

Solid Mineral Mining in Selected Communities in Ebonyi, Ekiti and Taraba States, Nigeria: Policies, Practices and the Way Forward



AFRICAN CENTRE FOR LEADERSHIP,
STRATEGY & DEVELOPMENT
(Centre LSD)



June 2017
Centre LSD Policy Brief No. 19

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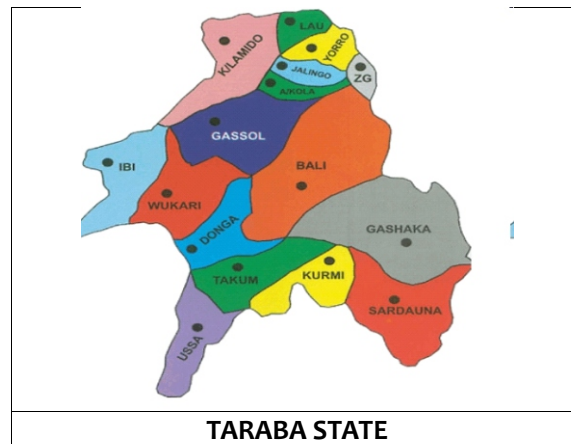
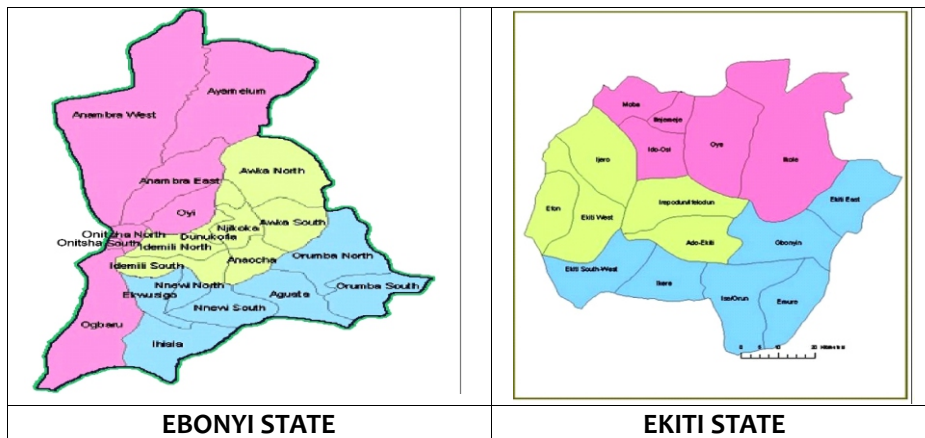


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Our sincere thanks also go to member organizations of the Natural Resource Governance Group (NRGG) at the focal states, who supported and are still supporting the State level advocacies to ensure the realization of the project goal. Indeed, the milestone the project has recorded thus far would not have been possible without your support.

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Centre LSD
June 2017

TABLE OF CONTENT

SECTION ONE

INTRODUCTION

- 1.1 INTRODUCTION
- 1.2 OBJECTIVES
- 1.3 EXPECTED GOALS
- 1.4 SCOPE
- 1.5 METHODS
- 1.6 LIMITATIONS OF THE STUDY

SECTION TWO

50

THE STATE OF MINING IN FOCAL STATES

2.1 SOLID MINERAL MINING IN EBONYI STATE

2.2 STATES AND THE MINING SECTOR

- 2.2.1 Review Interaction of Governments with Solid Mineral Sector
- 2.2.2. Revenue beneficiation mechanisms

2.3 COMMUNITY DEVELOPMENT AGREEMENTS

- 2.3.1. Review of Community Development Agreements
- 2.3.2 Quality of Community Development Agreement
- 2.3.3 Effectiveness of Community Development Agreement

2.4 SECURING MINING SECTOR ENVIRONMENTS

- 2.4.1 Evaluation of Environmental Policies
- 2.4.2 Administrative Challenges in Environmental Protection
- 2.4.3 Sustainable Solutions

2.5 MINING SECTOR FISCALS

- 2.5.1 Fiscal regimes in the sector
- 2.5.2 State Governments' Benefits
- 2.5.3 Revenue Leakages Challenges
- 2.5.4 Projections for National Economy Diversification

2.6 INFORMAL MINING SECTOR

- 2.6.1 Artisanal mining coverage
- 2.6.2 Regulations Guiding Informal Sector Mining
- 2.6.3 Challenges of Tracking Revenue Streams of Informal Mining Sector
- 2.6.4 Participation of Women Miners
- 2.6.5 Participation of Children Miners

SECTION THREE

FINDINGS

SECTION FOUR

PUBLIC POLICY RECOMMENDATIONS

- States and the Mining Sector
- Community Development Agreements
- Securing Mining Sector Environments
- Mining Sector Fiscals
- Revenue leakages challenges
- Informal Mining sector
- Participation of women and children in mining industry
- Civil Society and the Mining Sector

REFERENCES

RESPONDENTS

LIST OF ACRONYMS

CAC – Corporate Affairs Commission
CDA – Community Development Agreement
Centre LSD – African Centre for Leadership, Strategy & Development
COMEG - Council of Nigerian Mining Engineers and Geoscientists
EHS – Environment, Health and Safety
FGN – Federal Government of Nigeria
ILO – International Labour Organization
IPEC - International Programme on the Elimination of Child Labour
LGA – Local Government Area
KII – Key Informant Interview
MCO – Mining Cadastre Office
MMSD - Mining, Minerals and Sustainable Development
MOU – Memorandum of Understanding
NEITI - Nigeria Extractive Industries Transparency Initiative
NGSA - Nigerian Geological Survey Agency
NMDC - National Mineral Development Corporation
NSRMEA - National Steel Raw Materials Exploration Agency
OSIWA – Open society Initiative for West Africa
PAYE – Pay As You Earn
RMAFC - Revenue Mobilization Allocation and Fiscal Commission

EXECUTIVE SUMMARY

The study seeks to investigate the role of the state governments in the solid mineral mining sector; examine the nature, quality and effectiveness of community agreements; evaluate the quality, compliance of stakeholders to environmental policies and to find out the nature of the fiscal regimes and whether there are challenges in the derivation of benefits to stakeholders

The study will be used to strengthen civic engagement and advocacy for effective natural resource governance in Nigeria. Towards this, it is hoped that this effort by Centre LSD will: (i) build greater synergy and opportunity for citizens group to engage issues of natural resource governance in Nigeria (ii) re-galvanize civil society groups to engage the process of legal and administrative framework for natural resource governance in Nigeria (iii) examine the drive for non-oil-revenues, and how it will play out with existing solid minerals development law and possible sub-national governments interests in the mining sector and evaluate the nature of informal mining and the involvement of participants such as women and children.

The study employed data generated from secondary sources such as reports from communities, reports from state governments and existing regulations from the website of the State government or from Federal Ministry of Mines and Steel Development. Data has been generated from primary sources as well. This includes key informant interview (KII) and Focus Group Discussions (FGDs). The investigator also visited mining sites in the three focal states of the project: Ebonyi, Ekiti and Taraba.

Finding of the Study

Review Interaction of Governments with Solid Mineral Sector

- The relationship between the government and mining actors and communities in the state is guided by sets of legislations for instance that which provides for the existence of the State Mineral Resources and Environmental Management Committee.
- The composition of this committee makes it possible for the federal government regulatory agencies to relate with governments at the states and local government levels as well as the mining communities.
- What is missing from the composition is the participation of the miners and civil society.

Revenue beneficiation mechanisms

- **The benefits that accrue to the federal, states and local governments are royalties, ground rents, annual surface rents, levies on reconnaissance permit, exploration license, small scale mining lease, mining lease, quarry lease, and water use permit; taxes, education tax etc.**
- State and local governments and communities do not benefit directly from payment of royalties and so they experience **limited revenue flows**

Review of Community Development Agreements

- The Mineral Act provides for a Community Development Agreement that will ensure the transfer of social and economic benefits to the community.
- The Community Development Agreements as described in the Act is weak because it does not:
 - (i) prescribe the process that will lead to the making of an agreement that is inclusive, fair and equitable;
 - (ii) enshrines provisions that commits parties to ensure that the terms of the agreement are observed in the interest of parties;
 - (iii) sufficiently provides for flexibility to enable adjustments to be made when circumstances change and it does not indicate what sanctions to be taken to seek redress if the obligations are not met.

Quality of Community Development Agreement

- The agreement arrived at was not through negotiation as it was drafted by the mining firm and discussion regarding its contents were held with the state government.
- The agreement contains promises of delivering amenities but these were not tied to the development objectives of the community.

Effectiveness of Community Development Agreement

- Five (5) years after the commencement of the project, the mining firm hasn't fulfilled its obligations to the community because it argued that it hasn't produced for the market and so it cannot fulfil the agreement.
- There is a violation of the Act which states that the agreement should be reviewed after 5 years. The agreement is due for review but the firm has resisted the process of review.
- Regarding periodic monitoring, review and adjustment of the agreement, the communities are more committed to the process than the government and the mining firms.

Evaluation of Environmental Policies

- The Mineral Act enshrines provisions that are design to protect the environment such as prevention of pollution of the environment and the reclamation and restoration of exploited lands.
- both small scale, artisanal and big firms in the mining of salt and lead in Ameri Community have not complied with the provisions of the Act as there are many excavated lands that are littered around the community, some are no longer in use by title holders and they will not be returned to.
- There hasn't been any attempt to close them up, neither reclaimed or rehabilitated as required by law.
- There are situations that can lead to pollution and health hazards as water for human consumption will be affected due to the mining of lead.

Administrative Challenges in Environmental Protection

- **It is clear that the protection of the environment as required by the Act is weakened because of the actions or inactions of the regulating agencies in the mining sector such as the Mines Environmental Compliance and the Mines Inspectorate Department.**

Sustainable Solutions

- The reclamation of the mines is going to be a herculean task in view of the fact that the State is one of the old mineral bearing state in the country and there are already rampant violations of environmental regulations in mining.
- The new interest by the State Government will require political will, funding the federation account for environmental rehabilitation and transparency in the process of use of funds.

Fiscal regimes in the sector

- Nigerian fiscal federalism does not allow states, local government councils and communities direct access to mineral revenues specially royalties. They benefit from the revenues when they are shared at the federal level
- There are two levels of debates and agitations in the country for either absolute resource control where states can generate revenues and remit the mandatory share to the coffers of the federal government or increase the derivation share to oil bearing states.

State Governments' Benefits

- The state benefits only when the payment of ground rents and some taxes are paid. The lack of close monitoring had made states to lose substantial revenue due from the mining firms.
- the Federal, state and local government and communities loose from the non-disclosure and non-

declaration of additional minerals discovered during exploration and exploitation.

Revenue Leakages Challenges

- **The national regulations are not observed or they are deliberately made not to work in the interest of some interests in the mining industry.**
- Various grades of minerals were being purchased by middlemen and women who buy from mine workers who are involved in excavations. These economic transactions are held outside the purview of the government officials at the federal, state and local levels i.e. the Mines Inspectorate Department, Mines Cadastre Office, Artisanal and Small Scale Mining Department and Nigeria Geological Survey Agency, the State Board of Internal Revenue etc.
- This indicates either the lack of capacity or deliberate refusal to track the operations of the sellers and buyers and this provides the avenue for revenue lose. Whatever is declared or disclosed by licensed buyers is taken as the 'gospel truth' and use for the calculation of national wealth.
- NEITI reported that minerals were exported through porous land borders thus, beating customs and other security agencies' check points at the borders.
- There is no synergy between the various Government Agencies particularly the supervising ministry i.e. Ministry of Mines and Steel Development, Central Bank of Nigeria, Customs Service, Nigeria Export Promotion Council and Mining Cadastre Office.
- There hasn't been any prosecution of any company under section 131 which criminalises “illegal mining, false and misleading statements, false or non-declaration and smuggling” minerals.

Projections for National Economy Diversification

- The current level of regulations and operations of the solid mineral sector, make the sector to serve as a driver for the future diversification of the economy to be unlikely.
- The solid mineral sector will play a crucial role in the national economy when regulations are re-design to give some level of participation and control to the states; regulate the activities of the local, national and foreign mining actors to ensure compliance and respect of the law; and leakages must be blocked and violators of the law must be sanctioned.

Regulations Guiding Informal Sector Mining

- The findings show that the artisanal miners are not bounded by regulations in the Act for instance, obtaining the legal permit to commence operations. This explains why they are regarded as “illegal miners” especially by the government.
- There is no disclosure of what minerals are discovered in the course of exploitation.
- The regulation in respect of rehabilitation and reclamation are not obeyed by these miners.

Challenges of Tracking Revenue Streams of Informal Mining Sector

- The following constitutes reasons why it is difficult to track revenues of the informal sector operators:
 - i. The non-formal organization of artisanal miners has made it difficult for government to effectively regulate and therefore control them.
 - ii. Procedural difficulties in formalizing operations especially possession of licenses
 - iii. High rates of registration and possession of licenses
 - iv. Poor commitment of regulating agencies in monitoring operations in mining fields.
 - v. The over protective nature of sites by miners.

Participation of Women Miners

- The Mineral Act 2007 does not have any provision regarding participants such as women. The piece of legislation that speaks about women participation is the Labour Act which places restrictions on employment of women with respect to working underground in a mine.
- Women do not engage in underground mining as men, but have participated in mining operations as small scale miners with licenses, buyers of minerals from excavators; mine labourers engaged in washing, drying and packing of mineral deposits.
- Women working as mines labourers operate under indecent conditions: lack of organizing, poor wages, lack of protection, poor safety environment etc.

Participation of Children Miners

- The Labour Act as noted above, places restrictions on employment of persons under the age of 16 with respect to working underground in a mine although the Mineral Act is silent on participation of children.
- Children participate in the mines as: Independent Labourers or as mine workers associated with their parents who are mostly their mothers.
- The study reveals that children participate in mines work during holiday or after school periods. They are paid low wages and operate under similar conditions as women described above.

PUBLIC POLICY RECOMMENDATIONS

States and the Mining Sector

- Government should demonstrate the political will to revisit the debates on state participation in mineral sector and address the agitations in the interest of the mineral bearing states and the

country at large.

- Government should consider giving incentives and assist the states in co-investing in mining where they can become equity investors by applying to the MCO for licenses alone, or in partnership with private companies. (FGN (2016: 32)
- National or foreign investors should be encouraged to co-invest with communities or set-up transparent trusts to help communities manage any profit sharing or similar economic returns received. (FGN (2016: 32)

Community Development Agreements

- The agreement must be negotiated with communities in a transparent manner to ensure inclusivity
- The agreement should be tied to the development objectives of the community

Securing Mining Sector Environments

- The Mines Environmental Compliance Department should be strengthened in order for it to monitor and enforce compliance of mining regulations and practices;
- The regulatory bodies should periodically audit the environmental requirements and obligations and ensure social and environment issues involved in mining operations, mine closure-and reclamation of land are adhered to.
- *Strengthen the capacity of the Mines Inspectorate Department to ensure general supervision and adherence to health and safety regulations as prescribed by Regulations*

Mining Sector Fiscals

- Develop a framework for transparency and accountability in the reporting and disclosure by all extractive industry companies of revenue due to or paid to the Federal Government
- Eliminate all forms of corrupt practices in the determination, payments, receipts of revenues by the Federal Government and mining companies

Revenue leakages challenges

- In order to check the incessant smuggling of solid minerals out of the country, boarder markets should be created at strategic border points across the country. This will bring about flexible market control and provide a means of monitoring solid minerals sold in international markets.
- The activities of foreign nationals operating in the solid minerals sector and who are mostly the

primary buyers of the solid minerals mined by artisanal and small-scale miners should be regulated and effectively monitored. (NEITI, 2010)

Informal Mining sector

- Encourage the sustainability of mining cooperatives and associations in collaboration with local community, local government and state for ease of control of the minefields and for enhancement of mineral production by artisanal and small-scale miners.
- Control and strengthen the artisanal and small-scale mining operations through:
 - a. Encourage the formation of mining cooperatives with a view to empower them towards sustainable growth in the industry.
 - b. Establish license buying centres which would be an interface between mining cooperatives/licensed miners, local users and export markets.
 - c. Provide extension services to artisanal and small-scale miners in form of technical assistance and support services.
 - d. Provide micro credit to artisanal and small-scale miners.
 - e. Provide specialized funding for key institutions in the minerals sector such as (NGSA, COMEG, NMDC, Departments of MMSD, School of Mines, and NSRMEA).
 - f. Develop industry wide capacity building program for mining companies (NEITI)**
- Facilitate access to the following and other sources of funding for exploration and the development of minerals, steel, and other metals industries:
 - a. Solid Minerals Development Fund
 - b. Natural Resources Fund
 - c. Global Exploration Funds
 - d. Multilateral & Bilateral Funds
 - e. Venture Capital and Equity Funds
 - f. Capital Markets

Participation of women and children in mining industry

- The Mineral Act should be reviewed to provide for the guaranteeing and protection of women and children from exploitation of all categories of miners.
- They must be allowed to organise themselves into associations or unions. Miners employing them

should ensure they are fairly treated and paid decent wages.

Civil Society and the Mining Sector

- Specialize civil society organisations in the state must organize and strengthen themselves either as coalitions or individual organization to engage the government on solid mineral governance and growth and development
- The state government and the State house of Assembly should continue to create periodic dialogue sessions with civil society in the state on issues relating to solid mineral development
- The composition of all regulatory agencies such as the Mineral Resources and Environmental Management Committee, Management of the Board of the Solid Minerals Development Fund should be altered to include representatives of civil society in each of the States.

SECTION ONE

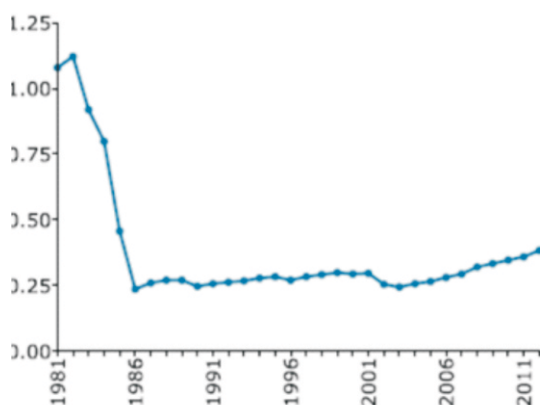
INTRODUCTION

1.1 INTRODUCTION

Recent developments in the mining industry have been shaped by the Federal Government's desire to refocus on the minerals and metals sector as part of its strategy to diversify the Nigerian economy away from dependency on oil resources. The interest in the solid mineral sector is because of the poor attention given to the sector as a revenue earner. For instance, it has been revealed that the solid mineral mining contributes about 0.55% to Nigerian Gross Domestic Product.

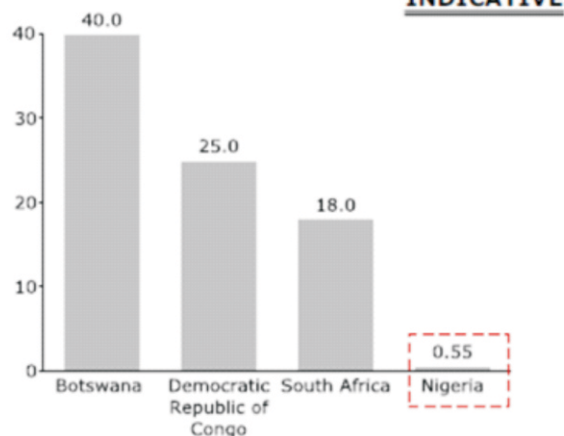
MINING SECTORS' CONTRIBUTION TO GDP HAS DECLINED

Mining and quarrying contribution to GDP at constant basic 1990 prices (%)



AND CURRENTLY THE LOWEST CONTRIBUTOR COMPARED TO OTHER AFRICAN PEERS

% contribution of mining sector to GDP



Source: Federal Republic of Nigeria (2016). Road map for the growth and development of the Nigerian mining industry - On the road to shared mining prosperity, Abuja: Federal Ministry of Solid Minerals, p. 18

This scenario has captured the attention of the Federal Government of Nigeria who is committed to restructuring and reforming the solid mineral sector to serve as alternative to oil and gas. This goal will not be achieved without addressing the substantial issues that revolve around the effectiveness of extant regulations, the relationship between governmental institutions, the role of small and big miners and their relations with host communities, compliance with environmental laws, the fiscal regulations in the sector and the place of civil society in the mining sector.

1.2 OBJECTIVES

The study therefore seeks to:

- a. Investigate the role of the state governments in the solid mineral mining sector
- b. Examine the nature, quality and effectiveness of community agreements
- c. Evaluate the quality, compliance of stakeholders to environmental policies
- d. To find out the nature of fiscal regimes how they affect financial benefits due to stakeholders
- e. Examine the nature of informal sector mining

1.3 EXPECTED GOALS

The study will be used to strengthen civic engagement and advocacy for effective natural resource governance in Nigeria. Towards this, it is hope that this effort by Centre LSD will:

- i. Build greater synergy and opportunity for citizens group to engage issues of natural resource governance in Nigeria.
- ii. Re-galvanize civil society groups to engage the process of legal and administrative framework for natural resource governance in Nigeria.
- iii. Examine the drive for non-oil-revenues, and how it will play out with existing solid minerals development law and possible sub-national government's interests in the mining sector.
- iv. Evaluate the nature of informal mining and the involvement of participants such as women and children

1.4 SCOPE

The study paid attention to solid mineral mining in three states of the federation: Ebonyi, Ekiti and Taraba. These States are chosen for the simple reason they provide the spread that is required for fair

generalization. It is important to note that the study is not investigating mining activities in the whole of these states but it focuses on three communities in these States. These are Agalegu Nfiu Alike, Ijero, and Mayo Sina in Ebonyi, Ekiti and Taraba States respectively.

The issues that have been taken up in this report are as follows:

- a. The role of state governments in the mining sector in the three states; their levels of interaction and engagement of governments in focus states of the project with solid mineral sector; levels of interaction and engagement of governments with national and sub-national related policies' implementation; regulation of mining activities and revenue beneficiation mechanisms.
- b. The nature of Community Development Agreements; their quality and effectiveness in the three states.
- c. The protection of the mining sector environments and here we are concerned with the evaluation of environmental policies, adherence and compliance trends, challenges and sustainable solutions in the three states
- d. The mining sector fiscals, which shall focus on finding out fiscal regimes in the sector - national and subnational; if there are challenges relating to revenue leakages; state governments' benefits; and projections for national economy diversification.
- e. Informal mining sector, where we shall pay attention to artisanal mining coverage, participation of women miners; participation of children miners; issues of regulations and challenges of tracking revenue streams of the informal mining sector.

1.5 METHODS

Location of the Study

Ebonyi State is located in the South East zone of the country. It is an agricultural producing region. It grows rice, yams, potatoes, maize, beans, and cassava. It equally has several solid mineral resources such as salt deposit at the Okposi and Uburu Salt Lakes, (http://www.worldmapfinder.com/En/Africa/Nigeria/Ebonyi_State/), silver, lead, coal and lignite, limestone, zinc ore, ball clay, refractory clay, gypsum, granite etc.

Ekiti State is situated in the South West zone of the country and it lies south of Kwara and Kogi State, East of Osun State and bounded by Ondo State in the East and in the south. It has a total land area of 5887.890sq km. The 2006 population census by the National Population Commission put the population of Ekiti State at 2,384,212 people. <http://ekitistate.gov.ng/about-ekiti/overview/>. Agriculture is the main occupation of the people of the State as they farm crops such as Cocoa, Oil Palm, Kola-nut, Plantain, Bananas, Cashew, Citrus and Timber; Arable /Food Crops such as Rice, Yam, Cassava, Maize and cowpea. The state has the following mineral resources Clay, Chamokite, Quartz, Lignite, Limestone, Granite, Gemstone, Bauxite, Cassiterite, Columbite, Tantalite, Feldspar, Kaolin etc.

Taraba State is located in the North East zone of Nigeria and it is bounded in the west by Nasarawa State and Benue State, northwest by Plateau State, north by Bauchi State and Gombe State, northeast by Adamawa State, east and south by Cameroun. The people of the state farm coffee, tea, groundnuts and cotton. Others include maize, rice, sorghum, millet, cassava, and yam are also produced in commercial quantity. In addition, cattle, sheep and goats and other livestock production activities like poultry production, rabbit breeding and pig farming and all year round fishing in fairly large scale are undertaken. https://en.wikipedia.org/wiki/Taraba_State . The state is also endowed with the following mineral resources Fluorspar, Gamete, Tourmaline, Sapphire, Zircon, Tantalite, Columbite, Cassiterite, Barite, Gelena, Limestone, Laterite, Calcite, Bentonitic Clay

Data Collection Methods

The study employed data generated from secondary sources such as reports from communities, reports from state governments and existing regulations from the website of the State government or from Federal Ministry of Mines and Steel Development. Data has been generated from primary sources as well. This include key informant interview (KII) and Focus Group Discussions (FGDs). The investigator also visited mining sites in the three focal states of the project: Ebonyi, Ekiti and Taraba. The table below shows the issues the study has focus attention on, the methods of data collection and analysis.

Table 1 – Issues, Indicators and Data Collection and Analysis

Focus	Issues	Indicators	Method of Data Collection	Source of Data	Methods of data analysis
1. States and the Mining Sector	a. Review the levels of interaction with solid mineral sector	-State government consultation with solid mineral actors -Local government consultation with solid mineral actors	KII	1. Commissioner, Ministry for Solid Mineral or representative 2. Local government Chairman or representative 3. Chairman, House of Assembly Committee on Solid Minerals 4. miners	-qualitative interpretation of data
	b. levels of engagement of governments with national policies on regulation of mining activities	State reviews of national laws on mining	KII state mining regulations	1. Commissioner, Ministry for Solid Mineral or representative 2. Local government Chairman or representative 3. Chairman, House of Assembly Committee on Solid Minerals	qualitative interpretation of data
	d. levels of engagement of governments with sub-national govts related to implementation of laws (i) regulating the mining activities and (ii) revenue beneficiation mechanisms	-Local government laws on mining -local government laws on revenue generation in the mining sector	-KII -Documents from Local government	-Commissioner, Solid Mineral Ministry -Chairman, Local Government Council or representative	qualitative interpretation of data
2. Community Development Agreements	-the quality of Community Development Agreements/ -effectiveness Community Development Agreements	Agreements signed between government and solid mineral communities	Collection of copies deposited in the community Or with government	-community (traditional ruler, leader of community development association) -Ministry for Solid Mineral	qualitative interpretation of data

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3. Securing Mining Sector Environments	-Evaluate environmental policies in targeted states	-Adherence and compliance trends -challenges -sustainable solutions	Federal and state environmental regulations	-Ministry of Solid Minerals -Website of the Ministry of Environment	qualitative interpretation of data
4. Mining Sector Fiscals	-Interrogate fiscal regimes in the sector	Method of revenue generation and remittance	Mining laws	Federal Ministry of Mining	qualitative interpretation of data
	-revenue leakages challenge	Non-remittance of revenue to state and local government	-KII -Reports from ministry of finance/Revenue Board -financial reports from local government	ministry of finance/Revenue Board	qualitative interpretation of data
	-state governments' benefits	Revenues accruing to government	-KII - State financial report	- State Revenue Board	qualitative interpretation of data
	-projections for national economy diversification	Revenues accruing to government	-KII - State financial report	- State Revenue Board	qualitative interpretation of data
5. Informal Mining sector	-Review of artisanal mining coverage in targeted states	Number of artisanal miners and locations	-KII -observations (from Personal visit)	-community -Chairman, Miners Association -mining sites	qualitative interpretation of data
	-participation of women miners	Number of women working in mining locations	KII	-community leader -children	qualitative interpretation of data
	-participation of children miners	Number of children working in mining locations	-KII	-community leader -children	qualitative interpretation of data
	-regularization issues	State regulations on artisanal mining	-KII -State Reports on adherence to regulations	-Chairman miners association -commissioner, state ministry for solid minerals	qualitative interpretation of data
	-challenges with the tracking of revenue streams of the informal mining sector	-government of artisanal production -government tracking of revenue	KII	Artisan miners -Chairman, artisan miners -commissioner, Solid Mineral Ministry	qualitative interpretation of data

Centre LSD has network of members in the three-focal state mentioned above and this made the access to the state and to the mining sites easier. The research assistant employed facilitated access through prior arrival to the state and mining sites. The LSD partners on the project were also useful in mobilizing respondents and offering advices to circumvent challenges experienced during the study.

1.6 LIMITATIONS OF THE STUDY

The timing for the study is considered short for in-depth investigation. However, to ensure that sufficient data is generated for the study, telephone calls and extensive use of the internet sources have been employed. Secondly, we experience the none-release of documents by both the government and communities particularly, the community development agreements and statistics on the revenues. However, we circumvented this challenge by asking questions regarding the contents of the community development agreements and whether revenues were received by government.

SECTION TWO

THE STATE OF MINING IN FOCAL STATES

2.1 MINERALS IN FOCAL STATES

As noted earlier, Ebonyi is endowed with several solid mineral resources such as salt deposit at the Okposi and Uburu Salt Lakes, (http://www.worldmapfinder.com/En/Africa/Nigeria/Ebonyi_State/), silver, lead, coal and lignite, limestone, zinc ore, ball clay, refractory clay, gypsum, granite etc. while Ekiti state has the following mineral resources Clay, Chamokite, Quartz, Lignite, Limestone, Granite, Gemstone, Bauxite, Cassiterite, Columbite, Tantalite, Feldspar, Kaolin etc. Taraba State is blessed with Fluorspar, Gamete, Tourmaline, Sapphire, Zircon, Tantalite, Columbite, Cassiterite, Barite, Gelena, Limestone, Laterite, Calcite, Bentonitic Clay

2.2 STATES AND THE MINING SECTOR

2.2.1 Review Interaction of Governments with Solid Mineral Sector

This section reviews the levels of interaction and engagement of governments in focus states of the project with solid mineral sector; the levels of interaction and engagement of governments with national and sub-national related policies' implementation; the regulation of mining activities and revenue beneficiation mechanisms.

The relationship between the government and mining actors and communities in the state is guided by sets of legislations. Section 19 (3) of the 2007 Act provides for the existence of the State Mineral Resources and Environmental Management Committee. The Committee in each State should consist of:

- (i) a representative of the Mines Environmental Compliance Department in the Ministry who shall be the chairman of the Committee;

- (ii) a representative of the Ministry responsible for land matters or mineral related matters In the State;
- (iii) the Mines Officer responsible for the state
- (iv) a representative of the Ministry of Agriculture or Forestry in the State;
- (v) a representative of the Surveyor-General of the State;
- (vi) a representative of the Local Government Council when matters affecting tile said Local Government Area are being considered by the Committee;
- (vii) a representative of the State Environmental Department or Agency
- (viii) a representative of the Federal Ministry of Environment in the State.

The functions of the Committee according to the Act include the following:

- (a) consider and advise the Minister on issues affecting returns of necessary reports affecting grants of mining titles;
- (b) consider issues affecting compensation and, make necessary recommendations to the Minister;
- (c) discuss, consider and advise the Minister on the matters affecting pollution and degradation of any land on which any mineral is being extracted;
- (d) advise the Department established in accordance with the provisions of this Act for the supervision of mineral exploitation and the implementation of social and environmental protection measures;
- (e) advise the Local Government Areas and the communities on the implementation of programs for environmental protection and sustainable management of Mineral resources;
- (f) advise and give other necessary assistance required by holders of Mineral titles in their interactions with state governments, local governments councils, communities, civil institutions and other stakeholders;
- (g) advise the Minister on resolving conflicts between stakeholders.

What is obvious from the composition of this committee is the intention to smoothen the relationship between the federal government agencies and governments at the states and local government levels as well as the mining communities. What is missing from the composition is the participation of the miners and civil society. However, the issues the committee is empowered to handle are those that affect both the miners, the government and the communities. These include the granting of mining titles, compensation,

pollution and degradation of land, supervision of mineral exploitation, the implementation of social and environmental protection measures and assistance required by holders of Mineral titles in their interactions with state governments, local government councils, communities and civil institutions.

With respect to the level of interaction and engagement of governments with national and sub-national related policies' implementation, there are variations in the level of interactions and engagements. In Ebonyi State, the State official say their relationship with the local government and the miners was cordial.

...we have played our roles. We have created a conducive atmosphere for companies to operate we have tried to play our role as a mediator between the companies and the community. We have also tried to regulate the activities of the environment to avoid dangers or poisoning.

The state officials in Ekiti and Taraba indicated the same level of cordiality in their relationships with miners in their states. They argued that the States were instrumental in creating enabling environmental for the miners to operate. However, the artisan miners complain of not being taken along at the state level. This is understandable because of their lack of formalization of their organization.

2.2.2 Revenue beneficiation mechanisms

The Mineral Acts of 2007 indicates the types of benefits that accrue to the federal, states and local governments. These benefits include: (a) royalty payments by companies operating in the solid minerals sector. Royalty payments are collectable by Mines Inspectorate Department on behalf of the Federal Government. (b) Ground Rents/Annual Surface Rents – the rents are paid by the lessee of a mining lease in advance while ground rents are paid annually by holders of State Government Certificate of Occupancy on occupied Government land. These rents are collectable on behalf of the Government by Board of Internal Revenue; Levies include fees authorized to be collected by the Mines Inspectorate Department, Mines Cadastre Office, Artisanal and Small Scale Mining Department and Nigeria Geological Survey Agency from operators in solid minerals industries who possess the following titles: reconnaissance permit, exploration license, small scale mining lease, mining lease, quarry lease, and water use permit.

The other type of benefit to the government are taxes which are statutory obligation of every limited liability companies. These enterprises are mandated to file their annual tax returns as well as deductions from employee's monthly salaries with Federal Inland Revenue Service.

A key government official in Ebonyi State noted that the nature of the industry and the legal framework makes it difficult for state and local governments to benefit directly because royalties are paid directly to the

Federal government and it is distributed to all the states of the federation and not to the mineral bearing communities.

...It is the Minister of Solid Minerals that issues title deeds to the prospective miner in form of lease. Then you go to the state and you can commence without the state having and input in the process. The only area the law give power to state is in the area of revocation of rights of occupancy. The law state within six months of lease, the Governor can revoke the right of occupancy. I think there is a need for power sharing between the federal and state government in area of mining and mineral to ensure equity and peace in those areas... ...The host community suffers the most in areas where mining is done. There will be grievance from the host community if you take minerals from their community to develop other states. This will breed disharmony. There is every need to share power

The governments at the state level feels that the resources from communities in their areas of jurisdiction are exploited and the benefits are shared. They revealed that the only benefit they derive are paltry sums of monies they are legally entitled to from miners. A State officer has this to say:

Yes, they [miners] about N50 per bag pay to the youths and 1000 per bag depending on the quantity of goods to the community. The monies are used for the maintenance of community roads. ...We don't know if local government councils collect money along the road.

We agree with NEITI, 2007-2010 report which made the point about the limited revenue flows to mining communities and States from the mining sector. The report noted that:

...the principal sources of income generation for local mining communities are from employment in mining or mining related activities; and the repayment by the Federal Government to the States of a proportion of all fees, rents, royalties and tax revenues collected from mining and quarrying. From findings on our visitation to RMAFC during the audit, we discovered that the 13% derivation payments from the Federal Government were not paid, and more importantly, there is no formal arrangement in place for the allocation of these funds to local governments and communities in mining areas. This situation portends great threats to sustainable exploitation of mineral resources in the future, because as mining activity grows, agitation for greater benefits will increase, with the potential for social tensions and crisis. (Emphasis in italics ours) (NEITI 2010: 65)

However, it is important to note that state and local governments benefit from surface rent, Pay as You Earn (PAYE) and property taxes.

2.3 COMMUNITY DEVELOPMENT AGREEMENTS

2.3.1. Review of Community Development Agreements

Section 116 (l) of the Act states that the holder of a mining lease, small scale mining lease or quarry lease should before the beginning of any development activity within the lease area, conclude with the host community where the operations are to be conducted, a Community Development Agreement that will ensure the transfer of social and economic benefits to the community. Such an agreement should contain undertakings with respect to the social and economic contributions that the project will make to the sustainability of such community. Specially, the agreement should address all or some of the following issues relevant to the host community:

- (a) educational scholarship, apprenticeship, technical training and employment opportunities for indigenes of the communities;
- (b) financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power;
- (c) assistance with the creation, development and support to small scale and micro-enterprises
- (d) agricultural product marketing
- (e) methods and procedures of environment and socio-economic management and local governance enhancement

Section 116(5) states that the Community Development Agreement shall be subject to review every 5 years and shall until reviewed by the parties have binding effect on the parties

Section 117. The Community Development Agreement shall specify appropriate consultative and monitoring frameworks between the mineral title holder and the host community and the means the community may participate in the planning, implementation, management and monitoring of activities carried out under the agreement.

Community Development Agreements as described in the Act is weak because of the following:

- i. It does not prescribe the process that will lead to the making of an agreement that is inclusive, fair and equitable.
- ii. The Act does not vividly enshrine provisions regarding commitment of parties towards making the agreement work.
- iii. The Act doesn't make the agreement sufficiently flexible to enable adjustments to be made when circumstances change and/or when it becomes apparent that desired outcomes are not being achieved.

(See ICMM Good Practice Guide: Indigenous People and Mining, 2010 for the standard requirements of a CDA)

- iv. the Act does not indicate what sanctions or steps to be taken to seek redress if the obligations contained in the CDA are to be respected by either party particularly, the mining firms.

2.3.2 Quality of Community Development Agreement

The communities visited in Ebonyi State said they have seen the agreement while, Ekiti and Taraba States explained that they have not heard of Community Development Agreements. However, the government officials acknowledged knowing the existence of signed CDAs. Our finding revealed the following, with particular reference with the Royal Salt Project in Ebonyi:

The first time this kind of document was signed, they said it's good for us. There was nobody on ground to advise us like you (researchers) have done. We did not look thoroughly before we just went ahead to sign the MOU. Later, we started seeing some level of gaps. But if we had the understanding, the signing of the document wouldn't have taken place.... However, the signed agreement mentioned the creation of job opportunities for our youth and welfare of our mothers, creation of schools, roads, hospitals, water, and electricity. ...That MOU is not totally bad for us, but the only problem is that it has not been implemented. They said the implementation of the MOU will be 12 months after production. They have argued that the company hasn't started production but only harvesting raw materials and nothing have been taken out of the factory and therefore cannot implement the agreement. The five-year agreement which was due for review in 2010, hasn't been touched.... ..

A female respondent said ...

We have been intimidated. But now our eyes are open, the government has not been for us, our women are hungry because our farm lands have been taken away and there hasn't been any role for them. None of our women is working in the company now, our widows are hungry. Our youths too are unemployed. We had a meeting of women and most of them were crying because their mining sites have been taken from them. The CDA was made without our input.

From the narratives we obtained from above, we will conclude that:

1. The agreements arrived at were not through negotiation; there was no consultation during the period the agreement was drafted as it was believed to have been drafted by the mining firm and discussion regarding its contents were held with the state government.

2. The agreement contains promises of delivering amenities such as those stated in the Act but they are not tied to the development objectives of the specific communities. If the agreement was discussed with the communities, their felt-needs would have been factored into the agreement.

2.3.3 Effectiveness of Community Development Agreement

Our finding reveals that five (5) years after the commencement of the project, the mining firm hasn't fulfilled their obligations to the community because it argued that it hasn't produced for the market and so it cannot fulfill the agreement. It argued that the agreement states that it will fulfil the obligation when production commences.

2. In addition, there is a violation of the Act which states that the agreement has to be reviewed after 5 years. The agreement is due for review but the firm has resisted the process of review.

In the three states visited, the ineffectiveness of the CDAs has created mistrust and therefore overt protestation by the citizens of the areas of mining. A State officials gave the example of community agitation when he said that:

Yes, severally, there has been protest in Ishiagwu, a community witnessing the crushing of rocks. They have severally protested by blocking their gate saying they have not been provided with electricity, water, as promised in the MOU... ..But in the end, there is usually an agreement. Presently there is an issue of water pollution and at the moment the case is in the House of Assembly and we are not taking it lightly because of the previous experiences.

Regarding periodic monitoring, review and adjustment of the agreement, to ensure that governance mechanisms are working effectively and progress is being made towards key objectives, we noted from the discussions with respondents in the communities and civil society that the communities are more committed to the process than the government and the mining firms.

2.4 SECURING MINING SECTOR ENVIRONMENTS

2.4.1 Evaluation of Environmental Policies

The Mineral Act enshrines provisions that are designed to protect the environment. Section 111 for instance states that the holder of mineral title shall have regard to the effect of mining operations on the environment and take such steps as may be necessary to prevent pollution of the environment resulting from the mining operation. In addition, section 114 mandates the Minister to request the grantee of a mining lease to restore

any area in respect of which mining operation has been, is being, or is to be carried out, on or after the date on which this Act comes into operation. This point is also emphasized in section 115 which states that where land has been exploited, the reclamation mined out areas shall be restored by the applicant under the condition of its grant.

Similarly, section 116 insist that that every holder of a mineral title shall as far as it practicable: (i) minimize, manage and mitigate any environmental impact resulting from activities carried out under this Act; and (ii) rehabilitate and reclaim, where applicable, the land disturbed, excavated, explored, mined or covered with tailings arising from mining operations to its natural or predetermined state.

From the above selected provisions, the Act seeks to prevent pollution, restore, reclaim, rehabilitate lands that have been exploited or mined. The following observations are made with respect to adherence and compliance with these provisions of the Act especially in the areas visited in the Ebonyi, Ekiti and Taraba States.

1. both small scale, artisanal and big firms in the mining of salt and lead in Ameri community, the mining of silica, kaolin in Ekiti and sapphire in Taraba, have not complied with the provisions of the Act as described above. From observation, there are many excavated lands that are littered around the community, some are no longer in use by title holders and appear as if they will not be returned to. There hasn't been any attempt to close them up, neither reclaimed or rehabilitated as required by the law. This has led to the degradation of the environment. The picture below shows miners at work in Sardauna LGA of Taraba State digging and degrading the environment in search of blue sapphire.



Picture 1 – digging in search of blue sapphire in Mayosina, Sardauna LGA in Taraba State
Source: Author, field study



Picture 2 – Degraded environment due to the mining of lead in Ameri, Ndifu Alike, Ikwo LGA in Ebonyi State
Source: Author, field study

**Environmental impacts of uncontrolled ASM activities
(NEITI, 2010:64)**

- i. the destruction of natural habitats at both ASM sites and waste disposal sites,
- ii. the destruction of adjacent habitats through emissions and discharges,
- iii. the destruction of adjacent habitats from the uncontrolled influx of migrant workers and encroachments,
- iv. Adverse changes in river regime and ecology due to pollution, salination, sedimentation and flow modification,
- v. Alteration of water table,
- vi. Soil contamination from treatment residues and chemical spillage, among others.



Picture 3 – abandoned mining site in Ijero, Ekiti

Source: author, field visit



Picture 4 – abandoned mining site in Ijero, Ekiti
Source: author, field visit



Picture 5 – abandoned mining site in Ijero, Ekiti
Source: author, field visit

2. In the Lead mining community visited in Ebonyi, I observed that water containing lead was piped out from the excavated pit and channeled to another abandoned pit, but the green grasses in the area where the water passed through had dried up due to chemical reaction. The explanation given is that the water is acidic. This situation if not properly handled, will lead to pollution and health hazards as water for human consumption will be affected.

2.4.2 Administrative Challenges in Environmental Protection

It is clear that the protection of the environment as required by the Act is weakened because of the actions or inactions of the regulating agencies in the mining sector. For instance, section 13 of the Act states that (i) the Mines Environmental Compliance Department should monitor and enforce compliance by holders of mineral of environmental requirements and obligations; (ii) periodically audit the environmental requirements and obligations and ensure they are complied with and (iii) liaise with relevant agencies of Government with respect to the social and environment issues involved in mining operations, Mine closure and reclamation of land.

In all the states visited, the point was made about the ineffectiveness of the administrative machinery to manage mining activities and prevent the violation of the environment by miners. In Ekiti State, a government official contended that:

It is difficult to supervise a company from Abuja, but easier from the States. If some powers are given to the state, then we will have the power to supervise the activities of miners. Most times, they have supervisory agencies in the State being managed by one or two persons and this makes supervision difficult.

If this agency was performing its functions of supervision and sanctioning erring miners, the abandoned open pits would have been closed and reclaimed.

In Ebonyi State, a legislator revealed that:

Quarry companies have left so many holes without reclamation, the area becomes permanently degraded. This is a clear violation of the Mining Act which specifies the reclamation of mining sites. Our State has an environmental law to check these violations but

what is required is monitoring to ensure proper reclamation. We are reviewing existing laws to check for gaps. ...A piecemeal recovery of mining fields will be our approach to reclamation. The communities can also help to monitor.

In Ebonyi, Ekiti and Taraba, mining by artisanal miner is done under hazardous conditions and no steps are being taken to reach these miners and their communities with safer and less hazardous ways of mining. During the visit, I noticed a women alighting from her family room to welcome the research team. She was working on lead with her bare hands and with her children around her. In an interview with the community, a family revealed that the lead deposits excavated are kept in the living room where access is limited. He said:

...this grade is good and therefore expensive and so we keep it in our bedroom which is always under lock and key. It was latter that we knew that the material is dangerous to health. We now keep the rest of the product in the compound....In 2009 we had a workshop in Ministry of environment. We never knew lead was dangerous. Our women often use the solid minerals as pillows because of theft. Since then we have been enlightening our women to keep them away from the house. ...

The import of this statement is that artisanal miners keep this poisonous mineral in their homes irrespective of its health implication to the family.