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MINING ACTIVITIES AND THE RIGHT TO HEALTH IN NIGERIA: A RIGHTS-BASED APPROACH

*Oluwatosin Busayo Igbayiloye (Mrs)**

ABSTRACT

The Mining sector of the Nigerian economy has been identified as one with a huge economic prospects for the country. Despite reforms by government, the sector is still faced with several challenges associated with the exploration and exploitation of the mineral resources. Thus, mining activities pose a serious threat to the environment and the rights of the people. Such rights include the right to life, right to health, right to water, and right to culture among others. This paper focuses on the right to health and the threats posed to it by mining activities. The paper analyses the extant laws as well as their inadequacies in the regulation of the mining activities, particularly in the area of protection of the right to health of the people in mining activities. The paper argues for and then suggests a rights-based approach to mining regulation with a view to ensuring an effective legal protection of people's health right. The paper concludes that health right should be recognized and adequately protected in the context of mining activities in all affected communities.

1. INTRODUCTION

The Nigerian Extractive Industry is a major source of income for the economy. This flows from abundant deposits of natural resources across the nation. The mining sector boomed during the colonial era until crude oil was discovered. At the time, solid mineral resources like coal were the backbone of the economy in addition to agriculture. Subsequently, overlooking the mining sector, the Nigerian Government dominated on exploring crude oil for the growth of its economy and the export of crude oil became a major source of revenue for the government.¹ Due to the fall in global prices including

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¹Olure-Bank Adeyinka and Micheal Salako Gbadebo, Economic Gift Source of Diversifying Nigerian Economy for Economic Growth and Economic Development Sustainability, Journal of Economics and Sustainable Development, Vol.7, No.11, 2016.

disruptions of oil production which resulted in the economic meltdown, there was a drive for diversification.

The mining sector became a focus for the Nigeria government because of its prospects for economic growth and benefits for the population. As a result, the government took steps to overhaul the solid mineral industry and brought about reforms on the policies and institutions. For instance, the substantive Nigerian Mineral and Mining Act of 2007 was enacted to replace the Federal Mineral and Mining Act 1999. The major purport for these reforms was to attract and encourage foreign investments in the sector by providing enabling environment for investors. There is no doubt that the exploration of solid minerals will generate economic benefits and development for the nation. However, it also has negative impacts on the rights of host communities, the environment and even the economy in the long run. There is evidence that the rights of host communities are threatened by the dangers posed by the exploitation of mineral resources in Nigeria. One of such right include right to health.

Health is important for every human being in the world. It is a significant matter for individuals and states.² Thus, it requires an adequate response to significantly reduce and or avoid problems that a suited law can address. States are under obligation to respect, protect and fulfill human rights. They also have the responsibility to ensure that third parties like companies protect and fulfill human rights. However, despite the reforms regulating the mining sector, the current legal framework, does not adequately provide for the protection of human rights particularly those of the host communities. The paper focuses on the impacts of exploration of minerals in the mining sector on the right to health.

2. INTERNATIONAL INSTRUMENTS ON RIGHT TO HEALTH

The right to health is a fundamental human right and refers to a life in dignity.³ Human rights are interdependent, indivisible and interrelated. The

<http://www.ijrnl.org/Inumali/index.php/ijrnl/article/viewFile/31228/32066> accessed on 23 September 2016

² Aisha Haruna, 'An Analysis Of The Legal And Institutional Framework For The Realization Of The Right To Health In Nigeria' A Thesis Submitted To The School Of Postgraduate Studies, Ahmadu Bello University, Zaria In Partial Fulfillment Of The Requirement For The Award Of Doctor of Philosophy In Law- Ph.D.

³ The right to health, Fact sheet No. 31

http://www.ohchr.org/_layouts/15/WopiFrame.aspx?source=Documents/Publications/Factsheet31.pdf&action=default&DefaultItemOpen=1 accessed on 24 March 2017

right to health is linked to⁴, reliant on and contributes to the realization of other human rights⁵. The implication of this is that, violating the right to health may prevent the enjoyment of other human rights, like the rights to education,⁶ the right to life, human dignity, freedom from discrimination, right to food, right to water, right to an adequate standard of living, right to adequate housing, freedom from discrimination, right to privacy, right to access to information, right to participation.⁷

According to the National Economic and Social Rights Initiative (NESRI), the human right to health means:

that everyone has the right to the highest attainable standard of physical and mental health, which includes to all medical services, sanitation, adequate food, decent housing, healthy working conditions and a clean environment.⁸

The protection of this right is contained in several international instruments which depicts its importance. At the international level, the formulation of health as a human right was initiated at the United Nations Conference in 1945.⁹ In 1946, the World Health Organization (WHO) was created as health was gradually described as a social issue.¹⁰ WHO became the first International Organisation to express an explicit 'right to health' in the Preamble to its Constitution. This inspired the definition of a right to health in the provisions of various human rights treaties.¹¹ The preamble of the Constitution defines health as "A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." Further, the Constitution states that:

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without

⁴Ebenezer Durojaye and Olabisi Ayankogbe, 'A rights-based approach to access to HIV treatment in Nigeria' AHRJ Volume 5 No 2 2005 pg 287-307 <http://www.ahrj.up.ac.za/durojaye-d-ayankogbe-0> accessed on 24 March 2017

⁵The Right to Health, no 3 above

⁶ibid

⁷ibid

⁸NESRI "What is the Human Right to Health and Health Care? <<https://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care/>> accessed on 24 March 2017

⁹<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-health> accessed on 24 March 2017

¹⁰<http://hrlibrary.umn.edu/edumat/IHRP/circle/modules/module14.htm> (accessed on 24 March 2017)

¹¹(No 9 above)

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distinction of race, religion, political belief, economic or social condition.

The Universal Declaration of Human Rights (UDHR)¹² also mentioned health as part of the right to an adequate standard of living. It states that:

Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.¹³

Similarly, the International Covenant on Economic, Social and Cultural Rights¹⁴ states that the right to health includes "The enjoyment of the highest attainable standard of physical and mental health".¹⁵ It also provide steps to be taken by Parties to the covenant to achieve the full realization of the right which include those necessary for: the reduction of still birth-rate, infant mortality and healthy development of the child; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and the creation of conditions which would assure all medical service and medical attention in the event of sickness.¹⁶

There are other international human rights instruments that recognize the right to health and also contain prohibitions against government's conduct that is detrimental to health. Such treaties include the International Convention on the Elimination of All Forms of Racial Discrimination¹⁷ which lists it as economic, social and cultural rights¹⁸; the Convention on the Elimination of All Forms of Discrimination against Women¹⁹ establishes the obligation to adopt adequate measures to guarantee women access to health and medical

¹²UN Universal Declaration of Human Rights, G.A. Res. 217A (III), art.13.1, U.N. GAOR, 3d Sess., at 71, 74, U.N. Doc. A/810

¹³Article 25(1) Universal Declaration of Human Rights 1948

¹⁴International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200I (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, 993 U.N.T.S. 3 (1966).

¹⁵Article 12(1) ICESCR

¹⁶Article 12(2) ICESCR

¹⁷International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, art. 5(d) (vii), G.A. Res. 2106 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965), 660 U.N.T.S. 195, 222 (entered into force Jan. 4, 1969).

¹⁸Article 5 (e)(iv) CERD

¹⁹Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Dec. 18, 1979, art. 12, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 1979 (entered into force Sept. 3, 1981).

care, with no discrimination whatsoever, including access to family planning services. It also establishes the commitment to guarantee adequate maternal and child health care.²⁰ The Convention on the Rights of the Child²¹ recognizes the right to health for all children and identifies several steps for its realization.²² The Convention relating to the Status of Refugees²³, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families²⁴; the Geneva Conventions²⁵; the Declaration on the Protection of Women and Children in Emergency and Armed Conflict²⁶; the Standard Minimum Rules for the Treatment of Prisoners²⁷; the Declaration on the Rights of Mentally Retarded Persons²⁸; the Declaration on the Rights of Disabled Persons²⁹; and the Declaration on the Rights of Indigenous Peoples³⁰. The General Comment No. 14 of the Committee on Economic, Social and Cultural Rights also elaborates on the right.

The protection of the right to health is also given recognition at the regional level. The African Charter on Human and Peoples' Rights³¹ recognizes this right. It enshrines the right to the highest possible level of health, to which end "necessary measures" will be taken, while also guaranteeing medical services in cases of illness.³² The African Charter on the Rights and Welfare of the Child also includes recognition of the right to health.³³

²⁰Article 12(2) CEDAW

²¹Convention on the Rights of the Child of 1989, Nov. 20, 1989, art. 24, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc A/44/49 (entered into force Jan. 4, 1990).

²²Articles 23 and 24 CRC

²³Article 23 CSR Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. Entry into force: 22 April 1954, in accordance with article 43

²⁴Article 28 CMW Adopted by General Assembly resolution 45/158 of 18 December 1990

²⁵such as the obligation to provide medical care for the wounded (Common Article 3(2) and Article 7 of Protocol II) and Article 12 of the First and Second Geneva Conventions

²⁶Proclaimed by General Assembly resolution 3318 (XXX) of 14 December 1974 article 6

²⁷Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, articles 22-26

²⁸Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971 article 2

²⁹General Assembly resolution 3447 (XXX) of 9 December 1975 [Article 25CPRD]

³⁰General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A, adopted on 29 June 2006 article 24

³¹African (Banjul) Charter on Human and Peoples' Rights Adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

³²Article 16 ACHR

³³(also called the ACRWC or Children's Charter) was adopted by the Organisation of African Unity (OAU) in 1990 (in 2001, the OAU legally became the African Union) and was entered into force in 1999. Article

The right to health like all other human rights imposes on countries the obligations to respect, protect and fulfil the right. The General Comments contains both freedoms and entitlements.³⁴ The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health. It contains key elements namely, availability, accessibility (including equality, affordability), acceptability and quality.³⁵ The obligation to fulfil or promote the right to health requires countries to embark on actions that create, maintain and restore the health of the population.³⁶

Like all other human rights, the right to health imposes on countries the obligations to respect, protect and fulfil the right.³⁷ The right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.³⁸

3. THE PROTECTION OF THE RIGHT TO HEALTH IN NIGERIA

Conceivably, it is the duty of governments to ensure that people live in conditions that do not harm their health.³⁹ They are under obligation to promote and fulfill this right. In Nigeria, though the right to health is not directly provided for in the Constitution⁴⁰, Nigeria has committed itself to the protection of the right by assuming obligations under international treaties with respect to the health of persons within its jurisdiction. Nigeria signed and ratified the following international treaties which include: the African Charter on Human and Peoples' Rights⁴¹; the African Union Charter on the Rights and

³⁴General Comments

³⁵General Comments

³⁶Cheluchi Onyemelukwe 'Access to anti-retroviral Drugs as a Component of the Right to Health in International Law: Examining the Application of the Right in Nigerian Jurisprudence' (2007) 2 AHRLJ 446-474

³⁷General Comments

³⁸General Comments

³⁹ A background to health law and human rights in South Africa <https://section27.org.za/wp-content/uploads/2010/04/Chapter1.pdf> accessed on 26 March 2017

⁴⁰ The 1999 Constitution of the Federal Republic of Nigeria

⁴¹ Ratified on 22nd June 1983

Welfare of the Child;⁴² UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);⁴³ UN Convention on the Rights of the Child (CRC);⁴⁴ UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT);⁴⁵ International Covenant on Civil and Political Rights (ICCPR);⁴⁶ International Covenant on Economic, Social and Cultural Rights (ICESCR);⁴⁷ and the International Covenant on the Elimination of all forms of Racial Discrimination (ICERD)⁴⁸. The Universal Declaration of Human rights (UDHR) though not binding but is considered as constituting customary international law because of its acceptance by several states. In addition, Nigeria is party to several Conventions of the International Labour Organizations⁴⁹ some of which contain provisions on the health of workers. Nigeria is also a party to the Geneva Conventions and Additional Protocols that prescribe rules for conduct of warfare, including health-related obligations. Furthermore, the country adheres to a number of non-binding instruments or standards that address health issues such as the 1993 Vienna Declaration and Programme of Action, the Programme of Action of the 1993 UN International Conference on Population and Development, and the 1995 Beijing Declaration and Platform for Action (UN Fourth World Conference on Women). The National Assembly officially incorporated and gazetted other treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Rome Statute of the International Criminal Court, and the Chemical Weapons Convention for domestication. An evaluation of the international instruments as well as interpretive documents makes it clear that the right to health as it is contained in international law encompasses not only health care but also include basic requirements for health, such as portable water and adequate sanitation and nutrition.⁵⁰

⁴²Ratified on 23rd July 2001

⁴³Ratified on 13th June 1985

⁴⁴Ratified on 19th April 1991

⁴⁵Ratified on 28th June 2001

⁴⁶Ratified on 29th July 1993

⁴⁷Ratified on 29th July 1993

⁴⁸Ratified on 16th October 1967

⁴⁹Ratified on 16th October 1967

⁵⁰Nigeria is an ILO member since 1960 and has ratified 40 International Labour Conventions

⁵¹Kimney, E., *The international right to health: what does this mean for our nation and our world?* (2001)

34 *Indiana Law Rev* 1457-1475; Toebes B., *The Right to Health as a Right in International Law*, Oxford,

England: Intersentia/Hart; 1999 cited in Oyeniyi, Ajigboye, *An Overview of the Legal Framework for the*

Protection of the Right to Health in Nigeria (2013). *Afe Babalola University Law Journal*,

2013 <https://ssrn.com/abstract=2447135> (accessed on 26 March 2017)

welfare of all persons in employment are safeguarded and not endangered or abused. It also states that the State should ensure there are adequate medical and health facilities for all persons.⁵⁵ The right to life⁵⁶, sanctity of the human person and human dignity⁵⁷, the respect for the dignity of person and not to be subjected to torture or to inhuman or degrading treatment⁵⁸ are also recognized in the Constitution. Furthermore, it provides that children, young persons and the aged shall be protected against exploitation, and against moral or material neglect⁵⁹ and the evolution and promotion of family life is encouraged. Ladan indicated that the constitutional provisions of sections 17, 33 and 35 are clearly related to physical and mental health of persons.⁶⁰ According to him, constitutional provision that states that conditions of work be just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life⁶¹ is one, which if properly implemented will work to promote women's health generally.⁶² The provision which characterizes what ought to be the right to health as one of the "Fundamental Objectives and Directive Principles of State Policy" (Directive Principles) enjoys no legal protection. Section 6(6) (c) of the Constitution precludes the courts' jurisdiction with respect to matters enumerated in chapter II. In essence, codification as a Directive Principle means that the right to health care is not justiciable under the Constitution or, for that matter, any other law in Nigeria. Consequently, courts have generally refrained from exercising jurisdiction in such matters. In *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria*⁶³, the Centre for Economic and Social Rights and SERAC jointly submitted a petition to the African Commission in respect of economic and social rights violations in Nigeria. The African Commission held Nigeria responsible for violation of certain provisions of the African Charter with respect to: freedom from discrimination, the right to life, the right to property, the right to health, the right to housing, the right to food, the right of people to freely dispose of their wealth and resources and the right to a safe environment. These violations were the results of environment degradation arising from extensive oil exploration in the Niger Delta region. The African Commission also made

⁵⁵Section 17 (3) (c) & (d) 1999 Constitution of Nigeria

⁵⁶Section 33

⁵⁷Section 17 (2) (b)

⁵⁸Section 34 (1) (a)

⁵⁹Section 17(3) (f)

⁶⁰Ido 53 above)

⁶¹Section 17(3)(b) 1999 Constitution

⁶²Ido 53 above)

⁶³(2001) AHR 60

several recommendations, including the establishment of a Development Commission for the Oil Minerals Producing Areas of Nigeria.

The current health policy of Nigeria is embodied in the National Health Policy and Strategy to Achieve Health for All Nigerians, introduced in 1988 and subsequently revised in 2004.⁶⁴ The policy seeks to improve the health of all Nigerians through designing a sustainable health system centered on primary health care (PHC).

4. MINING IN NIGERIA

4.1 The Development of Mining in Nigeria

Mining in simple terms has been defined as:

*...the removal of solid valuables from the earth for economic emancipation; such valuables are known as minerals. They are naturally endowed inorganic materials found in the earth for the benefit of mankind.*⁶⁵

Some of these natural resources include gold, tin, salt, coal, clay, diamond, iron ore, precious stones of varying types.

Nigeria is endowed with a variety of minerals comprising industrial minerals, metallic minerals, mineral fuel, gemstones, precious metals and dimension stones. These include 34 different types of minerals which are found in more than 500 locations of varying geological environments. Before the discovery of oil, the Nigerian economy depended on the exploitation and trade of solid minerals including agricultural production. In the early 1970s, the country was a major exporter of tin, columbine and coal.⁶⁶ They became a source of income for the economy and development of the nation. For instance, coal was used to build the railway system and for the supply of electricity while tin generated substantial foreign exchange earnings for the nation. In

⁶⁴ Federal Ministry of Health (FMH), National Health Policy and Strategy to Achieve Health for all Nigerians (Lagos, Nigeria: FMH, 1988); Revised National Health Policy (Abuja, Nigeria: FMH, 2004).

⁶⁵ Joshua Dada, and Obinna Ogbonaya, 'Impact of Mining On Nigerian Communities' Leadership Newspaper, Dec 13, 2014 <http://leadership.ng/features/394818/impact-mining-nigerian-communities> accessed on 23 March 2017

⁶⁶ KPMG

<https://www.kpmg.com/ho5/en/issuesAndInsights/ArticlesPublications/Documents/Nigerian%20Mining%20Brief.pdf>. See also Facts of the Nigerian Mining Sector <https://newsfromnigeria.com/facts-of-the-nigerian-mining-sector/> accessed on 2 August 2015

addition, the extraction of these minerals also presented employment opportunities.⁶⁷ However, with the oil boom of the 1970s, attention was drawn from these traditional sources of revenue and tilted towards the extraction of oil.⁶⁸ It became a major source of foreign exchange for the country⁶⁹ as the growing economy depended almost only on this profitable commodity while the solid mineral industry was by and large overlooked.

In view of the global decline in crude oil prices and economic meltdown in the 1980s, inclusive of its consequent impact on the country's earnings and reserves, efforts are being made to refocus on the nation's solid minerals. This is as a result of the potentials of solid minerals sector becoming a viable alternative to earn foreign exchange in Nigeria. Therefore, there was a push for diversification of the economy and the promotion of privatization and commercialization. In 1994, Government pressed for a private sector-led economic revival programme in solid minerals, agriculture and manufacturing as a means of diversifying the economy. This programme suggested the establishment of a Ministry of Solid Minerals Development, the creation of which was subsequently announced by the Head of State, Gen. Sani Abacha, in his 1995 Annual Budget Speech.⁷⁰ In 1999 the Federal Minerals and Mining Act was created, which was followed by a drive for the privatization of the then majority state-owned mines.⁷¹ When democracy gained prominence in 1999, the need to diversify the revenue base of the country became paramount.⁷² Obasanjo who was the president at that time, worked tirelessly in putting in place a mechanism for diversification of the country's revenue and as far as the mining sector is concerned.⁷³ A new national focus and strategy on mining evolved such that in 2007, the Nigerian Minerals and Mining Act (the Act) was enacted to revitalize the Nigerian mining industry.⁷⁴ In an attempt to reverse the reliance on petroleum, a bold step was taken to revamp the solid mineral industry through the establishment of the then Ministry of Solid Mineral Development in 1995, which today is known as the Ministry of Mines and Steel development. Also, these reforms were necessary to attract and

⁶⁷ Richbon Group Nigeria <https://richbongroupnigeria.wordpress.com/2016/01/05/history-of-mining-and-mining-in-nigeria/> Accessed on 2 August 2016

⁶⁸ No 67 above

⁶⁹ No 66 above

⁷⁰ (no 67 above)

⁷¹ (no 67 above)

⁷² (no 66 above)

⁷³ Facts of the Nigerian Mining Sector <https://newsofnigeria.com/facts-of-the-nigerian-mining-sector/> (accessed on 2 August 2016)

⁷⁴ (no 66 above)

create a viable environment for foreign investments. In 2008, the Minister of Solid Minerals Development (now called Mines and Steel Development) prioritized the development of seven solid minerals with strategic relevance to Nigeria's economy considering their availability in quantities that are sufficient to sustain mining operations for the long term. These minerals are coal, barytes, bitumen, gold, iron ore, lead/zinc, and limestone.⁷⁵ These resources provide potential opportunities for national development. For instance, coal which is largely deposited in the eastern part of Nigeria can serve as fuel for power generation, thereby easing the power infrastructural shortage in the country. In addition, bitumen a crucial constituent of asphalts can be used for the construction of roads.⁷⁶ In the sector, illegal miners, artisans including mining companies carry out operations in locations where deposits of mineral resources are found.

4.2 Legal and Institutional Framework for Mining in Nigeria

In the Nigerian Constitution⁷⁷, the Second Schedule, Part I item 39 of the Exclusive Legislative List, 'mines and minerals, including oil fields, oil mining, geological surveys and natural gas' are firmly under the control of the Federal Government. Apart from the constitution, the Nigerian Minerals and Mining Act 2007⁷⁸ ("the Act") was passed into law on March, 2007 to repeal the Minerals and Mining Act 1999⁷⁹. The Act is the principal legislation that regulates the mining sector in Nigeria and it regulates all aspects of the exploration and exploitation of solid minerals in Nigeria. It vests the control, regulation and ownership of all mineral resources in the Federal Government of Nigeria. The 2007 Act is structured into six chapters and 165 sections covering matters relating to ownership and control of minerals, prospecting, mining and quarrying; small scale mining, possession and purchase of minerals, environmental protection and rights of host communities; community development agreement; offences and penalties as well as miscellaneous provisions. It establishes an Environmental Protection and Rehabilitation Program and Fund which are aimed at accomplishing the objectives of the Act.

⁷⁵<http://www.nigerianminers.org/sites/default/files/Mining-Mineral-Act.pdf> (accessed on 2 August 2016)

⁷⁶(no 75 above)

⁷⁷The 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁷⁸Nigerian Minerals and Mining Act, 2007 (Act No. 20).

⁷⁹No.34 of 1999/Cap. M.12/LFN2001.

There are also other policies regulating the sector such as: the National Minerals and Metals Policy (2008)⁸⁰; the Nigerian Minerals and Mining Regulations 2011 which set out the rules, procedures and processes for the acquisition of mineral title; The Guidelines on Mineral Titles Application 2014 which details the different types of mineral titles, the requirements for the application of these titles as well as a detailed outlook on the application procedure and fees; Environmental Impact Assessment Act⁸¹ stipulates that public or private project that is likely to have significant impact on the environment should not be undertaken until assessment has been carried out. Other laws as regards mining of solid minerals in Nigeria includes; National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations 2009⁸², National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011⁸³, National Environmental (Quarrying and Blasting Operations) Regulations, 2013⁸⁴, Companies and Allied Matters Act, 2004, Land Use Act 1978, the Nigeria Extractive Industry Transparency Initiative Act⁸⁵, the Explosives Act and Explosives Regulations⁸⁶, Nuclear Safety and Radiation Protection Act ⁸⁷, Nigerian Investment Promotion Commission Act⁸⁸, Companies Income Tax Act (CITA)⁸⁹.

The Ministry of Mines and Steel Development (MMSD) is the agency set up to unlock the economic potentials of the solid minerals sub-sector in Nigeria. It was established in 1985 as a bold attempt by the Nigerian Government to spur the rapid and beneficial development of the country's solid mineral resources. The minister's responsibility is to ensure the sustainable development of Nigeria's mineral resources, create a viable environment for private investors. In terms of administration of the mining industry, Ministry of Mines and Steel Development oversees the industry's administrative activities. The administration is carried out by Mines Inspectorate Department, Artisanal and Small Scale Mining Department, Mines, Environment and Compliance and

⁸⁰The National Minerals and Metals Policy, 2008

⁸¹CAP E12 LFN 2004

⁸²Federal Republic of Nigeria, No. 31 of 2009, Vol. 96, No. 63, Official Gazette (Abuja) dated 12th October, 2009.

⁸³SI No.14, Gazette No. 41, Vol. 98 of 4th May, 2011

⁸⁴SI No. 33, Gazette No. 97, Vol. 100 of 30th October, 2013.

⁸⁵Cap N159 LFN 2004

⁸⁶CAPE18 LFN 2004

⁸⁷Cap N142 LFN 2004

⁸⁸Nigerian Investment Promotion Commission Act 1995, CAP N217, LFN 2004

⁸⁹Companies Income Tax Act 2011, CAP P8 LFN 2004

Mining Cadaster office. The responsibility of the ministry is to formulate policy; provide information and knowledge to enhance investment in the sector; regulate operations in the solid minerals sector; and generate appropriate revenue for the government.

The Ministry of Mines & Steel is also responsible for identifying the nation's solid minerals, advising government on the formulation and execution of laws and regulations guiding the various stages of prospecting, quarrying and mining; and handling sale and consumption of solid minerals in the country, through the issuance of Permits, Licenses, Leases and Collection of rents, Fees and Royalties.⁹⁰ The Ministry is organised with other agencies, like Mines Inspectorate, Mines Environmental Compliance, Artisanal and Small Scale Mining, Mining Cadastre Office, Metallurgical Inspectorate and Raw Material Development, Steel and Non-Ferrous Metals, Nigerian Geological Survey Agency (NGSA), Nigerian Metallurgical Development Centre, National Steel Raw Materials Exploration Agency (NSRMEA), Council of Mining Engineers and Geoscientists (COMEG).⁹¹

4.3 The Protection of the Right to Health under the Nigerian Mining Legal Framework

In West Africa, ECOWAS established directives and principles on mining for member states to ensure sustainable development.⁹² It recognizes the protection of the environment⁹³ rights of local communities⁹⁴.

In Nigeria, Chapter four of the Nigerian Minerals and Mining Act contains provisions on the rights of host communities as well as provisions in consideration of the environment. These provisions relates to surface rent over lands leased for mining operations⁹⁵, compensation for damage to the surface of the land, crop, economic work, building or work⁹⁶. The use of explosives in the extraction of sand, clay, laterite and stone for use by the local inhabitants

⁹⁰ Ministry of Mines and Steel Development- about MMSD

⁹¹ Ministry of Mines and Steel Development, Roadmap for the Growth and Development of the Nigerian Mining Industry <http://www.minesandsteel.gov.ng/wp-content/uploads/2014/09/Nigeria_Mining_Growth_Roadmap_Final.pdf>(accessed 24 November 2016)

⁹² Ecowas Directive On The Harmonization Of Guiding Principles And Policies In The Mining Sector

⁹³ See Article 6

⁹⁴ See Article 16

⁹⁵ Section 102

⁹⁶ Section 107

was also prohibited.⁹⁷ It also provides for a community development agreement to be concluded between the holder of a mining lease, small scale mining Lease or Quarry Lease and the host community before the commencement of any operations.⁹⁸ The content of the Agreement is in relation to social and economic contributions of the project to the community and it addresses issues like educational scholarship, apprenticeship, technical training and employment opportunities for members of the communities⁹⁹; financial or other forms of support for infrastructural development and maintenance such as education, health or other community services, roads, water and power; assistance to small scale and micro enterprises; marketing of agricultural products and procedures of environment, socio-economic management and local governance enhancement.¹⁰⁰ Health was mentioned as an area for financial or other contributory support for infrastructural development to be included in the community agreement.

The agreement is left to be concluded between the holder of mineral title and the host communities without government's participation. This will give room for such persons to act inappropriately and to the detriment of the communities. In respect of environmental impact caused from mining activities, holder of mineral title is expected to avoid, manage and reduce such¹⁰¹ but the procedures were not provided. The holder is to submit to the Mines Environmental Compliance department an environmental impact assessment approved by the Federal Ministry of Environment including an environmental Protection and Rehabilitation Program.¹⁰² It also prohibits against pollution of water and environment in the process of mining activities.¹⁰³ Compensation is to be paid to the owner of land affected and who suffers damages in respect to pollution of water as a result of mining operations.¹⁰⁴ Some of these provisions lacks procedures and guidelines.

The Nigerian Minerals and Act does not give enough attention to human right and is inadequate in the protection of human rights particularly the right to health in the process of exploration of mineral resources. The regulation of the operations of companies as regards the protection of the rights in mining

⁹⁷Section 99 Nigerian Minerals and Mining Act

⁹⁸Section 116 (1) Nigerian Minerals and Mining Act

⁹⁹Section 116(2)

¹⁰⁰Section 116 (3) (a-e)

¹⁰¹Section 118 (a)

¹⁰²Section 119

¹⁰³Section 123, 111

¹⁰⁴Section 125

process is also poor. The duty to respect the right to health does not lie only with governments. Apart from government, the mining companies also have responsibilities towards human rights particularly those rights of the communities as well as sustainability development wherein they are located. Under international law, there are norms in respect of the obligations of companies as regards human rights like the United Nations Business Guiding Principles which is recent. It defined the responsibilities of companies to respect human rights but these norms are not binding.

4.4 Impacts of Mining on the Right to Health in Nigeria

Mining of mineral is a kind of development project which can be on a mega scale and often times focus on the economic side of development excluding the economic, social, cultural and environmental aspect. Mining at the surface level have resulted in the alienation of land from communities depriving them of their surface rights and as a result denying many of their sources of livelihood.¹⁰⁵ Hazards manifest themselves in the form of displacement of habitats, landlessness, loss of jobs, food insecurity.¹⁰⁶ According to Aldinger¹⁰⁷, mining activities has environmental and health impacts on local communities in developing countries. These impacts have been said to be causes of complaints and clashes between mining companies and communities in mining areas.¹⁰⁸ Most times, the risks emanating from development projects occur when human rights are undermined. Issues like participation and consultation of the local communities, their involvement in the development process and decision making¹⁰⁹, protection of the rights of the project affected people, sustainable development, equal distribution of benefits are poorly taken into consideration.

The hazards caused by mining activities in host communities in Nigeria are documented by scientific studies, research by NGOs and the media. Mining

¹⁰⁵ T. Akabtsaa 'Mining in Ghana: Implications for National Economic Development and Poverty Reduction' in B. Campbell (eds) *Mining in Africa: Regulation and Development* (2009) 58.

¹⁰⁶ I. Hadiprayitno 'Hazard or Right? The Dialectics of Development Practice and the Internationally Declared Right to Development, with Special Reference To Indonesia', (2009) 251.

¹⁰⁷ P.E. Aldinger 'Addressing Environmental Justice Concerns in Developing Countries: Mining in Nigeria, Uganda and Ghana, *Georgetown International Environmental Law Review* (2014) Vol. 26, Issue 4.

¹⁰⁸ African Development bank Group, *Mining Industry Prospects in Africa* <http://www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/mining-industry-prospects-in-africa-10177/> (accessed on 18 September 2016).

¹⁰⁹ S.F. Puvimanasinghe 'Foreign Investment, Human Rights and the Environment A Perspective from South Asia on The Role of Public International Law for Development' (2007) 27.

activities, whether carried out by foreign and domestic companies, artisans or illegal miners, have continued to create a negative impact both socially and on the health in the lives of the host community. Global Rights, a NGO, revealed that operations of companies cause both negative and positive impacts in the environment of operation.¹¹⁰ For instance, the consequence of the operation of the ETA Zuma Group, a coal mining company in Okobo, Kogi State, Nigeria is that the community suffered increased infant mortality rates including respiratory diseases that led to the increase in infant mortality figures. In Adamawa state also, which is part of the northern part of the country, huge deposits of Uranium has led to suspected radioactive substances which has caused death of many.¹¹¹

Leadership Newspaper released information of the situation in Ishiagu Ivo local government area of the state where most of the residents of the area, especially those living around the mining sites have one health issue or the other. According to a resident of the area and former Council Boss of the area, Mr. Celestine Eze, during his tenure as the chairman, an examination of the health situation of the people of the area indicated that because of the irritating noise of the blasting of the stones, 70% of the people now have hearing problem. According to him; yes mining activities generate a lot of income for the council but the negative effect on the people is far much higher than the income generated.¹¹²

There are several scientific studies on the impacts of mining activities on health and environment of host communities in different parts of Nigeria. A mass lead poisoning from mining activities in Zamfara State in Nigeria, was discovered in March 2010, which affected villagers in three Local Government Areas (LGAs): Anka, Bukkuyum and Maru.¹¹³ A survey carried out by the US Centers for Disease Control and Prevention (US CDC) at the request of the Nigeria Federal Ministry of Health also revealed that at least 43 villages in Zamfara State were confirmed to have cases of lead poisoning (with blood lead concentration). The symptoms of lead poisoning include convulsions and loss of consciousness; in the long-term, it can cause kidney failure and brain

¹¹⁰Global Rights, 'What is the true cost of coal mining in Nigeria', <https://ventureafrica.com/features/what-is-the-true-cost-of-coal-mining-in-nigeria/> (accessed on 2 October 2015).

¹¹¹ 'Daily Nigeria News, June 2015 <https://www.dailyng.com/news/nigeria/336685/suspected-radioactive-uranium-deposits-endanger-people> (accessed on 2 October 2015).

¹¹²Leadership Newspaper, 'Leadership: Health Impact of Mining in Nigerian Communities', <http://leadership.ng/feature/334813/impact-mining-nigerian-communities> (accessed on 17 March 2017).

¹¹³ https://www.who.int/csr/don/2011_11_11/en/ (accessed on 26 March 2017).

damage. In a study carried out by Aliyu et al¹¹⁴ in mining areas in Nasarawa State, it was discovered that results of mining activities are health hazards, water pollution, lack of education, destruction of landscape, extinction of some animals, deforestation, degradation of the environment, communal conflicts.

According to Aigbedion and Iyayi,¹¹⁵ large-scale mining of tin and associated minerals in the Jos Plateau has resulted in a high degree of degradation of arable land, vegetation and landscape, as well as other environmental problems. Another case study carried out by Gyang and Ashano¹¹⁶ on water samples from mine ponds, wells and boreholes evaluate for possible pollution observed that mining of tin and other minerals like cassiterite and columbite, on the Jos Plateau caused huge environmental damage, destruction of pastoral land systematically destroyed with increased radioactive waste as a result of dumping of mine tailings and several heaps of mine dumps (overburden) and also mine ponds scattered all over the area. Awalla¹¹⁷ carried out an environmental impact assessment of coal mining activities in Enugu State, Southeastern Nigeria. The study discovered that coal mining caused water pollution by acid mine drainage rendering the water unfit for human drinking and agriculture; and unusable for other domestic and industrial purposes including plants and animals. Other impacts discovered was also air pollution caused by noxious gases, dust, air emissions from blasting and evacuation of mining sites including loss of natural vegetation. Sikakwe et al¹¹⁸ investigation into the impact of coal mining activities on the environmental Okpara coal mine, Enugu, also revealed that the acid mine drainage (AMD) in the Okpara mine and surrounding areas causes the water unfit for human consumption, vegetation, aquatic life and wildlife habitation.

¹¹⁴Aliyu AS, Ibrahim U, Akpa CT, Garba NN, Ramli A.T. 'Health and ecological hazards due to natural radioactivity in soil from mining areas of Nasarawa State, Nigeria' *Environ Health Stud.* 2015;51(3):448-68 <https://www.ncbi.nlm.nih.gov/pubmed/25848838> accessed on 20 March 2017

¹¹⁵Aigbedion I. and Iyayi S.E. 'Environmental effect of mineral exploitation in Nigeria' *International Journal of Physical Sciences* Vol. 2 (7), pp. 033-038, February, 2007

¹¹⁶Gyang, J.D And Ashano, E.C. 'Effects Of Mining On Water Quality And The Environment; A Case Study of parts of The Jos Plateau, North Central Nigeria, *Journal of Environmental Sciences* 3: 33 - 42, 2009 <https://www.scribd.com/doc/32343115/EFFECTS-OF-MINING-ON-WATER-QUALITY-AND-THE-ENVIRONMENT-A-CASE-STUDY-OF-PARTS-OF-THE-JOS-PLATEAU-NORTH-CENTRAL-NIGERIA-JGYANG-J-D-and-ASHANO-E-C> (accessed on 20 March 2017)

¹¹⁷Awalla, C.D.C 'Environmental Impact Assessment of Coal Mining Activity in Enugu Metropolis, Enugu State, Nigeria' *Journal of Software Engineering and Simulation* Volume 2 ~ Issue 5 (2014) p: 01-05

¹¹⁸G. U. Sikakwe, B. E. Ephraim, T. N. Njanje, E. E. U. Nkimi and E. A. Amah ' Geo environmental impact of Okpara coal mine, Enugu, South eastern Nigeria *Adv. Appl. Sci. Res.*, 2015, 6(4):5-16

The problems suffered in these communities are similar. The destruction of the environment, pollution of air and water, release of waste and toxic substances into the environment do have serious impacts on health of host communities. Such impacts include, diseases, sickness, hearing problem, infant mortality, miscarriages and death. Hence, this requires a serious attention by the government and also companies.

5. **RIGHTS BASED APPROACH TOWARDS EFFECTIVE LEGAL PROTECTION OF RIGHT TO HEALTH IN MINING IN NIGERIA**

Every woman, man and child is entitled to the human rights prescribed in the Universal Declaration of Human Rights and the other agreements that make up the International Bill of Rights. Nation states that have agreed to these basic human rights have a legal and moral obligation to guarantee and realise these rights for all people. They are the legal 'duty-bearers' of these rights and must honour their obligations to their citizens. Likewise all people are 'rights holders' who are entitled to the freedom and security set out in the human rights agreements. A human rights-based approach identifies rights holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. The RBA is being defined as an approach, a method, a tool, to integrate human rights into development processes.¹¹⁹ It is underpinned by international human rights law and recognizes the full spectrum of human rights: civil, cultural, economic, political and social rights. It is also operationally directed to promoting and protecting human rights.¹²⁰ An essential of human rights based approach is that the main objective of development policies and programmes are formulated should be to fulfill human rights. "A human rights-based approach focuses on the realization of the rights of the excluded and marginalized populations, and those whose rights are at risk of being violated, building on the premise that a country cannot achieve sustained progress without recognizing human rights principles (especially universality) as core principles of governance."¹²¹ The principles of the human rights based approach has been further simplified as

¹¹⁹Yarimova T 'Human Rights and Development in International Law' (2016) 32
¹²⁰United Nations Office of High Commissioner for Human Rights (UNDHCHR) (2006), 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation'
¹²¹<http://www.ohchr.org/Documents/Publications/FAQen.pdf> (accessed on 14 November 2016)
¹²²<http://thebaportal.org/faq/what-value-does-a-human-rights-based-approach-add-to-development> (accessed on 13 November 2016)

the PANEL principles.¹²² They are participation, accountability, non-discrimination, empowerment and legal redress which can be adopted in Nigeria and the mining sector to enhance the protection of rights of affected communities in Nigeria. It ensures participation in formulating required policies and also that participatory and democratic processes are institutionalized locally and nationally.¹²³ It helps in ensuring that the procedure of policy formulation is more transparent, and empowers people and communities to hold those who have a duty to act accountable, ensuring effective remedies where rights are violated.¹²⁴ The state should not only be the duty-bearer as others such as private companies should also bear responsibilities towards safeguarding and ensuring the rights of individuals or whole communities are upheld.

Hence, HBA will require that the regulatory frame work of the mining sector in Nigeria be formulated to promote and fulfill human rights which is lacking presently. Policies and institutions will have to be established to ensure human rights are realized in the process exploration of resources. It also requires that companies should recognize and safeguard human rights when carrying out their activities in host communities. Absence of this will imply continuous damage to environment and health hazards.

6. CONCLUSION

Health is an important asset for all human beings and it requires adequate protection. It has been poorly regulated in the mining sector. A major thrust of the mineral policy is emphasis on the participation of the private sector in the exploitation of solid minerals and not so much on the protection of rights of people in the process of exploration. Activities of the mining companies have not only devastated the environment of the host communities but also to a large extent led to social vices, health hazards and the degradation and destruction of the host communities. It is important that people directly or remotely affected by mining activities in the communities be protected. In the formulation of policies for the mining sector, this paper suggests that government adopts human rights based approach to ensure that all rights including the right to health are fulfilled and protected. There is also need to determine the human rights obligations of all stakeholders in the mining activities.

¹²² Andre Frankovits (2006) "The Human Rights Based Approach and The United Nations System" United Nations. Educational, Scientific and Cultural Organisation (UNESCO) p. 54.

¹²³(no 121 above)

¹²⁴ (no 121 above)