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THE COST OF FOREIGN INVESTMENT IN THE SOLID MINERAL INDUSTRY IN NIGERIA

Igbayiloye Oluwatosin Busayo*

Abstract

The extraction of mineral resources of a country constitutes a drive for the flow of foreign investment. Nigeria is endowed with immense natural resources broadly dispersed across the country. Therefore, mining is carried out in most states. The solid mineral sector is currently an area of diversification because of the economic downturn after the fall in the price of oil. Hence, the government took certain steps to reform the mining sector, replaced the old mining regulations to provide a viable environment to attract foreign investment for economic development. Foreign investment while undoubtedly beneficial causes harmful effects. The costs are particularly borne by the people and the environment in communities where extraction occurs.This article gives a brief background of the exploitation of solid minerals in Nigeria and highlights the benefits of foreign investment in the mining sector. This article points out that exploitation of resources have negative consequences on the rights and environments of host communities including the economy in the long run. It analyse the laws governing the mining sector and finds that in spite of the reforms, the sector is confronted with several challenges. It concludes that foreign investment in the mining industry is beneficial to the country but the negative impacts far outweigh the benefits if not effectively regulated. This article suggests that in order for the nation to maximise the benefits of these resources, it is necessary that the government adequately considers the rights of those that will be impacted by the exploitation of the resources. Government needs to strengthen these laws for adequate protection of the rights of host communities in the development that occurs on their lands.

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1. Introduction

The natural resources of a country are significant to its economic development. According to the World Bank, mineral resources play a major part in eighty-one countries, and they all form the quarter of the GDP of the world including half of the world's populace.[1] Africa is home to about thirty percent of the world's mineral reserves, ten percent of the world's oil, and eight percent of the world's natural gas.[2] Extractive industries provide the major source of foreign direct investment (FDI) in some countries, and in many countries constitutes a substantial part of public revenues and national exports, providing important contributions to the budgets of these countries.[3] The movement of FDI into Africa nonetheless, comes with challenges in host economies.

Nigeria is bestowed with immense natural resources broadly dispersed across the country which includes; solid minerals, petroleum and natural gas.[4] Therefore, mining is carried out in most states of the country.[5] The extractive industry in Nigeria is a major backbone to the economy. Currently, the solid mineral industry in Nigeria is one of the areas of diversification of the economy. This is as a result of the global drop in the prices of oil and its consequent impact on the earnings and reserves of the country, resulting in recent economic recession. Therefore,

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1 The World Bank, "Extractive Industries," http://www.worldbank.org/en/topic/extractiveindustries/overview (accessed 8 March 2019).

2 World Bank, "Extractive Industries"

3 International Labour Office "Harnessing the Potential of Extractive Industries: Decent Work in the Rural Economy Policy Guidance Notes," http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_457198.pdf (accessed 8 March 2019); Idowu A. Biobaku, Oluwashina A. Noah and Sunday A. Aghalajoh, "An Empirical Analysis of the Contribution of Mining Sector to Economic Development in Nigeria," *Kwara Journal of Humanities and Social Sciences* 21 (2013): 88.

4 See http://www.nigeriaembassy.ie/wp-content/uploads/2016/02/3.8.N-I-Economic-Development-in-Nigeria1-1.pdf (accessed 8 March 2019).

5 Biobaku, Noah and Aghalajoh, "An Empirical Analysis," 88.

previous and current government administrations focused on diversification from the oil sector to the mining sector and in clamouring for an overhaul of the mining industry took steps to reform the solid mineral industry. The old mining laws and regulations were replaced to create a viable environment to attract foreign investors in the industry for economic growth. This is a good move but it raises the question of whether the laws are adequate since mining brings about forms of extreme unsustainable development and growth, with irregular dispersals of wealth.[6]

Mining involves the exploitation and extraction of mineral resources. Mining is characterised with economic, environmental and social effects. Particularly when mining is carried out on a large-scale, it contends with local communities as regards rural farming activities for scarce land, water and labour resources.[7] Women, children and indigenous peoples are largely vulnerable and marginalised members of communities.[8] These people usually bear the negative social and environmental impacts of mining.

Against this backdrop, this article gives a brief background of the exploitation of solid minerals in Nigeria. It highlights the benefits of foreign investment in mining including the implication on human rights and the environments. This article points out that exploitation of resources have negative consequences on the rights and environments of host communities including the economy in the long run. It analyse the laws governing the mining sector and finds that in spite of the reforms, the sector is confronted with several challenges. It argues that the mining policies are not

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[6] Anthony Bebbington, Leonith Hinojosa, Denise H. Bebbington, Maria L. Burneo, and Ximena Warnaars, "Contention and Ambiguity: Mining and the Possibilities of Development," *Development and Change* (2008) 39(6):888 doi: 10.1111/j.1467-7660.2008.00517.x.

[7] David Szablowski, *Transnational Law and Local Struggles Mining, Communities and the World Bank* (USA: Hart, 2007), 38.

[8] Sara Bice, and James Ensor, "Oxfam Australia: The Rights-Based Approach and the Mining Industry," http://resources.oxfam.org.au/pages/download.php?ref=187&size=&ext=pdf&k=&alternative=-1&usage=-1&usagecomment=. (accessed 9 March 2019)

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adequate to respond to these challenges. This article suggests that in order for the nation to maximise the benefits of these resources, it is necessary that the government considers the rights of those that will be impacted by the exploitation of the resources. Therefore, there is need to strengthen these laws to effectively protect the rights of affected people and their environment.

2. The Exploitation of Solid Minerals in Nigeria

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. Mining was one of the ancient economic activities that occurred in Nigeria. Prior to the commercial production of oil in 1950s, the Nigerian economy depended on the exploitation and trade of solid minerals like tin, columbite and coal including agricultural production.[9] Some authors traced the history of the extraction of tin in Nigeria to 500 BC in which the Nok culture of areas of Benue and Northern Zaria had knowledge of iron smelting.[10] The history of mining is also traced to 340 BC.[11] 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 addition, the extraction of these minerals also provided employment opportunities.[12] The solid minerals industry started off as an unorganised and unregulated industry until the mineral surveys of the Northern and Southern Protectorates in 1903 and 1904 was created by the

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[9] National Bureau of Statistics "Nigerian Mining and Quarrying Sector Summary Report 2010-2012," January 2015 https://www.proshareng.com/admin/upload/reports/nbsMiningandQuarryingReport201012.pdf.

[10] National Bureau of Statistics "Nigerian Mining and Quarrying Sector"

[11] Eyre J.M. Frics and A. V. Agba, "An Economic Analysis of Natural Resources Sustainability for the Mining Sector Component Nigeria," May 2007 http://documents.worldbank.org/curated/en/612001468294070932/text/561780ESW0exhit10Box349489B01PUBLIC1.txt. (accessed 9 March 2019)

[12] Richbon Group Nigeria "History of Mining and Quarrying in Nigeria," https://richbongroupng.wordpress.com/2016/01/05/history-of-mining-and-quarrying-in-nigeria/ (accessed 9 March 2019)

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British colonial government.[13] Commercial mining began in the region in 1905, led by the Royal Niger Company, which secured exclusive rights to the area. By the 1940s, Nigeria was a major producer of Tin, Columbite, and coal. Before 1946, there was no regulation of mining activities in the country.[14] The discovery of oil in 1956 maimed the mineral extraction industries, as the focus of government and industries was on this new resource.[15] With the oil boom of the 1970s, attention was turned from these regular sources of revenue and towards the extraction of crude.[16] It became a major source of foreign exchange for the country as the growing economy depended almost only on this profitable commodity.[17] 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, government push for diversification of the economy.[18] In 1994, the Government pressed for economic revitalisation programme to be led by the private sector 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, and subsequently, its creation was announced by the Head of State, Gen. Sani Abacha, in his 1995 Annual Budget Speech.[19] In

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[13] Adeniyi I. Olatunbosun, Micheal O. Adeleke and Olabode O. Ayorinde, "Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria," *Canadian Social Science* 9(5) (2013): 67, http://cscanada.net/index.php/css/article/viewFile/j.css.1923669720130905.2544/5256(accessed 9 March 2019), Peter Osalor, "Mining Industry and Entrepreneur Revolution" *Vanguard News*, 9 February 2017 http://www.vanguardngr.com/2017/02/mining-industry-entrepreneur-revolution-2/.

[14] N.L. Usman, "Environmental Regulation in the Nigerian Mining Industry: Past, Present and Future," *Journal Energy &Natural Resources Law* (2001): 230 cited in Peter E. Aldinger, "Addressing Environmental Justice Concerns in Developing Countries: Mining in Nigeria, Uganda and Ghana," *Georgetown Int'l Environmental Law Review 26(4) (2014):* 353.

[15] Usman, "Environmental Regulation in the Nigerian Mining Industry," 235

[16] "Nigerian Mining and Quarrying Sector Summary Report 2010-2012"

[17] KPMG Nigeria "Nigerian Mining Sector Brief," 2014 http://www.blog.kpmgafrica.com/wp-content/uploads/2016/10/Nigerian-mining-sector-brief-KPMG.pdf. (accessed 9 March 2019)

[18] "Nigerian Mining and Quarrying Sector Summary Report 2010-2012".

[19] "Nigerian Mining and Quarrying Sector Summary Report 2010-2012".

1999 the Minerals and Mining Act was created, and was followed by a drive for the privatisation of majority of the mines owned by state.[20] Steps were 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. This ministry is now restructured and a new law, the Nigerian Minerals and Mining Act 2007[21] was passed on March 16, 2007, to repeal the Minerals and Mining Act of 1999 as part of the efforts to revitalise the Nigerian mining industry. The thrust of the Act is the regulation of the exploration and exploitation of solid materials in Nigeria. 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.[22] The reforms in the mining industry considerably increased the figure of government institutions, agencies and the private sector which includes both foreign and domestic investing in the mining industry.[23]

3. Mining and Foreign Investment

The Nigerian Minerals and Mining Act 2007 (referred to as "the Act") defines the term Mineral Resources as any substance whether in solid, liquid or gaseous form occurring in or on the earth, formed by or subjected to geological processes including occurrences or deposits of rocks, coals, cola bed gases, bituminous shales, tar sands, any substances that may be extracted from coal,

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[20] "Nigerian Mining Sector Brief".
[21] Nigerian Minerals and Mining Act No. 20 2007 (NMMA).
[22] "Mining in Nigeria: The Nigerian Minerals and Mining Act 2007," http://www.nigerianminers.org/sites/default/files/Mining-Mineral-Act.pdf (accessed 8 March 2019)
[23] Arthur Essaghah, Chidi Ogbonna and Micheal O. Alabi, "Environmental and Socio-Economic Impacts of Lead and Zinc Ores Mining in Shaiagu Community of Ebonyi State, Nigeria," *Journal of Geography and Earth Science* 1(1) (2013): 31, http://jges.net.com/journals/jges/Vol_1_No_1_June_2013/4.pdf. (accessed 8 March 2019)

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shale or tar sands, mineral water, and mineral components in railing and waste piles, but with the exclusion of petroleum and waters without mineral content.[24] Mineral exploitation under the Act means operations and works related to the technical and economic utilisation of mineral resources, including mine development, extraction, treatment, processing and beneficiation of mineral resources as well as the activities necessary or related to the marketing of such mineral resources.[25] Hence, mining of mineral resources can be defined as a kind of development project which can be on a mega scale and often times focus on the economic side of development excluding the social, cultural and environmental aspect. The deposits of mineral resources encourage foreign investment for the aim of economic growth. The attraction of investment necessitates drawing in foreign companies which are involved in the exploitation of natural resources in states.

Historically, solid minerals significantly contributed to the economy of Nigeria in the past. Currently, the mining industry in Nigeria is becoming a major recipient of foreign direct investment as the flow of FDI to Nigeria has traditionally been to the oil sector. The particular objective for diversification to the mining sector is for economic development. The deposit of solid minerals like kaolin, barite, limestone, iron ore, zinc quartz, feldspar, beryl coal phosphate, among others, unlocks the economy for exports, use in domestic industry for generation of foreign exchange and internal revenue including increase in employment of citizens especially in the rural areas where these minerals are located.[26]

In order to encourage foreign investment in the mining industry in Nigeria, the government put in place incentives such as the grant of a tax relief period of three years for any company granted a Mineral Title under the Act.[27] The tax relief period may be extended for a further period of two years by the Minister on

[24] Section 164 Nigerian Minerals and Mining Act No. 20 2007.
[25] Section 164 NMMA.
[26] Olatunbosun, Adeleke and Ayorinde, "Legal Regime for Exploring Solid Minerals," 77.
[27] Section 28(1) NMMA.

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the fulfilment of certain conditions.[28] The tax relief period commences on the date that the licence holder commences operations. Mining operators are granted exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations.[29] Other benefits include expatriate quota and resident permit in respect of the approved expatriate personnel; and Personal Remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

Foreign Direct Investment is regarded to be a key catalyst for economic growth in developing countries.[30] It unlocks prospects for the people and the country. Foreign direct investment is a way of expanding the capital available for investment and the economic growth needed to lessen poverty and raise living standards in the continent.[31] FDI can contribute to sustainable economic development, as it can result in the transfer of skills and production methods, make available access to international markets, enhance the efficiency of resource use, reduce waste and pollution and build-up product diversity.[32]Foreign direct investment encourages the transfer of technology and the development of infrastructure, especially in local communities.[33] It establishes local industries which provide jobs for people particularly those in the areas with a deposit of minerals. It brings about exportation that generates foreign exchange including internal revenue. Thus, it is significant to the future of development of a country.

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[28]Section 28(2) & (3) NMMA.

[29]Section 25 NMMA.

[30] Ntwala Mwilima, "Foreign Direct Investment in Africa," September 2003 Social Observatory Pilot Project – Final Draft Report – FDI http://www.sarpn.org/documents/d0000883/P994-African_Social_Observatory_PilotProject_FDI.pdf. (accessed 8 March 2019)

[31] "Environmental Impacts of Foreign Direct Investment in the Mining Sector in Sub-Saharan Africa" OECD Global Forum On International Investment Conference on Foreign Direct Investment and the Environment February 7-8, 2002 http://www.oecd.org/env/1819582.pdf (accessed 8 March 2019)

[32] "Environmental Impacts of Foreign Direct Investment"

[33] Jenny R. Kehl, *Foreign Investment and Domestic Development: Multinationals and the State* (USA: Lynne Rienner, 2009), 11-12.

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However, where there is a lack of or poor and ineffective enforcement of rules and policies regulating natural resource extraction, continuous reception of foreign investment may quicken the use of resource in an unsustainable manner. Foreign direct investment is overshadowed by transnational corporations (TNCs) and by way of TNCs increasing their investment, FDI in developing countries has increased considerably in recent years.[34] In as much as foreign investment can serve as an engine for growth and economic development in countries, it can also undermine human rights. The effectiveness of policy and institutional frameworks in developing countries determines the capability of developing countries to draw FDI, make the most of the accompanying benefits and reduce the risks.[35]

The government continues to make efforts to promote mining developments in Nigeria for its contribution to the economy. Nigeria is gradually recording success in attracting investments in mining and growing the GDP.[36]In 2010, the mining of solid minerals in Nigeria accounted for less than 1% of GDP.[37] In 2012, it accounted for less than 1% of the country's over US $400 billion GDP.[38] In 2014, its contribution to GDP was 0.6%,[39] 0.33% of about 400 billion in GDP in 2015.[40]In order to fully

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[34] "Transnational Corporations and Developing Countries: Big Business, Poor Peoples Dossier," ec.europa.eu/development/body/publications/courier/courier196/en/en_036_ni.pdf (accessed 9 March 2019)

[35] "Environmental Impacts of Foreign Direct Investment".

[36] Oscarline Onwuemenyi, "NIMG: Bringing Back the Lost Glory of Mining in Nigeria," *Vanguard,* October 2, 2012, http://www.vanguardngr.com/2012/10/nimg-bringing-back-the-lost-glory-of-mining-in-nigeria/.

[37] "Find Mining Expertise in Nigeria," http://www.commonwealthofnations.org/sectors-nigeria/business/mining_and_minerals/ (accessed 9 March 2019)

[38] "Nigeria Mining Sector Opens Up," https://eiti.org/node/4379 (accessed 9 March 2019)

[39] "Nigeria's Mining and Metal Sector Investment Promotion Brochure," August 2016 http://www.minesandsteel.gov.ng/wp-content/uploads/2016/09/Nigeria-Ministry-of-Solid-Minerals-Investment-BrochureV11.pdf (accessed 9 March 2019)

[40] Federal Ministry of Mines and Steel Development "Roadmap for the Growth and Development of the Mining Industry"

realise the potential of the sector to contribute to socio-economic development, certain key challenges need to be addressed. Mining causes severe impacts and these impacts are discussed in the next section.

4. Harmful effects of Foreign Direct Investment in the Solid Mineral Industry in Nigeria

Mining by its nature has an environmental impact that lasts for a considerable amount of time. The adverse impacts of mining need to be tackled if development from mineral exploitation is to produce long-term benefits.[41]The wealth of natural resources can influence the economic growth of a country just as it may as well slow down the development of a country.[42]The exploitation of minerals has been associated with the abuse of human rights.[43] Although negative impacts from mining activities are inevitable, many can be avoided during the different stages of mining if appropriate prevention and mitigation measures are taken. [44] The harmful effects will be discussed below.

4.1 Environmental Impact

Activities in the mining sector have harmful effects on people and their environment. The environmental effects occur in virtually all the communities where the extraction of resources takes place. These are shown in different studies, research and assessments undertaken in different locations in Nigeria. The study carried out in communities in Zamfara State on the impact of gold mining, revealed that mining activities caused land degradation, incessant flooding resulting in scarce land available for local food

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https://www.slideshare.net/FMMSDNgr/roadmap-for-the-growth-and-development-of-the-nigerian-mining-industry (accessed 08 March 2019)

[41] "Mining in Africa: Managing the Impacts," Bulletin 5 http://www.africaminingvision.org/amv_resources/ISGbulletin5.pdf (accessed 9 March 2019)

[42] Y. Oke, "International Law and Natural Resources Investment in Developing Countries: The Challenges of Environmentally Sustainable (Mineral) Resources Management in Africa," Paper presented at the international conference on Science and Technology- 'Science and Technology for Self Reliance; challenges for Developing Countries', August 14-19 2005 University of Technology Akure, Ondo State, Nigeria.

[43] "Mining in Africa: Managing the Impacts."

[44] "Mining in Africa: Managing the Impacts."

production and other agricultural purposes in the affected communities.[45] Mining of limestone in Ewekoro led to the converting of farmlands into quarry sites.[46] Quarrying led to the loss of vegetation cover caused by moving equipment to the site or removal of the blasted limestone.[47] In respect of sand mining activities in communities in Ogun state, sand mining contributed to the degradation of land as it destroys the soil surface and structure as well as diminishing the nutrients of agricultural land.[48] Jos Plateau, Northcentral is known for mining of tin and various case studies were carried out by various authors. It was observed that mining of tin and other minerals like cassiterite and columbite, on the Jos Plateau, caused huge environmental damage, systematically destruction of pastoral land with continuous radioactive waste due to the dumping of mine tailings and several heaps of mine dumps including mine ponds scattered all over the area. Mining releases chemical toxic waste into the environment that pollutes waterways and soil structure, affecting crop yields.[49]

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[45] Abdulakeem Olawuyi and Raheem Mudashir, "Environmental and health impact of mining in Abara and Tungar Community of Anka Local Government Area of Zamfara State, Nigeria," http://www.bing.com/search?q=A.+Olawuyi+%26+R.+Mudashir+%E2%80%98Environmental+and+health+impact+of+mining+in+Abara+and+Tungar+Community+of+Anka+Local+Governement+Area+of+Zamfara&form=IE11TR&src=IE11TR&pc=EUPP_LCJB (accessed 9 March 2019).

[46] Afolabi Aribigbola, Afolabi F. Fatusin and Adejompo Fagbohunka. "Assessment of Health and Environmental Challenges of Cement Factory on Ewekoro Community Residents, Ogun State, Nigeria," *American Journal of Human Ecology* 19(2) (2012): 53.

[47] Aribigbola, Fatusin and Fagbohunka, "Assessment of Health and Environmental Challenges," 53.

[48] Adetayo K. Aromolaran, "Effects Of Sand Mining Activities on Land in Agrarian Communities of Ogun State, Nigeria," http://www.bing.com/search?q=A.k.+Aromolaran+Effects+Of+Sand+Mining+Activities+on+Land+in+Agraian+Communities+of+Ogun+State%2C+Nigeria+&qs=n&form=QBRE&sp=-1&pq=a.k.+aromolaran+effects+of+sand+mining+activities+on+land+in+agrarian+communities+of+ogun+state%2C+nigeria+&sc=0-104&sk=&cvid=48DF809B157341F49F58F8882A771CBF (accessed 2 June 2017).

[49] "Protecting Host Community Rights; An Assessment Report on Extractive Host Communities in Nigeria," http://www.globalrights.org/ngo/wp

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4.2 Impacts on Agriculture and Livelihood of People

The outcomes of mining spread beyond the mine itself as it affects farming and fishing activities including the environment around the mines. Global Rights in their assessment in a few states in Nigeria observed that mining has an adverse impact on agriculture in the states as large expanses of farmlands have been taken over by unsustainable mining activities.[50] It was also documented that the livelihoods of farmers have also become threatened due to poor crop yields caused by gold processing methods which have reduced the quality of the soil.[51] In Ebonyi State, due to the presence of large excavated pits used for zinc and lead ores exploration, farmers are forced to vacate their farmlands and search for another far from their dwelling.[52] The results of environmental impacts are economic and social issues as livelihoods are disrupted.[53]

4.3 Impacts on Water

Mining and quarrying activities are water intensive and often compete with host community water needs. Miners utilise water to wash the mined minerals. This water is usually from common water sources that communities use for drinking, irrigation, and other purposes.[54] Mining causes pollution of water sources. This is because wastewater is often drained and emptied into waterways and eventually gets into community water sources.

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content/uploads/2016/08/Assessing_Community_Rights_Report.pdf (accessed 9 March 2019)

[50] "Protecting Host Community Rights."

[51] J. D. Gyang and E.C.Ashano, "Effects Of Mining On Water Quality And The Environment; A Case Study of parts of The Jos Plateau, North Central Nigeria," *ContinentalJournal of Environmental Sciences* 3(2009): 39 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- (accessed 20 March 2017)

[52] Essaghah, Ogbonna and Alabi, "Environmental and Socio-Economic Impacts," 31.

[53] "Mining in Africa: Managing the Impacts Bulletin."

[54] "Policy Brief on Solid Mineral Sector for the National Assembly," http://www.cislacnigeria.net/wp-content/uploads/2012/07/Policy-brief-on-solid-mineral-sector.pdf (accessed 8 March 2019)

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Such washed off water is highly toxic to human beings, animals and to crops. In some places, high levels of radioactive and other toxic chemicals have been found in water sources which have been contaminated by used water from mines.[55]

The impact of coal mining activities on the environment of Okpara coal mine, Enugu, causes the water unfit for human consumption, vegetation, aquatic life and wildlife habitation.[56] In addition, mining operations by ETA Zuma, a mining company polluted the only stream water in a rural community of Okobo in Kogi State.[57] Thus, women and children travel long distances to fetch water every day. Furthermore, wastewater from the mining pit is disposed into the communal water body, further polluting it, thereby causing it unacceptable for both domestic and human consumption. An environmental impact assessment of coal mining activities carried out in Enugu State, South-eastern Nigeria, revealed that coal mining caused water pollution by acid mine drainage.[58] This renders the water unfit for human drinking and agriculture, and unusable for other domestic and industrial purposes including plants and animals.

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[55] "Policy Brief on Solid Mineral Sector for the National Assembly."

[56] G.U. Sikakwe, B. E. Ephraim, T. N. Nganje, E. E. U. Ntekim and E.A. Amah, "Geoenvironmental Impact of Okpara Coal Mine, Enugu, Southeastern Nigeria," *Advances inApplied Science Research* 6(4) (2015): 14 http://www.bing.com/search?q=GU+Sikakwe+Geoenvironmental+impact+of+Okpara+coal+mine%2C+Enugu%2C+Southeastern+&qs=n&form=QBRE&sp=-1&pq=gu+sikakwe+geoenvironmental+impact+of+okpara+coal+mine%2C+enugu%2C+southeastern+&sc=0-76&sk=&cvid=94F8B4C9F82C477DBF8A085CAD1ACBA9 (accessed 2 June 2017).

[57] Global Rights "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation' June 7 2016 https://business-humanrights.org/en/nigeria-new-report-by-global-rights-exposes-the-negative-impacts-of-coal-mining-and-coal-power-generation-in-nigerian-communities (accessed 23 November 2016).

[58] C.O.C. Awalla, "Environmental Impact Assessment of Coal Mining Activity in Enugu Metropolis, Enugu State, Nigeria," *Journal of Software Engineering and Simulation* 2 (5) (2014): 3, www.questjournals.org/jses/papers/vol2-issue5/A250105.pdf (accessed 21 March 2017).

4.4 Impacts on Health

In Zamfara State, Nigeria, it was discovered that mining activities like the processing of gold ore caused leads to the poisoning of children in the affected villages.[59] The acute lead poisoning in the state killed at least 400 children and more than 3,500 affected children required immediate lifesaving treatment.[60] In addition, high rates of infertility and miscarriage were reported among adults.[61] Prevailing health problems were diseases such as malaria, respiratory tract infections, meningitis, typhoid and skin diseases.[62] In Ewekoro, Ogun State, due to limestone mining, residents were exposed to dust which caused asthma and heart diseases.[63] The health of workers was also of concern as exposure to silica led to diseases like silicosis, tuberculosis and lung cancer.[64] Other impacts discovered include pollution caused by noxious gases, dust, air emissions from blasting and evacuation of mining sites including loss of natural vegetation. The community where Obajana Cement Plc is located complained that the industry blasts caused noise pollution.[65]The most common health impacts reported in the communities of Jiya in Bukuru area of Jos plateau assessed were caused by air effluents and dust pollution resulting in respiratory infections and conditions including asthma, chronic bronchitis, and pneumoconiosis. Other impacts on health include noise pollution which causes varying degrees of deafness and

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[59] Y. Lo, Dooyema, C.A. Neri, J. Durant, T. Jefferies, A. Medina-Marino, L. Ravello, D. Thoroughman, L. Davis, R.S. Dankoli, M.Y. Samson, L.M. Ibrahim, O. Okechukwu, N.T. Umar-Tsafe, A.H. Dama, and M.J Brow., "Childhood Lead Poisoning Associated with Gold Ore Processing: a Village-Level Investigation—Zamfara State, Nigeria," October–November 2010 https://ehp.niehs.nih.gov/1104793/ (accessed 17 March 2017).

[60] "Childhood Lead Poisoning Associated with Gold Ore Processing.".

[61] "Childhood Lead Poisoning Associated with Gold Ore Processing.".

[62] Oluwuyi and Mudashir, "Environmental and health impact of mining in Abara".

[63] L Olofinji, "The Limestone Brouhaha of Ewekoro Community' Nigeria Real Estate Hub," May 21, 2015, http://nigeriarealestatehub.com/the-limestone-brouhaha-of-ewekoro-community.html/ (accessed 2 June 2017) see also Aribigbola, Fatusin and Fagbohunka, "Assessment of Health and Environmental Challenges," 54.

[64] Olofinji, "The Limestone Brouhaha of Ewekoro Community' Nigeria Real Estate Hub,".

[65] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."

stress-related disorders and water pollution causing outbreaks of cholera and other water-borne ailments.[66]

Mining activities resulted in social impacts in the communities. For instance, in Rayfield in Jos, there is the occurrence of loss of cultural heritage, community conflicts, migration of people, population increase and increased crime rate.[67] The growth in population caused social vices, pressure on facilities, traffic congestion, increase in costs of commodities and housing problems. Furthermore, the summary of assessments carried out by Global Rights in extractive host communities in some states in Nigeria revealed that the challenges encountered by the mining communities are similar experiences.[68] The issues they contended with includes; weak regulation of extractive operations carried out by mining companies, land acquisition for the purpose of extractive activities with inadequate compensation which also raises the concern of resettlement including water grabbing and threats to vulnerable groups particularly women and children.

In addition, companies in host communities took the government's requirement before mining lightly. An example of such a requirement is the Environmental Impact Assessment (EIA).[69] EIA is a measure by the Federal Government to ensure that mining and exploration activities are carried out in an environmentally and socially responsible manner. A mineral titleholder is required before commencing mining operations to submit an Environmental Impact Assessment statement to the Mines Environmental Compliance Department in respect of the mineral operations to be conducted within the mining area, as well as submit an Environmental Protection and Rehabilitation

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[66] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."

[67] S.U. Onwuka, J.O. Duluora C.O. Okoye, "Socio-Economic Impacts of Tin Mining in Jos, Plateau State, Nigeria," *International Journal of Engineering Science Invention* 2(7) (2013): 32, http://www.ijesi.org/papers/Vol%202(7)/Version-2/F0272030034.pdf (accessed 19 June 2017).

[68] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."

[69] Nigeria Minerals and Mining Act of 2004 Section 119 Cap M12 Laws of the Federation of Nigeria.

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Programme.[70] Global Rights revealed that most of the communities assessed never heard of an environmental impact assessment (EIA) and were unaware that it was a pre-licensing requirement for companies to submit a valid EIA to the Federal Ministry of Environment. Hence, practically none of the communities assessed was consulted or involved in any assessments.[71] Community Development Agreement (CDA) is an example of another requisite by the Minerals and Mining Act of 2007, which mandates mining companies to consultatively reach Community Development Agreement (CDA) with their prospective host community towards the provision of social and economic benefits that will enhance the sustainability of the host community.[72] Global Rights also stipulated that most mining companies do not have a formal CDA with host communities visited.[73]

The impacts of exploitation of resources are enormous and are related. The degradation to the environment caused by the mining sector results in adverse impacts on air, water, health, animals, plants and livelihood of indigenes. These impacts are human rights abuses and they need to be adequately addressed. Hence, the exploitation of minerals is linked to the abuse of human rights by mining activities.[74] The consequences of exploitation have impacts on rights like the right to life, right to health and a healthy environment, right to food, right to education, right to culture, right to housing, the right to access of water, loss of livelihood, loss of land without adequate compensation, employment rights.

5 Regulations and Institutions Governing the Mining Industry in Nigeria and Challenges

Mining is an inevitably environmentally degrading activity but its effects can be mitigated through the implementation of mining and

[70] Section 119 (ii) & 120 (i) NMMA.
[71] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."
[72] Section 116(1) NMMA.
[73] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."
[74] "Mining in Africa: Managing the Impacts Bulletin."

environmental regulations.[75] In order to harness the potentials of mining for the enhancement of its contribution to national earning, the government developed a national Policy on Minerals and Metals. The thrust of the National Minerals and Metals Policy is to "address the neglects of the past, respond to the new and global development in the sector and consider possible areas of future action".[76] The objectives of the Policy includes; to realise a substantial increase in GDP contribution by the minerals sector; generate jobs, attract investment capital, increase the capacity of mineral based industries; generate quality geoscience data; establish a transparent licensing regime; formalise artisanal and small scale mining operators; poverty eradication through ASM operations.

Aside from the National Minerals and Metals Policy of 2008, other relevant mining policies include; constitutional provision, Nigerian Mineral and Mining Act 2007 (NMMA), the Nigerian Minerals and Mining Regulations [77] and the Environmental Assessment Act.[78]

The Nigerian constitution is supreme and the grundnorm of the people. In the Nigerian Constitution,[79] 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. Thus, the National Assembly is saddled with the responsibility of passing laws relating to mining. Section 44 which although prohibits compulsory acquisition of property, states that ownership and control of minerals under or upon any land, waters and the Exclusive Economic Zone in Nigeria vests in the Federal

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[75] "Nigeria: NGO's report exposes the negative community impacts of coal mining and coal power generation."

[76] The National Minerals and Metals Policy 2008.

[77] Nigerian Minerals and Mining Regulations 2011.

[78] Environmental Impact Assessment Decree No. No 86 1992 CAP E12 LFN 200.4 There are several laws that regulate mining activities. Other relevant legislation includes the Nigerian Investment Promotion Commission Act 2004, Companies and Allied Matters Act CAP C20 LFN 2004, Immigration Act 2004, Companies Income Tax Act (Amendment) Act 2007 including the Personal Income Tax (Amendment) Act 2011.

[79] The 1999 Constitution of the Federal Republic of Nigeria (as amended).

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Government.[80] Therefore, ownership of minerals by the Federal Government is absolute as persons, mineral producing communities, local governments and states are denied rights to minerals found on or under their land.[81] Absolute ownership and control in the federal government deny states and local governments the power to manage those resources. In addition, it limits the participation of host communities in the development of resources on their lands. This may be a problem for states and host communities particularly in instances where the mineral extraction causes problems to the people and their environment.

The principal legislation governing the mining sector in Nigeria is the Nigerian Mineral and Mining Act 2007 (NMMA). Like the constitution, under the NMMA, all the property rights and the control over mineral resources in, under or on any land in Nigeria is vested in the Nigerian Government for and on behalf of the people of Nigeria. The government grants titles to search for or exploit mineral resources. The property of mineral resources then passes to the person(s) who are granted such titles under the NMMA on the recovery of such mineral resources. A mining title can be granted to an individual, a company or a co-operative. Although the NMMA gives consideration to the host communities and their environment in the extraction of mineral resources, some of these provisions have challenges.

The holder of a mining licence is required to follow certain conditions before commencing activities in the mining lease area. The holder of an exploration licence is expected to carry out exploration activities in a "safe, friendly, skilful, efficient and workmanlike manner in accordance with the regulations including "an environmentally and socially responsible manner".[82] In addition, the holder of a mining lease is to exercise the right conferred by the lease "in a manner consistent with the reasonable and proper conduct of the operations

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[80] Section 44 (3) CFRN.

[81] I.E. Sagay, "Federalism, The Constitution and resource Control," 26 http://www.profitsesagay.com/pdf/IBORI%20VANGUARD%20(RES.%20CONST.%20LECTURE%202001).pdf accessed 13 April 2018.

[82] Section 61(1) (a) & (b).

concerned".[83] Under the Mining Act, every holder of a mineral title is required to reduce, control and lessen any environmental impacts including rehabilitation and reclamation of mine or land covered with tailings caused by mining activities.[84] A mineral title with regards to the effect of mining operations is required to take necessary steps to prevent pollution of the environment.[85] Every holder of an exploration licence, small scale mining lease, mining lease, quarry lease or water use permit must, before the commencement of mining operations, on application for a term extension or on conversion, submit to the Mines Environmental Compliance Department an environmental impact assessment statement for the operations, approved by the Federal Ministry of Environment and an environmental protection and rehabilitation programme for the operations.[86] A holder of a quarry lease, mining lease or small-scale mining lease is required to enter into a community development agreement with the host communities of the mining title area, which will ensure transfer of economic and social benefits to the communities as well as individual members of the communities.[87]

In the course of mining or exploration for minerals, water or watercourses within the area of mining operations is not to be polluted.[88] Persons who use water for mining activities must ensure that the water used does not contain injurious substances in quantities likely to prove detrimental to animal or vegetable life when the water leaves the mining area.[89] Mine owners also have the obligation under the Mining Regulations to prepare arrangements for the treatment of mine waste before it is finally disposed of, minimise air and water pollution and include waste treatment in mine abandonment plans. The Regulations require the submission of reports and provision of detailed compliance requirements regarding the matters like underground mine working, outbreaks of disease, ventilation, dust, lifting machine and lifting tackle. Mining operations are prohibited in areas that

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[83] Section 101 (2).
[84] Section 118 (a) & (b) NMMA.
[85] Section 111 NMMA.
[86] Section 119 (c) (i & ii)-120.
[87] Section 116-117.
[88] Section 123.
[89] Section 124 .

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have been held to be sacred sites. Where mining activities affect such sacred sites, the mining title-holder may be liable to pay compensation to the community where such sacred sites lie. Sacred sites are determined by the MCO on the advice of the Mineral Resources and Environmental Committee.[90] Lawful occupiers of any land that is the subject of a mining title are entitled to fair compensation for any disturbance of their surface rights and for any damage done to the land including damage to crops, economic trees and buildings.[91] Failure to pay the occupiers of the land compensation may lead to the suspension or revocation of a mining title.[92]

The explanation or procedure for carrying out activities in an environmentally and socially responsible manner including reasonable and proper conduct of mining operation is lacking in the Act. Exercising the right is subject to limitations relating to surface rights as the Minister may prescribe in accordance with the Act.[93] This implies that the Minister may and may not provide the limitations which give the mining lease holder opportunity to carry out mining activities as deemed fit. The laws need to be clear and precise in the provisions to enable people understand its meaning and to encourage proper interpretation by the courts.

Another issue is with the CDA that addresses matters important to the host community such as economic, social and environmental matters. Holders of mining lease are required to consult with host communities on the implementation of the CDA.[94] The signatories to the CDA are individuals elected by the community as their representatives which list must be verified by the Ministry through its agency.[95] However, the CDA is only decided between the host community and the mining lease holder without the government's participation. The provision gives to the mineral titleholder the power to do what they want since there is no government representative to supervise the negotiation between the parties. Ladan indicated that there is no clarity on how

[90] Section 56 NMMA.
[91] Section 107 NMMA.
[92] Section 109 NMMA.
[93] Section 101 (1).
[94] [illegible] (2) Nigerian Minerals and Mining Regulations 2011.
[95] [illegible] (6-8).

and with who the CDA is to be negotiated and agreed on.[96] According to the author, clarity is required to stop powerful elements in the community from taking over the agreement process and its benefits.[97] Sometimes, companies fail to sign a CDA with the host community. For example, Ibese community, Yewa North Local Government Area, Ogun State, threatened to take legal action against Dangote Cement Company for its failure to sign a CDA with the host community before commencing operation.[98]

In respect of notifying landowners before commencing mining, the Act requires that the notice of application of mineral title over the land be given to a land occupier and consent of the landowner or occupier must be obtained before a licence can be granted otherwise the licence can be granted with the exclusion of the land in question.[99] The Act further provides that the owner of the land will be notified by the Minister of the intention to grant mining lease over the land.[100] The requirement of informing landowners is a good one but it does not seem adequate. This is because a key element of participation of affected persons or communities is lacking which can result in conflicts and protests against projects.

Another relevant legislation is the Environmental Impact Assessment Act [101] which was enacted by the Nigerian Government in 1992. The law establishes EIA as a tool for environmental protection and also empowers the Nigerian Environmental Protection Agency ("the Agency") as the principal regulator of the EIA process in Nigeria.[102] The EIA is mandatory for all development projects in both private and public sectors in Nigeria with potential adverse impacts on the environment before execution. Mining is listed in the Schedule of the EIA Act as one

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[96] M.T. Ladan, "Mineral Resources Law and Policy in Nigeria," No. 8 Prof. Ladan's Law and Policy Review Research Working Papers 8.

[97] Ladan, "Mineral Resources Law and Policy in Nigeria, "8.

[98] Daud Olatunji, "Community Threatens Dangote Cement Firm over MOU" November 3, 2011, https://www.vanguardngr.com/2011/11/community-threatens-dangote-cement-firm-over-mou/ accessed 24 April 2018.

[99] Section 100.

[100] Section 102 (2) (a).

[101] Environmental Impact Assessment EIA Act No 86 1992.

[102] Section 63(1) EIA.

of the mandatory study activities which implies that mining activities require environmental assessment. The environment assessment process involves screening or study and related report of a project,[103] assessment by a review panel and a report,[104] including design and implementation of a follow-up program.[105] The screening of a project and assessment by a review panel must take into account environmental effects of the project and their relevance, public comments on the effects including technical and economical mitigation measures.[106] Prior to the decision of the agency on the proposed project after the conclusion of the environmental assessment, stakeholders are given the opportunity to put in their comments on the assessment.[107] This provision implies that the Agency is required to give the public the opportunity of participation before it decides on the activity. The agency ensures that the public is aware of its decision in respect of a proposed project.[108] The agency in receipt of the report of the project study circulates it to the public who can send their comments within the period to be specified by the agency.[109] Section 25 appears to encourage participation of the public in the EIA process as they have access to the report and they can input their opinions. Public participation at this stage is late and minimal and may not accommodate the concerns of the stakeholders which make the process superficial since it is merely done to fulfil the requirements of the law.[110] Consequently, the Federal Environmental Protection Council hands over the project reportto a review panel where the council decides if the project is likely to cause adverse effects that cannot be mitigated or public concerns warrants such.[111] If in the agency's opinion, a project will likely

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[103] Section 16 (a) EIA Act.
[104] Section 16 (b) EIA Act.
[105] Section 16 (c) EIA Act.
[106] Section 17 (1) (a-d) EIA.
[107] Section 7 EIA Act.
[108] Section 9 (2-4) EIA Act.
[109] Section 25 EIA.
[110] E. Ako *et al* "Resolving Legislative Lapses through Contemporary Environmental Protection Paradigms- A Case Study of Nigeria's Niger Delta Region," *Indian Journal of International Law*, 47(3) (2007): 442 cited in Ibidayo Oluduro, *Oil exploitation and Human Rights Violations in Nigeria's Oil Producing Communities* (Cambridge: Intersentia, 2014), 393
[111] Section 26 (a) EIA

cause adverse effects which cannot be mitigated or public concerns warrants such, the agency can refer the project to the council for mediation.[112] A project is referred to mediation if the council is persuaded that parties concerned are identified and willing to participate and that the mediation will yield satisfactory results.[113] After the submission of a satisfactory report by a mediator or review panel, the agency where in its own opinion, the project will not likely cause significant environmental effects, or such effects can be mitigated, the agency may approve the implementation of the project on some conditions and ensure implementation of any mitigation measures considered appropriate and vice versa.[114] The mediation process may not accommodate the concerns of the public whose participation is not involved in the process of EIA. The concerns of the people should be known in the process of EIA if allowed to participate and not at the conclusion.

Furthermore, the Degree provides that environmental assessment of a project will not be required in certain instances.[115] The section provides that EIA shall not be required where in the opinion of the Agency, Council or President, the environmental effects of the projects are likely to be minimal; the project is to be carried out during national emergency for which temporary measures are taken by the government; in the opinion of the agency, the project is to be carried out in response to circumstances that is in the interest of public health or safety.[116] The effects which are minimal in the meantime can become increased in the long term if care is not taken. EIA should be required for projects to determine their impacts on people, their rights and the environment.

In addition, the Decree defined "environmental assessment" as 'in respect of a project, an assessment of the environmental effects of the project' and "environmental effect" of a project as any change that the project may cause to the environment, whether within or outside Nigeria, and includes any

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[112] Section 27 EIA
[113] Section 31 EIA
[114] Section 40(1) EIA
[115] Section 15 EIA
[116] Section 15(1)(a-c)

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effect of any such change on health and socio-economic conditions.[117] From these definitions, it seems that adverse environmental impacts are the major effects to be guarded against in the Decree.[118] The human rights impacts of a project are not considered in the provisions of the EIA. Hence, the socio-economic and direct cultural impacts of a project on individuals and communities are not significant and necessary to be assessed.[119] The socio-economic impacts of a mining project on a mining community are important and needs to be taken into consideration.

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 Department and Mining Cadastre office. The functions of the Ministry poorly cater for the rights of affected people and some of the functions are mentioned without further elaboration on how they will be accomplished. For instance, the Minister is required to "ensure the orderly and sustainable development of mineral resources in Nigeria.[120] The Act did not indicate what sustainable development entails and how the Minister is to ensure sustainable development of minerals resources in the country. The function focuses on the environment and economic development excluding people and their rights. The Act states that the Minister is required to develop a well-planned and coherent programme of exploitation of mineral resources taking into account the economic development, ecological and environmental factors.[121] The rights of affected people are not considered in the programme for the exploitation of minerals. The Act provides that the Minister "ensure that in the exploitation of the mineral resources, an equitable balance is maintained between foreign *an* indigenous

[117] Section 63 (1) EIA.
[118] Oluduro, *Oil exploitation*, 158.
[119] O Ajai, "Environmental Impact Assessment and Sustainable Development: A review of the Nigerian legal framework, 26 2&3 (1998) *Nigerian Current Legal Problems* 16 cited in Oluduro, *Oil exploitation*, 155.
[120] Section 4(a) NMMA.
[121] Section 4(b).

interest."[122] The Act recognises indigenous interest but it is not clear as to what it implies by this provision. In addition, there is an error in the provision as the word 'an' is supposed to be 'and'. The Minister's function is to monitor compliance with Community Development Agreements by industry operators.[123] This provision gives companies the opportunity to wield more power over communities since there is no one to monitor the process of CDA between the company and the host community. Therefore, the community is left at the mercy of the company. The functions seems to focus on the exploitation of mineral resources and encouraging investors in the mining industry. Most of the functions listed were related for such purpose. For instance, the Minister is to establish the procedure for monitoring developments in the solid minerals sector and encourage the private sector investment in mineral resources development.[124]

6. The Protection of Human Rights and the Environment in the Mining Industry

The protection of human rights and the environment is recognised in international and regional instruments. International law like the United Nations Declaration on Human Rights (UDHR), obligates states to respect and protect human rights.[125] This protection is also recognised in these two treaties: the International Covenant on Civil and Political Rights (ICCPR)[126] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[127] There are also other international treaties with respect to the protection of human rights. Nigeria is a party to many international as well as regional human rights instruments and a member of the international community has obligations both

[122] Section 4(c).
[123] Section 4(c).
[124] Section 4(d).
[125] Universal Declaration of Human Rights United Nations General Assembly Resolution 217 A(III).
[126] International Covenant on Civil and Political Rights adopted by the United Nations General Assembly 19 December 1966 GA. Resolution 2200A (XXI). and came in force from 23 March 1976.
[127] International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly 16 December 1966 GA. Resolution 2200A (XXI), and came in force from 3 January 1976.

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under these treaties and under the rules of customary international law.[128] Nigeria also recognises the respect and protection of human rights and the environment in the 1999 constitution. It provides for the Fundamental Objectives and Directive Principles of State Policy and the fundamental human rights in Nigeria in chapter II and IV.[129] Chapter II protects socio-economic rights while Chapter IV protects only civil and political rights. In section 20 of the 1999 Constitution provides that the state is to protect, improve the environment and safeguard the water, air, land, forest including wildlife of Nigeria. A challenge with the provisions under chapter II of the constitution is that they are non-justiciable and consequently the provisions lack judicial enforcement.

On the other hand, the African Commission on Human and Peoples rights also adjudicated on cases in respect of the application of socio-economic rights in Nigeria. In the case of the *Ogoni Community, NNPC V Shell Petroleum Development Corporation*[130], the Social and Economic Rights Centre (SERAC) filed the action on behalf of the Ogoni people alleging that toxic wastes were deposited into the local environment and waterways by the oil consortium leading to water, soil and air contamination. As a result, the people had been subjected to short and long term health problems. The African Commission found that the Nigerian Government condoned and facilitated these violations by placing legal and military powers at the disposal of the oil companies thereby destroying the right to clean environment by directly contaminating the soil and air. Also, that the right to a clean and

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[128] Some of the international human rights treaties Nigeria signed and ratified include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (the ICESCR), the Convention on the Rights of the Child (CRC), the Convention against Torture (CAT), the
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Nigeria has also signed and ratified Rome Statute of the International Criminal Court. The African Charter on Human and Peoples' Rights has also been signed and ratified by Nigeria so also the African Charter on the Rights and Welfare of the Child.

[129] Sections 33-46 1999 Constitution.

[130] Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights v Nigeria, Communication No 155 of 1996 decided on the 30th ordinary session, October, 2001.

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safe environment is critical to the enjoyment of economic and social rights. The Commission finds the Federal Republic of Nigeria in violation of articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter. The Commission, therefore, appealed to the government to ensure the protection of the Ogoni people as well as provide adequate compensation amongst others. Although the Ogoni's case was welcomed as groundbreaking, the decision had no binding force on the Nigerian government. In addition, The provisions of the Constitution promotes the human rights of citizens such as the right to adequate shelter, non-discrimination, right to education, right to adequate means of livelihood, right to human dignity. The constitution, however, does not recognise the right to water, right to environment and right to health but that the state must provide adequate health facilities for all and protect water and the environment.

7. Conclusion

Foreign investment in the mining sector is beneficial for the country. Government provided the environment conducive for foreign investors by replacing the laws and restructuring the institutions. There is no doubt that the mining industry has the potential of contributing substantially to the economy through foreign direct investment but it is likely to contribute to poor development in the country in the long run if not effectively regulated. The negative impacts of activities in the industry are more than the benefits when they are poorly regulated and monitored. The costs of these activities are often borne by those situated within the vicinity of such operations.

Therefore, the government needs to ensure that it takes effective measures to protect these vulnerable groups. The Nigerian government must consider and take immediate steps to protect the rights and environments of mining-affected communities. Human rights obligations must be considered at all stages of every project, from design to implementation. In as much as the development in the industry is aimed for the growth of the economy, it should also contribute to the development of the communities and the improvement of their well-being. The government also needs to enforce the laws including environmental laws effectively to prevent problems linked to

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mining activities. This can be achieved by preventing mining in places and ways that may abuse human rights or cause substantial harm to the environment of the communities. It must ensure significant participation of communities in the decision on the approval of mining projects in their environment. The people concerned and particularly the local communities should be stakeholders to the development projects situated on their lands. It also has to ensure that mining companies take government requirements prior to mining seriously and take steps to ensure they respect human rights and protect the environment. Relevant institutions need to ensure that government and mining companies carry out the necessary requirements before commencing mining in host communities. The activities of these companies can be monitored to ensure they abide by the relevant regulations throughout the process of mining.

If these issues are not taken into cognizance, the benefits of foreign investment in the mining industry will be forfeited in the long run.

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