

Mining Development in Nigeria: A Human Rights Based Approach

Dr Oluwatosin Busayo Igbayiloye,

Senior Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin. igbayiloye.ob@unilorin.edu.ng

Abstract

The mining sector in Nigeria is one with prospects and potentials of generation of employment, improved national income earnings and economic growth. The nation has mineral resources spread over its various regions with some in commercial quantities. The sector became an area for diversification due to economic recession and to promote investment in the sector, certain reform was undertaken by the administration. In as much as exploration of mineral resources can generate economic increase and benefits for the population and the country, such mining activities pose threat to people and the environment. This is due to weak laws and poor governance in the sector. A sustainable mining industry offers a route for swift growth. Against this backdrop, this paper employs doctrinal analysis and adopt an analytical approach. There are six sections in the paper. In addition to the introduction, it examines the situation of mining in Nigeria; identifies and examines the legal regime and institutions of the country's solid mineral sector, and evaluates the current laws regarding human rights responsibility. It emphasizes the inadequacy of the policies governing the mineral sector concerning human rights protection in the process of development of minerals. The study proposes a right-based approach to developments in the mining industry to be able to address poor regulations and human right and environmental abuses.

Keywords: *Mining, Human Rights, Communities, Human Rights-Based-Approach*

1. Introduction

Reforms in the Nigeria's mining sector are indicators that the government is making efforts to ensure that the industry is productive and can contribute substantially to the nation's Gross Domestic Product (GDP). The industry that has suffered neglect for many years and generates low GDP of about 0.3%. The sector is one of the key sources of revenue for the economy before and after her independence. These reforms are necessary to revive the mining industry, attract investment locally including foreign ones and generate revenue. Prior to 1970, the nation's mineral sector industry in Nigeria was active and the nation exported mineral resources including coal and tin. In the 1970s, the oil boom caused the mining sector to fall back and received minimal attention since the Nigerian government dominated on exploration of oil for a long time for the growth of its economy and the export of crude oil became a significant source of income for the state.¹ Problems such as the fall in global prices, disruptions of oil production resulted in the economic meltdown, causing the government to taking steps to revitalise the country's mining industry to enhance its performance. The mining sector became a focus for the government because of its prospects for the economy and benefits for the population. As a result, the government took steps to overhaul the solid mineral industry and brought about reforms on the policies and institutions. For instance, recently, the Nigeria Mineral and Mining Act was endorsed in 2007 to repeal the Federal Mineral and Mining Act 1999. The major purport for these reforms was to attract and encourage foreign investments in the sector by providing an enabling environment for investors. Consequently, mining companies have begun operations in communities where there are deposits of mineral resources.

Certainly, the discovery of solid minerals will lead to financial gains and development for the country. Despite the advantages, the government must consider the long-term harm that exploitation may cause to the environment, host communities' rights, and even the economy. There is proof that the risks associated with Nigeria's mineral resource production constitute a threat to the host populations. An adequate and effective response is necessary to lessen and prevent these adverse consequences. A primary concern is that the existing legal system, in spite of the reforms

¹ Olure-Bank Adeyinka, Micheal Salako Gbadebo, Economic Gift Source of Diversifying Nigerian Economy for Economic Growth and Economic Development Sustainability, Journal of Economics and Sustainable Development, Vol.7, No.11, 2016 , <http://www.iiste.org/Journals/index.php/JEDS/article/viewFile/31228/32066> accessed on 30 May 2023.

regulating the mining sector, does not adequately cater for safeguarding the rights of affected populace and also that of the environment. This article analyses the pertinent mining legislation in light of these circumstances and the extent they protect human rights as mining activities are concerned.

The paper examines the development of mining in Nigeria; identifies the extant laws enacted to regulate the mining sector; analyses the institutional and legal framework of the solid mineral sector in Nigeria; and the extant laws on the responsibility towards the environment and human rights in the country. It highlights how inadequate the laws controlling the mining sector are to safeguard both the environment and human rights while extracting mineral resources. In order to guarantee that human rights and the environment are effectively protected by law, it recommends a human rights-based approach to mining advancements in the industry.

2. Brief Background to Mining in Nigeria, Potential Benefits and Risk Factors

Nigeria is rich in a wide range of minerals, including dimension stones, precious metals, jewels, metallic minerals, industrial minerals, and mineral fuel. These comprise distinct minerals that can be found in over 500 locations with varied geological settings. Before the discovery of oil, the Nigerian economy depended on the exploitation and trade of solid minerals including agricultural production. The nation was a significant exporter of coal, columbite, and tin in the early 1970s.² Tin produced significant foreign exchange profits for the country, while coal was utilized to construct the railway network and provide energy. Additionally, there were job opportunities associated with the exploitation of these minerals.³ However, with the oil boom of the 1970s, attention was drawn from these traditional sources of revenue and tilted towards the extraction of crude.⁴ It developed into a significant source of foreign exchange for the nation⁵ as the growing economy depended almost only on this profitable commodity while the solid mineral industry was by and large overlooked. Considering the potential for the solid minerals industry to become a

² KPMG

<https://www.kpmg.com/NG/en/IssuesAndInsights/ArticlesPublications/Documents/Nigerian%20Mining%20brief.pdf>, See also Facts of the Nigerian Mining Sector <https://newsofnigeria.com/facts-of-the-nigerian-mining-sector/> (accessed on 30 May 2023).

³ Richbon Group Nigeria <https://richbongroupng.wordpress.com/2016/01/05/history-of-mining-and-quarrying-in-nigeria/> (accessed on 30 May 2023).

⁴ (No 2 above)

⁵ (No 1 above)

viable alternative to earn foreign exchange in Nigeria, efforts are being made to refocus on the country's solid minerals in light of the global decline in crude oil prices and the economic meltdown in the 1980s, including the ensuing impact on the nation's earnings and reserves. Therefore, there was a push for diversification of the economy and the promotion of privatization and commercialization. To diversify the economy, the government pushed for a private sector-led economic revitalization initiative in industry, agriculture, and solid minerals in 1994. In his 1995 Annual Budget Speech, Head of State Gen. Sani Abacha subsequently announced the creation of a Ministry of Solid Minerals Development, which was recommended under this program.⁶ Following the creation of the Federal Minerals and Mining Act in 1999, there was a push to privatize the mines that were then primarily owned by the state.⁷ When democracy gained prominence in 1999, it became critical that the nation's revenue base be diversified.⁸ Obasanjo who was the president at that time, worked diligently to establish a system for diversifying the nation's income, and in regard to the mining industry.⁹ In order to revive the Nigerian mining industry, the Nigerian Minerals and Mining Act (the Act) was passed in 2007 as a result of a shift in the country's mining focus and strategy. The development of seven solid minerals with strategic importance to Nigeria's economy was given top priority by the Minister of Solid Minerals Development (now known as Mines and Steel Development) in 2008. This was due to the fact that these minerals were available in sufficient quantities to support mining operations over the long run. Coal, barytes, bitumen, gold, iron ore, lead/zinc, and limestone are some of these minerals.¹⁰ Potential chances for national growth are offered by these resources. For example, coal, which is mostly found in eastern Nigeria, can be used as fuel to generate electricity, helping to alleviate the nation's power infrastructure deficit. Furthermore, bitumen, an essential component of asphalts, can be utilized in road construction.¹¹ Other benefits are employment benefits, foreign direct investments, and Gross Domestic Product (GDP) growth. Mining encourages flow of foreign direct investment (FDI) which is provided by large-scale mining companies.¹² The government in Nigeria through its

⁶ See (no 2 above)

⁷ See (no 2 above)

⁸ See (no 1 above)

⁹ Facts of the Nigerian Mining Sector <https://newsfnigeria.com/facts-of-the-nigerian-mining-sector/> (accessed on 30 May 2023)

¹⁰ <http://www.nigerianminers.org/sites/default/files/Mining-Mineral-Act.pdf> (accessed 20 October 2023).

¹¹ (no 10 above)

¹² K Tutu 'Improving the management of mineral resources for sustainable development in Africa' in Afful-Koomson & Asubonteng(eds) (Pixedit Limited, Ghana 2013) 'Collaborative Governance in Extractive Industries in Africa' 38-39.

reforms in the mining industry encouraged the flow of FDI. Although, its contribution to the GDP, maybe low presently, the country aims for more in the future since some of the resources are in commercial quantities.

Mining may contribute significantly to the economy of a country, but if such operations are not managed effectively, the negative impacts can outweigh the benefits generated from the development projects. The cost of poorly managed environmental and social effects minimizes the impact of financial benefits accruing to the economy of a country in the long run.¹³ Mining activities involve sighting, extraction and processing of the natural resources which causes environmental and social impacts. The activities of mining companies cause human rights abuses, environmental degradation, conflicts and adversely affect peoples' way of life. Human rights are adversely impacted in the course of mineral exploitation which fails to consider national laws, regional agreements, and international human rights legislation. Human rights like the rights to health, life, and a healthy environment, as well as the rights to shelter, can suffer risks caused by mining activities.

Mining operations poses risks to lives including those situated around mines and their health, causes destruction to shelter, farms, ancient structures and the environment. This is as a result of the toxic substances released into the water, soil and air causing pollution and environmental degradation, diseases and sicknesses and other health problems, reduction and loss of quality of the soil, good water and food supply. The execution of mining operations in certain communities lead to displacement of residents from their houses, loss of agricultural lands, clean water fit for drinking and other domestic uses, loss of houses, loss of cultural heritage and ancestral shrines, disruption and loss of livelihood of locals, competition over the use of water between affected communities and mining companies, extinction of wildlife in communities amongst others. Some other challenges affected communities may encounter are poor access to necessary information regarding mining developments on their lands, inadequate compensation for land grabbing, minimal or no participation in decision-making concerning mining projects on their lands.

¹³ World Bank and International Finance Corporation 'Treasure or trouble? Mining in developing countries' 2002 2 <http://siteresources.worldbank.org/INTOGMC/Resources/treasureortrouble.pdf> (accessed 30 May 2023).

The implication of these challenges is violation of human rights such as the right to life, water, food, healthy environment, property and housing, human dignity, culture and religion, access to information and participation. These human rights violations can lead to protest by host communities against companies which may lead to torture, cruel and inhumane treatment by company's personnel. These rights are protected under international human rights laws and regional instruments.

3. Nigerian Mining Legal and Institutional Framework

There is a need to address, minimize and prevent the problems caused by mining activities by companies. This section assesses the pertinent legislation that govern Nigeria's mining industry. According to the Second Schedule, Part 1 item 39 of the Exclusive Legislative List, the Federal Government of Nigeria is firmly in charge of "mines and minerals, including oil fields, oil mining, geological surveys, and natural gas," as stated in the Constitution.¹⁴ Every facet of solid mineral exploration and exploitation in Nigeria is governed by the Nigerian Minerals and Mining Act,¹⁵ law repealing the Minerals and Mining Act of 1999¹⁶ in March 2007. It gives the Federal Government of Nigeria ownership, authority, and control over all mineral resources. Six chapters and 165 sections make up the 2007 Act, which covers topics like mineral ownership and control, prospecting, mining, and quarrying; small-scale mining, mineral possession and purchase, environmental considerations, host community rights, offences and penalties, and other provisions. Another policy is the National Minerals and Metals Policy (2008),¹⁷ which was created by the NMMA as a tool to determine the new course of the sector's government development. The mining Cadastre Office, Mines Inspectorate Department, Artisanal and Small-Scale Mining Department, and Mines Environmental Compliance Department are the four technical units that was established as a result of the policy to improve performance and properly regulate the industry. In 2011, the Ministry released the Nigerian Minerals and Mining Regulations (the "Regulations"). The regulations' goals are to end the arbitrary granting of mineral titles and create a more accountable and coordinated solid minerals industry nationwide. By outlining the guidelines, protocols, and methods for obtaining mineral title, the Regulations expedite the process of awarding licenses to

¹⁴ The 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹⁵ Nigerian Minerals and Mining Act, 2007 (Act No. 20).

¹⁶ No.34 of 1999 Cap. M.12 LFN 2004.

¹⁷ The National Minerals and Metals Policy, 2008

investors, both domestic and international. The acquisition of a mineral title can be accomplished through competitive bidding or priority application for any of the different mining titles awarded by the Minister of Solid Minerals Development. The Nigeria Mining Cadastre Office (the "Cadastre Office") released the Guidelines on Mineral Titles Application (the "Guidelines") of 2014, and the most current revision was made in January of that year. According to the MMA, the Cadastre Office was founded in 2007 with the duty of managing and administering mineral rights in Nigeria. It provides a thorough overview of the application process and associated costs, as well as information on the various kinds of mineral titles and the prerequisites for applying for them. Assessment of the impacts of mining activities is important and this aspect is regulated by the provisions of the Environmental Impact Assessment Act¹⁸. This Act states that public or private project that is likely to have significant impact on the environment should not be undertaken until assessment has been carried out.

The Nigerian Extractive Industry Transparency Initiative Act,¹⁹ the Explosives Act and Explosives Regulations,²⁰ the Nuclear Safety and Radiation Protection Act,²¹ the Nigerian Investment Promotion Commission Act,²² the Companies Income Tax Act (CITA),²³ the National Environmental (Mining and Processing of Coal, Ores, and Industrial Minerals) Regulations 2009,²⁴ the National Environmental (Base Metals, Iron and Steel Manufacturing/Recycling Industries Sector) Regulations 2011,²⁵ the National Environmental (Quarrying and Blasting Operations) Regulations 2013,²⁶ the Companies and Allied Matters Act of 2004, and the Land Use Act of 1978.

The administrative operations of the sector are supervised by the Ministry of Mines and Steel Development (MMSD). The Nigerian government made a daring attempt to promote the swift and advantageous development of the nation's solid mineral resources when it founded it in 1985. This organization was established to unleash the economic potential of Nigeria's solid

¹⁸ CAP E12 LFN 2004

¹⁹ Cap N159 LFN 2004

²⁰ CAP E18 LFN 2004

²¹ CAP N142 LFN 2004

²² Nigerian Investment Promotion Commission Act 1995, CAP N117, LFN 2004

²³ Companies Income Tax Act 2011, CAP P8 LFN 2004

²⁴ Federal Republic of Nigeria, No. 31 of 2009, Vol. 96, No. 63, Official Gazette (Abuja) dated 12th October, 2009

²⁵ S.I. No.14, Gazette No. 41. Vol. 98 of 4th May, 2011

²⁶ S.I. No. 33, Gazette No. 97, Vol. 100 of 30th October, 2013.

minerals subsector. The departments of the Mines Inspectorate, Artisanal and Small-Scale Mining, Mines, Environment and Compliance, and Mining Cadastre office are responsible for the administration. The Ministry's responsibilities include developing policies, supplying data and expertise to boost investment in the industry, overseeing operations in the solid minerals sector, and producing enough money for the government.

The Ministry of Mines & Steel Development's responsibility is to identifying the solid minerals in the country, advising the government on the creation and implementation of laws and regulations that govern the different phases of prospecting, quarrying, and mining, and managing the sale and consumption of solid minerals in the nation through the granting of licenses, permits, and leases as well as the collection of rents, fees, and royalties.²⁷ The Nigerian Geological Survey Agency (NGSA), Nigerian Metallurgical Development Center, National Steel Raw Materials Exploration Agency (NSRMEA), Artisanal and Small-Scale Mining, Mining Cadastre Office, Metallurgical Inspectorate and Raw Material Development, Steel and Non-Ferrous Metals, and the Council of Mining Engineers and Geoscientists (COMEG) are among the agencies that are part of the Ministry.²⁸

The State Mineral Resources and Environmental Management Committee, also known as "the Committee," is another institution that must be set up in every state in the federation.²⁹ The committee reviews and advises the Minister on matters concerning compensation, the return of essential reports pertaining to mining title grants, the development of minerals, the supervision of mineral exploitation, the implementation of social and environmental protection measures, and pollution and degradation of any land from which minerals are extracted.³⁰ The State Mineral Resources and Environmental Management Committee discusses issues like pollution and land degradation,³¹ how social and environmental protection is being implemented, including state participation in EIAs,³² how to improve relations amongst stakeholders in the mineral sector,³³

²⁷ Ministry of Mines and Steel Development- about MMSD

²⁸ Ministry of Mines and Steel Development, Roadmap for the Growth and Development of the Nigerian Mining Industry <http://www.minesandsteel.gov.ng/wp-content/uploads/2016/09/Nigeria_Mining_Growth_Roadmap_Final.pdf> (accessed 20 October 2023).

²⁹ sec 19(1) NMMA.

³⁰ sec 19(3) (a-e) NMMA.

³¹ Regulation 163(8) (a) Mining Regulations 2011.

³² Regulation 163(8) (b).

³³ Regulation 163(8) (c).

and how to provide the Minister with necessary situational feedback.³⁴ Notwithstanding these lists of duties, the State Mineral Resources and Environmental Management Committees are hesitant to perform their duties and have not yet met the purpose for which they were established.³⁵ Although the applicable laws, aside from the constitution, may not directly address the preservation of human rights, they did address several societal issues. In general, it is anticipated that mining operations be conducted safely and in accordance with mine health and safety laws,³⁶ social obligations outlined in legislation and EIA requirements,³⁷ and compensation to landowners.³⁸ A mining license holder must present an authorized EIA, mitigation measures mandated by environmental legislation,³⁹ details of the work to be carried out,⁴⁰ and community development agreement (CDA),⁴¹ and compensation to land users.⁴² When land, crops, the owner's buildings, and economic trees are damaged or destroyed, or when water contamination occurs, the landowner must receive reasonable compensation.⁴³ According to the Constitution, a claimant has the right to decide his interest in the property and the amount of compensation in a court of law, tribunal, or other body with jurisdiction in that region of Nigeria.⁴⁴ It also prohibits the compulsory acquisition of property without payment of compensation. Before beginning a mining operation, a CDA or other agreement that will benefit the host community socially and economically and ensure its sustainability must be signed by the holder of a mining lease, small-scale mining lease, or quarry lease and the host community.⁴⁵ Infrastructural development, marketing of agricultural products, support for small and micro businesses, environmental and socio-economic management, education, technical training, jobs, compensation, conflict resolution, environmental protection, rights of the license holder to a mining area, and improving local governance are just a

³⁴ Regulation 163(8) (d).

³⁵ O Onwuemenyi 'Zamfara mining disaster: Still a human rights debacle' 7 August 2012 *Vanguard* Nigeria <https://www.vanguardngr.com/2012/08/zamfara-mining-disaster-still-a-human-rights-debacle/> (accessed 20 October 2023).

³⁶ Section 70 (1) (d)

³⁷ Section 70 (1) (f) & (g)

³⁸ Section 70 (1) (j)

³⁹ Section 71(a), Section 119 (a) (c) (i&ii),

⁴⁰ Section 71(b)

⁴¹ Section 71(c)

⁴² Section 71(d)

⁴³ Section 107 (b), section 113 (1) & (2), & section 125.

⁴⁴ Section 44 (1) (a)(b) CFRN 1999

⁴⁵ Section 116 (1) Nigerian Minerals and Mining Act, Section 114 (c) 2011, Section 118 (1) (a) (iii) Act, 193 (1) Nigerian Mines Regulations 2011. See also section 116 (2).

few of the issues that are addressed in the agreement.⁴⁶ Community involvement is necessary for the preparation, execution, oversight, and management of the agreement's operations,⁴⁷ including engagement with host communities regarding the CDA's implementation.⁴⁸ In addition to the environmental protection that the CDA takes into account, the Act forbids pollution of the environment and water that results from mining operations.⁴⁹ Similarly, the 1999 Constitution's environmental objectives mandate that the State preserve Nigeria's water, air, land, forests, and wildlife to protect and enhance the environment.⁵⁰ Mine managers must take effective steps to safeguard the host community from the dangers of tailings storage, lessen the effects of air pollution, and treat mine waste before it is finally disposed of to avoid contamination, including water and air pollution.⁵¹ The EIA Act mandates that projects' environmental effects be evaluated and takes into account the effects of mining operations.⁵²

Access to information, consent, and participation are crucial components of mining project development and execution. The 1999 Constitution and other mineral legislation give the federal government complete ownership and control over mineral resources, excluding community and stakeholder participation. The clauses of the Constitution, the Mining Act, and the Land Use Act imply that the Federal Government owns and controls all of Nigeria's mineral resources, including the land on which they are located.⁵³ Therefore, in cases where minerals are found on the land, ownership may be withdrawn.⁵⁴ The process of community participation is inadequate and insufficient.⁵⁵ The Mining Regulations further provides that mineral title holders are required to consult with project affected people and obtain feedback on suggested solutions to changes caused by mining impacts through means like community dialogues, public hearings, referendum, negotiation or monitoring teams.⁵⁶ The Regulations further elaborate what should be done, however, some of these provisions lack procedures and detailed explanations. Engagement with affected communities should involve their response to the projects before an agreement is

⁴⁶ Section 116 (3), 193 (9) (c-f),

⁴⁷ Section 117

⁴⁸ 193 (2) 2011

⁴⁹ Section 123, 111, Section 118 (a), Section 125 (1) (a & c)

⁵⁰ sec 20 1999 CFRN.

⁵¹ Section 125 (1) (b & e)

⁵² sec (2) & sec (4) EIA Act.

⁵³ sec 44(3) 1999 CFRN, sec 1(1) 7 (2) NMMA & sec 28(1) LUA.

⁵⁴ sec 28(1) & (3) (b) LUA.

⁵⁵ sec 25 EIA Act.

⁵⁶ Regulation 182(3) (c) Mining Regulations 2011.

established between a mining company and the government. Everyone has the right to freedom of expression, the ability to have opinions, and the unhindered reception and dissemination of ideas and information, according to Section 39(1).⁵⁷ Mineral laws have inadequate provisions pertaining to information access on mining-related topics. For instance, the Mining Regulation provides that before mining operations commence, a mineral title holder should sensitise the community about the project, its benefits, and measures to prevent the risks of the project.⁵⁸ The implication is that host communities may just only be informed about a project that is established.

Some other social concerns where affected host communities are concerned are recognised in the mining laws such as displacement and relocation and resettlement,⁵⁹ loss of livelihood and assistance with a new trade of land for farmers,⁶⁰ loss of ancestral land and property, health hazards, and compensation for damages suffered from mining activities. However, some of these provisions lacks procedures and detailed explanations on how to accomplish the tasks which needs to be addressed. Additionally, these laws need to be reformed requiring the government, businesses, and other parties to respect human rights. Human rights as outlined in international human rights documents must be taken into consideration in legislation and policies.

4. Human Rights Based Approach to Mineral Resource's Extraction in the Nigerian Mining Sector

The HRBA is described as a strategy, a technique, or a tool for incorporating human rights into development procedures.⁶¹ Based on the idea that a nation cannot make steady progress unless it acknowledges human rights principles—particularly universality—as fundamental tenets of governance, a human rights-based approach concentrates on the realisation of the rights of the excluded and marginalised populations as well as those whose rights are in danger of being violated.⁶² Human rights are universal, even if resource limitations necessitate prioritizing. It does not imply that every individual's issues must be resolved at once. The United Nations adopted this approach, which stated that all development-related programs should advance the realization of

⁵⁷ sec 39(1) CFRN.

⁵⁸ Regulation 13(3).

⁵⁹ Regulation 181(1) (a) (b) & (c) Mining Regulations 2011

⁶⁰ Regulation 181(1) (j).

⁶¹ T Karimova *Human rights and development in international law* (2016) 75-76

⁶² <http://hrbaportal.org/faq/what-value-does-a-human-rights-based-approach-add-to-development> (accessed on 13 October 2023)

human rights as outlined in the Universal Declaration of Human Rights and other international human rights instruments. These instruments should serve as a guide for all programming and development cooperation across all sectors and throughout the entire programming process. A human rights-based approach is operationally focused on advancing and defending human rights and is grounded in international human rights standards. It guarantees involvement in the creation of necessary policies as well as the institutionalization of democratic and participatory procedures at the local and national levels.

The United Nations adopted this approach, which stated that all development-related programs should advance the realization of human rights as outlined in the Universal Declaration of Human Rights and other international human rights instruments. These instruments should serve as a guide for all programming and development cooperation across all sectors and throughout the entire programming process.⁶³ A human rights-based approach is operationally focused on advancing and defending human rights and is grounded in international human rights standards.⁶⁴ It guarantees involvement in the creation of necessary policies as well as the institutionalization of democratic and participatory procedures at the local and national levels.⁶⁵ In addition to empowering individuals and communities to hold those responsible for actions accountable, it helps to make the process of formulating policies more transparent and guarantees adequate remedies in cases where rights are infringed.⁶⁶ HRBA also emphasizes the significance of the method by which development is accomplished as well as the results of progress.⁶⁷ Human rights are respected and upheld, and the HRBA's tenets are taken into account. Human rights concepts including participation, accountability, nondiscrimination, and access to justice will be

⁶³ 'The human right based approach to development cooperation towards a common understanding among UN agencies' <https://undg.org/wp-content/uploads/2016/09/6959-The-Human-Rights-Based-Approach-to-Development-Cooperation-Towards-a-Common-Understanding-among-UN.pdf> (accessed 20 October 2023)

⁶⁴ United Nations Office of High Commissioner for Human Rights (UNOHCHR) (2006), 'Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation' <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (accessed 20 October 2023)

⁶⁵ <http://hrbportal.org/faq/what-value-does-a-human-rights-based-approach-add-to-development> (accessed 20 October 2023)

⁶⁶ (no 65 above)

⁶⁷ J AlZaanin 'How were human rights-based approaches integrated in livelihood interventions in the Gaza strip after 2009?' Masters Thesis, Oxford Brookes University September 2012 11; N Gotzmann & T Bansal 'Human rights impact assessment in the extractive industries: Taking a human rights-based approach' 3rd International Conference on Social Responsibility in Mining' 2015 6 https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/hria_toolbox/gotzmann_bansal_hria_and_hrba_paper_070915.pdf (accessed 21 October 2023)

incorporated into resource governance regimes when the method is implemented.⁶⁸ This would serve as a foundation for requiring governments and project developers to confirm that the components are adhered to and ensured for the public during project design and implementation.⁶⁹ The process will involve establishing complaint mechanisms for victims or stakeholders to seek out redress, to oppose the authorization of mining projects or seek to evaluate approval of existing projects.⁷⁰ Most importantly, an HRBA promotes the Sustainable Development Goals (SDGs) by ensuring that development is inclusive, equitable, and just. HRBA emphasizes the importance of involving marginalized and vulnerable groups in decision-making processes. HRBA promotes transparent and accountable governance, crucial for effective implementation of the SDGs. It addresses systemic inequalities, which directly aligns with the SDGs focused on reducing inequalities (Goal 10). By ensuring the right to work, fair wages, and decent working conditions, HRBA supports economic growth (Goal 8) that is equitable and sustainable. HRBA recognizes the interconnection between human rights and environmental protection, aligning with goals such as Goal 13 on climate action and Goal 15 on life on land. HRBA highlights the need to address health disparities, ensuring that vulnerable populations receive adequate care.

The Guiding Principles on Business and Human Rights, which incorporate the United Nations 'Protect, Respect and Remedy' Framework (UNGPs), offer guidelines on incorporating human rights into resource governance in addition to international human rights norms, but they are not legally binding.⁷¹ The framework encourages companies to conduct human rights due diligence before beginning projects. This entails evaluating the effects on human rights and making sure that all of the effects are taken into account.⁷² According to the framework, authorities must oversee resource extraction while making sure that people are shielded from the negative effects of resource exploitation and that victims of violations of human rights have access to channels for redress.⁷³ Although the HRBA is not mentioned specifically in the UNGPs, it can be assumed that

⁶⁸ OB Igbayiloye 'A human rights-based approach to mining of solid minerals in Nigeria' LLD thesis, Centre for Human Rights, Faculty of Law, University of Pretoria 2020

⁶⁹ DS Olawuyi 'The emergence of right-based approaches to resource governance in Africa: False start or new dawn?' (2015) 15 *Sustainable Development Law & Policy* 14.

⁷⁰ Olawuyi (n 69 above) 14.

⁷¹ United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (UNGPs) Endorsed by the Human rights Council in resolution 17/4 of 16 June 2011

⁷² Principles 15, 17 and 18 UNGPs

⁷³ M Wachenfeld *et al* 'Promoting human rights, ensuring social inclusion and avoiding conflict in the extractive sector' Brazil, 3-5 December 2014 8 <https://espace.library.uq.edu.au/view/UQ:362654> (accessed 21 October 2023)

this method should be considered in the process of assessing the impacts of corporate operations on human rights.⁷⁴ The Nigerian government authorized the NAP on Business and Human Rights in April 2023, and it was incorporated as a chapter in the larger National Action Plan for the Promotion and Protection of Human Rights (2024-2028) on January 14, 2024. From 2015 to 2018, the National Human Rights Commission also conducted a number of consultations with civil society organizations. In order to produce the draft NAP, these consultations aimed to gather feedback from a range of stakeholders. The goal of these consultations was to get feedback on the draft NAP from a range of stakeholders. The outcome of these consultations was a platform for pinpointing areas that needed improvement in order to direct the creation of the NAP 2024–2028.⁷⁵ The creation of a National Working Group on Business and Human Rights (NWGBHR) is one of the actionable items under the State Duty to Protect. Its responsibility is to coordinate all of the efforts of the agencies that deal with business and human rights concerns.

At the regional level, the African Commission on Human and Peoples' Rights, during its 51st Ordinary Session, which took place in Banjul, the Gambia, from April 18 to May 2, 2012, endorsed the resolution on a human rights-based approach to natural resources governance.⁷⁶ A state must make sure that its governance of natural resources complies with international human rights norms and regulations. States must make sure that human rights are upheld when it comes to managing toxic waste, exploring for natural resources, and creating a legal framework for the sustainable development of water and natural resources. According to the Resolution, the parties must take steps to guarantee community participation and free, prior, and informed consent when making decisions about the governance of natural resources. States must step up regional initiatives to support legislation pertaining to natural resources that upholds everyone's rights. To ensure the accountability of extractive industries and the justiciability of human rights in the host and legal domicile countries, governments must also establish independent monitoring and accountability systems. The Resolution gives effect to the respect of human rights in the activities pertaining to the development of natural resources, even though it may not provide a detailed

⁷⁴ Gotzmann & Bansal (n 67 above) 5

⁷⁵ National Action Plan on Business and Human Rights- Nigeria
<https://globalnaps.org/country/nigeria/#:~:text=A%20NAP%20on%20Business%20and,adopted%20on%2014%20January%202024>. (accessed 18 October 2024)

⁷⁶ Resolution on a human rights-based approach to natural resource governance African Commission on Human and Peoples' Rights 51st Ordinary Session 2012 (the Resolution)

understanding of what an HRBA comprises. The Resolution is relevant because it provides governments with recommendations on how to implement the HRBA in different jurisdictions. The Resolution is commendable since it acknowledges that the utilization of natural resources must respect human rights. It is up to each state to take the necessary actions to include a human rights-based approach into the exploitation of natural resources within their borders, as the Resolution does not impose any obligations on member states.

Although there might not be a specific format for incorporating HRBA principles into mining laws and policies, the government of Nigeria can use the ones offered at the regional and international levels as a guide for efficient management and governance of the mining sector. This aims to address the issues, especially the violations of human rights brought about by mining corporations. One example is the State of Pakistan, which is dedicated to upholding its commitments under international human rights law and to promoting and defending human rights, particularly those of marginalized and vulnerable people. In order to safeguard its people's rights against the detrimental effects of corporate operations on human rights, the State of Pakistan developed the National Action Plan (NAP) to implement the UN Guiding Principles on Business and Human Rights. A National Baseline Assessment (NBA) on laws and policies pertinent to BHR in Pakistan and a number of stakeholder discussions led to the development of NAP. Initiation, evaluation and consultation, writing, implementation, and updating are the five stages of the UNWG's Guidance on National Action Plans on Business and Human Rights (also known as the NAP Guidance Document), which it has finished three of. The SDG goals serve as a yardstick for the suggested actions. The NAP is a supplement to Pakistan's 2016 National Action Plan on Human Rights, which focuses on implementing international instruments and important human rights priorities, including human rights protection actions. The Action Plan emphasizes the successful operation of Treaty Implementation Cells (TICs), the implementation of international commitments made possible by capacity-building programs, the strengthening of the National Human Rights Institutes (NHRI), and a rights-based approach to development planning.⁷⁷

⁷⁷ Ministry of Human Rights Government of Pakistan First five year National Action Plan on Business and Human Rights (2021-2026) Pakistan chrome-extension://efaidnbmnnnibpcajpcglefindmkaj/https://portal.mohr.gov.pk/wp-content/uploads/2021/11/NAP-BHR.pdf (accessed 18 October 2024)

5. Conclusion and Recommendation

Potential advantages for the nation and its people may result from the extraction of mineral resources. It is clear that the outcomes of ignoring the negative effects of corporations' mining operations are severe environmental damage and violations of human rights. Therefore, in order to successfully tackle the issues, it is necessary to address weak legislation and bad management of mineral development. A human rights-based approach to mineral development ensures that the process adheres to human rights norms, which is one way to resolve human rights issues. This has been embraced at the regional level to demonstrate the significance of implementing the strategy. In addition to preserving the environment and safeguarding the rights of effected communities, mineral development that incorporates human rights can also guarantee that the advantages of mineral wealth are distributed fairly. This approach improves the effectiveness of sustainable projects invariably promoting the SDGs in the process by embedding human rights into development frameworks.

Nigerian mining development can become transformed if it is approached from a human rights perspective. By prioritizing the rights of communities and ensuring equitable distribution of resources, Nigeria can harness its mineral wealth for sustainable development that benefits all its citizens. Collaboration among government, industry, and communities is essential to achieve these goals.

Furthermore, human rights protection must to be incorporated into the legal framework that oversees natural resources, including mining regulations. Since the protection of human rights encompasses both people and the environment, the applicable laws must change their focus from protecting the environment to protecting the impacted individuals. Governments should demonstrate their support for human rights by making sure that the institutions and regulations governing the management of natural resources in their countries encourage respect for these rights. As a result, current legislation has to be changed to comply with global human rights norms. This would guarantee that human rights are upheld in situations involving the exploration and exploitation of mineral resources, as well as their governance and the handling of toxic waste.

Furthermore, the government should adopt effective mechanisms that guarantee that the consent of the concerned communities and ensure that participation of the affected groups or communities are taken seriously in the decision-making process regarding mining projects.

Government should also provide social and human rights impact assessments. These impact assessments address human rights and social concerns related to mining developments. This will be in addition to the environmental impact assessment that focuses on addressing effects of mining operations on the environment.

.....