

Pune – Vol. 4, Issue 1, January 2025 (Annual)

Price ₹ 300/-, ISSN 2583-6870

MARATHWADA MITRA MANDAL'S SCLC LAW REVIEW

MARATHWADA MITRA MANDAL'S

SHANKARRAO CHAVAN LAW COLLEGE, PUNE

(Permanently Affiliated to Savitribai Phule Pune University, Approved by
Bar Council of India, Recognised by Government of
Maharashtra with ISO Certification & Accredited
by National Assessment & Accreditation Council of India with Grade 'A')

MARATHWADA MITRA MANDAL'S SCLC LAW REVIEW

Vol. 4, Issue 1, January 2025, ISSN 2583-6870

PUBLISHER

Name : Dr. Sourabh Visant Ubale
Designation : Assistant Professor (Law) (PG) & IR Officer
Address : Marathwada Mitra Mandal's Shankarrao Chavan Law College, 202/A, MHCC Campus, Deccan Gymkhana, Pune 411 004
Email : subale@sdic.edu.in
Contact No. : 9921277798
Place of Publication : 202/A, MHCC Campus, Deccan Gymkhana, Pune 411 004

EDITORIAL BOARD

1. Chief Editor

Name : Dr. Krandi Deshmukh
Designation : Principal, Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune
Address : Marathwada Mitra Mandal's Shankarrao Chavan Law College, 202/A, MHCC Campus, Deccan Gymkhana, Pune 411 004
Email : principal@sdic.edu.in
Contact No. : 9922418912

2. Co - Editor

Name : Dr. Sourabh Visant Ubale
Designation : Assistant Professor (Law) (PG) & IR Officer
Address : Marathwada Mitra Mandal's Shankarrao Chavan Law College, 202/A, MHCC Campus, Deccan Gymkhana, Pune 411 004
Email : subale@sdic.edu.in
Contact No. : 9921277798

3. Co - Editor

Name : Prof. Visantha Senewiratne
Designation : Head, Department of Public and International Law, Faculty of Law, University of Colombo, Sri Lanka
Address : Faculty of Law, University of Colombo, Sri Lanka
Email : pil@law.cmb.ac.lk
Contact No. : +94(0)112585639

4. Co - Editor

Name : Prof. Dr. Jyoti Bhakare
Designation : Registrar (JIC), Savitribai Phule Pune University, Pune & Professor, Department of Law, Savitribai Phule Pune University, Pune
Address : Savitribai Phule Pune University, Ganeshkhind Road, Ganeshkhind, Pune 411 007
Email : jyotibhakare@gmail.com
Contact No. : 7507779166

5. Co - Editor

Name : Dr. Swati Rautele
Designation : Professor, Department of Law, University of Mumbai, Mumbai
Address : Department of Law, University of Mumbai, Mahatma Gandhi Road, Fort, Mumbai 400 032
Email : swati.rautele@fortnum.ac.in
Contact No. : 9819609979

MARATHWADA MITRA MANDAL'S SCLC LAW REVIEW

Vol. 4, Issue 1, January 2025, ISSN 2583-6870

1. Introduction

Being established through an inspiration of socially and educationally charged personalities, we, Marathwada Mitra Mandal established in 1967 as a charitable trust, serve with a motto "Yethe Bahutanche Hit" (Welfare of the Masses). Under the patronage of Marathwada Mitra Mandal, Shankarrao Chavan Law College was established in 2003 with the objective of nurturing future legal professionals and researchers with ideals and values required for playing a constructive role to create a better world. The College is affiliated to Savitribai Phule Pune University, approved by the Bar Council of India, recognized by the Government of Maharashtra with an ISO Certification and accredited with "A" Grade by NAAC, and thus stands as one of the premier law colleges in India. Our college has the motto "Quality Legal Education for the Masses." Since inception, our college has been encouraging the students to develop themselves into legal professionals having legal knowledge, acumen, and expertise suitable for the dynamic and globalized legal industry. With this view, apart from academic excellence, we nurture the students with several co-curricular and extra-curricular activities. We are proud to collaborate with the University of Colombo (Sri Lanka), Universidad Peruana de Ciencias Aplicadas (Lima, Peru), Transforming Mediation LLC (Georgia, USA), University of Chieti Pescara (Italy), Tribhuvan University (Nepal), Lex Aquila (Mauritius), and with Hong Kong, Poland, Germany, etc. The college also runs the Center for Academic Research, Publication & E-content in Law (CARPEL). In this light, we started publishing this journal from 2022. This Journal is an annual, double-blind peer-reviewed international journal and invites scholarly, original, unpublished articles on various socio-legal issues.

2. AIMS & SCOPE

- Inculcate research skills and culture in students, faculty, and the masses.
- Develop research strengths in Law through facilitating intra, cross, multi, inter and trans disciplinary research excellence.
- Create a research and innovation-friendly society aimed at long-term development.

3. Frequency of Publication: Annual (January every year)

4. Language: English

5. Starting Year: 2022

6. Format of Publication: Print Only

7. Publisher & Editorial Details: Printed on reverse title page

8. Author Guidelines & Submission Details: Printed on reverse back cover

EDITORIAL

It gives me immense pleasure to introduce and present the fourth volume, first issue, of Marathwada Mitra Mandal's SCLC Law Review. This journal is an attempt by our institution to unfold and discuss issues pertaining to Law. In the era of technology & globalization, many laws and legal institutions stumble to cope with new challenges. Rapidly changing governmental policies and enactment of new laws sometimes encroach upon our basic human rights. India as a nation is moving fast in all spheres to get recognized as a developed country at the global level but such developments also pose threats like environmental issues, economic instabilities, etc. We at SCLC, being a part of the legal fraternity, would like to address these issues through the MM SCLC Law Review. In future, we expect contributions from academicians from all corners of India to enlighten us on various legal issues with appropriate solutions. This Journal is the perfect platform for addressing various issues related to Law at the national and international levels.

Here, I would like to take the opportunity to convey my heartfelt thanks to Hon'ble B.G. Jadhav - Executive President of Marathwada Mitra Mandal, Pune, and the management members of MM for their constant guidance and support in bringing out this Journal. I also convey my gratitude to the Editor, Co-editor, advisory members, Associate Editors, Assistant Editors, and the entire team of MM SCLC Law Review for their relentless efforts in publishing the first issue of this Journal.

We have received an overwhelming response for the fourth volume. The MM SCLC Law Review Fourth Volume focuses on some Nigerian and ECOWAS issues such as Criminal Justice, Food Security, Human Rights, Constitutionalism, Environment, and Mediation. It also focuses on general issues related to Biomedical Waste, Restitution of Conjugal Rights, Citizenship, ICC, Disaster Management, Capital Punishment, AI, Encroachment on Grazing Land, Data Protection Laws, Bail, etc.

Dr. Kranti Deshmukh,

Principal, Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune
& Chief Editor, Marathwada Mitra Mandal's SCLC Law Review

INDEX

Sr. No.	Title and Names of Author/s	Page No.
1.	An Appraisal of the Constitutionality of Remand Proceedings Under the Administration of Criminal Justice Act, 2015: A Case For Fair Hearing - Adedapomola G. Lawal, Adekunle Saheed Abiola and Abdulmajeed Folorunsho Malik	8
2.	Beyond Moral Obligation: Pathways to Realising the Right to Food and Food Security in Nigeria - A Comparative Analysis - Akinola E Akintayo	20
3.	International Laws and Their Effect on Human Rights Access to Water in Nigeria - Oluwabunmi Lucy Niyi-Gafar and Barakat Ebunoluwa Ogungbe	42
4.	The Impact of International Law on Constitutionalism: Challenges of Sovereignty and Democracy in ECOWAS Member States - Imam Abdur-Rasheed Ahmed and Tawakaltu Queen Oyinkoye	65
5.	Harmonization of Policies Governing Extractives for the Protection of Human Rights and the Environment: A Means for Effective Regional Cooperation under ECOWAS - Dr. Oluwatosin Busayo Igbayiloye and Rasheedat Abimbola Hassan	90
6.	Redclaiming Africa's Intellectual Futures: The Role Of Mediation In Fostering Inclusivity And Dialogue - Barakat Adebisi Raji, Israel Adekunle Adeniyi, Mulikat L. A. Mustapha and Muhinat B. Bello	113
7.	A Comprehensive Appraisal of India's Legal and Regulatory Framework Governing Biomedical Waste Management and its Implications on the Right to Health - Dr. Sonia B Nagarale and Mr. Nishikant C Mendhapurkar	130

Sr. No.	Title and Names of Author/s	Page No.
8.	An Analysis of The Restitution of Conjugal Rights in The Context of Social Justice Under The Hindu Marriage Act - Dr. Chanjana Elsa Philip and Vijaya Kumari	153
9.	Exploring the Citizenship Amendment Act: Implications and Controversies - Dr. Pradhnya Sawarkar	166
10.	Examining ICC Regulations on Evidence Admissibility: A Focus on Digital Forensic Applications in War Crimes Investigations - Dr. Sarika J Sagar	180
11.	Deconstructing the Federal Identity of India with Special Emphasis on Disaster Management and Covid-19 - Adv. Anunav Bhattacharya	201
12.	Capital Punishment vis-a-vis Human Rights: A Legal Discourse - Dr Kasturi Gakul and Adv. Dasuk L. Marshilong	216
13.	Artificial Intelligence and In Vitro Fertilization Technology: Ensuring Ethical Integrity and Human Rights Compliance - Manojkumar S. Raj and Dr. Deepak R. Kshirsagar	236
14.	Landlessness of Scheduled Castes and Encroachment on Grazing Land in Maharashtra - Kavita Nirmala Waman	258
15.	Digital Personal Data Protection Act: Safeguarding the Data Privacy of Digital India - Adv. Nidhi Kukade	274
16.	Personal Data Protection Laws In India - Ms. Vasundhara Kedamath Chaudhari and Dr. Nitesh D. Chaudhari	303
17.	Jail is the Rule, Bail is the Exception: UAPA 1967 - Adv. Mangesh Akhade	318

The sole responsibility of the views expressed by the contributors and the research content published in this journal, lies entirely with the author(s) and they do not represent the ideas and opinions of the publisher and the editorial board of Marathwada Mitra Mandal's SCLC Law Review. Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune is the sole copyright holder of this publication and no part of it shall be reproduced or transmitted in any material form (including storage in any kind of electronic form) without permission.

The annual publication "Marathwada Mitra Mandal's SCLC Law Review" is owned by Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune. Printed & Published by Dr. Sourabh Vasant Ubale; Printed at Columbus Publishing & Services, 30, Chandrashobha, Suvama Baug Colony, Kothrud, Pune 411038 and published at 202/A, Deccan Gymkhana, Pune 411004; Chief Editor – Dr. Kranti Deshmukh.

5. Harmonization of Policies Governing Extractives for the Protection of Human Rights and the Environment: A Means for Effective Regional Cooperation under ECOWAS

Dr. Oluwatosin Busayo Igbayiloye

(Senior Lecturer, Department of Jurisprudence and International Law, Faculty of Law,
University of Ilorin, Nigeria).

Rasheedat Abimbola Hassan

(Lecturer, Department of Jurisprudence and International Law,
Faculty of Law, University of Ilorin, Nigeria)

Abstract

ECOWAS and the African Union (AU) have taken regional measures to stop and avoid the abuse of right perpetrated by Africa's extractive industries. Different countries have responded by taking certain actions to address the harmful effects of the activities of the extractive sector by creating policies, reforming relevant laws, and establishing relevant bodies to serve various functions and ensure the implementation of the policies. The implication is inconsistency and lack of uniformity in the frameworks across the countries under ECOWAS. Hence, harmonization of the regulations regarding the control of the acts of companies in the industries is necessary for effectual protection of human rights and the environment in ECOWAS. This is crucial due to the vast resources of the continent and the significant effect of the industry on the populace and the environs. This paper seeks to discuss the importance and benefits of harmonization of the relevant regulatory frameworks and institutions within ECOWAS regarding the control of extractives so as to ensure the protection of peoples' rights and the environs. The paper adopts an analytical approach, as it would analyze regional frameworks and policies of extractive industries, in selected West African countries and find out the extent to which these policies are aligned to regional laws. The paper further identifies the challenges associated with having different policies across member states, and argues that a central coordination would ensure that all state members adhere to similar environmental and human rights criteria, to mitigate the ecological footprint of the activities of extractives. The paper suggests effective collaboration among member states to realize the harmonization of policies to adequately safeguard human rights and the environment and the ultimate goal of sustainable development in the extractive industry.

Keywords: Regional cooperation, Extractive industries, Human rights, mining

1. Introduction

The extractive industry is capable of generating significant resources to aid social and economic development. The term, "extractive industries" has been defined to refer broadly to the operations by private or State actors, usually on a commercial scale, of mining or extraction of natural resources for economic gain.¹ It states further that they relate to the mining, oil, and gas sectors, including their acts, which involve obtaining non-renewables resources like oil, metals, coal, and gas from the ground, and exploitation of resources. Extractive industries contribute significantly to national revenues through taxes, royalties, and fees. The potential for resource extraction usually attracts foreign direct investment, leading to improved technology transfer and expertise in local economies. The sector provides direct employment opportunities, often in regions with limited economic alternatives. It can also create indirect jobs in related sectors, such as construction, transportation, and services. Extractive industries invest in infrastructure projects, including roads, schools, and hospitals, which can benefit local communities and enhance overall development. In generating income and employment, the extractive industry has the potential to lift communities out of poverty, on the condition that revenues are managed effectively. These efforts promote sustainable development and sustainable development goals.

Natural resource wealth is, however, associated with risks, including unstable economic growth; weak job creation; violent disputes; corruption; degradation of the environment; gender-based violence; and adverse health effects, that include the outbreak of HIV and AIDS.² The adverse socio-economic impacts on vulnerable communities, conflict between communities and companies, as well as the abuse of the rights of persons are consequences of corporate activities.³ Therefore, the civil, political, and socio-economic

¹ State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries.

² D. Hailu & S. Liser Legal and Regulatory Frameworks-UNDP, UN-DO's Knowledge Hub (2017) <https://hub.unido.org/category/legal-and-regulatory-frameworks-undp>.

³ U. Ikemudofin et al. The Extractive Industry And Human Rights In Africa: Lessons From The Past And Future Directions, 78 Resources Policy 1, (2022).

rights, though protected, are adversely affected by the actions carried out by the mineral extraction industries. These acts infringe on international laws, especially human rights legislations, the Business and Human Rights Guiding Principles by the United Nations, and other international, regional and national policies established to redress abuse of rights committed by the extraction-related industry. These guidelines and the laws encourage businesses to uphold the rights of humans throughout their operations. The extraction industries influenced governments by creating diverse policies to regulate the oil and mining subdivisions in their territories, resulting in differences in national laws and practices. Therefore, the sectors continue to experience various challenges including human rights challenges, in resource-rich areas like West Africa. This would require collaborative efforts of the governments in the region to tackle these problems.

Harmonization of policies is simply a system that generates a leverage common ground or level where the rules guiding the game for the stakeholders in the industries are seen and predicted. Harmonization implies consenting to important or necessary principles which member states must honor, respect, adhere to and enforce.¹ One of the essence or importance of harmonized policies, especially economic policies is to assess all the benefits attached to regional integration for sustainable development.² Regional integration enables countries to overcome divisions caused by poor infrastructure, inefficient policies, and geography which impedes economic growth.³ Cooperation between nations in sectors including trade, information technology, investment, domestic regulation, macroeconomic and financial policy, security, education, and natural resources is necessary for regional integration.⁴ Integration can potentially promote robust and equitable economic growth, minimize conflict, and enhance trade liberalization.⁵ Enhancing increasing productive

¹ G. Grunius, 'To Corporate or to Harmonise?' *IndustBlog* (25 May 2012) <http://www.indlbc.org/blog/article/15620-to-corporate-or-to-harmonise.html>.

² United Nations Economic Commission for Africa, *Harmonization of Sectoral Policies* <https://archive.uneca.org/online/pages/harmonisation-sectoral-policies#?text=Harmonized+policies+generate+a+leverage+to+sustainable+economic+development>.

³ E. Price, *Regional Integration* World Bank Group <https://www.worldbank.org/en/publications/regional-integration/overview#?text=Regional%20integration%20allows%20countries%20to+commerce%20physical%20and%20resolution%20of+structure>.

⁴ *Id.*

⁵ A. Abubakar, *Importance of Regional and Continental Integration for Africa's Development* African Development Bank Group (3 December 2018) <https://www.afdb.org/en/news-and-events/importance-of-regional-and-continental-integration-for-africa-development-18773>.

capacity and promoting investments in infrastructure with the greatest economic potential, regional integration has also been demonstrated to maximize the positive effects of globalization while mitigating its negative ones, and to bolster development in the least developed nations. For some years now, there has been a cry for integration in Africa. The purpose is to have a collective voice regarding matters related to the continent's stand globally.⁹

The harmonization of extractive sector policies is crucial for promoting human freedoms, environmental preservation and development that is sustainable in the industry in West Africa. By aligning national policies with regional frameworks, countries can foster sustainable development and enhance cooperation. However, due to the focus of governments in the region on the financial value and importance of the deposit of minerals located in their states, there is less consideration of peoples' rights as well as sustainable development in the process of mineral extraction and exploitation. This paper discusses the importance of the integration of extractive policies across West Africa. It identifies the challenges related to poor harmonization of these policies across the region, including those encountered in the mining industry. The paper examines regional frameworks and policies related to extractive industries, particularly the mining sector, to find out how they protect rights and the ecosystem across West Africa. Certain selected countries were considered to also determine the extent to which these policies are aligned to regional laws. These selected countries were considered due to their extensive mining operations, varying approaches to regulation, human rights, and sustainability. The article recommends effective collaboration among member states for the harmonization of policies to securing individuals' rights adequately, environmental preservation with sustained development in the extractive industry.

2. An Overview of International Standards

Mining has an extreme effect on human rights, with either positive or negative implications for communities, workers, and the environment. Mining can drive economic growth, providing jobs and infrastructure that benefit local communities. This can lead to improved

⁹ G. Srinivas, 'To Corporate or to Harmonize?' *supra* note 4.

living standards and access to services. Additionally, governments can generate significant revenue from mining, which can be reinvested in public services like education, healthcare, and infrastructure. However, the extraction of minerals often leads to land dispossession, displacement, conflict and violence, and environmental degradation, which can violate the rights of affected populations, particularly indigenous communities. Apart from international human rights standards, some other standards emerged to curb the abuse caused by multinationals and businesses highlighting their responsibility towards human citizens' rights and holding non-state actors accountable for wrongs committed against the rights.

International Human Rights standards which include various treaties, such as the Universal Declaration on Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, among others, are principles and norms geared towards protecting persons against abuses, and guaranteeing liberties of individuals. The UNGPs emerged, providing a framework to ensure that multinational corporations (MNCs) respect human rights. These principles outline the responsibility of businesses, including mining companies, to uphold the rights of individuals, requiring the entities to conduct due diligence to avert abuses of individual rights. Due diligence is emphasised to find out, prevent, and mitigate risks posed to human rights. The framework comprises three pillars which are: 'States' duty to guard citizens against abuse of rights caused by third parties involving companies; the companies' responsibility to safeguard rights¹⁰; and access of victims to court or non-judicial remedies.¹¹ The Guiding Principles are important because they provide direction on how to incorporate rights into the process of extraction and management of mineral resources.¹² Another is the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, reviewed in 2011, and updated recently.¹³ The updated Guidelines were released on 8 June, 2023

¹⁰ The United Nations Guiding Principles on Business and Human Rights - Implementing the United Nations "Protect, respect and remedy" Framework, 2011, HR/PUB/11/04 Principle 11 (16 June 2011).

¹¹ *Id* Principle 27.

¹² Odehinde, *Human Rights-Based Approach to Mining of Solid Minerals in Nigeria* 2020, Submitted in fulfillment of the requirements for the degree of Doctor Legum, Faculty of Law, Centre for Human Rights, University of Pretoria.

¹³ Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (1976) 15 EUS 969.

within the context of the 2023 OECD Ministerial Council Meeting. These guidelines encourage businesses to carry out their acts responsibly regarding human rights, labor rights, and environmental stewardship, providing a framework for mining companies operating internationally. The updated version includes improved safeguards for vulnerable individuals and groups, particularly those who voice concerns about company practices. Others are the Standards of International Labour Organization (ILO), comprising the principles of ILO tripartite declaration related to multinational enterprises and social policy as well as various ILO conventions on workers' rights protection, and the right to safe working conditions and securing freedom from forced and child labor; the United Nations Global Compact, consisting of ten principles that evolve around environment, labor, rights, and that of corruption, which was later adopted in 2004;¹⁴ the Equator Principles;¹⁵ and Free, Prior, and Informed Consent (FPIC) as recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),¹⁶ whose importance lies in the protection of the rights of indigenous peoples affected by mining projects. Furthermore, the Sustainable Development Goals (SDGs) framework promotes development which is sustainable across various sectors, including mining. Specifically, Goal 1 on Poverty, Decent Work and Economic Growth-Goal 8, Responsible Consumption and Production - Goal 12, Life on Land - Goal 15, and Peace, Justice, and Strong Institutions - Goal 16. The implication of these SDGs is that, the mining industry can make contributions to economic growth and job creation, reduce poverty in resource-rich areas, and create economic opportunities. They indicate that mining practices need to be sustainable, minimize waste, foster management and effective usage of natural resources that is sustainable; and exacerbate conflict over resources. Additionally, the non-binding 'Voluntary Principles on Security and Human Rights have been developed to ensure that extractives' operations are safe while adhering to the rights of people.¹⁷ According to the principles, appropriately

¹⁴ Principle ten, Anti-corruption United Nations Global Compact 26 July 2008.

¹⁵ The Equator Principles EPI July 2020 The EPI is a risk management framework adopted by financial institutions to determine, assess, and manage environmental and social risk in projects and is envisioned to 'provide a minimum standard for due diligence and monitoring to support responsible risk decision-making'.

¹⁶ A/RES/69/295 Resolution adopted by the General Assembly on 13 September 2007

¹⁷ Voluntary Principles on Security and Human Rights 2002.

assessing risks in the workplace is essential for the safety of employees, local communities, and assets, as well as for the prosperity of the business's operations and the advancement and defense of human rights.¹⁸

These standards and principles may not be binding but they provide guidance to state governments and businesses including those in the mining industry, and ensure their activities respect human rights.

3. Regional Laws and Frameworks Governing the Extractives in Africa

The extraction sector in West Africa is governed by various regional laws and frameworks aimed at regulating the sector's conducts while protecting people's rights. The key frameworks are discussed below.

3.1 Economic Community of West African States (ECOWAS) Frameworks¹⁹

I. ECOWAS Revised Treaty

The agreement acknowledges that improving the states' social and economic growth is necessary to raise people's standards of life, and that harmonious economic development among the states would necessitate effective economic cooperation and integration. Member states are required to set up institutions to safeguard and conserve the environment, as well as to implement national and regional policies and strategies.²⁰ Members are guided by the African Charter on Human and Peoples' Rights, which calls for the protection of human and peoples' rights.²¹ Members must make sure that policies and programs pertaining to various economic sectors, including natural resources and environmental protection, are harmonized in order to foster integration.²² In order to manage natural resources, they must harmonize their policies.²³

¹⁸ *Id.*

¹⁹ Economic Community of West African States (ECOWAS) Revised Treaty signed in 14 July 1993, came into force on 23 August 1995.

²⁰ *Id.* Article 29.

²¹ *Id.* Article 4.

²² *Id.* Article 3 (c) (2)(a)(ii).

²³ *Id.* Article 3 (c).

ii. The ECOWAS Directive on Harmonization of Guiding Principles and Policies in the Mining Sector (ECOWAS Directive)

Signing the Lagos Treaty (ECOWAS Treaty) on 28 May, 1975, fifteen nations in West Africa created ECOWAS. From 2008, ECOWAS members adopted a Directive, which is a set of guiding principles for a regional mining law, as part of their efforts to implement unified mining legislation.

The ECOWAS Directive was developed with inputs from officials of governments, civil societies and mining communities, and agreed on 27 May, 2009. Implementing the harmonization of mining policies in member states' mining sectors is one of the Directive's goals. The ECOWAS Directive does not directly establish any rights or duties for individuals or business entities; it is only binding on member nations.²⁴ The Directive recognizes in the preamble, "the universality, indivisibility, interdependence, and interrelatedness of human rights", the right to development that gives persons the ability to take part in, contribute to, and enjoy economic, social, political and cultural development where every fundamental freedom, in addition to human rights, can be entirely achieved.

One of the objectives of the Directive is to give effect to mining regulations among member states' mining industries.²⁵ Recognition was given to the socio-economic and ecological effects on communities that were caused by the acts of mining and to the fact that marginalized people within communities required "special consideration" by mining companies and governments.

Article 6 makes a provision regarding obligations concerning environmental protection. To guarantee the preservation of natural resources, the environment, and public health, a mineral rights holder must obtain permits from the relevant authorities before executing any mining activity.²⁶ The activities of mining investors are required to be

²⁴ E-Annex 9 & 12.

²⁵ Economic Community of West African States Directive on the Harmonisation of Guiding Principles and Policies in The Mining Sector (ECOWAS Directive), C/DIR 3/05/09, Article 1 (27 May 2009).

²⁶ E-Annex 6(1).

notified. If the issue remains unresolved, the President of the ECOWAS Commission will then file a complaint with the ECOWAS Court of Justice.³⁵ Negotiation, arbitration, or other alternative conflict resolution procedures are used to resolve disagreements pertaining to the Directive.³⁷ The matter will be sent to the ECOWAS Court of Justice if the parties are unable to come to an agreement.³⁸ The Directive encourages harmonisation of mining laws in states. Member States 'shall adopt appropriate legislation to provide for a decentralised institution of mining activities and to harmonise mining related legislation on land rights, environment, forestry and water rights.'³⁹ As regards the implementation of the Directive, State parties are required to establish by law a competent authority to regulate mining activities.⁴⁰ States must provide a yearly budget and develop National Action Plans for the implementation of the Directive.⁴¹ An annual report on the implementation of the Directive is to be given to the President of the ECOWAS Commission, including the successes and failures of the mining sector.⁴² Member States are required to inform the Commission on measures they adopt to comply with the provisions of the Directive.⁴³ The President appoints an ad-hoc committee to monitor the implementation of the Directive by member States.⁴⁴

The ECOWAS Directive gives effect to the harmonisation of mining policies in the region; promotes sustainable development; the realization of human rights, which could be affected negatively by mining activities; and protection of the environment. The Directive recognizes the importance of collaboration between states, companies, civil society organisations and other stakeholders.⁴⁵

³⁵ Article 17.

³⁶ Article 18(2).

³⁷ Article 18(3).

³⁸ Article 11 (7).

³⁹ Article 19(1).

⁴⁰ Article 19(2) & (3).

⁴¹ Article 19(3).

⁴² Article 22(3).

⁴³ Article 22(4).

⁴⁴ Article 16(5-6&7).

iii. ECOWAS Court of Justice

The Economic Community of West African States' Court of Justice was commended because it held governments and companies accountable for pollution. The Nigerian government, in *SERAP v. Nigeria*, was held responsible for abuses perpetrated by oil companies. In the matter, Nigeria was found to have violated Article 21 on the right to natural wealth and resources, and Article 24 on the right to a general satisfactory environment of the African Charter on Human and Peoples' Rights, since the Niger Delta has suffered harm for a number of years, caused by the actions of oil firms, owing to the government that failed in its responsibility towards protecting citizens.

3.2 The African Union

i. The African Charter on Human and Peoples' Rights (1986)⁴⁶

The Charter particularly addresses extractives in Articles 21 and 24. It indicates that every person is entitled to freely dispose of the riches as well as natural resources that belong to them.⁴⁷ The Charter's parties are expected to exercise their rights in order to reinforce "African unity and solidarity."⁴⁸ In order for their populace to be beneficiaries of the value obtained from their natural resources, they must agree to get rid of every external form of economic exploitation.⁴⁹ Every people has the right to a general level of satisfaction that is conducive to their development, as guaranteed by Article 24. Through State reporting, the African Commission observes how the rights outlined in the African Charter are being implemented.⁵⁰

The Working Group on Extractive Industries, the Environment, and Human Rights was established by the Commission in recognition of the extent of the detrimental effects of the extractive industry's operations on various regions of the continent. The Working Group aims to reinforce responses by the region to human rights challenges related to

⁴⁶African Charter on Human and Peoples' Rights adopted in 1 June 1981 & came into force in 21 October 1986

⁴⁷In Article 21.

⁴⁸In Article 21 (4).

⁴⁹In Article 21 (5).

⁵⁰In Article 62.

the extractives within Africa in accordance to the work structure of the ACHPR.⁵ Therefore, in light of this, the Working Group's objectives are to: create a monitoring and emergency response system; generate knowledge and normative frameworks or tools; raise the Working Group's profile and collaborate with different stakeholders; and concentrate on maintaining the Working Group's work and activities. Through the Resolution on Developing Reporting Guidelines on the Extractive Industries, the African Commission decided to step up its oversight efforts.⁶ The Working Group is required by this Resolution to develop State Periodic Reporting Guidelines pertaining to the respective articles of the Charter.

Regional consultations on extractives, and the environs, including human rights violations, are among the Working Group's accomplishments. Other study missions include the trip to Marikana, South Africa, in the wake of the unfortunate events at the Lonmin Mine, which claimed the lives of about forty-four people, and the public hearing organized by the Marikana Commission of Inquiry (May 2013).

ii. State Reporting Guidelines on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries

Article 24 guidelines state that in a circumstance where damage done to the environment is due to the actions of the extractive industry, the affected persons are entitled to some protection measures, adequate compensation, availability of reasonably priced medical care, assistance in rehabilitating their means of subsistence, cleanup and repair of the impacted environment, and access to suitable legal and extrajudicial processes.⁷ For the purpose of implementing the rights, duties, and liberties outlined in the Charter, including Articles 21 and 24, states must acknowledge and employ the necessary legislatives or other means. The rights outlined in these articles ought to be incorporated by State parties into their domestic legislation.⁸ The

⁵ African Union, Working Group on Extractive Industries, Environment and Human Rights Violations | African Commission on Human and Peoples' Rights (aachpr), Working Group was established 2009.

⁶ ACHPR Res. 364(LPQ) 2016.

⁷ African Union, State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter on Human and Peoples' Rights Relating to the Operations of Extractive Industries 7 May 2014 paras. 33-36, para. 29-30.

⁸ *Id.* para. 32.

State Reporting Guidelines and Principles also acknowledge that corporations have a duty to right holders and that corporations are responsible for the duties of individuals under Article 27.³⁵ The guidelines recognize the importance of consultation by the company with the host community and natural resources rights of affected people, as well as how businesses must support the host communities' development needs.

Businesses are supposed to abstain from actions that could cause harm or denial of the rights safeguarded by the Charter and to ensure that their operations fully adhere to globally recognized labor, environmental, and human rights standards.³⁶

iii. Africa Mining Vision (AMV)

At their meeting in Addis Ababa in February 2009, the Heads of State and the government approved the Africa Mining Vision, which they described as a roadmap for strategically utilizing the continent's mining resources for widespread sustainable development. The AMV was founded in response to the realization that, despite having abundant mineral resources, African nations continue to rank among the world's poorest because of issues like weak institutions, corruption, and poor governance, as well as the export of resources to developed nations with little to no local development. The AMV would need to be included into pertinent national laws, rules, and regulations in order to be implemented.

Other policies and institutions include the African Minerals Governance Framework (AMGF), the Africa Mining Legislation Atlas (AMLA) and the African Minerals Development Centre. The purpose of the AMGF is to evaluate how well nations are implementing and tracking the Africa Mining Vision.³⁷ In order to assess if the policies in respect of mining, oil, and gas are on track and make the required changes or amendments, governments might utilize it as a monitoring framework. An organization dedicated to compiling, disseminating, and creating capacity on laws is the African

³⁵Id. Para. 56-65.

³⁶Id. Para. 57.

³⁷The Ministers mandated the African Union Commission to develop an Africa-led and owned mineral sector governance framework in the course of the first ordinary session of African Union Conference of Ministers Responsible for Mineral Resources Development, on 17 December 2013.

Mining Legislation Atlas (AMLA). In 2013, the World Bank's Legal Vice Presidency launched the project.³⁰ By facilitating the creation, amendment, and application of mining laws and promoting transparency, accessibility, and comparability of African mining laws, the project aims to assist African nations in optimizing the benefits of mineral resources. In collaboration with important continental, regional, and national policy actors, the African Minerals Development Center's responsibilities include providing technical assistance and direction for implementing the AMV and the AMGF; communicating and sharing the Vision's implementation progress with all stakeholders; and promoting the framework and the Vision.

Although there are several regional laws and frameworks aimed at governing the extractive industry in Africa and protecting human rights, the effectiveness of these instruments largely depends on national implementation, enforcement, and the commitment of both governments and corporations to upholding human rights standards.

4. An Examination of Mining in Selected Countries in West Africa

Mining plays a significant part in West African nations' economic development. It contributes to the GDP and creates employment opportunities. However, the industry encounters challenges, particularly environmental concerns and human rights challenges. The countries below are rich in mineral resources and the mining industry is a key player in the economy of these countries.

I. Mining in Nigeria

Nigeria has had her share of challenges associated with mining in the past and even presently. The country engaged in the export of minerals such as tin, coal and columbite between the 1960s and 1970s. Following its discovery, crude oil became the country's primary means of foreign exchange. As a result, the mining industry was neglected and

³⁰ AMLA 2013: 3 <<https://www.amla.org/en/about-us>>

had slow growth, with its share of the country's GDP (gross domestic product) still being less than 1 % as of 2023.

Nigeria's relevant laws regulating the solid mineral industry, discussed in this section, include the Nigerian 1999 Constitution,³⁷ the Nigerian Minerals and Mining Act of 2007 ("the Mining Act")³⁸, and the Nigerian Minerals and Mining Regulation (the "Mining Regulations").³⁹ According to the provisions of the 1999 Constitution, "mines and minerals, including oil fields, oil mining, geological surveys and natural gas" are under the control of the Federal Government.⁴⁰ The Minerals and Mining Act of 1999 was repealed in March 2007 and replaced with the Mining Act, which is the main piece of legislation governing the mining industry in Nigeria. By virtue of Section 21 of the NMMA, the Minister of Mines and Steel Development enacted the regulations. All facets of Nigeria's solid mineral exploration and exploitation are governed by the Mining Act, while the Mining Regulations establish guidelines and procedures for the topics covered by the Act and provide enforcement for its provisions.⁴¹ Aside these laws are the Metal Policy 2008 which highlights the mining industry's growth as a crucial element of Nigeria's economic diversification plan, the Environmental Assessment Act⁴² that directs that mining companies should conduct EIAs to assess and mitigate environmental impacts before starting operations; and other environmental laws including the Land Use Act. Other regulations are the Nigeria Extractive Industry Transparency Initiative (NEITI) Act⁴³ that promotes transparency and accountability, including environmental regulations such as the National Environmental (Mining and Processing of Coal, Ores, and Industrial Minerals) Regulations, 2009,⁴⁴ the National Environmental (Noise Standards and Control) Regulations, 2009,⁴⁵ the National

³⁷ The Constitution of the Federal Republic of Nigeria (as amended) 1999, CFRN.

³⁸ Nigerian Minerals and Mining Act, 2007, (Act No. 20).

³⁹ Nigerian Minerals and Mining Regulations, 2011.

⁴⁰ *Supra*, note 38, Item 29, Exclusive Legislative List, Part I Second Schedule CFRN.

⁴¹ *Supra*, note 40, The Regulations 3.

⁴² Environmental Impact Assessment (EIA), 2004, Act No 86 1992 CAP E12:LFN.

⁴³ 2004, Cap M159:LFN.

⁴⁴ National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations S.I. No. 31 of 2009 Federal Republic of Nigeria Official Gazette, No. 63 (12 October 2011).

⁴⁵ National Environmental (Noise Standards and Control) Regulations Federal Republic of Nigeria, Abuja, Regulations No. 35 of 2009, Official Gazette, Vol. 56, No. 47 (19th October 2009).

Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations, 2011,⁶⁸ the National Environmental (Quarrying and Blasting Operations) Regulations,⁶⁹ the Water Resources Act and the Explosives Act and Explosives Regulations⁷⁰ that seek to control, prevent and minimise pollution and noise from activities in the mining industry and activities involving explosives. A notable improvement in the Mining Act is the requirement of the submission of a community development agreement (CDA) by a mining lease holder.⁷¹ The project's social and economic contributions to the community's sustainability must be included in the CDA.⁷²

II. Mining in Ghana

Ghana has an history of mining spanning from the period before independence. Although the nation is rich in mineral resources, gold is the most common one produced there, along with diamonds, manganese, bauxite, clays, kaolin, and mica.⁷³ Industrial minerals include kaolin, brown clays and sand which are extracted to supply local industries. A vital component of Ghana's economy is the mining industry. The nation produces a substantial amount of gold in Africa, ranking 6th globally. The country produced about four million ounces in 2023. It contributed about 7% of the gross domestic product to the economy.⁷⁴

The 1992 Constitution of Ghana states that the people own the country's mineral resources, and the President is charged with managing them.⁷⁵ Apart from the Constitution, the mining industry is governed by a number of policies. The Minerals Commission Act⁷⁶ that created the Mineral Commission, ascertained its structure, and

⁶⁸ S.I. No. 14, 2011, Gazette No. 41, Vol. 90 (4th May, 2011).

⁶⁹ S.I. No. 33, 2011, Gazette No. 97, Vol. 100 (30th October, 2011).

⁷⁰ 2004, CAP 48:01, EN.

⁷¹ *Supra*, note 59, Section 71(b).

⁷² *Supra*, note 59, Section 114(2).

⁷³ Republic of Ghana Minerals & Mining policy of Ghana 9 November 2014 <https://www.mimc.gov.gh/wp-content/uploads/2021/06/Mineral-and-Mining-Policy-Ghana.pdf>.

⁷⁴ C. Bofof, Ghana is Africa's largest gold producer, but it has illegal mining issues: 5 essential reads, *The Conversation* (Sept 10, 2024), <https://theconversation.com/ghana-is-africa-largest-gold-producer-but-it-has-illegal-mining-issues-5-essential-reads-239623>.

⁷⁵ Constitution of the Republic of Ghana: April 26, 1992.

⁷⁶ 1991 (Act 450).

established its functions in relation to the governance and use of minerals, was superseded by the Minerals and Mining Act.⁷⁷ The Mining Act of 2006 also replaced the Minerals and Mining Law, Minerals and Mining (Amendment) Act.⁷⁸ The use of explosives in the industry is governed by the Minerals (Royalties) Regulations, 2009, the Minerals and Mining (General) Regulations⁷⁹ and the Minerals and Mining (Explosives) Regulations.⁸⁰ The Minerals and Mining (Licensing) Regulations⁸¹ stipulate the procedures for procuring, maintaining, and transferring licences. The Minerals and Mining (Health, Safety and Technical) Regulations⁸² govern safety, health and technical operation parameters in the industry. The Minerals and Mining (Support Services) Regulations⁸³ regulate entities that make provisions for auxiliary services to the mining sector. The Minerals and Mining (Local Content and Local Participation) Regulations⁸⁴ provide the minimum requirements for local content and local participation in the mining industry value chain. The Environmental Protection Agency Act⁸⁵ consolidates the law relating to environmental protection. The Environmental Assessment Regulations⁸⁶ set out the procedure for acquiring and maintaining an environmental permit and protect the environment by ensuring that mining companies conduct an Environmental Impact Assessment of their activities before they can be granted an Environmental Permit with which to conduct their business.

The Minerals Development Fund Act⁸⁷ launches a Minerals Development Fund to address the development challenges affecting mining communities, by setting aside 20% of the mineral royalties received by the Government for development projects.

The Minister is in charge of formulating policies, allocating mining rights, and managing

⁷⁷ 2006 (Act 200).

⁷⁸ 2006 (Act 900).

⁷⁹ 2006 (L 2173).

⁸⁰ 2009 (L 12: 77).

⁸¹ 2006 (L 12: 76).

⁸² 2006 (L 12: 82).

⁸³ 2006 (L 12: 74).

⁸⁴ 2020 (L 2431).

⁸⁵ 1994 (Act 493).

⁸⁶ 1997 (L 1682).

⁸⁷ 2006 (Act 9: 25).

the nation's natural resources. The Minerals Commission assists the Minister by providing advice on issues pertaining to mining policies and the issuance of mineral rights. Important roles in regulating the mining industry are played by other ministries, such as the Environmental Protection Agency (EPA), the Water Resources Commission, as well as the Forestry Commission,

Additionally, guidelines related to corporate social responsibility (CSR) were created for mining companies in Ghana by the Minerals Commission. These guidelines are the result of extensive consultation with members of mining communities, academicians, mining companies, mining sector agencies and civil society organizations. In order to guarantee that mining is carried out responsibly and in a manner that does not encourage disputes, disregard for the rights of individuals, or insecurity, the Ministry of Land and Natural Resources launched the Voluntary Principles on Security as well as the Ministry of Land and Human Rights (Work Plan for Ghana), 2014, as well as the Minerals and Mining Policy of Ghana, 2016.

III. A brief overview of mining policies in Benin

Mining has a lengthy history in Benin as well, going all the way back to pre-colonial times when local populations used the minerals that were extracted. Mineral resources include marble in Dajo, ceramic clay at Sakété, at Natitingou in the NorthWest, is gold and chromium ore, limestone in Onigbolo, and ilmenite which is a mineral source of titanium close to the shore. The mineral resources are under the government's custody. The Republic of Benin's October 17, 2006, Law No. 2006-17 related to the Mining Code and Mining Taxes governs mining operations. The May 17, 1983, No. 83003 law is superseded by this new one. The Mining Code and Mining Taxes Act regulates the prospecting, research, exploitation, processing, transformation of mineral deposits. The No. 98-030 of February 12, 1999 controls environmental protection as regards exploration and mining sites. The regulatory framework for the sector includes the 2006 mining and taxation code, decree No. 2008/804 relating to the regulations for the application of the mining and mining taxation code 2008.

There are still significant issues with environmental protection and human rights violations even though these West African nations have established various laws and frameworks controlling the extractive sector. The regional frameworks place a strong emphasis on acknowledging the right to development and hold both member state and non-state entities accountable for upholding human rights. These serve as a foundation for safeguarding local communities' human rights, encouraging community involvement, making sure that the advantages of extracting natural resources support sustainable development, and setting up conflict resolution procedures. They also support important stakeholders' cooperation for efficient human rights defense.

The region's key policies must be based on human rights and conform to regional norms to guarantee that rights of persons are upheld to solve issues. This next section identifies a few of these issues.

5. Challenges of the Mineral Sector in West Africa

This sector faces comparable difficulties across the nations. The socioeconomic and political environment of West Africa presents a number of unique challenges for the mining sector.

i. Infrastructure Challenges

Some of these countries experience lack of poor road conditions and limited rail infrastructure, which increase transportation costs and reduce efficiency. Unreliable electricity supply hampers mining operations and increases costs, especially in remote areas. Scarcity of clean water can limit mining activities and affect local communities, leading to conflicts over resources.

ii. Poor Participation in Mineral Resources Development and Poor Settlement of Mining Disputes

Local communities poorly participate in the process of making decisions concerning the mineral resources deposited beneath their lands. In some cases, certain selected persons are the ones that represent their communities in the negotiation of mining

agreements. Mining companies may not engage in meaningful consultations, leading to agreements that do not reflect community needs or concerns. Additionally, mining companies and governments do not necessarily satisfy the principles concerning free, prior and informed consent as required in the provisions of relevant policies. The implication is that local populations frequently feel excluded from the processes involved in making decisions pertaining to mining operations that impact their land and means of subsistence.

iii. Environmental Challenges and Climate Change

Mining communities are usually affected by pollution caused by the operations of mining companies. Mining activities lead to contamination of soil, air and water with significant impacts on the environment and human health. Deforestation and soil erosion from mining activities can lead to long-term environmental damage. Waste and toxic substances released from mining companies cause water and environment pollution. Poor management of mining waste can lead to hazardous conditions for both the environment and communities. While mining operations contributes immensely to climate change, climate-related events such as extreme weather can disrupt mining operations and supply chains.

iv. Poor Governance

Many West African countries struggle with limited capacity to regulate the sector effectively, leading to gaps in oversight. Corruption is another problem that results in poor control of the sector. Corruption within government agencies can hinder transparency and lead to unfair practices in awarding mining licenses. The Government faces challenges in enforcing regulations and ensuring transparency in the sector, which can deter investment.

v. Social Problems

Social issues such as community conflicts, displacement of local communities, and loss of income are concerns connected to the mining of valuable minerals. A vital component of some of the economies of the West African nations is the revenue

produced by the mining sector. In spite of this, the revenue may not necessarily translate into wealth for the populations. Tensions between mining companies and local communities can arise over land use, compensation, and environmental concerns. Mining operations have the potential to displace communities, upsetting their way of life and cultural connections.

Mining activities can pose health risks to local populations, including exposure to hazardous materials. Other problems are illegal mining and security risks as mining sites can be targets for theft, vandalism and terrorism, particularly in remote areas.

vi. **Poor Collaboration Between Key Stakeholders**

Poor collaboration between key stakeholders in the mining industry can severely undermine efforts to protect human rights. Government agencies, NGOs, mining companies, and local communities often operate independently, leading to a fragmented approach to human rights issues. In this instance, they may be unable to share successful strategies or lessons learned, which could otherwise improve human rights protection.

Conclusion and Recommendations

Harmonizing regulations of the extractive industry to promote human rights realization and environmental protection is essential for fostering effective regional cooperation. Some challenges were identified related to having a uniformed set of policies across the region including those encountered in the mining industry. The regional framework has been established as a set of guidelines for the countries to guarantee that governments and companies uphold the rights of individuals. It is important that the concerned countries should develop a robust framework to take cognizance of these guidelines to enable them to address the challenges, as aligning with these standards is aligning with international standards.

In order to realize the objective of having harmonized policies and regional cooperation among member states, there is a need for both individual and collective obligations to ensure the implementation of both old and new sectoral policies. Integrating these policies, regulations, etc., is necessary for optimizing the advantages from regional integration or cooperation. The challenges in West Africa require coordinated efforts among governments, mining companies, and local communities. Likewise, improving collaboration between key stakeholders in the mining industry is essential for effectively protecting human rights. Through, fostering dialogue, building capacity, and ensuring transparency, stakeholders can work together to create a more equitable and sustainable mining sector that respects and promotes human rights. Additionally, there is a need to establish accessible grievance mechanisms, allow communities to report human rights abuse and seek redress.

Enhancing regulatory frameworks, investing in infrastructure, promoting sustainable practices, and fostering community engagement are essential steps toward creating a more robust and accountable mining industry in the region. Furthermore, strengthening enforcement mechanisms, enhancing transparency, and ensuring

meaningful community engagement are critical to achieving better outcomes for affected populations and sustainable development in the region. A unified approach would ensure the protection of marginalized communities, including Indigenous peoples, from displacement and other negative impacts of extractive activities. Mining companies need to implement strategies that prioritize community engagement to ensure that local voices are heard in decision-making.