

REALIZATION OF RIGHTS OF HOST COMMUNITY UNDER NIGERIAN MINERAL AND MINING ACT 2007 TO FOSTER SUSTAINABLE COMMUNITY DEVELOPMENT¹

Abstract

To achieve sustainable development in a host community (HC) where mining operations are active, Nigerian Mineral and Mining Act (NMMA) accorded some rights to the people of the communities. These rights are not just basic rights to physical survival but include rights towards empowerment for community development focusing on economic, political, social and environmental issues so as to maintain the community's identity and existence as unique people. Despite the fact that these rights are well established in NMMA, the realisation of which has proved difficult to achieve as mining activities in the various communities have seriously deprived the people of their rights. Full realisation of the host community's rights are lacking because of some lapses and inconsistencies discovered in the provisions of the Act which greatly debarred the people from getting proper accountability from the mining companies for illegal activities carried out on their territories. Lack of enforcement policies to protect the rights, weak/ dependent regulatory bodies were also found to be responsible for these reckless activities that go on unchecked thereby culminating into various damages affecting the communities. In view of this therefore, this article thoroughly examined and analysed the provisions of NMMA on the rights of HC to determine how adequate the Act is to actualise, enforce and protect the rights of HC towards a sustainable community. Relevant literature was consulted from various journal and textbooks. Based on the facts collected, recommendations made include proper review and necessary amendments to be made in the Act for actual implementation to protect and enforce HC's rights towards sustainable community developments.

Keywords: Rights, NMMA, Host Community, Minerals, Mining.

1. Introduction

Solid minerals are gifts of natural resources that can be found anywhere across the globe and can be used to generate enormous revenue to promote the wealth base and aid socio-economic development of a country if found in large quantity.² It cannot be over emphasised that Nigeria is one of the countries that has been endowed with vast over 34 varieties of mineral resources ranging from cocoa, timber, tin, gold, lead-zinc, limestone, marble, bitumen, cole, lignite, iron ore and many more deposited in more than 450 locations all over the 36 States of the Federation.³ With these significant quantities of natural resources, Nigeria thus became a natural resource dependent State. History has it that exploration of mineral resources was a mainstay of the economy, contributing up to 50% of the gross domestic product at a time. This high contribution suddenly declined and overshadowed by the discovery of oil boom in 1970.⁴ While gradual abandonment of mineral operations came around the time the Indigenisation Decree was enacted, which gave rise to forceful withdrawal of many large-scale industries

¹Oluwabunmi Temitope AKINLEYE, LL.M, Lecturer, Faculty of Law, Federal University, Oye- Ekiti, Ekiti State, Email:bhummieakinleye@gmail.com. Phone No: +2348067856770.

² C Okoronkwo, 'A Review of the Nigerian Minerals/Mining Act, 2007 For Economic Transformation [2017] (4)(1) *International Journal of Innovative Research Education, Technology & Strategies*; 42.

³ Ministry of Foreign Affairs, 'Nigerian Natural Resources' (Abuja) <<https://foreignaffairs.gov.ng/nigeria/natural-resources/>> accessed 19 August 2022.

⁴ M A Olade, 'Solid Mineral Deposits and Mining in Nigeria - A Sector in Transitional Change' [2019] (2) (1) *Achievers Journal of Scientific Research*; 1& 2.

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owned by foreign investors.⁵ But in spite of this ugly development, the country still managed to earn at least 5.8 billion naira from the mining sector between the years 2019 and 2020.⁶

Incidentally, as a result of reduction in the oil prices later again, and to secure an alternative to generate more income, the government was poised to revive the mining sector.⁷ And as a means of resuscitating this however, Nigerian Mineral and Mining Act (NMMA) was enacted in 2007, which opened the doors to many artisanal miners and local investors. Right now, the mineral sector according to record is occupied with more than 80% of small scale business owners, artisanal miners with relatively few large scale companies. However, these miners are less experienced, money conscious, unconcerned and in many cases operate illegal mining businesses.⁸ It has been acknowledged by the outcry of many communities that the activities of these miners are more environmentally destructive like that of the large scale mining companies. These local artisans are known to be ill equipped without expertise, machineries, no proper regulations governing their operations, with poor environmental standards. The major forms of environmental damages caused by the mining operations consist of mining pits, found mostly on farmlands and forested areas resulting to negative impacts such as land degradation, soil contamination, destruction of vegetation, erosion of soils and poor quality water.⁹ All these negative consequences have also affected the sustainability of most HC and worst still have been found to lead to death of many people. An example can be found in Zamfara State, the indiscriminate manner with which the miners of gold, lead and other minerals performed their works subsequently led to the death of about 300 people as a result of lead poisoning of stream water and soils.¹⁰

As a matter of fact, mining activities have not only affected the environment negatively but have in multiple forms deprived the host communities of their rights as provided in NMMA. In an attempt to promote the development of HC, to sustain the environment, and thus establish peaceful co-existence with the mining companies, NMMA guaranteed some rights to the people. These rights include basic rights of physical survival together with rights towards empowerment of community development and of maintaining the community's identity and existence as a unique people. Specifically these rights consist of right to community development agreement, right to payments of compensations, right to surface rents, right to prohibition of mineral exploration in certain areas, right to occupiers/owners of land to give consent before issuance of licence, right of participation in environmental protection and rehabilitation programmes. For the fact that these rights are well established in NMMA, there are strong indications that the mining companies are still depriving the HC of their rights deliberately flouting the provisions in the NMMA. For example, in Irele Local Government of Ondo State, when the people in the community protested against exploitation of bitumen found

⁵This Day, 'Fayemi: Indigenisation Policy of 1970s Destroyed Nigeria's Mining Industry' *This Day Newspaper* <<https://www.thisdaylive.com/index.php/2017/04/24/fayemi-indigenisation-policy-of-1970s-destroyed-nigerias-mining-industry/>> accessed 20 July 2022.

⁶ A Ailemen, '2020: Mining Sector reforms yield 26.7% revenue increase – Osinbajo' *Business Day* (17 November 2021) < <https://businessday.ng/news/article/2020-mining-sector-reforms-yield-26-7-revenue-increase-osinbajo/> > accessed 20 July 2022.

⁷ E N Olowokere and A N Abasilim 'Rights of Host Communities to Mineral Resources for the Empowerment of Rural Dwellers in Osun State Nigeria' [2019] (10)(1) *Journal of Sustainable Technology*; 142.

⁸ M Ogonnaya, 'How illegal mining is driving local conflicts in Nigeria' ReliefWeb (Nigeria, 16 June 2020) <https://reliefweb.int/report/nigeria/how-illegal-mining-driving-local-conflicts-nigeria> accessed 25 June 2022.

⁹ T Oramah, J P Richards, R Summers, T Garvin, and T McGee, 'Artisanal and Small-Scale Mining in Nigeria: Experiences from Niger Nasarawa and Plateau States' [2015] (2) (4) *The Extractive Industries and Society*; 3.4.

¹⁰ World Health Organisation, Nigeria: mass lead poisoning from mining activities, Zamfara State (7 July 2010) <https://www.who.int/emergencies/disease-outbreak-news/item/2010_07_07-en> accessed 8 July 2022.

in their community thereby stopping the mining activities of the South-West Bitumen Nigeria Limited because of the fact that SBNL failed to conduct the mandatory community development agreements before commencing mining operations and at the same time, the company failed to address important environmental issues raised during the Environmental Impact Assessment (EIA) that was carried out.¹¹

With all these ugly occurrences coupled with the high level of impunity in the sector, it was observed that the realisation of the HC's rights are seriously lacking. Similarly, some inadequacies were found in the provision of the Act which prevented the communities to ensure proper accountability from the mining companies for their illegal activities. In addition, lack of proper enforcement policies to protect these rights, weak/ dependent institutions and lack of transparency have greatly resulted into illegal activities of miners causing many damages in the environments without any added value to the HC. In the light of all these however, this article intends to examine the provisions of NMMA critically and make valuable suggestions to possible ways the Act can be reviewed to actualise, enforce and protect the rights of HC towards sustainable community.

2. The menace of mining activities and the effects on host communities

Generally, it is a common believe that mineral resources should contribute substantially to the revenue generation of a country for the purpose of socio- economic developments of a HC if found in large quantities. Rather than these great opportunities and developments to bring succour, they have appeared to be a form of nightmare for HCs in Nigeria. It has been noted that unsustainable explorations of minerals have created so many indelible marks on the environment thereby altering their ecological settings. It has been proved that the environmental impacts of mining are in two stages - firstly digging of the land surface of the earth (formation of sinkholes/deep pit) and the second is pollution.¹² In the first place, creating deep pits on the land surfaces cause erosion, flooding, landslide, sinking, rock falls, gulying etc which sometimes result to loss of lives and properties. In Luku, Minna, North Central Nigeria, it was discovered that in all the 37 mining sites in the area, a total number of 354 mining pits of different sizes and depths were discovered. The miners were mainly concerned with the clearing, scooping and digging deep the ground of farmlands on which gold was discovered and later on relocated to a new site without proper reclamation of the abandoned site/land.

Secondly, the impact of pollution has greatly affected the marine, land and air making the environments unfit for human living, vegetation and animal habitats. In Ewekoro, Ogun State for instance, records of people living with eyes problems, asthma and respiratory attack of different kinds were discovered to emanate from adjacent communities owing to the activities of cement factory.¹³ In a related development, inhalation of dusts produced during mining was found to have caused black lung disease called Pneumoconiosis which seemed incurable. Along the line, mineral explorations in some communities have caused poor vegetation and deforestation. In a study by Adekoya, which explained that mining of limestone and cement have caused serious decline in kolanut output from many plantations located few kilometres

¹¹ O Kehinde 'Addressing Environmental Impact of Mining on Host Communities' The Guardian (08 September 2020) <<https://guardian.ng/business-services/addressing-environmental-impact-of-mining-on-host-communities/>> accessed 16 July 2022.

¹² I J Nwadiolor 'Minimizing the Impact of Mining Activities for Sustainable Mined-out Area Conservation in Nigeria' [2011] (6) (2) *FUTY Journal of the Environment*; 71 & 73.

¹³ I Aigbedion, & S E Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' [2007] (2) (2) *International Journal of Physical Sciences*; 033-038.

radius away from cement factories. Nmodu also claimed that due to the illegal and uncontrollable activities of the miners in Kawo village in Kaduna, sediments of germs and gold have flown into the main streams used for domestic purposes thereby exposing the whole community to deadly poisoning.¹⁴ It is equally important to note that radioactive elements found in the streams and waters cause kidney, liver and brain damages. The mysterious deaths of many people in Jos Plateau State have been ascertained to a high level of radiations released by monazite-rich sand used for building houses of the deceased people.¹⁵

Nonetheless, mining activities have caused various socio-economic developmental problems, leading to many conflicts, protests, hostilities, sabotage, kidnappings and even killings of some company workers. It is with high expectation that having found mineral resources in large quantities on a particular land will bring great fortune to its community such as creating jobs, good water supply, building of schools with good infrastructures, good roads and adequate health systems but currently the situation is alarming by depriving the HC of their benefits as well as compensations for losses sustained to cater for their welfare.¹⁶ It is worthy of note that there cannot be any development without properly recognizing and protecting the rights of the people in the HC. It is expected that the mining companies must respect the norms and values of the communities and strongly uphold the fundamental rights of individuals and the people as a whole as contained in the Nigerian Constitution and NMMA respectively. Unfortunately, the mining companies have failed severally to protect and respect the rights of the host communities. These companies are so notorious in flouting the well-recognised community development agreements CDA existing between mining companies and the people, while on several occasions, the HC consents are not properly sought before the commencement of mining activities just because of the security services they enjoyed from the Nigerian security agencies which serve as bodyguards.¹⁷

3. The Concept of Sustainable Community Development

Community development when viewed from the angle of ‘sustainable development’ makes it imperative here therefore to explain in detail the meaning of ‘sustainable development.’ In 1987, the United Nations World Commission on Environment and Development Report titled ‘Our Common Future’ defined sustainable development as paths of social, economic and political progress that meet the needs of the present without compromising the ability of the future generations to meet their own needs.¹⁸ And since the United Nations Conference on Environment (UNCED) known as the Rio Earth Summit in 1992, SD has been widely recognized, accepted and adopted as an international framework for guiding and evaluating the actions of the national government on improving the wellbeing of the people as well as

¹⁴ A F Ali , A S Abdullahi & A S Zangina, ‘Environmental Issues and the Prospects of Mining in Nigeria’ [2018] (4)(2) *Dutse Journal of Pure and Applied Sciences* (DUJOPAS); 534

¹⁵ C O Kenneth, A U Kalu & A Francis ‘Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem’[2017] (17)(3) *Global Journal of Science Frontier Research :H Environment & Earth Science*

¹⁶ S S Ojo, A S Adesina & J J Agara ‘A Sociological Analysis of the Impact of Solid Minerals Mining on Community Development in Nasarawa State: A Study of Awe Local Government Area. [2018] (4)(1) *International Journal of Sociology and Anthropology Research*; 19 &20.

¹⁷ G Odogwu, The Rage of Nigerian Mining Host Communities *The Punch* (17 October 2019) <<https://punchng.com/the-rage-of-nigerian-mining-host-communities/>>accessed 20 July 2022.

¹⁸ M. Hussain , ‘Social Development: A Paradigm Shift in Developmental Strategies’ [2013](5) *Kashmir Journal of Social Science*; 240.

protecting the environment.¹⁹ Many communities in the world have decided to practice sustainable development, because it is an offshoot standard for community development process that takes into proper account issues on economic, social, and environmental matters in the community. Meanwhile, achieving SD goals invariably translates to - no poverty, zero hunger, good health and well-being, quality education, clean water and sanitation, economic growth, gender equality, climate actions, peace justice and so on.

However, sustainable community development is a general term used in different contexts for different purposes by various scholars. In one way, SCD is regarded as an outcome meaning - to establish health care-centres, improve infrastructural facilities, and provide economic empowerment and many more. To establish them in environmentally friendly and stable forms. Also, SCD is considered as a comprehensive process such as managing community change in a sustainable manner which involves the inputs of the citizens through dialogues on their needs to be met, sharing of visions about the future, participating in implementation activities.²⁰ Thus, in a more concise term SCD is “a process of social action in which the people of a community organize themselves together to plan, define their goals and problems and execute these plans with maximum reliance on community resources which must be used in judicious and sustainable manner.”²¹ The goals of sustainable community must be to manage community resources to meet the current developments and ensure enough resources are preserved for the future generations.

Based on this definition therefore, SCD takes a holistic approach which is grounded in the principles of empowerment, human rights, inclusiveness, social justice, self-determination and collective action²² with the impression that the community members concerned are experts in ways to sustain themselves and also to preserve their communities with values of community knowledge and wisdom. To be able to establish ‘right based approach’ to SCD is an added advantage as it supports the HC to claim their entitlements on issues related to SCD and also to encourages accountability of the duty-bearers (in this context mining companies) to fulfil their human rights obligations. So, in achieving a sustainable community the State government needs to recognise and protect the rights of the people and ensure that SCD programs are managed by competent community members at all stages of developments beginning from decision making to selecting implementing, and finally to evaluation stage. In this regard SCD must focus on proper redistribution of powers to be able to address the causes of inequalities and the various disadvantages facing the people of the areas.²³

4. The Rights of Host Communities under the NMMA in Nigeria.

In a way to enhance host community developments, sustain the environment, and establish mutual co-existence between the mining companies and the HC, NMMA came on board to guarantee various rights to the people of the HC. These rights are not just basic rights to

¹⁹ The key output of the Summit were the twenty- seven (27) principles on environment and development to guide every member State, the Agenda 21 which is based on the commitment made to domesticate implementation of the Agenda 21 and the establishment of the commission on sustainable development.

²⁰ R U Onyekwelu, ‘Rethinking Community Development: An Option to Nigeria’s Development Challenges’ [2018] (3) (1) *International Journal of Advanced Research in Public Policy, Administration and Development Strategies*; 68 &70.

²¹ T N Yap, Sustainable Community Development. An introductory Guide (Ontario Environmental Network 1989) 9-11; K Zeuli & J Radel, ‘Cooperatives as a Community Development Strategy: Linking Theory and Practice’ [2005] (35) (1) *JRAP* 48 &50.

²² Onyekwelu, (n 20).

²³ *ibid.*

physical survival but are the rights towards empowerment, religion and cultural heritage which form a large part of the communities' identities and existence. These rights include - rights to community development agreement, right to prohibition of mineral exploration in certain areas, right of owners or occupier to graze or cultivate on land, right to participate in the environmental protection and rehabilitation programme. These rights are analysed in detail below:

4.1 Right to prohibition of mineral exploration in certain areas²⁴

Literally, community is a group of people living together in the same place with peculiar characteristics linked to their geographical location and cultural heritage. One of the major priorities of indigenous people is therefore to properly maintain their cultural heritage so as to sustain their different communities. That is to say, their heritage/ customs must be well protected and secured, so that their customs and cultures would not automatically fade away.²⁵ However, territories/lands are important sources of cultural legacies for social identities. This important connection between cultural rights and land was well acknowledged by the Human Rights Committee in the interpretation of Article 27 of International Civil Cultural Political Rights which concerns with the cultural rights of the minorities and states thus.

With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.²⁶

Reference to cultural integrity was further re-echoed in the decision made concerning the case in Endorios Community in Kenya. This case bothers on forced displacement of the Endorois community from their ancestral land in the heart of Great Rift Valley preventing the building of a wildlife reserve area, thereby plunging the whole community of traditional cattle-herders into poverty and driving them to the brink of cultural extinction. In this case, the indigenous community claimed access to their ancestral territory in addition to securing subsistence and livelihood regarded as sacred and inextricably linked to cultural integrity of the community and its traditional way of life. The African Commission instantly supported the claim as deprivation of cultural integrity and agreed that the removal of the indigenous community from their ancestral land was a great violation of their right to cultural integrity based on freedom of religion (article 8), right to culture (article 17), and access to natural resources (article 21) of the African Charter of Humans and Peoples Rights.²⁷

Relating the above to the provisions in NMMA, there is clear evidence to show that in order to sustain the identity of the people of the HC, the Act preserves rights to certain areas of land by prohibiting mining activities in sacred areas to prevent pollution. Section 98 provides that no person in the course of exploration of mineral resources is allowed in any area termed sacred or permit injury or destruction to any tree or any other object of vegetation. While Sub-section (2) of Section 98 provides that if any question arises as to whether an area is sacred or not or a tree or thing is an object of vegetation, the answer shall be decided by the Mining Cadastre

²⁴ Nigerian Minerals and Mining Act 2007.

²⁵ J Gilbert *Indigenous Peoples, Human Rights, and Cultural Heritage: Towards a Right to Cultural Integrity* (Brill, 2017); 117& 118.

²⁶ *ibid.*

²⁷ *Centre for Minority Rights Development, Minority Rights Group International and Endorois Welfare Council (On Behalf Of the Endorois Community) v Kenya (the 'Endorois' case) for Minority Rights Development (Kenya) and Minority Right Group International on behalf of Endorois Welfare Council v Kenya*, 276/2003.

Office (MCO) on the recommendation of the Mineral Resources Committee (MRC) of the State involved. In this circumstance where the MCO on the recommendation of the MRC decides that an area is sacred or not may sometimes lead to a legal tussle because the officers of MCO and MRC may not be members of the community, so therefore they cannot be the best judges on such matters relating to the customs of a particular community which they know nothing about.²⁸

4.2 Rights of owners or occupiers to graze or cultivate on land

Section 101(2) NMMA provides that

the lawful occupier of any land within an area subject to mining lease shall retain the right to graze livestock upon or cultivate the surface of the land in so far as the grazing and cultivation do not interfere with the mining operations in the area.²⁹

From the aforementioned provision, the owner or occupier of any land has a right to cultivate or graze or even to continue cultivating and grazing on surface areas of the land where mining lease or mining license is granted, in as much as the occupier/owner does not interfere with the mining operations. Relating this provision to the current situations in many communities today, this right has not been fully realized or practiced because often times, mining activities have so much affected the environments negatively thereby depriving the people of their rights to freely graze or cultivate their lands even when they do not interfere with the mining activities. What therefore will become of this aspect of right when the environments are not even conducive or enjoyable? This was affirmed in the decision made by the African Commission on Ogoni land's case which held that the destruction and contamination of food and water sources by explorative activities of oil companies in Ogoni land amounted to breach of rights by the Nigerian government. These rights include freedom from pollution, environmental degradation and activities threatening livelihood, protection and preservation of air, soil, water, sea/ice, flora and fauna on their land.³⁰

4.3 Right to Community Development Agreement (CDA)

Right of the host community to conduct CDA with the lesser/licensee (also known as mining company) is another right that is well recognized in NMMA to foster sustainable development. Although the Act fails to define what CDA is by merely stipulating that CDA is a compulsory criteria that must be conducted before commencement of any mining activity between the lesser/licensee and the HC.

Section 116 (1) of the NMMA thus provides that:

“Subject to the provisions of this section, the Holder of a Mining Lease, Small Scale Mining Lease or Quarry Lease shall prior to the commencement of any development activity within the lease area, conclude with the host community where the operations are to be conducted an agreement referred to as a Community Development Agreement or other such agreement that will ensure the transfer of social and economic benefits to the community”³¹

²⁸ NMMA (n 24).

²⁹ *ibid.*

³⁰ Ogoni's case I.L.M 858 by African Commission on Human Rights and Peoples' Rights see F Coomans 'The Ogoni Case Before the African Commission on Human Rights and Peoples' Rights[2003] (52) (3) *International & Comparative Law Quarterly* 756-759.

³¹ NMMA (n 24).

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The Act stressed therefore that CDA should contain undertakings, with respect to the social and economic contributions the project will make towards the sustainability of the community³² in terms of educational scholarships, apprenticeship, technical training and employment opportunities for indigenes/HC, providing financial and other forms of contributory supports for infrastructural developments and maintenance of community services like roads, water, power supply, support for small scale/ micro enterprises, agricultural product marketing, methods and procedures for socio-economic and environmental management as well as local governance enhancement. The Act went further to establish that CDA shall be a binding agreement between parties involved and subject to review every 5 years.³³

In this light, CDA is a legally binding or negotiated agreement that addresses various matters on social, economic, cultural and environmental communities' development existing between the licensee/lessee and the HCs. It is therefore regarded as a community engagement and developmental tool to avoid or minimize risks of local conflicts, and ensure the well-being of local communities by localizing their development in ways that can preserve the environments. In the process of engaging CDA, HC is provided with many opportunities to be able to identify and manage their interests and expectations on the mining projects, and how the projects will contribute positively to their social and economic growths and help to maximize the well-being of the present generation without compromising that of the future generations. More importantly, CDA will provide the HC the access to realise their rights and benefits from the minerals resources located on their lands as not to be side-lined or neglected from the developmental benefits.

As CDA, is considered as a tool for development, the effective participation of the people is highly necessary because of their meaningfully contributions from their knowledge towards their immediate needs and interests for total implementation.³⁴ To achieve this, Section 117 of the Act therefore stipulates that CDA should specify the appropriate consultative and monitoring frameworks between the licensee/lessee and the HC and other means by which the community may participate in the areas of planning, management, monitoring and implementation of the activities spelt out in the agreement.³⁵ The Act goes further to states that in case there is any failure between the HC and the lessee/licensee, in the course of the agreement to reach any conclusion after several attempts and before the title holder commences work, the matter should be referred to the Minister for resolution.³⁶ Once an agreement is reached, it becomes legally binding on both parties and must be totally enforced subject to review every five years. By so doing, the human rights standards/ principles are well guided viewing the HC as proper rights-holders while establishing the fulfilment of peoples' rights to SCD as an obligation of the duty-bearers, and not treated as an act of charity.³⁷ In this manner, the licensee/lessee is strongly held up as the duty bearer saddled with the responsibilities of protecting and developing the environments of the HC. If the duty bearer fails in the long run

³²NMMA, s 116 (2).

³³ NMMA, s116 (4).

³⁴C Hill and S Lilly White and M Simon, *Guide to Free, Prior and Informed Consent* [Oxfam Australia 2010].

³⁵ D Obinna, 'Legal Regime for Community Development Agreements under the Mineral and Mining Act 2007' *Business Day* (24 March 2017) < <https://businessday.ng/analysis/article/legal-regime-community-development-agreement-minerals-mining-act-2007-1/> > accessed 25 June 2022.

³⁶ P Akper 'A Legal Analysis of Community Development Agreements as a Tool for Enhancing Social Licence to Operate for Mining Companies in Nigeria' [2017] (8) (1) *The Gravitas Review of Business & Property Law*.

³⁷ Human right Principle are based on the word PANEL this include participation, accountability, legality, empowerment and non-discrimination with the aim of promoting values of equality, justice, and freedom in the society.

in any of its obligations, the HC has every right to seek justice by challenging and holding defaulters liable for non-implementation of CDA.

5. Challenges facing the Realization of Rights of the Host Communities in Nigeria

Despite the laudable provisions of NMMA regarding the rights of the HCs toward sustaining and developing their communities, there are still some challenges facing the actual realization/protection. The constant problems faced are not far-fetched from the active involvement of the government in the sector and some observed lapses in the provisions of the Act which warranted the unending abuse of the indigenous/host communities' rights. These problems are herewith highlighted.

5.1 Lack of Enforcement Policies

As a way of reviving the mineral sector to serve as an alternative means to generate income amidst the current economic recession facing the oil sector in Nigeria, NMMA invariably encouraged many artisanal miners/small miners to operate in the mining sectors but without proper guidelines/policy to control and monitor their activities. In addition, the unwillingness of the government to balance up economic growth with highly sustainable environments contributed to much laxities in breeding miners or licensee/lessees, who are money conscious with little experience and unconcerned miners to operate illegal mining businesses, which affected many communities in various negative ways thereby depriving the people of their rights. These problems arose because of the laxities observed in applying appropriate penalties/sanctions for violating environmental laws. Without any serious punishment attached to violation of environmental laws, there cannot be any justification or motivation for the licensee/lessee to be mindful of the environments in which they carry out their mining activities and there is much tendency to carry out illegal activities because of weak or no enforcement of sanctions at all over their actions.³⁸

Moreover, the ownership of the land where mineral resources are found had been bestowed on the government thus limiting the control of the people towards ensuring SCD within their communities. Section 44(3) of the Constitution provides for a compulsory acquisition of any property that contains natural resources by the government of the federation to take control of all the resources.³⁹ Government's ownership of land was however re-echoed in NMMA and in Section 28 of Land Use Act, which stipulates that the governor of a State can lawfully revoke the right of occupancy of an occupier for overriding public interest/ if the government of the federation so requires the land for mining purposes.⁴⁰ The implication of this is that no one can lay claim of ownership or be able to control the activities of mining within Nigeria except with the permission of the government. How then can a sacred area within the community be protected when ownership of land has been transferred to the government. Also, failure of the government through its legislations to provide adequate sanctions for illegal activities as well as the default of the enforcement agencies to monitor compliance of laws/regulations guiding mining holders have further compounded issues and deprived the HC's rights towards SCD.⁴¹

³⁸ Based on the Report of the United Nation Environment Programme (UNEP) on Ogoni land, oil companies do not apply the best practices in maintaining and decommissioning of oil fields infrastructures. At the same time many of them are unwilling to respond or clean up the affected areas because of lack of serious penalties or sanctions for disregarding the law.

³⁹ Constitution of the Federal Republic of Nigeria 1999.

⁴⁰ Land Use Act 1978.

⁴¹ E N Olowokere & A.N Abasilim, (n 6); 146, 147.

Apart from ownership of mineral resources in Nigeria, the constitution further deprived the host communities of their rights to conducive environment for easy cultivation and grazing plus other socio-economic rights.⁴² This is because the Constitution does not fully recognise these rights as fundamental rights as contained in chapter 4 of the Constitution which only considers the protection of the environment as safeguarding water, air, land forest and wildlife in the process of promoting social economic development of host communities as the duties and obligations of the State governments. This means therefore that the economic social and cultural rights are fundamental objectives and directive principles of the State Policy as contained in chapter 2 of the Constitution. These rights and obligations are therefore regarded as non-justiciable in section 6 (6) (c) of the Constitution which ousted the jurisdiction of the judicial powers in determining matters relating to this aspect of the constitution. That is to say that these rights cannot be automatically enforced except where the statutes enacted to actualize chapter 2 provisions are challenged or where the implementation of chapter 2 infringes on the fundamental rights in chapter 4.⁴³ And so far that NMMA did not consider the environment as a justiciable right then enforcement of right to a clean environment would remain adamant except Nigerian courts start to adopt the activists dispositions like that of Indian Supreme Courts in interpreting right to life to include hygienic environment.⁴⁴

5.2 Lack of transparency as a challenge

With un-ended powers accorded the Minister who is solely responsible for the administration of mineral and mining operations in Nigeria, the problem of abuse of HCs' rights is very much on the increase. NMMA, gave statutory and discretionary powers to the Minister of mines and steels development and this by implication is an extension of the government to control every aspect of the mineral and mining activities and developments in the sector.⁴⁵ These powers/functions range among awarding licenses and leases to those interested in mining operations, appointing and monitoring all activities of the departments established under the Ministry, monitoring mining operations to meet-up with the international best practice standard, penalizing any offences committed and enacting regulations/guidelines to be used. In view of all of these, there is therefore the possibility of conflicts of interests because of the fact that, the Minister is the only regulator who is responsible for issuing of license, responsible for the developments of the sector, and at the same time determining matters arising between the lessee/licensee and the HC. This ugly trend becomes critical more so when the Minister has a deep financial interest in mining activities and in so doing, it is very likely that the Minister will be greatly biased in decision making neither will he be transparent enough to properly ensure full realization of the rights under NMMA for sustainable developments of HC well at the expense of his personal interests and economic growth of the country.

Along the line, in the aspect of enforcement of CDA, the Act does not make specific provisions for the implementation but merely recommends that if there is a failure in reaching conclusion about CDA before commencement of work by the licensee/lessee, the matter should be referred to the Minister for resolution who because of his political interest may find it difficult if not

⁴² See the separate opinion of Judge Weeramanty in Gabcikivi-Nagymaros project Case, where it was established that human rights are inter related so protecting the environment forms a major part of the contemporary human rights doctrines and sine qua non to other human rights which includes right to health, life and to acquire property.

⁴³ The constitution (n 39).

⁴⁴ E B Herbert & O T Akinleye, 'Review of the Legal Response to Environmental Impact of Covid-19 in Nigeria', [2021] (17/0); *Law, Environment and Development Journal*; x, < <http://www.lead-journal.org/content/a1709.pdf> > accessed 24 June 2022.

⁴⁵ NMMA, s 4.

impossible to make decisions that will favor the HCs. In other words, referring matters to the Minister for resolution is rather worse and at the detriment of the HCs. It would have been better still if, the concerned parties are given the opportunities to explore other avenues to seek redress themselves without being subjected to the biased powers of the Minister and to be able to challenge his decisions when either parties are not satisfied with the Ministers decisions. Hence with no other alternative for resolution of matters can forcefully deprive the people of their rights to sustainable developments and freedom to participate in matters/politics that affect their communities. It is worthy of note that the exclusive powers given to the minister has retarded progress much in the mining sectors and as well compromised sufficient transparency and accountability that gave rise to abuse of powers with impunity.

5.3 Weak Regulatory Agencies

Another serious challenge arises from the total independent working attitude of the regulatory agencies proposed under the NMMA. Failure of the mining policies are evidenced in the lots of decay and the type of monopoly been practiced by these regulatory agencies. In the aspects of duties and responsibilities, NMMA created some offices with their respective roles and duties such as (i) the MCO for maintaining/keeping cadastral registers and ministering mineral titles which include considering applications for mineral titles/permits, issuing and revoking mineral titles, receiving and disposing of applications for renewal, extension or transfer and relinquishment of mineral titles.⁴⁶ (ii) Mines Inspectorates Departments (MID) has a sole duty to supervise all reconnaissance, exploration and mining operations for the purposes of ensuring compliance with provisions of the Act.⁴⁷ and lastly (iii) The Mines Environmental Compliance Department (MECD) has the responsibility of monitoring and enforcing compliance with all environmental requirements imposed by the Act and the Regulations⁴⁸ All these agencies are provided in the Act and are supposed to work independently as independent working system matters a lot towards effective performances of duties and reduces the third parties' pressures, that may hamper effectiveness but to ones dismay, the agencies loyalties are towards the Minister for the simple reason that the Act is silent about appointments to positions, tenure in office, procedures towards officers' removal nor towards any qualifications required for the positions. All these loopholes have created lots of inconsistencies in the Act, anybody can just be chosen to occupy a position and for just any person to arbitrarily occupy a position, his loyalty will first be towards the person/minister who has appointed him. To this end, these gaps and lapses have eventually crippled the efficient performances of these regulatory agencies which have promoted bribery and corruption as well as non- accountability that greatly paralysed the entire mining systems.⁴⁹

6. Conclusion and Recommendations

The discovery of mineral resources in large quantities in many HC is considered a great blessing for the people and the community as a whole but rather on the contrary mining activities have appeared to be a curse due to the simple fact that NMMA enacted rights to solve many problems but were not fully realised in the mining sectors which sometimes lead to loss of lives and properties and more importantly have led to the abuse and deprivation of the HC's rights towards SCD. The rights of the HC are indeed essential to community developments if fully realised and enforced. Unfortunately some inadequacies of the NMMA have greatly deprived the HC of these rights. To ensure adequate sustainable development in the HCs,

⁴⁶NMMA, s 5.

⁴⁷ *ibid*, s 16.

⁴⁸ *ibid*, s 18.

⁴⁹ See *Attorney General Plateau State v Goyol* (2007) 16 NWLR (pt 1059) 57 at 94-96.

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therefore NMMA must be well reviewed to meet all its obligations and to properly incorporate transparency and accountability in the Act. This can thus be accomplished by minimizing the discretionary and excessive powers accorded solely to the Minister to guarantee smooth administrative performances of duties. The Act must provide support for the independent working attitudes of the regulatory agencies without totally relying on the external force. It is therefore recommended that the Act should be repealed to embrace proper transparent procedures/guidelines concerning appointments, tenure and removal of any of the member of the regulatory bodies. So also, the government, the licensee/lessee and the HCs must see to actual implementation of CDA, and provide alternative action for resolution of conflicts when they arise from either non-conclusive or non-implementation of CDA and extreme cases should be referred to the Court as a last resort to obtain real justice.

Furthermore, the federal government should be well alert to its responsibilities on matters relating to pollution, reclamation and restoration of mining areas in Nigeria by applying heavy sanctions/penalties on polluters. NMMA must frequently revise the forms of penalties to impose on liabilities or defaulters who engage in illegal mining activities to ensure sustainable communities. In addition, the federal government as well as the law enforcement agencies must sincerely and strongly fight against corruption among the mining operators and support any public disclosure of reports on pollution of the environment to minimize illegal mining activities. The right to conducive environments in chapter 2 of the Constitution must also be properly made justiciable and enforceable while Nigerian Law courts should try and adopt the activist dispositions like the Indian Supreme Courts on expanding and interpreting the rights to life to include hygienic environments which permit the HC to institute actions against mining companies and be able to hold them accountable for reclamations of damaged lands so that mineral resources are explored in a more refined and sustainable manner.⁵⁰

⁵⁰ See, *M. C. Mehta v. Union of India* [1987] SCR (1) 819, AIR 1987 965; *Shela Zia v. Water and Power development Authority (WAPDA)*, [1994] PLD A16.