diseases, injuries, disabilities, lower life spans, reduced income, and sometimes loss of life;
- Forced labour and child labour (*this is more akin to artisanal mining*);
- Negative impacts of industrial mining on existing artisanal and small-scale mining.

Development

Mining at first glance appears to promote development opportunities for host communities. However, in reality, mining operations frequently prevent this due to a wide range of factors such as corruption, lack of transparency in mining revenues, sharp practices to circumvent regulations, failure to effectively regulate the sector, and a lack of accountability within the sector. These factors create a variety of situations which impact the human rights of host communities.

- Corruption in respect to accounting for revenues takes money away from local communities, and these funds could potentially have been used to improve infrastructure and social services.[211]
- Failure to ensure citizens have a right to information on mining activities only perpetuates corruption and underdevelopment.
- A lack of transparency prevents the deployment of mining revenues towards essential services such as healthcare and education.[212]
- Sharp practices to circumvent regulations include avoiding local content quotas that would result in more host community members being employed and the local sourcing of materials and

---

[209] AUSTRALIAN HUMAN RIGHTS COMMISSION, THE AUSTRALIAN MINING AND RESOURCE SECTOR AND HUMAN RIGHTS 1 (2009), *available at* www.humanrights.gov.au/pdf/education/business_and_human_rights/factsheet3.pdf.

[210] *See infra* Part I.B.

[211] *E.g.*, Int'l Federation for Human Rts., Mali – Mining and Human Rights International Fact-Finding Report 40, 42 (2007), *available at* http://www.unhcr.org/refworld/pdfid/46f146840.pdf.

[212] *E.g.*, HUMAN RIGHTS WATCH, OUT OF CONTROL – MINNG REGULATORY FAILURE AND HUMAN RIGHTS IN INDIA 2 (2012), *available at* http://www.sarwatch.org/sarwadocs/viewsperp_issue04_Final.pdf.

services. Because of the imbalanced importation of manpower and materials, poverty is perpetuated in these communities.
- Because of the increase in cash available within the community but not to host community members, inflation and deflation occur frequently and rapidly.

The case study below about small-scale/ artisanal mining further accentuates how some of the issues highlighted above resulted in a multiplicity of human rights violations in Zamfara State, Nigeria.

D. Case Study: Artisanal Mining in Zamfara

Zamfara state, located in North West of Nigeria with a population of approximately 4.3 million people, is rich in natural resources. It is, however, one of the least developed states of the federation with most of its population living on less than one dollar a day. The recent discovery of large quantities of gold deposits which should in fact have brought socio-economic advancements to the state has instead been the cause of infant deaths and tragic economic misfortunes for citizens of the state. Poorly regulated artisanal gold mining has led to high level contaminations of lead in both humans and the environment since around March 2010. Communal water and homesteads were contaminated leading to deaths and high level poisoning.[213]

More than 400 children died from the mining disaster, and more than 2000 are being treated for acute lead poisoning.[214] *Some of the children treated have been re-infected. The exact number of adults affected has not been ascertained, however, it has led to higher rates of miscarriages among female adults.*[215]

Where government fails to enforce or protect the rights of its citizens when they are being violated by private persons or entities, the government has itself breached the rights of citizens through its passive acquiescence of criminal actions perpetuated by miners. The violation of the right to life, which is the most fundamental of all human rights, is the most obvious breach in the Zamfara case. Both the Federal and state government, through state agencies, failed to respond appropriately and adequately to the Zamfara disaster, resulting in violations of socio-economic rights, such as the right to health, right to adequate standards of living, and right to housing. The presence of child workers in the mines is also an indicator of child labour violations.

Together, these brief sketches of the changes mining activities bring and impacted rights demonstrate that human rights violations cut across all types of rights – civil and political rights; economic, social, and cultural rights; and solidarity rights. This is not an exhaustive list of concerns, but those included

[213] World Health Organization (WHO) reports that they found 100 children in the villages of Dareta and Yargalma, with a mean blood lead concentration of 119 µg/dL (levels as low as 10 µg/dL can cause impaired neurological development in children). In the same report, lead concentrations in soil of >100,000 ppm were found in and around habitations in the villages (the limit for residential areas applied in the USA and France is 400 ppm).

[214] This represents about 10% of the total number of children in these communities.

[215] *Zamfara Villages Still Affected by Lead Poisoning*, DAILY TIMES, 7 Feb. 2012, http://dailytimes.com.ng/article/zamfara-villages-still-affected-lead-poisoning

above provide a brief glimpse of the sort of human rights issues mining host communities in Nigeria and most developing countries grapple with. In the next chapter, we will discuss the inadequacy of the Nigerian legal, institutional and regulatory framework in addressing these issues.

CHAPTER 3: ENSURING ADEQUATE PROTECTION OF COMMUNITY RIGHTS

From the discussion above, it has been demonstrated that there are human right issues peculiar to the mining sector. Additionally, it is clear that host communities should have their civil and political rights, economic, social and cultural rights, as well as right to development and community rights like the right of participation and right to information, proactively protected by laws and regulatory institutions Against this background, the extent to which the legal, institutional and regulatory framework for solid minerals mining affords protection to host communities will now be examined.

A. Provisions protecting community rights

The Minerals and Mining Act 2007, as the primary legislation regulating solid minerals mining in Nigeria contains a number of provisions which – if responsibly and transparently implemented with effective monitoring – will go a long way in safeguarding the rights of host mining communities. That said, its biggest challenge till date has been its poor implementation. The lack of transparency, the shoddy delineation of responsibilities and multiplicity of government departments also give credence to this problem.

1. Environmental protection

The creation of the Mineral Resources and Environmental Management Committee (MIREMCO)[216]

Every State of the Federation is expected to have a MIREMCO board (considering that there are mineral resources present in every state). MIREMCO boards are charged with the responsibilitiy of attending to issues relating to compensation and making recommendations related to this to the Minister of Mines and Steel Development.[217] Also, they are expected to discuss, evaluate and advise the Minister on the matters relating to pollution and degradation of any land from which minerals are extracted.[218] In addition, they are to consider issues relating to mineral development which the Minister may refer to them by from time to time.[219] The Committee is also tasked with advising the Local Government Areas and mining host communities on implementing programs for protection of the environment and the sustainable management of solid mineral resources.[220]

Judging from the functions bestowed by the Act on MIREMCOs, there is no doubt that the establishment and proper functioning of the Committee is integral to protection of a multiplicity of host community rights. As at September 2013, only 6 of the 36 states of the Federation and the Federal Capital Territory had activated their MIREMCO boards.

[216] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.19.
[217] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.19(3)(b).
[218] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.19(3)(c).
[219] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.19(3)(d).
[220] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 19(3)(f).

Environmental considerations and rights of host communities [221]

The Minerals and Mining Act contains a number of provisions aimed at addressing environmental and social concerns and ensuring some share of the benefits of having minerals within their community accrues to host mining communities. Most of such provisions are contained in Chapter 4 of the Act.

Prevention of environmental pollution

In order to realize the rights of host communities to a healthy environment, the Act places an obligation on the mineral title holder to be mindful of the effect of mining operations on the environment and to take steps to prevent pollution to the environment in the exercise of their rights under the title.[222]

Environmental restoration

Section 114 of the Act requires that areas where mining operations were being carried out on or after the passage of the Act into law in 2004 must be restored after the operations by the grantee of the mining lease. The law is however silent about who will be responsible for the restoration of previous areas of mining operations before the Act was passed into law. For example, the tin mines in Jos have wrecked havoc on the city's topography with no plans made for their restoration.

The Act in addition obligates title holders, within the bounds of what is reasonably practicable to minimize, manage and mitigate the impact of their activities on their environment.[223] It also obligates them to rehabilitate and reclaim where applicable the land which had suffered as a result of the impact of mining activities, to such state as may be stipulated in the Minerals and Mining Act, the Minerals and Mining Regulations made hereunder, or other relevant laws in force, and in line with established best practices.[224]

Environmental Impact Assessment Reports and Environmental Protection and Rehabilitation Program

The Act requires a mineral titleholder to submit an Environmental Impact Assessment report, and an Environmental Protection and Rehabilitation Program[225] approved by the Federal Ministry of Environment, in respect of exploration or mining operations in a mineral title area, as a precondition to the commencement of mining operations.[226] It is also a requirement when an application for an extension of term is sought, or when an application for conversion of mineral title is desired.[227] The details of the foregoing documents are provided for in environmental regulations issued pursuant to the Mining Act.[228] Both documents are to be submitted to the Mines Environmental Compliance Department.[229]

---

[221] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, Chapter four.
[222] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.111
[223] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.118 (a).
[224] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.118 (b)
[225] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.120, gives greater insight into the contents of the Environmental Protection and Rehabilitation Program. See also Minerals and Mining Regulations 2011, S.140(5)(b)
[226] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.119 (a)(i). See also Minerals and Mining Regulations 2011, S.18(f)(i) and S.136.
[227] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.119(b) –(c)(i)
[228] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S 119.
[229] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(1).

These provisions should help address the potential impact of mining on the environment with a view to ascertaining how to manage it and restoring the land as practically close to its original state as possible, without the host communities having to bear the cost. However, this provision envisages a seamless inter-ministerial collaboration between the Federal Ministry of Mines and Steel Development and the Federal Ministry of Environment to be effective. The recent state of interaction between both ministries does not suggest this.

Guarantee of environmental obligations through the Environmental Protection and Rehabilitation Fund

The Act provides for the establishment of an Environmental Protection and Rehabilitation Fund to ensure that the environmental obligations of mineral title holders are guaranteed.[230]Every holder of a mineral title is obligated to contribute to the Fund in accordance with amounts stipulated in the Environmental Protection and Rehabilitation Program.[231] The Fund is to be administered by a reputable institution customarily engaged in the business of fund managers or trustees[232] appointed by the Minister of Mines and Steel Development, and they are expected to operate in accordance with the provisions of the Trustees and Investment Act.[233] This provision directly impacts on the right to a healthy environment and potentially a variety of other economic rights.

While the Fund is yet to be activated, in January 2013, the Hon. Minister of Mines and Steel Development inaugurated an Environmental Protection and Rehabilitation Fund Committee (EPRFC).[234] The minster tasked the committee with producing detailed modalities for the Environmental Protection Fund (EPRF). The Terms of Reference of the committee include:

- Developing a framework for the establishment of the Environmental Protection and Rehabilitation Fund;
- Developing modalities for appointment of Trustees and Fund Managers;
- Producing a comprehensive list of Mineral Title Holders;
- Providing guidelines for the contents of Environmental Protection and Rehabilitation Program (EPRP) such as mode of payments and determination of contributions payable by each Mineral Title Holders on the EPRP;
- Organizing a stakeholders forum to sensitize Mineral Title Holders on the establishment of the EPRP;
- Determining the associated impacts of the mining of specific minerals as well as its cost implication towards the contribution to the Fund among others vicinity.

Protection of watercourse

[230] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.121 (1). See also Minerals and Mining Regulations 2011, S.141.
[231] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004m S. S.121(4) .
[232] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.121(2).
[233] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.121(3).
[234] http://blueprintng.com/new/2013/01/22/fg-inaugurates-protection-and-rehabilitation-fund-committee/ (date accessed).

The Act prioritizes the protection of watercourses in the vicinity of the Mining Lease or beyond it from being polluted in the course of mining activities,[235]thereby ensuring access to safe water which is essential for host communities. It also requires that the water used in mining activities do not contain injurious substances in quantities likely to prove detrimental to animal or plant life when the water leaves the mining area in which it has been used.[236]Section 126, also guides miners on the levels of tailings that may be deposited in waterways. Section 127 prohibits the alteration of waterways which may hinder the enjoyment of other persons of its supply without prior permission from the Mines Inspectorate Department. Where a river bank is interfered with in the course of mining activities the Act provides for its restoration.[237]

Section 125 of the Act provides for the compensation of persons who have suffered from mining related pollution or water contamination.

Disposal of tailings

The Minerals and Mining Regulations places an obligation on the Minister of Mines and Steel Development to periodically stipulate by written notices published in any widely read national newspaper, the manner in which tailings should be managed by mineral title-holders.[238] It further prohibits mineral title holders from depositing tailings in any natural watercourse without the permission of the Ministry of Mines and Steel Development.[239]

Unfortunately, the Ministry of Mines and Steel Development is yet to publish notices in National Newspapers guiding the disposal of mining tailings. If it were published, it would educate not only miners but also host communities on what to expect in the disposal of tailings.

Every mineral title holder must mandatorily do the following:

- Provide an effective management system for disposal of tailings throughout the tenure of their operations;
- Make adequate arrangements to ensure protection of the general public, especially the host community from the risks associated with storage of tailings;
- Ensure the proper treatment of tailings before they are discharge into watercourses;
- Ensure mine wastes are properly treated before final disposal to avoid air and water pollution and contamination;
- Provide adequate measures to reduce the effect of air pollution.[240]

[235] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2007, S.123.
[236] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2007, S 124.
[237] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.121(1).
[238] Minerals and Mining Regulations 2011, S.10(1).
[239] Minerals and Mining Regulations 2011, S.10(2). See also S.112.
[240] Minerals and Mining Regulations 2011, S.112 (3)(a)-(e).

2. Community mining

Preservation of community rights to winning certain minerals

The Act grants citizens rights, and subject to conditions which may be stipulated by the Minister of Mines and Steel Development, to win soda, potash or galena from lands designated as security lands (other than lands within the area of a mining lease or land).[241] It however, places limits on the extent to which such soda, potash, and galena may be won from such lands, through the order of the Minister as published in the Federal Gazette from time to time.

Retention of community's rights in respect of certain quarriable minerals

The Mining Act recognizes and does not interfere with the extraction of sand, clay, laterite and stone by local inhabitants of an area for their personal use and in line with the local custom of their community.[242] However, the Act recognizes the need for safety measures to protect the larger society and therefore prohibits the use of explosives in their extraction.[243]

Deprivation of host community rights to mining titles

While, these provisions have the potential to protect the economic rights of the community as well as their right to a healthy environment if implemented, there are gaps in ensuring community rights to mine and retain title to mine in their own communities.

A common example in Nigeria is the often repeated situation in which prospectors outsmart mining communities, which aware of the presence of mineral resources within their own land engage in unregulated artisanal mining oblivious of procedures for obtaining a mining lease. Such prospectors time and again simply prospect for local artisanal miners, note the abundance of minerals within the community and run to the Federal Ministry of Mines and Steel with trumped up communal consent, obtain mining titles and bar such communities from their communal land. At best, they eventually allow the artisanal miners back to the mining sites and buy their minerals off of them at rip off prices.

Artisanal and Small Scale Mining

As highlighted in the forgoing case study, artisanal mining is the most common form of mining in Nigeria and is practiced mostly by host community members themselves in virtually every state of the federation. These miners account for over 90% of solid minerals production in the country with a reported figure of over 500,000 people involved in it. Artisanal mining activities are not limited to only members of mining host communities, but include an array of illegal migrants from neighbouring countries and beyond.[244] Their activities include the winning of common minerals such as salt, soda, potash, galena, in addition to the mining of precious stones and metals such as garnet, beryl, gold, columbite, and tantalite. A more common activity which is carried out in most communities is the

---

[241] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.97 (1).
[242] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.99 (1).
[243] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.99 (2).
[244] *FG Cracks Down on Illegal Mining,* DAILY TIMES, 28 June 2012 http://dailytimes.com.ng/article/fg-cracks-down-illegal-mining. (date accessed).

mining of river sands and laterite for building purposes. Most of these activities are uncoordinated and unregulated and result in environmental degradation. However, they provide livelihoods for host communities and therefore contribute to their socio-economic development.

Because artisanal mining is poorly regulated throughout Nigeria, it is carried out in very unsafe operational conditions and it is not uncommon to hear of underground mine collapses. The haphazard manner in which they carry out their activities also destroy the topography of the regions in which they operate. With little or no protective gears and crude unsophisticated instruments, they sometimes mine sites that are dangerous, toxic and sometimes even radio-active. The abandoned tin mine sites in Jos, and the gold pits at Igun at Osun state are examples of how these activities affect mining communities.

The Zamfara gold mine disaster which occasioned the death of hundreds of children through lead poisoning, and the unprecedented levels of contamination in homesteads in various communities, is a good example of what could, and does go wrong with unregulated artisanal mining activities. In addition to lead poisoning, there have been incidences of mine collapse with fatalities in the same State.[245]

An interesting dynamic in the Zamfara disaster is the involvement of foreign nationals in gold mining, processing and selling activities. Gold mining had occurred with little incidence in Zamfara state for about 20 years till Chinese prospectors started to buy gold nuggets from the artisanal miners. To increase production, these foreign prospectors gave grinding machines to some of these artisanal miners, who took them home to grind with. In order to meet up with demands, miners from these communities also started to use their local, domestic grinding mills to process the nuggets. The result of course was the lead poisoning that ensued and resulted in the deaths of children, miscarriages, and other health complications in mining communities in Zamfara state.

The presence of illegal aliens who mine or buy minerals in Nigeria include nationals of China, and neigbouring West African states.[246] Their activities compromise local security and contribute to the economic hemorrhage from the mining sector. They also contribute to insecurity in the communities in which they mine or prospect for minerals.

The government tends to label unlicensed artisanal miners as ‘illegal miners’ rather than ‘unregulated miners,’ while it continues to try to woo foreign investors into the Nigerian mining sector. We think the more appropriate term should be ‘unregulated miners.’ Should the government proactively seek to assist local miners by encouraging the formation of mining cooperatives, ensuring that they are aware of the need to be licensed and make licensing affordable to them and this gesture is rejected by local miners, their activities may then be described as illegal. To promote socio-economic development and the nationalization of Nigeria’s resources, the Federal Ministry of Mines and Steel Development should devote as much resources as it does into wooing foreign investors into promoting and improving the activities of artisanal and small scale miners.

The Minerals and Mining Act and the Minerals and Mining Regulations do provide some guidelines to regulate artisanal and small scale mining. However, as earlier noted, their biggest challenge remains their implementation.

Section 49 of the Act provides that:

---

[245] http://nigerianewsday.com/national/788-mine-collapses-in-zamfara

[246] http://www.punchng.com/editorial/curbing-illegal-miners-in-solid-minerals-sector/

A qualified applicant for a Small-scale Mining Lease is-

(a) A citizen of Nigeria with legal capacity and who has not been convicted of a criminal offence; or
(b) A Mining Co-operative; or
(c) A body corporate duly incorporated under the Companies and Allied Matters Act; or
(d) The holder of an Exploration License granted in respect of the area subject to the application; provided that the applicant has fulfilled all the conditions attached to the Exploration License

To guide the activities of artisanal and small scale miners, Section 91 of the Act provides that the government should provide extension services to small scale and artisanal mining cooperatives by:

a. providing prospecting and exploration services to them to determine the geological setting, structure and nature of occurrence, quantity and quality of minerals being mined;

b. providing mineral testing standards and assist them in determination of mineral grades;

c. providing proven mineral reserve evaluation including feasibility reports;

d. assisting them on mine design and planning suitable for the deposit;

e. teaching adequate skills to them and regularly introduce them to new mining technology;

f. providing teaching equipment and plant for hire on an arrangement with manufactures of leasing companies and ensuring proper linkage and guarantees are provided;

g. introducing appropriate mineral processing technology skills in order to meet market demands and optimize profit;

h. providing environmental impact assessment report and detailed guidelines on waste and tailing disposal;

i. introducing health and safety procedure in the mines, provision of water and health facilities to large mining camps;

j. holding regular workshops to update miners knowledge on legal, marketing, business skills and infrastructural support, facilitate mineral testing and the determination of mineral grades; and

k. facilitating mineral testing and the determination of mineral grades.

While the Federal Ministry of Mines and Steel Development has carried out some of these extension services to artisanal and small scale mining cooperatives, their services reach only a minute proportion of the mining population, most of whom are still unaware of the need to be registered by the Ministry, or the benefits of forming mining cooperatives.

3. Land use

Notification to owner or occupier

The Act provides for the owner or occupier of a land, whether private land, or land occupied under a state lease, or right of occupancy, which falls within an area for which a mineral title is sought to be notified in a prescribed format and his consent obtained, failing which the license, if granted, will exclude the private land in question.[247]

Reservations of certain rights of owner or occupier

For the benefit of lawful occupiers of land, the Act places limitations relating to surface rights on the lessee of a mining lease in accordance with the prescriptions of the Minister of Mines and Steel Development.[248] It also stipulates that the exercise of rights bestowed under the mining lease must be done in a way that aligns with reasonable and proper conduct of the operations concerned.[249] Subject to the foregoing subsection, the Act further seeks to ensure that a lawful occupier of any land falling within an area over which a mining lease has been granted neither loses the right to graze livestock on it, nor the right to cultivate the surface of the land, as long as both activities do not impede mining operations in the area.[250] The danger in this is that mining is often prioritized above agriculture and pastoralist activities and so agrarian activities may be considered to 'impede' mining operations. In effect, community members may be deprived of their livelihoods.

Payment of surface rents to land owners and occupiers

The Mining Act places an obligation on the lessee, without demand being made for it, to pay yearly advance rent determinable by the Minister to owners or occupiers for all lands occupied or used in connection with mining activities.[251]

Prior to the grant of a mining lease, the owner or occupier of the land is to be informed of the intention to grant a mining lease over the land.[252] Following this, the owner or occupier of the land must indicate in writing within the stipulated timeframe contained in the Minerals and Mining Regulations 2011, the amount he/she desires to be paid as annual surface rent for the use of the land for which the mining lease is sought to be granted.[253] The Minister of Mines and Steel Development, if satisfied with the fairness and reasonableness of the surface rent desired by the owner or occupier of the aforementioned land shall approve and subsequently notify the lessee.[254] The surface rent is subject to review every five years.[255] The degree of damage likely to be done to the land will be a critical factor in the quantum of surface rent to be fixed by the Minister.[256]

---

[247] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.100.
[248] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.101 (1).
[249] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.101 (2).
[250] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.102(3); see also Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.72.
[251]Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.102(1). See also Minerals and Mining Regulations 2011, S.98.
[252] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 102(2)(a).
[253] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 102(2)(b).
[254] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 102(3).
[255] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 102(4).
[256] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 102(5).

Right of compensation where interest in land is revoked

The Act provides that where on account of a grant or existence of a mining lease, the right of occupancy over land which is the subject of a certificate of occupancy is revoked, or alternatively, where possession is resumed in respect of a land under state lease either by the President of Nigeria in the case of federal land, or the governor of a state in Nigeria in any other case, the holder of the certificate of occupancy is entitled to compensation from the government, with the mineral title holder under obligation to reimburse the government in respect of such compensation.[257]

Security for payment of compensation

The Act makes provision for an applicant for a minerals title to make security available for the payment of compensation in the form of a deposit,[258] or alternatively, to reimburse the Federal Government of Nigeria for any compensation paid to any state government or lawful occupier in relation to any land subject to a mining title.[259] This provisions ensures that compensation will be paid also promotes the right to property.

Compensation for disturbance of surface rights and other properties or work[260]

Without prejudice to other amounts payable under the Act and subject to a valuation report by a valuer licensed by the government, the holder of a mineral title is obligated to pay to an owner or occupier of land subject to a state lease or subject to a right of occupancy, reasonable compensation for disturbance of surface rights and for damage done to the surface of the land in the course of mining activities.[261]

In addition, subject to the valuation report, compensation is to be paid to the owner of any crop, economic tree, building or work for damage, removal or destruction caused by the holder of a mineral title, or it agents or servants.[262] The Act further stipulates the mode for ascertaining the amount of compensation in respect of the foregoing issues by leaving the responsibility to the Mining Cadastre Office, which is expected to consult with both the State Minerals Resources and Environmental Management Committee, and a government-licensed valuer.[263] Failure to pay the compensation may result in the suspension[264] and subsequent revocation of the minerals title[265] since it is an implied condition that the holder of mineral title has the obligation to pay the aforesaid compensation.[266]

Surrender of land by mineral title holder for public purpose

Sometimes, land approved for mining activities may be required for public good. The Act therefore recognizes the interest of the community by providing for circumstances where a mineral title holder will surrender such land in their possession for public purpose. However, the lessee shall be entitled to

---

257 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.104. See also Constitution of the Federal Republic of Nigeria 1999, S.43 and 44.
258 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.106 (1)(a).
259 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.106(1)(b).
260 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.107.
261 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.107. See also Minerals and Mining Regulations 2011, S.11.
262 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.107(b).
263 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 108. See also Minerals and Mining Regulations 2011, S.12.
264 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.109(1).
265 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004. S.109(2).
266 Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.110.

compensation for such interference with way, work, building, plant or for expenses incurred in the exploration of the area required for public purpose.[267] Where it is a mining lease, the compensation shall include an amount for loss or reasonable expectation of profits.[268] Also the holder of the mineral title is prohibited from disturbing the occupier of any portion of the land specified in the mineral title area within the duration of any quarrying operation until the land is required for the public purpose referred to above.[269]

Compensation for crops, economic trees, building or work damaged

Without prejudice to reimbursements due to the Federal Government from the mineral title holder, the Act also provides for compensation to be paid to the owner or occupier of land that falls within the mineral title area, in respect of any crop, economic tree, building or work damaged, removed or destroyed by the holder of a mineral title, or his agents and servants.[270] The foregoing compensation is to be paid subsequent to the date when the surface rent becomes payable.[271]

The Act also provides for how the quantum of compensation will be determined.[272] In addition, it provides for any other person who suffers any damage, loss or disturbance of right as a result of the operation of any of the provisions of chapter four of the Act to be adequately compensated, while making the Federal High Court having jurisdiction over the area to be the forum for determination of any related contentious disputes.[273]

Prohibition of the grant of titles in certain areas

S.3 of the Act attempts to safeguard the safety, economic, social and cultural rights of host communities by prohibiting the grant of mineral titles in certain places. Such places include lands set apart for military purposes (except approved by the President); land occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or sited within fifty meters for a railway, or which is the site of, or within fifty meters of, any government or public building, reservoir, dam or public road; or one subject to the provisions of National Commission for Museum and Monument. Host communities should therefore take cognizance of the fact that they have the right to reject mineral exploration and exploitation in respect of the foregoing lands.

The provision is aimed at ensuring that mining fields would be sited as far as possible from where host communities live or places sacred to them, or public places important to their way of life and proper functioning of their society. This potentially safeguards such rights as the right to health, right to a healthy environment, right to work, and freedom of thought, conscience and religion; and other collective rights.

---

[267] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.112 (1).
[268] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.112(1).
[269] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004 S112(4).
[270] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.113 (1).
[271] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.113 (2).
[272] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S 113(3).
[273] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.113(4).

Prohibition of operations in sacred areas, things or tree

The Act prohibits the holders of mining titles from operating in areas regarded as sacred, or injuring or destroying any tree or thing viewed as an object of veneration.[274] Failure to abide by this will make such a holder of mineral title liable to pay compensation to affected persons for such damage or injury caused.[275] Where there is a dispute on what should be considered a sacred area or tree, the Mining Cadastre Office will determine this on the recommendation of the Mineral Resources and Environmental Committee of the relevant state.[276] This provision potentially promotes socio-cultural rights and also the freedom of thought, conscience and religion.

The above provisions also promote a number of rights such as the right to property and environmental rights as well as the right to information. However, they fail to provide that host communities be informed of the environmental impact assessment or how the land will be restored post-mining. Given the changes mining also brings to the topography and soil pH, the type of agricultural or pastoral activities that can be conducted on the land becomes even more limited. In arid regions of Northern Nigeria, the dilemma of land occupiers and agrarian communities becomes even direr.

4. Community development and benefits

Community Development Agreements

As a precondition for the commencement of development work or extraction of natural resources within the lease area, the Mining Act imposes an obligation on the holder of a mining lease, small-scale mining lease or quarry lease to reach a Community Development Agreement with the host community where the operations are to take place.[277] The Agreement is to embody an undertaking by the mining lease holder to provide social and economic benefits that will contribute towards the sustainability of host communities.[278] The Act further provides for themes which the Agreement must address to include educational scholarship, technical training, apprenticeship and employment of indigenes of the host community; contributory support for the development of infrastructure and maintenance related to healthcare, education, community services, water, roads, and power; helping to create, develop and support small-scale and micro-scale businesses etc[279]

Where after several attempts the lessee and the host community fail to conclude the Agreement by the time the mineral title holder is about to commence development work, it shall be referred to the Minister of Mines and Steel Development.[280] In addition, the Community Development Agreement is to have binding effect on both parties until it is reviewed after a five-year period.[281] Significantly, the Act provides that the Agreement must stipulate appropriate consultative and monitoring mechanisms. The objective of this is to enable the host community participate in critical phases such as planning,

[274] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 98(1).
[275] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, 98(3).
[276] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.98 (2).
[277] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(1), Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 71(1)(c). See also Minerals and Mining Regulations 2011, S.139.
[278] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(2).
[279] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(3).
[280] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(4).
[281] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S.116(5).

implementation, management and monitoring of development activities in the Agreement.[282] In the event of renewal of a mineral title, an applicant for such renewal is also expected to submit an updated copy of the Community Development Agreement to the Ministry of Mines and Steel Development.

These provisions are aimed at ensuring host communities' right of participation and information, in addition to their right to development. CDAs should however not replace free, prior and informed consents. CDAs should be reached only after the community has given its unequivocal assent to a mining project being conducted in their community.

Again, the provision on the CDA does not stipulate the appropriate representatives to negotiate CDAs with, or insist that social and environmental impact assessments be conducted and explained to members of the communities to assist them understand the far reaching impacts of the mining activities. While the Minerals and Mining Regulations expects a mineral title holder to identify the community leaders known and recognized by the people and who exercise a reasonable degree of control over them,[283] it does not provide for oversight by the supervising Ministry.

Furthermore, the Regulations obligates a mineral title holder, to engage the community and their leaders on the proposed project, prior to commencement of operations, on likely benefits that may accrue to the community, and measures to be taken to prevent hazards and risks associated with mining operations, especially pollution and environmental degradation.[284]

However, there will be (and there has been) the tendency for mining companies to liaise with their choice of leadership rather than one recognized by the community as representing their interests and to provide watered down versions of the likely effects of their activities since they are not under any obligation to provide the community with a copy of the environmental impact assessment and do not have to conduct a social impact assessment. The five year review period might also work unforeseen hardship on the host communities when they realize that the negative impacts of the mining operations outweigh their benefits.

On a final note, the provisions on CDAs do not take into cognizance the activities of artisanal miners which is more predominant in Nigeria and their activities often more destructive than those of small scale and large companies. Are artisanal miners and mining cooperatives precluded from the requirements of a CDA? Given that most of them engage in subsistence mining, can they afford to meet the demands of the communities in which they work – which are often their own communities?

Progress Report on Community Development Agreement with host community

The Minerals and Mining Regulations places an obligation on a mineral title holder to give an annual progress report on CDAs concluded with host communities which is expected to embody a fair and honest assessment of the projects pursued in the community, the achievements recorded as well as the constraints being experienced.[285] However, the Regulations do not indicate who this report is to be submitted to or if it is to be reviewed by any authority. It also does not call for a shadow report by the host community, or their assent to the content of the report.

[282] Minerals and Mining Act, Cap M12, Laws of the Federation of Nigeria 2004, S. 117.
[283] Minerals and Mining Regulations 2011, S.13(2).
[284] Minerals and Mining Regulations 2011, S.13(3).
[285] Minerals and Mining Regulations 2011, S.18(c).

5. Labour conditions

As earlier discussed, the Mining laws in Nigeria do not make extensive provisions on labour, however, the Labour Act, Cap 198, Laws of the Federal Republic of Nigeria, 1990, in addition to the few provisions provided in the Mining Act, are applicable to this sector.

Given the propensity for accidents and the need to protect mine workers from unsafe work environment, the Minerals and Mining Act, along with the Minerals and Mining Regulation provide a protocol for dealing with accidents and ensuring mine safety.

Mine safety provisions

The Minerals and Mining Regulations contain provisions to promote safety in mine operations. These provisions cover safety measures in respect of surface mine workings;[286]underground mine workings;[287]ventilation, gases and dust;[288]use of lifting machines or lifting tackle;[289] winding engines and installations;[290]haulage and transport;[291] scheme for examining and maintaining haulage systems;[292]use of machinery;[293]protective equipment, clothing and devices;[294] first aid;[295]etc. The challenge however has been the implementation of these regulations and their diligent monitoring by the Federal Ministry of Mines and Steel Development.

Investigation and inquiry into accidents

In the event of an accident in the course of mining operations resulting in death or serious injury, the mineral title holder or his agent is required to take steps to ensure that the place where the accident occurred is not disturbed or tampered with in any way.[296] Furthermore, the mineral title holder or its agent is to take photographic or video recording of the accident scene.[297] If the circumstances warrant it, he is to make an order for work or operations to stop.[298] The mineral title holder or its agent is also obligated to make a report of the accident to the police immediately.[299]

In addition to the foregoing the Minerals Regulations requires a report to be made within twenty-four (24) hours of the occurrence of the accident to the Minister of Mines and Steel Development; the Mines Inspectorate Department in the state and the nearest police station.[300]The report must state the description of the site where the accident occurred; the time and nature of the accident, and details on

286 Minerals and Mining Regulations 2011, S.124.
287 Minerals and Mining Regulations 2011, S.125.
288 Minerals and Mining Regulations 2011, S.126
289 Minerals and Mining Regulations 2011, S.127.
290 Minerals and Mining Regulations 2011, S.128.
291 Minerals and Mining Regulations 2011, S.129.
292 Minerals and Mining Regulations 2011, S.130.
293 Minerals and Mining Regulations 2011, S.131.
294 Minerals and Mining Regulations 2011, S.133.
295 Minerals and Mining Regulations 2011, S.135.
296 Minerals and Mining Regulations 2011, S.115(1)(a).
297 Minerals and Mining Regulations 2011, S.115(1)(b).
298 Minerals and Mining Regulations 2011, S.115(1)(c).
299 Minerals and Mining Regulations 2011, S.115(1)(d).
300 Minerals and Mining Regulations 2011, S.115 (2).

how it occurred; the type of injury sustained; the police station that the incident was reported to and the names of deceased persons where death occurred.[301]

To follow up on this, the Minister of Mines and Steel Development is obligated to set up a Panel of enquiry to investigate the accident with a view to determining the cause of the accident and submit a report embodying findings and recommendations.[302] The investigation to be conducted by the Panel shall also include an inquiry on the following: whether there was any negligence on the part of the mineral title holder or his/her agent; the cause of death or serious injury; as well as measures to forestall a re-occurrence in the future.[303]

The Employees Compensation Act 2010 is applicable in determining compensations in the event of accidents.

Keeping of register of records of accidents, dangerous occurrences and diseases

Mine managers of mineral title holders are under obligation to maintain a register of accidents, [304] dangerous occurrences and diseases.[305] Furthermore, they are to cause an incident report of the foregoing events to be prepared by their Health Safety and Environment (HSE) Manager.[306] They are also to ensure an extract from the register referred to above to be submitted to the Mines Inspectorate Department at the end of each quarter.[307]

Mine managers are also under obligation to notify the Mines Inspectorate Department immediately of the outbreak of any contagious disease in any mine or mine settlement in the event that any person employed in or at the mine contracts or die of such contagious disease.[308] The foregoing notification must detail the particulars of the persons involved and the diseases they contracted.[309]

Health hazards mitigation plan

The Minister of Mines and Steel Development is obligated under the Minerals and Mining Regulations to request mining companies to submit in their mine plans, potential cases of health hazards that may occur in the course of their exploration or mining activities, as well as their proposed plans for mitigating them.[310] In practice they rarely do. Artisanal miners are not required to provide such plans.

Drainage of dumps

The Minerals and Mining Regulations make provisions on drainage of dumps with a view to ensuring safety. Accordingly, it obligates mineral title holders or mine operators to ensure that dumps are

[301] Minerals and Mining Regulations 2011, S.115(3).
[302] Minerals and Mining Regulations 2011, S.14(1) &(2).
[303] Minerals and Mining Regulations 2011, S.14(3).
[304] Minerals and Mining Regulations 2011, S.123(1)(a).
[305] S.123(2)-(3) of the Minerals and Mining Regulations 2011 refers to the Labour Act for list of the diseases to be notified while giving additional powers to the Minister of Mines and Steel Development in collaboration with the Minister of Health to determine by notice in the Gazette other notifiable diseases.
[306] Minerals and Mining Regulations 2011, S.123(1)(b).
[307] Minerals and Mining Regulations 2011, S.123(1)(c)).
[308] Minerals and Mining Regulations 2011, S.123(4).
[309] Minerals and Mining Regulations 2011, S.123 (5).
[310] Minerals and Mining Regulations 2011, S.123(6).

properly drained to avoid dumping operations that may result in accumulation of water in, under or near a dump, thereby making the dump insecure or dangerous; and also the obligation of ensuring that drainage from dumping operations do not enter mine openings and subsiding ground over any mine workings, irrespective of whether abandoned or not.[311]

B. Gaps in the protection of community rights

From the foregoing, it is clear that the present legal, institutional and regulatory framework takes into perspective some measures for the protection of host communities, by making provisions for environmental protection and requiring community development agreements. The effectiveness of the framework will depend on the meticulous implementation of the laws, effective functioning of the institutions and diligent oversight of activities in the sector. On the other hand, the framework is not perfect as there are certain areas in which the framework is deficient.

1. Revenue transparency and accountability

There has been very little accountability with respect to the revenues accruing to the government from the mining sector,[312] and there is also little insight into how the revenue generated from the sector is utilized towards promoting development.[313] In addition there is lack of accurate information or record-keeping by companies operating in the sector.[314] Artisanal and small-scale miners who dominate the mining sector in Nigeria (majority of whom do not have a mining license and are illiterate) conduct their activities unregulated and with few or no records kept, therefore their production volumes are difficult to determine, and their sales, earnings, annual reports, and statutory payments such as royalties and taxes cannot be tracked accurately.[315]

The fact that the mineral resources in question are non-renewable makes the problem more grave because losses from the sector are irreversible and have a negative impact on development nationwide. An increase in activity in the mining sector unfortunately will not automatically translate to national development, unless there is improvement in transparency and accountability in the sector. For that to occur, the revenue accruing from the sector will need to be properly monitored and judiciously disbursed, and the public must be regularly kept abreast of same periodically and be able to hold the government accountable.[316]

2. Foreign, unlicensed labour migrants

---

[311] Minerals and Mining Regulations 2011, S.117

[312] O. Alubo, *Transparency and Accountability in Nigerian's Extractive Industries: The Solid Mineral Sub-Sector in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 166 (Coalitions for Change eds., 2010).

[313] *Id.* at 167.

[314] *Id.*

[315] *Id.* at 167, 174.

[316] *Id.* at 166.

Unlicensed artisanal mining costs Nigeria millions of dollars annually.[317] The drain in the sector is further compounded by an influx of illegal migrants from neighbouring countries, such as Benin, Burkina Faso, Cameroon, Chad, Niger, and Togo; and from far-off countries as China,[318] who exploit the nation's non-renewable natural resources and illicitly export them without paying for licenses, permits, taxes or royalties.[319] Porous borders and poor enforcement of immigration laws have aided the increase in illegal aliens engaged in mining activities. The funds lost to the activities of foreign and unlicensed artisanal miners could have been used to improve the welfare of citizens, particularly, providing for much needed infrastructure that would promote socio-economic rights in host communities. Moreover, the manner in which these small mining operations frequently conduct their activities with scant regard for health, safety and environmental standards has led to permanent disabilities, loss of lives, property and occasioned injuries due to the several large uncovered pits they leave behind after cessation of their activities.[320] While the Minerals Act prohibits unlicensed mining, the supervising Federal Ministry seems largely impotent to address the problem.

3. Inattention to gender

As extensive as the legal, institutional and regulatory framework of the mining sector appears to be, there is no apparent attempt to address gender issues in the mining sector.[321] While the Act does not specifically allude to gender, as noted earlier, the labour laws tend to preclude women from engaging in mining activities by restricting them from working in underground mines and from engaging in mining activities past the hours of 10pm and not before 5am which their male colleagues are not barred from. The Labour Act also bars them from being engaged in manual labour at mines. Also, despite their significant contributions, women earn less income relative to their male counterparts.[322]

An important question yet to be determined from the labour Act is that do these provisions also apply to artisanal mining and mining cooperatives? In any event, the Labour Act clearly violates the socio-economic rights of women in mining.

In communities where women are not allowed to own land, they are effectively precluded from compensation and other benefits which would have accrued to a male landowner of areas where mineral extraction is occurring.[323] For example, some women may only gain access to land through marriage in several customary land tenure systems despite the fact that the right to acquire and own immovable property is guaranteed by the Nigerian Constitution.[324] The implication of this is that women are socially precluded from having land to lease out for mining operations and enjoy the

---

317 F. Olokesusi, *The History, Evolution and Geography of the Solid Mineral Industry in Nigeria in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 26 (Coalitions for Change eds., 2010).

318 http://premiumtimesng.com/regional/139539-nigerian-security-arrests-2-chinese-over-illegal-mining-in-minna.html

319 *Id.* at 31.

320 L. Aladeitan, *The Legal and Regulatory Framework of Solid Minerals and Mining in Nigeria in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 162 (Coalitions for Change eds., 2010).

321 F.L. Adamu, *Labour and Gender Issues in Solid Minerals Mining: The Case Study of Tin and Gold in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 97 (Coalitions for Change eds., 2010).

322 *Id.*

323 *Id.*

324 CONSTITUTION OF NIGERIA 1999, S 43.

attendant benefits. The present framework does not recognize or attempt to take affirmative action to empower women to take more prominent roles in the sector as landowners or mineral title holders.[325] Again, they are often excluded from discussions between host communities with mining companies aimed at generating community development agreements for these same reasons. These differences mean that the assumption that the host community with which the Community Development Agreement is made is a homogenous group such that the benefits of the foregoing agreement will be equally extended to both men and women is erroneous.[326]

In addition, any support designed to assist small-scale and artisanal miners is unlikely to benefit women.[327] For example S.91 of the Minerals and Mining Act of 2007 legislates on the provision of skills, technology and extension services to small scale and artisanal mining, which ordinarily should benefit both male and female miners. However, since most of the women are involved in the supply chain and not actual mining itself from which the Labour Act precludes them, they are unlikely to derive benefit from the foregoing provision unless the supervising ministry develops a clear policy of affirmative action for women miners.[328] With respect to large scale mining, women rarely participate in such operations due to the forgoing reason and lack of access to capital.[329]

There are differences in the way mining activities affect men and women in mining host communities. Women become more susceptible to the violence an influx of alien, single men, or men without their families, bring to such communities. They are also more likely to suffer sexual violence. While men may have new employment opportunities, women are more likely to have their traditional livelihoods disrupted by mining security details or construction. Decreased livelihoods and increased demand for transactional sex increases their risk of contacting venereal diseases and unplanned pregnancies. As primary caregivers, their tasks may become more onerous in underdeveloped communities, especially when for example, water sources become polluted by mining activities and they have to seek for fresh water from sources further away from their communities, protecting their families from dust and emissions from mine operations also falls on them. In view of the foregoing, the Mining Act therefore ought to pay particular attention to protecting the rights of women and promoting their access to development opportunities in community development activities.

From economic and human right perspectives, the mining terrain is stacked against women; and the present framework has done little to recognize the subtle and blatant forms of gender discriminations in the sector. It does little to protect and promote women's participation in the sector. It may however achieve this by taking affirmative action through relevant provisions to address it[330] especially by promoting women's access to, and ownership of mineral rights and their attendant benefits.[331] It also needs to take into account the peculiar effect of mining on women living in mining host communities through social impact assessments and respond appropriately.

4. Failure to adequately address community land and mineral rights

[325] Adamu, *supra* note 223, at 113.
[326] *Id.* at 112.
[327] *Id.* at 111.
[328] *Id.* at 111-12.
[329] *Id.* at 101.
[330] *Id.* at 102.
[331] *Id.* at 111.

The ownership and control of mineral resources has always been a contentious issue between the Federal Government, states and the local communities where mineral extraction occurs. While states have responsibilities to ensure the protection of their environment, they do not have correlating powers on the mineral resources within their states. Ideally, they should have some degree of control given that the minerals are within their respective jurisdictions in a federal system of governance. Host communities on the other hand argue that they have an ownership stake in these resources on the basis that the lands in which these minerals are located belong to them and that their lives revolve around these lands and that they have a vested interest in ensuring they pass them on to the next generation. They are however helpless to decline mining development activities on these same lands.

This sense of community entitlement has fuelled agitations for resource control and calls for an amendment of the Constitution to give states and communities control over the resources in their domain. Until that materializes however, the *status quo* remains. The Federal Government is vested with the ownership and control of mineral resources and the lands where those mineral resources are found. This state of affairs has rendered state and local governance structures virtually powerless with regards to ensuring that the interest, traditional values and concerns of host communities are catered for, or shielding them against the harmful effect of mining activities taking place within their locale.[332]

The Minerals and Environmental Management Committee (MIREMCO) earlier discussed in chapter 2, should ordinarily provide a platform for some meaningful degree of participation by states and local governments for effective governance of the sector. However, very few states have inaugurated the foregoing body in their jurisdictions,[333] and the effectiveness of those that have done so is questionable.[334]

5. Failure to establish or regulate mineral buying centres

In order to protect the interests of small scale miners and to keep a record of all mineral proceeds, Section 95 of the Minerals and Mining Act requires all proceeds recovered under a small-scale mining lease shall be sold to a licensed Mineral Procurement Centre, where they must be inspected by an authorized officer of the Cadastre office and receipted for. Buying centres are expected to be registered and regulated in accordance with the law. Section 117 of the Minerals and Mining Regulation provides criteria for qualification as a buying centre as follows:

The ability to produce the following documents:

- Certificate of Incorporation.
- Three (3) years Tax Clearance Certificate.
- An attestation of non conviction of a criminal offence.
- A Banker's Guarantee.

---

[332] VAO Adetula, *Best Practices in Solid Minerals: International Dimension and Comparison in* AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 246 (Coalitions for Change eds., 2010).

[333] *Id.*

[334] *Adamawa Set to Tap Mineral Resources,* VANGUARD, 22 Jan. 2010, http://www.vanguardngr.com/2010/01/adamawa-set-to-tap-mineral-resources/; *Ogun Moves to Exploit Solid Minerals,* GUARDIAN NEWS NIGERIA, 17 March 2012, http://guardiannewsngr.com/index.php?option=com_content&view=article&id=80353:ogun-moves-to-exploit-solid-minerals&catid=1:national&Itemid=559; *FG Inaugurates Bauchi State Mineral Resources and Environmental Management Committee*, BLUEPRINT NIGERIA, 24 April 2012, http://blueprintng.com/2012/04/fg-inaugurates-bauchi-state-mineral-resources-and-environmental-management-committee/. (date accessed).

- Source of supply.
- Evidence of technical competent person.
- Payment of prescribed fee.

Licensed buyers are obligated to:

1. Maintain registers and books of accounts of minerals purchased and sale transactions books which shall be made available for inspection on demand.
2. Render monthly returns to the Mines Inspectorate Department.
3. Pay prescribed monthly royalty on mineral sold / used.

The License to purchase and possess minerals is renewable yearly upon payment of prescribed fee and fulfillment of obligations.

Unfortunately, till date, there are only three official buying centres[335] in the country and there has been no attempt by government to effectively control their activities or regulate their prices. The effects are that:

1. Miners are unable to trade their proceeds at internationally competitive prices
2. There are very poor records of mineral proceeds throughout Nigeria
3. The nation loses the royalties that should naturally accrue from these minerals.

6. Lack of attention to labour issues

The present Mining Act provides very little regulations about labour-related issues or the rights and entitlements of miners. Instead it articulates incentives and rights for mineral title holders, who are usually not members of host communities.[336] Even though not mentioned in the Mining Act, the Minerals and Mining Act the Pension Act and the Employee Compensation Act of 2010 are applicable to the sector. Other than these, there are no other mentions of employment conditions. Considering the dangers and occupational, health and safety hazards inherent in the sector, this is a costly oversight and a threat to the labour rights of mining workers to a safe working environment.[337] These problems are even more complex in the case of artisanal mining where casual and child labours are rampant.[338]

The artisanal and small-scale nature of operators predominant in the mining sector presents a large number of labour-related issues which the existing regulatory and institutional framework inadequately addresses. As previously stated, very few artisanal and small scale miners operate with any form of authorization, and even those with some authorizations operate outside the boundaries of their licenses in several states in the country.[339]

This state of affairs has dire consequences for the health and safety of mining communities and mining personnel. Notorious for operating under poor working conditions with little or no access to basic health care facilities or clean water, mine workers especially artisanal miners are exposed to risks such as dust, mercury and other dangerous chemicals, mine collapse, poor sanitation and ventilation, effects

---

335 http://www.premiumtimesng.com/business/112635-how-nigeria-loses-billions-in-solid-mineral-sector-neiti-report.html
336 *Id.* at 105.
337 *Id.*
338 *Id.* at 110.
339 F.L. Adamu, *Labour and Gender Issues in Solid Minerals Mining: The Case Study of Tin and Gold in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 98 (Coalitions for Change eds., 2010).

of noise and vibrations, over-exertion, misuse of explosives, contagious diseases from shared public facilities etc.[340]

7. Multiplicity of environmental agencies

The Minerals and Mining Act 2007 recognizes three bodies that have roles to play with respect to protection of the environment – the Mines and Environmental Compliance Department, the Federal Ministry of Environment, and the National Environmental Standards and Regulations Enforcement Agency. The vesting of overlapping responsibilities pertaining to the protection of the environment amongst these bodies is frequently a recipe for confusion when not well managed.[341] They could very well deflect their responsibilities pushing the buck among themselves with the functions which they were set up to perform eventually left undone, resulting in dire implications to the environment and the host communities they were established to protect.

8. Core challenge: Implementation

As frequently reiterated, the core challenge to the protection of host community rights is the implementation of existing laws regulations and policies. The lack of manpower and technical capacity on the part of the supervising ministry, the lack of political will on the part of government and poor governance have resulted in the failure to effectively regulate the sector to benefit all stakeholders as envisioned by architects of the framework.

The supervising ministry needs to return to the drawing board to develop a roadmap for the effective implementation of the laws and regulations, bearing in mind peculiar circumstances, especially of the proliferation of artisanal and small scale miners throughout the mining landscape in Nigeria.

---

[340] *Id.* at 99.

[341] L. Aladeitan, *The Legal and Regulatory Framework of Solid Minerals and Mining in Nigera in* 2 AN EVALUATION OF THE NATURE AND CHARACTER OF THE NIGERIAN EXTRACTIVE INDUSTRIES IN NIGERIA 152 (Coalitions for Change eds., 2010).

CHAPTER 4: RECOMMENDATIONS

This section has recommendations to address the weaknesses identified above in protection of community rights in the legal and regulatory framework. The following recommendations are worthy of consideration and if adopted could immensely benefit the framework and the governance of the mining sector in Nigeria. The implementation of these recommendations hopefully will lead to the enhancement of the rights of host communities, maximization of the potentials of the sector, and overall improvement in its governance.

For the Federal Government of Nigeria

Implementation of established laws and regulations: The most essential start point for the protection and promotion of the rights of host communities, and progress of the mining sector, is the dedicated implementation of laws and regulations governing the sector. There must be effective synergy between government institutions in order to achieve this. In particular, there must be a deliberate effort to strengthen communication between the Federal Ministry of Mines and Steel Development and the Ministry of Environment both at the federal and state levels.

Capacity building programmes for personnel and institutions: In view of the highly technical and complex nature of solid mineral extraction, there is a need for the Federal Government to strengthen institutions and personnel within them with requisite capacity in terms of equipment, man-power and skills to function effectively.[342]

Expertise Requirements: The government should ensure that prior to granting small and large scale mining leases, prospective mineral title holders have the requisite team of experts to consult with and work on the mining development. The requirements for qualified mining engineers, safety experts and a project manager should become mandatory and such experts should be made accountable for the failure to follow best practices.

Better regulation of small-scale and artisanal miners: The present framework appears to be designed primarily to address medium and large scale mining, judging from the scant provisions on artisanal and small-scale miners. Considering the fact that more than ninety per cent of the activities in this sector are undertaken by the latter group, and that they operate largely unregulated, it is clear that there is an urgent need to improve governance of the activities of artisanal and small-scale miners.[343] This would entail introducing robust legislative provisions, strengthening supervisory and affiliated agencies, grant of concessionary loans, introduction of health and safety regulations to guide the

[342] *Id.* at 34.
[343] *DP Sha* 'Ownership structure and level of participation in the Nigerian Extractive Industries: Solid minerals' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 85; *FL Adamu* 'Labour and Gender Issues in Solid Minerals Mining: The case study of Tin and Gold' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 120; *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 2.

conduct of their activities and protect their labour rights,[344] provision of loan facilities, and mandating them to form cooperative societies to enable proper supervision and monitoring.[345] These cooperatives should make a deliberate effort at including women, otherwise, their meaningful participation in the sector may not be guaranteed.[346] This would also facilitate protection of their labour rights.[347]

Establishment of a National Solid Minerals Areas Development Commission: We suggest the establishment of a national solid mineral areas development commission, which should be designed along the ideals of the Niger-Delta Development Commission.[348] This in addition to supplementing the Community Development Agreements mandated by the Minerals and Mining Act 2007 will provide a more formal, stronger and far-reaching mechanism for ensuring the rights of host mining communities.[349]

Restructuring the governance system to give a greater sense of ownership: The social restiveness in the oil sector may not yet have spilled over to the mining sector in Nigeria. However, there is clearly a need for the entire political structure of governance to be realigned to become more in tune with true federalism. This way, host communities will have a greater sense of ownership over the minerals being extracted from their communities and enjoy the developments opportunities that accrue from them.[350] The present system which vests exclusive ownership and control in the Federal Government breeds a sense of alienation and disconnect between the people and the government.[351] This does not bode well for cooperation on security, illegal mining and other issues between the Federal Government, other tiers of government and host communities.[352] Arguably, this may be the reason why states, local governments, and host communities are complacent in curbing unregulated mining activities within

---

344 *FL Adamu* 'Labour and Gender Issues in Solid Minerals Mining: The case study of Tin and Gold' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010)p.120; *L Aladeitan* 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 153; *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 251.

345 *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 250.

346 *DP Sha* ' Ownership structure and level of participation in the Nigerian Extractive Industries: Solid minerals' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 85.

347 *FL Adamu* 'Labour and Gender Issues in Solid Minerals Mining: The case study of Tin and Gold' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 121.

348 The Niger-Delta Development Commission was established to catalyze the rapid, even and sustainable development of the hydro-carbon rich Niger-Delta region, into a region that is economically prosperous, socially stable, ecologically regenerative and politically peaceful. For more on the Niger-Delta Development Commission, see: nddc.gov.ng

349 *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 32.

350 *FL Adamu* 'Labour and Gender Issues in Solid Minerals Mining: The case study of Tin and Gold' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 120.

351 *Id.*

352 *Id.*

their domain. This recommendation will require an amendment of the 1999 Nigerian Constitution, the Minerals and Mining Act 2007 and some other laws that constitute the present framework on solid minerals mining in Nigeria. Amendments should be targeted at letting host communities and their state authorities have a stake in the sector, for example by instituting a revenue derivation law which makes provision for remitting a percentage of royalties paid to them.[353]

Promoting equity participation by host communities and other stakeholders: The Federal Government should explore novel contractual arrangements and legislation to promote and facilitate equity participation by key stakeholders such as host mining communities and mining companies operating in their environment.[354]

Funding of State MIREMCOs: The Minerals and Mining Act failed to elucidate the source of funding for state MIREMCOs. We propose that an amendment should consider federal funding, derived from solid mineral revenue. Such funding should also provide state MIREMCOs with allocations for expert consultations.

Mandating social impact assessments: The Minerals and Mining Act should be amended to provide for mandatory social and human rights impact assessments to be conducted prior to granting mineral titles. Although the Act provides for environmental impact assessment, it is insufficient to deal with socio-economic and human rights issues which may occur as a result of mining activities. A social impact assessment is more far-reaching than an environmental impact assessment in comprehensively identifying social and human rights risks and addressing them.

Negotiating mine development agreements based on international best practice for protecting community rights: The government is encouraged to negotiate mine development agreements with investors using the International Bar Association's Model Mine Development Agreement, especially the chapter on Communities and Sustainable Development.[355]

Curbing unregulated mining: The implications of unregulated mining and the revenues lost have already been highlighted. Effective collaboration must be ensured between institutions, security forces, local governments and state government to curb the menace of unregulated mining. In this regard, the Mines Inspectorate Department particularly and other enforcement agencies and security forces must devise better monitoring and enforcement strategies to effectively address these issue. Another solution would be to take registration of local artisanal miners to their locality and provide communities with incentives to act as watchdogs over the resources within their communities.

Promoting increased participation by women: The present framework should be amended to ensure a policy for affirmative action for women through initiatives to grant extension services, equipment and special mineral concessions to them on terms that take their vulnerable position into consideration. In addition, a certain percentage of mineral titles could also be reserved for women.[356] This policy

[353] *Id.*
[354] *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds.) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol. 2, Solid Minerals* (2010) p. 32.
[355] International Bar Association, Model Mine Development Agreement, http://www.mmdaproject.org/
[356] *Id.* at 121.

direction is critical if a level playing ground is to be achieved between men and women in the sector. Again, relevant data on mining operations, licensing and other issues should as much as possible be disaggregated based on gender.[357] Urgent action should also be taken to address poor working conditions, for example in the areas of health and safety to encourage greater participation of women in the sector.[358] Encouraging women to become active in the sector's supply chain through capacity building initiatives is another way to ensure diversity and inclusiveness in this sector.

Empowering civil society: The framework should be amended to formally apportion a role for civil society actors to act in advisory capacity and monitor activities of institutions and mineral title holders in the sector.

Extension of environmental restitution programmes: The government's environmental restitution programme has been slow and marked by irregularities. The government should revamp its efforts and ensure it's expeditious execution, considering the impact of mining on the environment, lives and livelihoods. Also, the Federal Government would be well advised to increase the coverage of its current environmental restitution programme to all abandoned mines in the country.

Adherence to environmental impact assessment requirement and public participation in the process: The Federal Ministry of Mines and Steel Development should ensure that the requirement of conducting an environmental impact assessment is religiously observed irrespective of the scale of mining proposed to be conducted. Provisions should be made for effective oversight of the environmental impact assessment process, specifically laws:

- Establishing a **permanent fund** for the public to participate in the social and environmental impact assessment processes, so that affected communities can use these funds to hire their own technical advisors to conduct an independent review of the company's environmental and social impact assessments, and knowledgeably participate in the assessment process.[359]

- Ensuring the **independence and integrity** of the consulting firm hired by the mining company to conduct the environmental impact assessment, by appointing a multi-stakeholder panel to review the qualifications and independence of the consulting firm.[360]

- Ensuring **transparency** in EIA processes and making them publically available, especially as a document necessary for communities to negotiate a community development agreement.

Increasing transparency and accountability There is a need to increase transparency and accountability in the mining sector if the sector is to develop efficaciously.[361] Therefore, the government should work towards ensuring that vital statistics and data on different aspects of the industry is generated and publicly disseminated. For example there is a need to have detailed and accurate information on revenue accruing to the coffers of the Federal Government from the sector,

---

[357] *Id.*
[358] *Id.*
[359] See for example Environment Canada, Intervener Funds, at http://dx.doi.org/10.1080/02688867.1991.9726814.
[360] See Robert Goodland, 8 Principles of Responsible Mining, Principle 1, at http://www.uvm.edu/ieds/sites/default/files/Responsible_Mining.pdf.
[361] *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 249.

and also an account of funds expended on the sector.[362] On the aspect of revenue and payments made in the sector, the NEITI is best to play this role. It should ensure that it monitors the revenues paid into government coffers in the sector to safeguard against corruption and misappropriation by corrupt government officials.[363] However, its capacity must be strengthened to ensure that its existence amounts to more than a window-dressing.[364] The various anti-corruption laws and agencies must also be vigilant to combat corrupt practices in the sector. In addition, there is a need to collaborate with host communities to put in place a mechanism for determination of the actual quantity and quality of minerals extracted by mineral title holders.[365] Including a clause penalizing mineral title holders for non-disclosure or adducing false information would also be helpful.[366]

Delineating the responsibilities of the different bodies involved in environmental protection: As stated, the plurality of bodies involved in environmental protection leaves much room for confusion and buck-passing. There is a need to clearly delineate the boundaries or sphere of operation of each body and also promote greater coordination between them in the interest of the sector.[367]

Initiating sensitization and awareness campaigns: The Federal Ministry of Mines and Steel Development should extend sensitization campaigns to host communities and miners. With regard to the host communities, the campaigns should focus on the protocol for initiating a new mining project by companies, and the rights they are entitled to under the solid minerals and regulatory framework, the obligations of miners; environmental protection laws, health and safety issues; as well as relevant institutions to be involved in the sector in Nigeria, amongst other key issues. Other appropriate themes should be developed for mining companies, artisanal miners and government agencies involved in the sector.

NEITI: NEITI should make concerted efforts to track revenue within the solid mineral extractive industry, treating it with equal importance as the hydrocarbon industry.

---

362 *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 34.

363 *L Aladeitan* 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 179.

364 *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 249.
L Aladeitan 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 179.

365 *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 34

366 *DP Sha* ' Ownership structure and level of participation in the Nigerian Extractive Industries: Solid minerals' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 85.

367 *L Aladeitan* 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p..153.; *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 249.

For State Governments

State governments have a vital role to play if governance in the mining sector in Nigeria is to improve. They would therefore be well-advised to consider the following recommendations:

Activation of state MIREMCOs: The Minerals and Mining Act has provided a platform for effective participation by state governments in mining sector affairs through the establishment of a Mineral Resources and Environmental Committee (MIREMCO) in each state.[368] The failure of most states to push for the activation of this advisory committee has contributed to the poor governance of the sector.

A recurring complaint by most state governments has been the lack of funding for MIREMCO activities. Investing a seed fund to support MIREMCO activities should be seen by these state governments as an investment which will yield revenue and development dividends for their communities. States should therefore take steps to activate their MIREMCO in their respective jurisdictions with a view to realizing the objectives for which they were designed and in the interest of the people they govern.

Ensuring adherence to environmental impact assessment and other project conditions: While mining falls within the purview of the Federal Government, state governments can fulfill their human rights obligations to host communities by ensuring that the pre-conditions to the commencement of mining activities within their domain, such as environmental impact assessment and environmental management plans have been complied with. While they have no direct supervisory rights over these, they may advise the supervising ministries in this regard.

They could further protect host communities by ensuring that they put in place a strong environmental monitoring mechanism housed within their respective Ministries of Environment which could coordinate efforts with the necessary federal agencies or bodies empowered under the Minerals and Mining Act to ensure the safeguard of the environment.

Development of State Minerals Information Management System: States should explore the possibility of devising a State Solid Minerals Information Management System (SSMIMS)[369] to collate information on licensed miners, employees of mineral title holders or exploration license holders, approved mineral title area, royalties paid, details of corporate social responsibility initiatives and other relevant information.[370] This will help deal with the menace of illegal mining, ensure transparency in revenue, accountability in the volumes of resources mined, protect the interest of host communities and overall - promote better governance of the sector.

---

368 Section 19, Minerals and Mining Act 2007.

369 *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 249; *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 34.

370 *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 34.

Collaboration with Federal Government on safety and infrastructure: States can contribute to the growth and effective functioning of the mining sector by partnering with the Federal Government to ensure occupational safety, adopting security measures and through the provision of infrastructure in host mining communities.[371]

Developing state and community development plans: State governments in mineral rich areas will do well to develop state development plans. These state development plans are the blue prints which take into cognizance the development aspirations of the state alongside the prospects and challenges of mining activities. A state and community development plan will strengthen and inform community development agreements to be reached with mining companies.

Negotiation and monitoring of Community Development Agreements: State governments can play a role in securing the interest of host communities by ensuring that communities are able to negotiate Community Development Agreements with the **technical, legal and financial assistance** necessary to give free, informed and democratic consents to agreements and ensuring effective implementation and monitoring of the Community Development Agreements required in the Minerals and Mining Act.

Ensuring local governments play an active role: Every mineral title area falls within a particular local government. Local governments are also closer to mining host communities. Accordingly they have an important role to play in monitoring activities within their jurisdiction amongst other things. The state governments should ensure that the local governments play active roles and contribute their quota to the growth of the sector.[372]

Sensitizing host communities: State governments can also play an important role by systematically sensitizing host communities on mining developments, their rights as provided for in the solid minerals framework, and avenues for communal development through proposed projects.

Providing an enabling environment: State governments can promote the security of host communities by providing infrastructure, thereby creating enabling environments to engender development without negatively impacting on host community resources.

Transparency and accountability: State governments can also contribute to improving transparency and accountability in the sector through the provision of detailed information on revenues accruing to them from the sector and expenditures made by them.[373]

For Local Governments

Local governments also have a critical role to improve the governance of the mining sector in Nigeria. The following recommendations may be helpful:

---

[371] Id.

[372] *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 34.

[373] Id.

Monitoring adherence to environmental impact assessments and other project conditions: Local governments have a critical role in ensuring environmental standards are adhered to by mining companies and artisanal mining cooperatives, taking into consideration that they are the closest strata of government to the mineral title areas and the host communities. In collaboration with state and Federal Government and their agencies, they can monitor project development pre-conditions such as environmental impact assessment, environmental management programs and other conditions are complied with.[374]

Monitoring negotiations of Community Development Agreements: Local governments should ensure that communities are able to negotiate Community Development Agreements on a thoroughly informed basis, by providing legal and technical assistance to these communities to conduct EIAs and social impact assessments, in order to secure their interests and ensure the effective implementation and monitoring of Community Development Agreements.

Initiating local development plans: When a local government is able to develop a local development plan, its development priorities and a clear plan for accommodating mining projects to the advantage of the host communities will be reached. A ready local development plan will help keep in focus the development priorities for a community and assist in the negotiation of a community development agreement

Providing and maintaining infrastructure The local government should endeavour to provide, necessary infrastructure in host communities to mitigate the strain the influx of mining populations would cause to existing facilities.

Collaboration on safety and security issues The local government may also contribute to governance of the mining sector by collaborating with other tiers of government on related issues, including safety and security, particularly those operating in the sector for the benefit of host communities.

For the Private Sector

The private sector is a key player in the mining industry. Considering that the successful governance of the sector will ultimately positively impact their profitability and sustainability, it is in their best interest to ensure they act above board and consciously respect host community rights. To this end the following recommendations are worthy of serious consideration:

Promote transparency and accountability: By following due process, securing the stipulated licenses and permits, complying with the provisions of their licenses and legal prescriptions, and shunning sharp practices, private sector actors will raise the profile of the sector, ensure the sustainability of the industry and promote government's contribution to the development of infrastructure and development in the communities in which they work.

Execute and implement Community Development Agreements: Ensuring that they obtain social license from their host communities and fairly negotiate equitable and beneficial community

[374] Id. at 35.

development agreements, and guaranteeing the implementation of these agreements, will benefit not only the communities, but will ensure social goodwill for the companies and strengthen their sustainability.

Adoption of human right policies and human right impact assessment: Mining companies should deliberately adopt human right policies to ensure their operations are above board and that the rights and interest of their staff and host communities are taken into consideration. Conducting social/ human rights impact assessments are therefore imperative for them to address the human rights impact of their activities on host communities and the country.

Adding value to extracted minerals: The private sector is encouraged to design ways of adding value to extracted minerals before they are exported. This will create a positive multiplier effect on the nation in terms of spawning of processing industries, generating more employment, and earning more income, etc. This might require an amendment of the Minerals and Mining Act 2007 or its Regulations to steer firms in this direction, for example, by providing tax incentives.[375]

Adoption of international best practices Mining companies would do well to adopt international best practices in the conduct of their exploration and production activities. This would go a long way in minimizing the negative impact of mining on the environment and on host communities and would help them maintain their social license to operate. In addition, it will give them a strong backing when seeking international financial aid.

For Civil Society

The importance of the active engagement of civil society actors cannot be over emphasized. Their active engagement in the sector will improve the government and companies' attention to host community issues and ensure greater adherence to standards. Accordingly, the following recommendations should be considered:

Serve as watchdog over the sector: Civil society's role as watchdogs over the activities of the federal, state and local governments and the institutions involved in the regulation of the mining sector in Nigeria is imperative if the rights of host communities are to be adequately protected. They can provide a platform for interaction between local communities and the authorities, providing technical expertise and partnership. They can also assist these communities to monitor the effective governance of the sector and advise the government on lapses in their administration. They can also monitor the activities of mineral title holders,[376] especially their compliance on issues such as: safety, health, social license, environment standard compliance, impact on host communities and general compliance with the provisions of the solid minerals legal and regulatory framework.[377]

---

[375] *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 250.
[376] *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 249.
[377] Id. at 251.

Promoting transparency and accountability: Civil society can promote better governance of the mining sector by demanding transparency and accountability in the sector. They can also promote this by obtaining and disseminating information to the public to drive the demand for accountability by citizens.[378] It is important to collaborate with a wide array of stakeholders including host communities, related government agencies, especially NEITI where it relates to revenues flows, international organizations, and development partners. With the passage of the Freedom of Information Act, in Nigeria, they may now directly access data from relevant agencies when necessary.

Advocating for reforms: Civil society can also help improve the governance of the sector by promoting awareness on the lapses and weaknesses identified in this book and putting pressure on policy-makers and relevant institutions and governments to reform the framework in the areas identified.

Raising awareness on host community rights issues: Local levels of understanding on mining issues and community rights are low and are a contributory factor to the lack of demand for accountability in natural resource governance. Civil society can also play a critical role in improving governance of the sector by engaging in sensitization and awareness programmes. For example, carrying out awareness campaigns in host communities on their rights and entitlements as embodied in the solid minerals legal and regulatory framework. It will be helpful to extend such campaigns to miners and government agencies so they can also become cognizant of their responsibilities.

Public interest litigation/ administrative proceedings: Civil society can also contribute to improving governance in the sector by *pro bono* advocacy services to host communities. For example, civil societies can commence adjudicatory proceeding before judicial bodies to compel the government or other bodies to fulfill their obligations, or even to compel a public officer to do what (s)he has neglected to do.

For Host Communities

Host communities should not be viewed as helpless stakeholders. Informed of their rights and the obligations of the government and mineral title holders, they can play a key role in the effective governance of the mining sector. Accordingly, the following recommendations should be given serious consideration:

Creating mining enterprises: As earlier noted, communities may apply for mining lease licenses and create their own mining companies to harness the mineral potential in their vicinity. Should the cost of

[378] *L Aladeitan* 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 178; *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 35; *FL Adamu* 'Labour and Gender Issues in Solid Minerals Mining: The case study of Tin and Gold' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 121; *VAO Adetula* 'Best Practices in Solid Minerals: International dimension and comparison' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 251.

such an enterprise be intimidating, they could consider inviting investors or approach the Bank of Industry to provide financial support. Proceeds from the mines which would provide employment for members of the community, could be invested in a development foundation run as a business concern to yield dividends for the community.

Curbing unregulated mining: Realizing the environmental, safety and health toll unregulated mining has on them; host communities should cooperate with the authorities to ensure unregulated mining is curbed in their vicinity. Instead, they should encourage the formation of cooperatives with a view to securing an artisanal and small-scale license to participate in mining activities and be subject to environmental and other obligations imposed by law. They should in addition be vigilant in stemming the menace in their communities by notifying the relevant authorities on incidents of illegal mining occurring in their environment, and ensuring that offenders are arrested and prosecuted.[379]

Negotiating equitable and beneficial community development agreements: It is in the best interest of host communities to develop comprehensive development plans for their communities. With the assistance of town planners and other development experts who will be able to factor in mining operations and population expansion, their plans will provide a strong platform for negotiating equitable, practical and beneficial community development agreement that will also cater for the interests of vulnerable groups such as women and children.

To ensure equity and the representation of the interests of all sectors of the society, all interest groups within the community, especially women and other minorities should be represented at community development agreement negotiations.

Communities also need to be circumspect and ensure that the terms of the agreement are vetted by experts before they are signed. They at the least must guarantee that they are measurable, time-bound, have conflict resolution clauses, and that there are enforceable penalties should the company fail to fulfill its agreed obligations.

Fashion a mechanism for ascertaining the quantity of minerals extracted: In order to contribute to transparency in the mining sector, host communities should fashion a reliable mechanism for ascertaining the quantum of minerals extracted from their communities.[380] In the long run, such information may impact the revenue returns to the state or community.

Collaboration with government on key issues: Host communities can help improve governance of the sector by collaborating with government on key issues such as health and safety measures, security, provision of infrastructure, accountability and transparency, and other pertinent issues.[381]

Understanding their rights and responsibilities: Host communities can help to improve the governance of the mining sector when they understand their rights, the roles and responsibilities of

---

[379] *L Aladeitan* 'The legal and regulatory framework of solid minerals and mining in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 178.

[380] *F Olokesusi* 'The History, Evolution and Geography of the Solid Mineral Industry in Nigeria' in Coalitions for Change (eds) in *An evaluation of the nature and character of the Nigerian extractive industries in Nigeria – Vol 2, Solid Minerals* (2010) p. 36.

[381] Id.

mining companies and the government. They must go beyond just understanding them; they must consistently enforce those rights. Faced with enlightened host communities, regulatory bodies and government would understand that they have little choice but to govern the sector effectively.

Partnering with civil society to advocate for solutions to their challenges: Host communities may also partner civil society or create a coalition of host communities to provide a united platform to advocate for better mining governance.

CONCLUSION

This book has contextualized the protection and promotion of host community rights within the national legal and institutional framework for solid minerals and mining in Nigeria. Starting with the Constitution which vests all control of all mineral resources in Nigeria in the Federal Government, it reviewed other regional and national laws and the institutional framework governing the sector.

While pointing out that the intent of the laws and regulations are to attract investment and the rapid development of the sector, it clearly showed that the laws were far from perfect and that governance of the sector was deficient in many ways. Some of the deficiencies it noted were as follows:

1. The failure of applicable laws and regulations to adequately protect the fundamental and socio-economic rights of host communities.
2. The failure of applicable laws and regulations to extensively provide guidelines for artisanal mining which accounts for the largest form of mining in Nigeria
3. The poor implementation of laws and regulations guiding solid mineral mining in Nigeria due to deficient coordination among government ministries and the different levels of government; insufficient resources such as: manpower constraints, financial constraints, lack of skills, technical knowledge and equipment; and worst of all - lack of political will.

In reviewing the revenue laws for the sector, it is clear that laxity in the monitoring of revenues accruing from mining has led to a drain in national resources that could have prospered the development of host communities and the nation and improved governance of the sector. For instance, the failure to prioritize the functioning of the Solid Mineral Development Board and consequently, the activation of the Solid Mineral Development Fund are ready indications of the lack of political will to advance fiscal accountability and efficient management in the sector.
NEITI's failure to devote considerable attention to tracking revenue flows from mining has also been detrimental to the development of the sector. NEITI's role in ensuring transparency in Nigeria's extractive industry must swiftly begin to extend beyond the hydrocarbon industry to include a strong interest in the solid minerals industry.

Poor environmental regulatory compliance and the failure of coordinating ministries and parastatals to effectively synergize and communicate for the effective implementation of environmental laws governing solid mineral mining has been detrimental to the wellbeing of host communities and has had devastating effects on the topography of the nation. There must be a deliberate attempt at syncing their activities in order to be mutually effective.

Premised on Section 17(1)(d) of the Constitution of the Federal Republic of Nigeria (1999) which provides that the "exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented;" this book reviewed the multi-faceted breaches to the rights of host communities. It in particular reviewed mining practices detrimental to the environment in which host communities exist; and the effects of these activities on their health, access to resources, livelihoods, socio-cultural dynamics, safety and security. It established the premise for including social and human rights impact assessment as a mining prerequisite.

Labour issues and gender issues also stood out as needing greater attention through laws and regulation. In particular, women are in need of a veritable platform for greater participation in solid mineral mining. Affirmative action and participatory governance are points of consideration for the supervising ministries. Eradicating child labour in mining and ensuring greater respect for health, safety and social security for this hazardous occupation is essential.

In addition, considering that solid minerals are non-renewable resources, it is essential that they are mined with a long term perspective in mind – how does the government ensure that these resources are not entirely depleted in the shortest possible time; how can a vibrant post-mining economy be guaranteed; and how can the interests of the present and future generations be served and preserved through these activities? The current structure promotes direct foreign investment to the detriment of local participation in the sector. The reality is that most of the resources mined are exported unaccounted for and unprocessed from Nigeria, hence depriving the country of additional resources derivable from value added processing.[382]

While the government is focused on the solid mineral sector being private sector driven, and there has been specific emphasis on encouraging direct foreign investment,[383] there is some value in advocating for the semi-nationalization of solid minerals as a means of developing the economy and empowering Nigerians. Nationalization does not negate the private driven initiative, it just ensures that its control stays within national control. Perhaps, consideration could be given to a 70% local stake in all mineral titles. A paradigm shift in the ownership structure for solid mineral in Nigeria might bode well for mining host communities, which may consider – with the assistance of their state governments – setting up their own mining companies, thereby reducing artisanal mining which is more damaging to the environment than other forms of mining.

In conclusion, it is clear from the information provided in this book that the current legal, regulatory and institutional framework for solid mineral mining is still a long way from promoting and protecting host community rights. While it contains several provisions that, if implemented and enforced, will go a long way in safeguarding the rights of host communities, it clearly is still deficient.

Civil society, state, host communities and local governments will do well to be well acquainted with the framework, particularly those which have the potential to secure the enjoyment of their rights as communities and as individuals within those communities. They will also do well to advocate for the reform of defective laws, regulations and institutions to address identified gaps and ensure a more robust, dynamic and comprehensive framework which will not only drive investment in the sector, but ensure that mining is conducted in a way that respects the rights of host communities.

---

[382] http://www.theguardianmobile.com/readNewsItem1.php?nid=13220

[383] http://isee9ja.com/four-foreign-coys-to-begin-mining-of-nigerias-gold-iron-ore-in-2014/