

# The Contribution Of The Minerals And Mining Industry To Poverty Alleviation and Sustainable Development In Nigeria – A Legal Perspective

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## 1.0 Abstract

Despite the huge deposits of mineral resources in Nigeria, the success of the Mineral and Mining industry in alleviating poverty has been relatively low. There is high inequality which is reflected in a wide gap between the rich and the poor and poverty alleviation. Environmental, social and economic activities encourage poverty in Nigeria. Poverty reduction strategies ignore the contribution of mining to poverty reduction. Activities in the mining industry can cause damage to the environment and reduce economic growth if not carried out in an environmentally sound manner. The rule of standi is not given broad interpretation and this has hindered the activities of civil society organization in exposing violation of recognized norms in the mining industry. There is therefore a need to evaluate activities of the mining sector and how it contributes to the alleviation of poverty and the quest for sustainable development. This paper highlights the place of mining industry in the alleviation of poverty and the attainment of sustainable development. It articulates some of the challenges faced by the Nigerian mineral industry and reviews some practices for enhanced public participation in the environment, social and economic aspects of the mining circle. A framework of improved policies, legal and policy mining operations were also discussed, with a view to offering solutions as to how the Nigerian Mineral and Mining Industry can contribute to achieve a better world for Nigerians.

## 2.0 Introduction

Nigeria is richly endowed with minerals and she has a very high significant share in the world's mineral market. The country relies heavily on the mining industry, which plays a crucial role in her economy.<sup>1</sup> Nigeria has always hoped to make and use the mineral sector to contribute to economic and social development and to alleviate poverty. This made the Nigerian State to take full control of the industry with the hope that the mining sector would be the engine of growth and rapid industrialization, providing more economic benefits to the nation as well as improving the livelihoods of the people. Rapid transformation to rehabilitate moribund minerals and mining sector to attract foreign direct investment were embarked upon. State enterprises were privatized and efforts as well as resources were redeployed to improve the investment climate. Mineral policies, statutory<sup>2</sup> and regulatory<sup>3</sup> as well as administrative frameworks were formulated and established. Search for new social contracts which could result in integrated development and increased social well-being, livelihood in response to pressures for an equitable share of benefits and maximization of local impacts for sustainable development were undertaken in the mineral sector. Tri-sector partnerships involving government, private sector and local communities was introduced in order to improve government, private and local community relationships as well as social and development outcomes of mining at local levels. Despite all of the above, the Nigerian mineral sector has failed to realize improved well-being for all, to the disappointment of the Nigerian populace. This paper focuses on how the mining industry can be engine of sustainable development and alleviate poverty in Nigeria.

## 3.0 The Mining Industry

<sup>1</sup> Pegg, S (2003) Poverty Reduction or Poverty Exacerbation? "World Bank Group Support for Extractive Industries in Africa" Department of Political Science, Indiana University, Indianapolis

<sup>2</sup> Such as the Minerals and Mining Act CAP M12 LFN 2004

<sup>3</sup> Such as the National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations 2009

Mineral deposits are vital to the development of both rich and poor countries alike. They are endowments that can be used to promote growth and development in any given economy. Careful extraction of these deposits will help in the education and health systems and other forms of human and social capital.<sup>4</sup>

Nigeria is engaged in enclave mining with vicious cycle of poverty. The country operates a mono-economy with erratic income and low savings. Opportunistic self-serving systems of governance operate in Nigeria as depicted in land seizure, corruption and conflict. Nigerian degraded environment as a result of activities in the mining sector results in the challenges of environmental health, deforestation and erosion etc.

Mining can create opportunities for growth and development through enhanced revenue derived from export earnings, taxes and royalties, job creation, knowledge, skill and technology transfer, provision of infrastructure and social services etc. Be that as it may, mining activities also create a number of negative impacts on the environment, social fabric as well as the economy. Since mineral resources are physically finite, the wealth created as a result of the extraction of mineral resources must be effectively deployed. A stable and profitable project requires consideration of not just the economic viability of mineral deposit, but competent project appraisals are also essential. Mining can only gain acceptance if it improves its social, economic and environmental contribution with new and evolving governance systems. More needs to be done to achieve a positive change in the Nigerian mining industry if it is to become a catalyst for sustainable development.

The State is expected to represent the interest of the people. More often than not, the local communities are disenfranchised and rendered passive spectators of the development process. This is particularly so in the extractive industries, particularly the mining sector of the economy.

Nigeria needs to transit from a vicious cycle of poverty to a virtuous circle of abundance. A nation with economic vitality and diversification that will lead to reinvestment of income into the Nigerian economy as well as more equitable distribution of economic opportunity is desired in Nigeria. A transition to a social and cultural well-being with improved capacity to plan and manage Nigerian affairs with the full participation of community organization is needed in Nigeria as well as a transparent and equitable governance system which have regards for resource rights. Sustainable mining is the surest way to achieve the above.

#### **4.0 Challenges Association With Mining Operations**

Minerals are examples of non renewable resources. The wealth created by minerals is expected to be used to build as an engine of growth and development, and to sustain it long after the minerals have been depleted. This poses a great challenge as to how to create a viable and diversified mining industry throughout the value chain, and sustain mineral wealth without compromising other forms of land use and environmental, social and cultural considerations, and ensuring an enabling environment that encourages mineral wealth.

Investment challenge is another challenge facing mining operations in Nigeria. This has to do with how to invest mineral revenues to ensure sustainable wealth and deciding how much ought to be saved and how much should be invested as well as how to determine the area of investment.

Distributional challenge is yet another challenge facing the mining industry. This has to do with distributing benefits from mining equitably and balancing and managing conflicting local and national level concerns and interests and determining what form the allocation should take to promote pro-poor growth. Also associated with this is the challenge of how to maximize the benefits of mining, and avoid or mitigate the adverse impacts of mining at the community level.

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<sup>4</sup>Ms. Vinveeta Sing (2014) "An Impact and Challenges of Sustainable Development in Global Era," Journal of Economics and Development Studies, Vol. 2, No. 2, pp 327-337 at 333

Governance and macro-economic challenges is yet another challenge. This has to do with how to ensure sound systems of governance and a stable macroeconomic policy which curbs rent-seeking and corruption while enhancing public interest in wealth creation.

Mineral companies are also faced with the challenge of how to meet sustainable development imperatives. This include how to go beyond their traditional responsibilities to employees, shareholders and regulators, and how to engage in meaningful partnerships with governments and local communities as well as foster stakeholder participation and ensure integrated life cycle planning in all activities for a post mining scenario.

There is also failure to underscore the negative economic, political, or social externalities and pitfalls which may arise from a growth strategy that relies solely on mining and lack of awareness of the potential for resource-dependent growth to exacerbate poverty.

Poverty reduction strategies have ignored the contribution of mining to poverty reduction. Such strategies fail to stress the fact that growth must be channeled into pro poor initiatives in order to ensure poverty reduction. Abundance deposit of mineral resources has accelerated the rout to poverty in Nigeria rather than alleviate same, for many reasons: Neglect of human capital development; non-responsiveness of government to the needs of Nigerian poor; weak social infrastructure, dysfunctional economic policy; corruption etc.

With regards to policy formulation, poverty reduction strategies are required to be produced through participatory processes. The representativeness of the civil society groups, their capacity to address policy issues and the extent to which representatives of the people in the legislature are involved and the relationships between policy articulation in poverty reduction strategies and those implemented by government through budget statements and other policy measures is questionable.

Divergent interests exists, in dealing with environmentally sound production and consumption patterns. While issues of risks and hazards minimization are being addressed, those relating to elimination of hazardous wastes and full cost accounting have received few policy recommendations. Environmental miners are faced with the challenge of how to optimize the trade-off between environmental damage and the potential benefits to national and local economies.<sup>5</sup> In most cases, mine decommissioning is not planned for in a continuous manner and this includes promotion of alternative forms of livelihoods for miners, relocation of mining communities and restoration of land and structures for alternative uses after mine closure. This has made it difficult to overcome challenge of environmental management in the mining sector of the Nigerian economy.

Capacity to effectively handle the mineral sector is low and how to apply sustainable development principles in practice to the mining sector is another big challenge.

## **5.0 Sustainable Development**

Different paradigms of development are being given consideration globally and one of such paradigms is sustainable development. Sustainable development is the process of judicious use and conservation of natural resources for the overall improvement in the quality of life for the present and future generations on long term basis.

Sustainability is the ability of a system to maintain a well defined level of performance over time and if required, to enhance that output without damaging the essential ecological integrity of the system.<sup>6</sup> It is the ability of a system to keep production and distribution going continuously without failing.<sup>7</sup>

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<sup>5</sup> Sterling, V. A (2002) "Breaking New Ground: Mining, Minerals and Sustainable Development (MSSD)", Earthscan Publications Ltd., London

<sup>6</sup> Jodha (1990) quoted by Grace O. Evbuomwan, Emmanuel U, Ukeje, Moses F, Out, B.A.G, Amoo, E.A., Essien, L. I, Odey and M. A. Abba, Agricultural Development, Issues of Sustainability, In Nnanna, O. J., Alade, S. O. and Odoko, F.O. (2003) Contemporary Economic Policy Issues in Nigeria, Central Bank of Nigeria Publication, 2003 pp. 185 - 221

The United Nations Development Programme sees sustainable development as not only generating economic growth, but distributing its benefits equitably, empowering people rather than marginalizing them, giving priority to the poor, enlarging their choices and opportunities, and providing for their participation in decisions affecting them.<sup>8</sup> It is that development that does not endanger the environment and the resources therein but preserve same for present and future generations. It is a self sustaining development that meets the needs of both present and future generations. It is a type of development that increases the availability of life, goods and services such as food, education, health, protection and raising living levels through higher income, employment, better educational institutions and that which frees the people from servitude and continuous dependence on individuals and nations.<sup>9</sup>

The term “sustainable development” is generally considered to have been coined by the 1987 Brundtland Report which defined it as “development that meets the needs of the present without the compromising the ability of future generations to meet their own needs.” The term contains within it, two concepts namely:

- i. The concept of ‘needs’, in particular, the essential needs of the world’s poor to which overriding priority must be given;
- ii. The idea of limitation imposed by the state of technology and social organization, on the environment’s ability to meet present and future needs.<sup>10</sup>

Going by the above, activities in the mining industry ought to take into account, the essential needs of the poor in Nigeria, and priority attention ought to be given to alleviating the poverty level in Nigeria. If the mining industry is to contribute to sustainable development in Nigeria, mineral resources are required to be explored in an equitable and prudent manner and used equitably as well as preserved for future generations. Policies in the mining sector should be such that ensures that environmental considerations are integrated into development plans and programmes and projects in the mining industry.

The concept of sustainable development comprises of four legal substantive elements and some procedural elements<sup>11</sup> which enhances the pursuit of sustainable development. The following are the substantive elements of sustainable development:

- 1) The preservation natural resources for the benefit of future generations (the principle of intergenerational equity);
- 2) The exploitation of natural resources in a suitable or prudent manner (the principle of sustainable use);
- 3) The equitable use of natural resources which requires that the use by one State must take account of the needs of other States (the principle of equitable use or intra-generational equity); and

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<sup>7</sup> Idachaba, F. S. (1980) Concepts and Strategies of Integrated Rural Development: Lessons From Nigeria. In: In Nnanna, O. J., Alade, S. O. and Odoko, F.O. (2003) Contemporary Economic Policy Issues in Nigeria, Central Bank of Nigeria Publication, 2003 pp. 185 - 221

<sup>8</sup> Emmanuel O. Oladapo, Human Development Strategies: The UN Approach: A Paper Presented at the PALACE FORUM on Culture and Development, Benin City, Feb. 22 1997 p. 1

<sup>9</sup> M. P. Todaro, (1992) Economics for Developing World, and Introduction to Principles, Problems and Policies for Development, (3rd ed) Longman NY, p. 155

<sup>10</sup> Report of the World’s Commission on Environment and Development (The Brundtland Report) , Our Common Future (1987), 43

<sup>11</sup> The procedural elements of sustainable development include public participation in decision making, environmental impact assessment, cooperation between states, access to information etc

- 4) The need to ensure that environmental considerations are integrated into economic and other development plans, programmes and projects and that development needs are taken into account in applying environmental objectives (the principle of integration).<sup>12</sup>

The procedural elements of sustainable development include public participation in decision making, environmental impact assessment, cooperation between States, access to information and justice etc.

Sustainable development seeks economic development that is ecologically sound, equitable as to both present and future generations and one that promotes social welfare.<sup>13</sup> Operationally, sustainable development requires governance structure that integrates economic and environmental concerns into all decisions, promote sustainable consumption and population levels intergenerational equity, public participation, and imposes this common responsibility on all nations, although with the responsibility differentiated between developed and developing nations.<sup>14</sup> Activities in the mining industry must be carried out in an ecologically sound manner and must of necessity promote social welfare.

At the root of the concept of sustainable development is the belief that the resources of the earth belong to all generations. No country or generation has an exclusive right to the natural resources of the earth which have been handed over from past generations. Consequently the present generation has an obligation to transmit mineral resources deposits in good and enhanced conditions to posterity. The concept of sustainable development also calls for fairness in the utilization of resources between past, present and future generations.<sup>15</sup> It requires attaining a balance between meeting the consumption demands of existing societies and ensuring that adequate mineral resources are available to meet the needs of future generations.<sup>16</sup> In mining, sustainable development involves using natural capital, which is the rewards from extracting raw materials, to build social and human capital such as schools, hospitals, jobs, skill acquisition etc.<sup>17</sup>

Members of the present generation hold the earth in trust for future generations.<sup>18</sup> As a result, recognition has been given to the interests of the nations of the world in safeguarding the great natural resources for future generations.<sup>19</sup> Mineral resources are required<sup>20</sup> to be conserved, utilized and developed by establishing and maintaining their rational utilization for the present and future welfare of mankind. In this regard, nations of the world have pledged to protect, conserve, present and transmit cultural and natural heritage to future generations.<sup>21</sup> More recent treaties<sup>22</sup> have also sought to preserve particular natural resources<sup>23</sup> and other environmental assets<sup>24</sup> for the benefit of present and future generations.

The role of minerals sector in contributing to sustainable development was examined in the year 2000 by the corporate world initiative.<sup>25</sup> This was with the aim of assessing global mining and minerals use

<sup>12</sup> Philippe Sands, (2004) Principles of International Environmental Law, Cambridge University Press, 2003 pp.252 - 256

<sup>13</sup> David R. Hodas (2005) "Sustainable Development and the Marrakech Accords" in Adrian J. Bardbrook, Rosemary Lyster and Richard L. Ottinger and Wang X. I. (2005) The Law of energy for sustainable Development, Academy of Environmental Law Research Studies, University Press, Cambridge p. 56

<sup>14</sup> John C. Dernback (2002) "Sustainable Development: Now More than Ever" in John C. Dernback (2002) Stumbling Towards Sustainability Environmental Law Institute

<sup>15</sup> Brown, E. Weiss, (1989) In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity, Transnational Publishers, New York

<sup>16</sup> Franck, T.M. (1995) Fairness in International Law and Institutions Oxford University Press, Oxford,

<sup>17</sup> Ms. Vineeta singh (2014) "An Impact and Challenges of Sustainable Development in global Era" Journal of Economics and Development Studies Vol. 2, No. 2 pp 327-337

<sup>18</sup> Brown Weiss E. (1990) "Our Rights and Obligations to Future Generations for the Environment. 84 AJIL 198 at 199

<sup>19</sup> See the Preamble to the 1946 International Whaling Convention

<sup>20</sup> See Preamble to the 1968 African Conservation Convention

<sup>21</sup> See Article 4 of the 1972 World Heritage Convention

<sup>22</sup> Like the 1992 Climate Change Convention (Article 3 in particular), the 1992 Biodiversity Convention etc

<sup>23</sup> Such as flora and fauna, essential renewable natural resources, water resources and other resources of the earth

<sup>24</sup> Such as the climate system and the environment generally

<sup>25</sup> See Mining, Minerals and Sustainable Development Project (MMSD)



in terms of transition to sustainable development; identifying how the services provided by the minerals sector could be delivered in accordance with sustainable development in the future; propose key elements of an action plan for improving the mineral system; and build platforms of analysis and engagement for ongoing cooperation and networking among all stakeholders.<sup>26</sup>

An examination of the laws and policies regulating the Nigerian mining industry reveals that these laws have the principles of sustainability embedded in them. Such provisions should have enabled the mining industry to operate in an environmentally sound manner. Unfortunately, these provisions only reflect on paper. They are not implemented by the relevant bodies saddled with the responsibility of implementing them. This has made the benefits of sustainable operations in the Nigerian mining industry evasive.

## **6.0 Legal and Policy Framework on The Mining Industry in Nigeria**

The legal protection of private persons and propriety rights at common law which gives liability for pollution-free activities in the mining industry is mostly based on actions in the tort of trespass to land, nuisance, negligence and the rule in *Rylands v. Fletcher* and these deal with liability for damage caused by the escape of noxious substances from the land.<sup>27</sup> The statutory framework directly related to mining operations in Nigeria includes the Nigerian Constitution, the Minerals and Mining Act, the Land Use Act, the Environmental Impact Assessment Act etc. Institutional framework on the Nigerian environment with regards to mining operation is the National Environment (Mining and Processing of coal, Ores and Industrial Minerals) Regulations 2009. The Minerals and Mining Act and the National Environment (Mining and Processing of coal, Ores and Industrial Minerals) Regulations 2009 will be discussed in this paper.

### **6.1 The 1999 Constitution of the Federal Republic of Nigeria**

The 1999 Constitution made provision for mining and minerals.<sup>28</sup> By the constitutional provision, exclusive legislative competence is vested in the Federal Government as opposed to its constituent States or local governments. According to the Constitution,<sup>29</sup> "... the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria, in, under or upon the territorial water and the Exclusive Economic Zone of Nigeria, shall be vested in the government of the Federation, and shall be managed in such a manner as may be prescribed by the National Assembly."

### **6.2 The Minerals And Mining Act CAP M12 LFM 2004**

The Mineral and Mining Act provides for the control of and property in minerals and to regulate mining in Nigeria. The act vests the entire property in and control of all minerals in, under or upon any land in Nigeria, its contiguous continental shelf and of all rivers, streams and watercourses throughout Nigeria, any area covered by territorial waters or constituency and the Exclusive Economic Zone in the government of the federation, for and on behalf of the people of Nigeria.<sup>30</sup> All lands in which minerals have been found in commercial quantities is acquired by the Federal government in accordance with the provisions of the land Use Act and such land is designated as security lands.<sup>31</sup>

### **6.3 The Land Use Act CAP L5 LFN 2004**

The Act is targeted at reducing the incidents of under-utilization or unproductive use of natural resources on the land among other things. The Land Use Act removed the ownership of land from the communities and nationalized all land in Nigeria. The essence of the Act is "to vest all land

<sup>26</sup> Sterling, V, A (2002) supra

<sup>27</sup> Emejuru C., (2006) "Legal Framework for the Environment Against Oil and Gas Pollution in Nigeria" M.Phil thesis Submitted to the Faculty of Law Ile-Ife. p. 225

<sup>28</sup> See Items 39 and 41 of Schedule II of the 1999 Constitution of the Federal Republic of Nigeria

<sup>29</sup> Section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria

<sup>30</sup> Section 1(1) of the Minerals and Mining Act, 2004

<sup>31</sup> Section 1(2) of the Minerals and Mining Act, 2004

comprised in the territory of each State<sup>32</sup> in the Governor of the State, who would hold such land in trust for the people. Thus, all land comprised in the territory of each state are vested in the Governor of that state and such land is held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.<sup>33</sup>

#### **6.4 The Environmental Impact Assessment (EIA) Act (CAP E12 LFN 2004)**

EIA is a pre-requisite for all development projects in Nigeria.<sup>34</sup> It is “an assessment of the environmental impacts of a project” or “a process which attempts to identify and predict the impact of legislative proposals, policies, programmes, projects and operational procedures on the biogeophysical environment and on human health and well-being. EIA is an important tool for sustainability requiring contracting parties<sup>35</sup> to introduce appropriate procedures and requiring environmental impact assessment of its proposed project which are likely to have significant adverse effects.<sup>36</sup>

#### **6.5 National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations 2009**

The purpose of the above Regulation is to minimize pollution from the mining and processing of coals, ores and industrial minerals.<sup>37</sup> New developments in the mining and processing techniques are required<sup>38</sup> to apply up-to-date, efficient cleaner production technologies to minimize pollution to the lowest degree practicable. Adopting the polluter pays principle, the collection, treatment, transportation and final disposal of wastes within the specified standards and guidelines is made the responsibility of the facility generating the wastes.<sup>39</sup> In the event of a pollution resulting in an impact on the environment whether socio-economically or health wise, the facility shall be responsible for the cost of clean-up,<sup>40</sup> remediation,<sup>41</sup> reclamation,<sup>42</sup> compensation to affected parties<sup>43</sup> and cost of damage assessment and control.<sup>44</sup>

#### **7.0 Framework For A Sustainable Mineral Sector in Nigeria**

In order to attain a sustainable mineral sector in the economy, the following should be in place:

##### **7.1 Principles of Sustainable Development**

As mentioned earlier, sustainable development comprises of four legal substantive elements as well as some procedural elements which facilitate the implementation and enhances the pursuit of sustainable development. They include the principle of sustainable use of natural resources, the principle of equity and eradication of poverty, the principle of common but differentiated responsibilities, the principle of precautionary approach to fields such as health, natural resources and ecosystem, the principle of public participation and access to information and justice, the principle of good governance and the principle of integration. The observance of these principles in the Nigerian mining industry will go a long way in ensuring a sustainable mining industry in Nigeria that will be a catalyst for sustainable development in Nigeria.

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<sup>32</sup> Except land vested in the Federal Government or its agencies

<sup>33</sup> Section 1 of the Land Use Act

<sup>34</sup> With effect from March 1991

<sup>35</sup> In this case, the federal government and the MNCs

<sup>36</sup> Article 11 of the Convention on Biological Diversity

<sup>37</sup> Regulation 1 of the National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations, 2009

<sup>38</sup> Regulation 2(1)

<sup>39</sup> Regulation 13(1)

<sup>40</sup> Regulation 13(2)(a)

<sup>41</sup> Regulation 13(2)(b)

<sup>42</sup> Regulation 13(2)(c)

<sup>43</sup> Regulation 13(2)(d)

<sup>44</sup> Regulation 13(2)(e)

## 7.2 Integration of Mining into the Nigerian Economy

Sustainable development principles should effectively be integrated into the mining sector of the Nigerian economy in order to maximize value accruing to the Nigerian economy. This will help to increase the proportion of mining revenues retained in the country as well as to enhance income and employment multiplier effects. Such integration will enable Nigerians to participate more fully in the mineral sector of the economy and it will encourage the company to procure greater amount of local goods and services for its operations. It will also help to reduce the isolation of mining operations from the Nigerian economy. By so doing, there will be increase in the proportion of mining revenue that is retained in the country and this will help to enhance income and employment multiplier effects.

## 7.3 Sustainable Use of Mineral Resources

The principle of Sustainable Use of Natural Resources places Nigeria under the obligation to take future generations into account by managing her mineral resources in a rational, sustainable and safe manner and in such a manner as to contribute to the development of her citizens, and to the conservation and protection of her mineral resources. The underlying factor here is concern for more rational use and conservation of mineral resources.<sup>45</sup> Thus, all relevant actors<sup>46</sup> are placed under a duty to avoid wasteful use of mineral resources and promote waste minimization policies.

## 7.4 Equity and Eradication of Poverty

The principle of equity and eradication of poverty are central to the attainment of sustainable development.<sup>47</sup> It is the primary responsibility of States to aim for conditions of equity within its population, and to ensure the eradication of poverty. Equity here refers to both inter-generational<sup>48</sup> equity and intra-generation equity.<sup>49</sup> This principle places the Nigerian government under a duty to ensure equitable use of her mineral resources so as to enable it serve the needs of both present and future generations.

## 7.5 Precautionary Approach

The principle of precautionary approach<sup>50</sup> is a commitment<sup>51</sup> to avoid human activity that may cause significant harm to human health, natural resources or ecosystems even in the light of scientific uncertainty. This principle permits precautionary regulations in the absence of complete evidence about the particular risk scenario.<sup>52</sup> By this principle, even in the absence of scientific uncertainty, any mining operation in a way that is likely to result in harm to human health should be avoided. In other words, mining operations must be carried out in an environmentally friendly manner.

## 7.6 Good Governance

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<sup>45</sup> Patricia Birnie, Alan Boyle and Catherine Redgwell (2009) *International Law And The Environment* (3<sup>rd</sup> Ed.) Oxford University Press, Oxford at p. 199

<sup>46</sup> Such as States, industrial concerns and other components of civil society

<sup>47</sup> See the New Delhi Conference which took place in April, 2002

<sup>48</sup> This imposes a duty on present humanity to take into account, the long term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations. Benefits in this context could mean economic benefit, social benefit or environmental benefit

<sup>49</sup> This refers to the right of all people within the current generation to fair access to the natural resources of the Earth

<sup>50</sup> This approach includes State responsibility, planning based on clear criteria and well defined goals, effective use of environmental impact assessment, the establishment of an appropriate burden of proof on the part or persons carrying out or intending to carry out the activity and accountability for harm cause, where appropriate

<sup>51</sup> Commitment here is on the part of the State, civil society, international organizations and scientific and business communities

<sup>52</sup> Daniel Bodansky, Jutta Brunnee and Ellen Hey (2010) *The Oxford Handbook of International Environmental Law*, Oxford University Press, Oxford at p. 604



The principle of good governance is in line with the declaration that civil society and non governmental organizations have a right to good governance.<sup>53</sup> Democratic and transparent decision making procedures, financial accountability effective measures to combat corruption, respect for the principle of due process, rule of law and human rights and the implementation of a public procurement approach are all part and parcel of good governance. Good governance can also be in the context of corporate social responsibility and socially responsible investments and a fair distribution of mineral wealth among and within communities. The observance of this principle in the mining industry will go a long way in attaining sustainable development in Nigeria.

### 7.7 Access to Information

Access to relevant information<sup>54</sup> is an essential public policy tool for the enforcement and implementation of mineral rights. Routinely making mining information public enables civil society to play an active role in ensuring reinforcement and expanding upon government efforts to ensure accountability. Access to information will help to enlighten citizens on environmental threats and the origin of such threats and enable the public to effectively advocate for environmental protection. Effective right to information is what will enable citizens to question, challenge and otherwise influence decision making in a more positive manner as well as to enhance the transparency of mining activities. A framework that makes mining information available in a transparent and user-friendly manner will surely assist in ushering in sustainable development sector in Nigeria.

### 7.8 Public Participation

Public participation is a condition for responsiveness, transparency and accountability.<sup>55</sup> Public participation and sustainable development are both central and interconnected in current development discuss. Public participation forms a very important part of environmental impact assessment, having great potential for contributing to the sustainable management of natural resources especially in the area of decision making as to whether or not a project with potentially significant environmental impacts should proceed. Where environmental impact assessment is imposed, the public participation component is expected to be included.

Public participation has been made a central developmental objective<sup>56</sup> and universal public participation has also been recognized<sup>57</sup> as essential for the right to development. It was explicitly stated that “one of the fundamental prerequisites for the achievement of sustainable development is broad public participation”.<sup>58</sup> Sustainable development therefore requires broad public participation in decision making. Public participation is based on the right of those who may be affected to have a say in the determination of their environmental future.<sup>59</sup> Agenda 21 emphasizes the desirability of direct participation in governance by identifying important roles for women, youth, indigenous people and their communities, non-governmental organizations, local authorities etc.<sup>60</sup> In line with the above, it has been declared<sup>61</sup> that “all persons have the right to active, free and meaningful participation in planning and decision-making and processes that may have an impact on the environment and development. This should be brought to bear in the Nigerian mining industry.

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<sup>53</sup> International Law Association

<sup>54</sup> Environmental information includes any information in writing, visual, oral, electronic or in any other material form on the state of the environment, policies or measures taken or the state of human health and safety that will affect or likely to affect the state of environment.

<sup>55</sup> This is on the part of government, civil society, industrial concern and trade unions

<sup>56</sup> 1986 United Nations General Assembly *Declaration on the Right to Development*

<sup>57</sup> Article 1 of the 1986 United Nations General Assembly *Declaration on the Right to Development*

<sup>58</sup> Agenda 21(See note 48) at para. 8.3(d), 8.4(e), and 23.2

<sup>59</sup> Kiss, A & Shelton, D (1994) *International Environmental Law*, 2<sup>nd</sup> ed. Transnational Publishers, New York at 204

<sup>60</sup> Agenda 21(See note 48) at para. 8.3(d), 8.4(e), and 23.2

<sup>61</sup> 1994 Draft Principles on Human Rights and the Environment

There can be no effective mineral sector without the constructive participation of civil society. It has been observed<sup>62</sup> that Government commitment will be useless if they are not paralleled by similar commitments by the business sector and civil society. Federal government cannot do every thing; the essential role of government is to encourage and facilitate sustainable activities in order to further rather than impede sustainability goals. Government can also encourage and facilitate other actors in society towards the attainment of these goals. Government needs the advice and support and action of civil society to channel the power of the people they represent.<sup>63</sup>

Nigerian government needs to foster sustainable mineral sector by energizing all parts of society to seek the end result of sustainable mineral sector through public participation that is founded on clearly defined principles,<sup>64</sup> ground rules and objectives. A framework of sustainable environmental governance is therefore one that takes into account the role of all actors which all impact on the mineral sector.

Many of the regimes on mineral resource management give expression to public participation but experience has shown that it is one thing to give expression to public participation right and quite another to effectively implement them. It should be noted that the most effective obligations are those which are legally enforceable. The most effective method of enforcement is by way of orders made by a court or other judicial body. In most cases, it is stipulated a person does not have legal standi to institute and action he or she can show a right infringed or an interest prejudiced over and above the general public interest in the matter.

The principle of public participation stresses the importance of public participation to sustainable development. Public participation is a condition for responsiveness, transparency and accountability.<sup>65</sup> It requires effective protection of the human right to hold and express opinions, and to seek, receive and impact ideas and it requires a right of access to appropriate, comprehensive and timely information in the custody of government and industrial concerns regarding the sustainable use of natural resources and the protection of the environment. It also requires that nondiscriminatory access to effective judicial or administrative procedures should be ensured in jurisdictions where measures have been taken to challenge such measures and to claim compensation.<sup>66</sup> Nigerians should be given ample opportunity to participate in the mineral sector of the economy.

## **7.9 The Principle of Common But Differentiated Responsibility**

The principle of common but differentiated responsibilities requires cooperation<sup>67</sup> in the achievement of global sustainable development and the promotion of the environment. This principle also requires that recognition be given to the special needs of developing countries and countries with economies in transition and that developed countries should bear special burdens and responsibilities in reducing and eliminating unsustainable patterns of production and consumption and in contributing to capacity building in developing countries.<sup>68</sup> The application of the above principle to the mining sector of the Nigeria economy requires the Nigerian government to give recognition to the special needs of members of the communities where mining operations take place, while bearing the burden of having to reduce and eliminate unsustainable patterns of production and consumption and in contributing to capacity building of such people.

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<sup>62</sup> Evans P. (1996) "Government Action, Social Capital and Development: Reviewing the Evidence on Synergy" *World Development* 24(6): 1119-1132

<sup>63</sup> Civil Society Consultations on the International Governance: Summary Report, Nairobi May 22-23, 2001 at p. 6

<sup>64</sup> Such as the principles of transparency, collaboration, equity etc.

<sup>65</sup> This is on the part of government, civil society, industrial concern and trade unions

<sup>66</sup> See Principle 10 of Rio Declaration

<sup>67</sup> Those to cooperate in this regard includes all States, relevant actors, international organisations, corporations, non-governmental organisations and civil society

<sup>68</sup> See principle 7 of the Declaration of the 1992 Conference on Environment and Development which took place at Rio-de Janeiro

### **7.10 Capacity Building**

Capacity is the fuel to the implementation of any development agenda. The transformation of the mineral sector requires upgraded and integrated institutions and capacities. An effective capacity-building process is one which encourages the participation and ownership, and one which provides a non-partisan and genuinely inclusive space for stakeholders engagement. Capacity strengthening efforts to enhance effectiveness and transparency, and increase the skill base through training of local employees who will eventually replace highly skilled foreign labour is essential. Capacity building should result in governmental efforts that is adequately funded, well managed, capable of integrating environment and development policies and supported by sufficient non-governmental constituencies to overcome interests vested in unsustainable practices.<sup>69</sup> Strong efforts must be made to increase local competence for meaningful participation in the mineral sector of the Nigerian economy.

### **7.11 Financial Assistance**

Assistance should be provided to indigenous business people through direct grants or soft loans. Indigenous companies should be made to supply goods and services to mining companies. This will enable them to participate more fully in the mineral sector of the economy. Appropriate monitoring of the use of such assistance should be undertaken. As a way of incentives, such indigenous companies should be exempted from payment of tax. Nigeria should also endeavour to finance down stream projects such as further processing of mineral products in this integration process. This will also help to ensure that greater profit from mining is retained in Nigeria.

### **7.12 Foreign Exchange Control**

Nigeria can institute a foreign exchange policy requiring mining companies to justify the proportion of their gross revenues which they would need to retain offshore to pay for their foreign costs and obligations. This would encourage such companies to procure greater amount of local goods and services for their operations as well as help to reduce the isolation of mining operations from the Nigerian economy. Nigeria will enjoy more access to foreign currency from mining to enable her service other domestic requirements more effectively.

### **7.13 Mining Ombudsman**

Nigerian Mining Ombudsman should be established to receive complaints and check all claims through site investigations and to assist the economically poor and vulnerable communities who are affected by mining and whose basic human rights are been threatened by mining operations. This will provoke the mining industry in Nigeria to operate in such a way as to ensure the basic rights of people in mining communities are better protected. It will also encourage mining industries in Nigeria to adhere to universal human rights standards in their various locations and to ensure that companies deal with the communities in a fair and equitable manner with respect to the fundamental rights of affected communities.. Any action to be taken by the Ombudsman should be done in consultation with the community.

### **7.14 Economic Diversification**

Economic diversification may be embarked upon in order to avoid a situation where such communities will degenerate into ghost towns when mining activities stop. A good percentage of the money should be invested in ventures that yield long term income streams so as to ensure revenue flows to the community long after mining activities has stopped. Investment could be made in ventures that have linkages with the local economy and investment in enterprises and or schemes that generate high skill for a large number of people in the community is particularly useful. In addition to this, a reasonable

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<sup>69</sup> Jaro Mayda, (1985) Environmental legislation in Developing Countries: Some Parameters and constraints, 12 *Ecology L. Q.* 997

share of allocated benefits from the mining sector should be made available to those communities close and disproportionately affected by mining operations.

## **8.0 Conclusion**

The prospects of a prospering Nigeria stems from the flavouring operations in the Nigerian mining industry with the principles of sustainable development. The point must be made that sustainable development in the mining sector entails ensuring that mineral development should be made sustainable in environmental, economic and social terms, taking into consideration market dynamics, technological innovation, community involvement, health and safety, environmental impacts and institutional setups.

A stable and profitable mineral project requires consideration of not just the economic viability of mineral deposit, but competent project appraisals is also essential as well as early incorporation of environmental and social impact analysis and the strengthening of the capacity of institutions to engage in such integrated assessment. Adequate government capacity to regulate the mining sector, enforce laws and monitor activities is also required to enable the mining industry to create opportunities for growth and development.

The world is currently in search of the future of a desirable world as reflected in the “Million Voices”. One of the proposed goals of sustainable development is to ensure sustainable consumption and production patterns. Sustainable mineral sector will enhance the achievement of sustainable management and efficient use of natural resources. The Nigerian mining sector should be positioned to act as an engine or catalyst to the attainment of sustainable development in Nigeria.

## **9.0 Recommendations**

In order to overcome the challenge at the community level, the different social, environmental and economic goals and expectations of all stakeholders, including affected communities should be negotiated in a balanced manner through participatory processes, taking the local context into account.

Relevant tools and bench mark which align adequately to current societal-oriented development paradigms with particular attention on monitoring and evaluation should be made use of in the mining sector of the Nigerian economy. Adequate indicators of sustainable development in mining which can be measured in a cost-effective and reliable manner should be developed. This requires all key actors in the mineral sector to be committed to explicit and well understood goals and objectives which should be part of the benchmarks. There is also the need for leadership and capacity building at government, companies and local government levels, including civil society organization in order to attain sustainable mining operations.

The rule of standi should be broadened so as to permit litigations to be instituted to enforce obligations owed to all members of mining communities. This will enhance civil society organization activism in exposing violation or alleged violation of recognized norms with regards to the mining sector.

Procedural rights are indispensable to the implementation of environmental rights for the attainment of sustainable mining operations. These procedural rights should be given effect to under Nigeria laws in order to enhance the enforcement of rights in Nigerian mining sector. This will provide civil society with the mechanism for learning about actions that may affect them, participate in governmental decision making processes and hold the government accountable for its actions.

Capacity is the fuel for implementation of any development agenda. A transformative energy sector requires upgraded, coordinated and integrated institutions and capacities. Nigeria should endeavour to build capacities in the mineral sector of her economy.

The Nigerian nation must begin to experience environmental integrity reflected in pollution prevention and control and sustainable environmental health management in her mining endeavors. There is need

to mitigate environmental, social and economic impacts that encourages poverty in Nigeria. Mining policies and laws should be reviewed to incorporate a poverty reduction dimension so as to ensure the integration of social and economic development in Nigeria.

Resource based industrialization could be used to catapult Nigeria to modernization if backed up with projects that are embedded in Nigeria's local economy, efficient management, supporting infrastructure, local competition, strong local knowledge capable of enhancing capacity for innovation etc. Small scale mining should be allowed to enable people to turn to seek alternative livelihoods. This will help to check Nigerian youths most especially from migration from rural to urban areas.

Rather than paying sums of monies to traditional authorities, portions of the revenue from mining should be allocated to local mining communities and steps should be taken to ensure that local communities where mining takes place does not grind to a halt when mining activities ceases. Proper planning is required of the use and management of the community's share.

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