

**Towards a Stakeholder Model for Institutional Voids: Integrating
Host Communities in the Corporate Governance of Nigerian Mining
Companies**

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DEDICATION

This thesis is dedicated to the Almighty God.

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THESIS SUMMARY

Mining is both beneficial and detrimental to the environment, society and economy. Nigeria is blessed with many natural resources. However, host communities suffer greatly from social, economic and infrastructural underdevelopment due to mismanagement of mining activities. This thesis contends that Nigerian laws do not sufficiently protect the host communities' rights. The study assessed the effectiveness of Nigeria's mining regulatory regime and corporate governance system in promoting and protecting host community rights. The study finds that most regulatory systems are ineffective and have allowed corporations to get away with environmental degradation and infringement on the rights of host communities.

To build and maintain an organised corporate governance system, establishing a legally justifiable and acceptable corporate governance system and an organised market mechanism for developing and emerging economies is necessary. Consequently, this thesis proposed a model of corporate governance for Nigeria that recognises stakeholder rights, specifically those of host communities, are considered.

The integrative stakeholder model, a synthesised theory of corporation law, was suggested in the thesis. The suggestion is a different contextual framework for corporate governance in Nigeria. It may be possible to envision more corporate responsibility actions based on the integrative stakeholder model's hypotheses. In-depth consideration was given to how much host communities should be permitted to participate in managing the mining business alongside the directors and shareholders. This thesis establishes that incorporating ISM into Nigeria's institutional and legal mining regime in support of host communities' participatory development will, among other things, promote environmental sustainability, peaceful coexistence, more informed decision-making, economic sustainability, and social sustainability. This thesis also demonstrates that a more cooperative regulatory framework for

mining that prioritises a fair compliance and enforcement model can have the desired regulatory impact and ensure a revolutionary sustainability outcome. The host communities will likely have a voice and a chance to meaningfully address issues and hold other stakeholders accountable once they are acknowledged as stakeholders and actively involved in the corporate governance system of mining companies in Nigeria.

This was a desk study, which involved a wide-ranging document review. The study examined and analysed government policies, regulations, journal articles, government reports and information from mining corporations.

Keywords: Host Communities; Host community rights; Corporate Governance; Sustainable Development Goals; Stakeholders; Stakeholders' theory; Stakeholder's protection; Nigeria

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U

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LIST OF ABBREVIATIONS

AC	-	-	-	Appeal Cases
AER	-	-	-	All England Report African State
AI	-	-	-	Amnesty International
All ELR	-	-	-	All England Law Reports
All FWLR	-	-	-	All Federation Weekly Law Report
ALR	-	-	-	American Law Reports
ANLR	-	-	-	All Nigeria Law Report
ANSCA	-	-	-	Alaska Native Claims Settlement Act
CA	-	-	-	Court of Appeal
CAC	-	-	-	Corporate Affairs Commission
CAMA	-	-	-	Company and Allied Matters Act
CAP	-	-	-	Chapter
CB/R	-	-	-	Common Bench/Report
CBN	-	-	-	Central Bank of Nigeria
CDA	-	-	-	Community Development Agreement
COP	-	-	-	Communication on Progress (under the UN Global Compact)
CSR	-	-	-	Corporate Social Responsibility
EITI	-	-	-	Extractive Industries Transparency Initiative
ESV	-	-	-	Enlightened Shareholder Value
EU	-	-	-	European Union
FDI	-	-	-	Foreign Direct Investment
FPIC	-	-	-	Free, Prior and Informed Consent
HL	-	-	-	House of Lords
HRC	-	-	-	Human Rights Council

ILO	-	-	-	International Labour Organization
ISA	-	-	-	Investments and Securities Act
ISM	-	-	-	Integrative Stakeholder Model
LFN	-	-	-	Laws of the Federation of Nigeria
MECD-	-	-	-	Mines Environmental Compliance Department
MID	-	-	-	Mines Inspectorate Department
MMSD	-	-	-	Ministry of Mines and Steel Development
MNC	-	-	-	Multinational Corporation
MNE	-	-	-	Multinational Enterprise
NDA	-	-	-	Niger Delta Avengers
NDDC-	-	-	-	Niger-Delta Development Commission
NEITI	-	-	-	Nigerian Extractive Industries Transparency Initiative
NGO	-	-	-	Non-Governmental Organisation
NMMA	-	-	-	Nigerian Minerals and Mining Act
NNPC	-	-	-	Nigerian National Petroleum Corporation
NSWG-	-	-	-	National Stakeholders Working Group
OECD	-	-	-	Organisation for Economic Cooperation and Development
OEEC	-	-	-	Organisation for European Economic Co-operation
PC	-	-	-	Privy Council
PCL	-	-	-	Property Conveyancing Law
PENCOM	-	-	-	National Pension Commission
PHCF	-	-	-	Petroleum Host Communities Fund
PIA	-	-	-	Petroleum Industry Act
PIB	-	-	-	Petroleum Industry Bill
PRR	-	-	-	Protect, Respect, Remedy

PRT	-	-	-	Promoting Revenue Transparency
PSNR	-	-	-	Permanent Sovereignty over Natural Resources
PULP	-	-	-	Pretoria University Law Press
QB	-	-	-	Queen's Bench
RDI	-	-	-	Reports on Foreign Aid and Development
RMRDC	-	-	-	Raw Materials Research and Development Council
RSLR	-	-	-	Rivers State Law Report
SAP	-	-	-	Structural Adjustment Programme
SC	-	-	-	Supreme Court
SCNLR	-	-	-	Supreme Court of Nigeria Law Report
SDN	-	-	-	Stakeholder Democracy Network
SEC	-	-	-	Securities and Exchange Commission
SGSR	-	-	-	UN Secretary-General's Special Representative
SIP	-	-	-	Specific Instance Procedure
SMMRP	-	-	-	Sustainable Management of Mineral Resources Project
TBL	-	-	-	Triple Bottom Line
UDHR	-	-	-	Universal Declaration of Human Rights
UK	-	-	-	United Kingdom
UKHL	-	-	-	United Kingdom House of Lords
UN	-	-	-	United Nation
UNDP	-	-	-	United Nations Development Programme
UNEP	-	-	-	United Nations Environment Programme
UNGC	-	-	-	United Nations Global Compact
UNGP	-	-	-	United Nations Guiding Principles on Business and Human Rights

USA	-	-	-	United States of Nigeria
VOL	-	-	-	Volume
WA	-	-	-	West Africa
WBCSD	-	-	-	World Business Council for Sustainable Development
WCED-	-	-	-	World Commission on Environment and Development
WNLR-	-	-	-	Western Nigeria Law Report
WWW	-	-	-	World Wide Web

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CHAPTER ONE

INTRODUCTION TO THE THESIS

1.1 Background to the Study

The mining industry plays a vital role in economic development by contributing to national revenue, job creation, and the overall growth of nations.¹ Yet, the extraction of mineral resources often transpires in close proximity to host communities, giving rise to a spectrum of social, environmental, and economic impacts.² These impacts have raised concerns about the rights and well-being of host communities and the need for robust legislative frameworks to protect their interests.³ This study delves into a crucial area of corporate governance research, shedding light on institutional voids prevalent in the mining sector, specifically regarding the incorporation of host communities into the corporate governance framework of Nigerian mining industry.

Nigeria is a country blessed with abundant natural resources,⁴ and exploring some of these resources has been one of the main sources of support for the country's economy for over 40 years.⁵ Given Nigeria's wealth of natural resources, a significant portion of its economic foundation has been built upon the exploration and utilisation of these valuable assets for over

¹ I James 'Minerals Mining and the Nigerian Environment Today'.1 (2015) The African Journal for Environmental Law & Development Studies, 204.

² I James 'Minerals Mining and the Nigerian Environment Today'.1 (2015) The African Journal for Environmental Law & Development Studies, 204,205.

³ Isaac Aigbedion and SE Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' (2007) 2 International Journal of Physical Sciences 33.

⁴ Some of which include: iron ore (Itakpe), cassiterite (Jos), columbite (Barkin Ladi), lead and zinc (Abakaliki), Kaolin (Nahuta), limestone (Ashaka), marble (Toto), diatomite (Bularaba), gold (Ilesha), gemstones (Keffi), talc (Kagara), bitumen (east of Ijebu Ode), coal (Enugu), petroleum and natural gas (the Niger Delta).

⁵ Isaac Aigbedion and SE Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' (2007) 2 International Journal of Physical Sciences 33, 34.

four decades. Among these resources, solid minerals hold a prominent position, constituting a vital but finite component of the nation's wealth. Solid minerals are classified as non-renewable resources, meaning their natural quantities cannot be replenished or renewed once they are depleted.⁶ This inherent characteristic of mineral resources clearly establishes them as finite and non-renewable assets. The mining of solid minerals holds a prominent position as one of the world's vital industries. It is recognized as the second oldest industry globally, following agriculture. The extraction and processing of solid minerals have played a crucial role in supporting economic growth and development throughout history. Unfortunately, mining activities associated with extracting these minerals significantly negatively impact the environment.⁷ It is essential to acknowledge that the extraction processes involved in mining operations can have detrimental effects on the environment, including habitat destruction, water and air pollution and soil degradation.⁸ If any of these mineral resources are to become revenue for the country, they must be explored, extracted from the earth, processed and used to produce goods. While doing so, damage is done to the environment and the people within the environment.⁹

Despite the amount of income derived from mining activities in the country, mining is still one of Nigeria's leading causes of environmental degradation.¹⁰ Some forms of degradation include the desolate landscape of earth mounds (as can be seen in certain areas in Plateau State); damage to the topography beauty of mining communities; farmlands made barren as a result

⁶ Akper, P.T. 'Addressing Environmental Concerns in the Exploitation of Solid Minerals in Nigeria: Issues, Problems and Prospects.' (2011). In: Fagbohun O. (ed.) 1 NIALS Journal of Environmental Law, 183,187.

⁷ Isaac Aigbedion and SE Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' (2007) 2 International Journal of Physical Sciences 33, 34.

⁸ Ifeanyi Jonathan Nwadiolor, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' (2011) 6 Journal of the Environment 68, 70.

⁹ Ifeanyi Jonathan Nwadiolor, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' (2011) 6 Journal of the Environment 68, 70.

¹⁰ Ali I Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities also Matter!' (2020) 8 Journal of Geoscience and Environment Protection 212.

of mining activities; water sources (especially in lead-zinc mines) tainted with traces of toxic elements.¹¹

The effect of mining also extends to air, land and water, causing health risks to both terrestrial and aquatic locales.¹² The impact of exploiting the resources in this sector has had a huge effect on host communities, resulting in several conflicts within and between the communities and the corporations.¹³ These conflicts have led to persistent tension and protests from members of the host communities and their supporters worldwide to alleviate the communities' suffering and save them from the harmful effect of the mining projects.¹⁴

It can be argued that mining companies' operations in countries help improve living standards and enhance national economies.¹⁵ Mining contributes to the economic development of nations, including wealth creation and Gross Domestic Product (GDP). Various countries, such as Canada, Ghana, Botswana, the Democratic Republic of Congo (DRC), South Africa, and Nigeria, have been recognized for the significant role mining plays in their GDP.¹⁶

For instance, the mining industry in Ghana holds a crucial role in the country's growth and development, impacting various economic sectors. It is the largest contributor, accounting for 35% of the country's exports and 5% of GDP. Additionally, it provides 1% of total employment in the country. Mining activities have facilitated infrastructure development across different

¹¹ Ali I Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities also Matter!' (2020) 8 *Journal of Geoscience and Environment Protection* 212.

¹² Isaac Aigbedion and SE Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' (2007) 2 *International Journal of Physical Sciences* 33, 35.

¹³ Sunday Bontur Lugard, 'Stakeholder Approach to Corporate Social Responsibility: Recipe for Sustainable Peace in the Niger Delta Region?' (2014) 4 *Journal of Sustainable Development Law and Policy* 155, 157.

¹⁴ Sunday Bontur Lugard, 'Stakeholder Approach to Corporate Social Responsibility: Recipe for Sustainable Peace in the Niger Delta Region?' (2014) 4 *Journal of Sustainable Development Law and Policy* 155, 157.

¹⁵ Ali I Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities also Matter!' (2020) 8 *Journal of Geoscience and Environment Protection* 212, 213.

¹⁶ Magnus Ericsson and Olof Löf, 'Mining's contribution to national economies between 1996 and 2016', (2019) 32 *Mineral Economics* 223,225.

regions and stimulated the establishment of industries. The sector generates significant government revenue, with proceeds amounting to USD 79 million, including a notable direct royalty contribution of USD 42 million. Furthermore, mining creates employment opportunities in the informal sector, contributing to 7% of total employment and 5% of GDP.

In Nigeria, the mining sector's contribution to GDP was 0.28% in 2006, 0.34% in 2010, 0.36% in 2011, and increased to 0.6% in 2012, 2013, and 2014.¹⁷ A recent publication highlighted that the sector accounts for 0.3% of the national economy, 0.2% of exports, and approximately USD 1.4 billion to Nigeria's GDP.¹⁸ In 2015, the sector's contribution to the economy was estimated to be between 0.5% and 0.6% of the country's GDP. Although these figures may seem insignificant when compared to the industry's potential, opportunities derived from it can be substantial. In other African countries, the mining sector contributes more to GDP, such as 40% in Botswana and 25% in the Democratic Republic of Congo (DRC).¹⁹

These examples highlight the substantial economic contributions of the mining sector to various countries. However, it is important to ensure that mining activities are conducted responsibly, considering the potential environmental impacts, and striving for sustainable practices. By doing so, the mining industry can continue to support economic development while minimizing negative environmental consequences.²⁰ It is essential to acknowledge the negative impacts of mining on both local and global environments, which undermine the overall well-being and sustainability of the Earth.

¹⁷ M.T Ladan, *Natural Resources and Environmental Law and Policies for Sustainable Development in Nigeria*. (Ahmadu Bello University Press Limited, Zaria 2014) p.358.

¹⁸ M.T Ladan, *Natural Resources and Environmental Law and Policies for Sustainable Development in Nigeria*. (Ahmadu Bello University Press Limited, Zaria 2014) p.358.

¹⁹ Magnus Ericsson and Olof Löf, 'Mining's contribution to national economies between 1996 and 2016', (2019) 32 *Mineral Economics* 223,230.

²⁰ Magnus Ericsson and Olof Löf, 'Mining's contribution to national economies between 1996 and 2016', (2019) 32 *Mineral Economics* 223,230.

In response to the environmental impacts of mining, the global mining industry has proactively established a range of legal standards at global, regional, and national levels. These standards are designed to promote sustainable and responsible practices, aligning with the objectives outlined in the Sustainable Development Goals (SDGs). Over the years, numerous international conventions, treaties, and agreements have been put in place to address environmental concerns. These include significant milestones such as the United Nations Conference on the Human Environment (Stockholm Convention) in 1972, the United Nations Conference on Environment and Development (UNCED) in 1992, the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, and several others including those focused on biodiversity, ozone layer protection, and hazardous waste management.²¹ These efforts reflect a collective commitment to mitigating the environmental impacts associated with mining activities on a global scale.

In Africa, significant efforts have also been made to address the environmental impacts of mineral mining by adopting conventions and treaties by member states. These include the African Charter on Human and Peoples' Rights, the Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa in 1991, and the Revised African Convention on the Conservation of Nature and Natural Resources in 2003. These regional initiatives further demonstrate the commitment to preventing or mitigating the environmental impacts associated with mining activities. At the sub-regional level, the Economic Community of West African States (ECOWAS) Treaty was established in 1975 and revised in 1993. The revised version, specifically Chapter VI, focuses on cooperation regarding the environment and natural

²¹ 'Repositorio.Cepal.Org' (Sustainable development 20 years on from the earth summit) <<<https://repositorio.cepal.org/server/api/core/bitstreams/b76eab6-0af3-4299-abdb-d88129ba1040/content>> > accessed 10 October 2023.

resources.²² Article 29(1) of the treaty obliges member states to protect, preserve, and enhance the region's natural environment and cooperate in responding to natural disasters.²³ Furthermore, Article 30(1) requires member states, individually and collectively, to take appropriate measures to prohibit the importation, transit, dumping, and burial of hazardous and toxic wastes within their territories.²⁴ Article 31(1) emphasizes the need for member states to harmonize and coordinate their policies and programs related to natural resources.²⁵

These global, continental, and regional conventions, treaties and agreements have been established to safeguard the environment from the impacts of mining and other activities that pose risks to human health and the environment while promoting sustainability in the mining sector. However, for these conventions and treaties to have the desired positive impacts, national governments must fully incorporate them into their domestic laws and policies.

In many parts of Nigeria, where solid mineral mining has occurred or is currently taking place, the environment is left detrimental to human development.²⁶ For instance, extensive land degradation is evident in certain mining regions, such as the Jos Plateau, where open-cast mining has persisted for decades. Unlike in Europe and other advanced countries, Nigeria has yet to adopt and implement the principle and practice of remediation fully. Although there is an abundance of laws, regulations, policies, and guidelines pertaining to solid mineral mining in Nigeria aimed at ensuring fair and equitable exploitation of these resources and protecting the environment, and host communities, compliance and enforcement have become significant concerns. The effects and consequences of a degraded environment on the population's

²² Comprising of Articles 29, 30 and 31.

²³ Economic Community of West African States (Ecowas) Revised Treaty 1993.

²⁴ Economic Community of West African States (Ecowas) Revised Treaty 1993.

²⁵ Economic Community of West African States (Ecowas) Revised Treaty 1993.

²⁶ M.O Erhun, 'The contribution of the Minerals and Mining Industry: A Legal Perspective' (2015) 5 *Journal of Energy Technologies and Policy* 99,100.

economic, social, cultural, spiritual, and political activities can be far-reaching. Therefore, it is essential to prioritize sustainable mining practices to leave future generations with a balanced, healthy and harmonious environment.²⁷

The thesis proposes implementing a corporate governance system that prioritizes protecting and including host communities as stakeholders in Nigeria. By adopting this approach, the interests and welfare of host communities can be safeguarded, ensuring their active participation in decision-making processes, and promoting sustainable development. The thesis proposes adopting an inclusive stakeholder approach to address Nigeria's ineffective regulations surrounding mining practices. Implementing this approach aims at fostering a conducive and sustainable business environment. To create a sustainable business environment, it is recommended to establish stakeholder-inclusive board compositions as a corporate governance method. This approach addresses the concerns of all stakeholders and promotes effective decision-making processes within the organization.

Corporate governance is proposed to protect host communities. A more robust and inclusive corporate governance framework can be established by identifying and rectifying shortcomings such as regulatory gaps or insufficient stakeholder representation. This thesis focuses on the defects in legislation pertaining to protecting host community rights within the mining industry. It examines the existing legal frameworks and identifies the gaps, weaknesses, and inadequacies that hinder the effective safeguarding of host communities' rights. By exploring these defects, this study aims to shed light on the urgent need for legal reforms and policy interventions to ensure host communities' fair and equitable treatment. By closely scrutinising the regulatory landscape of the Nigerian mining industry, this thesis recognises the need for a comprehensive corporate governance framework to address the prevailing challenges.

²⁷ M.O Erhun, 'The contribution of the Minerals and Mining Industry: A Legal Perspective' (2015) 5 Journal of Energy Technologies and Policy 99,100.

Exploring corporate governance structures and practices within the industry has shed light on existing deficiencies and the subsequent proposal of vital reforms.²⁸ These reforms aim to shift Nigeria's corporate governance system from a shareholder-centric approach to a more inclusive framework that encompasses the interests of all stakeholders.²⁹

The current corporate governance landscape in the Nigerian mining sector reveals certain limitations and imbalances that undermine sustainable and responsible industry practices.³⁰ The dominance of a shareholder-centric perspective often overlooks the critical role and rights of other stakeholders, particularly the host communities impacted by mining operations. Consequently, the proposed reforms seek to rectify these shortcomings by advocating for a stakeholder-inclusive corporate governance model.³¹

By embracing a stakeholder-inclusive approach, Nigeria's mining industry can foster greater transparency, accountability, and ethical decision-making. This shift acknowledges the importance of balancing the interests of shareholders, host communities, employees, government agencies and other relevant stakeholders. Such an inclusive framework recognises the interdependencies and shared responsibilities within the industry, ensuring that the rights and well-being of all stakeholders are duly considered and protected.

Through the recommended reforms, the thesis aims to foster a corporate governance environment that prioritises sustainable development, community engagement, and responsible mining practices. The proposed framework can help build trust, promote social cohesion and

²⁸ Stephen. A. Ejuvbeokpo and Benjamin. U. Esuiké, 'Corporate governance issues and its implementation: The Nigerian experience' (2013) 3 *Journal of Research in International Business Management* 53,56.

²⁹ Stephen. A. Ejuvbeokpo and Benjamin. U. Esuiké, 'Corporate governance issues and its implementation: The Nigerian experience' (2013) 3 *Journal of Research in International Business Management* 53,56.

³⁰ Stephen. A. Ejuvbeokpo and Benjamin. U. Esuiké, 'Corporate governance issues and its implementation: The Nigerian experience' (2013) 3 *Journal of Research in International Business Management* 53,56.

³¹ Ayodele Adelaja Adekoya, 'Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions' 6 (2011) *Journal of Business Systems, Governance and Ethics* 39,43.

minimise potential conflicts between mining companies and host communities by providing a platform for effective participation, communication, and collaboration among stakeholders. Furthermore, the transition to a stakeholder-inclusive corporate governance system aligns with international best practices and emerging trends in corporate governance. It reflects a growing recognition of the need for corporations to go beyond financial performance and consider their broader societal and environmental impacts. By embracing this approach, Nigeria's mining industry can enhance its competitiveness, attract responsible investments, and contribute to the nation's sustainable development goals. This aligns with Tirole's definition of corporate governance, which emphasizes the importance of institutional structures in encouraging management to adopt an inclusive approach that prioritizes the welfare of stakeholders.³² In this context, implementing effective corporate governance practices in the mining sector not only benefits individual companies but also serves as a catalyst for broader economic and societal advancement.

The proposed inclusive stakeholder approach integrates a company's stakeholders within its board composition. By doing so, corporate governance balances the interests of stakeholders and shareholders so that the shareholders' voices cannot marginalise those of the stakeholders. This inclusive approach is desirable, as it recognises that the company's interests are not necessarily always linked to the shareholders' interest and that the interests of the shareholders do not always have to take priority over the stakeholders' interests.

The inclusive stakeholder approach also means that the board does not consider the stakeholders as mere instruments to generate profits for the shareholders but as entities with

³² Jean Tirole, 'Corporate Governance' (2001) 69 *Econometrica* 1, 30.

inherent value that can decide on matters in the corporation's best interest while supporting the corporation's holistic sustainability goals.

This thesis aims to fill the research gaps related to this topic by analysing how corporate governance strategies from previous studies can be adopted in Nigeria's mining industry. This thesis proposition is based on the triple bottom principles of corporate governance,³³ which attempt to create a new language that can define an inevitable expansion of existing corporate models from economic values. As such, this thesis proposes that the boards of mining companies should be legally obliged to recognise the interests of other stakeholders (such as the host community and the environment), thereby not focusing exclusively on the interests of shareholders. Thus, it is concerned with recognising stakeholder's rights and interests, primarily emphasising integrating host communities into the corporate governance structure. To this end, the thesis thoroughly examines and explains relevant corporate governance challenges and suggests legislative reforms for corporate governance in the Nigerian mining sector.

Many discussions have taken place concerning the responsibility of a corporation within the larger community and the level of consideration directors need to give to the interests of shareholders.³⁴ Friedman asserts that a business has only one social obligation: to use its resources and engage in activities to raise profits. This is the case so long as the company keeps within the rules of the game. That is, it engages in open and free competition without any deception or fraud.³⁵ In comparison, other models contend that firms have social duties beyond simply providing shareholder advantages to 'stakeholders. According to Frederick, business and society have a symbiotic relationship in that a fundamental shift in one causes movement

³³ Wayne Norman and Chris MacDonald, 'Getting to the Bottom of "Triple Bottom Line"', (2004) 14 *Business Ethics Quarterly* 243.

³⁴ Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' in WC Zimmerli, M Holzinger and K Richter, (eds) *Corporate Ethics and Corporate Governance*. (Springer, 1970).

³⁵ *ibid.*

to the other.³⁶ Corporate critics, however, have asserted that to argue that a corporation has a responsibility to act in a manner that is not conducive to its shareholders' well-being is illogical and inconsistent.³⁷

The conventional notion of company law has been that corporate undertaking maximises profits for shareholders³⁸ while ignoring other stakeholders' rights, including those of the host communities and the environment. In the words of Bowen, LJ, a core proponent of this theory, '...there should be no cakes and ale except such as are required for the benefit of the company ... charity has no business to sit at the board of directors qua charity'.³⁹ This statement received criticism from pro-stakeholder scholars⁴⁰ who challenged the traditional notion of shareholder primacy within Anglo-American corporate governance.⁴¹ These scholars have gone on to open the debate around companies' corporate social responsibility (CSR), imposing a broader obligation on companies regarding their responsibilities to other stakeholders and raising the issues of consideration for the environment, donations and host communities.⁴²

In the 1900s, corporate governance became controversial because various scholars challenged the regulations guiding corporations.⁴³ The shareholder theory of corporate governance argues

³⁶ William Crittenden Frederick, *Corporation, Be Good!* (Dog Ear, 2006).

³⁷ Philip RP Coelho, James E McClure and John A Spry, 'The Social Responsibility of Corporate Management: A Classical Critique' (2003) 18 *American Journal of Business* 15, 30.

³⁸ Referred to as 'members' in English law. Andrew Keay 'Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model' (2008) 71 *The Modern Law Review* 663, 665.

³⁹ *Hutton v. West Cork Railway Company* (1883) 23 ChD 654.

⁴⁰ Egi Troka, 'The Danger of Shareholder Primacy: Harm to Stakeholders, Shareholders, and the Well-Being of the Corporation' (2016) 13 *Revue your Review* 99, 102; Joseph Heath and Wayne Norman, 'Stakeholder Theory, Corporate Governance and Public Management: What Can the History of State-Run Enterprises Teach us in the post-Enron Era?' (2004) 53 *Journal of Business Ethics* 247; Margaret M Blair, 'Rethinking Assumptions Behind Corporate Governance' (1995) 38 *Challenge* 12.

⁴¹ *ibid.*

⁴² Carla Munoz Slaughter, 'Corporate Social Responsibility: A New Perspective' (1997) 18 *The Company Lawyer* 313, 315.

⁴³ Sanford Jacoby, 'Corporate Governance and Society' (2005) 48 *Challenge* 69, 70.

that more power should be given to shareholders, to the exclusion of other stakeholders.⁴⁴ In contrast, stakeholder theorists argue that stakeholders' interests should be included.⁴⁵

This thesis aligns with the viewpoint of the stakeholder theorist. As such, it examines the conventional theory of company law and the rights of stakeholders in the company concerning corporate governance practices. The thesis considers the rights and interests of non-shareholder groups, including the employees, creditors, stockholders and host communities. However, since this thesis focuses on host communities' rights, recommendations are focused on ensuring that Nigerian mining companies recognise and uphold same.

The immense damage done to the environment by mining and the exploitation of mining resources seems to have reached a disturbing level that has given rise to conflict.⁴⁶ Achieving a balance between protecting the environment and increasing wealth through mining exploration is one of the main issues facing the mining sector. Therefore, focusing on this sector within a Nigerian context is essential. There is a need for good corporate governance in the industry, aiming to reduce and prevent environmental damage and encourage the representation of the communities involved.

1.2 Research Problems

By nature, humans are social creatures that rely on the environment for their development and survival. In this pursuit, they constantly explore the environment to meet their economic, socio-

⁴⁴ Estelle Beer and Ronél Rensburg, 'Towards a Theoretical Framework for the Governing of Stakeholder Relationships: A Perspective from South Africa' (2011) 11 *Journal of Public Affairs* 208, 210; Amy J Hillman and Gerald D Keim, 'Shareholder Value, Stakeholder Management, and Social Issues: What's the Bottom Line?' (2001) 22 *Strategic Management Journal* 125; Juha Kettunen and Manodip Ray Chaudhuri, 'Sustainable Engagement in Stakeholder Relationships: Crafting a Stakeholder Map', (2017) 17 *Journal Management Indonesia* 27.

⁴⁵ *ibid.*

⁴⁶ Ifeanyi Jonathan Nwadior, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' (2011) 6 *Journal of the Environment* 68, 70.

political, and technological needs. With its abundant resources, the environment has always been a target for human exploitation. However, regardless of the methods and technologies employed, it is widely acknowledged that mining activities have detrimental impacts on the environment.⁴⁷ In some developing countries, weak regulatory regimes and low safety standards are established to attract foreign direct investment (FDI) into the mining sector, aiming to expedite national development.⁴⁸ Countries like Ghana and Zambia have employed this strategy to varying degrees. Ghana, for instance, has historically implemented policies aimed at attracting FDI into its mining sector.⁴⁹ The government has offered tax incentives, streamlined permitting processes, and provided other preferential treatment to foreign mining companies. This approach is rooted in the belief that a conducive investment environment will lead to increased mining activity, which, in turn, will stimulate economic development.⁵⁰

Zambia, on the other hand, has also pursued FDI in its mining sector, but the approach has not always yielded the desired outcomes. The country has faced challenges related to issues like tax evasion, environmental degradation, and disputes over community rights. These challenges highlight the complex nature of balancing economic development goals with the protection of local communities and the environment.

In both cases, the pursuit of FDI in the mining sector has necessitated careful consideration of regulatory frameworks. Striking the right balance between attracting foreign investment and safeguarding the interests of host communities remains a critical challenge for these countries.

⁴⁷ Ifeanyi Jonathan Nwadiakor, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' (2011) 6 *Journal of the Environment* 68, 70.

⁴⁸ Eghosa O Ekhaton, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' (2016) 21 (1) *Annual Survey of International and Comparative Law* 43, 48.

⁴⁹ Kyla Tienhaara, 'Mineral investment and the regulation of the environment in developing countries: lessons from Ghana' (2006) 6 *Int Environ Agreements* 371.

⁵⁰ Kyla Tienhaara, 'Mineral investment and the regulation of the environment in developing countries: lessons from Ghana' (2006) 6 *Int Environ Agreements* 371.

This approach appeals to foreign multinational corporations due to lower operational costs resulting from lax standards. Unfortunately, regulatory institutions governing Nigeria's mining sector are weak in enforcing existing regulations. Corruption permeates the system, and the judicial process for dispute resolution is sluggish, hindering justice delivery. These factors contribute to institutional voids within the sector.⁵¹ Compounding the issue, host communities in Nigeria find themselves embroiled in legal battles with multinational companies that possess significant material resources. These corporations employ various tactics to frustrate environmental degradation cases, creating prolonged legal proceedings. The protracted *SDPC v. Anaro & Ors* case, which lasted 32 years, serves as an example. These challenges undermine the ability of host communities to obtain environmental justice in Nigeria.⁵² This and many more are the militating factors against host communities' ability to obtain environmental justice in Nigeria.⁵³

Nigeria's existing legal, regulatory, and institutional framework lacks adequacy in protecting the environment from the adverse impacts of mining activities. One example is the ambiguous language used in section 90(2) of the Nigerian Minerals and Mining Act, which requires leaseholders to carry out effective rehabilitation of mined areas "proportionate to their profits" without providing clear guidelines or standards for compliance. Another instance is found in sections 46 and 131 of the same act, where the offence of illegal mining is defined, but no corresponding punishment is specified in section 131.⁵⁴

⁵¹ Emeka Polycarp Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, in Ensuring Access to Justice for Victims of Environmental Degradation' (2010) 6 (3) Law Environment and Development Journal 320, 327.

⁵² *ibid.*

⁵³ Eghosa O Ekhaton, 'Improving Access to Environmental Justice under the African Charter on Human and Peoples' Rights: The Roles of NGOs in Nigeria' (2014) 22 (1) African Journal of International and Comparative Law 63, 63.

⁵⁴ Nigerian Minerals and Mining Act, 2007.

The 'pollution haven theory' exposes how corporations, to maximise profit for their shareholders, ordinarily target business environments in which they are likely to encounter less stringent regulatory measures.⁵⁵ Unregulated or unauthorized mining operations by unlicensed and artisanal miners further contribute to environmental degradation and pose risks to vulnerable communities. Moreover, these activities lead to revenue losses for the government. Despite efforts, unregulated or illegal mining persists, leaving numerous abandoned sites that threaten human lives. The presence of multiple mining sites in the Jos-Plateau region serves as a notable example. The mining industry plays a vital role in Nigeria's economy but confronts significant challenges. This introduction outlines two key research problems: the impact of mining on Nigeria's economy and the issue of permanent sovereignty over natural resources concerning the Nigerian Constitution.

1.2.1 Mining and Nigeria's Economy

Mining consists of different activities or operations that may involve extracting mineral resources that serve as raw materials for various products.⁵⁶ Natural resources are deposits of raw materials found underneath the earth, rock or seabed, which take either solid, liquid, or gaseous forms.⁵⁷ Countries that are wealthy in mineral resources have a significant chance of translating it into monetary wealth.⁵⁸ Nigeria is endowed with mineral resources; it is rich in both petroleum and solid mineral resources, including coal, tin, lignite, copper, steel, columbite, gold, iron ore, bitumen, and uranium.⁵⁹ Solid mineral resources have served as the

⁵⁵ Kevin R Gray, 'Foreign Direct Investment and Environmental Impacts: Is the Debate Over?' (2002) 11 (3) Review of European Community and International Environmental Law 306, 307.

⁵⁶ Emrah Karakaya and Cali Nuur, 'Social Sciences and the Mining Sector: Some Insights into Recent Research Trends' (2018) 58 Resources Policy 257, 259.

⁵⁷ Theodore Okonkwo, 'Ownership and Control of Natural Resources under the Nigerian Constitution 1999 and its Implications for Environmental Law and Practice' (2017) 6 International Law Research 1.

⁵⁸ Olugbenga Akindeji Okunlola, *Riches Beneath our Feet: Mineral Endowment and Sustainable Development of Nigeria* (Inaugural Lecture, University of Ibadan Press, 2017) 10.

⁵⁹ Ahmed F Ali, Amina S Abdullahi, and Aminu S Zangina, 'Environmental Issues and the Prospects of Mining in Nigeria' (2018) 4 (2) Dutse Journal of Pure and Applied Sciences 531, 535.

means of funding the Nigerian economy since 1902. At the peak of its solid mineral exploration, Nigeria was one of the largest tin and coal-producing countries, while its gold production hit about 1.4 tons annually.⁶⁰

The extraction of mineral resources has helped tremendously with the growth and development of national economies. The mining industry greatly affects the macroeconomy by creating infrastructure, improving employment rates, and developing rural communities, among other factors.⁶¹ However, due to the questionable methods used in exploration and mining operations by corporations, various damaging health effects, ranging from exposure to harmful dust to noise emissions resulting from the process of mining activities, have affected the host communities and made the good impacts almost non-existent. This has led to the conclusion that 'the health cost of mining operations sometimes outweighs the benefits'.⁶² About 6.5 million people die annually due to urban air pollution.⁶³ The benefits accrued from mining, in the form of increased investment, are being achieved at high environmental, health, and social costs to residents, resulting in many public protests against mining corporations.⁶⁴ Since the mining industry plays an important role in improving Nigeria's economy and generating revenues that are used for development and growth purposes, corporations may be inclined to focus only on maximising profit. Thus, mining companies may disregard the adverse effects of their operations and activities on the residents of the host communities, the environment and the land they use. This disregard has led to severe criticism of the mining industry for its role

⁶⁰ Olasupo Shasore, 'Nigeria's Solid Minerals as a Source of Economic Development – Tapping a Latent Resource?' (*African Law Practice*, 2016) <<https://www.alp.company/sites/default/files/Nigeria%27s%20Solid%20Minerals%20as%20a%20source%20of%20Economic%20Development%20.pdf>> accessed 25 September 2022.

⁶¹ Carla Gonzalez Zlatar, 'Mining Company Engagement with Universities: A CSR Approach' (Master of Business Research, Queensland University of Technology 2018).

⁶² Mbuyi M Melodi, 'Assessment of Environmental Impacts of Quarry Operation in Ogun State, Nigeria' (2017) 2 *Federal University, Oye Journal of Engineering and Technology* 100, 103.

⁶³ Adejoke C Olufemi, Andile Mji and Murembiwa S Mukhola, 'Health Risks of Exposure to Air Pollutants among Students in Schools in the Vicinities of Coal Mines' (2018) 37 *Energy Exploration and Exploitation* 1638, 1639.

⁶⁴ *ibid.*

as a major contributor to environmental pollution and degradation.⁶⁵ The mining of solid minerals has had negative impacts of various sizes on host communities. Mining companies occasion adverse impacts on host communities marine and surface ecosystems. These impacts include the loss of traditional conviviality, natural ambience, cultural heritage and sacred connection to ancestral land.⁶⁶ The Niger Delta region has been adjudged to be topmost endangered wetland worldwide.⁶⁷ This is not surprising, as members of the community have been made victims of their own natural mineral resources. This situation highlights the environmental degradation caused by solid mineral resource mining, primarily stemming from mineral exploration.

Solid mineral resources mining has its share of environmental degradation occasioned by mineral exploration. Before petroleum exploration, Nigeria was involved in active solid mineral exploration. Enugu State was generally known as the coal mining state, while there was aggressive tin mining in Plateau State.⁶⁸ With less regulatory supervision, mining companies were not mindful of standards that ensure proper care is taken when carrying out exploration activities.⁶⁹ Hence, it is common to see large gullies, the contortion of the earth's surface, loss of vegetation and the pollution of surface and groundwater caused by this display of social irresponsibility by mining companies.⁷⁰ The situation has also rationed the limited

⁶⁵ Jonathan Drimmer, 'Human Rights and the Extractive Industries: Litigation and Compliance Trends' (2010) 3 (2) *Journal of World Energy Law and Business* 121, 124.

⁶⁶ Hari M Osofsky, 'Learning from Environmental Justice: A New Model for International Environmental Rights' 24 (1) *Stanford Environmental Law Journal* 1, 3.

⁶⁷ Adelaja O Odukoya, 'Oil and Sustainable Development in Nigeria: A Case Study of the Niger Delta' (2006) 20 *Journal of Human Ecology* 249, 249.

⁶⁸ Other parts of Nigeria where tin exploration has taken place include Bauchi, Kano, Ilesha and Zaria. See, Udeagha S Onwuka, Joseph Oluchukwu Duluora and Chinedu Oguejiofo Okoye, 'Socio-Economic Impacts of Tin Mining in Jos, Plateau State, Nigeria' (2013) *International Journal of Engineering Science Invention* 30, 30.

⁶⁹ Peter Eddie Aldinger, 'Addressing Environmental Justice Concerns in Developing Countries: Mining in Nigeria, Uganda and Ghana' (2014) 26 *The Georgetown International Environmental Law Review* 345, 353.

⁷⁰ Peter Eddie Aldinger, 'Addressing Environmental Justice Concerns in Developing Countries: Mining in Nigeria, Uganda and Ghana' (2014) 26 *The Georgetown International Environmental Law Review* 345, 353.

land mass that host communities would otherwise have used for agricultural extensions and other valuable ventures.

There has also been vast loss of farmland to tin-mining operations in Jos South, Plateau State due to 'soil erosion problems, swampy nature of the neglected mined excavation, mine dump, pits and industrial use of the arable land'.⁷¹ Consequently, there are: low yields from farming, land breakage, land disputes and clashes, as well as unemployment in the area.⁷² Medicine Without Borders once notified the authorities of a lead-poisoning outbreak in Bagega village, Zamfara State, which arose from mining activities.⁷³ This led to emergency health problems for community members and resulted in an outbreak of lead poisoning among the community residents. Within a period of seven months, 500 children lost their lives.⁷⁴

Residents also deal with vibrations and loud noises from mineral mining activities.⁷⁵ Over time, the residents of communities where these activities occur tend to experience nervous shock, sometimes leading to health problems such as high blood pressure or hypertension.⁷⁶ There are also spillage incidents, resulting in the drainage of cyanide into nearby streams used by residents.⁷⁷

⁷¹ Michael Adejare Adegboye, 'Effect of Mining on Farming in Jos South Local Government Area of Plateau State' (2012) 3(4) *Journal of Soil Science and Environmental Management* 77, 80.

⁷² *ibid.*

⁷³ Human Rights Watch, 'A Heavy Price: Lead Poisoning and Gold Mining in Nigeria's Zamfara State' (2012) <https://www.hrw.org/sites/default/files/related_material/Nigeria_0212.pdf> accessed 22 September 2022.

⁷⁴ Olufemi Olamide Ajumobi and others, 'High Concentration of Blood Lead Levels among Young Children in Bagega Community, Zamfara – Nigeria and the Potential Risk Factor' (2014) 18 *Supp 1(14) Pan-African Medical Journal* 1, 7.

⁷⁵ Benjamin Okang' Odumo and others, 'Impact of Gold Mining Associated with Mercury Contamination in Soil, Biota Sediments and Tailings in Kenya' (2014) 21 *Environmental Science and Pollution Research* 12426; IJ Nwadiolor, 'OHCHR Permanent Sovereignty over Natural Resources' (2020) <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/NaturalResources.aspx>> accessed 24 July 2020.

⁷⁶ Benjamin Okang' Odumo and others, 'Impact of Gold Mining Associated with Mercury Contamination in Soil, Biota Sediments and Tailings in Kenya' (2014) 21 *Environmental Science and Pollution Research* 12426.

⁷⁷ Qian Li and others, 'Exploring the Impacts of Coal Mining on Host Communities in Shanxi, China – Using Subjective Data' (2017) 53 *Resources Policy* 125, 126.

The host communities where the exploration occurs continue to suffer from lack amid plenty. This lack is worsened by persistent environmental pollution, especially that caused by oil spillage and gas flaring. The effect of pollution can be seen in the depletion of agricultural resources (food products, economic crops and trees, farmlands and drinking water).⁷⁸ This depletion is in addition to other socioeconomic problems such as: poverty, hunger, unemployment and poor standard of living. To make matters worse, little attention has been paid to the development of the host communities, despite all the damage done to their natural environments. As a result of these persistent issues and agitations, violent conflicts have emerged. A case in point is Ken Saro-Wiwa and the other Ogoni activists, who were allegedly killed by the Abacha military junta, with Shell's collaboration.⁷⁹

It has also been noted that mining companies and host communities have always been at loggerheads with each other during their interactions.⁸⁰ According to Abuya,⁸¹ conflicts between the corporation and community, on the one hand and the state and the community, on the other, arise due to six main issues: land ownership; unfair compensation practices; unbalanced resource allocation; environmental dilapidation; poverty caused by mining activities; and human right abuses.⁸² This is because there is a lack of equality concerning sharing benefits from mining companies' activities. Conflicts have included challenges for compensation for assets lost during relocation, land title disputes and environmental degradation conflicts.

⁷⁸ Uguru W Ibor, TI Bassey and A Seun, 'Socio-Economic and Environmental Risk Factors of Allergic Conjunctivitis in Lokoja, Kogi State, Nigeria' (2019) 23 *Journal of Applied Sciences and Environmental Management* 489, 490.

⁷⁹ Jena Martin Amerson, 'What's in a Name? Transnational Corporations as Bystanders to the Rule of Law in a Globalized Society' (2011) 85 *St.John's Law Review* 1, 3-4.

⁸⁰ Adejoke C Olufemi, Andile Mji and Murembiwa S Mukhola, *supra* (note 54) 1640.

⁸¹ Willice O Abuya, 'Mining Conflicts and Corporate Social Responsibility: Titanium Mining in Kwale, Kenya' (2016) 3 *The Extractive Industries and Society* 489, 491.

⁸² *ibid.*

It is imperative that mining companies adhere to environmentally sound protocols in mineral resource mining. In this regard, the government plays a crucial role in ensuring adequate regulation and establishing an effective institutional framework to guarantee corporate compliance with best practices.⁸³ the Nigerian government's insufficient efforts to enforce compliance with legal and institutional regulations by mining companies have raised concerns about impartiality.⁸⁴ Additionally, there are troubling allegations of gross human rights violations by these companies. The environmental toll spans from heedless exploitation of mineral resources to the ecological crises faced by mining communities. This, coupled with allegations of collusion with the government in perpetrating systemic crimes against host communities, has led to a cycle of conflict that profoundly impacts the affected regions. Urgent and robust measures are imperative to rectify these issues, safeguard the rights of host communities, and promote responsible mining practices for the collective well-being of the nation.⁸⁵

1.2.2 Permanent Sovereignty over Natural Resources and the Nigerian Constitution

In the case of Nigeria, the federal government has control over the petroleum and solid mineral resources that form the major means of exercising PSNR.⁸⁶ This principle is confirmed in the Nigerian Constitution (the Constitution) and in several Nigerian statutes. Section 44(3) of the Constitution provides that every 'property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government

⁸³ Kingsley U Ekwere, *Sustainable Development of Oil and Gas in the Niger Delta: Legal and Political Issues*. (PhD Thesis, University of Hamburg 2009) 190.

⁸⁴ Abiodun Jacob Osuntogun, 'Global Commerce and Human Rights: Towards an African Legal Framework for Corporate Human Rights Responsibility and Accountability', (PhD Thesis, University of the Witwatersrand 2015) 5.

⁸⁵ Larisa Wick, 'Human Rights Violations in Nigeria: Corporate Malpractice and State Acquiescence in the Oil Producing Deltas of Nigeria' (2003) 12 Michigan State University Journal of International Law 63, 74.

⁸⁶ Lanre Aladeitan, 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy' (2013) 38 Thurgood Marshall Law Review 159, 169.

of the Federation'.⁸⁷ This provision vests the federal government's ownership and control of all mineral resources. Even though Nigerian law recognises ownership of land by constituent states, whenever a mineral deposit is found on any land in Nigeria, the federal government can take over the ownership of such land by virtue of the above constitutional provision.⁸⁸ Enactments similar to s 44(3) abound. This includes: s 1 of the Land Use Act 1978, s 2(1) of the Exclusive Economic Zone Act 1978 and s 1(3) of the Nigerian Minerals and Mining Act (NMMA) 2007.⁸⁹ The combined effect of these statutes places Nigeria in the comity of states that uphold the absolute theory of mineral resource ownership.⁹⁰

The Nigerian state exercises regulatory power over the operations of expatriates and companies in the solid mineral sector.⁹¹ Given its limited expertise in mineral mining ventures, the Nigerian government has granted concessionary rights to multinational corporations with the financial and technical wherewithal and proficiency to undertake petroleum and solid mineral exploration in the country.⁹² Solid mineral exploration licences issued under the NMMA 2007 enable the government to transfer mineral resources property to the licensees who successfully and lawfully explore the raw materials.⁹³ However, this act⁹⁴ does not include a clear plan for the inclusion of host communities within a mining company's board composition. It was reported in 2013 that 223 small-scale mining activities, 195 mining lease holders, 845 mining cooperatives for artisans and 2,048 mining exploration licences had already been issued to

⁸⁷ Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), s 44(3).

⁸⁸ CFRN 1999, s 44(3). See also: Petroleum Act 1969, s 1; Land Use Act (LUA) 1978, s 1.

⁸⁹ This will be further discussed in chapter 5 and 6 of this thesis respectively.

⁹⁰ H R Williams & C J Meyer, *Oil and Gas Law* (New York: Matthew Bender & Co, 1991)

⁹¹ Livinus Ifeatu Nwokike, 'Addressing The Environmental Rights Of The Niger Delta States Through Governments' Social Responsibility' 12 (2021) *NAUJILJ* 145, 148.

⁹² Olasupo Shasore, 'Nigeria's Solid Minerals as a Source of Economic Development – Tapping a Latent Resource?' (African Law Practice, 2016) <<https://www.alp.company/sites/default/files/Nigeria%27s%20Solid%20Minerals%20as%20a%20source%20of%20Economic%20Development%20.pdf>> accessed 25 September 2022.

⁹³ Minerals and Mining Act (NMMA) 2007, s 1(3).

⁹⁴ *ibid.*

companies.⁹⁵ The issuance of solid mineral exploration licenses under the NMMA 2007 in Nigeria allows the government to transfer mineral resource property to licensees who successfully and lawfully explore raw materials. However, a significant problem arises from the absence of a clear plan for the inclusion of host communities within the composition of mining company boards. This omission means that the voices and interests of the host communities directly affected by mining activities are not adequately represented in decision-making processes. Despite this significant activity, the lack of provisions for host community representation on mining company boards undermines meaningful community participation and engagement. The exclusion of host communities from board composition can lead to a disconnect between the decisions made by mining companies and the concerns and interests of the communities. Consequently, conflicts and tensions may arise due to the perceived neglect of community needs and aspirations.

Another implication of the federal Government being the sole owner of natural resources is that only the federal government is entitled to the proceeds of natural resource exploitation in Nigeria. The federating units wherein the mineral resources are deposited are not even entitled to the proceeds of the natural resources mined from their territories, save for a 13% allocation from there, following the derivation principle in s 162(2) of the Nigerian Constitution.⁹⁶ Host communities are not legally entitled to any proceeds from their mineral resources. They are at the mercy of the government and the mining companies with concessionary rights to exploit natural resources on their land. This has created a wealthy federal government with impoverished federating units that merely depend on monthly allocation from the federal government. The host communities, the aboriginal owners of the land and its resources, are left

⁹⁵ Muhammad Sada Musa, 'Mid Term Report for the Minerals and Metals Sector' (*Ministry of Mines and Steel Development*, 2013) <<https://allafrica.com/download/resource/main/main/idatcs/00061949:ddeb59b5a5fbd7446bb9a729a9390f80.pdf>> accessed 25 September 2022.

⁹⁶ Constitution of the Federal Republic of Nigeria 1999, as amended to 2018.

even worse off. Given the non-altruistic nature of the federal and state governments, the host communities are neglected and left to suffer a lack of social amenities, poor infrastructure and a low standard of living.

The mentioned challenges have led to the ire of local communities, such as the natives of Ogoni and those of Ijaw ethnic nationalities located in the Niger Delta region.⁹⁷ The host communities are simply asking that mining companies engage in the prudent exploitation of their resources in an environmentally conscious manner. This is because most members of these communities are farmers and fishermen who live off the environment.⁹⁸

Young people have resorted to taking up arms against the state, kidnapping expatriates, engaging in petroleum bunkering, and destroying pipelines and other important national infrastructure.⁹⁹ This is detrimental to the developmental stride of any country, and Nigeria is still a developing country with its infrastructures and environments at a growing stage. The country's government is laden with corruption, and its officers misappropriate the funds meant to serve the needs of host communities.¹⁰⁰ The huge federal revenue base derived from the mining sector and the allocation that the states derive therefrom has not translated into improved living standards for the ordinary members of the host communities. Indeed, the host communities are likely to feel disenchanting and alienated unless they are drafted in to participate in the wealth-making processes performed by the multinational companies

⁹⁷ Nerry Echefu and E Akpofure, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework' in UN Environment Programme, *UNEP Environment Impact Assessment Training Resource Manual* (2002) 63, 65.

⁹⁸ Nerry Echefu and E Akpofure, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework' in UN Environment Programme, *UNEP Environment Impact Assessment Training Resource Manual* (2002) 63, 65.

⁹⁹ J I Dibua, 'Citizenship and resource control in Nigeria: the case of minority communities in the Niger Delta' (2005) 40 *Afrika Spectrum* 5, 9.

¹⁰⁰ J I Dibua, 'Citizenship and resource control in Nigeria: the case of minority communities in the Niger Delta' (2005) 40 *Afrika Spectrum* 5, 9.

operating in their communities.¹⁰¹ The mining companies themselves may not feel responsible to the people because they know that their concession to operate is derived from the federal government and is not the purview of the host communities. This has become more apparent as the law forces the host communities to hand over the ownership of mineral resources to the federal government.

Another significant issue is that Nigeria's legal, regulatory, and institutional framework lacks adequate provisions to protect the environment from the negative impacts of mining activities. For example, Section 90(2) of the Nigerian Minerals and Mining Act (N.M.M.A) uses the vague phrase "proportionate to their profits" when mandating leaseholders to carry out effective rehabilitation of mined areas to the satisfaction of the Mines Environmental Compliance Department.¹⁰² This lack of specification can lead to insufficient measures being taken for environmental rehabilitation and care.

Additionally, sections 46 and 131 of the N.M.M.A create the offense of illegal mining but fail to include provisions for punishment in section 131.¹⁰³ This loophole allows for inadequate enforcement against illegal mining activities, further contributing to environmental degradation. The ineffective regulations and lack of compliance by mining companies exacerbate these problems. The Nigerian government has not taken sufficient measures to ensure that mining companies adhere to legal and institutional regulations.¹⁰⁴

The existing legal framework in Nigeria, particularly sections 46 and 131 of the N.M.M.A, falls short in addressing illegal mining activities due to the absence of provisions for

¹⁰¹ Chinyere Immaculata Emeh, 'An Analysis of the Legal Rights of the Niger Delta States in Relation to Ownership and Control of Mineral Resources under Nigerian Law' (LLM Thesis, Ahmadu Bello University 2016) 56.

¹⁰² Nigerian Minerals and Mining Act (N.M.M.A), 2007.

¹⁰³ Nigerian Minerals and Mining Act (N.M.M.A), 2007.

¹⁰⁴ Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness During Mineral Mining Activities in Nigeria' (2018) 14 European Scientific Journal 165, 167.

punishment. This oversight weakens enforcement against such practices, leading to increased environmental degradation. Coupled with the ineffective regulations and compliance gaps among mining companies, the Nigerian government must take more robust measures to ensure strict adherence to legal and institutional regulations in the mining sector. Closing these loopholes is essential for sustainable and responsible mining practices, safeguarding the environment and the well-being of affected communities. This leads to the need to recognize the pivotal role that effective corporate governance plays in achieving this objective. A well-structured and enforced corporate governance framework not only guides companies towards ethical and sustainable operations but also provides the necessary checks and balances to ensure compliance with legal and environmental standards. It is, therefore, imperative to delve into the significance of corporate governance in the context of the Nigerian mining industry.

1.2.3 Importance of Corporate Governance

Corporate governance generally refers to a system whereby corporations are governed to enhance shareholder value and meet stakeholder expectations.¹⁰⁵ Although there are various definitions of corporate governance, the term typically means the methods through which a company is managed and controlled. This includes: accountability for corporate actions and how managers and directors implement tasks.¹⁰⁶ A broader definition of corporate governance centres on a wider range of stakeholders (including shareholders) who provide the company with the resources required for its existence, competitiveness and success. Such stakeholders include employees, suppliers, customers and communities in the affected environment, all performing various important roles that aid the company's growth. A study on stakeholder theory describes a stakeholder as 'any group or individual who can affect or is affected by the

¹⁰⁵ Salahuddin Yousuf and Md Ariful Islam, 'The Concept of Corporate Governance and its Evolution in Asia' (2022) 6 Research Journal of Finance and Accounting 19.

¹⁰⁶ Jean Tirole, 'Corporate Governance' (2001) 69 Econometrica 1, 30.

achievement of the organisation's objectives'.¹⁰⁷ This definition shows that almost any group or individual, including a host community, can claim to be affected by a specific corporation, especially in today's globalised world.

The importance of corporate governance in today's business landscape cannot be overstated. Corporate governance provides the framework and mechanisms through which companies are directed and controlled, ensuring transparency, accountability, and ethical decision-making.¹⁰⁸ It encompasses a set of principles, policies, and procedures that guide the behaviour and actions of the board of directors, management, and other organisational stakeholders. One of the key aspects of corporate governance is its role in safeguarding the interests of various stakeholders.¹⁰⁹ This includes shareholders, employees, customers, suppliers, and the broader community. By establishing clear lines of responsibility and accountability, corporate governance helps protect the rights and interests of these stakeholders, promoting a fair and equitable business environment.¹¹⁰

Effective corporate governance also enhances the trust and confidence of investors and the financial market. It ensures that companies are managed responsibly and sustainably, reducing the potential for fraud, mismanagement and unethical practices. This, in turn, attracts investment, enhances market stability, and contributes to economic growth.¹¹¹

¹⁰⁷ Micheal Jensen, 'Non-Rational Behavior, Value Conflicts, Stakeholder Theory, and Firm Behavior' (2008) 18 *Business Ethics Quarterly: The Journal of the Society for Business Ethics* 167.

¹⁰⁸ Garzón Castrillón and Manuel Alfonso, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178, 181.

¹⁰⁹ Kose John and Lemma W. Senbet, 'Corporate governance and board effectiveness' (1998) 22 *Journal of Banking & Finance* 371, 372.

¹¹⁰ Kose John and Lemma W. Senbet, 'Corporate governance and board effectiveness' (1998) 22 *Journal of Banking & Finance* 371, 372.

¹¹¹ Garzón Castrillón and Manuel Alfonso, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178, 182.

Furthermore, corporate governance plays a crucial role in promoting long-term value creation and organisational performance.¹¹² Establishing strategic goals, monitoring performance, and providing guidance helps align the interests of management and shareholders towards sustainable business growth. It encourages effective risk management, strategic decision-making, and innovation, fostering a culture of long-term success.¹¹³

In the context of the mining industry in Nigeria, where there are significant social, environmental, and economic impacts, corporate governance becomes even more critical. Mining companies must navigate complex issues related to resource extraction, community engagement, environmental protection, and revenue sharing. A robust corporate governance framework ensures that these companies operate responsibly, considering the interests and well-being of host communities, the environment, and other stakeholders.

This thesis proposes a corporate governance model for the Nigerian mining industry that considers including stakeholder rights, specifically the host communities where the mining companies are located. The thesis will thoroughly examine the extent to which host communities should be integrated into the governance structure of mining firms, alongside directors and shareholders. In the context of a developing economy like Nigeria, characterized by a fragile institutional framework, establishing and sustaining an effective corporate governance system based on Anglo-Saxon shareholder primacy principles proves to be a challenging endeavour.¹¹⁴ This thesis presumes that this form of corporate governance is more

¹¹² Garzón Castrillón and Manuel Alfonso, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178, 182.

¹¹³ Garzón Castrillón and Manuel Alfonso, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178, 182.

¹¹⁴ Elewechi NM Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) 15 *Corporate Governance: An International Review* 173, 175.

likely to be effective if it is supported by strong institutions that will enforce the legislation and stop corruption.¹¹⁵

Institutional voids in Nigeria highlight the absence or inadequacy of formal institutions necessary for supporting and enforcing the principles of shareholder primacy. These voids can be attributed to weak regulatory frameworks, insufficient enforcement mechanisms, and limited institutional capacity.

As a result, the Anglo-Saxon shareholder primacy model, which prioritizes the interests of shareholders in corporate decision-making, faces significant challenges in Nigeria. The lack of robust formal institutions makes it difficult to ensure transparency, accountability, and protection of shareholder rights within corporate governance structures.¹¹⁶

Institutional voids can lead to underdeveloped capital markets, a failed educational system within the country, and increased transaction costs. Institutional voids are situations wherein the institutional structures that support the market are weak, absent, ineffective, or not capable of achieving the purpose for which they were created. Some of these factors include irregular government regulations and absence of specialist mediators, undeveloped capital markets and inadequate contract enforcement procedures.¹¹⁷ These institutional voids hinder the effective operations of markets, thus increasing the cost of transactions.¹¹⁸ Institutional voids in Nigeria's mining sector include regulatory ambiguities, weak enforcement, and a lack of specialized oversight. These gaps can lead to disputes, hinder environmental assessments, and limit

¹¹⁵ This is a presumption by the author, as this is a transplanted model of corporate governance from a country with stronger institutions.

¹¹⁶ Elewechi NM Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) 15 *Corporate Governance: An International Review* 173, 175.

¹¹⁷ Attique Ur Rehman, Muhammad Shakeel Sadiq Jajja, Raja Usman Khalid and Stefan Seuring, 'The Impact of Institutional Voids on Risk and Performance in Base-of-the-Pyramid Supply Chains' (2020) 31 *The International Journal of Logistics Management* 829, 831.

¹¹⁸ *ibid.*

transparency. Addressing these deficiencies is essential for establishing a robust governance framework that safeguards the rights and interests of all stakeholders, especially host communities.

The Nigerian system is rife with institutional voids.¹¹⁹ Institutional voids have emerged in Nigeria as a result of issues like inconsistent government laws, a lack of specialised intermediaries and a nascent capital market. Increased corruption and a lack of political accountability and stability can all be explained by institutional voids.¹²⁰ This thesis argues that distinct informal institutional frameworks in the form of host communities, should be created to support a strong corporate governance framework. The regulations from developed economies are not necessarily applicable to developing economies. Thus, adopting a new model for developing countries with institutional voids is important. Institutions may be corrupt, resulting in political or country risk. This risk predominates in developing countries like Nigeria, which has abundant natural resources but weak regulations, leading to the possibility of corruption.

1.3 Literature Review

As covered in detail in Chapter 4, the debate surrounding corporate ideological theories has been a prevalent issue among researchers since the early 1930s. Scholars from various disciplines have offered countless ideas and points of view to this ongoing discussion. While Berle and Dodd's ideas were essential to the debate, the dispute has progressed and has been described in various ways.¹²¹ Some prominent formulations are the Shareholder Primacy

¹¹⁹ Franklin Nakpodia and Emmanuel Afolabi Adegbite, 'Corporate Governance and Elites' (2017) 1 Academy of Management Proceedings 1.

¹²⁰ Paul Valentin Ngobo and Maurice Fouda, 'Is "Good" Governance Good for Business? A Cross-National Analysis of Firms in African Countries' (2012) 47 Journal of World Business 435.

¹²¹ Bratton, W. W., and Wachter, M. L., 'Shareholder Primacy's Corporatist Origins: Adolf Berle and the Modern Corporation', [2008] 34 (1) Journal of Corporate Law 99, 101 and 103.

Model against the Stakeholder Model, the Communitarian versus Contractarian discussion, the Berle versus Dodd dispute, and the Monotonic versus Pluralistic perspectives of corporate aims.

It is important to note that the debate surrounding corporate ideological theories has far-reaching implications and continues to influence discussions on the responsibilities and behaviours of corporations. Scholars have proposed various ideas, including the standard shareholder-oriented, state-oriented, stakeholder-oriented, manager-oriented, voluntary donations and higher-order society-oriented models. These ideas contribute to the ongoing discourse and shape our understanding of corporate governance and behaviour.¹²² To this end, the following section will examine pertinent corporate governance theories.

1.3.1 Meanings and Theories of Corporate Governance

The field of corporate governance has evolved, giving rise to different meanings and theories that seek to define and understand its essence.¹²³ One of the primary meanings of corporate governance is its focus on distributing rights, responsibilities, and power among different corporate stakeholders, including shareholders, directors, managers, employees, customers, suppliers, and the broader society.¹²⁴ It recognises that corporations are not only responsible to their shareholders but also have broader societal obligations and should consider the interests of other stakeholders. This perspective emphasises the importance of achieving a balance between the pursuit of shareholder value and the fulfilment of broader societal goals.¹²⁵

¹²² Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation: Lessons From Germany' 26 (2017) *Journal of Management Inquiry* 165.

¹²³ Garzón Castrillón MA, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178.

¹²⁴ Garzón Castrillón MA, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178,180.

¹²⁵ Garzón Castrillón MA, 'The Concept of Corporate Governance' (2021) 25 *Visión de Futuro* 178,180.

Several theories have emerged to explain the nature and purpose of corporate governance.¹²⁶ The shareholder theory assumes that business executives have a primary, if not sole, commitment to shareholders and the maximisation of their wealth.¹²⁷ This theory is also based on the fundamental assumption that companies belong to the owners and that the company's accomplishment (total economic performance) should be considered the shareholders' accomplishment.¹²⁸

A broader definition of corporate governance centres on a wider range of stakeholders (including shareholders) who provide the company with the resources required for its existence, competitiveness and success. Such stakeholders include employees, suppliers, customers and communities in the affected environment, all of whom perform various important roles that aid the company's growth. One study on stakeholder theory describes a stakeholder as 'any group or individual who can affect or is affected by the achievement of the organisation's objectives'.¹²⁹ This definition shows that almost any group or individual, including a host community, can claim to be affected by a specific corporation, especially in today's globalised world. With the stakeholder model, it is assumed that a corporation should exist for the common benefit of those with an interest in the company (often referred to as constituents or stakeholders). According to the model, no single stakeholder interest is particularly more important than another.

In contemporary business dynamics, the stakeholder model, the shareholder primacy model, including its Enlightened Shareholder Value (ESV) variant in the United Kingdom (UK), has

¹²⁶ John Parkinson, 'Models of the Company and the Employment Relationship' (2003) 41 *British Journal of Industrial Relations* 481.

¹²⁷ John Parkinson, 'Models of the Company and the Employment Relationship' (2003) 41 *British Journal of Industrial Relations* 481, 482.

¹²⁸ Lisa Whitehouse, 'Corporate Social Responsibility as Regulation: The Argument from Democracy', in J O'Brien (ed), *Governing the Corporation: Regulation and Corporate Governance in an Age of Scandal and Global Market* (John Wiley & Sons 2005) 156.

¹²⁹ Micheal Jensen, 'Non-Rational Behavior, Value Conflicts, Stakeholder Theory, and Firm Behavior' (2008) 18 *Business Ethics Quarterly: The Journal of the Society for Business Ethics* 167.

limited relevance in safeguarding host communities' rights. While certain aspects of this model have been incorporated into the integrative stakeholder model synthesis, this study rejects the shareholder primacy model due to its unsustainable nature and misalignment with prevailing social norms. The fundamental premise of this model, which posits that maximising shareholder value and enhancing stakeholder value are mutually exclusive objectives, is fundamentally flawed.¹³⁰

There is a need to rethink corporate governance to incorporate economic and environmental objectives. It, therefore, behoves both states and corporate entities to pursue economic development in a sustainable and environmentally friendly manner. Sustainable economic development increases employment rates without jeopardising local fiscal stability, degrading the natural environment or contributing to global climate change. This is important because environmental degradation from unsustainable mining activities makes it difficult or impossible for host community members (primarily, farmers and fishermen) to perform economic activities to earn a living.

Given the shortcomings occasioned by the statutory denial of host communities' rights to their mineral resources, corporate governance seems to be the last resort. Therefore, as much as mining companies seek to maximise profit in their commercial undertakings, they must ensure that the host communities remain safe from their activities.¹³¹ As such, mining activities should not cause environmental hazards affecting the host communities' livelihood. To ensure the mining corporations' survival, corporations should consider the interests of a wider group of stakeholders.¹³²

¹³⁰ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 *The Academy of Management Review* 65, 88

¹³¹ *ibid.*

¹³² This will be further analysed in Chapter 4.

It has been posited¹³³ that mining corporations face a continuous dilemma when balancing the expensive and time-consuming process of considering stakeholder interests alongside the risks involved in ignoring them. This dilemma would have been a non-issue if the ideological construct of corporate governance in Nigerian mining companies were founded on inclusive stakeholder principles.

The above stakeholder-inclusive conceptualisation of corporate governance is designed to guarantee liability, productivity and effectiveness, impartiality, veracity, and transparency in the governance and operations of companies, serving as the fundamental basis of corporate governance.¹³⁴ In relation to the mining sector, it is argued that a corporate governance framework that gives guidance will assist the mining corporations' directors and managers with the issues within the mining sector and their host communities. While corporate governance has been proposed as a solution for protecting host communities, it is important to acknowledge that corporate governance itself is not without its problems. The next section will address some of these challenges.

1.3.2 Corporate Governance in Nigeria: Institutional Problems

The thesis recommends the adoption of corporate governance to tackle the mining-related problems in Nigeria; however, the Nigerian corporate governance sphere is not without its problems. Corporate governance in Nigeria is confronted with several institutional issues that pose challenges to effective oversight and accountability. These institutional problems undermine the principles of transparency, fairness, and responsibility in corporate practices.

¹³³ Raina M Maier and others, 'Socially Responsible Mining: The Relationship between Mining and Poverty, Human Health and the Environment' (2014) 29 *Reviews on Environmental Health* 83, 85.

¹³⁴ John Parkinson, 'Models of the Company and the Employment Relationship' (2003) 41 *British Journal of Industrial Relations* 481,495.

Understanding these issues is crucial for identifying areas of improvement and implementing necessary reforms.

In Nigeria, the concept of corporate governance has been discussed in connection with corruption, which has been one of the main impediments to social, economic, and political growth.¹³⁵ This is because, recent and ongoing events in Nigeria continue to draw attention to corporate governance issues among scholars, practitioners, and policymakers. Furthermore, the unique characteristics of Nigeria's turbulent history of corporate corruption offers an illuminating perspective of corporate governance may be fostered even in the presence of poor institutional limitations.¹³⁶ Corruption indexes measure the strength of an institutional environment and its corporate governance. For example, the World Bank Anti-Corruption and Governance Index is based on six main indicators of good governance: voice and accountability; political stability; government efficacy; good governance; legal system; and corruption prevention.¹³⁷ Based on all these factors, Nigeria is viewed as a country with a fragile and corrupt institutional setting.¹³⁸

Therefore, effective corporate governance has gradually been raised as one of the major means of reducing corporate corruption. As a result of the financial crises that happened in the 1990s, the World Bank and the International Monetary Fund (IMF) stressed that adherence to international standards and codes of best practice could play a serious role in supporting national and international financial structures.¹³⁹ This led to the call to prepare Reports on the

¹³⁵ Adeoye Afolabi, 'Examining Corporate Governance Practices in Nigerian and Ghanaian Firms' (2015) 3 *International Journal of Managerial Studies and Research* 15.

¹³⁶ Olufemi O Amao, 'Corporate Social Responsibility, Multinational Corporations, and the Law in Nigeria: Controlling Multinationals in Host States' (2008) 52 *Journal of African Law* 89, 90.

¹³⁷ Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (*info.worldbank.org*, 2010) <<http://info.worldbank.org/governance/wgi/>> accessed 5 January 2022.

¹³⁸ *ibid.*

¹³⁹ World Bank, 'Nigeria – Report on the Observance of Standards and Codes (ROSC)' (World Bank, 2020) <<https://documents.worldbank.org/en/publication/documentsreports/documentdetail/440581468099577387/nigeria-report-on-the-observance-of-standards-and-codes-rosoc>> accessed 18 July 2020.

Observance of Standards and Codes (ROSC),¹⁴⁰ which are made up of assessments of the level at which a country observes internationally recognised standards and codes. In 2004, Nigeria created its ROSC, which noted a number of problems, including different financial reporting requirements for large and small businesses, a need for institutional weakness regulation, a lack of compliance and enforcement, insufficient adherence to international accounting standards and the International Standards on Auditing (ISA), and the absence of strong local standards.¹⁴¹ These challenges hinder the ability of corporate entities to uphold the rights and interests of various stakeholders, including employees, customers, communities, and the environment.

In Nigeria, no effective judicial system can enforce these rights, which has traditionally increased contracting costs and made business activities much riskier.¹⁴² Owing to the existence of a reliable and approachable judicial system in the UK, the duty imposed on company directors has the effect, in certain circumstances, of requiring directors to consider or take action in the interests of shareholders.¹⁴³ In Nigeria, in comparison, even where judgment is given against the government or the corporation in respect of mineral mining issues, the enforcement mechanism is almost non-existent, as can be seen from the non-execution of the judgment requiring Shell to compensate a polluted community and effect the clean-up of the same.¹⁴⁴

The weak regulatory framework is a major institutional problem in Nigeria's corporate governance landscape. Based on the specifications of CAMA 2020, an independent body known as the Corporate Affairs Commission (CAC) was created to ensure good and

¹⁴⁰ *ibid.*

¹⁴¹ Emmanuel Adegbite, 'Corporate Governance Regulation in Nigeria' (2012) 12 *Corporate Governance: The International Journal of Business in Society* 257, 259.

¹⁴² Rafael la Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'Corporate Ownership around the World' (1999) 54 *The Journal of Finance* 471, 473.

¹⁴³ UK Companies Act 2006, s 172.

¹⁴⁴ *Okpabi and others v. Royal Dutch Shell Plc and Another* [2021] UKSC 3.

accountable corporate governance of Nigerian companies. CAC is a governing body that regulates the creation, supervision, management and winding up of companies in Nigeria.¹⁴⁵ UK statutes influenced the creation, functions, and responsibilities of this governing body.¹⁴⁶ While efforts have been made to establish regulatory bodies such as the Securities and Exchange Commission (SEC) and the Corporate Affairs Commission (CAC), their effectiveness in enforcing corporate governance standards has been limited. Inadequate legal provisions, loopholes, and inconsistencies in the regulatory framework create opportunities for corporate misconduct and unethical practices.

It has been reported that the CAC does not have a rigorous implementation mechanism, which is worsened by endemic corruption and weak record-keeping.¹⁴⁷ The weak corporate governance framework in the Nigerian mining sector provides a strong justification for this thesis. Another significant challenge is the lack of enforcement mechanisms and penalties for non-compliance with corporate governance regulations.¹⁴⁸ Weak enforcement undermines the effectiveness of regulatory efforts and allows companies to disregard good governance practices without facing appropriate consequences.¹⁴⁹ This leads to a culture of impunity and fosters an environment where ethical breaches can occur with impunity.

¹⁴⁵ The Companies and Allied Matters Act (CAMA) 2020.

¹⁴⁶ Adeoye Afolabi, 'Examining Corporate Governance Practices in Nigerian and Ghanaian Firms' (2015) 3 *International Journal of Managerial Studies and Research* 15.

¹⁴⁷ World Bank, 'Nigeria – Report on the Observance of Standards and Codes (ROSC)' (*World Bank*, 2020) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/440581468099577387/nigeria-report-on-the-observance-of-standards-and-codes-rosc>> accessed 18 July 2020.

¹⁴⁸ Adeoye Afolabi, 'Examining Corporate Governance Practices in Nigerian and Ghanaian Firms' (2015) 3 *International Journal of Managerial Studies and Research* 15,22.

¹⁴⁹ Adeoye Afolabi, 'Examining Corporate Governance Practices in Nigerian and Ghanaian Firms' (2015) 3 *International Journal of Managerial Studies and Research* 15,22.

Nigeria's prevalence of corruption and unethical practices also poses a significant institutional challenge to corporate governance.¹⁵⁰ Bribery, fraud, and embezzlement erode trust in the business environment and hinder the development of robust governance systems. Corruption undermines the effectiveness of regulatory institutions and fosters a culture of non-compliance.¹⁵¹

Another challenge relates to stakeholders' limited representation and participation in corporate decision-making processes. Stakeholders, such as employees, host communities, and consumers, are often not adequately included in corporations' governance structures or decision-making bodies. This lack of representation prevents their voices from being heard and their interests from being fully considered, leading to potential negative consequences for stakeholders.

Addressing these institutional problems requires comprehensive reforms prioritising stakeholder protection within Nigeria's corporate governance framework. Clear and enforceable legal provisions should be established to safeguard stakeholder rights and ensure their active participation in decision-making processes. Enhanced transparency and accountability mechanisms, including robust reporting standards, should enable stakeholders to assess a company's performance and hold them accountable.

The crisis in corporate governance within Nigerian mining industries is evidenced by the lack of an adequate, simple, and clear legal and fiscal framework, weak institutional structures, lack of power to enforce the extant regulations and a lack of political will to effectuate applicable

¹⁵⁰ Uchechukwu Nwoke, Chinwe Martha Ekwelem, Henrietta Chibugo Agbowo-Egbo 'Curbing corruption and promoting a more efficient corporate governance regime in Nigeria' 30 (2023) *Journal of Financial Crime* 536, 537.

¹⁵¹ Uchechukwu Nwoke, Chinwe Martha Ekwelem, Henrietta Chibugo Agbowo-Egbo 'Curbing corruption and promoting a more efficient corporate governance regime in Nigeria' 30 (2023) *Journal of Financial Crime* 536, 537,538.

policies.¹⁵² There are many issues within Nigerian mining companies. However, this thesis focuses specifically on their weak corporate and institutional governance systems and possible steps that can be taken to improve the situation.¹⁵³ Thus, the main aim of this research effort is to develop such a framework, which can help Nigerian mining company directors apply due diligence processes, promote fairness, and listen to the host communities' chosen voices.

To effectively apply a corporate governance system in Nigeria, it is crucial to address the institutional voids that exist within the country. Weak institutions can result in a lack of contract protection, poorly defined property rights, limited access to information, and rampant corruption. Unfortunately, these institutional voids heavily affect Nigeria's corporate governance system. While Nigeria does have a developed corporate governance framework, the main challenge lies in the ineffective implementation and enforcement of existing legislation, as well as the gaps present within the laws themselves.¹⁵⁴

Addressing these institutional problems necessitates comprehensive reforms within Nigeria's corporate governance framework. Key steps include strengthening the regulatory framework, improving enforcement mechanisms, safeguarding the rights of minority shareholders, combating corruption, and promoting professional development. By tackling these institutional challenges and prioritizing the protection of stakeholders, Nigeria can establish a corporate governance environment that upholds the interests of all parties involved. This approach not

¹⁵² Lisa Goldman and others, 'Artisanal and Small-Scale Gold Mining in Nigeria: Recommendations to Address Mercury and Lead Exposure' (2014) <<https://www.eli.org/sites/default/files/eli-pubs/nigeria-asgm-assessment-final-report.pdf>> accessed 18 July 2020; I Harymawan and others, 'Corporate Governance and Disclosure Level in Mining Companies: Evidence from Regulation Changes in Indonesia' (*Knowledge E*, 2020) <<https://knepublishing.com/index.php/Kne-Social/article/view/3470/7374>> date accessed 20 September 2022.

¹⁵³ Micheal Bamidele Fakoya and Isiah Dzingai, 'Effect of Corporate Governance Structure on the Financial Performance of Johannesburg Stock Exchange (JSE)–Listed Mining Firms' (2017) 9 *Sustainability* 867, 871.

¹⁵⁴ Peer C Fiss, 'Institutions and Corporate Governance' (2007) SSRN Papers <<https://ssrn.com/abstract=1003303>> accessed 25 October 2020.

only fosters sustainable and responsible business practices but also cultivates trust, facilitates long-term value creation, and contributes to the overall development of the Nigerian economy.

1.4 Research Questions

The primary focus of this study is the mining companies' corporate governance policy and engagement of stakeholders and the host communities. Academic research¹⁵⁵ has mainly focused on understanding mining corporations' management of stakeholders, with some studies¹⁵⁶ focusing on their engagement with communities. However, few studies have been conducted that focus on the stakeholder inclusivity process. Following the problems detailed above, this thesis investigates the following questions:

1. To what extent can the mining host communities be integrated into corporate governance as an informal institution representing the stakeholders?
2. How can Nigeria's corporate governance system be restructured to address institutional voids in the mining industry?

To address the main research questions, six subsidiary questions have been formulated to guide the investigation. Each sub-question explores aspects of corporate governance and stakeholder protection in the Nigerian mining sector. The revised version is as follows:

The first sub-question is: 'What is the historical overview of the mining industry in Nigeria and how does it relate to the modern context?' 'This question is addressed in Chapter Two of the thesis, this question aims to explore the historical development of the mining industry in Nigeria, including key milestones, policies, and regulations that have shaped its operation.

¹⁵⁵ R Edward Freeman, Jeffrey S Harrison and Andrew C Wicks, *Managing for Stakeholders* (Yale University Press 2007).

¹⁵⁶ *ibid.*

Additionally, it seeks to investigate the extent to which host community rights are safeguarded within the mining sector's legal framework.

The second sub-question is: 'What are the current laws and regulations in place to protect the interests of host communities in the mining industry in Nigeria?' Chapter Three of the thesis is dedicated to answering this question. This chapter analyses the current laws and regulations aimed at protecting the interests of host communities in the mining industry in Nigeria. It explores the legal framework, rights and obligations of host communities, implementation and enforcement mechanisms, and the importance of stakeholder engagement and community participation.

The third sub-question is: 'What is the overarching framework for corporate governance in Nigeria, and how does it contribute to stakeholder protection?' Chapter Four of the thesis addresses this sub-question. This chapter provides an in-depth analysis of Nigeria's overarching framework for corporate governance and its contribution to stakeholder protection. It explores the regulatory framework, fundamental principles, and objectives of corporate governance practices in Nigeria.

The fourth sub-question is: 'What are the theoretical perspectives and alternative models for corporate governance that promote stakeholder inclusivity?' This sub-question is answered in Chapter Five of the thesis. This chapter explores the theoretical perspectives and alternative models for corporate governance that promote stakeholder inclusivity. The chapter delves into alternative models of corporate governance that prioritize stakeholder interests, considering their features, benefits, and potential challenges. The chapter aims to comprehensively understand the theoretical foundations and alternative approaches that contribute to stakeholder inclusivity in corporate governance.

The fifth sub-question is: ‘How can corporate governance frameworks in other jurisdictions be examined to gain insights and learnings?’ This will be addressed in Chapter Six, this chapter aims to explore corporate governance frameworks in other jurisdictions and extract valuable insights and learnings that can be utilized to enhance corporate governance practices within the context of the study.

The sixth sub-question is: ‘How can the adoption of an integrative stakeholder corporate governance model improve the corporate governance framework for mining companies and better protect the rights and interests of host communities?’ Chapter Seven of the thesis addresses this sub-question. It focuses on the integrative stakeholder model and its potential to protect host communities in mining areas. This question focuses on exploring the potential benefits and effectiveness of implementing an integrative stakeholder corporate governance model specifically in the context of mining companies. The aim is to assess how this model can contribute to improved corporate governance practices, particularly in terms of safeguarding the rights and interests of host communities affected by mining operations.

1.5 Thesis Statement

The central argument of this research is that the existing regulations in the Nigerian mining sector are insufficient in safeguarding the well-being of host communities, and the current corporate governance system applied to the Nigerian mining industry is inadequate. Mining operations have a direct impact on the residents of these host communities, making it imperative to prioritize their interests. Thus, it is crucial to consider the welfare and concerns of the individuals residing in these mining host communities.

Corporate governance is an important step towards the sustainable development of strong economies and communities. The International Finance Corporation has made about ten recommendations, some of which will be discussed in subsequent chapters, on ensuring good

corporate governance within African countries.¹⁵⁷ The recommendations will promote good corporate governance, encouraging better relationships with all stakeholders, specifically host communities. This thesis will analyse the relevance of this regulatory dialogue and its usefulness in advancing social and community relationships and addressing the problems affecting environmental protection.

It is on this premise that this study advocates for adopting a stakeholder-inclusive corporate governance model, focusing on integrating host communities into Nigerian mining companies' corporate governance structures.¹⁵⁸ Under this proposed regulatory regime, each mining company would work in synergy with the government, local authorities and other relevant stakeholders (mainly the host communities) to ensure that the exploitation of natural resources is not carried out in a manner that impacts the rights of the parties.

Considering the limitations of the current shareholder-primacy model implemented in Nigeria, it is argued that adopting the stakeholder model presents a more viable and suitable regulatory approach to corporate governance. The stakeholder model offers a sustainable alternative encompassing formal and informal regulations, minimising the need for extensive government intervention while encouraging active engagement of stakeholders, particularly host communities. This proactive involvement of host communities exemplifies the essence of the proposed model, which aims to establish a governance system responsive to all stakeholders' diverse interests and concerns. The thesis suggests that corporations stand to gain significant advantages by embracing a stakeholder-inclusive corporate governance system. One key benefit of this system is its capacity to foster a heightened awareness of potential opportunities and pitfalls. By actively considering the interests and perspectives of a broader range of

¹⁵⁷ *ibid.*

¹⁵⁸ Michael C Jensen., 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2001) 14 *Journal of Applied Corporate Finance* 8.

stakeholders, corporations can more effectively identify and capitalise on emerging opportunities while mitigating potential risks. This expanded awareness is a valuable strategic asset, enabling companies to navigate an evolving business landscape with greater agility and foresight.¹⁵⁹

Adopting such a system enables mining corporations to align closely with their operating environments, reducing the likelihood of unexpected setbacks and missed opportunities. It is widely recognised that effectively and efficiently balancing the interests of stakeholders and shareholders is a complex task for boards of directors, as there is no predetermined formula or clear-cut spectrum for achieving this balance. Nonetheless, acknowledging the inherent challenges, embracing a stakeholder-inclusive approach provides a framework for actively engaging with diverse stakeholder groups and striving towards harmonising their interests with those of the shareholders.

However, the argument goes beyond prioritising the short-term satisfaction of shareholders' interests. Companies are increasingly being encouraged to adopt a broader perspective that encompasses the long-term well-being of shareholders. This entails recognising and addressing issues that have the potential to impact the corporation's sustainability and continued existence significantly. By proactively engaging with these issues, companies can mitigate risks, seize emerging opportunities, and enhance their long-term value proposition to shareholders. Thus, a comprehensive approach to corporate governance acknowledges the importance of balancing immediate shareholder concerns with the strategic consideration of long-term shareholder benefits.¹⁶⁰ In the long run, addressing stakeholders' interests is also beneficial to shareholders'

¹⁵⁹ Omolara A Campbell, 'Inclusive Growth and Sustainable Human Development in Nigeria' (2017) 4 *Advances in Social Sciences Research Journal* 79, 81.

¹⁶⁰ Ayo D Awotundun, James S Kehinde and Olukayode R C Somoye, 'Corporate Governance and Stakeholders' Interest: A Case of Nigerian Banks' (2011) 6 *International Journal of Business and Management* 102, 107.

interests.¹⁶¹ This entails considering the diverse interests and well-being of shareholders, employees, customers, suppliers, communities, and the environment. The core of this approach is that corporations are responsible for and receptive towards competitive collaborations and extra-corporate interests and/or affairs. 'Interests' here refers to the needs of the investors, shareholders, employees, suppliers, customers, partners, government, organised labour, host communities and the public.¹⁶² In the context of this study, the stakeholder model is employed as a foundation for a system that acknowledges and addresses the diverse needs and interests of various stakeholders involved in the exploration and utilisation of natural resources. This approach promotes fairness, effectiveness, and sustainability in managing these resources.¹⁶³

This thesis suggests that there is a need to evolve towards an equitable regime that guarantees safe natural resource management, mandates the fair distribution of the gains and pains of resource exploitation to all stakeholders and, ultimately, ensures the sustainable well-being of society.¹⁶⁴

1.6 Justification of the Study

This research acknowledges the growing importance of the exploitation of solid minerals in Nigeria's development. Its main objective is to support the federal government in establishing an improved legal and institutional framework for mineral mining in the country, specifically focusing on mitigating the adverse environmental impacts of mining and protecting host communities. As earlier mentioned, this research focuses on assessing the protection afforded

¹⁶¹ Haslinda Abdullah and Benedict Valentine, 'Fundamental and Ethics Theories of Corporate Governance' (2009) 4 Middle Eastern Finance and Economics 88; Wan Fauziah Wan Yusoff, 'Insight of Corporate Governance Theories' (2012) 1 Journal of Business and Management 89, 91.

¹⁶² *ibid.*

¹⁶³ Al Chukwuma Okoli and Clement Ahar Uhembe, 'Crisis of Natural Resource Governance in Nigeria's Extractive Industry: Examining the Phenomenon of Artisanal Mining/Quarrying' (2015) 15 Global Journal of Human-Social Science 39, 44.

¹⁶⁴ *ibid.* 45.

to host community rights in Nigeria. One of the unique contributions of this study is the development of a context-specific integrative model that considers the dynamics of the key stakeholders, specifically the host communities.

Previous research has predominantly focused on community participation as a framework for compliance rather than exploring descriptive solutions that effectively address the issues at hand. This research aims to provide an original contribution to understanding corporate governance and establishing meaningful partnerships in the mining industry. Consequently, the study examines the existing corporate governance literature and its application within the Nigerian context. Doing so aims to advance knowledge in this field and promote the development of more effective governance practices in the mining sector.

The justification of this study stems from the need to address the significant gaps and challenges in corporate governance practices, particularly in relation to the protection of host community rights in the Nigerian mining industry. This study is justified for several reasons.

Firstly, the mining sector plays a crucial role in Nigeria's economy, contributing to employment, revenue generation, and foreign exchange earnings. However, there are concerns regarding the impact of mining activities on host communities, including environmental degradation, displacement, and socioeconomic inequalities. Exploring and enhancing corporate governance practices to protect the rights and interests of these communities is crucial for sustainable and responsible mining operations.

Secondly, while there is existing literature on corporate governance, there is a dearth of research specifically focused on the Nigerian mining industry and its implications for host community protection. This study fills this gap by providing an in-depth analysis of the institutional problems and challenges in corporate governance practices in the Nigerian mining sector.

Thirdly, by examining the different theories and models of corporate governance and their applicability to the Nigerian mining context, this study seeks to contribute to developing context-specific frameworks that can effectively address the complexities and dynamics of the industry. The findings and recommendations from this research will provide valuable insights for policymakers, mining companies, and stakeholders in formulating and implementing policies that promote responsible mining practices and protect the rights of host communities.

The research contributes to knowledge vis-à-vis the redefining of corporate governance in the mining industry in Nigeria through the execution of cooperation between the mining corporations and host communities. According to Solomon *et al.*, although solid social research on topics like community participation has been conducted over the past ten years, there has been concern that implementation on the ground could be much more developed.¹⁶⁵

It also contributes to advancing knowledge regarding the influence of a country's legal, socioeconomic, and cultural characteristics as institutional factors that shape the 'rules of society' and define acceptable behaviour for individuals and organisations. The study examines these dynamics and regulations that govern the definition and extent of socially responsible corporate conduct, utilising the framework of the stakeholder theory. This research will apply the stakeholder theory to comprehend how stakeholders interact with mining businesses.¹⁶⁶

Developing an integrative stakeholder model that considers the dynamics of the key stakeholders, particularly the host communities, also holds significant benefits for various stakeholders involved in the mining sector. For economists, this integrative model can provide a valuable tool for understanding the complex economic dynamics of the mining sector in

¹⁶⁵ Fiona Solomon, Evie Katz, and Roy Lovel, 'Social Dimensions of Mining: Research, Policy and Practice Challenges for the Minerals Industry in Australia' (Resources Policy, 2008) 142, 145

¹⁶⁶ Mark Anthony Camilleri, *Creating Shared Value through Strategic CSR in Tourism* (Edinburgh University Press, 2012); R Edward Freeman, *supra* (note 123).

relation to host communities. By considering the interests and needs of these communities, economists can develop more accurate assessments of the sector's contributions to the GDP, national growth, and overall development. This model can guide economists in formulating strategies and policies that maximize the positive impact of mining while ensuring equitable distribution of benefits.

Lawmakers in Nigeria, particularly National Assembly members, can significantly benefit from the research's integrative model. It can serve as a comprehensive framework for reviewing and amending existing legal and institutional frameworks related to mining. By incorporating the dynamics of key stakeholders, such as the host communities, lawmakers can develop legislation that addresses their concerns, protects their rights, and fosters sustainable development. The model can highlight the gaps and limitations of the current legal framework, enabling lawmakers to propose more effective and context-specific policies.

Academicians and researchers can utilize this research as valuable reference material for contributing to the mining and sustainable development knowledge. The integrative model can serve as a foundation for further study and analysis, allowing academicians to delve deeper into the intricacies of the mining sector's impact on host communities. By building upon this model, researchers can generate new insights and perspectives, contributing to a more comprehensive understanding of the subject.

1.7 Research Objectives

This research has a two-fold aim. Firstly, it assesses current mining regulations in Nigeria for their effectiveness in reducing negative impacts on host communities. It focuses on how well the existing legal framework protects these communities. Secondly, the research proposes a corporate governance system that addresses environmental concerns in mineral mining. The emphasis is on responsible and sustainable practices, with a strong focus on safeguarding

stakeholder interests, including host communities. By analysing the current framework, the research identifies strengths and weaknesses in addressing environmental issues in mining.

This thesis will provide recommendations for enhancing stakeholder integration in the corporate governance framework, aiming for a context-specific approach tailored to the unique needs of the Nigerian mining sector. By achieving this, the research seeks to contribute to developing a responsible and sustainable mining industry in Nigeria that harmonizes economic growth with environmental protection and the well-being of host communities.

In pursuit of this objective, the following aims have been established:

1. To evaluate the performance of legal and institutional mining mechanisms in monitoring environmental compliance by mining operators in Nigeria. It identifies and analyses the problems and challenges in enforcing mining and environmental laws in the industry. By examining these issues, the study aims to understand the barriers to effective enforcement and propose recommendations for improvement. The goal is to promote sustainable mining practices and ensure compliance with environmental standards in line with international best practices.
2. To critically examine the existing corporate governance practices in the Nigerian mining industry: This aim involves conducting a thorough analysis of the current corporate governance landscape in the sector, identifying its strengths, weaknesses, and areas for improvement. By assessing the existing practices, this research aims to identify gaps and challenges that need to be addressed to enhance the effectiveness of corporate governance.

3. To evaluate the relevance and applicability of existing corporate governance theories and models in the Nigerian mining context. This aim involves a comprehensive review and evaluation of different corporate governance theories and models. By assessing their relevance and applicability to the unique characteristics and dynamics of the Nigerian mining sector, this research aims to identify the most suitable frameworks that can effectively guide corporate governance practices.
4. The final objective of this research is to assess the effectiveness of the proposed model in protecting the rights and interests of host communities while promoting fair, effective, and sustainable mining operations and the utilisation of mineral resources. This objective recognises the importance of addressing stakeholders' diverse needs and interests through a comprehensive and inclusive approach.

The proposed framework aims to enhance transparency, accountability, and the protection of stakeholder interests, including those of the host communities. By adopting this integrated standard of corporate governance, the Nigerian mining sector can drive sustainable development, mitigate environmental impacts, and promote the well-being of all stakeholders involved.

By accomplishing these objectives, this research aims to advance corporate governance practices in the Nigerian mining industry and facilitate the establishment of an effective and sustainable framework. Through these contributions, this research seeks to contribute to the broader goal of achieving a more equitable and sustainable mining sector in the country.

1.8 Statement of Methodology

This study employs a doctrinal approach to legal research to address the research questions. The doctrinal method involves investigating the existing body of law and analysing its practical

application within specific contexts. By examining legal principles, statutes, regulations, and relevant case law, this research aims to gain a comprehensive understanding of the current state of the law and its implications in specific circumstances.¹⁶⁷ The doctrinal research is focused on 'analysis of the legal doctrine and how it has been developed and applied'.¹⁶⁸ The methodology used in this study aligns with the principles of hypothesis testing or knowledge-building research within the legal research community. In particular, the approach employed is doctrinal research, which involves a detailed analysis of existing laws, relevant cases, and authoritative materials pertaining to the specific theme under investigation. By scrutinising these legal sources, this research aims to enhance the understanding of the subject matter and contribute to the body of legal knowledge in this field.¹⁶⁹

The doctrinal methodology adopts a desktop or library-based research approach in this law-based study. It involves a comprehensive analysis of legal phenomena by examining existing domestic legislation, national regulations, international treaties, judicial interpretations, and the scholarly works of legal experts. These sources of information are classified into primary and secondary sources of law. The primary sources encompass statutes, treaties, regulations, codes, and judicial precedents from Nigerian and foreign jurisdictions. By delving into these legal sources, this thesis aims to thoroughly understand the subject matter and contribute to the existing body of legal knowledge.

Specifically, the applicable legislation in the context of the theme of this study includes the Constitution of the Federal Republic of Nigeria 1999 (as amended), NMMA 2007, the Environmental Impact Assessment Act 2004, CAMA 2020, the Financial Reporting Council

¹⁶⁷ Terry Hutchinson, 'Doctrinal Research: Researching the Jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2013) 9.

¹⁶⁸ Terry Hutchinson and Nigel Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17 *Deakin Law Review* 179, 181.

¹⁶⁹ *ibid* 183.

of Nigeria (FRCN) Act 2011, Nigerian Mineral and Mining Regulations 2011 and relevant petroleum subsidiary legislations. The host of corporate governance codes established by the FRCN is examined to determine their applicability and suitability to the mining sector. Reference is also made to relevant decisions by courts of competent jurisdictions that relate to the subject matter under consideration. The secondary sources employed here consist of pertinent literature in textbooks, journal articles, reports, policy documents and other online sources. These sources have all been subjected to appropriate content and context legal analyses. This study also includes an analysis of corporate governance laws from other jurisdictions, such as Germany and India. Examining these international frameworks aims to identify valuable insights and lessons that can be applied in Nigeria to enhance the corporate governance framework specifically for mining companies. This analysis allows for a broader perspective on corporate governance practices and facilitates the identification of best practices that can be adapted and implemented in the Nigerian context.

1.9 Structure of the Thesis

This thesis is organised into eight chapters. Chapter One deals with the context of the thesis. It introduces the thesis and gives an overall synopsis. It separates the thesis into parts, starting with its background before identifying the research problems and setting out the research questions. The central argument of the research and its objectives are further explored and concludes with a statement of the methodology and structure of the thesis.

Chapter Two provides an overview of the mining industry in Nigeria. It explores the historical context, examines the legal framework, and discusses the protection of host communities. In this chapter, the historical overview examines the development and evolution of the mining industry in Nigeria over time. It discusses discovering mineral resources, establishing mining operations, and the industry's growth. Furthermore, the chapter addresses the issue of host

community protection. It examines the rights and interests of the local communities residing in or near mining areas.

Chapter Three of the thesis is dedicated to analysing the existing laws and regulations in Nigeria that are specifically designed to protect the interests of host communities in the mining industry. The chapter will delve into the legal framework surrounding mining activities and the rights and obligations of host communities as outlined in these laws. It will explore the implementation and enforcement mechanisms that are in place to ensure compliance with these regulations. The chapter assesses the extent to which their rights are safeguarded within the existing legal framework. The aim is to critically analyse the effectiveness of current measures and identify gaps or areas for improvement in protecting the rights of host communities. This chapter aims to provide a comprehensive understanding of the background and context in which the mining sector operates in Nigeria. The chapter sets the stage for further analysis in subsequent chapters.

Chapter Four analyses Nigeria's overarching corporate governance framework and its relationship to stakeholder protection. It examines different approaches to corporate governance, explores the extent of stakeholder protection within the existing framework, and identifies areas for improvement. The chapter provides a comprehensive understanding of the regulatory landscape and sets the foundation for discussing stakeholder inclusion in corporate governance.

Chapter Five delves into analysing various corporate governance theories and alternative models. It explores the underlying principles and concepts that inform the Nigerian mining sector's current corporate governance rules and practices. The chapter critically examines the strengths and weaknesses of these theories and models, specifically focusing on their applicability and effectiveness in the mining industry context. The aim is to determine the best

model for future corporate governance in the Nigerian mining sector, considering the industry's unique challenges and dynamics.¹⁷⁰

Chapter Six focuses on an in-depth exploration and analysis of corporate governance frameworks implemented in various jurisdictions outside of Nigeria. It examines the regulatory frameworks, laws, and practices governing corporate governance in these jurisdictions, specifically emphasising their relevance and applicability to the Nigerian mining sector. The chapter aims to draw insights and lessons from these international frameworks to inform the development of an effective and suitable corporate governance framework for mining companies in Nigeria. By examining different approaches and best practices from other jurisdictions, the chapter seeks to identify potential improvements that can enhance corporate governance standards in the Nigerian mining industry.

Chapter Seven provides discussion and proposes a suitable corporate governance model based on the findings in chapters 2, 3, 4 and 5. It answers the question of how the proposed integrative stakeholder model can provide a better corporate governance system for mining companies in Nigeria. To provide a complete corporate governance framework, the important concepts in the chapters are merged and conceptually matched in light of stakeholder theory and institutional theory based on institutional complexity. Therefore, the chapter proposes an integration of host communities into the corporate governance of Nigeria's mining companies.

Chapter Eight is the concluding chapter which highlights the major arguments, research findings and makes appropriate recommendations on how to improve corporate governance in Nigerian mining companies. It provides a comprehensive analysis of the research conducted, addressing the research questions and objectives outlined at the beginning of the thesis. This

¹⁷⁰ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853.

chapter presents the main conclusions drawn from the study, highlighting the main contributions and key takeaways.

CHAPTER TWO

MINING INDUSTRY IN NIGERIA: HISTORICAL OVERVIEW AND THE MODERN CONTEXT

2.1 Introduction

This chapter provides an overview of Nigeria's mining industry, focusing on the history of its mining regulations, structure and how it has progressed over the years. Nigeria is rich in mineral resources, with large deposits of coal, tin, and other minerals and has a long history of mining dating back to the pre-colonial era. However, the mining sector has faced several challenges including poor investment, poor infrastructure and inadequate regulatory frameworks, which have affected its growth and development.¹ Nigeria is constantly increasing its investment opportunities, and as the country continues to pursue investment opportunities through mining, therefore it cannot overlook the potential social, environmental, and human impacts that may arise from mining operations in host communities, despite the potential economic benefits that the industry may offer.² These consequences may include displacement, conflict, pollution, and land degradation.³ One of the main consequences is the constant conflict between the host communities and the mining companies over resource access and distribution.⁴ It is, therefore, important to critically examine Nigeria's mining industry and its various challenges to identify potential solutions and opportunities for sustainable development.

¹ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', (2012) 7 Continental J. Applied Sciences 34.

² Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', (2012) 7 Continental J. Applied Sciences 34,37.

³ Y Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and Their Phytoremediation Strategies for Sustainable Ecosystem' (2017) Global Journal Of Science Frontier Research: H Environment & Earth Science 19,20.

⁴ Ali I Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities Also Matter!', (2020) 8 Journal of Geoscience and Environment Protection 212, 213.

As a result, various research has focused on the issue of corporate responsibility, accountability, and transparency in the Nigerian mining industry.⁵ Therefore, this chapter provides a historical overview of mining in Nigeria, analyses the structure of the mining industry, reviews the legislative framework governing mining, examines the challenges facing the sector, and discusses the potential implications for sustainable development.

The chapter examines the historical context and evolution of Nigeria's mining policies and laws, particularly in relation to the role of the private and public sectors in driving development. The chapter highlights that the mining industry has faced challenges due to inconsistent policies over time. It notes that the sector experienced a period of stagnation from the late 1970s to the mid-1990s, which slowed down the process of legislative reforms. However, the chapter emphasizes that significant reforms were implemented in the late 1990s, bringing the mining policy and legislation more in line with global trends. It concludes that the existing mining policy and legislation can contribute to the sector's development, provided they are continuously updated to align with evolving international best practices. Since mining is an international business, these instruments must remain responsive to global trends and standards.

The chapter is divided into four sections to facilitate a historical analysis of the relevant mining laws and policies. Section I serves as an introduction, while Section II provides an overview of Nigeria's mining laws and policies in different periods: pre-independence and the decade of

⁵ Adedoyin Akinsulore, 'The Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector of Nigeria' (2016) 7 *Journal of Sustainable Development Law and Policy* 97, 102; U Idemudia, and UE Ite, 'Corporate-Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) 13 *Corporate Social Responsibility Environmental Management* 194, 195; B Nwete, 'Corporate Social Responsibility and Transparency in the Development of Energy and Mining Projects in Emerging Markets: Is Soft Law the Answer?' (2007) 4 (8) *German Law Journal* 324.

independence (1902-1970), the era of indigenization and post-indigenization (1971-1990), and the decade of reforms in the mining and minerals sector (1990-2000).

In addition to the discussions mentioned above, this chapter critically examines the rights and interests of the host communities affected by mining activities in Nigeria. It recognizes the significant impact that mining operations can have on the environment and the potential implications for human rights within these communities. Special attention is given to the rights of the host communities to oppose and exercise control over mining activities taking place within their territories. By examining these aspects, the chapter aims to comprehensively understand the complex dynamics between the mining industry and the host communities. It emphasizes the need to balance economic interests with social and environmental considerations. Through this detailed analysis, the chapter sets the stage for a deeper exploration of the multifaceted issues and challenges surrounding the Nigerian mining sector, ultimately contributing to informed discussions and potential solutions for sustainable and responsible mining practices.

2.2 Defining Mining and its general impacts on Health and the Environment

Mining is extracting and concentrating minerals with the economic value from a mineral deposit.⁶ The Nigerian Minerals and Mining Act of 2006⁷ explicitly defines the terms mentioned, focusing on the term ‘mine.’ When used as a noun, ‘mine’ refers to any location, excavation, or site where mining activities take place.⁸ This includes structures, facilities, infrastructure, water reservoirs, waste disposal areas, and other related components above or below the ground. The purpose of such sites is to conduct operations involved in mining,

⁶ Ouadadi Senouci, Environmental and Health Impacts of Mining in Nigeria: A Review 10 (2020) International Journal of Engineering and Science 27.

⁷ Section 164, Nigerian Minerals and Mining Act, No. 20, 2007.

⁸ Section 164, Nigerian Minerals and Mining Act, No. 20, 2007.

processing, or preparing minerals and extracting or obtaining minerals or metals through various methods. It should be noted that the definition of 'mine' does not encompass smelters or refineries.⁹ The Act offers comprehensive explanations of the term as a noun and a verb, ensuring clarity and understanding within the legal context. The definitions provided in the Act serve as a foundation for interpreting and applying the provisions related to mining activities in Nigeria. By offering distinct perspectives and explanations of the term "mine," the Act aims to eliminate ambiguity and facilitate effective implementation of the legislation.

The term "mine" has also been subject to judicial interpretation, as seen in the case of *Consolidated Oil Limited v. Mobil Producing Nig Unltd.*¹⁰ In this case, the plaintiff/respondent agreed with the appellant to procure and provide 1,067 joints of epoxy coated 10 by 40-line pipes used for transporting crude oil and natural gas. The plaintiff/respondent assured the appellant that the supply would be obtained from local sources and the United States of America. However, upon delivery of the items, the appellant refused to fulfil their payment obligations fully. As a result, the plaintiff/respondent filed a lawsuit at the Lagos State High Court, seeking damages for breach of contract and recovery of the outstanding debt.

The appellant raised a preliminary objection questioning the court's jurisdiction, arguing that the subject matter fell under the provisions of section 251(1)(n) of the 1999 Constitution of the Federal Republic of Nigeria, which pertains to mines and minerals. The trial court dismissed the objection, prompting the appellant to appeal the decision to the Court of Appeal. The Court of Appeal upheld the appeal and, in clarifying the meanings of terms such as 'mine,' 'mineral

⁹ Section 164, Nigerian Minerals and Mining Act, No. 20, 2007.

¹⁰ (2008) 2 F.W.L.R. (PT. 419) Page 2403 @ 2416 paras. C-E.

oil field,' 'oil mining,' and 'geological survey,' defined 'mine' as a location where coal or other minerals are extracted from beneath the surface of the ground.¹¹

According to Hartman and Mutmansky, there are two main types of traditional exploitation methods, depending on the location: surface and subsurface.¹² Surface mining includes techniques like open pit and open cast (strip mining), while underground mining falls into three main categories: unsupported, supported, and caving. When deciding on a particular mine plan, the primary objective is to maximize profit. This choice must consider various factors such as the deposit's unique characteristics, its geographical location, and the prevailing international mineral prices. Moreover, considerations related to safety, economic viability, and environmental impact are paramount. Each mining method and process exerts distinct influences on both the environment and human health. Therefore, it's crucial to carefully weigh these effects when determining the most suitable approach for a given scenario.¹³

It is important to highlight that Nigeria possesses abundant reserves of solid minerals, many of which are located underground or underwater. In some cases, these minerals can even be found on the surface without extensive exploration.¹⁴ In Nigeria, a wide range of minerals is mined, including crude oil and solid minerals such as limestone, coal, tin, columbite, iron ore, gypsum, and gold.¹⁵ The rich diversity of minerals mined in Nigeria, ranging from crude oil to solid resources like limestone, coal, tin, columbite, iron ore, gypsum, and gold, highlights the complexity of the country's mining sector.

¹¹ Consolidated Oil Limited v. Mobil Producing Nig Unltd (2008) 2 F.W.L.R. (PT. 419) Page 2403 @ 2416 paras. C-E.

¹² Howard L. Hartman and Jan M. Mutmansky, *Introductory Mining Engineering*, 2nd (Wiley, 2002).

¹³ Ouadadi Senouci, Environmental and Health Impacts of Mining in Nigeria: A Review 10 (2020) *International Journal of Engineering and Science* 27,28.

¹⁴ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', (2012) 7 *Continental J. Applied Sciences* 34.

¹⁵ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', (2012) 7 *Continental J. Applied Sciences* 34.

Moreover, the mining sector holds global significance. For example, the World Bank estimates that approximately 3.5 billion people, roughly half of the world's population, reside in nations endowed with significant mineral, oil, or gas resources.¹⁶ Additionally, the mining sector contributes significantly to the economies of roughly 81 nations, which account for a quarter of global GDP.¹⁷ Despite the potential of the mining sector to contribute significantly to the country's economic growth and development, the sector has faced numerous challenges over the years. Nigeria's significant deposit of mineral resources, including tin, columbite, lead, coal, limestone, and more, has made it susceptible to the environmental impacts of mining.¹⁸ It has been argued that industrial and artisanal mining primarily contribute to environmental pollution, altered geochemical cycles, and ecological imbalances in modern society.¹⁹ Mining exploration leaves an irreparable impact on the environment, with the alteration of environmental conditions being particularly crucial. Accounts of the detrimental effects of mining on the environment are bound to happen because Nigeria has a significant deposit of mineral resources, from Jos (tin and columbite) in the north to Edo (lead) in the south and Enugu (coal) in the east to Ogun (limestone) in the west.

People with heart or lung conditions are more susceptible to disease and mortality from tailing, a substantial source of air pollution from particulate matter, carbon monoxide, persistent free radicals, volatile organic compounds, and heavy metal particles. Long-term exposure also

¹⁶ World Bank Group. "Climate-Smart Mining: Minerals for Climate Action." World Bank, March 31, 2023. <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action> accessed 02 May 2023.

¹⁷ World Bank Group. "Climate-Smart Mining: Minerals for Climate Action." World Bank, March 31, 2023. <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action> accessed 02 May 2023.

¹⁸ Ladan, M.T. 'Natural Resources and Environmental Law and Policies for Sustainable Development in Nigeria', (2014 Ahmadu Bello Press Limited, Zaria), p.248

¹⁹ Jeanna R. Henry, 'An Overview of the Phytoremediation of Lead and Mercury' (U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Technology Innovation office Washington, D.C., August 2000) <<https://semspub.epa.gov/work/03/2095110.pdf>> accessed 21 April 2023.

hastens the development of lung cancer and chronic respiratory diseases in children.²⁰ Around 7 million people died in 2012 as a result of air pollution²¹, according to research from the World Health Organisation (WHO).²² Mining activities can affect the richness of aquatic life in water by endangering it by interfering with its natural processes. This raises serious questions about the safety of the food, fruit, and cash crops grown nearby on farms with a long history of mining. An example of the impact of mining in Nigeria is the 2010 Zamfara lead poisoning pandemic. The World Health Organisation (WHO) described it as an unprecedented environmental emergency, with soil lead levels exceeding 100,000 mg/kg (10%) and individual venous blood lead levels exceeding 400 g/dL. The acute lead poisoning claimed the lives of 400 children under the age of five within a short period after the outbreak.²³

The natural equilibrium, which plays a crucial role in maintaining the quality of life and the proper functioning of the environment, is disrupted as vast heaps and dumps of solid waste, tailings, and effluent are released into the surroundings.²⁴

The main emphasis of this thesis revolves around the classification of exhaustible and non-renewable resources, with a specific focus on solid mineral resources. According to records, the solid mineral sector is the second largest cause of pollution after crude oil.²⁵

²⁰ Jeanna R. Henry, 'An Overview of the Phytoremediation of Lead and Mercury' (U.S. Environmental Protection Agency Office of Solid Waste and Emergency Response Technology Innovation office Washington, D.C., August 2000) <<https://semspub.epa.gov/work/03/2095110.pdf>> accessed 21 April 2023.

²¹ *Air Quality Criteria for lead (Final report, 2006)* (2017) EPA. Environmental Protection Agency. Available at: <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=158823> Accessed: April 21, 2023.

²² "Ambient Air Pollution: A Global Assessment of Exposure and Burden of Disease." World Health Organization. World Health Organization. <<https://www.who.int/publications-detail-redirect/9789241511353>> accessed 21 April 2023.

²³ Simba Tirima et al., 'Food Contamination as a Pathway for Lead Exposure in Children during the 2010–2013 Lead Poisoning Epidemic in Zamfara, Nigeria,' 67 (2018) *Journal of Environmental Sciences* 260.

²⁴ Olufemi Bamigboye, Nnabo PN, and Adekeye JID, 'Mining and Environment in Nigeria: The Past, the Present and the Future', 56 *Discovery* 222.

²⁵ J.A Adekoya, 'Environmental effect of solid minerals mining', (2003) *Journal of Physical Sciences Kenya* 625.

Solid minerals are finite resources that exist in predetermined quantities within the earth. This viewpoint is supported by a policy document acknowledging that mineral resources are limited, and mining activities adversely affect the environment.²⁶

While each form of mining has its distinct impacts, it is important to discuss the history of mining and its impacts collectively to gain a comprehensive understanding of the Nigerian mining industry. This approach is justified for different reasons. Understanding the history and impacts of mining in Nigeria helps identify shared patterns and challenges across different minerals. This approach also provides a broader context for comprehending the industry's evolution in Nigeria, including its impact on host communities over time. The next section explores mining's evolution and its effect on host community rights, followed by a discussion on health and environmental impacts, highlighting irreversible changes in ecological conditions caused by mining exploration.

2.3 Historical Overview of Mining in Nigeria and Host Community Rights

Mining has been a crucial part of Nigeria's economy for decades, providing significant contributions to the country's Gross Domestic Product (GDP) and serving as a primary source of employment for many citizens. The mining industry in Nigeria has a rich history, with some aspects predating colonialism and formal legislation dating back to the colonial era when the country was under British rule. During the colonial period, mining operations were mainly focused on tin mining in Jos and coal mining in Enugu.²⁷

²⁶ National Minerals & Metals Policy, 2008 p.8.

²⁷ B. W. Hodder, 'Tin Mining on the Jos Plateau of Nigeria' 35 (1959) *Economic Geography* 109,111.

Understanding the historical development of mining in Nigeria is important before developing a corporate responsibility framework for the Nigerian mining sector. This section will explore the early beginnings of mining in Nigeria, including discovering mineral resources and establishing mining operations. It will also examine the impact of colonialism on the mining industry and the subsequent efforts to develop the sector after independence.

2.3.1 Overview of the Historical Development of Mining Laws and Practices in Nigeria

The mining sector in Nigeria predates the British colonial era, particularly what has been known locally as "solid mineral resources" (that is, non-oil and gas resources).²⁸ Evidence of the pre-colonial flourishing in the mining sector among indigenous populations exists in works of art from many Nigerian civilizations.²⁹ For example, mineral resources such as iron and tin in Northern Nigeria's Bauchi-Plateau axis gave rise to the Nok Culture between 1000 BC and 200 AD, while copper and bronze technology flourished among the Igbo (Igbo-Ukwu area) from the 850s AD; in the Oyo Empire around 1000 AD; and in the Benin Kingdom around 1340 AD.³⁰

Laws were introduced during the colonial era to regulate mining in Nigeria. One of the primary aims of the Colonial government's regulation of the mining industry was to establish the British Crown as the rightful owner and controller of Nigeria's mineral resources. This objective was typically reflected in the proclamations issued by the British government during the colonial era and the policies adopted and enforced in the mining sector.

²⁸ Began in 1861 and formally ended in 1960 when Nigeria attained independence from British colonial rule.

²⁹ A Obafemi. *States and Peoples of the Niger-Benue Confluence Area*. In O Ikime. (ed.) *Groundwork of Nigerian History*. (Ibadan: Heinemann Educational Publisher 2006).

³⁰ T Shaw. 2006. *Prehistory*. O Ikime. (ed.) *Groundwork of Nigerian History*. (Ibadan: Heinemann Educational Publisher 2006).

The evolution of Nigeria's mining laws and policies has been characterized by a lack of coherence, primarily influenced by the legacy of colonialism and the government's inconsistent approach towards the sector. These developments can be categorized into three distinct but interconnected periods: the pre-independence era (1902-1970); the period of indigenization and post-indigenization (1971-1990); the decade of reforms in the mining and minerals sector (1990-2000); and the renaissance period of Nigeria's minerals and mining sector (2000-2017).

2.3.1.1 Pre-Independence Era (1902-1970)

Before the colonial era, communities living in resource-rich areas were actively involved in decision-making processes regarding exploiting their resources. They would receive benefits from the trade of these resources, and their territories were developed for the collective good of the community.³¹ However, with the arrival of the colonists, they claimed that the land they were settling on was "*Halis Terra Nullius*," meaning no one's land, disregarding the indigenous communities' ownership and rights.³² As a result, the people were deprived of their inherent right to govern their land. The arrival of Europeans in Africa was mostly driven by a desire to access and exploit raw materials for their home government industries, which defined the colonial era.³³ There was no discernible legislation that protected the environment and host communities where mining operations take place.³⁴

³¹ Bunter, M.A.G, *Host Communities, Nature Title, and Petroleum Licensing* (CEPMLP Publication CP 2/05, Dundee: CEPMLP 2005) 9.

³² Bunter, M.A.G, *Host Communities, Nature Title, and Petroleum Licensing* (CEPMLP Publication CP 2/05, Dundee: CEPMLP 2005) 9.

³³ T.K.Adekunle And Hilary Nwaechefu, 'Environmental Sustainability In The Pre-Colonial, Colonial And Post-Colonial Era In Nigeria: The Key To Human Survival' 7(2019) *Global Journal Of Politics And Law Research* 33,38.

³⁴ T.K.Adekunle and Hilary Nwaechefu, 'Environmental Sustainability In The Pre-Colonial, Colonial And Post-Colonial Era In Nigeria: The Key To Human Survival' 7(2019) *Global Journal of Politics and Law Research* 33,38.

The pre-independence era in Nigeria was marked by a significant presence of foreign entities involved in the exploration and exploitation of solid minerals. The private sector played a crucial role in driving the development of the mining industry during this period. While some organized mining activities were already taking place in locations like Jos, Asaba, Enugu, and Ilesha before colonial rule, the mineral survey report commissioned by the Secretary of States for the Colonies in 1903/4 is widely recognized as the catalyst for organized mining in Nigeria, which gained momentum around the 1940s.³⁵ Despite the existence of indigenous entrepreneurs who were appointed as "tributers" and engaged in purchasing minerals from local artisans to sell to foreign licensed miners, their level of involvement in the mining industry remained limited.³⁶ It was during the colonial rule that mining on a significant commercial scale, particularly for export purposes, gained prominence. In fact, tin mining in Nigeria commenced in Jos in the years 1903-1904.³⁷ Colonialism granted the wealth and riches of the conquered territories to the colonial authorities.³⁸ In the early twentieth century, this aided British colonial governments in expanding and increasing their borders, largely through trade. The economic boom from mining enabled colonial administrations to manage natural resources in places such as Nigeria, a British protectorate in the 1900s. Because of the ties between Britain and Nigeria, the British-owned Royal Niger firm was able to purchase and control the area's resources.

The colonial administration launched the Mineral Survey of the Northern Protectorates in 1903, marking the beginning of organised mining.³⁹ Together with its counterpart in the Southern

³⁵ I Unaogu "National Strategic Planning for Solid Minerals Development" In ECPER (1996) 4 Journal for Political and Economic Studies 211, 212.

³⁶ I Unaogu "National Strategic Planning for Solid Minerals Development" In ECPER (1996) 4 Journal for Political and Economic Studies 211, 212.

³⁷ Osunbor, A.O. (1998 Reprint 2000). "Environmental Consideration in the Development of the Solid Minerals Industry in Nigeria." In: Osunbor, O.A and Simpson S. et al. (eds.) Environmental Law and Policy, Law Centre, Faculty of Law, Lagos State University, Lagos, p.396.

³⁸ John McLeod. *Beginning Postcolonialism*. (Manchester University Press, 2016).

³⁹ Eghosa Osa Ekhaton and Linimose Anyiwe, 'Foreign Direct Investment and the Law in Nigeria: A Legal Assessment', 58 (2016) International Journal of Law and Management 126,127.

Protectorate, this survey produced results up to 1940, when Nigeria emerged as a significant producer of resources, including tin and coal.⁴⁰

The colonial era, from the late 19th century to the mid-20th century, played a pivotal role in shaping the country's mining industry and exploiting its natural resources. During this period, the British colonial powers established control over Nigeria and sought to exploit its vast resources for economic gain. The colonial administration introduced policies and practices that facilitated the extraction and exportation of valuable minerals, such as tin, columbite, and coal, to meet the growing demands of the industrialized world.⁴¹ Colonialism, with its extractive agenda, laid the foundation for systematically exploiting Nigeria's mineral wealth. The British colonial authorities granted mining rights and concessions to British companies, enabling them to extract and profit from the country's mineral resources. This process often marginalized host communities and disregarded their rights and interests in pursuing economic interests.⁴²

After the British conquest of northern and southern Nigeria and merging the two to establish Nigerian colonies and protectorate, the British sought the best interests between direct and indirect rule.⁴³ Economically, the tax and transportation systems deepened the British's plunder and control over the economy in Nigeria.⁴⁴

In the early 20th century, organized mining activity began in Nigeria following the mineral surveys conducted in the Southern and Northern Protectorates between 1903 and 1904. The

⁴⁰ Eghosa Osa Ekhaton and Linimose Anyiwe, 'Foreign Direct Investment and the Law in Nigeria: A Legal Assessment', 58 (2016) *International Journal of Law and Management* 126,127.

⁴¹ Merem, E.C., et al (2017). 'Assessing the Ecological Effects of Mining in West Africa, the Case of Nigeria' (2017) 6 *International Journal of Mining Engineering and Mineral Processing* 2,3.

⁴² Osunbor, A.O. (1998 Reprint 2000). "Environmental Consideration in the Development of the Solid Minerals Industry in Nigeria." In: Osunbor, O.A and Simpson S. et al. (eds.) *Environmental Law and Policy*, Law Centre, Faculty of Law, Lagos State University, Lagos, p.396.

⁴³ Osunbor, A.O. (1998 Reprint 2000). "Environmental Consideration in the Development of the Solid Minerals Industry in Nigeria." In: Osunbor, O.A and Simpson S. et al. (eds.) *Environmental Law and Policy*, Law Centre, Faculty of Law, Lagos State University, Lagos, p.396.

⁴⁴ History of the British takeover of Nigeria (2020) *Comparative Studies 1100 Introduction to the Humanities* Spring 2020. Available at: <https://u.osu.edu/introhumanitiesonline/2020/02/04/history-of-the-british-takeover-of-nigeria/> Accessed: 12 June 2023.

exploration efforts led by the British Secretary of State for the colonies unveiled the country's mineral potential. At this time, European and British explorers gained control over mining activities thanks to the support of the Royal Niger Company. It was during this period that modern mining techniques were introduced by Col. Laws, a mining engineer affiliated with the Royal Niger Company. His exploration efforts in Jos, Plateau State, focused on the tin, and substantial deposits of tin and columbite were discovered in the Delimi area of Jos.⁴⁵ According to reports, when the Company discovered valuable mineral deposits, particularly tin and columbite, in the Northern Protectorate at that time, it implemented regulations that effectively granted exclusive mining rights to the Company, establishing a monopoly over mining activities in Northern Nigeria.⁴⁶

Additionally, other mining companies like the Gold and Base Metals Company in Ilesha and the Amalgamated Tin Mining Company of Nigeria emerged, expanding the scope of mining operations. These developments were accompanied by the implementation of key legislations, such as the 1914 Mineral Oils Ordinance, the Geological Survey of Nigeria in 1919, and the Mineral Oils Act of 1959.⁴⁷

The Company held its monopoly on the exploitation of these minerals until 1900 when the British Government terminated its Charter. Subsequently, the colonial administration enacted laws to regulate the industry, the earliest being the Minerals Ordinance of 1902, which vested all mineral rights in the Crown.⁴⁸ Despite subsequent amendments in 1916 and 1927, the Mineral Ordinance favoured foreign investors, particularly British companies, and their affiliates, by reserving mining privileges.⁴⁹

⁴⁵ Abdulahi Aliyu, *Potentials of the Solid Minerals Industry in Nigeria* (RMRDC Publication, 1996) 208.

⁴⁶ E I Kachikwu *Nigerian Foreign Investment Law and Policy*, (Mikzek Law Publications Ltd 1988) 17.

⁴⁷ Abdulahi Aliyu, *Potentials of the Solid Minerals Industry in Nigeria* (RMRDC Publication, 1996) 208,209.

⁴⁸ Mineral Ordinance 1902.

⁴⁹ E I Kachikwu *Nigerian Foreign Investment Law and Policy*, (Mikzek Law Publications Ltd 1988) 18.

Nigeria has been affected systemically by British colonial authority, which helped create its contemporary nation-state's diverse legal traditions and frame discussions around mining natural resources.⁵⁰ Nigeria was a significant tin, columbite, and coal producer by the 1940s. However, the ability of Nigeria to maintain the pace of mineral growth was made more difficult by the rise in global demand for mineral resources.⁵¹

Diversifying the economy was necessary due to several economic, political, and other worldwide realities, which reminded the country of the value of exploiting its solid minerals. The government tried to set up bodies to explore these abundant minerals,⁵² but most of the bodies failed.⁵³ The introduction of the Minerals Ordinance in 1946 and the Coal Ordinance in 1950 served as key legislative measures to regulate mining activities. Similar to its predecessors, the Minerals Ordinance conferred ownership of all minerals to the British Crown.

The Minerals Ordinance of 1946 and the Coal Ordinance No. 29 of 1950 provided the legislative framework for the development of minerals and metals, giving the British Crown exclusive control of all minerals in the colony, now Nigeria.⁵⁴ The Minerals Ordinance of 1946 and the Coal Ordinance No. 29 of 1950 played a crucial role in establishing the legal framework for the development of minerals and metals in Nigeria during the colonial period. These ordinances granted the British Crown exclusive control over all minerals in the colony, which later became the independent nation of Nigeria. Under these ordinances, the British colonial

⁵⁰ Ekhaton, E.O. and Anyiwe, L. (2016) 'Foreign Direct Investment and the law in Nigeria: A legal assessment', *International Journal of Law and Management*, 58 (2016) *International Journal of Law and Management* 126,127.

⁵¹ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) *Continental J. Applied Sciences* 34.

⁵² Nigeria Steel Development Authority (NSDA); Nigerian Mining Corporation (NMC) set up in 1972; Nigerian Coal Corporation (NCC) set up earlier before NMC to explore the mine and market coal; NSDA was replaced by six companies through decree no. 60 of 1979; National Iron Ore Mining Company Project (NIOMP); Ajaokuta Steel Company; Delta Steel Company, Aladja; Jos Steel Rolling Company; Katsina Steel Rolling Company.

⁵³ Ajaokuta Steel Complex and the Delta Steel Complex failed.

⁵⁴ E I Kachikwu *Nigerian Foreign Investment Law and Policy*, (Mikzek Law Publications Ltd 1988) 18.

administration exercised significant authority and ownership rights over the mineral resources of Nigeria. This control allowed the British government to regulate and exploit the country's mineral wealth for its own economic interests.⁵⁵

Similarly, the Coal Ordinance No. 29 of 1950 specifically focused on regulating coal mining in Nigeria. It provided provisions for the exploration, mining, and exportation of coal, with the British Crown holding exclusive control over coal deposits in the country. This ordinance further solidified the colonial government's control over the coal industry, enabling them to oversee its operations and benefit from its economic potential. The legislative framework established by these ordinances served the interests of the British colonial administration by ensuring their monopoly over Nigeria's mineral resources. It allowed the British government to extract and export minerals for economic gain while limiting the participation of indigenous Nigerians in the mining sector.⁵⁶

The exclusive control of minerals by the British Crown had significant implications for Nigeria's development and the subsequent struggles for resource control during the post-colonial era. The control of mineral resources by the colonial powers contributed to the exploitation and extraction of Nigeria's wealth without commensurate benefits for the local population. The legacy of these ordinances and the colonial control over mineral resources has shaped the discourse on resource governance and ownership in Nigeria. It underscores the need for equitable and transparent management of mineral wealth in the country, considering the interests and rights of the host communities and the overall socio-economic development of Nigeria.

⁵⁵ Eghosa Osa Ekhaton and Linimose Anyiwe, 'Foreign Direct Investment and the Law in Nigeria: A Legal Assessment', 58 (2016) *International Journal of Law and Management* 126,127.

⁵⁶ I Ehighelua, *Environmental Protection Law* (New Pages Law Publishing Co.,Effurun/Warri),115

During the colonial era, the exploitation of solid minerals in Nigeria lacked consideration for sustainable resource use and environmental protection. Despite the 1946 Ordinance containing provisions for environmental protection, the initial focus of mining activities did not prioritize environmental concerns and host community protection. Although the Minerals Act⁵⁷ had its shortcomings, it did include commendable provisions. For instance, it recognized and preserved the rights of host community members to mine specific mineral resources within designated areas if it was their customary practice before the Act's implementation. It was expected that the traditional methods and values associated with such mining would be employed to prevent or mitigate environmental degradation in these communities.⁵⁸ The Mining Ordinance 1946 failed to address the important aspect of ensuring that host communities benefit from solid mineral mining activities and that measures are taken to remediate and restore the environment. Locations like Enugu, Jos, and other areas in Nigeria serve as reminders of the negative impact of mining on the environment. Environmental degradation was widespread, and the affected areas were left without proper remediation, which had detrimental effects on the livelihoods, health, and sustainable development of the communities and the country. Additionally, existing laws during this period did not adequately protect the environment, especially in terms of addressing the rights and obligations of indigenous communities regarding the rehabilitation of degraded mining sites caused by solid mineral extraction. The laws governing mining, such as the Mining Ordinance 1946, remained largely unchanged until its repeal in 1999, with only minor modifications. This lack of a positive paradigm shift contributed to Nigeria's ongoing environmental challenges associated with mineral resource exploitation.

⁵⁷ Minerals Act, Cap. 121, Laws of the Federation of Nigeria and Lagos, 1958.

⁵⁸ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) *Continental J. Applied Sciences* 34,35.

During this period, known as the pre-indigenization era, the control of mining activities in Nigeria largely remained in the hands of European and British entities.⁵⁹ This arrangement provided them with a significant level of influence and authority in the country's mining sector. However, it is important to note that these dynamics would undergo a significant transformation with the introduction of the indigenization policy in Nigeria. The indigenization policy aimed to address the imbalances created by colonialism and promote local ownership and control of industries, including mining. This policy shift marked a turning point in Nigeria's mining history, with profound implications for resource acquisition and corporate governance that continue to shape the present realities in the mining industry. The mining policy was significantly revised in 1971 when the government established the Nigeria Mining Corporation.⁶⁰

2.3.1.2 Indigenization and Post-Indigenization Era (1971-1990)

The period of the Indigenization Policy in Nigeria, starting in the early 1970s, aimed to grant Nigerians total control over the mineral sector. The civil war and various factors, including the shift from civilian to military rule in 1966, led to an unfavourable investment climate in Nigeria's mining sector, resulting in the withdrawal of foreign investors. This withdrawal created a significant gap in the sector. In response, in contrast to its previous stance of non-involvement in mining, the government actively stepped in to fill this void and became directly involved in the mining industry.⁶¹ During this period, the Nigerian government played a catalytic role in the mining sector by establishing the Nigeria Mining Corporation, which used

⁵⁹ E I Kachikwu Nigerian Foreign Investment Law and Policy, (Mikzek Law Publications Ltd 1988) 18.

⁶⁰ Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, Minerals and Mining Policies in Nigeria: Implications on Sustainable Growth and National Development, 'International Journal of Research in Engineering and Science' 60,64.

⁶¹ National Policy on Solid Minerals 1971

government funds for mining activities. The government rejected the concept of private sector-led development in the solid mineral subsector and sought to promote direct investment through state-owned entities.⁶²

Against this backdrop, the Nigerian government made a significant policy shift in 1971 by adopting a new Policy on Solid Minerals. The main objectives of this policy were to promote diversification of the country's primary mineral products through extensive geological exploration and mineral beneficiation assessments, encourage the development of mineral resources for the national economy, and ensure the conservation of mineral resources through research and efficient extraction methods. This marked a departure from the passive approach to active government involvement in solid minerals exploitation. The policy acknowledged that private investors may not necessarily be the most effective means to achieve Nigeria's mineral resources' development and long-term economic benefits.⁶³ Additional significant efforts during this period included the establishment of the Ministry of Solid Minerals Development in 1995 and promulgation the Decree on Mining in 1999. These actions aimed to restructure the mining industry, diversify Nigeria's revenue sources, and contribute to economic development.

The government's mining policy emphasized developing, conserving, and utilising Nigeria's mineral resources for long-term economic benefits. It highlighted the government's shift toward direct participation in the mining industry, recognizing the limitations of relying solely on private investors. The Geological Survey Department and Mines Division were expanded to play more intensive roles in geological exploration, mineral beneficiation, and appraisals to

⁶² Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, Minerals and Mining Policies in Nigeria: Implications on Sustainable Growth and National Development, 'International Journal of Research in Engineering and Science' 60,64.

⁶³ National Policy on Solid Minerals 1971.

implement the policy. Prospecting permits were decentralized to state mines offices, incentives in the form of concessions were offered to encourage extensive exploration, and a new institute was established to enhance training in mining engineering.⁶⁴

Despite the government's intervention, the mining sector in Nigeria faced significant challenges and experienced a decline. The implementation of the Indigenization Policy, which began in 1972, made it mandatory for Nigerians to have ownership interests in strategic sectors, including mining.⁶⁵ This policy required Nigerian acquisition of interests in foreign-owned mining ventures. However, the Indigenization Policy had unintended negative consequences for mining investments in Nigeria. It was met with resistance from foreign mining companies and expatriates who perceived it as a form of nationalism.⁶⁶ Many foreign investors chose to close their operations and relocate to more favourable destinations rather than weaken their interests to accommodate Nigerian entrepreneurs as required by the policy. This led to a mass withdrawal of foreign investment from Nigeria and hindered the development of the mining industry. Furthermore, Nigeria continued to rely on the outdated Minerals Act, which originated from a colonial ordinance in 1946 and was later transformed into an Act of Parliament in 1963, to regulate the mining sector. The inadequacy of the 1963 Act became apparent as it no longer aligned with the development priorities of an independent Nigeria.

The lack of essential managerial and technical skills necessary to meet the demands of the mining industry posed a significant obstacle. The public sector, responsible for mining operations due to government intervention, was ill-equipped for its new role. Challenges including insufficient funding, mismanagement, corruption, and attitudinal issues further

⁶⁴ Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, Minerals and Mining Policies In Nigeria: Implications On Sustainable Growth And National Development, 'International Journal of Research in Engineering and Science' 60,65.

⁶⁵ V A. Odozi, "Keynote Address" presented at the In-House Seminar on Reviving Nigeria's Non-Oil Sector for Economic Development for CBN Executive Staff, (1997) 35 Economic and Financial Review 5

⁶⁶ E I Kachikwu Nigerian Foreign Investment Law and Policy, (Mikzek Law Publications Ltd 1988) 168.

compounded this. These factors hindered the public sector from making effective decisions and investments needed to sustain the mining industry. Challenges arose during this period, including illegal mining, pig cropping, speculative pegging, administrative bottlenecks, and insufficient manpower in the Inspectorate Department for effective oversight. Despite heavy public expenditure on the mining corporations, the expected economic benefits envisioned in the 1971 policy review were not fully realized, with poor or negative returns on investment. To address these issues, the Ministry of Solid Minerals Development established a committee in 1995 to advise on administrative, legal, and fiscal strategies for the subsector's orderly and continued development. Overall, this period marked a significant shift in Nigeria's mining sector towards indigenous participation, though challenges and limitations hindered the realization of anticipated economic advantages. The subsequent establishment of the committee aimed to address these issues and pave the way for improved development in the mining subsector.⁶⁷

2.3.1.3 Post-Independence Mining Policy and Protection of Host Community Rights

After Nigeria gained independence in 1960, the mining industry continued to grow with the discovery of new mineral deposits and the establishment of larger mining operations. Even after gaining independence, Nigeria's political leaders have continued to follow the colonialist approach of discovering, using, and taking control of the people's resources, ignoring their inherent rights. However, host communities were still denied land and mineral rights. New laws were enacted, but there is no private ownership of mineral rights. According to section 44 (3) of the Constitution of the Federal Republic of Nigeria, the government of the federation

⁶⁷ Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, Minerals and Mining Policies In Nigeria: Implications On Sustainable Growth And National Development, 'International Journal of Research in Engineering and Science' 60,65.

shall own the entire property in all minerals, mineral oils, and natural gas under, on, or upon any Nigerian land as well as in, under, or the country's territorial waters and exclusive economic zone, and shall manage it in any manner the National Assembly may specify. According to the provision, the government is supposed to hold the mineral resources in trust on behalf of the citizens of Nigeria, for the benefit and growth of the economy.⁶⁸ Accordingly, the exclusive right of occupancy, customary or legal, is the highest interest a person can gain in Nigerian law.

As seen with the current situation in Nigeria, when the government has full ownership of mineral resources, the governor can use them as they deem fit. In *Nkwocha v. Governor of Anambra State*,⁶⁹ the plaintiff, Nkwocha, filed a lawsuit against the State Governor, seeking a declaration that the Governor lacked the authority to cancel the plaintiff's leasehold. The court dismissed the case. The case involved a dispute over the ownership and control of certain mining rights and interests in Anambra State, Nigeria. The plaintiff, Mr. Nkwocha, claimed that the Anambra State Government had unlawfully revoked his mining license. The court determined that under section 1 of the Land Use Act, all land in a state is vested in the Military Governor, and the successor, including the Civilian Governor, can inherit this power. Despite the Land Use Act being considered a Federal Enactment, the Supreme Court held that the State Governor can administer the Act under section 276 of the constitution. This grants the Governor the power to exercise various rights and authorities within the Act, such as granting and revoking land rights. The court also clarified the constitutional status of the Land Use Act,

⁶⁸ Ogugua VC Ikpeze, & Nnamdi G Ikpeze, 'Examination of Some Legislations Referencing Acquisition of Rights for Oil Exploration, Prospection and Mining in Nigeria', (2015) 5 Journal of Energy Technologies and Policy 1, 5.

⁶⁹ (1984)1 SC NLR 634.

stating that it is not an integral part of the Constitution but rather an ordinary statute entrenched in the Constitution.⁷⁰

The judgement implies that no individual has the right of ownership to land and by extension, its natural endowment in accordance with section 44 (3) CFRN. The decision in *Chief R. O Nkwocha v Governor of Anambra State & ors* (1984) 1 SCNLR 634 has implications for the host communities in relation to their land rights and the authority of the State Governor. The court affirmed that under the Land Use Act, all land in a state is vested in the Governor, whether the Military or Civilian Governor. For the host communities, this decision means that their land rights are subject to the authority of the State Governor. The Governor has the power to make decisions regarding the use and allocation of land within the state, including land in the host communities. The Governor can grant land rights to individuals or entities and has the authority to revoke those grants if necessary.

The decision highlights the significance of the Governor's role in land administration. It underscores the need for effective governance and engagement with host communities to ensure their interests are considered in managing and utilising land resources. Similarly, the Land Use Act (LUA), originally a 1978 decree of the federal military government, which was later annexed to the 1979 constitution, made significant changes in the mining sector.⁷¹ It nationalised all land in the country, supposedly due to the difficulties private and government institutions faced to acquire land for developmental projects. The Act gave each state governor absolute ownership of land with each state.⁷² In *Abioye v. Yakubu*,⁷³ the court established the Act's effects on customary land holding by withdrawing land ownership from individuals,

⁷⁰ Chief R. O Nkwocha V Governor OF Anambra State & ors (1984) 1 SC NLR 634

⁷¹ Rhuks T Ako, 'Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice' (2009) 53 Journal of African Law 289, 293.

⁷² Section 1 Land Use Act 1979.

⁷³ (1991) 5 NWLR (Pt 190) 130, 223, paras (d)-(g) per Obaseki J.

families and host communities and conferring the title on the governor of each state in the hope that the land would be used for the benefit of all Nigerians.

Likewise, the transfer of control and administration of land ownership from families and host communities to the state governors.⁷⁴ Section 28 LUA provides that land may be taken if it is in the public's interest, which includes the use of the land for mining purposes, or any purpose connected in addition to that. One example of such a public interest arises when the land belonging to host communities is needed for oil or mineral mining. This intersects with the Constitution, which confers ownership of all mineral resources on the government of the federation.⁷⁵

However, while the LUA only approved government alienation of land for public purposes, the government usually acquires land endowed with mineral resources from the aboriginal landholders, only to confer it on mining companies that explore the land for their private profit-making purpose. Government officials and their allies are these mining companies' eventual shareholders and beneficiaries.⁷⁶ Influential elite class members benefit unduly from the Act by deliberately manipulating the allocations committee.⁷⁷

The combined effect of Section 1 LUA 1978, Section 44(3) of the CFRN and Section 2 Exclusive Economic Zone Act 1978 limits the rights of host communities to protect their lands and environs. They also have no say in the introduction of mining projects in their community since the government exercises all the rights over all lands. By the mere grant of government

⁷⁴ *ibid.*

⁷⁵ Kaniye SA Ebeku, 'Oil and the Niger Delta People: The Injustice of the Land Use Act', 35 (2002) *Law and Politics in Africa, Asia, and Latin America* 201, 203.

⁷⁶ Yinka Omorogbe, 'The Legal Framework for Public Participation in Decision-making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless', in Donald M Zillman, Alastair Lucas, and George (Rock) Pring (eds), *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources* (Oxford Academic, 2012).

⁷⁷ P Francis 'For the Use and Common Benefit of all Nigerians: Consequences of the 1978 Land Nationalization' (1984) 54 *Africa: Journal of the International African Institute* 5, 7.

consent, any mining company can invade any community and commence exploration activities. The post-independence mining policy in Nigeria, coupled with the protection of host community rights, presents a complex landscape that has evolved. The Nigerian Land Use Act and subsequent mining policies have had significant implications for host communities, particularly in terms of community governance. The post-independence mining policy in Nigeria has had implications for host community rights, particularly in relation to community governance and control over land.

2.4. The Current State of Mining

The current state of the mining industry in Nigeria presents both opportunities and challenges for sustainable development. With abundant mineral resources, Nigeria has the potential to harness its mining sector to drive economic growth, create employment opportunities, and contribute to the nation's revenue. However, assessing the current mining activities, identifying the major players, and understanding the scale and scope of mining operations in different areas of the country is crucial.

In this analysis, the thesis examines the mining landscape of Nigeria to provide a comprehensive overview of the types of mining being carried out and the size of the industry. The thesis examines the major players in each area of mining and highlight their contributions to the sector. By understanding the current state of mining in Nigeria, policymakers, stakeholders, and communities can make informed decisions and implement strategies that promote sustainable mining practices, ensure environmental protection, and safeguard the rights and well-being of host communities.

2.4.1 Current Forms of Solid Minerals Mining

The mining industry in Nigeria encompasses a wide range of solid minerals, each with unique characteristics and economic significance. Some prominent minerals mined in Nigeria include limestone, granite, coal, tin, columbite, lead, zinc, gold, and gemstones.⁷⁸ These minerals are found in various states across the country, and mining activities related to them vary in scale and scope.

Tin and columbite mining were extensively carried out in the Jos Plateau region of Nigeria, with the majority of cassiterite mineral production coming from this area. The mining activities extended beyond the Jos Plateau to other regions such as Wamba, Kafanchan, Bura, and the Jarawa hills.⁷⁹ Additional mining of tin and columbite took place in Bauchi and Kano areas. The production of tin increased significantly from 1904 to 1943, reaching its peak at 15,842 tonnes. The Ngell sub-basalt tin deposit is believed to hold untapped reserves of approximately 3,500 tonnes still.⁸⁰

Limestone mining is one of the major forms of solid minerals mining in Nigeria. The country has significant limestone deposits, particularly in states such as Cross River, Ogun, Benue, Sokoto, Edo, and Ebonyi. Limestone is primarily used in cement production, as a construction material, and for various industrial applications.⁸¹ Granite mining is another significant form of solid minerals mining in Nigeria. Granite, a type of igneous rock, is abundant in states such as Ogun, Kaduna, Lagos, Ekiti, and Enugu. It is widely used in the construction industry as a building material and to produce aggregates. Coal mining has a long history in Nigeria and

⁷⁸ Lar, Uriah Alexander 'Trace Elements and Health: An Environmental Risk in Nigeria.' (2013) 2 Earth Science 66,68.

⁷⁹ Lar, Uriah Alexander 'Trace Elements and Health: An Environmental Risk in Nigeria.' (2013) 2 Earth Science 66,69.

⁸⁰ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) Continental J. Applied Sciences 34.

⁸¹ Abdullahi Aliyu, 'Potentials of the Solid Minerals Industry in Nigeria, Nigeria, Raw Materials Research and Development Council (Investment Promotion) (1996) 10.

remains an important sector. Major coal mining operations are primarily located in Enugu, Kogi, Benue, and Gombe states.⁸² Coal is used for power generation, industrial processes, and as a source of energy in domestic households. The discovery of coal in Enugu in 1909 led to the establishment of the Agbete Mine and the commencement of coal extraction by 1916.⁸³ Coal production rapidly increased, reaching 180,122 long tons (201,737 short tons) by 1920. The late 1950s saw the peak of coal production, with output reaching 565,681 long tons (633,563 short tons) by 1960.⁸⁴

Gold has been mined in Nigeria since 1913, with production peaking in the 1930s. It is mainly concentrated in states like Zamfara, Osun, Niger, and Kaduna, where artisanal and small-scale mining activities occur. The mining of gold was predominantly carried out by colonial mining companies.⁸⁵ Bitumen exploration in Nigeria began in 1905, and more recent drilling activities have revealed the presence of high tar sands and bituminous deposits. Iron ore deposits are found in various locations in Nigeria, with the purest deposits located around Itakpe in Kogi State. The National Iron Ore Mining Company was established in 1979 with the aim of exploring, exploiting, processing, and supplying iron ore concentrate to the Ajaokuta Steel Company and Delta Steel Company. The Nigerian government is also exploring the possibility of exporting excess iron ore.⁸⁶

⁸² Felix Bamidele Fatoye and Yomi Barnabas Gideon, 'Appraisal of the Economic Geology of Nigerian Coal Resources' (2013) 3 *Journal of Environment and Earth Science* 25,27.

⁸³ Felix Bamidele Fatoye and Yomi Barnabas Gideon, 'Appraisal of the Economic Geology of Nigerian Coal Resources' (2013) 3 *Journal of Environment and Earth Science* 25,27.

⁸⁴ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) *Continental J. Applied Sciences* 34,36.

⁸⁵ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) *Continental J. Applied Sciences* 34,35.

⁸⁶ Mustafa, Ibrahim Alhaji and Ezeamaka Cyril Kanayochukwu, 'Spatial Location of Artisanal Mining Activities in Niger State and Its Implication to The Environment' (2020) *International Journal of Engineering Applied Sciences and Technology* 711,714.

Uranium mining in Nigeria was previously controlled by the Nigeria Uranium Mining Company (NUMCO), which was a partnership with Total Compagnie Minière of France. However, Total pulled out of the partnership in 1989, and the government reassigned NUMCO's responsibilities to the Nigerian Geological Survey in 1993. The NUMCO Corporation was dissolved in 1996, and the government is currently in the process of liquidating its remaining assets.⁸⁷

The analysis of the current state of mining in Nigeria reveals a diverse range of solid minerals being mined, including tin/columbite, coal, gold, bitumen, iron ore, and uranium. These minerals are found in different regions of the country and have varying production and economic significance levels. The current state of mining in Nigeria also demonstrates the industry's potential and challenges. The country possesses significant reserves of various solid minerals that can contribute to economic development and diversification. However, there is a need for comprehensive policies and effective implementation to promote sustainable mining practices, ensure environmental protection, and maximize the socio-economic benefits for host communities.

The Nigerian mining industry grapples with multiple challenges. Among them is the struggle to effectively implement and sustain mining policies and practices. This is exemplified by difficulties faced in modernizing coal mining through mechanization. Abandoned mines and the lingering disruptions from historical events also cast doubts on the sector's long-term viability and potential for rejuvenation. Additionally, artisanal, and small-scale mining, particularly in gold, poses a significant challenge. While it supports livelihoods, it often

⁸⁷ Stephen J. Mallo, 'The Nigerian Mining Sector: An Overview', 7 (2012) *Continental J. Applied Sciences* 34,35.

operates outside regulatory bounds, resulting in environmental harm, unsafe conditions, and limited government revenue. This will be explored further in the next section.

2.4.2 Actors in the Nigerian Mining Sector

Nigeria's mining industry comprises several actors, including small-scale miners, medium-scale miners, and large-scale mining companies. Each of these groups play a unique role in the industry, and understanding their size and scope is critical to developing effective policies and regulations that promote sustainable development. By examining the actors of the mining industry and analysing the environmental and health impacts of mining operations, the thesis aims to highlight the importance of integrating measures to protect host communities within the overall governance framework. It provides an in-depth overview of mining in Nigeria and its impact on host communities.

2.4.2.1 Small-Scale Miners (Artisanal Mining)

Small-scale miners are characterized by their modest operations, utilizing basic tools and techniques. Although they may lack formal training and often operate informally, they fulfil a crucial role in meeting local mineral demand, creating job opportunities, and generating income for themselves, their families, and their communities. While their methods may be rudimentary compared to large-scale mining operations, they contribute significantly to the local economy and play a vital part in the overall mining landscape.⁸⁸ The Nigerian Minerals and Mining Act includes provisions regarding the eligibility requirements, coverage area, activities, and

⁸⁸ J. A. Awomeso, A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria.' (2017) 6 Environmental Systems Research 1,2.

operations of small-scale mining leases. It also outlines the supervisory and intervention roles of the Mines Environmental Compliance (MEC) Department, which operates under the Federal Ministry of Mines and Steel Development.⁸⁹

Small-scale mining refers to various mining operations, including artisanal and alluvial mining, that utilize low-level technology or methods that do not require significant financial investment.⁹⁰ Artisanal mining is a form of informal mining conducted by individuals or groups, primarily relying on manual labour, and employing simple tools and techniques without prior exploration activities. Artisanal and small-scale mining, also known as ASM, is prevalent in third-world countries, driven by poverty or the need for survival. Approximately 13-50 million individuals are involved in artisanal and small-scale mining in about 80 countries globally.⁹¹ ASM is responsible for producing 15-20% of all metals and minerals used globally, including 80% of sapphires and 20-30% of gold. Artisanal and small-scale mining are primary sources of income in rural areas, where minerals are extracted on a small scale with minimal tools and equipment in Nigeria.⁹² This is an informal sector that operates outside of the legal and regulatory framework.⁹³

It is asserted that the environmental degradation resulting from the mining activities of small-scale miners can be attributed to several factors. These include using rudimentary mining techniques, the lack of education and experience among miners in modern mining practices,

⁸⁹ Sections 164, Nigerian Minerals and Mining Act, No. 20, 2007.

⁹⁰ Sections 49, 90 & 91, Nigerian Minerals and Mining Act, No. 20, 2007

⁹¹ J. A. Awomeso, A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria.' (2017) 6 Environmental Systems Research 1,2.

⁹² J. A. Awomeso, A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria.' (2017) 6 Environmental Systems Research 1.

⁹³ Anthony Bradshaw 'Restoration of mined lands—using natural processes'. (1997) 8 Ecol Eng 255,256.

and limited exposure to advanced mining methods. Since the beginning of small-scale mining activities, the communities where the mining activities occur have experienced a rapid loss of farmlands, water and soil pollution, and problems with mine waste management.⁹⁴ Surface and groundwater contamination has been particularly severe. On an annual basis, an average of 6-8 deaths occurs due to injuries caused by flooding and cave-ins in the tunnels and pits. ASM is also characterized by low mechanization, poor health and safety, lack of proper qualifications, low-value recovery, and environmental damage. ASM is associated with conflicts over land use, human rights violations, poor environmental practices, health, and safety risks, forced and child labour, security threats, and unequal distribution of benefits.⁹⁵

Although these negative impacts exist due to ASM and small-scale mining, Artisanal and small-scale mining (ASM) produces 15-20% of all metals and minerals used globally, including 80% of sapphires and 20-30% of gold. ASM also has positive impacts, such as providing employment, revitalizing smallholder agricultural activities, promoting infrastructural development, and contributing to economic growth. Artisanal and small-scale mining (ASM) is important for economic development in sub-Saharan Africa but is often associated with poverty and illegal activity.⁹⁶

ASM is prevalent in Nigeria, where it is driven by frustration, poverty, and the lack of alternative livelihoods. ASM can potentially increase internal income, foreign exchange, and

⁹⁴ J. A. Awomeso, A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria.' (2017) 6 Environmental Systems Research 1,2.

⁹⁵ J. A. Awomeso, A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria.' (2017) 6 Environmental Systems Research 1,2.

⁹⁶ Hilson, Gavin, Abigail Hilson, Roy Maconachie, James McQuilken, and Halima Goumandakoye. "Artisanal and Small-Scale Mining (ASM) in Sub-Saharan Africa: Re-Conceptualizing Formalization and 'Illegal' Activity." 83 (2017) *Geoforum* 80,81.

employment but lacks appropriate policies and institutional capabilities.⁹⁷ ASM is carried out mostly illegally and informally by rural, poor, and illiterate miners without legal mining titles. Nigeria's mining laws and protocols focus on providing extension services but lack meaningful incentives and assistance to formalize ASM. The difficulties facing the ASM sector in Nigeria include lack of organization, improper mining regulations, illiteracy, non-availability of financial and technical aid, poverty, and unemployment. Neglecting ASM could have terrible consequences.⁹⁸ Despite providing a source of income for locals, the collective economic benefits are relatively limited when weighed against the hazards of being trapped in a pit, exposure to toxic trace elements, and the destruction of surrounding farmland, among other social problems.⁹⁹

Overall, the analysis highlights the issues of corruption, the need for clear and specific legislation in the mining sector in Nigeria. It emphasizes the importance of addressing these challenges to ensure effective governance and enforcement in the industry.

2.4.2.2 Large-Scale Miners

Large-scale mining companies are the major players in the Nigerian mining industry. These companies are typically multinational corporations with significant financial resources, advanced technology, and extensive experience in mineral exploration and extraction. They are

⁹⁷ Mustafa, Ibrahim Alhaji and Ezeamaka Cyril Kanayochukwu, 'Spatial Location Of Artisanal Mining Activities in Niger State and Its Implication to The Environment' (2020) *International Journal of Engineering Applied Sciences and Technology* 711,714.

⁹⁸ Mustafa, Ibrahim Alhaji and Ezeamaka Cyril Kanayochukwu, 'Spatial Location Of Artisanal Mining Activities in Niger State and Its Implication to The Environment' (2020) *International Journal of Engineering Applied Sciences and Technology* 711,717.

⁹⁹ Awomeso, J. A., A. M. Taiwo, E. O. Dada, and O. O. Ayantobo. 'Human Health and Environmental Assessments of Small-Scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria. 6(2017) *Environmental Systems Research* 1,9.

engaged in large-scale mining operations and significantly impact the Nigerian economy.¹⁰⁰ Some major large-scale mining companies in Nigeria include Dangote Group, BUA Group, Multiverse Mining and Exploration Plc, Symbol Mining Limited and Thor Explorations Ltd. These are just a few examples of the major large-scale mining companies operating in Nigeria. These companies contribute to the country's mining sector, economic growth, and employment opportunities.

Large-scale mining companies are often controversial in the Nigerian mining industry due to their perceived negative impact on the environment and host communities. Some of the concerns critics raise include the depletion of natural resources, pollution of the environment, displacement of local communities, and the violation of human rights. Despite these challenges, large-scale mining companies remain vital to the Nigerian mining industry. Large-scale mining in Nigeria has caused considerable environmental harm, and even where mines have been stopped, they continue to be an environmental concern to the communities. This is because abandoned mine tailing dump sites are often not identified or regarded as harmful by residents.¹⁰¹ As a result, locals continue to use these sites as building materials and even for soil cultivation.¹⁰²

2.4.2.2.1 The Nigerian Government and State-Owned Mining Operations

State mining companies in Nigeria are primarily established to ensure government participation and control in the mining sector.¹⁰³ These companies often operate under specific legislation

¹⁰⁰ I.G.E. Ibeanu, 'Tin Mining and processing in Nigeria: cause for concern?' (2003) 64, *Journal of Environmental Radioactivity*, 59, 64

¹⁰¹ I.G.E. Ibeanu, 'Tin Mining and processing in Nigeria: cause for concern?' (2003) 64, *Journal of Environmental Radioactivity*, 59, 64

¹⁰² I.G.E. Ibeanu, 'Tin Mining and processing in Nigeria: cause for concern?' (2003) 64, *Journal of Environmental Radioactivity*, 59, 64

¹⁰³ Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness during Mineral Mining Activities in Nigeria' (2018) 14 *European Scientific Journal* 165,166.

and regulations, aiming to achieve national development objectives.¹⁰⁴ They are typically mandated to promote the exploration, extraction, and processing of mineral resources to benefit the state and its citizens. The Nigerian government is also a main actor in the large-scale mining sector in Nigeria. State mining companies play a crucial role in revenue generation, job creation, and the overall management of mineral resources. Examples of prominent state mining companies in Nigeria include the Nigerian Mining Corporation, which has been instrumental in mineral exploration and development activities.¹⁰⁵ The Nigerian Mineral Corporation (NMC) was established by Decree 39 in 1972 to develop Nigeria's mining industry. Its functions include exploring, prospecting, processing, and disposing of minerals, smelting, purchasing, marketing, and performing other functions.¹⁰⁶ The company has subsidiaries in various states, including Nigerian Kaolin Processing, Barytes Mining, Tin and Allied Products, Nimco Gold, Terrazzo, Quarry Products, Consolidated Tin Mines, and Nigerian Brick and Clay Products.¹⁰⁷ The Nigerian Minerals Corporation (NMC) is a 100% owned and funded company under the Federal Government's supervision. It has eight subsidiaries, four projects, and shares in 21 Associated/Joint Venture companies. The NMC owns all subsidiaries except for the Bricks and Clay Product Company and Consolidated Tins Mines, which FGN owns. The company operates in various states, including Enugu, Kano, Kaduna, Maiduguri, and Izom.¹⁰⁸

The government established and operated state mining companies in Nigeria to facilitate national development and resource management. These companies operate under specific

¹⁰⁴ Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness during Mineral Mining Activities in Nigeria' (2018) 14 *European Scientific Journal* 165,166.

¹⁰⁵ 'Nigerian Mining Corporation - Bureau of Public Enterprises' (BPE, 21 October 2018) <<https://www.bpe.gov.ng/nigerian-mining-corporation/>> accessed 28 May 2023.

¹⁰⁶ 'Nigerian Mining Corporation - Bureau of Public Enterprises' (BPE, 21 October 2018) <<https://www.bpe.gov.ng/nigerian-mining-corporation/>> accessed 28 May 2023.

¹⁰⁷ 'Nigerian Mining Corporation - Bureau of Public Enterprises' (BPE, 21 October 2018) <<https://www.bpe.gov.ng/nigerian-mining-corporation/>> accessed 28 May 2023.

¹⁰⁸ 'Nigerian Mining Corporation - Bureau of Public Enterprises' (BPE, 21 October 2018) <<https://www.bpe.gov.ng/nigerian-mining-corporation/>> accessed 28 May 2023.

legislation and regulations, with a focus on promoting the exploration, extraction, and processing of mineral resources for the benefit of the state and its citizens. The ground rules for mineral projects have changed dramatically during the previous two to three decades. Civil societies anticipate environmental responsibility and positive relationships with local communities as the government's role in mining shifts from one of the owners to one of the regulators.¹⁰⁹ Between 2007 and 2014, the Nigerian government claimed to conduct sustainable mining by reclaiming twenty abandoned mines in Kano, Borno, Edo, Plateau, Akwa Ibom, Abia, Nasarawa, Bauchi, and Ebonyi States.¹¹⁰ Recent research, however, has shown that abandoned tin mines are still dispersed throughout Nigeria.¹¹¹ In Jos, poor locals use these mine sites as construction sites for their homes, endangering their long-term health because these sites have been found to contain dangerous heavy metals and radioactive materials.¹¹²

Looking at the petroleum industry, one crucial point discovered is that government-owned petroleum corporations in Nigeria were the least compliant in corporate disclosure. They, particularly Nigeria National Petroleum Corporation (NNPC), were laden with poor management. There are many problems associated with petroleum corporations that do not have a credible corporate governance structure. These problems include corruption, tax and royalty remission evasion and crude oil product swaps.¹¹³

¹⁰⁹ Marcello M. Veiga, Malcolm Scoble, Mary Louise McAllister, 'Mining with Communities' (2001) 25 *Natural Resources Forum* 191,193; Adisa Azapagic, 'Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry' (2004) 12 *Journal of Cleaner Production* 639, 642.

¹¹⁰ Samuel Danjuma Wapwera, C.O. Egbu, A.G. Parsa, and G.M. Ayanbinpe, 'Abandoned mines, homes for the people: case study of Jos Tin-mining region', (2015) 8 *International Journal of Housing Markets and Analysis* 239, 257.

¹¹¹ Samuel Danjuma Wapwera, C.O. Egbu, A.G. Parsa, and G.M. Ayanbinpe, 'Abandoned mines, homes for the people: case study of Jos Tin-mining region', (2015) 8 *International Journal of Housing Markets and Analysis* 239, 257.

¹¹² Samuel Danjuma Wapwera, C.O. Egbu, A.G. Parsa, and G.M. Ayanbinpe, 'Abandoned mines, homes for the people: case study of Jos Tin-mining region', (2015) 8 *International Journal of Housing Markets and Analysis* 239, 257.

¹¹³ *ibid.*

Oyinkari's study of environmental problems in the corporate business policy of the Nigerian oil and gas industry concluded that 'whenever business policies are bereft of environmental considerations... the business will face a lot of difficulties from its host'.¹¹⁴ He also surmised that 'the largest, strongest and most powerful oil and gas organization in Nigeria is the Federal Government-owned NNPC, which is the greatest culprit in oil and gas-related environmental degradation (and neglect)'.¹¹⁵ He also found that the government has been primarily interested in the oil industry's economic (business profit) potential since colonial times. Laws promulgated have favoured profitable rather than sustainable production and control of the oil sector. With the government as the chief player, the others in the sector use the government as the standard of judgment for the right actions; placing the burden of enhancement of environmental protection on the government and its institutions.¹¹⁶

The Nigerian government's establishment of state mining companies demonstrates its commitment to national development and resource management. However, challenges such as environmental degradation and poor corporate governance need to be addressed. It is crucial to prioritize sustainable practices, transparency, and collaboration between the government, mining companies, and local communities for the mining sector to contribute effectively to Nigeria's development while minimizing negative impacts.

2.4.2.2 Private Mining Companies

Private mining companies in Nigeria are privately owned entities that operate in the mining sector for profit and business growth. Market dynamics and commercial considerations drive

¹¹⁴ Patrick Oyinkari, 'Environmental Considerations in the Corporate Business Policy of the Nigerian Oil and Gas Industry' (master's Thesis University of Calabar, 2001) 127.

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

these companies. Private mining companies bring valuable investments, technical expertise, and innovation to the sector. They often employ advanced mining technologies and management practices to optimize efficiency and profitability. Companies such as the Dangote Group and BUA Group have made significant contributions to Nigeria's mining sector, driving job creation, export earnings, and community development.

The Nigerian federal government holds ownership of all mineral resources in the country, and miners must comply with regulations such as submitting an environmental impact assessment (EIA) and obtaining consent from host communities.¹¹⁷ However, there are instances where traditional rulers and local government authorities grant permission to miners in exchange for payment, even without legal rights. There is also confusion regarding the enforcement of environmental safety regulations and taxation powers of state governments.¹¹⁸ In some cases, private mining companies sublease exploration licenses from government-owned companies. For example, the Omoluabi Mineral Promotion Company Limited, belonging to the Osun state government, holds the most significant number of exploration licenses in the state. These licenses are then sublet to private operators, including Chinese investors. However, illegal mining activities by private companies have been observed, leading to intervention from the Ministry of Mines and Steel Development.¹¹⁹

The inadequate protection of land rights and the disregard for environmental regulations have led to significant negative consequences. Local farmers, often tenants, suffer the loss of their

¹¹⁷ Section 44(3) Constitution of the Federal Republic of Nigeria, 1999 (as amended), Cap. C23, Laws of the Federation of Nigeria, 2004; Also see Section 1(1) Nigerian Minerals and Mining Act, Cap. N162, Laws of the Federation of Nigeria, 2004.

¹¹⁸ Gabriel Ogunjobi, “‘Brought down by Gold’: Communities and Nature Suffer amid Nigerian Bonanza” (Mongabay Environmental News, 9 March 2023) < <https://news.mongabay.com/2023/03/brought-down-by-gold-communities-and-nature-suffer-amid-nigerian-bonanza/>>accessed 30 May 2023.

¹¹⁹ Gabriel Ogunjobi, “‘Brought down by Gold’: Communities and Nature Suffer amid Nigerian Bonanza” (Mongabay Environmental News, 9 March 2023) < <https://news.mongabay.com/2023/03/brought-down-by-gold-communities-and-nature-suffer-amid-nigerian-bonanza/>>accessed 30 May 2023

farmland without proper compensation. The pollution of watercourses due to the processing of gold-bearing ore by artisanal and commercial miners is a pressing concern. Widespread use of mercury in gold processing contaminates soil and waterways, affecting the Osun River basin and its ecosystems. Water samples have shown alarming levels of mercury and lead, far exceeding the permitted limits.¹²⁰

The state government and federal ministry's lack of accountability and enforcement which has allowed miners to operate with impunity, causing further damage to farmlands and water sources. The miners exploit political cover and continue their activities, leaving behind flooded pits and disregarded complaints from local communities. The consequences of this gold rush are detrimental to the environment and the lives and livelihoods of the people in the affected areas. The situation raises important questions about the long-term impact on the environment and the well-being of the people once the gold reserves are depleted. It is evident that more robust regulation, enforcement, and accountability measures are needed to address the challenges associated with private mining companies in Nigeria and ensure sustainable and responsible mining practices that prioritize the protection of the environment and the rights of local communities.¹²¹

The current challenges and negative consequences associated with private mining companies in Nigeria underscore the pressing need for the implementation of an effective ISM framework. Such a framework would provide the necessary regulations, oversight, and enforcement

¹²⁰ Gabriel Ogunjobi, “‘Brought down by Gold’: Communities and Nature Suffer amid Nigerian Bonanza” (Mongabay Environmental News, 9 March 2023) < <https://news.mongabay.com/2023/03/brought-down-by-gold-communities-and-nature-suffer-amid-nigerian-bonanza/>>accessed 30 May 2023

¹²¹ Gabriel Ogunjobi, “‘Brought down by Gold’: Communities and Nature Suffer amid Nigerian Bonanza” (Mongabay Environmental News, 9 March 2023) < <https://news.mongabay.com/2023/03/brought-down-by-gold-communities-and-nature-suffer-amid-nigerian-bonanza/>>accessed 30 May 2023.

mechanisms to ensure sustainable and responsible mining practices, protecting the environment and safeguarding the rights and well-being of local communities.

2.4.2.3 The Host Communities

Host communities refer to the local communities residing in close proximity to mining sites and directly affected by mining activities. These communities play a crucial role in the mining sector as they provide the labour force, land, and resources necessary for mining operations. Understanding the dynamics of host communities is essential for comprehending the social, economic, and environmental impacts of mining and formulating appropriate policies to address their concerns.

Host communities can be found in various regions of Nigeria where mining activities are prevalent. For example, in the Jos Plateau region, host communities are located in areas surrounding tin and columbite mining sites. In Edo State, host communities exist near limestone and granite mining areas. Other regions with significant mining operations, such as Enugu, Kogi, Zamfara, and Niger, also have their respective host communities.¹²²

Nigeria is rich in solid minerals, and their distribution spans various regions. Iron ore deposits can be found in locations such as Itakpe, Chakochoko, Ajabonoko, Obajana, Ebija, Okudu (Kogi State); Muro (Plateau State); Bingi, Maraba (Maru District, N. Nigeria); Ajase (Osun State); Birni Kebbi; and Gusaka (Sokoto State). Ironstone is discovered in Dakingari (Sokoto

¹²² ONAH, F. & E. Promotion Of Economic Activities Through Development Of Solid Mineral Potentials In The States. <<https://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=07795183A645F83D3C897D6A42A21710?doi=10.1.1.546.3164&rep=rep1&type=pdf>>. accessed June 12, 2023.

State); Tajimi (Kaduna State); Rishi (Bauchi State); Karfa (Borno State); Ejieja (Benue State); Nsude (Enugu State); Lokoja, Akpanya (Kogi State); and Batati, Sakpe (Niger State).¹²³

Other significant minerals include cassiterite found in Jos (Plateau State) and Bauchi, columbite in Plateau, Kaduna, Kano, Bauchi, Ondo, Abuja, and Kwara, and tantalite in Plateau, Bauchi, Kaduna, and Ondo. Manganese deposits are present in Mallam Ayuba (Kaduna State) and Zaria, while vanadium is located in Abuja. Nickel can be found in Ife – Ilesha (Osun State), and chromite in Sokoto and Katsina.¹²⁴

The country is also abundant in various types of rocks and gemstones. Notable examples include limestone in Nkalagu (Enugu State), Odumoke (Ebonyi State), Mfamoshi, Odukpau (Cross River State), Ewekoro (Ogun State); Igumale, Ogbolokuta, Yandeu (Benue State), Ashaka (Bauchi), Kanawa, Kambiena (Sokoto State), Umu-Obom, and Ohafia (Abia State). Marble deposits can be found in Jakura, Ubo, Ajaokuta (Kogi State), Ukpilla (Edo State), Itobe (Benue State), and Kankara (Katsina State). Dolomite is present in locations such as Osara, Elebu (Kogi State), Burum, Taka Lafia (Federal Capital Territory), and Igbetti (Oyo State).¹²⁵

These mineral deposits have significant implications for the mining industry in Nigeria and contribute to the country's economy. Proper management and sustainable practices are

¹²³ ONAH, F. E. Promotion Of Economic Activities Through Development Of Solid Mineral Potentials In The States.<<https://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=07795183A645F83D3C897D6A42A21710?doi=10.1.1.546.3164&rep=rep1&type=pdf>>. accessed June 12, 2023.

¹²⁴ ONAH, F. E. Promotion Of Economic Activities Through Development Of Solid Mineral Potentials In The States.<<https://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=07795183A645F83D3C897D6A42A21710?doi=10.1.1.546.3164&rep=rep1&type=pdf>>. accessed June 12, 2023.

¹²⁵ ONAH, F. E. Promotion Of Economic Activities Through Development Of Solid Mineral Potentials In The States.<<https://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=07795183A645F83D3C897D6A42A21710?doi=10.1.1.546.3164&rep=rep1&type=pdf>>. accessed June 12, 2023.

necessary to harness the benefits of these resources while ensuring the well-being and development of the host communities in these regions.

As we transition to the next section on the impacts of mining activities on host communities in Nigeria, it becomes clear that understanding these effects is crucial for developing sustainable mining practices and mitigating potential negative consequences. By examining mining operations' environmental and social impacts, we can identify host communities' challenges and explore strategies to address them effectively. With a comprehensive understanding of the structure of the mining industry and the importance of protecting host communities, we can now delve into the specific impacts of mining activities.

2.5 Impact of Solid Mineral Mining in Nigeria

While the mining industry has the potential to provide significant economic benefits to Nigeria, it also has the potential to impact the host communities where mining activities take place negatively. The impacts of mining in Nigeria have become a significant concern for various stakeholders, including governments, mining communities, companies, and the public. The detrimental effects of these concerns are evident in many areas across Nigeria where solid mineral mining has occurred or is currently ongoing.

Solid minerals mining in Nigeria has had significant environmental and health impacts throughout its various stages. From exploration to extraction and processing, the entire mining process has contributed to environmental degradation, particularly in resource-rich areas of Nigeria. These impacts have adversely affected agriculture, vegetation, wildlife, and the well-being of both mine workers and local communities.

The exploration phase involves drilling and excavation, which can disrupt ecosystems, leading to deforestation, soil erosion, and habitat destruction.¹²⁶ This disruption can have long-term consequences for biodiversity and ecosystem services, impacting the overall ecological balance in affected areas. Additionally, using heavy machinery and equipment during exploration can result in noise and air pollution, affecting air quality and human health.¹²⁷ During the extraction and processing, mining operations often generate large waste materials, including tailings and mine spoil. Improper management of these wastes can lead to soil and water contamination, posing risks to agricultural lands, rivers, and groundwater sources. The release of harmful chemicals, such as heavy metals and acids, can harm the environment and human health.¹²⁸

Furthermore, the charging and hauling phase involves the transportation of mined materials, often through the use of trucks and heavy machinery. This can contribute to air pollution by emitting particulate matter and greenhouse gases, further impacting air quality and human well-being. The cumulative impact of solid minerals mining in Nigeria is evident in the degradation of ecosystems, loss of biodiversity, and adverse health effects on local communities. These impacts are particularly significant in areas where mining activities are concentrated, leading to socio-economic disruptions and conflicts over land and resources.

To the above extent, this section analyses the adverse challenge of environmental degradation resulting from solid mineral mining in Nigeria. It examines the causes and effects of this degradation. It delves into the specific impacts on the environment, including land, water, and air, as well as their repercussions on human health, livelihoods, and the Sustainable

¹²⁶ William Hughes, 'The Mining Process: 5 Lifecycle Stages Explained from Exploration to Reclamation' (Crux Investor, 2020) <<https://www.cruxinvestor.com/articles/the-stages-of-mining>> accessed 1 August 2021.

¹²⁷ William Hughes, 'The Mining Process: 5 Lifecycle Stages Explained from Exploration to Reclamation' (Crux Investor, 2020) <<https://www.cruxinvestor.com/articles/the-stages-of-mining>> accessed 1 August 2021.

¹²⁸ William Hughes, 'The Mining Process: 5 Lifecycle Stages Explained from Exploration to Reclamation' (Crux Investor, 2020) <<https://www.cruxinvestor.com/articles/the-stages-of-mining>> accessed 1 August 2021.

Development Goals (SDGs). Additionally, the section focuses on the impact of solid minerals mining on host communities in Nigeria, encompassing the social, environmental, and human health consequences of mining operations and their effects on the well-being of residents residing near mining sites.

2.5.1 Impact of Mining Activities on Human Health in Nigeria

Stephens and Ahern argue that mining is still one of the most dangerous things in the world, both in terms of immediate danger and fatalities as well as long-term effects, including cancer and respiratory illnesses like silicosis, asbestosis, and pneumoconiosis.¹²⁹ Most of these health concerns are caused by mine air pollution, specifically dust.¹³⁰ Mining-related lead poisoning deaths due to its prevalence are also common.¹³¹

Other significant health concerns include chemical risks unrelated to underground air pollution or gases, skin problems, ergonomic stresses, ionising radiation, and decompression illness connected with diving in the diamond sector on the country's west coast. Some of these issues will be discussed below. Due to space constraints, only some of the issues related to the impact of solid minerals mining in Nigeria are discussed below. It is important to note that the mining industry encompasses a wide range of environmental and health concerns that cannot be fully addressed within the limitations of this discussion. The selected issues highlighted below provide a glimpse into the significant challenges associated with solid minerals mining in Nigeria, but additional factors warrant attention and consideration. The intention is to provide

¹²⁹ Carolyn Stephens, and Mike Ahern. (2002), Worker and community health impacts related to mining operations internationally: A rapid review of the literature: London School of Hygiene and Tropical Medicine. Report.

¹³⁰ Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' 17(2017) Global Journal of Science Frontier Research: Environment & Earth Science 19, 29.

¹³¹ Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' 17(2017) Global Journal of Science Frontier Research: Environment & Earth Science 19, 29.

an overview of the impacts to illustrate the gravity of the situation and highlight the need for comprehensive approaches to address these concerns.

2.5.1.1 Air pollution

Air is a blend of gases encompassing the Earth's surface and essential for breathing. From a practical standpoint, air is a constituent of the atmosphere, which refers to the gaseous envelope encircling the Earth and other celestial bodies.¹³² The distinction between "air" and "atmosphere" is straightforward: air exists within the atmosphere, while the atmosphere surrounds and extends beyond the air.¹³³

Pristine and dry air in the lower atmosphere is predominantly composed of nitrogen (78.084% by volume) and oxygen (20.946%), with argon, carbon dioxide, neon, helium, krypton, xenon, hydrogen, methane, and nitrous oxide making up the remaining 0.970% in decreasing order.¹³⁴ However, human activities, such as mining solid minerals, often lead to concerns regarding established air quality standards. During certain stages of mining operations, air pollution occurs as the set limits for ambient air quality are infringed upon, resulting in the degradation or pollution of the air resource.¹³⁵

¹³² M.T Okorodudu-Fabura, 'Statutory Scheme for Environmental Protection in the Nigerian Context: Some Reflections of Legal Significance for the Energy Sector', *Nigerian Current Law Review*, (Nigerian Institute Advanced Legal Studies, Lagos (1996) 387.

¹³³ M.T Okorodudu-Fabura, 'Statutory Scheme for Environmental Protection in the Nigerian Context: Some Reflections of Legal Significance for the Energy Sector', *Nigerian Current Law Review*, (Nigerian Institute Advanced Legal Studies, Lagos (1996) 387.

¹³⁴ M.T Okorodudu-Fabura, 'Statutory Scheme for Environmental Protection in the Nigerian Context: Some Reflections of Legal Significance for the Energy Sector', *Nigerian Current Law Review*, (Nigerian Institute Advanced Legal Studies, Lagos (1996) 387.

¹³⁵ M.T Okorodudu-Fabura, 'Statutory Scheme for Environmental Protection in the Nigerian Context: Some Reflections of Legal Significance for the Energy Sector', *Nigerian Current Law Review*, (Nigerian Institute Advanced Legal Studies, Lagos (1996) 387.

Air pollution refers to the accumulation of substances in the air, albeit in concentrations insufficient to cause immediate discernible effects on humans, plants, and animals. It involves the release of harmful substances into the atmosphere, posing risks to all living organisms. The presence of foreign matter, whether in the form of gases, particulates, or a combination thereof, in the air is considered air pollution and can have detrimental effects on human health and well-being.¹³⁶

One of the effects of mining, which is present at every stage from planning through closure, is air pollution. Mining-related dust has a significant negative impact on the environment and workers' health. Almost all mining operations, including drilling, blasting, and crushing, produce dust, fine dust particles are generated and carried by the wind, and they impact not just people but also animals and vegetation.¹³⁷ Large numbers of small particles are emitted during blasting, explosions, and crushing and are then carried away by the wind. Less than 10 microns in size, these dust particles are extremely small. They present health risks to people when discovered as airborne particulate matter (PM) in the ambient air.¹³⁸

Ndinwa found that in Auchi, Edo, the processing of marble and granite derivatives negatively impacts the quality of neighbouring vegetable gardens grown around companies or mining sites.¹³⁹ These impacts sometimes lead to cause respiratory illnesses, silicosis, and lung diseases appearing at the highest level of exposure through inhalation.¹⁴⁰ Adiuku-Brown

¹³⁶ L Atsegbua, et al. *Environmental Law In Nigeria: Theory and Practice*, (Ababa Press Ltd, Lagos 2004) 75,

¹³⁷ Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' 17(2017) *Global Journal of Science Frontier Research: Environment & Earth Science* 19, 21.

¹³⁸ Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' 17(2017) *Global Journal of Science Frontier Research: Environment & Earth Science* 19, 21.

¹³⁹ G. C. C Ndinwa & C. O Ohwona, 'Environmental and Health Impact of Solid Mineral Exploration and Exploitation in South-Northern Nigeria: A Case Study of Igarra in Edo State,' (2014) *Review of Environment and Earth Sciences, Conscientia Beam* 24,29.

¹⁴⁰ *Ibid* 30.

confirmed this by reporting that carbon dioxide in the atmosphere hinders the escape of outgoing long-wave radiation from the planet to outer space, as more heat is created and less escapes, the earth's temperature rises.¹⁴¹ Air pollution has a significant impact on both the environment and people's health. Without mitigating measures, the creation of dust by mining certainly negatively impacts people's health.¹⁴²

2.5.1.1.1

Dust

The biological, chemical, and physical characteristics of dust particles have the potential to have negative consequences on human health.¹⁴³ The quality of soil is immediately impacted by dust from the mining and production of limestone and cement because it contains additional hazardous elements. In mining for cement, calcium (CaCO₃), silicon (SiO₂), aluminium (Al₂O₃), ferric, and manganese oxides are the main components of cement dust,¹⁴⁴ but the production of cement dust also results in the production of other known toxic, carcinogenic, and mutagenic substances, such as particulate matter, sulphur dioxide, nitrogen dioxide, volatile compounds, long-lived dioxins, and heavy metal. The respiratory system may become overloaded due to the dust from mines making it unable to remove all the dust that is inhaled. Lung illnesses thereafter typically start to manifest.¹⁴⁵

Mining host communities are exposed to several forms of dust depending on the minerals extracted, and each type of dust produces a particular disease. Some of the mineral-related

¹⁴¹ M.E Adiuku-Brown, 'The Dangers Posed by Abandoned Mine Ponds and Lotto Mines on the Jos Plateau'. (1999) 3 *Journal of Environmental Sciences* 258.

¹⁴² M.E Adiuku-Brown, 'The Dangers Posed by Abandoned Mine Ponds and Lotto Mines on the Jos Plateau'. (1999) 3 *Journal of Environmental Sciences* 258.

¹⁴³ Kaung Suu Lwin et al., 'Effects of Desert Dust and Sandstorms on Human Health: A Scoping Review,' (2023) 7 *GeoHealth* 1, 2.

¹⁴⁴ Jide Muili Akande and Musa Adebayo Idris, 'Environmental effects of gemstone exploitation in Ofiki, Oyo State, Nigeria' 12 (2005) *Journal of Science Engineering of Technology* 5858,5860.

¹⁴⁵ Jide Muili Akande and Musa Adebayo Idris, 'Environmental effects of gemstone exploitation in Ofiki, Oyo State, Nigeria' 12 (2005) *Journal of Science Engineering of Technology* 5858,5860.

diseases that develop as a result of mine dust include Silicosis (quartz, tridymite, and cristobalite dust), Pneumoconiosis caused by silicate dust (dust of silicate minerals such as kaolin, talc, tremolite, actinolite, and anthophyllite), Asbestosis (asbestiform dust such as amosite, chrysotile, and crocidolite) Pneumoconiosis (coal dust), Siderosis (dust of iron including ores) and Beryllium sickness (dust of beryllium compounds including ores).¹⁴⁶ According to Akabzaa and Darimani, gold mining activities are unquestionably the main cause of silicosis and silico-tuberculosis in Zamfara, Oyo, Ishiagu, and Enyigba mining districts, because the dust from gold mining sites has a high silica concentration. Additionally, it was found that in Ogun state there are records of people living with eye pain, asthma and different types of respiratory attack(s) which happened as a result of mining operations in the area.¹⁴⁷ People living close to mine sites cannot predict their risk of developing lung disease. Both mining corporations and the government must prioritize the safety and well-being of host communities and ensure that mining activities are carried out responsibly.

2.5.1.1.2. Radiation

Extracting mineral resources also makes it easier for radioactive substances to escape from host minerals and enter the environment. Research has shown that mining activities have led to the technical enhancement of the natural background radiation and higher activity concentrations of primordial radionuclides in the topsoil of mining sites and their environs.¹⁴⁸ Exposure to high radiation levels can have various detrimental effects on human health. It increases the risk of developing radiation-related illnesses like cancer, genetic mutations, and other radiation-

¹⁴⁶ A. Scott Laney and David N. Weissman, 'Respiratory Diseases Caused by Coal Mine Dust' 56(2014) J Occup Environ Med 18, 19.

¹⁴⁷ I.N Aigbedion, Environmental Pollution in the Niger-Delta, Nigeria. (2005) 3 Inter-Disciplinary Journal of Enugu Nigeria 205.

¹⁴⁸ Abubakar Sadiq Aliyu et al., 'Radioecological Impacts of Tin Mining,' (2015) 44 Ambio 778,779.

induced health conditions. Prolonged exposure to radioactive substances may lead to long-term health consequences, including an increased incidence of certain types of cancer and other radiation-related diseases.

Abubakar Sadiq Aliyu et al. conducted a regional investigation of the effects of mining on the ecosystem, and the investigation looked at the radioecological impacts of copper, barite, and zinc mining in Nigeria's Nasarawa State.¹⁴⁹ Plateau State and Nasarawa have similar borders and physical characteristics, and the latter is drained by several swift-moving streams and rivers that originate from the Jos Plateau. According to the study, mining for solid minerals is anticipated to majorly impact some terrestrial plants and animals since they are highly radiosensitive.¹⁵⁰ While the study specifically focuses on the ecological impact, it raises concerns about the potential implications for human health. Since humans are part of the ecosystem and rely on the surrounding environment for various resources, any adverse effects on terrestrial plants and animals can indirectly affect human well-being. The presence of highly radiosensitive plants and animals in areas affected by mining activities suggests that the radiation levels may be significant enough to pose potential risks to humans. Suppose humans are exposed to elevated levels of radiation through contaminated food sources, water, or direct contact with the environment. In that case, it can potentially increase the risk of radiation-related health issues, including cancer and genetic mutations.

Therefore, the study's findings emphasize the importance of considering the potential pathways through which radiation can affect humans in the context of mining activities. It underscores the need for comprehensive monitoring and management of radiation levels and the

¹⁴⁹ Abubakar Sadiq Aliyu et al., 'Radioecological Impacts of Tin Mining,' (2015) 44 *Ambio* 778,779.

¹⁵⁰ Abubakar Sadiq Aliyu et al., 'Radioecological Impacts of Tin Mining,' (2015) 44 *Ambio* 778,779.

implementation of protective measures to safeguard the health of individuals living in or near mining-affected areas.

Funtua and Elegba researched the radiation exposure from high-level radiation areas and related mining and processing activities of Jos Plateau, central Nigeria. They found that the mine tailings in the Jos area of central Nigeria expose people to high levels of radiation, mostly of the Th type, which is a type of radiation emitted by thorium (Th). Thorium is a naturally occurring radioactive element found in the Earth's crust.¹⁵¹ Members of the population who reside close to the haphazardly dumped tailings will be exposed to doses above 1 mSv yearly and workers at the milling plants may be exposed to radiation levels much beyond the yearly exposure limit of 20 mSv.¹⁵² Humans are generally exposed to natural background radiation from various sources, including cosmic radiation from space, rocks and soil, and radiation from the food we consume. The average annual radiation exposure from natural background sources is typically around 1-3 millisieverts (mSv) globally. It's important to note that radiation exposure limits vary across countries and organizations, but a commonly accepted limit for occupational exposure is 20 mSv per year. In the context of the Jos Plateau area, the research findings indicate that individuals living in proximity to the indiscriminately disposed tailings could potentially face exposure levels surpassing 1 mSv annually. This suggests that the radiation levels in those areas exceed what is considered normal for background radiation. Therefore, people living close to the tailings are experiencing higher radiation exposure than what would typically be expected.

Furthermore, the study indicates that workers at the milling plants involved in the mining and processing activities may be exposed to radiation levels significantly higher than the yearly

¹⁵¹ I.I. Funtua and S.B. Elegba, 'Radiation Exposure from High-Level Radiation Area and Related Mining and Processing Activities of Jos Plateau, Central Nigeria,' (2005) 1276 International Congress Series 401,402.

¹⁵² I.I. Funtua and S.B. Elegba, 'Radiation Exposure from High-Level Radiation Area and Related Mining and Processing Activities of Jos Plateau, Central Nigeria,' (2005) 1276 International Congress Series 401,402.

exposure limit of 20 mSv. This implies that these workers face occupational radiation exposure exceeding the recommended safety limits. The fact that members of the population who reside close to the haphazardly dumped tailings are exposed to doses above 1 mSv yearly is a cause for alarm.

According to Onwuka et al., radiation from tin mining activities had a major detrimental influence on the ecosystem and left a lasting social and economic scar on the people who lived in the mining districts as well as the surrounding landscape.¹⁵³ According to the study findings of Aliyu et al, terrestrial organisms such as grasses, herbs, lichens, bryophytes, and shrubs probably get dosage rates that are higher than generally recognised regulatory limits and may be cause for worry. This study also demonstrated that the output of agricultural products, such as peas and potatoes, may be significantly impacted by mining operations.¹⁵⁴ Similarly, it has been found by Kaung Suu Lwin et al ., that various by-products of tin mining in the Jos Plateau, including monazite, pyrochlore, and xenotime, are radioactive.¹⁵⁵ A high amount of radioactivity has been detected in villages with mining settlements at several locations.¹⁵⁶ Strange deaths and fatalities of numerous residents in a handful of these host communities have been attributed to have resulted from a high radiation level emitted by the monazite-rich sand used to construct the homes the deceased resided in.¹⁵⁷

2.5.1.2 Noise and Vibration

¹⁵³ S. Onwuka, J Duluora, C Okoye, O Onaiwu. 'Socio-economic impacts of tin mining in Jos, Plateau State, Nigeria'. (2013) 2 International Journal of Engineering Science Invention. 30,34.

¹⁵⁴ Abubakar Sadiq Aliyu, Timothy Alexander Mousseau, Ahmad Termizi Ramli, and Yakubu Aliyu Bununu, 'Radioecological impacts of tin mining' (2015) 44 Ambio 778.

¹⁵⁵ Kaung Suu Lwin et al., 'Effects of Desert Dust and Sandstorms on Human Health: A Scoping Review,' (2023) 7 GeoHealth 1.

¹⁵⁶ Kaung Suu Lwin et al., 'Effects of Desert Dust and Sandstorms on Human Health: A Scoping Review,' (2023) 7 GeoHealth 1, 2.

¹⁵⁷ Kaung Suu Lwin et al., 'Effects of Desert Dust and Sandstorms on Human Health: A Scoping Review,' (2023) 7 GeoHealth 1, 2.

Noise can be described as any unwanted and bothersome sound that is inherently displeasing to humans or potentially impacts human health or the environment negatively.¹⁵⁸ Mining operations usually generate a lot of noise vibration. The Noise may be agitated, unsettling, and terrifying to humans and animals. Also, vibration causes buildings to crack.¹⁵⁹ One of the main environmental risks associated with rock quarrying in many areas of Nigeria is noise. Noise is produced during mining operations like excavation, drilling, and explosive blasting of crystalline rocks. Heavy-duty truck traffic, the operation of equipment used to process minerals, and the electricity production by diesel generators all produce noise. Each of these runs for several hours every day.¹⁶⁰ Studies with similar issues were conducted worldwide by the International Coordination of Environmental and Occupational Control programmes, overseen by the World Health Organization (WHO).¹⁶¹ Their findings demonstrated that high noise exposure to host communities increased the development of psychological issues in a small number of people, increased irritability in a large number of people, and caused slow reaction times and general fatigue in most residents. Musculoskeletal illnesses and associated health problems have been linked to exposure to high-amplitude whole-body vibration. Loss of visual acuity, loss of postural stability and manual control, low-back pain, early spinal degeneration, and disc herniation are all symptoms.¹⁶²

Another study was conducted by Melodi¹⁶³ on a quarry operation in Ogun State and discovered that vibration might harm not only mine workers but also the people who live nearby in terms

¹⁵⁸ Regulation 18 of the National Environmental (Noise Standards and Control) Regulations, 2009.

¹⁵⁹ Stephen Ojo S., Adesina S. Ayesoro. and Jummai 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' 4 (2018) International Journal of Sociology and Anthropology Research 16, 22.

¹⁶⁰ Stephen Ojo S., Adesina S. Ayesoro. and Jummai 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' 4 (2018) International Journal of Sociology and Anthropology Research 16, 22.

¹⁶¹ Ibid.

¹⁶² A.M Donoghue, 'Occupational health hazards in mining: an overview' (2004) 54 Occupational Medicine, 283.

¹⁶³ Mbuyi M Melodi., 'Assessment of Environmental Impacts of Quarry Operation in Ogun State, Nigeria'

of health and property. This claim is substantiated by observations that the quarry's vibration and air blast caused fractures to appear in the indigenes' dwellings, and that buildings extremely close to the quarries suffered greatly from breaking glasses and other glass wares in their homes.¹⁶⁴ The extraction of solid minerals in resource-rich countries, particularly Nigeria, has a substantial environmental and health impact at all phases. Mining operations, from planning to construction to extraction and processing to charging and hauling, all contribute to environmental degradation, affecting agriculture, vegetation, and wildlife, and even posing a threat to the health of mine or quarry workers and everyone else living in the surrounding areas.

2.5.2 Environmental Impacts of Mining

Mining activities have profound environmental impacts that cannot be overlooked. This section will delve into the environmental consequences arising from mining operations. It will encompass issues such as land degradation, deforestation, water and air pollution, disruption of ecosystems, emission of greenhouse gases, generation of hazardous waste, and the potential for long-term ecological damage. By exploring these environmental impacts, we can better understand the challenges associated with mining and the importance of implementing sustainable practices in this industry.

2.5.2.1 Deforestation

Deforestation and loss of vegetation are significant environmental impacts associated with mining extraction worldwide. Globally, mining is responsible for approximately 7% of deforestation in the subtropics, as documented by the Global Forest Atlas.¹⁶⁵ This damage to vegetation is particularly pronounced during the initial development phase of a mine. In

(2017) 2 FUOYE Journal of Engineering and Technology 100.

¹⁶⁴ Mbuyi M Melodi., 'Assessment of Environmental Impacts of Quarry Operation in Ogun State, Nigeria' (2017) 2 FUOYE Journal of Engineering and Technology 100,102.

¹⁶⁵ A. Ogunwale, 'Deforestation and greening the Nigerian environment' (2015), <https://core.ac.uk/download/pdf/32226334.pdf> accessed 02//05/2023.

Nigeria, mining, and oil exploration activities, especially in the Niger Delta region, contribute significantly to deforestation, as highlighted by Ogunwale.¹⁶⁶ The ecological consequences of these activities have had severe repercussions on rural populations, particularly in the northern region of the Edo state, specifically the Ogoni territory. Ogoni land has long experienced the detrimental effects of exploration-related activities on vegetation and plantations, such as oil palm trees.¹⁶⁷

Research conducted by Ndinwa and Ohwona in Northern Edo State reveals the extensive clearance of land due to mining, resulting in the destruction of the forest that supports numerous animal species, providing them with food and shelter. This disruption of the ecosystem's equilibrium has likely led to the displacement or extinction of various species that inhabit the area.¹⁶⁸

This global and local understanding of the impact of mining on deforestation emphasizes the interconnectedness between mining activities and environmental degradation. However, it is essential to recognize the concrete implications of these issues for the Ogoni community and society. The adverse effects on vegetation and the subsequent disruption of the ecosystem directly affect the livelihoods and well-being of the Ogoni people, underscoring the importance of addressing these environmental concerns.

2.5.2.2 Agriculture and Water Pollution

¹⁶⁶ A. Ogunwale, 'Deforestation and greening the Nigerian environment' (2015), <https://core.ac.uk/download/pdf/32226334.pdf> accessed 02//05/2023.

¹⁶⁷ A. Ogunwale, 'Deforestation and greening the Nigerian environment' (2015), <https://core.ac.uk/download/pdf/32226334.pdf> accessed 02//05/2023.

¹⁶⁸ G. C. C Ndinwa & C. O Ohwona, 'Environmental and Health Impact of Solid Mineral Exploration and Exploitation in South-Northern Nigeria: A Case Study of Igarra in Edo State,' (2014) 1Review of Environment and Earth Sciences, Conscientia Beam, 24.

Mining operations generate significant waste, including mine tailings and other by-products. These wastes can contain hazardous substances such as heavy metals, radioactive materials, and chemicals.¹⁶⁹ When not properly managed, these mining wastes can contaminate water sources and soil, posing risks to human health and the environment. The contamination of water sources due to mining activities directly affects water consumption for drinking and eating.¹⁷⁰ As mine wastes seep into local water bodies, the water becomes polluted and unsuitable for human consumption. This contamination can lead to waterborne diseases and other health issues when consumed or used for cooking and irrigation. Furthermore, the impact of mining waste on agriculture is substantial. As contaminated water is often used for irrigation in farming communities near mining sites, crops can absorb harmful substances, affecting their quality and yield. Soil fertility can also be compromised, reducing agricultural productivity and food scarcity.

Water and food remain the most important necessities for human survival. Agriculture and water are the cornerstones of food security. According to Arokoyo, Nigeria is a sizable agricultural nation that is endowed with substantial natural resources such as 68 million hectares of arable land, 12 million hectares of freshwater resources, 960 kilometres of coastline, and ecological diversity that enables the country to produce a wide variety of crops and livestock, forestry, and fisheries products.¹⁷¹ However, according to findings, a kid dies every eight seconds from water-related concerns, with five million deaths yearly from water-related sickness and inadequate sanitation.¹⁷² The lead poisoning incident in Zamfara State, Nigeria,

¹⁶⁹ I. J. Nwadiolor, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' 6 (2011) FUTY Journal of the Environment 68,71.

¹⁷⁰ I. J. Nwadiolor, 'Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation in Nigeria' 6 (2011) FUTY Journal of the Environment 68,71.

¹⁷¹ T. Arokoyo, (2012) 'Challenges of Integrating Small Scale Farmers into the Agricultural Value Chains in Nigeria'.

¹⁷² N.N. Jibiri, I.P. Farai, and S.K. Alausa, 'Estimation of Annual Effective Dose Due to Natural Radioactive Elements in Ingestion of Foodstuffs in Tin Mining Area of Jos-Plateau, Nigeria', 1 (2007) Journal of Environmental Radioactivity 31.

in 2010, resulting in the tragic deaths of over 200 children aged 5, is a notable case among several instances of similar fatalities across the country.¹⁷³ It was a single well-publicized incident among numerous pockets of associative death that had occurred across the country.¹⁷⁴ In 2010, Zamfara State in Nigeria experienced a tragic incident that highlighted the devastating impact of mining on human health. Over 200 children, just five years old, died from lead poisoning. This incident resulted from unregulated artisanal gold mining activities in the region. Unfortunately, these informal mining practices can release toxic substances, such as lead, into the environment. In the case of Zamfara State, the gold ore being mined was found to contain high levels of lead. During the mining and ore processing activities, lead-rich rocks were crushed, releasing fine particles that were dispersed in the air and settled on the ground. As a result, the surrounding soil and water sources became contaminated with lead. The water sources in the affected communities became contaminated with lead. This contamination extended to wells, rivers, and other water bodies relied upon for drinking, cooking, and irrigation.¹⁷⁵ The local population, including children, unknowingly consumed this contaminated water, leading to widespread lead poisoning. Tragically, the local community, including children, was unknowingly exposed to this toxic substance. Lead is a highly poisonous metal that can severely affect human health, especially in children more vulnerable to its effects. Ingesting or inhaling lead-contaminated particles can lead to lead poisoning, causing severe neurological damage, developmental issues, organ failure, and, in extreme cases, death. The incident in Zamfara State was a wake-up call, shedding light on the broader problem of lead poisoning associated with mining activities nationwide. It revealed that similar

¹⁷³ “Nigeria: Mass Lead Poisoning from Mining Activities, Zamfara State.” World Health Organization. https://www.who.int/emergencies/disease-outbreak-news/item/2010_07_07-en. accessed May 2, 2023.

¹⁷⁴ Nigeria: Mass Lead Poisoning from Mining Activities, Zamfara State.” World Health Organization. https://www.who.int/emergencies/disease-outbreak-news/item/2010_07_07-en. accessed May 2, 2023.

¹⁷⁵ Nigeria: Mass Lead Poisoning from Mining Activities, Zamfara State.” World Health Organization. https://www.who.int/emergencies/disease-outbreak-news/item/2010_07_07-en. accessed May 2, 2023.

pockets of associative deaths had occurred in other mining regions in Nigeria where lead-containing minerals were being extracted.

Mining operations have significantly impacted the agricultural practices of indigenous communities in the Jos-Plateau region, leading to a scarcity of arable land and subsequent low crop yields in villages near mining sites. Adegboye's research highlights the various consequences of tin mining activities, such as soil erosion, neglected mine excavations, and industrial use of arable land, which directly contribute to decreased productivity in crop farming.¹⁷⁶ Furthermore, mining indirectly affects farmers' access to water, as contaminated water sources are utilized for farming and even consumed by communities living near mining operations. Sadly, host communities around where mining operations take place not only use the contaminated water for farming but drink it as well. In a recent study, Abu blamed over three decades of iron ore exploration found in the state of Kogi Nigeria for the population's gastro-intestinal irritation, catharsis, dehydration, dry skin, and tooth discolouration.¹⁷⁷ When it rains, the accumulation of mine wastes containing magnetite, zircon, ilmenite, monazite, silica sand, and amethyst and the likelihood of seepage into or probable flow into a local water source poses a risk to the public's health. The water becomes more murky or acidic as this happens, rendering it unsuited for home use and aquatic life.¹⁷⁸ Recent research suggests that some of the abandoned mine ponds have turned into lethal environments due to accidental falls in remote locations where there is no hope of portable water, forcing the villagers to channel

¹⁷⁶ Adegboye, Michael Adejare. 'Effect of mining on farming in Jos South Local Government Area of Plateau State.' (2012).

¹⁷⁷ Abu Onimisi Hassan and Olarewaju Oluseyi Ifatimehin Kogi State University 'Environmental Impacts of Iron Ore Mining on Quality of Surface Water and Its Health Implication on The Inhabitants of Itakpe'. 3 (2016) International Journal of Current Multidisciplinary Studies 318.

¹⁷⁸ Odoh Chuks Kenneth, Akpi Uchenna Kalu & Anyah Francis, 'Environmental Impacts of Mineral Exploration in Nigeria and their Phytoremediation Strategies for Sustainable Ecosystem' 17(2017) Global Journal of Science Frontier Research: Environment & Earth Science 19, 21.

runoff rainwater into the old mine pit for irrigation farming and other domestic uses.¹⁷⁹ After constant exposure to heavy metals through the food chain and groundwater seeping from mining wastes, these strange actions will undoubtedly have a negative effect on human health.

2.5.2.3 Landscape Degradation and Soil Erosion

The aesthetic nature of any environment is related to its landscape construction. In Nigeria, thousands of abandoned mine pits, such as those seen in the Jos mining zone, have disrupted the area's tranquillity. Examples include the destruction of natural landscapes, the formation of pits, and the indiscriminate dumping of heaps in Imeke, Igarra, and Ikpeshi, where granite and marble quarries are being explored.¹⁸⁰ Strip mining is one type of mining that is causing soil erosion all over the world. However, as Ndinwa and Ohwona highlighted, sand excavation for building purposes is Nigeria's most common cause of soil erosion.¹⁸¹ Sand excavation has caused significant damage to the land in areas underlain by sedimentary rocks such as Afowa, Ayoguri, Fugar, and Apana.¹⁸² Mining activities such as excavation have exposed the entire terrain to severe erosion because it is commonly underlain by crystalline rocks where quarrying activities take place daily. The impact of mining on aesthetics should not be overlooked, as it directly affects the visual appeal and beauty of the environment. It diminishes the natural harmony and scenic qualities that contribute to the overall quality of life for both local communities and visitors. The loss of aesthetic value can adversely affect tourism, cultural heritage, and overall well-being. Preserving the aesthetic integrity of an environment is not

¹⁷⁹ E. C. Merem et al., 'Assessing the Ecological Effects of Mining in West Africa: The Case of Nigeria,' 1 (2017) *International Journal of Mining Engineering and Mineral Processing* 1.

¹⁸⁰ G. C. C Ndinwa & C. O Ohwona, 'Environmental and Health Impact of Solid Mineral Exploration and Exploitation in South-Northern Nigeria: A Case Study of Igarra in Edo State,' (2014) 1 *Review of Environment and Earth Sciences, Conscientia Beam* 24,28.

¹⁸¹ G. C. C Ndinwa & C. O Ohwona, 'Environmental and Health Impact of Solid Mineral Exploration and Exploitation in South-Northern Nigeria: A Case Study of Igarra in Edo State,' (2014) 1 *Review of Environment and Earth Sciences, Conscientia Beam* 24,29.

¹⁸² G. C. C Ndinwa & C. O Ohwona, 'Environmental and Health Impact of Solid Mineral Exploration and Exploitation in South-Northern Nigeria: A Case Study of Igarra in Edo State,' (2014) 1 *Review of Environment and Earth Sciences, Conscientia Beam* 24,29.

merely a matter of subjective preference; it is a crucial aspect of environmental sustainability and human connection to nature.¹⁸³ Mining solid minerals in Nigeria significantly negatively impacts the environment, including the aesthetic aspects of landscapes. The destruction of natural features, the formation of unsightly pits, and the indiscriminate waste dumping undermine the affected areas' visual appeal. Therefore, it is imperative to prioritize sustainable mining practices to minimize the environmental and social costs associated with mining activities, including their detrimental effects on aesthetics.

2.6. Ensuring a Fair Balance from Mining

While the preceding suggests that mining has a negative impact on local communities in Nigeria, it is challenging to discourage such activities, given that the Nigerian economy is heavily reliant on it.¹⁸⁴ According to Ezeaku's research, mining in Nigeria has several positive impacts on local communities.¹⁸⁵ One significant benefit is employment generation, with approximately 60% of the population relying on mining-related jobs for their livelihoods. This provides a vital source of income, as demonstrated by the fact that around 80% of the population earns higher incomes from mining activities compared to traditional farming practices. Moreover, mining activities contribute to increased economic activities, fostering the growth of petty businesses, particularly for women. Additionally, mining operations often

¹⁸³ Jason S. Ogola, Winnie V. Mitullah, and Monica A. Omulo, (2002) 24 *Environmental Geochemistry and Health* 141.

¹⁸⁴ Peter Ikemefuna Ezeaku, 'Evaluating the influence of open cast mining of solid minerals on soil, land use and livelihood systems in selected areas of Nasarawa State, North-Central Nigeria' (2012) 4 *Journal of Ecology and Natural Environment* 62.

¹⁸⁵ Peter Ikemefuna Ezeaku, 'Evaluating the influence of open cast mining of solid minerals on soil, land use and livelihood systems in selected areas of Nasarawa State, North-Central Nigeria' (2012) 4 *Journal of Ecology and Natural Environment* 62,68.

result in improved infrastructure, including the development of graded roads and transportation facilities, which enhance connectivity and accessibility within the mining regions.¹⁸⁶

Despite the economic benefits, mining activities in Nigeria can have detrimental social and environmental consequences. Environmental degradation is a significant concern, as mining operations can lead to deforestation, soil erosion, water pollution, and destruction of natural habitats. Furthermore, improper waste disposal and inadequate environmental management practices can contaminate water sources, posing health risks to both humans and wildlife. Additionally, mining projects sometimes require the displacement of communities, leading to social disruption and the loss of traditional livelihoods.

As a result, while mining causes significant harm to communities' social and environmental well-being, it also contributes to their economic well-being, particularly in Nigeria's impoverished rural areas. Therefore, a balance must be struck between mitigating social and environmental harm and halting economic activity. With Nigeria's high incidence of unemployment, such economic activities are vital for livelihood sustainability. While mining has provided employment opportunities and increased economic activities, it has also led to environmental degradation, health hazards, and displacement of communities.¹⁸⁷ Achieving a fair balance between the positive economic impacts and the negative social and environmental consequences of mining is paramount. While mining activities contribute to employment and income generation, it is essential to ensure that the social and environmental costs are effectively mitigated and managed. Regulations should be in place to address environmental protection, health and safety standards, community engagement, and the rights and interests of

¹⁸⁶ Peter Ikemefuna Ezeaku, 'Evaluating the influence of open cast mining of solid minerals on soil, land use and livelihood systems in selected areas of Nasarawa State, North-Central Nigeria' (2012) 4 *Journal of Ecology and Natural Environment* 62,68.

¹⁸⁷ Ouadadi Senouci, 'Environmental and Health Impacts of Mining in Nigeria: A Review' 10 (2020) *Research Inventy: International Journal of Engineering and Science* 27,28.

host communities. These laws should prioritize sustainable mining practices, environmental conservation, and the welfare of local communities. The upcoming chapter will examine current laws addressing host communities' rights and interests, shedding light on the existing framework and potential areas for improvement.

2.7 Conclusion

This chapter has provided a comprehensive overview of the mining industry in Nigeria, examining its historical development, the current state of mining activities, and the impacts on health, the environment, and host communities. The findings underscore the need for a balanced approach that considers the economic benefits of mining while addressing its social and environmental challenges.

The chapter began by defining mining and discussing its general impacts on health and the environment. It then delved into the historical overview of mining in Nigeria, tracing the development of mining laws and practices and the protection of host community rights. The analysis revealed the evolution of mining policies, from pre-independence to post-independence, and the ongoing efforts to address the concerns of host communities.

The current state of mining in Nigeria was explored, highlighting the various forms of solid minerals mining and the key actors involved, including small-scale miners, large-scale miners, and government-owned operations. Additionally, the chapter emphasized the importance of recognizing the role of host communities in the mining sector and the need for their active participation and engagement. It further examined the impacts of solid minerals mining in Nigeria. The discussion encompassed the adverse effects on human health, such as air

pollution, specifically dust and radiation exposure, as well as the impacts of noise and vibration. The environmental consequences of mining, including deforestation, agriculture and water pollution, landscape degradation and soil erosion, were also examined.

Notably, ensuring a fair balance from mining emerged as a crucial consideration. While acknowledging the economic benefits and employment opportunities mining provides, the chapter emphasized the need to address social and environmental harm. It stresses the importance of effective policies, regulations, and enforcement mechanisms to minimize negative impacts, promote sustainable practices, and safeguard the rights and interests of host communities. The chapter provides a comprehensive understanding of the mining industry in Nigeria, highlighting its historical context, current state and impacts. It underscores the importance of striking a balance between economic development, environmental sustainability, and social well-being. Achieving this balance requires collaborative efforts among government agencies, mining companies, civil society organizations, and local communities.

As subsequent chapters explore specific aspects of mining regulation and offer recommendations, it is clear that a holistic approach is needed to ensure responsible and sustainable mining practices in Nigeria. By prioritizing the well-being of host communities, preserving the environment, and fostering inclusive decision-making processes, Nigeria can harness the potential of its mineral resources while safeguarding the interests of its people and future generations.

CHAPTER THREE

CURRENT LAWS PROTECTING HOST COMMUNITY INTERESTS

3.1 Introduction

Solid minerals in Nigeria have contributed 3% of Nigeria's GDP and 95% of its foreign exchange.¹ Although it is important to develop the solid mineral sector, it is also necessary to ensure that the proper management system is put in place to ensure the sector's sustainability is not compromised.² The previous chapters have shown that mining has substantially impacted the environment and society. As a result, it is vital to determine what type of regulation the Nigerian government has implemented to offset the negative effects of mining.

Laws, regulations, and policies play significant roles in environmental protection, including mining solid minerals. The principle that "where there is no law, there is no offense, duty, or obligation" highlights the importance of laws in guiding human conduct in society. In the context of mining, these laws are grounded in a paternalistic school of thought, suggesting that the law knows what is best for us, even when there is a conflict with individual preferences.³ An example of this can be observed in the mining industry, where capitalists may prioritize profit maximization over environmental restoration and rehabilitation. However, laws, regulations, and policies mandate rehabilitating mined-out areas to ensure environmental protection and sustainable development. Failure to comply with these obligations would result in ongoing environmental degradation, particularly affecting marginalized communities who

¹ Herbert McLeod, 'Natural Riches? Perspectives on Responsible Natural Resource Management in Conflict-Affected Countries' (We Forum, 2013) <http://www3.weforum.org/docs/WEF_GAC_NaturalRiches_ResponsibleNaturalResourceManagementConflictCountries_Report_2013.pdf> accessed 1 February 2021.

² Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, 'Minerals and Mining Policies in Nigeria: Implications on Sustainable Growth and National Development', (2020) 8 International Journal of Research in Engineering and Science 60, 62.

³ Y Aboki, 'Introduction to Legal Research Methodology. (Ajiba Printing Production, Kaduna (2013), 91.

lack the resources to mitigate the harmful impacts on their health and livelihoods. Law is viewed as an instrument for promoting change and social engineering, aiming to address these issues and create a more sustainable future.

The legal framework governing the protection of the host communities from the negative impacts caused by mining solid minerals in Nigeria holds a significant position in exploiting these resources. Its purpose is to establish guidelines that prevent or mitigate the harmful effects of mining activities on the environment and promote the principles of sustainable development. Within this context, the thesis focus lies on assessing the extent to which relevant provisions in these laws, regulations, and policies have effectively contributed to host community protection, the promotion of sustainable mining practices, and the overall objective of ensuring a sustainable environment for future generations. The examination covers both general provisions concerning the environment and specific provisions related to mining solid minerals in Nigeria. Additionally, the interrelationships among these laws, regulations, and policies concerning preventing or mitigating environmental degradation caused by mining activities are explored where applicable.

This chapter examines the legal frameworks that regulate the solid mineral sector of Nigeria and the institutions responsible for the regulation. The objective is to consider whether they adequately address host community rights in the mining sector and consider the capability of regulatory institutions to ensure operators comply with the extant legislative framework vis-à-vis regulation requirements in the sector. It seeks to determine whether the Nigerian regulatory framework in the mining sector is sound enough to manage the negative impacts of mining discussed earlier, in accordance with the research questions mentioned in the introduction.

To thoroughly examine the legal landscape, this chapter begins with an overview of the Nigerian legal system, providing a contextual understanding of the framework within which

mining regulations operate. Subsequently, it analyses key legislative acts and regulations that govern the mining sector, including the Environmental Impact Assessment (EIA) Act 1992, the Mineral and Mining Act 2007, the Minerals and Mining Regulations 2011, and the Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007. By scrutinizing these legal instruments, their central provisions, and potential limitations in enforcement, this chapter seeks to shed light on the strengths and weaknesses of the current regulatory framework. Additionally, it explores the role of corporate social responsibility (CSR) initiatives in addressing gaps and complementing regulatory efforts to promote sustainable mining practices and protect the rights of host communities. Through this analysis, it becomes possible to assess the effectiveness of existing laws and institutions in managing the negative impacts associated with mining activities, including environmental degradation, health hazards, and social dislocation. By identifying areas of improvement and potential solutions, this chapter contributes to the broader objective of developing a sustainable and equitable mining sector in Nigeria.

3.2. An Overview of the Nigerian Legal System

The Nigerian legal system is a complex framework encompassing various law sources, institutions, and processes.⁴ It draws its foundations from a combination of statutory laws, case law, customary law, and international conventions. Understanding the structure and dynamics of the Nigerian legal system is essential for comprehending the regulatory framework governing the solid mineral sector and its implications for host community rights.

At the core of the Nigerian legal system is the constitution, which serves as the supreme law of the land. The constitution, enacted in 1999, provides the overarching legal framework for

⁴ Adrian Powell, "Nigeria Legal Profile," Proelium Law LLP, February 23, 2022, <<https://proeliumlaw.com/nigeria-legal-country-profile/>> accessed 16 June 2023.

the country's governance and sets out fundamental rights and freedoms, including environmental and community rights provisions.⁵ The 1999 Constitution is the supreme law, overriding all other sources of law, and any legislation inconsistent with the Constitution is deemed void to the extent of the inconsistency. Legislation, primarily enacted by the National Assembly at the federal level, is considered a secondary source of Nigerian law.

In addition to the Constitution, statutes and legislation play a crucial role in shaping the legal landscape. The Nigerian legislature, consisting of the National Assembly at the federal level and State Houses of Assembly at the state level, is responsible for enacting laws. Pertaining to the solid mineral sector, the primary legislation is the Mineral and Mining Act 2007, which establishes the legal basis for mining operations, licensing, and regulation. Furthermore, regulations and guidelines issued by relevant government agencies provide detailed provisions for implementing the legislative framework. For instance, the Minerals and Mining Regulations 2011 outline specific requirements and procedures for obtaining mining licenses, environmental impact assessments, community development agreements, and other aspects of mining operations.

The judiciary, comprising various courts and tribunals, interprets and applies the laws in Nigeria. The hierarchy of courts includes the Supreme Court at the apex, followed by the Court of Appeal, the Federal High Court, State High Courts, and subordinate courts. These courts play a crucial role in adjudicating disputes arising from the solid mineral sector and ensuring the protection of host community rights.⁶ Judicial precedents, especially from the Supreme Court, also play a significant role in the legal system. However, the application of rulings and

⁵ Adrian Powell, "Nigeria Legal Profile," Proelium Law LLP, February 23, 2022, <<https://proeliumlaw.com/nigeria-legal-country-profile/>> accessed 16 June 2023.

⁶ Adrian Powell, "Nigeria Legal Profile," Proelium Law LLP, February 23, 2022, <<https://proeliumlaw.com/nigeria-legal-country-profile/>> accessed 16 June 2023.

legislation may vary, and there is room for flexibility. Customary law is often applied in personal and family matters, particularly for members of specific ethnic groups, while twelve northern states have implemented a Sharia legal system. Sharia law introduces religious-based criminal offences and punishments based on the Qur'an, though the constitutionality of these punishments is yet to be determined by the Supreme Court.⁷

It is important to note that despite a comprehensive legal framework, challenges remain in Nigeria's effective enforcement and implementation of laws. Inconsistent application, corruption, and limited resources often hinder the full realization of legal provisions, thereby impacting the protection of host community interests. The Nigerian legal system encompasses diverse sources, including the constitution, statutes, regulations, customary law, and judicial precedents. Understanding the interplay of these legal sources is crucial for comprehending the regulatory framework governing the solid mineral sector and its implications for host community rights. By recognizing the strengths and weaknesses of the legal system, efforts can be directed toward enhancing the effectiveness of laws and institutions to ensure the responsible and sustainable management of the mining sector in Nigeria.

3.2.1 Constitutional Provisions for Host Community Rights

Creating a framework for protecting host communities in Nigeria requires understanding the constitutional provisions relating to land ownership in Nigeria. In Nigeria, there is no private ownership of mineral rights. According to section 44 (3) CFRN, the government of the federation shall own the entire property in all minerals, mineral oils, and natural gas under, on,

⁷ Adrian Powell, "Nigeria Legal Profile," Proelium Law LLP, February 23, 2022, <<https://proeliumlaw.com/nigeria-legal-country-profile/>> accessed 16 June 2023.

or upon any Nigerian land as well as in, under, or the country's territorial waters and exclusive economic zone. It shall manage it in any manner the National Assembly may specify.

3.2.1.1 The Land Use Act: Origin and Impacts on the Host Communities

The LUA was originally a 1978 federal military government decree later annexed to the 1979 constitution.⁸ The Act made significant changes in the mining sector. It nationalised all land in the country, supposedly due to the difficulties private and government institutions faced acquiring land for developmental projects. The Act gave each state governor absolute ownership of land with each state.⁹ In the case of *Abioye v. Yakubu*,¹⁰ the court established the Act's effects on customary land holding by withdrawing land ownership from individuals, families and host communities and conferring title on the governor of each state in the hope that the land would be used for the benefit of all Nigerians. Secondly, by withdrawing control and management of lands from the family and host community and conferring that power on the governors of each state.¹¹ Section 28 LUA provides that land may be taken if it is in the public's interest, which includes the use of the land for mining purposes, or any purpose connected therewith. One such public purpose includes when the land of host communities is required for oil or mineral mining purposes. This is particularly because the constitution has conferred ownership of all mineral resources on the federal government. The LUA also intersects with the PIA, which grants the federation ownership of all mineral oils.¹²

However, while the LUA only approved government alienation of land for public purpose, the government usually acquires land endowed with mineral resources from the aboriginal

⁸ Rhuks T Ako, 'Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice' (2009) 53 *Journal of African Law* 289, 293.

⁹ Section 1 Land Use Act 1979.

¹⁰ (1991) 5 NWLR (Pt 190) 130, 223, paras (d)-(g) per Obaseki J.

¹¹ *ibid.*

¹² Kaniye SA Ebeku, 'Oil and the Niger Delta People: The Injustice of the Land Use Act', 35 (2002) *Law and Politics in Africa, Asia and Latin America* 201, 203.

landholders, only to confer it on mining companies which explore the land for their profit-making purpose. Government officials and their allies are these mining companies' eventual shareholders and beneficiaries.¹³ Influential elite class members benefited unduly from the Act by deliberately manipulating the allocations committee.¹⁴ Furthermore, the Act undermined the authority of the community leaders to administer, control and use their land. This means that the mining community leaders cannot resolve and mediate land-related conflicts in their area.¹⁵ Land disputes must now be resolved in the courts, which have proven ineffective, slow, and open to corruption.

3.2.1.2 The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

Although different regulations govern the Nigerian petroleum and mining industry, the Constitution also serves as the foremost statutory regulation for the sector by virtue of its supremacy clause in Section 1 (3) CFRN 1999. The constitutional provision affecting the petroleum industry is concerned with the ownership, control and operation of oil and gas in Nigeria. Specifically, Section 44 (3) gives the federal government exclusive control, ownership, and management rights over Nigeria's mineral resources, including petroleum. The government is supposed to hold the mineral resources in trust on behalf of the citizens of Nigeria for the benefit and growth of the economy.¹⁶ Accordingly, the exclusive right of occupancy, customary or legal, is the highest interest a person can gain in Nigerian law. When the government has full ownership of mineral resources, the governor can use them as they

¹³ Yinka Omorogbe, 'The Legal Framework for Public Participation in Decision-making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless', in Donald M Zillman, Alastair Lucas, and George (Rock) Pring (eds), *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources* (Oxford Academic, 2012).

¹⁴ P Francis 'For the Use and Common Benefit of all Nigerians: Consequences of the 1978 Land Nationalization' (1984) 54 *Africa: Journal of the International African Institute* 5, 7.

¹⁵ Charles Ukeje 'Youths, Violence and the Collapse of Public Order in the Niger Delta Region of Nigeria' (2001) 26 *Africa Development* 337.

¹⁶ Ogugua VC Ikpeze, & Nnamdi G Ikpeze, 'Examination of Some Legislations Referencing Acquisition of Rights for Oil Exploration, Prospection and Mining in Nigeria', (2015) 5 *Journal of Energy Technologies and Policy* 1, 5.

deem fit. In the case of *Nkwocha v. Governor of Anambra State*,¹⁷ the plaintiff filed a lawsuit against the Governor, seeking a declaration that the Governor lacked the authority to cancel the plaintiff's leasehold. The court dismissed the case. The judgement implies that no individual has the right of ownership to land and, by extension, its natural endowment in accordance with section 44 (3) CFRN.

The implication of the combined effect of Section 1 LUA 1978 and Section 2 Exclusive Economic Zone Act 1978 is that host communities have no right to protect their lands and environs. They also have no say in the introduction of mining projects in their community since the government exercises allodial right over all land. By the mere grant of government consent, any mining company can invade any community and commence exploration activities.

3.3 Environmental Impact Assessment Act 1992

Over the years, host communities have complained of the lack of consultation by the government and mining companies¹⁸ before mining projects start.¹⁹ It is important to examine how the Environmental Impact Assessment Act 1992 applies to steps taken by mining companies before the commencement of mining projects. The Environmental Impact Assessment Act (referred to as the "E.I.A. Act") is founded on the Precautionary Principle, which serves as the underlying philosophy of the legislation. This principle serves as a crucial framework for achieving sustainable development by preventing or mitigating environmental pollution and degradation, particularly in sectors such as mining and steel. In recent years, the E.I.A. Act has become a vital tool for incorporating environmental considerations into development plans, programs, and projects. This shift is driven by the recognition of significant

¹⁷ (1984)1 SC NLR 634.

¹⁸ Aoy Raji and TS Abejide, 'The British Mining and Oil Regulations in Colonial Nigeria C. 1914 - 1960S: An Assessment' (2014) 2 Singaporean Journal of Business, Economics and Management Studies 62, 70.

¹⁹ *ibid.*

ecological disasters and observable consequences resulting from past poorly thought-out and short-term development practices. The E.I.A. Act aims to avoid the repetition of such mistakes and promote the integration of environmental concerns in decision-making processes for a more sustainable future.²⁰

This Act aims to ensure an environmental impact assessment before any public or private project is conducted.²¹ Before permits can be given, a prior assessment of the project's effect on the environment must be done.²² According to Section 1 of the Act, the critical requirement is to determine if a project will likely have a 'significant impact on the environment'.²³

The Act set out a tactical process to collect data about the project and its risks. The objective of creating the Act is to promote the implementation of appropriate policy in all federal lands, state, or local government areas; and to encourage the development of procedures for information exchange, communication and consultation between organs and persons when specific projects are estimated to have adverse effects on the environment of neighbouring towns and villages.²⁴

Notably, the 1992 EIA Act's key requirement of consultation requires impact assessors to consult the host communities.²⁵ The ability to develop the desire and means of eradicating, alleviating, or decreasing the impact of mining on the environment makes a difference, notwithstanding the possibility that there cannot be zero tolerance for environmental degradation in the mining business.

²⁰ Fagbohun, O. A. (1998 Reprint 2000). 'Public Environmental Litigation in Nigeria- An Agenda for Reform.' In: Osunbor, O.A and Simpson S. et al. (eds.) Environmental Law and Policy, Law Centre Faculty of Law, Lagos State University, Lagos, 144.

²¹ Environmental Impact Assessment Act 1992, Sections 9 and 10.

²² *ibid.*

²³ Environmental Impact Assessment Act 1992, Cap E12 LFN 2004.

²⁴ Kevin Ukeomure Udungeri, Miebaka Nabiebu and Okor Edet Efombruh, *supra* (note 1241) 34.

²⁵ Federal Republic of Nigeria, Environmental Impact Assessment (EIA) Act 86, 1992

Nigeria adopted environmental impact assessment as an environmental management and planning tool, but as this section explains Nigeria faces challenges in implementing them effectively.²⁶

3.3.1. Central Provisions

The EIA Act of 1992 requires mining companies to consult with affected communities to obtain their consent before starting mining activities. Before permits can be granted, a prior assessment of the project's effect on the environment must be assessed.²⁷ According to Section 1 of the Act, the critical requirement is to determine if a project will likely have a 'significant impact on the environment'.²⁸ The statute's key requirement of consultation demands impact assessors consult the host communities.²⁹ Communities have the right to demand that these measures are adhered to, and mining activities are conducted responsibly and sustainably. The EIA Act of 1992 stipulates a crucial requirement for impact assessors to engage in meaningful consultation with host communities. This provision emphasizes that the assessors are obligated to seek input and feedback from the affected communities throughout the environmental impact assessment process. However, it is essential for the Act to provide clearer guidance on the specific steps and methods to be employed during the consultation process. This includes defining the scope and duration of the consultation, outlining the responsibilities of the assessors and the communities, and establishing mechanisms to ensure that the concerns and interests of the host communities are adequately addressed. By enhancing the clarity and effectiveness of this requirement, the Act can promote a more inclusive and participatory

²⁶ Fatona Pius Olubenga, Adetayo Olumide, Adesanwo Adeola, 'Environmental Impact Assessment Law and Practice in Nigeria: How Far? How Well?' (2015) 1, American Journal of Environmental Policy and Management, 11,12.

²⁷ Fatona Pius Olubenga, Adetayo Olumide, Adesanwo Adeola, 'Environmental Impact Assessment Law and Practice in Nigeria: How Far? How Well?' (2015) 1, American Journal of Environmental Policy and Management, 11,12.

²⁸ Environmental Impact Assessment Act 1992, Cap E12 LFN 2004.

²⁹ Federal Republic of Nigeria, Environmental Impact Assessment (EIA) Act 86, 1992.

approach to decision-making, fostering responsible and sustainable mining practices that benefit both the communities and the environment.

The E.I.A. Act is characterized by certain shortcomings and weaknesses, notably its poor drafting in relation to the mining of solid minerals and the overall development of environmental law in Nigeria. The Act exhibits numerous unclear language and grammatical errors. An example of this can be found in the initial section of the decree, which illogically mandates an assessment of the effect of the environment on an activity rather than the other way around. The E.I.A Act also suffers from various issues of incorrect cross-referencing. For instance, section 49(1) and the definition of the so-called "exclusion list" in section 63(1) refer to non-existent sections 55(1)(b), (d), or (e) of the Act. This is highly undesirable for legislation as significant as the E.I.A Act. Such errors and inconsistencies in the drafting style may undermine the country's credibility in the eyes of the international investment community.

Moreover, these inadequacies pose significant challenges for effectively enforcing the provisions of the Act and protecting the environment from degradation caused by solid mineral mining in Nigeria. To ensure regulatory certainty and facilitate compliance, it is crucial to amend the E.I.A Act and address the pressing need for clarity and precision in its provisions. In the mining sector, rectifying mistakes that lead to environmental degradation is often extremely difficult. Therefore, clear, and unambiguous legal provisions are essential to prevent operators from exploiting loopholes in the legal framework to evade liability deliberately.

3.3.2. Problems with Enforcement

According to authors like Hussaini, Nigeria lacks proper enforcement of mandatory Environmental Impact Assessment (EIA) requirements.³⁰ Project developers tend to take

³⁰ Abdullahi Hussein, 'The current status of environmental impact assessment in Nigeria (EIA): challenges and prospects', (2015) 1(1) HSE 28, 33.

advantage of the lack of coordination among responsible authorities in Nigeria, rendering EIA procedures merely a formality.³¹ This lack of implementation is a common trend in Nigeria, where good policies are often not enforced, as noted by Ebigbo.³² Even when impact studies are conducted, the procedures outlined in the guidelines are typically ignored, particularly when it comes to consultations.³³ For instance, the study by Lawal, *et al.*, of the West African Gas Pipeline project found insufficient evidence of effective consultations as required.³⁴

The lack of implementation of the Environmental Impact Assessment (EIA), leads to no pre-assessment of the site, no quarterly assessment of the mining site and the abandonment of the site after use.³⁵ The effects of the mining operations and the effects on the environment and host communities are not monitored either.³⁶ After mining, the sites are left alone at great risk to the health and life of host community members. To protect host community rights, community engagement requires proper and enhanced awareness, planning, and the desire of all stakeholders to collaborate. Continuous and inventive approaches are needed to ensure the process is useful, efficient, effective, and successful. According to the findings of the study conducted by Lawal *et al.*, host community participation and protection are insufficient, and all

³¹ Abdullahi Husseini, 'The current status of environmental impact assessment in Nigeria (EIA): challenges and prospects', (2015) 1(1) HSE 28, 33.

³² P.O. Ebigbo, 'Appraising the impact of economic reform programme on micro, small and medium scale enterprises.' (2008) 19th Enugu International Trade Fair Colloquium

³³ Abdullahi Husseini, 'The current status of environmental impact assessment in Nigeria (EIA): challenges and prospects', (2015) 1 HSE, 28, 33

³⁴ Akeem Morounkeji Lawal, Stefan Bouzarovski, and Julian Clark, 'Public participation in EIA: the case of West African Gas Pipeline and Tank Farm projects in Nigeria' (2013), 31 Impact Assessment and Project Appraisal, 226.

³⁵ Akeem Morounkeji Lawal, Stefan Bouzarovski, and Julian Clark, 'Public participation in EIA: the case of West African Gas Pipeline and Tank Farm projects in Nigeria' (2013), 31 Impact Assessment and Project Appraisal, 226,229.

³⁶ Akeem Morounkeji Lawal, Stefan Bouzarovski, and Julian Clark, 'Public participation in EIA: the case of West African Gas Pipeline and Tank Farm projects in Nigeria' (2013), 31 Impact Assessment and Project Appraisal, 226,229.

involved in the process need to become more aware of the challenges host communities face to have common ground on how to protect the environment and host communities effectively.³⁷

Another central concern in this Act is the relief available to victims if the Agency fails to carry out its duty or fulfilled its duty but executes its decision inadequately.³⁸ Although host communities have a right to provide input, the Act fails to give persons or groups the right to sue. A significant flaw in EIA is the lack of a clear avenue for legal recourse for host communities. In the case of *Oronto Douglas v. Shell Petroleum Development Co.*,³⁹ it was held that ‘the right of interested persons to make input by way of comment, does not carry with it the competence to pursue a judicial review of a decision of the Agency about environmental impact assessment of any project.’⁴⁰ This judgment validates the deficiencies in the Act, which the Court could have addressed, but did not. In the case of *Oronto Douglas v. Shell Petroleum Development Co.*, the court ruled that while interested individuals have the right to provide input and comment on environmental impact assessments conducted by the relevant agency, this does not automatically grant them the legal standing to initiate a judicial review of the agency's decision regarding the assessment of a project. In other words, the mere ability to provide comments and input does not confer the authority to challenge or legally contest the agency's decision in court. This ruling suggests that there are limitations on the extent to which interested parties can pursue legal action in relation to environmental impact assessments.

³⁷ Akeem Morounkeji Lawal, Stefan Bouzarovski, and Julian Clark, ‘Public participation in EIA: the case of West African Gas Pipeline and Tank Farm projects in Nigeria’ (2013), 31 *Impact Assessment and Project Appraisal*, 226.

³⁸ Kevin Ukeomure Udungeri, Miebaka Nabiebu and Okor Edet Efombruh, ‘Evaluation of the Statutory Regime of Corporate Environmental Liability in the Oil and Gas Sector in Nigeria’ (2018) 2 *American Journal of Humanities and Social Sciences Research* 29,34.

³⁹ *Oronto Douglas v. Shell Petroleum Development Co.* FHC/L/CS/573/93 Federal High Court, Lagos (1997) unreported.

⁴⁰ *Oronto Douglas v. Shell Petroleum Development Co.* FHC/L/CS/573/93 Federal High Court, Lagos (1997) unreported.

This lack of legal recourse puts host communities at a disadvantage compared to the mining companies and undermines their ability to protect their rights and interests. It also raises concerns about accountability and enforcing environmental regulations, as companies may not face sufficient consequences for non-compliance. Therefore, there is a need to address this deficiency in the Act and ensure that host communities can access effective legal remedies to protect their rights and the environment. Here, Nigeria could learn from the United States of America, whose National Environmental Policy Act of 1969 recognised the citizens' rights to judicial review to challenge the Act.⁴¹ If Nigeria had a similar provision, Nigerians could challenge the state's acts in the courts. Perhaps this could have caused approval to be denied for many existing infrastructures would have been relocated or improved upon.⁴² The statement suggests that Nigeria could benefit from adopting a provision similar to the National Environmental Policy Act (NEPA) of the United States. The NEPA, enacted in 1969, grants citizens the right to initiate judicial review and challenge government actions related to environmental matters. A similar provision would grant citizens the opportunity to challenge the state's decisions and actions in court, potentially leading to the denial of approval for certain infrastructure projects or the implementation of improvements.

Finally, according to various authors, including Olugbenga, corruption and disregard for the EIA Act of 1992 have plagued the EIA process in Nigeria.⁴³ The government and multinational oil companies are among the culprits responsible for the abuse of the EIA process. The EIA Act stipulates that the public should have access to all relevant information and be given a chance to participate in project impact assessments. However, in the Niger Delta region, for

⁴¹ Plaintiffs may challenge an agency's compliance with NEPA under the APA, Section 10(a) of the Administrative Procedure Act (APA) 5 USC §551 et seq. (1946).

⁴² Kevin Ukeomure Udungeri, Miebaka Nabiebu and Okor Edet Efombruh, 'Evaluation of the Statutory Regime of Corporate Environmental Liability in the Oil and Gas Sector in Nigeria' (2018) 2 American Journal of Humanities and Social Sciences Research 29,34.

⁴³ Fatona Pius Olubenga, Adetayo Olumide, Adesanwo Adeola, 'Environmental Impact Assessment Law and Practice in Nigeria: How Far? How Well?' (2015) 1, American Journal of Environmental Policy and Management, 11.

example, local communities are often left out of the decision-making process, despite the legal provisions. While the EIA Act and its guidelines exist, they are often disregarded, which renders them ineffective. This is not surprising, given that Nigeria is a developing country with limited resources, and implementing the ambitious EIA Decree is a challenge.⁴⁴

The current state of implementation of the Environmental Impact Assessment (EIA) Act in Nigeria presents several significant challenges. The Act lacks clear penalties for non-compliance, leading to inadequate enforcement. The responsibility for implementing the Act has shifted from the defunct Nigerian Environmental Protection Agency to the National Environmental Standards and Regulations Enforcement Agency, but issues of political manipulations and mismanagement persist. As a result, the decision-making process regarding environmental impact assessments can be influenced by political interests rather than objective evaluations.

Furthermore, responsible authorities lack coordination, allowing project developers to exploit loopholes and treat EIA procedures as mere formalities. Consultation processes outlined in the guidelines are often ignored, limiting effective participation of host communities. The absence of proper pre-assessment and monitoring of mining sites poses risks to the environment and the well-being of host community members. There is a need for enhanced awareness, planning and collaboration among stakeholders to protect host community rights and ensure effective environmental protection.

The Act also falls short in providing legal recourse for host communities if the agency fails to execute decisions adequately or carry out its duty as expected. The lack of a clear avenue for legal action undermines the ability of host communities to protect their rights and interests.

⁴⁴ Fatona Pius Olubenga, Adetayo Olumide, Adesanwo Adeola, 'Environmental Impact Assessment Law and Practice in Nigeria: How Far? How Well?' (2015) 1, *American Journal of Environmental Policy and Management*, 11.

Drawing on the experience of the United States' National Environmental Policy Act, it is suggested that Nigeria could benefit from adopting provisions that grant citizens the right to challenge state acts through judicial review. This could lead to improved decision-making, denial of approval for problematic infrastructure projects, and a greater emphasis on environmental protection. Corruption and disregard for the EIA Act have further undermined the process in Nigeria. Government agencies and multinational oil companies have been implicated in abusing the EIA process, while host communities are often excluded from decision-making despite legal provisions. Despite the existence of the EIA Act and its guidelines' effective implementation remains a challenge, exacerbated by limited resources.

3.4 The Mineral and Mining Act 2007

The main objective of the N.M.M.A, as evident from its comprehensive title, is to oversee and regulate all aspects of solid mineral exploration and exploitation in Nigeria and address associated concerns. The enactment of the N.M.M.A is motivated by the intention to establish distinct roles for both the private sector, responsible for operating and owning mineral resources in compliance with the Act, and the government, tasked with regulating various aspects related to mineral resources in Nigeria, such as reconnaissance, exploration, exploitation, beneficiation, possession, retention, transportation, transformation, sale, marketing, and other associated purposes.⁴⁵

The primary legislation governing mining activities in Nigeria is the Mineral and Mining Act (NMMA) 2007, which confers all mineral resources on the federal government and prioritises mining over other land uses.⁴⁶ Nigeria adopted the NMMA to control the exploration and mining of solid minerals in Nigeria and to facilitate their contribution to its sustainable

⁴⁵ The Explanatory Note, Nigerian Minerals and Mining Act, No. 20, 2007.

⁴⁶ Nigerian Minerals and Mining Act, 2007 Act, No 20.

development.⁴⁷ The Act is administered by the Ministry of Mines and Steel Development. This department has generally been tasked with developing a well-structured and logical plan to explore Nigeria's mineral resources.⁴⁸

3.4.1 Main provisions

One requirement of the Act is that the person who legally discovered the mineral resources will gain property rights from the government.⁴⁹ Under the Mineral and Mining Act 2007, the state is required to grant property rights to the person or entity that legally discovers mineral resources. However, there are certain limitations and conditions associated with this provision. The Act emphasizes that the discovery must be made in accordance with its provisions and applicable regulations. The discoverer must go through an application process, providing documentation and information about the discovery, including its location and potential value. In some cases, competitive bidding may be involved, especially for valuable or strategic minerals. The granting of property rights is subject to compliance with relevant laws, regulations, and environmental standards. The applicant must demonstrate their capacity to responsibly explore and develop the minerals while considering environmental and social responsibilities. While the Act recognizes the right to property for the discoverer, the government retains discretion in granting these rights based on factors such as technical and financial capacity, intended use of the minerals, and overall economic benefit to the country. It is important to refer to the specific provisions of the Act and related regulations for a

⁴⁷ Adeniyi Olatunbosun, et al, 'Legal Regime for Exploring Solid Minerals for Economic Growth in Nigeria' (2013) 9 Journal of Canadian Social Science 68, 70.

⁴⁸ Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, 'Minerals and Mining Policies in Nigeria: Implications on Sustainable Growth and National Development', (2020) 8 International Journal of Research in Engineering and Science 60, 65.

⁴⁹ Nandom Abu, Suleiman Abba Tahir and HD Ibrahim, 'Minerals and Mining Policies in Nigeria: Implications on Sustainable Growth and National Development', (2020) 8 International Journal of Research in Engineering and Science 60, 65.

comprehensive understanding of the requirements and processes involved in obtaining property rights for discovered minerals in Nigeria.⁵⁰

The Act established an Inspectorate Department and an Environmental Compliance Department to authorise mining, environmental protection and community benefits.⁵¹ The Act also created Mining Cadastre Office to control mineral titles and update information on registers of mining leases.⁵² The office is also responsible for considering applications for mineral titles, issuing permits, the suspension of permits, and extracting mineral subject to ministerial written approval.⁵³ A situation where several exploration companies bid for the same area at the same time will be addressed on a first come, first served basis.⁵⁴ This approach aligns with international standards observed in advanced countries where regulatory bodies in the solid minerals sector operate independently from the government, ensuring efficiency and effectiveness in their duties.⁵⁵ Granting licenses to qualified applicants to extract solid mineral resources is an additional measure implemented by the legislation to prevent environmental degradation caused by mining activities in Nigeria. By promoting organized mining conducted by competent individuals, the focus shifts towards preventing or mitigating environmental harm.

The Ministry of Mines and Steel Development is vested with the power to grant six types of permits, licenses, and leases.⁵⁶ These include a reconnaissance permit, which confers the right

⁵⁰ S.61 of the Minerals and Mining Act, 2007.

⁵¹ I. J Nwadiolor, *Minimizing the Impact of Mining Activities for Sustainable Mined-Out Area Conservation In Nigeria* 6 (2011) *Journal Of The Environment* 68,70.

⁵² *ibid.* 65.

⁵³ Lisa Goodman, 'Artisanal and Small-Scale Gold Mining in Nigeria: Recommendations to Address Mercury and Lead Exposure', (2014) <<https://www.eli.org/sites/default/files/eli-pubs/nigeria-asgm-assessment-final-report.pdf>> accessed 3 February 2021.

⁵⁴ Gbenga Biobaku, 'The New Minerals and Mining Regulations, 2011', (Gbc-Law, 2021) <<http://www.gbc-law.com/assets/publications/new-minerals-and-mining-regulations-2011.pdf>> accessed 5 February 2021.

⁵⁵ Section 5 of the Nigerian Minerals and Mining Act, 2007 Act.

⁵⁶ Section 46(1), 56-58 Minerals and Mining Act 2007.

to mine land for mineral resources on a non-exclusive basis;⁵⁷ an exploration license, which grants the right to explore mineral resources on an exclusive basis, including the right to erect machinery and plants and conduct bulk sampling and selling of samples;⁵⁸ mining leases confer the right to exclusively use, occupy and carry out mineral exploitation in an area not exceeding 50 kilometres;⁵⁹ small-scale mining lease which grants the right to exploit minerals in the area between 5 acres and 3 square km using low-level technology or inexpensive methods;⁶⁰ a water use permit allows the use of water for exploration, mining or quarrying purposes;⁶¹ and a quarry lease grants, the right to remove and dispose of any quarriable minerals, in an area not exceeding 5 square kilometres.⁶²

The overall objectives of the Nigerian Mineral and Mining Act 2007 are to regulate mining activities to promote environmental protection, social responsibility, and sustainable development. The NMMA 2007 has specific clauses and strategies that would make it easier to accomplish these objectives. The clauses are as follows: environmental protection and social obligation,⁶³ which orders mining lease holders to comply with environmental protection requirements and compensate the legal owners of the land, compensation and community development agreement (CDA),⁶⁴ which requires due compensation to owners of land and completion of a community development agreement (between the host communities and mining licensee); extension services economic incentives and compensation,⁶⁵ consultative and enforcement mechanism,⁶⁶ which provides a mechanism for a community development

⁵⁷ Section 46(1), 56-58 Minerals and Mining Act 2007.

⁵⁸ Sections 59-63 Minerals and Mining Act 2007.

⁵⁹ Sections 65-70 Minerals and Mining Act.

⁶⁰ Sections Minerals and Mining Act; Sections 90-91 (Establishing Area of Small-Scale Lease).

⁶¹ Section 94-96 Minerals and Mining Act.

⁶² Sections 46 Mineral and Mining Act 2007.

⁶³ Section 70 NMMA 2007

⁶⁴ Sections 71, 116 and 117 NMMA 2007.

⁶⁵ Section 91 NMMA 2007.

⁶⁶ Section 117 NMMA 2007.

agreement between the host communities and mineral title holders, called the environmental degradation and reclamation.⁶⁷

3.4.2. Specific provisions

The Act includes environmental protection requirements, landowner compensation, community development agreements, and consultative and enforcement mechanisms.⁶⁸ These provisions aim to ensure that the rights and interests of host communities are safeguarded and that the negative impacts of mining on the environment and local communities are minimized. For example, section 100 of the NMMA mandates that when a request is made for a mineral title on privately owned land that is occupied, the landowner must be notified, and their consent obtained before the title is granted. Moreover, under section 107 of the NMMA 2007, if the government revokes a right of occupancy on any land, the titleholder must pay the government the amount of any compensation awarded to the community affected by the mining activity on the land. This provision is significant because it indicates that the government recognizes the importance of compensating communities for any adverse effects of mining activities. However, despite these provisions, the mining industry in Nigeria is often associated with environmental degradation, human rights abuses, and conflicts with host communities.

The situation is similar to the experiences of communities affected by oil extraction activities, particularly those involving multinational oil companies such as Shell. The mining and oil extraction industries have been associated with environmental degradation, human rights abuses, and conflicts with host communities in Nigeria. Communities living close to mining and oil extraction sites often face similar challenges, including land dispossession, pollution of air and water, loss of livelihoods, and social disruptions.⁶⁹ In many cases, the affected

⁶⁷ Section 118 NMMA 2007.

⁶⁸ Sections 100, 111, 114, 115 and 118 of the NMMA 2007.

⁶⁹ 'Niger Delta Negligence' (Amnesty International, 6 June 2021) <<
<https://www.amnesty.org/en/latest/news/2018/03/niger-delta-oil-spills-decoders/>> >accessed 28 June 2023

communities have raised concerns about inadequate compensation, lack of meaningful consultation and participation in decision-making processes, and the negative impacts on their health and well-being. These issues have led to conflicts, protests, and legal battles as communities seek to protect their rights, demand justice, and secure fair treatment from both mining and oil companies.⁷⁰

Shell, one of the largest oil companies operating in Nigeria, has faced significant criticism and legal challenges for its activities in the Niger Delta region, where communities have experienced severe environmental damage and socio-economic hardships. The similarities between the situations faced by communities affected by mining activities and those impacted by oil extraction activities, particularly involving multinational oil companies like Shell, revolve around environmental degradation, human rights concerns, and conflicts with host communities. These shared challenges underscore the need for more robust regulatory frameworks, effective enforcement, community engagement, and accountability measures to ensure sustainable and responsible practices in both industries.

The N.M.M.A. incorporates several provisions, such as sections 111, 114, 115, and 118, which place significant obligations on mining operators to prevent environmental pollution and restore mined areas in Nigeria. The Act's underlying philosophy focuses on principles like prevention, precaution, polluter pays, mitigation, remediation, and restoration, alongside establishing a criminal penal regime. It also mandates companies involved in mineral resource exploitation to establish a tax-deductible reserve for environmental protection, mine rehabilitation, reclamation, and closure costs. The inclusion of section 30, similar to the United States superfund, may have been influenced by calls from practitioners, including Okhaevbo,

⁷⁰ 'Niger Delta Negligence' (Amnesty International, 6 June 2021) <<https://www.amnesty.org/en/latest/news/2018/03/niger-delta-oil-spills-decoders/>> accessed 28 June 2023

to create such a fund to ensure compulsory contributions corresponding to the environmental risks associated with specific development projects.⁷¹

Section 30 of the N.M.M.A. acknowledges the responsibility of mining companies and operators to allocate funds for environmental protection, mine rehabilitation, reclamation, and closure costs. While this provision aligns with sustainable development, its practical implementation poses challenges within the sector. The N.M.M.A. lacks clarity regarding oversight, percentage allocation, and contribution requirements for the reserve, creating uncertainties. It fails to address how companies without profits would contribute or if deductions would be made from negative balance sheets. Furthermore, the provision lacks clear guidelines on the utilization of the reserve for its intended purposes. These gaps hinder effective implementation, create uncertainty, and impede the enforcement of environmental protection laws. The resulting legislative uncertainty and laxity undermine genuine efforts to mitigate environmental degradation caused by mining activities in Nigeria, leading to losses for the environment and humanity.

Additionally, the Mineral and Mining Act 2007 acknowledges the difficulty of conducting mining activities without causing harm to the environment, and therefore Section 118 mandates mineral title holders to minimize, manage, and mitigate environmental damage caused by mining operations. The Act further requires that the land be rehabilitated and reclaimed to its natural state after being disturbed, excavated, explored, or mined. The Nigerian government has claimed compliance with this provision by reclaiming twenty abandoned mines in several states between 2007 and 2014.⁷² However, recent studies have shown that abandoned mines

⁷¹ V.O.A. Okhaevbo, 'Environmental Regulatory Standards: Problems of Enforcement in An Emerging Economy'. (2005) 3 Igbinedion University Law Journal, 115.

⁷² Rahma Oladosu, "Abandoned Mines: A Danger to Communities across Nigeria," Economic Confidential, April 1, 2023, <https://economicconfidential.com/2023/04/abandoned-mines-danger-communi/> accessed 2 May 2023.

are still scattered throughout the country, posing risks to the health of locals who use such sites as housing developments.⁷³ Despite this, it is important to note that this is not due to non-compliance with Section 118 but rather a lack of care and planning in past mining regulations.

Another provision for host community protection is Section 100 NMMA which provides that affected communities have the right to oppose mining activities on their land. The Act requires that consent must be obtained from landowners before mining activities can commence on their land. This means that mining operators must notify landowners of their intentions and seek their consent before commencing mining activities.⁷⁴ By granting the right to oppose mining activities, Section 100 recognizes the importance of community participation and consent in decisions directly affecting their land and livelihoods. It empowers host communities to voice their concerns and interests, allowing them to play an active role in determining whether mining operations should proceed. This provision serves multiple purposes. Community participation in mining is crucial. It protects host communities' land rights, fosters inclusive decision-making with operators, and minimizes conflicts by prioritizing consent and community input through a legal framework. However, it is important to note that the practical implementation and effectiveness of Section 100 may vary in different contexts. Challenges arise in ensuring meaningful community participation, obtaining genuine consent, and addressing power imbalances between the mining operators and the host communities. Therefore, it is crucial to properly enforce and monitor this provision to ensure that the rights and interests of the host communities are adequately protected throughout the mining process. As Nigeria's mining sector develops, it remains to be seen if the Act's provisions will be fully enforced, especially as significant players begin large-scale mining operations.

⁷³ Rahma Oladosu, "Abandoned Mines: A Danger to Communities across Nigeria," Economic Confidential, April 1, 2023, <https://economicconfidential.com/2023/04/abandoned-mines-danger-communi/> accessed 2 May 2023.

⁷⁴ Section 100 NMMA 2007.

3.4.3.

Areas of Concern

The Mineral and Mining Act 2007 in Nigeria incorporates provisions intended to safeguard the rights and interests of communities impacted by mining operations. These provisions acknowledge the importance of addressing the concerns and needs of host communities. However, there are ongoing concerns regarding the wording and effectiveness of these provisions, as well as doubts about their ability to protect the rights of host communities effectively. Some argue that the language used in the Act may be ambiguous or open to interpretation, potentially leading to inconsistencies in implementation.⁷⁵ Additionally, there are questions about the extent to which these provisions are enforced and whether they provide sufficient mechanisms for addressing the diverse social, economic, and environmental impacts experienced by host communities. It is important to ensure that these provisions are adequately refined, clarified, and effectively enforced to protect host communities' rights and interests and promote sustainable and responsible mining practices in Nigeria.⁷⁶

The NMMA 2007 protects landowners by preventing their forceful eviction from their land without their consent and fair compensation for the economic benefits of mining. This is a common issue in many countries, and the 2007 Act attempts to address it by requiring consent before mining can commence. However, there are concerns regarding how effectively these provisions protect host communities. Rural landowners in Nigeria, where mining activities occur, are often uneducated and may not fully understand what they consent to. This can make it easier for mining operators with more resources and negotiating skills to obtain consent.⁷⁷

Rural land ownership in Nigeria tends to be communal, leading to situations where only some

⁷⁵ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community under Nigerian Mineral and Mining Act 2007 to Foster Sustainable Community Development' 14 (2023) NAUJILJ 1.

⁷⁶ Chukwudi Ofoegbu, E I Akubugwo, Chioma C Dike, H C Maduka, Chidiebere E Ugwu, & Nwogo A Obasi, 'Effects of Heavy Metals on Soil Enzymatic Activities in the Ishiagu Mining Area of Ebonyi State- Nigeria' (2013) 5 Journal of Environmental Science, Toxicology & Food Technology 66, 69.

⁷⁷ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community under Nigerian Mineral and Mining Act 2007 to Foster Sustainable Community Development' 14 (2023) NAUJILJ 1,6.

community members are consulted while others are not and maybe forcefully evicted from their land.

The 2007 Act does not provide specific guidelines on obtaining consent, further weakening its protection.⁷⁸ This needs to be clarified as it makes it difficult to obtain consent from members of the host communities. In Zimbabwe, for example, section 31(1) (a) of the Mines and Minerals Act Chap 21:05 states that no prospecting operations should be carried out on any holding or private land except: with the consent in writing of the owner or of some person duly authorised thereto by the owner or, in the case of a portion of Communal Land, by the occupier of such portion, or upon any State land except with the consent in writing of the owner or of some person duly authorised thereto by the owner.⁷⁹ This provides greater clarity in terms of consent than the Nigerian law on consent acquisition.

The analysis above clearly indicates that the NMMA 2007 represents a significant improvement from the previous regulations regarding environmental protection. The Act's strong language regarding environmental regulation demonstrates that Nigeria recognizes the importance of balancing economic development with environmental protection, as emphasized in the Rio Convention.⁸⁰ The Rio Convention adopted during the Earth Summit in Rio de Janeiro in 1992 underscores the need for countries to integrate environmental considerations into their decision-making processes, including managing natural resources and preventing

⁷⁸ According to Section 100 of the 2007 Act, prior to granting a licence, notice of the application must be given to the owner or occupier of any private land included in the area in question, as well as any land subject to a state lease or right of occupancy, in the manner specified by Section 100. If this is not done, the licence may be granted without including the private land in question.

⁷⁹ Bassey Udo, "How Corrupt Govt Officials Helped Ruin Nigeria's Mining Sector," Premium Times - Nigeria leading newspaper for News, investigations (Premium Times), <<https://www.premiumtimesng.com/news/headlines/212822-interview-corrupt-govt-officials-helped-destroy-nigerias-mining-sector-minister.html> > accessed May 2, 2023.

⁸⁰ 'United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992' (United Nations) <<https://www.un.org/en/conferences/environment/rio1992>> accessed 1 October 2023.

environmental degradation.⁸¹ The Nigerian mining regulations align with the principles of the Rio Convention, which emphasize sustainable development and environmental protection. The Act demonstrates Nigeria's commitment to fulfilling its obligations under the Rio Convention by recognizing the need to balance economic development with environmental concerns. This recognition highlights the importance of integrating environmental considerations into mining practices and reflects Nigeria's dedication to sustainable development. Despite these positive developments, the enforcement of laws in Nigeria remains a significant challenge. It also remains ineffective in the protection of host community rights. The lack of enforcement policies is a significant area of concern within the NMMA 2007. The Act has encouraged the participation of artisanal and small-scale miners in the mining sector without providing adequate guidelines and policies to regulate and monitor their activities.⁸² This has resulted in a proliferation of illegal mining operations carried out by inexperienced and profit-driven miners, leading to negative consequences for many communities and violating their rights. The problem stems from the failure to impose appropriate penalties and sanctions for environmental law violations.⁸³ Without strong enforcement and consequences for illegal activities, miners have little incentive to prioritize environmental protection. This lack of community control, combined with inadequate sanctions for unlawful activities and the failure of enforcement agencies to monitor compliance with mining regulations, further undermines the rights of host communities towards sustainable community development.

There are certain deficiencies in the penalties prescribed for offences, which undermine their effectiveness as deterrents. In some sections, specific punishments for offences are not

⁸¹ 'United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992' (United Nations) <<https://www.un.org/en/conferences/environment/rio1992>> accessed 1 October 2023

⁸² Sections 46, 47, and 48 NMMA 2007.

⁸³ 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.leadjournal.org/content/a1709.pdf>> accessed 17 June 2023

explicitly stated, creating ambiguity and the potential for offenders to escape punishment. This lack of regulatory certainty and specificity can lead to doubts in the minds of stakeholders, including judges, and allow for discretionary judgments. For instance, the "illegal mining" offence is created in Section 131 of the N.M.M.A., but no specific penalty is specified for this offence. This means that illegal miners could potentially go unpunished depending on the circumstances. Section 133, which outlines the punishments for offences created by Section 131, also fails to specify the penalty for the offense of illegal mining. This ambiguity gives courts discretion to determine the appropriate punishment based on presented facts and arguments.

Furthermore, it is observed that the penalties prescribed in Section 133 are relatively high, making it challenging to file cases and prosecute offenders in court. It is worth noting that, since the enactment of the N.M.M.A in 2007, no reported or known cases have been filed to prosecute offenders under this section, resulting in lack of convictions. This situation not only undermines the deterrent effect of the law but also wastes the legislative resources expended in its creation. In addition to the deficiencies in penalties, the absence of clear punishment for illegal mining may contribute to environmental degradation and foster corruption, considering Nigeria's prevailing high rate of corruption.

The inadequate and ambiguous penalties, coupled with the lack of enforcement and prosecution, undermine the effectiveness of the N.M.M.A. In deterring illegal mining and protecting the environment. Legislative certainty, specificity, and the enforcement of penalties are crucial for ensuring compliance and addressing the issues associated with illegal mining in Nigeria.

Another significant challenge arises from the lack of strong and independent regulatory agencies established under the NMMA.⁸⁴ The functioning of these agencies is characterized by a high level of autonomy, which has resulted in decay and monopolistic practices. The Act assigns specific roles and responsibilities to various offices, including the MCO, MID, and MECD. The MCO is responsible for maintaining cadastral registers, administering mineral titles, and handling applications related to mineral titles.⁸⁵ The MID supervises reconnaissance, exploration, and mining operations to ensure compliance with the Act. The MECD is responsible for monitoring and enforcing environmental requirements. While these agencies are meant to operate independently, the Act is silent on crucial aspects such as appointments, tenure, removal procedures, and qualifications for these positions. As a result, individuals can be chosen arbitrarily for these roles, leading to their loyalty being directed towards the appointing minister rather than impartial enforcement. These gaps and inconsistencies have hindered the adequate performance of regulatory agencies, fostering bribery, corruption, and a lack of accountability, ultimately paralysing the mining system.⁸⁶

In addition to the provisions for protecting the environment and the rights of host communities, the NMMA 2007 also includes requirements for establishing Community Development Agreements (CDAs) between mining companies and host communities. These agreements aim to ensure mining activities benefit the local communities and promote sustainable development.

3.4.4. Host Communities and Compulsory Contract Requirements

Community Development Agreements (CDAs) are agreements between mining companies and host communities to offer certain social facilities to support the host community's economic,

⁸⁴ Section 5 NMMA 2007.

⁸⁵ Section 16 NMMA 2007

⁸⁶ Attorney General Plateau State v Goyol (2007) 16 NWLR (pt 1059) 57 at 94-96.

social and general development.⁸⁷ The NMMA 2007 made the Community Development Agreement a compulsory requirement that every Nigerian mining company must carry out before they are allowed to undertake any exploration activity.⁸⁸ The Act additionally mandates that the mining company must provide scholarships to the host community, along with technical training, creation of employment opportunities and support for small-scale businesses.⁸⁹ The CDA clause is unique because of the level of responsibility it places on businesses for community wellbeing.

Statutorily imposing a CDA on the holder of a mineral title is intended to facilitate communication between host communities and mining firms, so that both parties have a shared commitment to the mining operation.⁹⁰ This provides for reciprocal communication between the parties before the start of the mining activities.⁹¹ The CDA is a prerequisite for obtaining a licence.⁹² However, many Nigerian communities are unaware of this requirement under the NMMA of 2007.⁹³ As a result, mining firms use this lack of information to deny host communities this legal right.⁹⁴

3.4.4.1 Main provisions

The Community Development Agreement (CDA) is an enforceable agreement that addresses various issues related to host communities' social, economic, cultural, and environmental development. It serves as a tool for community engagement and development, aiming to prevent or minimize conflicts and ensure the well-being of local communities while preserving

⁸⁷ Section 116 (1) Nigeria's Minerals Act 2007.

⁸⁸ Section 116 (1) Nigeria's Minerals Act 2007.

⁸⁹ Section.116 (3) (a-e) of Nigeria's Minerals Act 2007.

⁹⁰ Section 117 NMMA 2007.

⁹¹ *ibid.*

⁹² Section 116 (1) of the NMMA.

⁹³ Section 116 (1) of the NMMA.

⁹⁴ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 *Journal for Sustainable Development Law And Policy* 98, 99.

the environment. Through the CDA process, host communities can identify and manage their interests and expectations regarding mining projects. They can also determine how these projects will contribute positively to their social and economic growth while safeguarding the well-being of the present and future generations. Notably, the CDA allows host communities to access benefits from the mineral resources found on their lands, ensuring they are not excluded or overlooked in terms of developmental benefits.⁹⁵

To ensure meaningful participation and effective implementation, the active involvement of the community is crucial in the Community Development Agreement (CDA) process. Section 117 of the NMMA emphasizes the need for the CDA to specify appropriate frameworks for consultation and monitoring between the licensee/lessee and the host community. This includes establishing channels through which the community can participate in planning, managing, monitoring, and implementing the activities outlined in the agreement.

The Nigerian Minerals and Mining Act recognizes the impact of solid minerals mining on host communities and includes provisions for Community Development Agreements (CDAs).⁹⁶ These agreements aim to protect the environment from the negative effects of mining and promote sustainable development within the communities. Before initiating any development activities within the leased area, the holder of a Mining Lease, Small Scale Mining Lease, or Quarry Lease must establish an agreement with the host community, known as a Community Development Agreement or a similar agreement. This agreement ensures that social and economic benefits are transferred to the community.⁹⁷

⁹⁵ Business day domains@gmail.com, “Legal Regime for Community Development Agreement under the Minerals and Mining Act 2007 (1),” *Businessday NG*, March 23, 2017, <<https://businessday.ng/analysis/article/legal-regime-community-development-agreement-minerals-mining-act-2007-1/>> accessed 17 June 2023.

⁹⁶ Sections 116 & 117, Nigerian Minerals and Mining Act 2007.

⁹⁷ Sections 116 of the Nigerian Minerals and Mining Act 2007.

The NMMA emphasizes the inclusion of specific commitments in the Community Development Agreement (CDA) to ensure the project's positive impact on the community's sustainability. These commitments encompass various aspects, such as educational opportunities through scholarships, apprenticeships, technical training, and employment opportunities for local community members. Additionally, the CDA should outline provisions for financial and other forms of support towards infrastructural development and the maintenance of community services like roads, water, and power supply. It should also address the promotion of small-scale and micro enterprises, agricultural product marketing, and the implementation of socio-economic and environmental management practices. Furthermore, the Act stipulates that the CDA should be a legally binding agreement between the involved parties and subject to periodic review every five years.⁹⁸

Furthermore, if the host community and the licensee/lessee are unable to reach a consensus after multiple attempts before work commence, Section 117 states that the matter should be referred to the Minister for resolution. Once an agreement is reached, it becomes legally binding for both parties and must be fully enforced. The CDA is subject to review every five years to ensure its continued relevance and effectiveness.⁹⁹ This approach ensures that human rights standards and principles are upheld, recognizing the host community as rightful rights-holders and emphasizing that the fulfilment of their rights to sustainable community development is an obligation of the duty-bearers rather than an act of charity.

The active and meaningful participation of the people is crucial in utilizing the Community Development Agreement (CDA) as a tool for development. Section 117 of the Act recognizes the importance of this participation by stipulating that the CDA should specify appropriate frameworks for consultation and monitoring between the licensee/lessee and the host

⁹⁸ Section 116 (4) NMMA.

⁹⁹ Section 117, Nigerian Minerals and Mining Act, No. 20, 2007.

community. Furthermore, in situations where the host community and the licensee/lessee fail to reach a conclusion after multiple attempts before work commences, Section 117 states that the matter should be referred to the Minister for resolution. Once an agreement is reached, it becomes legally binding on both parties and must be fully enforced. The CDA is subject to review every five years to ensure its continuous effectiveness. The host community is recognized as rightful rights-holders, and the fulfilment of their rights to sustainable community development becomes the obligation of the duty-bearers, rather than an act of charity. Consequently, the licensee/lessee is held responsible for protecting and developing the host community's environment. In the event of the duty-bearer's failure to fulfil their obligations, the host community retains the right to seek justice by challenging and holding them accountable for non-implementation of the CDA.¹⁰⁰

The Nigerian Minerals and Mining Regulations, which were issued in accordance with the Mining Act, contain extensive provisions regarding Community Development Agreements (CDA).¹⁰¹ These provisions largely reinforce the corresponding provisions in the Act or address potential gaps that could hinder the implementation of the Act. To enhance the significance of CDAs, the Regulations stipulate that a mineral title holder must submit a Community Development Action Plan to the Mines Environmental Compliance Department. This plan is required to outline the implementation strategy for addressing social concerns raised in the Environmental Impact Assessment Study and the contents of the Community Development Agreement.

A CDA is only required under section 116 of the 2007 Act, where the project developer holds a mining lease. As a result, an exploratory title holder is only liable to compensate the

¹⁰⁰ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community under Nigerian Mineral and Mining Act 2007 to Foster Sustainable Community Development' 14 (2023) NAUJILJ 1.

¹⁰¹ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community under Nigerian Mineral and Mining Act 2007 to Foster Sustainable Community Development' 14 (2023) NAUJILJ 1.

landowner for immediate loss caused by their activity under Section 113 of the Act rather than for future losses as would have been covered by a CDA. This is regrettable given that mining firms in Nigeria can explore for up to seven years, and it also does little to protect the interests of local mining communities.

3.4.4.2. Limitations to Realising the CDA's Ideals

Implementing Community Development Agreements (CDA) has significantly shifted the dynamics between government agencies, mining corporations, and host communities. It has effectively broken down the barriers that often exist between these parties. In the past, there has been a disconnect between powerful mining corporations and rightfully suspicious and uninformed host communities. This represents a notable departure from the prevailing practice in Nigeria, where corporations have historically paid more attention to the concerns of mining communities rather than others.

However, the CDA is not without its limitations. It is asserted that the underlying intention of the Regulation is to create a favourable environment for solid minerals mining and ensure environmental protection. Land and resource acquisition, including control, are known causes of communal conflicts and underdevelopment in many parts of the world, especially in Africa.¹⁰² Therefore, the Regulation includes provisions to address these issues. However, disputes over resources and boundaries between communities can escalate into crises and wars, posing security and economic challenges.¹⁰³ Considering the cross-border effects of mining on interconnected communities and the livelihoods of host community members, other

¹⁰² O Fagbohun, 'Environmental Degradation and Nigeria's National Security: Making Connections.' (2011). In: E Azinge, E. & Fatima Bello, (eds.) Law and Security in Nigeria, Nigerian Institute of Advanced Legal Studies, Lagos, 360.

¹⁰³ O Fagbohun, 'Environmental Degradation and Nigeria's National Security: Making Connections.' (2011). In: E Azinge, E. & Fatima Bello, (eds.) Law and Security in Nigeria, Nigerian Institute of Advanced Legal Studies, Lagos, 360.

neighbouring communities may also be affected. The effects can be localized to communities within, surrounding, or adjacent to the mining area. In such cases, the definition of a host community as the community closest to the mineral title area may not be appropriate. It may lead to injustices for communities affected by the negative impacts of mining. Regulation 193(5)(c) and 193(5)(b) of the Nigerian Minerals and Mining Regulations may seem like a solution, but they may not effectively address disputes and crises that have already emerged before the Minister's intervention. It is, therefore, necessary to redefine the term "host community" or expand the scope of beneficiaries to include similarly affected communities.

Most importantly, there is no provision in the NMMA 2007 defining who, within the community, is supposed to control the money meant for the CDA.¹⁰⁴ The assumption is that mining companies will deal with traditional or community leaders.¹⁰⁵ In the Niger Delta, there have been instances where community leaders have failed to account for the contents of Community Development Agreements (CDA) and properly manage the associated benefits for the community. Reports of mismanagement, embezzlement, and diversion of funds intended for community development projects outlined in the CDA have emerged. This lack of transparency and accountability, coupled with inadequate oversight mechanisms, has hindered the realization of the region's intended socioeconomic and infrastructural development. These experiences emphasize the importance of establishing robust accountability measures and involving the wider community in decision-making processes to manage CDA funds and promote sustainable development effectively. However, the Niger Delta experience has shown

¹⁰⁴ Eyene Okpanachi, 'Confronting the Governance Challenges of Developing Nigeria's Extractive Industry: Policy and Performance in the Oil and Gas Sector' (2011) 28 *Review of Policy Research* 25, 27.

¹⁰⁵ Adedoyin Akinsulore, 'The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria' (2016) 7 *Journal of Sustainable Development Law and Policy* 97,102.

that community leaders fail to account for the contents of the CDA and its benefit for the community.¹⁰⁶

The CDA also suffers from the inability of the host communities to negotiate effective contracts with the mining companies. The original drafters of the CDA may have believed that the mining companies and host companies would be able to negotiate, draft documents and reach favourable agreements. However, this is not always the case, as most host communities are within the rural parts of Nigeria, often neglected, poverty-stricken, and left in a state of illiteracy and ignorance so the community members know very little or nothing about the nature of mining activities.¹⁰⁷ This, in turn, affects the ability of the host communities to make informed decisions that protect their rights and advance the sustainability of their communities.¹⁰⁸

3.4.4.3 Pursuing Better CDAs

While respecting the local state hierarchy is important, it is also important to involve most of the host community members regardless of social and economic classes.¹⁰⁹ Involving a broad representation of host community members in the Community Development Agreements (CDA) decision-making process is essential for various reasons. It promotes inclusivity by considering the perspectives and needs of individuals from different social and economic classes within the community. This ensures that no particular group is excluded and allows for a more comprehensive understanding of community concerns. Furthermore, involving a wide

¹⁰⁶ *ibid.*

¹⁰⁷ Adedoyin Akinsulore, 'The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria' (2016) 7 *Journal of Sustainable Development Law and Policy* 97,100.

¹⁰⁸ Section 116 (1) Nigeria Minerals and Mining Act 2007.

¹⁰⁹ Isaac O Albert, Nathaniel Danjibo, & Olumayowa Albert, 'Back to the Past: Evolution of Kidnapping and Hostage Taking in the Niger Delta, Nigeria' (2020) 11 *Beijing Law Review* 211, 226.

range of community members enhances the legitimacy of the CDA, as it creates a sense of ownership and participation among the community. By preventing the concentration of power in the hands of a few individuals or community leaders, involving a diverse group helps mitigate the risks of corruption and ensures that the CDA funds are utilized for the benefit of the entire community. Lastly, involving a majority of community members maximizes the benefits of the CDA by addressing different groups' specific needs and priorities, contributing to sustainable development and overall well-being. Overall, the involvement of host community members from various backgrounds ensures transparency, accountability, and the holistic development of the community.

For instance, there are unreported cases of the Community development agreement including landowners and excluding women in decision-making.¹¹⁰ This omission has led to many members of the host communities regarding themselves as being removed from the benefits of mining in their domain, thereby leading to apathy and aggression.¹¹¹ It has been argued that, when members of host communities are identified and meaningfully involved in the early stages of mineral exploration, it gives them a sense of ownership of the process, which possibly encourages them to engage in future community programmes.¹¹² The CDA does not clearly articulate how core host community members can engage in the mining process. This does not mean that the CDA is useless as a regulatory tool, rather this thesis will argue that CDAs should be signed and used within the confines of the proposed integrative Stakeholder Model within this thesis.

¹¹⁰ Isaac O Albert, Nathaniel Danjibo, & Olumayowa Albert, 'Back to the Past: Evolution of Kidnapping and Hostage Taking in the Niger Delta, Nigeria' (2020) 11 Beijing Law Review 211, 226.

¹¹¹ *ibid.*

¹¹² Graham Davis, 'The Mineral Sector, Sectoral Analysis, and Economic Development' (1998) 24 Resource Policy, 217, 220; DA Humphreys, 'Business Perspective on Community Relations in Mining' (2000) 26 Resource Policy, 127, 130.

3.5

Minerals and Mining Regulations 2011

The Nigerian Minerals and Mining Regulations 2011, issued by the Federal Ministry of Mines and Steel Development, aim to bring about a more organized and transparent solid minerals sector in Nigeria. The regulations were introduced to eliminate the arbitrary granting of mineral titles and establish a framework that promotes accountability. The Nigerian Minerals and Mining Regulations (referred to as "the N.M.M.R") are designed to implement the provisions of the N.M.M.A and establish guidelines for the regulation of mining and exploitation activities.¹¹³ These regulations outline procedures and processes to govern mining operations, focusing on ensuring the safety of workers, the public, and the mining environment. They also provide frameworks for enforcing compliance with the Act and maintaining regulatory standards.¹¹⁴

They provide guidelines, procedures, and processes for the acquisition of mineral titles, aligning with the provisions of the Minerals and Mining Act No. 20 of 2007. These regulations aim to ensure a systematic and regulated approach to mineral resource management in the country.¹¹⁵ The Mineral and Mining Regulation 2011 in Nigeria aims to provide a legal framework for the exploration and exploitation of minerals in the country while protecting the environment and the rights of affected communities. According to the World Bank, mining minerals in Nigeria has accounted for less than 05% of the GDP in recent years, and the government aims to increase it to 3% by 2025.¹¹⁶ Nigeria reformed its mining laws in 2007 and again in 2011, culminating in the Minerals and Mining Regulations of 2011 to achieve this. There are various forms of licenses obtainable under this regulation. These include the

¹¹³ Regulation 3, Nigerian Minerals and Mining Regulations, 2011.

¹¹⁴ Regulation 3(a), Nigerian Minerals and Mining Regulations, 2011.

¹¹⁵ Gbenga Biobaku, 'The New Minerals and Mining Regulations, 2011', (Gbc-Law, 2021) <<http://www.gbc-law.com/assets/publications/new-minerals-and-mining-regulations-2011.pdf>> accessed 5 February 2021.

¹¹⁶ Gbenga Biobaku, 'The New Minerals and Mining Regulations, 2011', (Gbc-Law, 2021) <<http://www.gbc-law.com/assets/publications/new-minerals-and-mining-regulations-2011.pdf>> accessed 5 February 2021.

reconnaissance permit, which is issued for one year and may be renewed if an application is approved.¹¹⁷ The permit allows the owner to conduct surveillance and inspection activities in an environmentally and socially responsible way.¹¹⁸ An exploration license grants the holder of this license the right to explore the land within a designated area.¹¹⁹ This license is issued for an area not exceeding 200 square kilometres.¹²⁰ The license usually lasts three years, after which it can be renewed.¹²¹ Additionally, a mining lease gives the right to access and enter the mining lease area without restrictions on mineral exploration activities.¹²²

Affected communities have the right to oppose mining activities in their territories and can do so by voicing their concerns to the government and mining companies.¹²³ They also have the right to control mining activities in their territories through negotiation and consultation with mining companies.¹²⁴ In terms of benefits, affected communities have the right to receive adequate compensation for the use of their lands and resources for mining activities. The regulation also mandates that mining companies must provide social amenities and infrastructure to impacted communities.¹²⁵ However, the effectiveness of these regulations in protecting the rights of affected communities and the environment depends on their enforcement. The government must ensure that mining companies comply with the regulation and adequately compensate impacted communities. Additionally, affected communities must be involved in decision-making processes and given a voice in the development of mining projects that impact their lives and livelihoods.

¹¹⁷ Sections 32 Minerals and Mining Regulations 2011.

¹¹⁸ Sections 32 Minerals and Mining Regulations 2011.

¹¹⁹ Sections 24 Minerals and Mining Regulations 2011.

¹²⁰ Sections 24 Minerals and Mining Regulations 2011.

¹²¹ Sections 35 Minerals and Mining Regulations 2011.

¹²² Sections 56 and 57 Minerals and Mining Regulations 2011.

¹²³ Regulation 11 The Minerals and Mining Regulations, 2011.

¹²⁴ Section 154 Minerals and Mining Regulations 2011.

¹²⁵ Section 154 Minerals and Mining Regulations 2011.

3.5.1

Central Provisions

The legislation obligates mineral title holders to pay rent for the right to the title. Also, the holder is expected to give an account of the minerals they have explored, confirm they have used the land only for the purpose for which it was leased and abide by the provisions of the Act.¹²⁶ Finally, the mineral titleholders must adhere to any CDA to which he is a party and abide by all environmental, health and safety provisions provided for in the Act.¹²⁷

In terms of the sanctions imposed for breaching the act and regulations, the Mining Cadastre Office (MCO) may revoke a mineral title for any reason specified in the Act. A revocation becomes effective with the Minister's written permission to the MCO, giving 30 calendar days' notice of intention to revoke the mineral title. The revocation notice provides details and reasons for the revocation, allowing the holder to correct the breach and save the title.¹²⁸

The regulation states that the minister will set up a committee to resolve any disagreement or conflict between mineral title holders and non-applicants or other third parties. If the parties are unsatisfied with the minister's decision, they can appeal it at the Federal High Court.¹²⁹

The N.M.M.R also outlines the responsibilities of the Ministry of Mines and Steel Development, which includes ensuring compliance with the Act and Regulations.¹³⁰ The Ministry is empowered to arrest individuals suspected of committing offenses under the Act and Regulations without a warrant. Additionally, the Ministry has the authority to issue written orders suspending exploration or mining operations if they pose a danger or are deemed defective.¹³¹ Furthermore, the N.M.M.R mandates the Ministry to periodically publish notices

¹²⁶ Section 154 (f) Minerals and Mining Regulations 2011.

¹²⁷ Section 154 (a) Minerals and Mining Regulations 2011.

¹²⁸ Section 94 of The Minerals and Mining Regulations, 2011.

¹²⁹ Isaac Onyeyirichukwu Chukwuma, 'Legal Regulation as Driver for Sustainable Development of Nigeria's Solid Mineral Sector' (2020) 5 *Advances in Science, Technology and Engineering Systems Journal* 769, 772.

¹³⁰ Regulation 6(1)(c)(i) The Minerals and Mining Regulations, 2011.

¹³¹ Regulation 6(1)(c)(i) The Minerals and Mining Regulations, 2011.

in national newspapers regarding the management of tailings by leaseholders. However, it is uncertain if the Ministry has initiated the expected advertising as specified in the Regulation. Failure to enforce laws creates societal problems and signifies a country in crisis. Non-enforcement wastes taxpayers' money and resources spent on legislation and regulations, erodes societal values, promotes corruption, and hampers a nation's development. This situation reflects the current challenges in safeguarding the environment from degradation caused by solid minerals mining, where laws, regulations, and policies are not effectively implemented.

The N.M.M.R also includes provisions for compensating landowners, occupants, and individuals who experience damage, loss, or disturbance of their rights due to mining operations.¹³² The assessment of fair and appropriate compensation is outlined in accordance with Section 108 of the N.M.M.A. This assessment is conducted by the Mining Cadastre Office (M.C.O) in consultation with the State Mineral Resources and Environmental Management Committee and a government-licensed surveyor. Furthermore, mineral title holders are obligated to fulfil specific responsibilities, which include raising awareness among host communities about the project's benefits and implementing measures to prevent the hazards and risks associated with mining operations, notably pollution and environmental degradation.

Regulation 20(1)(i) may appear to contradict sections 131(a) and (d) of the NMMA when it comes to establishing sanctions for the industry. The language used in the regulation, which limits the penalty not to exceed the maximum penalty specified in the NMMA and the NMMR, contradicts the provisions of the Act. The N.M.M.A. defines such activities as criminal

¹³² Regulation 11 The Minerals and Mining Regulations, 2011.

offenses, including exploitation, mining, or selling minerals without the necessary mineral title or license.¹³³

3.5.2 Limitations in Enforcement

The Minerals and Mining Regulations do not include oversight by the supervising ministry, and they do not require a mineral title holder to list any community leaders who might be influencing their decision.¹³⁴ Furthermore, it is important to note that Nigeria does not have a state mineral law in place, and there have been no apparent efforts to enact one at the time of the research. This absence of a state mineral law makes it challenging to effectively regulate and control exploration activities to prevent profit-driven practices that disregard the full execution of the law. Consequently, the supervision and enforcement of mineral laws become difficult to achieve, leading to a lack of compliance by mining companies in Nigeria. Exploiting these gaps in the mining legislation, some mining companies have commenced operations without engaging in proper negotiations for a Community Development Agreement (CDA) with the host communities. This situation highlights the need for a more comprehensive legal framework that addresses these issues and ensures the proper engagement and participation of host communities in mining activities. Alternatively, they select a few community leaders and pay them without the people's knowledge.¹³⁵ As such, this Act does not protect the host community's rights. It fails to provide for prior consultation with host communities, which is very important to the host communities.

The Act also fails to provide for how the rights to life, health and food security of host communities will be protected in the exploration process by mining companies. In this regard,

¹³³ Section 131(a) &(d), Nigerian Minerals and Mining Act, No. 20, 2007.

¹³⁴ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 Journal for Sustainable Development Law and Policy 98, 100.

¹³⁵ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 Journal for Sustainable Development Law and Policy 98, 100.

Nigerian mining regulations have proven to be utterly useless. Even though the government enacts laws and establishes enforcement organisations to control, oversee and keep an eye on Nigeria's oil and gas sector,¹³⁶ these organisations typically have inadequate funding, inadequate tools and, most importantly, corrupt employees who lack integrity, regulatory competence, and knowledge. The non-enforcement of regulatory legislation is a result of Nigeria's inadequate regulatory authorities. This explains why Nigerian mining firms continue to act irresponsibly unmitigated.¹³⁷ Since they fear alienating oil investors, successive Nigerian governments have consistently disregarded, rejected, and failed to demonstrate the political will to implement environmental liability rules.¹³⁸

The Mineral and Mining Regulation 2011 in Nigeria aims to provide a legal framework for the exploration and exploitation of minerals in the country while protecting the environment and the rights of affected communities. However, mining activities can still have negative impacts on the environment and the human rights of communities.

3.6 Host Communities and the Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007

Although NEITI Act 2007¹³⁹ does not pertain specifically to the solid minerals sector, it is a significant factor in the extractive industry regulatory community. It promotes transparency in the Nigerian extractive industry and is crucial to the Nigerian government's anti-corruption regulations.¹⁴⁰ The Nigerian legislative drafters adopted the Extractive Industries Transparency Initiative (EITI) to promote accountability and transparency in oil, gas, and mineral mining

¹³⁶ Evaristus Oshionebo, 'Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria's Oil and Gas Industry' (2007) 15 *African Journal of International and Comparative Law* 107, 110.

¹³⁷ Kevin Ukeomure Udungeri, Miebaka Nabiebu and Okor Edet Efombruh, *supra* (note 1241) 29.

¹³⁸ *ibid.*

¹³⁹ The Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007.

¹⁴⁰ Amanze Ejiogu, Chibuzo Ejiogu and Ambisisi Ambituuni, 'The Dark Side of Transparency: Does the Nigeria Extractive Industries Transparency Initiative Help or Hinder Accountability and Corruption Control?' (2019) 51 *The British Accounting Review* 100811, 100816.

countries. Nigeria was the first to disclose its interest in adopting the EITI principles,¹⁴¹ officially enacted in Nigeria in 2007.¹⁴²

3.6.1 EITI Principles

The EITI is a voluntary global initiative that aims to improve the management of natural resource wealth in countries with abundant resources by promoting transparency in resource revenue.¹⁴³ It was initially introduced in 2002 with the support of the British Government led by Prime Minister Tony Blair. The initiative gained momentum and was officially launched at a global conference in London in 2003. Starting with four pilot countries in 2004, it has attracted participation from 33 resource-rich countries as of December 2010, each at different stages of implementation. In this section, we provide a brief overview of the global design of the EITI as a background to the specific country case chosen for this study.

The UK Government greatly influenced the creation of the EITI under Tony Blair, often referred to as the Tony Blair Initiative or the British Government Initiative.¹⁴⁴ The EITI is a collaborative effort involving governments, companies, and civil society to ensure that natural resources benefit everyone.¹⁴⁵ Countries whose extractives industry contributes up to 25% of their GDP are encouraged to adopt the initiative. Due to the significant investments involved, the extractives sector and construction are considered highly susceptible to corruption. While participation by governments in the EITI is voluntary, it is mandatory for all companies and

¹⁴¹ Extractive Industries Transparency Initiative, 'EITI Standards 2019' (2019) <<https://eiti.org/document/eiti-standard-2019>> accessed 20 February 2021.

¹⁴² P Eigen 'Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry' (2006) 29 *Houston Journal of International Law* 327.

¹⁴³ Extractive Industries Transparency Initiative, 'EITI Standards 2019' (2019) <<https://eiti.org/document/eiti-standard-2019>> accessed 20 February 2021.

¹⁴⁴ The management of the EITI was initially overseen by the DFID (Department for International Development) from its inception until 2007. Subsequently, the EITI established its own secretariat based in Oslo, Norway.

¹⁴⁵ Extractive Industries Transparency Initiative, 'EITI Standards 2019' (2019) <<https://eiti.org/document/eiti-standard-2019>> accessed 20 February 2021.

agencies within implementing countries. The EITI is guided by twelve principles and six criteria agreed upon and endorsed by government, business, and civil society participants at a global conference in 2005.¹⁴⁶ The EITI Principles serve as the fundamental pillars of the initiative, guiding its objectives and actions. These principles can be summarized as follows: Firstly, there is a shared belief among participants that the prudent utilization of natural resource wealth can be a catalyst for sustainable economic growth and poverty reduction, but if mismanaged, it can have negative social and economic consequences. Secondly, it is recognized that the responsibility for managing natural resource wealth lies with sovereign governments, who are expected to act in the best interest of their national development.¹⁴⁷ Thirdly, it is acknowledged that the benefits derived from resource extraction are long-term and can be influenced by fluctuations in commodity prices. Transparency and accountability are emphasized through several principles. The disclosure of government revenues and expenditures over time is seen as a means to facilitate public debate and make informed decisions regarding sustainable development.¹⁴⁸ The principles further underscore the importance of accountability, with governments being accountable to their citizens for the stewardship of revenue streams and public expenditure.¹⁴⁹

3.6.2. Central provisions for the Nigeria's Extractive Industries Transparency Initiative (NEITI) Act 2007

¹⁴⁶ World Bank. 2008. Implementing the Extractive Industries Transparency Initiative : Applying Early Lessons From the Field. © Washington, DC : World Bank. <<http://hdl.handle.net/10986/6399>> accessed 17 June 2023.

¹⁴⁷ The Eiti Principles, EITI, <<https://eiti.org/documents/eiti-principles#:~:text=We%20believe%20in%20the%20principle,government%20operations%20and%20in%20business>> accessed 17 June 2023.

¹⁴⁸ The Eiti Principles, EITI, <<https://eiti.org/documents/eiti-principles#:~:text=We%20believe%20in%20the%20principle,government%20operations%20and%20in%20business>> accessed 17 June 2023.

¹⁴⁹ The Eiti Principles, EITI, <<https://eiti.org/documents/eiti-principles#:~:text=We%20believe%20in%20the%20principle,government%20operations%20and%20in%20business>> accessed 17 June 2023.

The combination of Nigeria's vast mineral wealth and the prevalence of corruption in the mining sector makes it a suitable candidate for the Extractive Industries Transparency Initiative (EITI). Transparency and accountability in the management of mineral revenues are crucial to address the misappropriation and mismanagement that has plagued the sector. In the transition to civilian rule in 1999, the Nigerian government, led by President Obasanjo, recognized the need for institutional reforms to combat corruption and enhance transparency in the mining sector. Various measures were implemented, including the establishment of anti-corruption agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC).¹⁵⁰ These reforms aimed to tackle corruption and helped Nigeria secure substantial debt relief of \$18 billion, alleviating the burden of longstanding debt. Against this backdrop, the Extractive Industries Transparency Initiative (EITI) presented an attractive opportunity for Nigeria's political leadership, including President Obasanjo, who had affiliations with the global civil society organization Transparency International. The EITI's focus on promoting transparency and accountability in the mining sector resonated with Nigeria's efforts to address corruption and ensure responsible management of its mineral resources.

The Nigerian Extractive Industries Transparency Initiative (NEITI) is the domestic implementation of Nigeria's global Extractive Industries Transparency Initiative (EITI). As such, NEITI's mandate addresses the rights and interests of the affected communities in the extractive sector, including mining.¹⁵¹ The NEITI Act sought to ensure due process and transparency in payments made by all companies within the extractive industry to the Federal Government, to monitor and ensure accountability in the Federal Government's revenue

¹⁵⁰ Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian anti-corruption statutes: an impact assessment,' (2013) 16 *Journal of Money Laundering Control*, Emerald Group Publishing Limited, 62.

¹⁵¹ Osaretin Aigbovo and Lawrence Atsegbua, 'Nigerian anti-corruption statutes: an impact assessment,' (2013) 16 *Journal of Money Laundering Control*, Emerald Group Publishing Limited, 62.

receipts from extractive industries and ensure that the money received is used for Nigeria's sustainable development. NEITI enabled the creation of a structure which includes a secretariat governed by an executive secretary and supervised by a National Stakeholder Working Group (NSWG).¹⁵² The NSWG oversees the activities of NEITI and has delegates from the government, mining companies and interest groups.¹⁵³

While the NEITI Act does not explicitly outline the development of host communities, it indirectly addresses this through its alignment with the objectives of the global Extractive Industries Transparency Initiative (EITI). Sections 2 (d) and (e) of the NEITI Act highlight the Act's purpose of ensuring accountability and transparency in the utilization of funds derived from extractive industry corporations, as well as adherence to the principles of the EITI.¹⁵⁴ The NEITI Act acknowledges the significance of community involvement in decision-making processes and mandates that stakeholders, including host communities, must be consulted before any decisions are made that may impact them. This provision allows communities to voice their concerns and request appropriate actions to address them. Moreover, the Act recognizes the rights of host communities to exercise control over mining activities taking place within their territories.¹⁵⁵ In terms of compensation, the NEITI Act acknowledges the entitlement of host communities to fair compensation for damages caused by extractive activities.

Section 2(d) is concerned with the development of host communities. Given that these revenues make up a significant portion of the nation's revenue base and budgetary income, NEITI

¹⁵² Amanze Ejiogu, Chibuzo Ejiogu and Ambisisi Ambituuni, the dark side of transparency: Does the Nigeria extractive industries transparency initiative help or hinder accountability and corruption control? 51 (2019) *The British Accounting Review* 100811.

¹⁵³ Section 6 (2)(a) NEITI Act 2007.

¹⁵⁴ Bethel Uzoma Ihugba and Sergius Nnamdi Okoro, 'Evaluation of the Legal Framework for Promoting Sustainable Development in the Extractive Host Communities in Nigeria' (2017) 8 *Journal of Sustainable Development Law and Policy* 354, 362.

¹⁵⁵ Sections 2 (d) and (e) The Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007.

oversees the application of payments following the minimum 13 per cent derivative formula specified in Section 162 CFRN. This provision is an adaptation of the principles of the EITI, which calls on member states to encourage transparency and accountability in the use of extractive industry revenue for national development.

3.6.3. Limitations for Host Communities

Although EITI¹⁵⁶ standards were transplanted into the NEITI Act 2007, when drafting the NEITI, the legislators failed to consider the existing legal, institutional, and socio-economic dimensions of transplanting the EITI standards. Despite all the optimism about the NEITI regime, it has not lived up to expectations as a practical regulatory framework for corporate responsibility. The unlimited power of the President of the Federal Republic of Nigeria to assign the power of policy direction to the NSWG has been attacked for undermining the independence and fairness of NEITI, as an honest stakeholder engagement structure.¹⁵⁷

The only power that NEITI has seemed to have is control over the payments to the government from corporations and the power to disclose where there is a default with the payments.¹⁵⁸ NEITI has had to depend on other agencies without the required skills, knowledge and legal backing to enforce sanctions against contraventions of its provisions.¹⁵⁹ These agencies include the Economic and Financial Crimes and Commission, Independent Corrupt Practices Commission and Office of the Attorney General, Federation.¹⁶⁰

The Act's coverage of host community development needs to be clarified and better understood as the lack of an explicit reference to host communities as stakeholders renders the law

¹⁵⁶ Extractive Industries Transparency Initiative, 'EITI Standards 2019' (2019) <<https://eiti.org/document/eiti-standard-2019>> accessed 20 February 2021.

¹⁵⁷ Section 6 (2) (a) NEITI Act 2007.

¹⁵⁸ Section 2 (d) and (e) NEITI Act 2007.

¹⁵⁹ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 *Journal for Sustainable Development Law and Policy* 98,101.

¹⁶⁰ *ibid.*

ambiguous. Although NEITI (the body and not the Act) does run programmes concerned with stakeholder engagement and community sensitisation, the public can only be involved once they are privy to the NEITI audit.¹⁶¹ Also, the rules followed by NEITI which govern accountability and transparency when using funds are ambiguous. The rules governing accountability and transparency in fund usage by NEITI (Nigerian Extractive Industries Transparency Initiative) suffer from ambiguity. This can be attributed to several factors, including the lack of specific guidelines, room for interpretation and discretion, limited enforcement mechanisms, complex stakeholder dynamics, and the evolving regulatory environment.

Critics argue that the NEITI Act has not improved quality of life for Nigerian citizens and has failed to combat corruption since its implementation effectively. Scholars such as Haufler¹⁶² and Okeke & Aniche¹⁶³ have pointed out these shortcomings. Ihugba¹⁶⁴ highlights several flaws in the Act, including the lack of a clear definition for the different types of audits (e.g., physical, process, financial) and the absence of specific timelines and milestones for the publication of audit reports. This criticism emphasizes the need for addressing these issues to enhance the effectiveness and impact of NEITI's efforts in promoting transparency and accountability in Nigeria's extractive industries. Furthermore, although the NEITI Act outlines its functioning of NEITI and objectives, it lacks provisions for enforcing criminal actions against institutions and individuals who fail to comply with NEITI principles. This limitation

¹⁶¹ Okeke, V.O.S. and Aniche, E.T, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector", 14 (2013) *British Journal of Arts and Social Sciences* 98,103.

¹⁶² Virginia Haufler, 'Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World' (2010) 10 *Global Environmental Politics* 53.

¹⁶³ Okeke, V.O.S. and Aniche, E.T, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector", 14 (2013) *British Journal of Arts and Social Sciences* 98.

¹⁶⁴ Bethel Uzoma Ihugba and Sergius Nnamdi Okoro, 'Evaluation of the Legal Framework for Promoting Sustainable Development in the Extractive Host Communities in Nigeria' (2017) 8 *Journal of Sustainable Development Law and Policy* 354.

undermines NEITI's ability to promote transparency and accountability effectively. Numerous violations of the Act have been reported, including discrepancies in payments between companies and government agencies, oil theft, tax evasion, underpayment of royalties, lack of collaboration, and corruption involving government agencies and officials Okeke & Aniche.¹⁶⁵ Surprisingly, no sanctions or penalties have been imposed on the non-compliant parties. Additionally, the Act fails to establish clear guidelines and best practices for transparency and accountability in the extractive industry, leaving room for companies to interpret and justify incomplete or inadequate compliance efforts. This loophole hampers stakeholders' ability to align their actions with recognized standards and undermines the overall effectiveness of NEITI.

In general, the existing evidence indicates that there are significant hurdles for NEITI resulting from Nigeria's mining industry's structure. These include deficiencies in the regulatory and management frameworks of the industry, inadequate capabilities of government organizations, and problems with oil bunkering and illicit mining.¹⁶⁶

Having examined the NEITI's efforts in enhancing transparency and accountability in Nigeria's mining sector, the attention shifts to the rights and welfare of host communities involved in mining. The subsequent section aims to examine the recurring challenges associated with enforcing mining laws in Nigeria, particularly in addressing the social and environmental consequences that mining activities impose on these communities.

3.7 Consistent Problems with Enforcing Nigeria's Mining Laws

¹⁶⁵ Okeke, V.O.S. and Aniche, E.T, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector", 14 (2013) British Journal of Arts and Social Sciences 98.

¹⁶⁶ Okeke, V.O.S. and Aniche, E.T, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector", 14 (2013) British Journal of Arts and Social Sciences 98, 105.

Even though the government enacts laws and establishes enforcement organisations to control, oversee and monitor Nigeria's mining sector, there are still issues with enforcement.¹⁶⁷ The non-enforcement of regulatory legislation results from Nigeria's inadequate regulatory authorities, which explains why Nigerian mining firms continue to act irresponsibly unmitigated.¹⁶⁸ Since they fear alienating oil investors, successive Nigerian governments have consistently disregarded, rejected and failed to demonstrate the political will to implement environmental liability rules.¹⁶⁹ Enforcing Nigeria's mining laws has been plagued by a range of consistent problems, impeding host communities' effective regulation and protection. Several key challenges can be identified.

Weak Institutional Capacity: The lack of robust institutions and inadequate enforcement mechanisms hinder the proper implementation of mining laws. Insufficient resources, technical expertise, and manpower undermine regulatory oversight and monitoring. The enforcement of environmental laws in Nigeria faces significant challenges, particularly in terms of the effectiveness of enforcement strategies.¹⁷⁰ These strategies and mechanisms are inadequate and have not been fully implemented. One example is the absence of a proper mechanism for collecting and managing environmental data from various facilities and service providers, such as waste transporters, waste vendors, landfills, companies emitting effluents, carbon footprints, sewage treatment plants, and recycling companies. These critical data collection and management systems have not been developed or implemented.¹⁷¹

¹⁶⁷ Evaristus Oshionebo, 'Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria's Oil and Gas Industry' (2007) 15 *African Journal of International and Comparative Law* 107, 110.

¹⁶⁸ Kevin Ukeomure Udungeri, Miebaka Nabiebu and Okor Edet Efombruh, *supra* (note 1241) 29.

¹⁶⁹ *ibid.*

¹⁷⁰ P.T. Akper. and Laura Ani. 'Legal and Policy Issues in the Development of Nigeria's Mining Sector: Charting the Way Forward.' (2020) *Natural Resources Law & Policy eJournal* 1, 12.

¹⁷¹ Hakeem Ijaiya, O. T. Joseph, 'Rethinking Environmental Law Enforcement in Nigeria', (2014) 5 *Beijing Law Review* 306,315.

Inconsistent Enforcement: Inconsistent application of mining laws and regulations contributes to a climate of uncertainty. This inconsistency may arise from varying interpretations of the laws by different government agencies or inadequate coordination among them. This inconsistency can stem from different interpretations of the laws by different government agencies or a lack of effective coordination among these agencies. As a result, there is a climate of uncertainty where mining companies and stakeholders are unsure about the specific requirements and standards they need to adhere to. In some cases, certain regulations may be strictly enforced by one agency while being overlooked or loosely enforced by another. This inconsistency creates a challenging environment for mining operations as it hampers predictability and can lead to confusion and conflicts between the government, mining companies, and affected communities. It also raises concerns about fairness and equitable treatment within the industry. To address this issue, it is crucial to establish clear guidelines, enhance inter-agency coordination, and promote a consistent interpretation and application of mining laws and regulations throughout the country.

Threats from influential individuals and groups undermine effective enforcement of environmental laws in Nigeria. These powerful entities, often owners of industries, pose significant challenges to the enforcement process. One example of interference is the Federal Government's intervention in the exclusive functions of the National Environmental Standards and Regulations Enforcement Agency (NESREA). In May 2012, NESREA was barred from sealing telecoms mast, a clear instance of encroachment on NESREA's authority.¹⁷² Corruption and poor governance prevalent in the country further exacerbated the enforcement issues related to environmental laws. Some facility owners and operators resort to blackmail and intimidation tactics to resist NESREA's actions. They may even impersonate agency officials

¹⁷² Emma Okonji, 'Nigeria: FG Bars NESREA From Sealing Telecoms Masts' <<https://allafrica.com/stories/201205280776.html>> accessed 17 June 2023.

to harass and threaten facility owners/operators, seeking financial favours in exchange for lenient sanctions or penalty waivers. These threats and interference not only impede the effectiveness of environmental law enforcement but also undermine the credibility and integrity of the enforcement process. The enforcement of mining laws in Nigeria presents significant challenges that impede the regulation and protection of host communities.

Weak Regulatory Agencies: Insufficient resources, technical expertise, and manpower within regulatory agencies hinder their ability to enforce mining laws effectively. This results in a lack of robust oversight and control over mining operations, leading to environmental degradation and social conflicts. Inconsistent interpretation and application of mining laws by different government agencies further contribute to the challenges faced in the sector. This inconsistency creates confusion and conflicts among stakeholders, impacting the overall governance of the mining industry.¹⁷³ Moreover, threats from influential individuals and groups pose additional obstacles to enforcing mining laws. Powerful entities, including industry owners can interfere with regulatory processes, undermining the credibility and integrity of enforcement efforts. Corruption and poor governance further exacerbate these issues, with some facility owners resorting to blackmail and intimidation tactics to evade compliance. These challenges compromise the effectiveness of environmental law enforcement and perpetuate irresponsible practices within the mining sector.¹⁷⁴

The independent working attitude of the regulatory agencies proposed under the Nigerian Minerals and Mining Act (NMMA) presents a significant challenge in the effective implementation of mining policies. This issue becomes apparent when observing the decay and monopolistic practices that have emerged within these agencies. The NMMA establishes

¹⁷³ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community Under Nigerian Mineral And Mining Act 2007 To Foster Sustainable Community Development' (2023) 14 NAUJILJ 1,11.

¹⁷⁴ Oluwabunmi Temitope Akinleye, 'Realization Of Rights Of Host Community Under Nigerian Mineral And Mining Act 2007 To Foster Sustainable Community Development' (2023) 14 NAUJILJ 1,10.

various offices with defined roles and responsibilities, such as the Mineral Cadastral Office (MCO),¹⁷⁵ Mines Inspectorate Departments (MID), and Mines Environmental Compliance Department (MECD). However, the Act remains silent on crucial aspects such as appointments, tenure, removal procedures, and qualifications required for these positions. The failure of mining policies can be seen in the decay and monopolistic practices exhibited by these agencies. The Mines Inspectorate Departments (MID)¹⁷⁶ are responsible for supervising reconnaissance, exploration, and mining operations to ensure compliance with the Act. The Mines Environmental Compliance Department (MECD)¹⁷⁷ is tasked with monitoring and enforcing compliance with environmental requirements imposed by the Act and the Regulations. Although these agencies are intended to work independently, their loyalty seems to lie with the Minister due to the lack of clarity in the Act regarding appointments, tenure, removal procedures and required qualifications for these positions. This lack of clarity has led to inconsistencies and opened loopholes in the Act.¹⁷⁸ Anyone can be chosen for a position, and when someone is arbitrarily appointed, their loyalty will likely be towards the appointing person or Minister. These gaps and lapses have resulted in inefficiencies within the regulatory agencies, promoting bribery, corruption, and a lack of accountability that hinders the effectiveness of the entire mining system.¹⁷⁹

3.8 Can Corporate Governance or Social Responsibility Help Integrate Communities into the Regulatory Framework?

After an extensive review of the historical development of mining in Nigeria and host community rights, it is evident that the mining industry has significantly impacted the

¹⁷⁵ Section 5 of the NMMA 2007.

¹⁷⁶ Section 16 of the NMMA 2007.

¹⁷⁷ Section 18 of the NMMA 2007.

¹⁷⁸ Oluwabunmi Temitope Akinleye, 'Realization of Rights Of Host Community Under Nigerian Mineral And Mining Act 2007 To Foster Sustainable Community Development' (2023) 14 NAUJILJ 1,11.

¹⁷⁹ Attorney General Plateau State v Goyol (2007) 16 NWLR (pt 1059) 57 at 94-96.

environment and the health of individuals living in host communities. The chapter provided a brief overview of mining activities in Nigeria, highlighting the environmental impacts of mining and the impact of mining activities on human health. The structure of the mining industry in Nigeria was discussed, including the actors in the industry and their impacts on the host communities. With respect to the research question, to what extent are the host communities recognised in the regulatory framework of mining in Nigeria? The discussion above has made some discoveries. These findings not only shed light on existing gaps but also highlight the need for additional innovations in this area.

In the context of the Nigerian mining industry, corporate governance has been proposed as a promising tool by the thesis for improving outcomes for stakeholder communities. However, this focus on corporate governance needs to be justified compared to other areas of law, such as business and human rights, CSR, and environmental regulations. This justification can be based on the fact that other legal frameworks have not been successful in addressing the root causes of issues facing stakeholder communities in the Nigerian mining industry. These issues include environmental degradation, human rights violations, and socio-economic inequalities as seen in this chapter. This is because other legal frameworks often take an ex-post tort-based approach, which only addresses the symptoms of these issues after they have occurred.¹⁸⁰ This is evident in the above review of mining regulations in Nigeria. In mining regulations, the legal framework relies on the tort law system to address and rectify the harm caused by mining operations to individuals, communities, and the environment after the fact. This approach is based on the idea that parties harmed by the actions of others have the right to seek legal remedies for the damages caused.¹⁸¹ Under an ex-post tort-based approach, mining companies can be held liable for any harm or damage caused by their operations, even if it was not their

¹⁸⁰ Barbara H. Fried, 'The Limits of a Nonconsequentialist Approach to Torts' (2012) 18 *Legal Theory* 231,239.

¹⁸¹ Gregory C. Keating, 'The Priority of Respect over Repair' (2012) 18 *Legal Theory* 293, 298.

intention to cause harm. This includes environmental damage, health problems, and social issues such as land use conflicts or displacement of communities.

The tort-based approach holds mining companies accountable for their actions and provides a legal remedy for affected parties. However, it is often criticized for being reactive rather than proactive, as it focuses on addressing harm after it has occurred rather than preventing it in the first place. As a result, many mining regulations also include provisions for preventative measures and risk assessments to complement the ex-post tort-based approach. In contrast, corporate governance takes a "life-cycle" approach, which aims to address the root causes of these issues throughout the mining life cycle.¹⁸² This approach emphasizes proactive stakeholder engagement and accountability mechanisms, which can help to ensure that the concerns and perspectives of host communities are considered in the decision-making processes of mining companies.

Therefore, the thesis will justify its focus on corporate governance as a promising tool for improving outcomes for stakeholder communities in the Nigerian mining industry by explaining why other legal frameworks have not been successful and highlighting the advantages of corporate governance's "life-cycle" approach.¹⁸³ This will also help respond to questions about the potential for the proposed stakeholder-inclusive corporate governance model to effectively address the issues facing stakeholder communities in the Nigerian mining industry.

¹⁸² Daniela M. Salvioni, Francesca Gennari and Luisa Bosetti, 'Sustainability and Convergence: The Future of Corporate Governance Systems?' (2016) 8 Sustainability 1203; G. Finnveden, J. Potting, 'Life Cycle Assessment' (2014) Encyclopedia of Toxicology 74-77.

¹⁸³ Daniela M. Salvioni, Francesca Gennari and Luisa Bosetti, 'Sustainability and Convergence: The Future of Corporate Governance Systems?' (2016) 8 Sustainability 1203; G. Finnveden, J. Potting, 'Life Cycle Assessment' (2014) Encyclopedia of Toxicology 74-77.

The focus of the thesis on corporate governance is justified for several reasons as a promising tool for improving outcomes for stakeholder communities. Corporate governance is a set of internal rules, policies, and procedures that guide the behaviour of a company's management, board of directors, and shareholders.¹⁸⁴ As such, it can significantly impact a company's decision-making and behaviour, including its relationships with stakeholders.¹⁸⁵

Corporate governance is also a dynamic field constantly evolving, and there is growing recognition that a more inclusive stakeholder approach is necessary to promote sustainable and responsible business practices.¹⁸⁶ Importantly corporate governance has a life-cycle policy that can address the full range of impacts of a company's operations on stakeholders, the environment, and society.¹⁸⁷ This contrasts with other areas of law, such as tort law, which typically focuses on addressing specific harms after they have occurred. A life-cycle approach to corporate governance emphasizes the importance of long-term planning, risk management, and sustainability in corporate decision-making, and it requires companies to consider the full range of impacts of their operations over time.

The corporate governance "life-cycle" approach within the mining context is a comprehensive framework that requires companies to consider the full range of impacts of their operations over time, from exploration to closure and remediation. It emphasizes the importance of long-term planning, risk management, and sustainability in corporate decision-making. The life-

¹⁸⁴ Cadbury Committee Report on the Financial Aspects of Corporate Governance (Gee, 1992), para. 2.5.

¹⁸⁵ Cadbury Committee Report on the Financial Aspects of Corporate Governance (Gee, 1992), para. 2.5.

¹⁸⁶ Keke Bai, Ullah Farid, Arif Muhammad, Erfanian Sahar, and Urooge Saima. 2023. 'Stakeholder-Centered Corporate Governance and Corporate Sustainable Development: Evidence from CSR Practices in the Top Companies by Market Capitalization at Shanghai Stock Exchange of China' 15 (2023) Sustainability 2990,2992.

¹⁸⁷ Keke Bai, Ullah Farid, Arif Muhammad, Erfanian Saha, and Urooge Saima. 2023. 'Stakeholder-Centered Corporate Governance and Corporate Sustainable Development: Evidence from CSR Practices in the Top Companies by Market Capitalization at Shanghai Stock Exchange of China' 15 (2023) Sustainability 2990,2992.

cycle approach ensures that companies are held accountable for their operations' full range of impacts on stakeholders, the environment, and society, not just the immediate harms that can be addressed through traditional legal remedies.

The advantages of the corporate governance "life-cycle" approach are numerous. It allows companies to proactively address potential environmental and social risks associated with their operations before they occur, reducing the likelihood of negative impacts on host communities and the environment.¹⁸⁸ This approach is particularly relevant in the mining industry, where operations can significantly impact the environment and communities. By adopting a life-cycle approach, mining companies can plan for and mitigate potential impacts over the life of the mine. The life-cycle approach also provides a framework for continuous sustainability and social responsibility improvement.¹⁸⁹ By requiring companies to consider the full range of impacts of their operations, the life-cycle approach encourages companies to develop sustainable and responsible practices that minimize negative impacts and maximize benefits for stakeholders. The approach promotes transparency and accountability in corporate decision-making. By requiring companies to consider the full range of impacts of their operations and to engage with stakeholders throughout the life of the mine, the life-cycle approach ensures that stakeholders have a voice in corporate decision-making and that companies are held accountable for their actions.

In contrast, the ex-post tort-based approach is a reactive approach to governance, relying on legal remedies after a failure has occurred. This approach can be costly and time-consuming

¹⁸⁸ Daniela M. Salvioni, Francesca Gennari and Luisa Bosetti, 'Sustainability and Convergence: The Future of Corporate Governance Systems?' (2016) 8 Sustainability 1203; G. Finnveden, J. Potting, 'Life Cycle Assessment' (2014) Encyclopedia of Toxicology 74,75.

¹⁸⁹ Daniela M. Salvioni, Francesca Gennari and Luisa Bosetti, 'Sustainability and Convergence: The Future of Corporate Governance Systems?' (2016) 8 Sustainability 1203; G. Finnveden, J. Potting, 'Life Cycle Assessment' (2014) Encyclopedia of Toxicology 74,76.

and may not address the underlying causes of the failure. Mining companies significantly impact host communities and the environment, and there is a growing recognition that a more stakeholder-inclusive approach to corporate governance is necessary to promote sustainable and responsible mining practices. The focus on corporate governance is justified as a promising tool for improving outcomes for stakeholder communities because it has a significant impact on a company's behaviour, is a dynamic field that is evolving toward a more stakeholder-inclusive approach, has a life-cycle approach that can address the full range of impacts of a company's operations, and is directly applicable to the mining industry, which is the focus of the thesis. Overall, the corporate governance "life-cycle" approach is a proactive framework promoting sustainable and responsible corporate decision-making practices. It is a more practical approach to addressing institutional voids.

3.8.1. Findings on the integration of host communities in Nigeria's mining laws

The examination of host communities' integration within Nigeria's mining laws yields crucial insights into the regulatory framework's efficacy in safeguarding their interests. Through the analysis of the existing legal apparatus the strengths and weaknesses of the regulations are revealed. These findings illuminate the multifaceted nature of host community inclusion, shedding light on areas where the current system excels and where it falls short.

The EIA Act 1992¹⁹⁰ is the first statute that permits public participation in decision-making.¹⁹¹ It is one of the few regulations that promote public participation. Therefore, the public can gain information and be involved in decision-making. However, a weakness of the EIA is that in some situations, the EIA can be set aside. These may include cases where the scale or scope of the proposed project is deemed insignificant, projects considered to be of national interest or

¹⁹⁰ Environmental Impact Assessment Act 1992.

¹⁹¹ CAP E12, LFN 2004.

security, emergencies, or when the cost of conducting an EIA is deemed disproportionate to the project's potential impacts.

As discussed above, these exceptions negate the purpose of the Act. For instance, although the act provides that host communities can object to a mining project, the act also provides that the president of Nigeria grant permission to the mining companies despite these objections. The findings in this chapter reveal significant shortcomings in the integration of host communities in Nigeria's mining laws. Before enacting the EIA Act of 1992, environmental and social regulations were virtually non-existent. However, even after the introduction of the Act, enforcement of these regulations remained weak, undermining their effectiveness.

Similarly, the Mining Act of 2007, viewed as a pivotal moment for environmental and social protection in Nigeria, falls short in recognizing the participation rights of host communities in mining activities within their environments.¹⁹² While the Act contains strong and specific provisions for safeguarding the environment and communities, the main obstacle lies in enforcement, as insufficient resources have been allocated to the solid minerals sector to enforce the laws.¹⁹³

Additionally, the provisions of the mining regulations related to the grant of mining leases are currently applied without consulting the members of the host communities, including the compensation of the host community members for a certificate of occupancy,¹⁹⁴ damages and pollution¹⁹⁵ lease,¹⁹⁶ amongst others. Furthermore, this thesis suggests that the 2007 Act could face additional challenges as it was primarily designed to attract foreign investment into

¹⁹² Nigerian Minerals and Mining Act 2007.

¹⁹³ Hakeem Ijaiya, O. T. Joseph, 'Rethinking Environmental Law Enforcement in Nigeria', (2014) 5 Beijing Law Review 306,315.

¹⁹⁴ Section 104 Nigerian Minerals and Mining Act, 2007.

¹⁹⁵ Section 125 *ibid.*

¹⁹⁶ Section 112 *ibid.*

Nigeria's mining sector rather than to safeguard the environment.¹⁹⁷ Consequently, if a choice between promoting investment and protecting the environment arises, investment may take precedence however it is important to protect the host communities and the environment. This prioritization of investment could potentially result in the neglect or inadequate enforcement of the Act's environmental regulations.

Furthermore, examining Nigeria's mining laws reveals certain shortcomings in protecting the rights and interests of host communities. While the Act acknowledges the need for consent from host communities before granting a mineral license, it lacks clear guidelines on how this consent should be obtained. This ambiguity creates uncertainty and leaves room for potential abuse. Additionally, the requirement for leaseholders to establish a community development agreement, as outlined in section 116 of the 2007 Act, disadvantages local communities due to their limited bargaining power. This provision may not adequately address the concerns and needs of the communities, further undermining their rights and interests.

3.8.2 Moving towards changes in corporate governance and social responsibility.

As this chapter shows, the laws on mining in Nigeria need to be reviewed to better recognise and protect the rights of host and affected communities in incontestable terms and provide means for them to enforce the protection of these rights. In recognition of the threats posed by mining, the Nigerian government has implemented various policies and regulations aimed at ensuring that mining activities are carried out in a socially responsible and sustainable manner. One such policy is the requirement for mining companies to engage in Corporate Social Responsibility (CSR) activities that benefit the host communities. According to Parkinson, CSR is a practice that involves willingly forgoing profits, either through the addition of costs

¹⁹⁷ Oluwabunmi Temitope Akinleye, 'Realization Of Rights Of Host Community Under Nigerian Mineral And Mining Act 2007 To Foster Sustainable Community Development' 14 (2003) NAUJILJ 1,6.

to the company's production processes or the distribution of surpluses to non-shareholder groups, with the expectation that these actions will have benefits above and beyond those resulting from a pure profit maximisation policy.¹⁹⁸ Therefore CSR can be defined as a continuous commitment by companies to act ethically while improving the quality of life of the labour force, local community and society.¹⁹⁹ CSR came into play when the desire for shareholders' profit started to be viewed as socially and economically detrimental to the labour force and the community. As a result, corporations have been required to be socially responsible, which has become achievable through CSR.²⁰⁰

Some academics have suggested that companies engaging in CSR helps them reduce regulatory risks, strengthen their reputations, and create competitive benefits.²⁰¹ Transitioning towards enhanced corporate governance and social responsibility marks a pivotal shift in business ethos. It signifies a commitment to broader stakeholder interests beyond shareholders, incorporating environmental, social, and governance considerations. This approach prioritizes transparency, long-term value creation, legal compliance, and positive societal impact. It necessitates ethical leadership, adaptability, and active community engagement. Embracing these changes not only safeguards reputations but also fosters sustainable, accountable, and resilient business practices in an ever-evolving global landscape.

¹⁹⁸ John E Parkinson, *Corporate Power and Responsibility: Issues in the Theory of Company Law* (OUP 1995).

¹⁹⁹ Angela K Davis and others, 'Do Socially Responsible Firms Pay More Taxes?' (2016) 91 (1) *The Accounting Review* 47, 56.

²⁰⁰ Carmelo Reverte, 'Determinants of Corporate Social Responsibility Disclosure Ratings by Spanish Listed Firms' (2008) 88 *Journal of Business Ethics* 351, 353.

²⁰¹ Zucheng Zhou, Ben Nanfeng Luo and Thomas Li-Ping Tang, 'Corporate Social Responsibility Excites "Exponential" Positive Employee Engagement: The Matthew Effect in CSR and Sustainable Policy' (2017) 25 *Corporate Social Responsibility and Environmental Management* 339; Eshani Beddewela and Jenny Fairbrass, 'Seeking Legitimacy through CSR: Institutional Pressures and Corporate Responses of Multinationals in Sri Lanka' (2015) 136 *Journal of Business Ethics* 503, 506.

This chapter has examined the legal and institutional framework for controlling mining companies in Nigeria. It noted that the pre-independence laws in Nigeria were in favour of mining businesses because of the colonial origins of Nigerian law and the historical ties between mining companies and colonial authorities. The colonial background also affected the post-independence attempts to exert some level of control over mining firms. Although it is typically believed that the Nigerian mining industry has enough ways to resolve many of its legal issues, the problem has been weak or lax enforcement. This thesis questioned this assumption, stating that the concern is a function of flawed laws severely damaged by a faulty legal transplanting procedure, a limiting view of corporate governance, and incoherence and policy differences between corporate governance rules in basic laws and subsidiary laws.

This chapter also evaluated the strengths and weaknesses of mining laws in Nigeria. The mining sector is now inadequate and less productive due to outdated laws. Rules that are vague, ambiguous and offer bureaucrats much discretion have given rise to some more severe problems with the government, including rampant corruption and a lack of transparency. Archaic laws governing the oil and gas industry have slowed progress and made investments unpredictable. Regulatory efforts to advance reasonable mining regulations become corrupt and entrenched structural and systematic configurations remain largely untouched. That is why the regulations cannot achieve their purposes; they are only window-dressing laws on paper, which make no direct correction of institutionalised corrupt practices across all sectors of the Nigerian mining environment.

Most of the effects of the exploration carried out in the host communities affect the members of the host communities and not the persons in power, such as the government of the federation. Thus, the host communities should be given a right to the land resources and to contribute to

decisions about the exploration activities carried out in their communities; otherwise, these types of regulations can alienate them.²⁰² This feeling of exclusion encourages members of the host communities to rebel and engage in illegal mining.²⁰³ Therefore, appropriate measures must be implemented to protect the environment and the health and safety of the host and neighbouring mining communities.²⁰⁴

The Nigerian Mining and Minerals Act 2007 aims to benefit the host communities and the national economy. However, the identities of the host communities could be clearer to determine the methods to bestow these benefits on them. This has led to persisting conflicts in the Niger Delta region.²⁰⁵ Furthermore, until today, the practice in mining communities has been based on memorandum of agreement, which are entirely optional and thus only sometimes available. Every attempt to make CSR legally enforceable has consistently failed because of disagreements amongst the many parties involved. On the other hand, CDA is an obligatory requirement of the law which mineral mining companies must sign with the host communities in support of the socioeconomic development of mining communities but are inadequately skewed against the host communities. Although this approach has received much praise for clearly delineating rights and obligations and providing enough incentives for all parties involved, it is not without its criticisms. Academics disagree about the success of employing legal instruments to enforce CSR.²⁰⁶ As with the CDA, there is insufficient evidence of practical experience within Nigeria to draw any conclusions.

²⁰² Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness During Mineral Mining Activities in Nigeria' (2018) 14 *European Scientific Journal* 165, 176.

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ Gabriel Eweje, 'Multinational Oil Companies CSR Initiatives in Nigeria: The Scepticism of Stakeholders in Host Communities' (2007) 49 *Managerial Law* 218, 220.

²⁰⁶ Amanda Perry, 'An Ideal Legal System for Attracting Foreign Direct Investment? Some Theory and Reality' (2000) 15 *American University International Law Review* 1627, 1630.

The encouragement of private investments in mining and infrastructure requires unambiguous legal measures guaranteeing the protection of private property rights against any arbitrary use of state power. Thus, this chapter demonstrates how mining companies can institute an inclusive stakeholder model for corporate governance to stimulate the development of Nigeria's mining industry and protect the rights of host communities. The Next Chapter provides an insight into the Current Laws on Corporate Governance In Nigeria.

CHAPTER FOUR

CURRENT LAWS ON CORPORATE GOVERNANCE

4.1. Introduction

To properly understand corporate governance in Nigeria, it is crucial to trace the history of company law in Nigeria before examining the specifics of Nigeria's corporate governance laws. Since the late 1990s, international financial institutions have been advising developing countries to embrace the shareholder primacy corporate governance model.¹ The expectation was that in an ever more interconnected global financial landscape, countries implementing corporate governance principles that prioritise the interests of investors would potentially enjoy a competitive edge, attracting greater capital inflows and consequently fostering the growth of their financial markets.²

The enhancement of corporate governance practices is widely recognized as a crucial factor in fortifying the underpinnings of a nation's long-term economic performance and contributing to the reinforcement of the global financial system. This economic rationale also found resonance in the United Nations Conference on Trade and Development, which pledged that improvements in corporate governance would facilitate investment inflows and mobilize financial resources for economic progress.³ Consequently, this impetus drove a trend toward convergence and the transplantation of corporate governance norms, particularly in the realms of company law and corporate governance within some developing nations.⁴

¹ Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 Corporate Governance 884,885.

² Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 Corporate Governance 884.

³ UNCTAD, 'Guidance on good practices in corporate governance disclosure' UNCTAD/ITE/TEB/2006/3.

⁴ Countries like Nigeria, India, Ghana, South Africa. Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 Corporate Governance 884,885.

During this period, the primary international corporate governance code that gained widespread prominence was the OECD Principles of Corporate Governance. This framework predominantly espoused the shareholder value corporate governance model, albeit with some limited acknowledgment of stakeholder considerations. In essence, the advice provided to some developing countries entailed adopting a shareholder-centric model, predominantly influenced by the Anglo-Saxon approach.⁵ The argument posited that if a country were to embrace this shareholder primacy corporate governance model, it would attract foreign investment, thereby stimulating the local financial market, with domestic investors also participating, ultimately fostering further growth in the financial sector.⁶

Nigeria is an example of a developing country influenced to adopt a corporate governance system. The influence of the United Kingdom on Nigerian company law and regulations can be traced back to the colonial era when Nigeria was under British rule. This colonial heritage has shaped the development of company law in Nigeria.⁷ Following independence, Nigeria, like many other post-colonial countries, adopted what is commonly referred to as the Anglo-American Model in company law characterised by ownership of shares by outsiders who are not associated with the company and involves three key players—directors, management, and shareholders.⁸ Here, the board functions as a unitary board which includes executive and non-executive directors.⁹ Yet, the economies and economic concerns differ between the United Kingdom and Nigeria. As a MINT economy—those economies that are smaller than BRICS

⁵ Countries like Nigeria, India, Ghana, South Africa. Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 *Corporate Governance* 884,885.

⁶ Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 *Corporate Governance* 884,886.

⁷ Mohammed Suleh-Yusuf, 'Corporate Governance in Nigeria: The Need for a Prescriptive Approach', (2017) 19 *Journal of Business and Management* 21, 35.

⁸ Elewechi NM Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) 15(2) *Corporate Governance: An International Review* 173,193. .

⁹ Navajyoti Samanta, 'Transplantation of Anglo-American corporate governance and its impact on financial market growth: a comparative analysis of nineteen developing countries' (2019) 19 *Corporate Governance* 884,885.

but are regarded as the next set of strong emerging markers¹⁰—most economic growth occurs in the financial, technological, communication and services industries.¹¹ The economies of the United Kingdom and Nigeria exhibit significant differences. As a developed economy, the United Kingdom focuses on maintaining stability, managing inflation, and promoting innovation, particularly in its strong financial, technological, communication, and services sectors. In contrast, Nigeria, classified as a MINT economy, derives much of its economic growth from its vast natural resources, notably oil. However, Nigeria faces challenges related to diversifying away from oil dependency, infrastructure development, and reducing poverty. While the UK thrives on a diversified and innovative economy, Nigeria's corporate governance framework has evolved over time to address its unique historical and legislative context.

Company Law, also known as Corporate Law, in Nigeria is a part of what is commonly known as received English Law, which has been integrated into the Nigerian Legal System. Before 1876, there were no indigenous laws governing the operations of companies in Nigeria.¹² The first legislation enacted in Nigeria to regulate company activities was the Companies Ordinance of 1912, which was only in force in the Lagos colony.¹³ However, after the amalgamation of the Southern and Northern Protectorates in 1914, the Act was amended in 1917 to apply to the whole country. In 1922, the Companies Ordinance Act 1922 repealed the Companies Ordinance Act of 1917 which applied to the entire Nigeria.¹⁴ The legal framework underwent

¹⁰ MINT is an acronym referring to Mexico, Indonesia, Nigeria and Turkey. See, World Atlas 'What are the MINT Economies?', <<https://www.worldatlas.com/articles/what-are-the-mint-economies.html>>accessed 15 September 2020.

¹¹ MINT is an acronym referring to Mexico, Indonesia, Nigeria and Turkey. See, World Atlas 'What are the MINT Economies?', <<https://www.worldatlas.com/articles/what-are-the-mint-economies.html>>accessed 15 September 2020.

¹² Sylvester C. Udemezue, 'A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria' 8 (2021) Nnamdi Azikiwe University Journal of Commercial and Property Law 66.

¹³ Adopted from the English Companies Act of 1908

¹⁴ Sylvester C. Udemezue, 'A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria' 8 (2021) Nnamdi Azikiwe University Journal of Commercial and Property Law 66,67.

modifications through the enactment of the Companies (Amendment) Ordinance in 1941 and the Companies (Amendment) Ordinance in 1954. Subsequently, the Companies (Amendment) Ordinance of 1941 was rebranded as the Companies Act in 1963 but was eventually replaced by the Companies Act of 1968 shortly after Nigeria gained independence. The 1968 legislation was based on the English Companies Act of 1948,¹⁵ which became Nigeria's primary legislation regulating companies. The statute contained detailed provisions for companies regarding running their affairs, especially the roles of the board of directors and general meeting members.

Nigeria initiated a comprehensive reform of its Company Law, resulting in the replacement of the 1968 Companies Act with the Companies & Allied Matters Act (CAMA) of 1990, as documented in Cap C20, LFN 2004. Subsequent amendments were made to the 1990 CAMA. First, in 1990, the Companies & Allied Matters (Amendment) Decree No 32, 1990 introduced changes, followed by further amendments in 1991 through the Companies & Allied Matters (Amendment) Decree No 46, 1991. Additionally, in 1992, the Companies & Allied Matters (Amendment) Decree, No 46, 1992 introduced further revisions. It's worth noting that the Investment & Securities Act (ISA) of 1999 played a significant role in this process. Specifically, the ISA of 1999 repealed sections 541 to 623 of the CAMA and subsequently re-enacted these sections as sections 1 to 148 of the ISA, 1999. These legislative actions collectively contributed to the transformation and modernization of Nigerian Company Law during this period.

There are now several frameworks, regulations and guidelines governing how companies operate in Nigeria. Corporate governance has become an increasingly important topic in Nigeria due to the need to attract foreign investments, enhance economic development, and

¹⁵ C Kolade, 'Board Performance Analysis', *Distinguished Management Lecture Weekend Concord Newspaper* (Lagos, November 1998) 6.

ensure that companies operate ethically and transparently.¹⁶ This Chapter will examine the legal and regulatory frameworks governing corporate governance in Nigeria, including the Companies and Allied Matters Act, the Nigerian Stock Exchange Listing Rules, and the Code of Corporate Governance for Public Companies in Nigeria. The section will assess the effectiveness of these mechanisms in promoting good corporate governance practices in Nigeria.

To accomplish these goals, the Chapter first develops a working definition of corporate governance. It then outlines the key provisions of Nigeria's corporate laws applicable to the mining sector before discussing more specific codes of conduct developed to address concerns with corporate governance. Throughout this discussion, the Chapter focuses on both the benefits and the weaknesses of the laws. The Chapter then promulgates a case for corporate responsibility in the Nigerian context.

4.2. Defining Corporate Governance

The concept of corporate governance originated from considering fundamental issues about the separation of ownership and control in the corporate structure of organisations.¹⁷ This separation entails shareholders not having direct influence over daily operations, leaving decision-making power with the board and management. Corporate governance can take diverse forms, from shareholder-centric models emphasizing profit maximization to stakeholder-oriented approaches considering the interests of employees, customers, communities, and the environment. The balance between shareholders and stakeholders

¹⁶ Ngozi Odiaka, 'Principle of 'Comply and Explain' as an Enforcement Mechanism to Corporate Governance Codes for Public Companies in Nigeria', (2019) 1 *International Review of Law and Jurisprudence* 170, 171.

¹⁷ Melih Sonmez and Suat Yildirim, 'A Theoretical Aspect on Corporate Governance and its Fundamental Problems: Is it a Cure or Another Problem in the Financial Markets?', (2015) 3 *Journal of Business Law and Ethics* 21, 21; James E Post, Lee E Preston and Sybille Sachs, *Redefining the Corporation* (Stanford Business Books 2002)

depends on legal frameworks, industry norms, and individual company values, resulting in a wide spectrum of corporate governance practices globally. The research on corporate governance issues is not only associated with the law but also with economics, management, accounting, finance, psychology, and sociology.¹⁸ Thus, agreeing on a universally accepted definition of the term is challenging, as it is a highly interdisciplinary issue. In explaining the different aspects of the relationships occurring within and outside a corporation, different theories have been proposed.¹⁹ This is because it has become evident that corporate governance theories and models are continuously evolving. Agency and stewardship theories (or the stakeholders' perspectives) are often considered contradictory;²⁰ transaction costs theory and the theory of contracts are seen as complementary.²¹ The others are viewed as neutral, as they concern different aspects of the business environment.²² Corporate governance is a complex field with multifaceted relationships both within and outside corporations. Several theories have emerged over time to better understand these dynamics and governance practices. In this chapter, we will examine various theories that hold relevance for the development of an updated stakeholder model, especially concerning host communities. This chapter aims to introduce and elucidate these theories concisely yet comprehensively. By doing so, we will clarify how these theories relate to this chapter's objectives and align with our research questions (RQs).

4.2.1 Competing Definitions of Corporate Governance

¹⁸ Terry McNulty, Alessandro Zattoni and Thomas Douglas, 'Developing Corporate Governance Research Through Qualitative Methods: A Review of Previous Studies' (2013) 21 *Corporate Governance: An International Review* 183.

From the time of Adam Smith to the era of industrialisation, the great depression and the recent half-century of globalisation and wealth, the aims and objectives of the business enterprise, particularly large corporations, have been the focus of discussion.²³ Governments have tried to curb the excesses of corporations through law. In addition, ‘they have taken major scopes of economic activity into the public sector, often with unsatisfactory results and subsequent privatisation.’²⁴ Irrespective of time, the major question remains the same: What is a corporation? Are the directors liable and to whom are they liable?

A corporation owes its impetus to the insistent pursuit of answers to questions about it, and for over two centuries, it has progressed into an exceedingly malleable and effective form of human enterprise. Bakan identified the corporation as pathological by matching its attributes to the standard medical literature’s list of symptoms of lack of moral conscience.²⁵

Corporate law’s history shows that corporate governance owes its introduction to big corporate disasters and scandals.²⁶ Laws and regulations within the context of corporations are seen as essential tools that safeguard the well-being and constancy of the economy and communal interest.²⁷ The corporate framework emerged from contracts between investors and directors; it took a lot of work to differentiate a corporation from a partnership.²⁸ From the 1970s, corporate governance has been the main object of debate in corporate law in the United States and around the world. In the 1990s, the matter received higher recognition after the press took an interest in the high dismissal rate of chief executive officers (CEOs) of companies such as IBM and KODAK.²⁹ In the early 1990s, IBM faced substantial financial challenges as it

²³ Stephen Griffin and Michael Hirst, *Company Law* (4th edn, Longman 2006) 364.

²⁴ Stephen Griffin and Michael Hirst, *Company Law* (4th edn, Longman 2006) 364.

²⁵ Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (1st edn, Constable 2005), 12.

²⁶ Stephen Griffin and Michael Hirst, *Company Law* (4th edn, Longman 2006) 364.

²⁷ *ibid.*

²⁸ Aled Griffiths, *Company Law* (Pearson Education, 2012) 58.

²⁹ Cosneanu Sorin and others, ‘Foundations and Principles of Corporate Governance’ 4 (2013) 2 *Valahian Journal of Economic Studies* 31.

struggled to keep up with a rapidly changing technology landscape. Competitors like Microsoft and Intel were gaining an edge in the personal computer market, leading to IBM's declining market share. To address these issues, IBM initiated a major restructuring effort. This overhaul included the appointment of a new CEO, Louis Gerstner, in 1993. Gerstner's strategic decisions, such as shifting the company's focus towards services and consulting, played a pivotal role in IBM's recovery. This case underscores the critical importance of leadership and strategic decision-making in a company's ability to not only survive but thrive in a highly competitive industry.

Also, with Kodak, once an industry leader in photography and imaging, Kodak struggled to adapt to the digital revolution that began in the late 20th century. Despite inventing the digital camera in the 1970s, Kodak failed to effectively capitalize on its own innovation. Consequently, the company's market share experienced a significant decline. In 2012, Kodak filed for bankruptcy. During this period, Kodak's CEOs faced dismissal as a reflection of the company's inability to navigate the digital shift effectively. These cases highlighted questions about corporate strategy and adaptation to technological disruption. They serve as cautionary tales, emphasizing the critical need for companies to continually innovate and adapt to evolving markets.³⁰

These high-profile cases garnered attention because they brought corporate governance, leadership, and strategic management into the spotlight in the face of rapidly evolving industries. They underscored the profound impact of CEO decisions and actions in shaping the destiny of large corporations. Furthermore, these cases shed light on the significance of effective governance structures, which are crucial to ensuring a company's long-term sustainability and success. The growth and interest in corporate governance can be ascribed to

³⁰ Cosneanu Sorin and others, 'Foundations and Principles of Corporate Governance' 4 (2013) 2 Valahian Journal of Economic Studies 31.

the demand to re-establish investor reliance on capital markets.³¹ Governments and investors are trying all they can to ensure that corporate boards are more responsible and contain external or non-executive directors.³²

Tricker stated that corporate governance has to do with how corporate entities are governed, in contrast to how the businesses within those companies are managed.³³ Corporate governance also investigates the matters encountered by boards of directors, which include: dealing with top management and connecting with the investors and others interested in the dealings of the company. In the UK Cadbury Report (1992) and the South African King Report (1994), corporate governance was defined as ‘the framework by which organisations are coordinated and controlled’.³⁴ Clarke defined corporate governance as ‘the entire set of legal, cultural, and institutional arrangements that control what publicly traded corporations can do, who is in charge of them, how that control is used, and how the perils and revenues from the activities they undertake are allocated’.³⁵ Clarke's definition emphasizes the legal, cultural, and institutional arrangements that regulate the activities of publicly traded corporations and the allocation of risks and revenues.³⁶ Justice Owens stated that corporate governance can be reflected in the light of two specific meanings.³⁷ Initially, in the introductory section titled ‘Corporate Governance: A Problematic Model,’ he expressed concerns about the ubiquitous use of the term ‘corporate governance’, suggesting that it had become so broadly employed that it risked losing its substantive meaning.³⁸ However, Justice Owen went on to provide a

³¹ Christine A Mallin, *Corporate Governance* (5th edn, Oxford University Press, 2016) 63.

³² Jean Jacques Du Plessis, Mirko Bagaric and Avril Hargovan, *Principles of Contemporary Corporate Governance* (2nd edn, Cambridge University Press, 2010) 3.

³³ Bob Tricker, *Corporate Governance: Principles, Policies, and Practices* (4th, OUP Oxford, 2019).

³⁴ Bob Tricker, *Corporate Governance: Principles, Policies, and Practices* (4th, OUP Oxford, 2019).

³⁵ Thomas Clarke, *Comparative Corporate Governance* (Routledge, 2022), 55.

³⁶ Thomas Clarke, *Theories of Corporate Governance* (Routledge, 2004).

³⁷ *ibid* 11.

³⁸ Report of the HIH Royal Commission (Owen Report), ‘A Corporate Collapse and its Lessons, Canberra, Commonwealth of Australia’ (vol. 1, *The Failure of HIH Insurance*, 2003) xxxiii; Jean Jacques Du Plessis, Mirko Bagaric and Avril Hargovan, *Principles of Contemporary Corporate Governance* (Cambridge University Press 2018).

more precise definition stating that corporate governance, when understood correctly, refers to the intricate framework of regulations, relationships, structures, and procedures that dictate how authority is wielded and supervised within corporations. When viewed from this perspective, the term 'corporate governance' encompasses not only the models or systems themselves but also the actual practices employed to exercise and regulate this authority. Justice Owens' definition emphasizes the importance of the structures, regulations, and schemes that guide power relations within companies.³⁹ A more extensive interpretation views corporate governance as the process influenced by a combination of legislative, regulatory, legal, market mechanisms, listing standards, best practices, and the collective efforts of all corporate governance participants, including directors, officers, auditors, legal advisors, and financial consultants.⁴⁰ This process aims to establish a system of checks and balances with the objective of creating and enhancing sustainable shareholder value while safeguarding the interests of other stakeholders.⁴¹ Keasy et al. noted the inconsistent use of the term 'corporate governance' among different scholars and found a lack of consensus in its definition.⁴²

According to Rose, this lack of consensus in defining various aspects of corporate governance has fostered the growth of a Corporate Governance.⁴³ Demb and Neubauer defined corporate governance as the process whereby corporations are made to respond quickly to the rights and needs of stakeholders.⁴⁴ Demb and Neubauer's definition emphasizes the responsiveness of

³⁹ Report of the HIH Royal Commission (Owen Report), 'A Corporate Collapse and its Lessons, Canberra, Commonwealth of Australia' (vol. 1, *The Failure of HIH Insurance*, 2003) xxxiii; Jean Jacques Du Plessis, Mirko Bagaric and Avril Hargovan, *Principles of Contemporary Corporate Governance* (Cambridge University Press 2018).

⁴⁰ Jean Jacques Du Plessis, Mirko Bagaric and Avril Hargovan, *Principles of Contemporary Corporate Governance* (Cambridge University Press 2018).

⁴¹ Zabihollah Rezaee, *Corporate Governance and Ethics* (John Wiley and Sons, Hoboken 2009) 29.

⁴² Kevin Keasey, Steve Thompson, Mike Wright, 'Corporate Governance, Economic, Management, and Financial Issues' 13 (1998) *Managerial Auditing Journal* 390.

⁴³ Rose, Caspar. "Does Female Board Representation Influence Firm Performance? The Danish Evidence." *Corporate Governance: 15* (2007) *An International Review* 404.

⁴⁴ Ada Demb and Friedrich F Neubauer, 'The Corporate Board: Confronting the Paradoxes' (1992) 25 *Long Range Planning* 9.

corporations to the rights and needs of stakeholders.⁴⁵ Bourne has opined that corporate governance relates to issues that involve the viability of a corporation's operations, the consistency of a corporation's financial reporting submission in terms of its compliance with the relevant laws and regulations, and the protection of corporate assets.⁴⁶ Bourne's definition focuses on the protection of corporate assets and compliance with laws and regulations.⁴⁷ Khoza and Adam stated that corporate governance is about having an operative financial accounting and administration function, legitimate and sufficient risk management methods, viable observation and controls, autonomous auditing, responsibility and noteworthy, sustainability and sincerity.⁴⁸ Khoza and Adam's definition emphasizes the importance of financial accounting, risk management, observation, control, auditing, and sustainability.⁴⁹

The World Bank, adopting the OECD Principles of Corporate Governance, has defined corporate governance in reference to the structures and processes used in the direction and management of companies.⁵⁰ This is a collection of legislation, guidelines and codes of conduct implemented voluntarily; it allows a corporation to attract the human and material resources essential to its activities, permitting it to carry out these activities effectively and thereby creating long-term values for investors, interest groups and the public as a whole.⁵¹ The OECD also stated that the relationships involve different rules and incentives that present a framework by which the aims of the firm, the method used to achieve them and the ways by

⁴⁵ Ada Demb and Friedrich F Neubauer, 'The Corporate Board: Confronting the Paradoxes' (1992) 25 Long Range Planning 9.

⁴⁶ Nicholas Bourne, *Bourne on Company Law* (6th edn. Routledge-Cavendish, 2013), 200.

⁴⁷ Nicholas Bourne, *Bourne on Company Law* (6th edn. Routledge-Cavendish, 2013), 200.

⁴⁸ Reuel J Khoza and Mohamed Adam, *The Power of Governance: Enhancing the Performance of State-Owned Enterprises* (Pan Macmillan and Business in Africa, 2005).

⁴⁹ Reuel J Khoza and Mohamed Adam, *The Power of Governance: Enhancing the Performance of State-Owned Enterprises* (Pan Macmillan and Business in Africa, 2005).

⁵⁰ World Bank, 'Report on the Observance of Standards and Codes (ROSC), Corporate Governance Country Assessment, Russian Federation' (*The World Bank*, 2013) <<https://www.worldbank.org/en/programs/rosc>> accessed 1 May 2022.

⁵¹ Sorin COSNEANU and others. 'Need to implement corporate governance in the Romanian companies,' (2013) 4 Theoretical and Applied Economics, Asociația Generală a Economistilor din România 63.

which output is supervised are set.⁵² The absence of a precise definition can lead to situations in a company's day-to-day operations being labelled as corporate governance issues, even when they may not actually be.

In an attempt to connect the aforementioned definitions, corporate governance has been referred to as an umbrella term relating to the concepts and theories surrounding corporations and the practices of corporate parties. It also relates to how boards, stockholders, top management, regulators, auditors, and other rightful stakeholders interact.⁵³ Monks and Minow suggested that these relationships must function in a manner that ensures that the right questions are asked, and the required responses are received.⁵⁴ They also argued that creating long-term value for the company must be the primary goal.⁵⁵ However, Cohen has asserted that despite the amount of prominence afforded to, and recognition of the importance of trying to give a sufficient definition to corporate governance in academia and practice in modern times remains impossible to achieve.⁵⁶ The definitions provided present different perspectives and aspects of corporate governance, highlighting the complexity of the concept.

4.2.2. A Workable Definition of Corporate Governance

Despite the different perspectives, the definitions converge on the importance of corporate governance in promoting transparency, accountability, and responsibility in the management of corporations. It can be said that corporate governance relates to how a corporation is

⁵² OECD 'G20/OECD Principles of Corporate Governance' (OECD, 2015)

<<https://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>> accessed 20 June 2022.

⁵³ Philip L Cochran and Steven Leslie Wartick, *Corporate Governance: A Review of the Literature* (Financial Executives Research Foundation 1988); G Maaseen, *An International Comparison of Corporate Governance Models* (Spencer Stuart 2000).

⁵⁴ Robert A G Monks and Neil Minow, *Corporate Governance* (3rd edn, Blackwell 2004) 434.

⁵⁵ *ibid* 435.

⁵⁶ Suzanne Young and Vijaya Thyil, 'Corporate Social Responsibility and Corporate Governance: Role of Context in International Settings' (2013) 122 *Journal of Business Ethics* 1.

controlled. It is the system and process by which corporations are organised and managed.⁵⁷ The presence of suitable corporate governance means that the business aims to fulfil and grant the wishes of the stakeholders. The board of directors controls the company for the corporation's stakeholders' benefit. Corporate governance is predominantly concerned with individual, communal, economic, and social goals. The corporate governance structure describes the separation of duties and responsibilities among the board, shareholders, and other stakeholders in the company as well as the procedures and methods for making corporate decision-making.

Corporate governance aims to establish a framework of rules and regulations which aim at ensuring that a company is directed and controlled responsibly and sustainably.⁵⁸ It encompasses the mechanisms, processes, and relationships through which companies are directed and controlled. Corporate governance seeks to balance the interests of various stakeholders, such as shareholders, management, customers, employees, suppliers, and the broader community, in a manner that promotes the company's long-term success. Corporate governance is a system of checks and balances aimed at enhancing accountability, transparency, and integrity in a company's management. Its primary goal is to minimize risk, maximize shareholder value, and ensure that companies operate ethically and responsibly.

Corporate governance plays a vital role in the growth and development of economies as companies are significant contributors to societies' economic and social well-being.⁵⁹ The significance of sound corporate governance practices is evident in their positive impact on national growth, ability to attract foreign investments and prevent corporate failures. Therefore,

⁵⁷ Stuart L. Gillan, Laura T. Starks, Corporate governance proposals and shareholder activism: the role of institutional investors, (2000) 57 *Journal of Financial Economics* 275,277.

⁵⁸ Zabihollah Rezaee, *Corporate Governance and Ethics* (John Wiley and Sons, Hoboken 2009) 29.

⁵⁹ S. William How to Govern Corporations so they Serve the Public Good: A Theory of Corporate Governance Emergence (Edwin Mellen Press Ltd. 2009) 2.

it is widely acknowledged that effective corporate governance is crucial for sustainable business operations and for companies to meet international standards.⁶⁰ Hence, promoting economic growth and development, attracting domestic and foreign investment, and enhancing market competitiveness are key factors for many developing nations, which underscore the critical importance of implementing effective corporate governance practices.⁶¹

This section has provided a comprehensive overview of the definitions and concepts of corporate governance. It has explored the fundamental principles and components contributing to effective corporate governance practices. The following section examines external and Internal Corporate Governance Mechanisms.

4.3. External and Internal Corporate Governance Mechanisms

Meyer and Rowan posit that formal organisations have generally been structured, managed, and controlled by complex networks of technical relations and cross-country interactions.⁶² External mechanisms of corporate governance are an example of such structures. External corporate governance mechanisms are institutions set up by the government or statutes to act as regulatory bodies, which ensure that companies comply with the statutes and codes of corporate governance.⁶³ Formal regulations are created to ensure that competing corporations adhere to the common standards of fairness, transparency, accountability, and responsibility to protect shareholders, consumers, employees, and the environment from abusive acts. A well-written legal framework competently addresses a firm's activities.⁶⁴ Other external features are

⁶⁰ S. William How to Govern Corporations so they Serve the Public Good: A Theory of Corporate Governance Emergence (Edwin Mellen Press Ltd. 2009) 2.

⁶¹ E. N. M. Okike 'Corporate Governance in Nigeria: The Status Quo' (2007) 15 Corporate Governance: An International Review 173,193.

⁶² John W Meyer, & Brian Rowan, 'Institutionalized Organizations: Formal Structure as Myth and Ceremony', (1977) 83 American Journal of Sociology 340.

⁶³ Adetunji M Babatunde and Olawoye Olaniran, 'The Effects of Internal and External Mechanisms on Governance and Performance of Corporate Firm Nigeria,' (2009) 7 Corporate Ownership and Control 831, 834.

⁶⁴ Adetunji M Babatunde and Olawoye Olaniran, 'The Effects of Internal and External Mechanisms on Governance and Performance of Corporate Firm Nigeria,' (2009) 7 Corporate Ownership and Control 831, 834.

developed by national and international bodies, focusing on best practices.⁶⁵ The external system is known for its independence, neutrality, altruism, and consideration of public interest. Since the government established and enabled external bodies, they wield the necessary tools to impose checks and balances on defaulting companies or officers.

The internal mechanisms of corporate governance regulate the powers of managers, directors, shareholders, and a broad array of stakeholders.⁶⁶ Even though internal mechanisms are essential for efficiency, they are not all that is required for good corporate governance. For a company to have a good governance structure, it must balance the roles of three actors – the shareholders, the employees, and the management team - while meeting its obligations to a wide range of other stakeholders. Shareholders provide capital in exchange for the opportunity to increase corporate profits.⁶⁷ The regulations enshrine the shareholders' rights and powers, including the right to appoint and remove directors and auditors, and to approve or disapprove fundamental decisions that may affect the company.⁶⁸ The main interest of the shareholders is to maximise the value of the firm's equity in the face of economic risk. The board needs to be independent of the management and its members should be well-versed in the firm's line of business. The board also needs to be of reasonable size and the tenure of its directors should be fixed. The company is expected to set up guidelines and codes of conduct for its officers and employees.

To achieve the preceding objectives, companies need to appoint committees or individuals from within to monitor and ensure that the company complies with corporate governance principles. Some companies have due diligence and compliance departments, which assume

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ngozi Odiaka, 'Principle of 'Comply and Explain' as an Enforcement Mechanism to Corporate Governance Codes for Public Companies in Nigeria', (2019) 1 *International Review of Law and Jurisprudence* 170, 171.

the role of internal corporate governance mechanisms. Durosomo and Herbert contend that the company secretary occupies the foremost role in the internal hierarchy of companies as the ‘corporate governance officer’.⁶⁹

Companies even set up internal whistle-blowing mechanisms to report illegal activities and malpractices.⁷⁰ The corporate fraudulent scandal which rocked Cadbury Nigeria Plc in October 2006 reinforces the relevance of such internal whistleblowing mechanisms. An alarm raised by an anonymous whistle-blower revealed that between 2003 and 2006, the fraudulent practice of account overstatements reached N15 billion (£29,468,895.00).⁷¹ The company failed because the Chairman, the former CEO, executive directors, non-executive directors, senior financial accountant, head of internal audit, and others violated Nigeria’s Corporate Governance Code. Cadbury Nigeria submitted its annual report and accounts to the Commission for the fiscal years 2002 to 2005, which contained false and misleading statements. The audit committee also failed to fulfil their statutory responsibilities, as they did not examine existing leads which show the state of the company’s accounts. In summary, the company failed to comply with the Nigerian corporate governance code.

The forthcoming sections of this chapter will specifically focus on a comprehensive examination and analysis of internal and external mechanisms within Nigeria. This detailed investigation is essential, particularly in the context of this thesis, because it sheds light on how these mechanisms operate and their impact on corporate governance practices in the Nigerian context.

⁶⁹ Ibitayo Oyinda Durosomo & Eti Best Herbert, ‘Articulating the Locus of Company Secretary in Corporate Governance in Nigeria’, (2019) 40 (6) Business Law Review 258, 261.

⁷⁰ Marcia P Miceli, Janet Ppllex Near & C.R. Schwenk, ‘Who Blows the Whistle and Why?’, (1991) 45 Industrial and Labour Relations Review 113, 130.

⁷¹ Eti Best Herbert, ‘Legal Mechanism for Blowing the Whistle against Incidence of Tax Haven in Nigeria’ (2019) 12 (4) OIDA International Journal of Sustainable Development 33,41.

4.4. Corporate Laws in Nigeria

Corporate laws in Nigeria govern the formation, operation, and dissolution of companies and other forms of business entities in the country. The primary legislation governing corporate entities in Nigeria is the Companies and Allied Matters Act (CAMA) of 1990, which was amended in 2020. When CAMA was promulgated in 1990, corporate governance was yet to emerge as a distinct concept.⁷² However, CAMA⁷³ included fundamental provisions for Nigerian corporate governance practices. Some of these provisions include compulsory accounting and auditing standards, equity ownership disclosure, minority shareholders' rights, equality of members and oversight of regulatory functions of CAC over companies.⁷⁴ Aside from CAMA, corporations must comply with other general and industry-specific legislation. Such provisions are contained in statutes such as the Trustees Investments Act 2004, Central Bank of Nigeria (CBN) Act,⁷⁵ Banks and Other Financial Institutions Act (BOFIA),⁷⁶ National Insurance Commission (NAICOM) Act,⁷⁷ National Pension Commission (PENCOM) Act,⁷⁸ Financial Reporting Council (FRC) Act,⁷⁹ Nigeria Deposit Insurance Corporation (NDIC) Act,⁸⁰ Nigeria Communication Commission Act (NCC) Act,⁸¹ Investment Securities Act (ISA) 2007,⁸² and the Rules and Regulations of the Securities and Exchange Commission (SEC)

⁷² Mohammed Suleh-Yusuf, 'Corporate Governance in Nigeria: The Need for a Prescriptive Approach', (2017) 19 *Journal of Business and Management* 21,29.

⁷³The Companies and Allied Matters Act (Chapter C20) Laws of the Federation of Nigeria 2004 (CAMA) was enacted in Nigeria as a decree of the military government in 1990.

⁷⁴ *ibid.*

⁷⁵ Central Bank of Nigeria Act, 2007.

⁷⁶ Banks and Other Financial Institutions Act 1991 (As Amended in 1997, 1998, 1999 and 2002)

⁷⁷ The NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria.

⁷⁸ The Code of Corporate Governance for Licensed Pension Operators.

⁷⁹ The Financial Reporting Council of Nigeria Act 2011.

⁸⁰ Nigerian Deposit Insurance Corporation Act 2006.

⁸¹ The Nigerian Communications Commission Code of Corporate Governance for telecommunication companies (the NCC Code).

⁸² The Investment and Securities Act 2007.

made pursuant to the ISA, amongst others. This section considers the most relevant provisions from this suite of legislation.

4.4.1 The Companies and Allied Matters Act 2020 (CAMA 2020)

The CAMA 1990 was repealed and re-enacted in the 2020 version of the Act. The newly enacted CAMA can be loosely described as a corporate governance statute since many of its provisions give directions for corporate governance and how corporate operations should be carried out.⁸³ Since CAMA 2020 is a generic legislation, every public company operating in Nigeria, irrespective of its sector, must apply this provision.⁸⁴ The Act encourages disclosure and transparency, which are core determinants of corporate governance. The Act can be said to contain the sacred doctrine of Nigerian corporate operations and governance.

The leading institution that regulates private sector activities in Nigeria is the CAC established under the CAMA 2020.⁸⁵ The functions of CAC, as set out in CAMA, include: administering the Act, regulating, and managing its creation, its incorporation and management. It is also concerned with establishing and maintaining a company's registry and offices and arranging and conducting investigations into the affairs of any company when the interest of the shareholders and the public are at stake.⁸⁶ The CAC now includes one representative of the Institute of Chartered Secretaries & Administrators of Nigeria (ICSAN)⁸⁷ and a representative from the Nigerian Association of Small and Medium Enterprises.⁸⁸ This inclusion allows for the input of Micro, Small and Medium Enterprises (MSMEs), representing most private

⁸³ Mohammed Suleh-Yusuf, 'Corporate Governance in Nigeria: The Need for a Prescriptive Approach', (2017) 19 *Journal of Business and Management* 21, 34.

⁸⁴ *ibid.*

⁸⁵ Ebenezer Y Akinkoye, & Omoneye O Olanmi, 'Corporate Governance Practice and Level of Compliance among Firms in Nigeria: Industry Analysis', (2014) 9 *Journal of Business and Retail Management Research* 13, 15.

⁸⁶ See, Section Companies and Allied Matters Act 2020.

⁸⁷ Appointed by the Minister on the recommendation of the Association – Section 2 paragraph (v) CAMA 2020.

⁸⁸ Appointed by the Minister on the recommendation of the Institute – Section 2 paragraph (iv) CAMA 2020.

companies. However, there are still some doubts about the breadth of influence of the CAC.⁸⁹ The CAC can impose penalties as it deems fit in any case of contravention of the regulation.⁹⁰ This might prove difficult, as there are no specific rules regarding the form or extremity of penalties CAC may impose. This allows the CAC to exercise power as it sees fit, which could lead to insufficient or excessive penalties. This could further create leeway for bribery, corruption and non-compliance with extant company laws and regulations.

4.4.1.1 Key Provisions

CAMA 2020 requires companies to convene annual general meetings (AGM), wherein companies must disclose the remuneration of the company managers.⁹¹ More members can now participate in company meetings and AGMs allow for the effective representation of stakeholders' interests and a more transparent decision-making process.⁹² This is a good innovation, as it caters for the current situation and the new business realities of the world.

In the updated CAMA 2020, a significant change was made regarding the share capital of companies. The traditional concept of "Authorized Share Capital" has been replaced by what is now known as "Minimum Issued Share Capital." This means that companies are no longer required to declare an authorized share capital. Instead, they need to ensure that they maintain a "minimum issued share capital," as outlined in Section 27(2)(a) of CAMA 2020.

The legislation specifies the minimum amounts for this issued share capital. For private companies, the minimum is set at N100,000.00, while for public companies, it's N2,000,000.00. These amounts must be stated in the memorandum of association when the

⁸⁹Ebenezer Y Akinkoye, & Omoneye O Olasanmi, 'Corporate Governance Practice and Level of Compliance among Firms in Nigeria: Industry Analysis', (2014) 9 Journal of Business and Retail Management Research 13, 15.

⁹⁰ *ibid.*

⁹¹ Section 238 CAMA 2020.

⁹² *ibid.* 38.

company is registered, along with the division of the share capital into fixed amounts. Furthermore, when a company decides to issue new shares, CAMA 2020 requires that a quarter of the total issued share capital, which accounts for 25%, must be paid up, as stipulated in Section 128(1) of the Act. This change reflects a more flexible approach to capital requirements for businesses under the new legislation.

Section 265(6) CAMA 2020 is a milestone in corporate governance because it requires that the office of the chairman of the board of a public company is distinct from that of the CEO. In other words, a single individual cannot hold both offices simultaneously in a public company. This provision aims to avoid a possible conflict of interest on the board. It should be noted that there was no such requirement in the previous CAMA. The sector-specific corporate governance codes introduced the provision into the Nigerian corporate world to fill up its omission in the last CAMA.⁹³ Since those codes are not legally binding, the inclusion of this provision in CAMA 2020 implies that public companies are now bound to comply with this requirement.

Additionally, Section 119 of the Companies and Allied Matters Act (CAMA) 2020 mandates companies to maintain a register of beneficial owners. This register is designed to provide transparency and prevent illicit financial activities such as corruption and money laundering. Companies are required to identify and record individuals with significant ownership or control over the company, ensuring that this information is up-to-date and accessible for regulatory purposes.

Finally, Section 1 of the Companies and Allied Matters Act (CAMA) 2020 serves as the foundation for the establishment and operation of the Corporate Affairs Commission (CAC) in

⁹³ 'Companies and Allied Matters Act 2020: Reforming Provisions that Impact the Nigerian Business Community' (Banwo & Ighodalo, 2022) <<https://banwo-ighodalo.com/resources/companies-and-allied-matters-act-2020-reforming-provisions-that-impact-the-nigerian-business-community>> accessed 12 September 2022.

Nigeria. This section outlines the statutory authority for the CAC, designating it as the regulatory body responsible for overseeing various aspects of corporate affairs, including business registration, corporate governance, and compliance with legal requirements. Through this provision, the CAMA 2020 empowers the CAC to carry out its crucial role in promoting transparency, accountability, and proper business conduct in the Nigerian corporate landscape.

Despite receiving positive reviews, CAMA regulations often prove inadequate, permitting clever tactics that subvert the intentions of the lawmakers. This is especially so when the director aims to satisfy personal interests and misuse corporate funds.⁹⁴ This has worsened due to shareholders' need for more activity to uphold directors' obligations, despite the many opportunities to do so.⁹⁵

4.4.1.2 Areas of Concern

There are apparent issues with the CAMA 2020, which arise from the inherent performance-related weakness of the above-stated organs. It is often assumed that the members in general meetings are a corporation's primary organ and that the board of directors are merely agents of the firm subject to the direction of the members in general meetings.⁹⁶ However, subsequent judgements appear to contradict this position, stating that members of general meetings cannot interfere with the directors' choices unless they contradict the Act or the Articles.⁹⁷

According to section 87 (3) CAMA 2020, once a company's administration is delegated to the board of directors, the board can exercise managerial power even if permission is not specified in the articles of association. Simply put, the board of directors oversees a company's day-to-

⁹⁴ *Isle of Wright Railway v. Tahourdin* [1883] 25 Ch.D, 320.

⁹⁵ Ss. 44, 353-357 CAMA 2020.

⁹⁶ *Isle of Wright Railway v. Tahourdin* [1883] 25 Ch.D, 320.

⁹⁷ *Automatic Self- Cleansing Filter Syndicate Co v. Cuninghame* [1906] 2 Ch.D, 34; *Shaw & Sons (Salford) Ltd v. Shaw* [1935] 2.

day operations. Nonetheless, as seen in Section 87 (4) CAMA 2020, which appears to be a weapon possessed by the members of the general meeting, is comparable to a bulldog without teeth that only growls at its prey without hurting them. This claim is supported by the fact that the section absolves the board of directors from following the resolutions passed by the general meeting unless the bylaws specifically state otherwise or the board does not act in good faith and due care.⁹⁸ Additionally, CAMA 2020 imposes several restrictions on the rights and powers of the members; limiting their ability to effectively carry out their overseeing responsibilities to rein the board's excesses.⁹⁹ These limitations affect the potential for good practice in corporate governance.

In addition to working in the company's best interest, a director's responsibilities should include the company's relationships with suppliers, consumers, the host community, the environment, and responsible business practices. This is not the case with CAMA, where company directors are only answerable to the company shareholders, hence have no legal responsibility or authority to undertake any other duty. The company director's duty to act in the organisation's best interests encompasses the interests of members and employees, excluding the interests of other significant stakeholders like host communities. Furthermore, CAMA does not seem to have an ideology that encourages good stakeholder inclusivity in Nigeria. CAMA follows the conventional type of corporate governance that prioritises the interests of its shareholders and there are limitations to the inclusivity of stakeholder groups such as employees, creditors, and host communities.¹⁰⁰

Section 305 (4) and (9) CAMA buttresses this by providing limited support for stakeholders, specifically the employees. Sub-section 4 states that the interests of the firm's members and

⁹⁸ M.O Sofowora, 'Shareholders, Directors, Corporate Managers and the Balance of Power' [2000] 4, Law and Business Quarterly, 122.

⁹⁹ Section 235 CAMA 2020.

¹⁰⁰ Section 309 CAMA 2020.

general employees are among the entities that the director of a company must consider when carrying out his duties. However, Subsection 9 states that any obligation placed on a director can be enforced on them by the corporation. It seems that Subsection 4 encourages directors to consider the interest of employees when making company decisions. On the other hand, Subsection 9 clearly states that, even though these employees might think their interests are being considered in promoting the company's success, they shouldn't try to enforce this right. Only the company (the shareholders) can file a lawsuit if this right is violated or believed to have been violated by corporate managers. This does not give the employees confidence that their rights are not protected, which is a codification of the long-existing common law rule established in the case of *Foss v Harbottle*.¹⁰¹ Aside from only providing limited support to the employees, it fails to include other stakeholders, such as host communities and the environment.¹⁰²

Also, CAMA strictly adheres to the shareholder primacy model regarding the company's statement reporting and disclosures. It does not include any provisions for the interests of significant stakeholders (such as host communities), corporate disclosures, or reports on non-financial (social and environmental) issues.¹⁰³ Examining the CAMA through the lens of accountability, transparency and corporate responsibility indicates that the stakeholders receive little to no protection. The omission of additional important stakeholder interests is to the company's detriment. These stakeholders also have legitimate interests in the company that warrant protection.

4.4.1.3 Assessing CAMA 2020

¹⁰¹ (1943) 2 Hare 461, 69 E.R. 199 Ch

¹⁰² Sections 166 (2) India Companies Act 2013 and 172 UK Companies Act 2006.

¹⁰³ Section 303 CAMA 2020.

The discussion has shown that, despite the potential of the CAMA to control companies in Nigeria, it has failed to rise to the challenge and has proven to be less favourable to stakeholders. While the provisions introduced in the CAMA 2020 are intended to promote transparency and accountability, they also have some limitations in protecting stakeholders' interests. On one hand, the CAMA 2020 provides enhanced disclosure requirements for companies, including the requirement for companies to maintain a register of beneficial owners, which helps curb corruption and money laundering. On the other hand, some of the provisions of the CAMA 2020 may not be effective in protecting the interests of stakeholders. For instance, the new law allows companies to hold virtual meetings, which may make it more difficult for stakeholders to fully participate in decision-making processes. Additionally, the CAMA 2020 retains the requirement for minimum share capital for companies, which may exclude small businesses from the formal sector.

Furthermore, while the CAMA 2020 provides for the establishment of a regulatory body, the Corporate Affairs Commission, to ensure compliance with the new provisions, the effectiveness of this body remains to be seen. There are concerns about the capacity and resources of the Corporate Affairs Commission to effectively enforce the new provisions and hold companies accountable for non-compliance.

Overall, while the CAMA 2020 represents a positive step towards improving corporate governance in Nigeria, its effectiveness in protecting stakeholders' interests will depend on properly implementing and enforcing its provisions. The limited provisions for shareholder protection, weak accountability mechanisms, and inadequate sanctions for non-compliance suggest that the Act falls short of meeting stakeholders' expectations.

4.4.2 SEC Code of Corporate Governance for Public Companies

The SEC is the principal regulatory agency of the Nigerian capital market.¹⁰⁴ It regulates corporate governance issues, especially regarding publicly quoted companies; it monitors and supervises the security activities of public companies, and sanctions erring practitioners.¹⁰⁵ It has achieved a measure of success in ensuring good corporate governance regarding the protection of shareholders. In 2000, a seventeen-member committee headed by Atedo Peterside was set up by the Securities and Exchange Commission (SEC), in coalition with the CAC, to create the SEC Code of Corporate Governance for Public Companies.¹⁰⁶ The committee was made up of representatives from various sectors of the economy, whose job was to identify the major weaknesses in Nigerian corporate governance¹⁰⁷ and to identify changes that need to be made to address the shortcomings and improve the corporate governance system. This was an attempt to regain the trust of investors and the public. The committee produced a 2003 code focused on the board of directors and the role of management, shareholder rights and privileges, and the audit committee.¹⁰⁸ These were issues that the existing corporate governance framework at the time had failed to address.¹⁰⁹

In 2003, both the SEC and CAC boards approved a code of best practices for corporate governance in Nigeria. In September 2008, the SEC created a committee led by Abubakar Mahmoud (SAN) with a mandate to review the 2003 Code of Corporate Governance for Public Companies. The committee was responsible for identifying weaknesses in Nigeria's current corporate governance practices for public companies, reviewing international best practices, and recommending methods for achieving greater compliance with corporate governance

¹⁰⁴ Eti Best Herbert and Ibitayo Oyinda Durosomo, 'Tracing the Evolution of Corporate Governance Regime in Nigeria', (2019) 11 (2) *Journal of Corporate Governance* 2382, 2410.

¹⁰⁵ Section 1 (b) SEC Code of Best Practices on Corporate Governance in Nigeria 2003

¹⁰⁶ Junaidu Bello Marshall, 'Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria' (2015) 3 *International Journal of Business and Law Research* 53, 54.

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ John O Okpara, 'Perspectives on Corporate Governance Challenges in a Sub-Saharan African Economy', (2010) 5 *Journal of Business and Policy Research* 110.

codes; to investigate and recommend methods of achieving greater compliance with the codes of corporate governance.¹¹⁰ After the report was compiled and submitted, along with a draft corporate governance code, the SEC reviewed the code, put in some amendments and approved the Corporate Governance Code for Public Companies in April 2011.¹¹¹ Although the 2011 code was created with public companies in mind, the SEC encouraged private companies to conduct their company affairs according to its principles, as it can also be useful for private companies.¹¹² The code was based on five leadership principles: effectiveness, accountability, remuneration and shareholder relations.¹¹³ The code underwent continual review from 2008 until 2018 the government issued the Nigerian Code of Corporate Governance.

4.4.2.1 Key Provisions

The code seeks to ensure Nigerian companies follow the best corporate governance practices, promote public awareness of essential corporate values and ethical practices, rebuild trust and confidence in the country's economy and facilitate trade and investment. The code stipulates adopting the "apply and explain" approach, providing continual reports of how businesses comply with the code.¹¹⁴ It has been opined that the repealed code was concerned with controlling the direction of the enterprise, supervising executive actions, and with transparency and accountability in the governance of these companies within an existing regulations framework.¹¹⁵ The 2018 code has retained these principles.

¹¹⁰ Kunle Aina and Bolanle Adejugbe, 'A Review of Corporate Governance Codes and Best Practices in Nigeria', (2015) 28 *Journal of Law, Policy and Globalization* 78, 80.

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ Chinoyelum Uwazie, 'Corporate Governance for Public Companies', (*International Financial Law Review*, 2021) <<https://www.iflr.com/article/b11v0lzb2v8h71/corporate-governance-for-public-companies>> accessed 11 January 2021.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

The SEC Code emphasizes corporate sustainability and requires companies to always consider the interests of stakeholders. Public companies should demonstrate sensitivity to Nigeria's social and cultural diversity and should try to advance and promote strategic national interests.¹¹⁶ This provision reflects the level of corporate sustainability currently expected of corporate institutions in Nigeria. The code states that the board should disclose annual reports on the well-being of the company employees; measures taken to reduce environmental degradation in cases of mining operations and disability inclusion.¹¹⁷ While this provision has increased the willingness of public companies to disclose sustainability reports, research has shown that companies do not consider this provision necessary and consider it an act of philanthropy.¹¹⁸

The Nigerian SEC Code 2018 has had an impact on corporate compliance. On one hand, the provision has increased the willingness of public companies to disclose sustainability reports, which is a positive step towards greater transparency and accountability. However, the research indicates that some companies view this provision as unnecessary and consider sustainability reporting as an act of philanthropy rather than a regulatory requirement.¹¹⁹

The impact on corporate compliance varies among companies. Those who embrace sustainability reporting as a responsible business practice may improve their compliance with environmental and social standards. However, for companies that see it as optional, compliance might not be significantly affected.

4.4.2.2 Limitations in Protecting Stakeholders

¹¹⁶Article 28.1, SEC Code of Corporate Governance 2011.

¹¹⁷Article 28.3, SEC Code of Corporate Governance 2011.

¹¹⁸ Olanrewaju David Adeyanju, 'An Assessment of the Impact of CSR in Nigerian Society: The Examples of Banking and Communication Industries' (2012) 1 *Universal Journal of Marketing and Business Research* 17, 22.

¹¹⁹ Kunle Aina and Bolanle Adejugbe, 'A Review of Corporate Governance Codes and Best Practices in Nigeria', (2015) 28 *Journal of Law, Policy and Globalization* 78, 80.

One of the main reasons why the SEC Code of Corporate Governance for Public Companies fails to protect stakeholders is the lack of enforcement of the Code.¹²⁰ While the Code provides guidelines for corporate governance practices, there is no mechanism to ensure that companies comply with these guidelines.¹²¹ As a result, companies can ignore the Code without facing any significant consequences, which puts stakeholders at risk.

Similarly, the SEC Code provides for the establishment of a stakeholder management policy, but it does not clarify how this should be implemented. It states that public companies should pay attention to the interests of their stakeholders, including the employees, host communities and consumers however there is not specify how performance related to stakeholder management should be measured.

Another issue with the SEC Code of Corporate Governance for Public Companies is that it is not comprehensive enough to cover all aspects of corporate governance and the new developments in the sector.¹²² The Code focuses mainly on-board structure and composition, internal controls, and disclosure requirements, but it does not address other important aspects of corporate governance such as executive compensation and risk management. This leaves stakeholders vulnerable to abuse by company executives who may engage in unethical practices that the Code does not cover. The omission of executive compensation and risk management in the Nigerian SEC Code highlights the need for a more comprehensive corporate governance framework. Executive compensation is crucial as it directly impacts the behaviour of top management, aligning their interests with those of shareholders and stakeholders. An effective compensation structure encourages responsible decision-making that benefits the

¹²⁰Junaidu Bello Marshall, 'Corporate Governance Practices: An Overview of The Evolution of Corporate Governance Codes in Nigeria' 3 (2015) *International Journal of Business & Law Research* 49,54.

¹²¹Junaidu Bello Marshall, 'Corporate Governance Practices: An Overview of The Evolution of Corporate Governance Codes in Nigeria' 3 (2015) *International Journal of Business & Law Research* 49,54.

¹²²Junaidu Bello Marshall, 'Corporate Governance Practices: An Overview of The Evolution of Corporate Governance Codes in Nigeria' 3 (2015) *International Journal of Business & Law Research* 49,54.

long-term sustainability of the company. On the other hand, risk management is essential for identifying and mitigating various risks, including financial, operational, and reputational risks. Integrating robust risk management practices into corporate governance ensures proactive handling of potential threats.

The SEC Code of Corporate Governance for Public Companies was introduced in Nigeria to promote good corporate governance practices and protect stakeholders' interests. The Code provides a framework for public companies to follow, focusing on areas such as board structure and composition, internal controls, and disclosure requirements. It also emphasizes the need for corporate sustainability and the protection of stakeholder interests, including employees, host communities, and consumers.¹²³

However, despite the introduction of the Code, stakeholders in Nigeria's public companies have not been adequately protected. One of the main reasons for this is the lack of enforcement of the Code, which allows companies to ignore it without facing significant consequences. Additionally, the Code is not comprehensive enough to cover all aspects of corporate governance, such as executive compensation and risk management, leaving stakeholders vulnerable to abuse by company executives who engage in unethical practices.¹²⁴ Furthermore, the Code does not clearly define who qualifies as a stakeholder, making it difficult to determine who is entitled to protection under the Code. This lack of clarity can lead to disputes between different stakeholders who may have conflicting interests, and the absence of clear protections for each group can exacerbate these conflicts.

Also, the code only covers public companies. Some Mining Companies control more than 50 per cent of Nigeria's crude oil and liquefied natural resources, which account for more than 60

¹²³ Principle 1.3 of the SEC Code 2011.

¹²⁴ I.J. Essian, 'Re-Affirming the Principles of Corporate Governance in the Nigerian Capital Market: The Role of Securities and Exchange Commission' in S.I. Oji (ed.), *Philosophical Legacy on Issues in Nigerian Public Law* (Faith Printers International, Zaria, 2008) 239- 254.

per cent of the country's GDP. These mining companies are incorporated as private companies and the SEC Code does not apply to them; neither does any other existing corporate governance code in Nigeria. This creates a regulatory vacuum and justifies the need to develop a mining sector-specific Code of Corporate Governance, to enhance sustainability in areas of high-impact business activity.

While the SEC Code of Corporate Governance for Public Companies is a step in the right direction towards promoting good corporate governance and stakeholder protection, there is still a need for stronger enforcement mechanisms and a more comprehensive approach to corporate governance in Nigeria. Only then can stakeholders truly be assured of their protection and be confident in the corporate governance practices of Nigerian companies.

4.4.3 The FRCN's 2018 Code of Corporate Governance

The Financial Reporting Council of Nigeria (FRCN) is a regulatory body established by the Nigerian government. Its primary mandate is to set accounting and financial reporting standards in Nigeria and promote compliance with these standards in the public and private sectors.¹²⁵ The FRCN plays a crucial role in enhancing transparency, accountability, and good corporate governance practices in the Nigerian business environment. It oversees financial reporting, corporate governance, and related matters to ensure that organizations in Nigeria maintain high standards of financial reporting and ethical conduct. The FRCN's activities are aimed at improving investor confidence, protecting stakeholders' interests, and promoting the integrity of financial reporting and corporate governance in the country.¹²⁶

¹²⁵ 'Financial Reporting Council of Nigeria Federal Ministry of Industry, Trade And Investment Adoption And Compliance With Nigerian Code Of Corporate Governance 2018'
<<https://pwcniigeria.typepad.com/files/nigerian-code-of-corporate-governance-2018-1.pdf>>.

¹²⁶ 'Financial Reporting Council of Nigeria Federal Ministry of Industry, Trade And Investment Adoption And Compliance With Nigerian Code Of Corporate Governance 2018'
<<https://pwcniigeria.typepad.com/files/nigerian-code-of-corporate-governance-2018-1.pdf>>.

Pursuant to its powers under Sections 11 (c) and 41 (c) FRCN Act 2011, the FRCN issued a Code of Corporate Governance in 2018¹²⁷ as an alternative to the suspended National Code of Corporate Governance 2016. The Federal Government of Nigeria suspended the 2016 Code due to several controversies over its provisions and enforceability.¹²⁸ The 2018 code applies across many industries and companies of varying sizes and complexities.¹²⁹ The 2018 Code of Corporate Governance generally applies to all companies operating in Nigeria, including those in the mining industry. It also promotes public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment.¹³⁰ This code has three versions for private, public, and not-for-profit organisations, respectively.¹³¹ This review concerns the private-sector version only.

There are unique features associated with the 2018 code. The first is its underlying philosophy: the ‘apply and explain’ standard that companies must follow. This principle implies that the application of the code varies based on the distinctive features of a particular company and the requirements of its specific industry.¹³² The concept means that companies are expected to abide by the required principle and corporations must show the specific activities they have undertaken to best achieve the outcome intended in the corporate governance principles stated in the Code.¹³³ By virtue of the apply and explain method, a corporation can modify the principles of the Code to meet its specific needs and choose how best to utilise the

¹²⁷ Pursuant to Chapter F42, Laws of the Federation of Nigeria, 2004.

¹²⁸ Junaidu Bello Marshall, ‘Corporate Governance Practices: An Overview of the Evolution of Corporate Governance Codes in Nigeria’ (2015) 3 *International Journal of Business and Law Research* 53,63.

¹²⁹ Federal Reporting Council of Nigeria, ‘Nigerian Code of Corporate Governance 2018 (NCCG 2018)’ <<https://www.financialreportingcouncil.gov.ng/>> accessed 15 September 2019.

¹³⁰ *ibid.*

¹³¹ The Code, which was published in three parts— the Code of Corporate Governance for the Private Sector, the Code of Corporate Governance for Non-Profit Entities, and the Code of Corporate Governance for the Public Sector— was essentially a consolidation and refinement of various sectoral codes on corporate governance. Unlike the UK Code of Corporate Governance, which operates on a “comply or excuse non-compliance” basis, the Code of Corporate Governance for the Private Sector has been made mandatory.

¹³² By virtue of Paragraph C of the Nigerian Code of Corporate Governance 2018.

¹³³ Eti Best Herbert and Ibitayo Oyinda Durosomo, ‘Tracing the Evolution of Corporate Governance Regime in Nigeria’, (2019) 11 (2) *Journal of Corporate Governance* 2382, 2415.

recommended practices to suit the company's type, size and growth stage, while still achieving the outcome pictured in the principles. In the same way, since the company determines how to implement the code, the company is still expected to show that the approach adopted is suitable to achieve the code's objectives. The board of directors of individual companies are duty-bound to affect the 'apply and explain' standard.¹³⁴

It is to be noted that the 2018 code's 'apply and explain' approach has a more liberal disposition than the 'comply or else' approach of the 2016 code, which takes a more imperative disposition. The 2016 code did not allow for non-compliance or deviation from the express provisions of the code.¹³⁵ The 2016 code dictated that non-compliance would be met with consequences.¹³⁶ While this imperativeness should have further entrenched corporate governance in Nigeria, this priced achievement led to the eventual downfall of the 2016 Code. It was met with stiff resistance from different quarters, eventually leading to its suspension.¹³⁷ The lenient position adopted by the 2018 code was an attempt to calm frayed nerves. While this approach has contributed to a broader acceptance of the 2018 code, it has backtracked on the huge reforms to corporate governance the 2016 code had put in place.¹³⁸

The code recommends that the board ensure an annual evaluation of corporate governance, including an assessment of the code's application, is conducted by an independent external consultant at least once every three years.¹³⁹ If applicable, the evaluation report's results should be incorporated into the company's annual report and the investor's portfolio.¹⁴⁰

¹³⁴ *ibid.*

¹³⁵ *ibid.* 2396.

¹³⁶ *ibid.*

¹³⁷ *ibid.*

¹³⁸ Bello Marshall Junaidu, & Abdullahi Saulawa Mua'zu, 'Examining the Regulatory and Institutional Framework on Corporate Governance in Nigeria and Islamic Perspective on Corporate Governance: A Comparative Analyses' (2015) 3 (2) *International Journal of Business & Law Research* 88, 93.

¹³⁹ *ibid.*

¹⁴⁰ See Principle 15 of the Code.

Thirdly, the Code recognizes the social responsibility of companies and envisions them as positive social citizens.¹⁴¹ This means that companies have moral obligations to give back to society, acknowledging that the community is a stakeholder in the company. As a result, companies must consider vital issues such as sustainability, transparency, and total disclosure in accordance with international business standards.¹⁴² The Code promotes the symbiotic relationship between companies and society by encouraging companies to consider environmental, social, community health, and safety considerations.¹⁴³ Furthermore, the Code requires companies to keep stakeholders informed to help them make responsible decisions. To achieve this, the Code places responsibility on the board to promote an ethical culture of responsible corporate citizenship and ensure that management acts in the best interests of shareholders and other stakeholders.¹⁴⁴

Principle 32 (1) of the Code instructs corporations to take into consideration the interests of stakeholders, including customers, suppliers, employees, the host community, the public, and future generations. However, the use of the term 'shall' in the Code is open to interpretation and may be difficult for the FRC to enforce as it appears to be a suggestion rather than an order. Additionally, the self-regulatory nature of the Code and the lack of specified sanctions for non-compliance make it challenging for the FRC to promote stakeholder inclusivity and compliance effectively.

The 2018 Code of Corporate Governance in Nigeria has also faced criticism for its lack of effective enforcement mechanisms, which limits its ability to protect stakeholders. Moreover,

¹⁴¹Eti Best Herbert and Ibitayo Oyinda Durosomo, 'Tracing the Evolution of Corporate Governance Regime in Nigeria', (2019) 11 (2) Journal of Corporate Governance 2382, 2396.

¹⁴² *ibid.* 2415.

¹⁴³ Principles 24 FRCN Code.

¹⁴⁴ *Ibid.* Principles 24.

the code does not provide clear guidelines on important issues such as executive compensation, board diversity, and whistleblowing, which are crucial for safeguarding stakeholders' interests.

In addition, the 2018 code fails to adequately address the needs and concerns of minority shareholders and stakeholders. Minority shareholders often lack representation in decision-making processes and may face barriers to accessing relevant information. Stakeholders are also frequently marginalized and adversely impacted by the activities of corporations. In conclusion, while the 2018 Code of Corporate Governance in Nigeria provides a framework for promoting good corporate governance practices, it falls short of protecting the interests of all stakeholders. Its lack of enforcement mechanisms, vague guidelines on critical issues, and inadequate attention to the needs of small shareholders and host communities limit its effectiveness in promoting transparency, accountability, and stakeholder protection.

Other African countries that have implemented a code of corporate governance in the last decade have followed an inclusive model of corporate governance that incorporates other stakeholder issues. However, Nigerian codes are notable for retaining the traditional shareholder-centric model of corporate governance.¹⁴⁵

4.4.4 Assessing Corporate Governance in the Nigerian Mining Industry: The Challenges and Opportunities

The previous section examined the legal framework of corporate governance which assessed the protection of stakeholders and how corporations have included stakeholders in the decision-making process regarding the governance of companies. It has been argued that those with governance responsibility are crucial in promoting environmental sustainability and

¹⁴⁵ Olufemi Amao, 'Corporate Social Responsibility, Social Contract, Corporate Personhood and Human Rights Law: Understanding the Emerging Responsibilities of Modern Corporations' (2008) 33 *Australian Journal of Legal Philosophy* 100, 102.

responsible resource management.¹⁴⁶ The review revealed that stakeholders' rights are not adequately protected and that corporate boards have not done enough to encourage stakeholder-friendly practices.

Nigeria has adopted a voluntary corporate governance code instead of a regulatory approach to encourage corporations to practice self-governance and information disclosure. The SEC Code explicitly states that it is voluntary and not a rigid set of rules. Its purpose is to guide corporations in adopting good corporate practices and behaviours.¹⁴⁷ However, Nigeria needs to establish effective regulatory bodies to achieve stronger corporate governance. In Nigeria, the emphasis must be on promoting the characteristics of a market economy and a just democratic society, which thrives on the rule of law, transparency, responsibility, constitutional property rights and justice. Importing laws from other nations may not be the most effective means of addressing regulatory challenges in Nigeria. The Nigerian corporate governance model, based on the Anglo-Saxon/US model, aims to maximise shareholder wealth.¹⁴⁸ This approach is unpopular with stakeholders and limits a company's ability to handle competing demands imposed on them. Furthermore, the model disregards the local context in which companies operate, separating the firm from society.¹⁴⁹

Currently, the law exclusively targets three specific aspects of corporate governance: the board of directors, shareholders, and audit committee. The code could specify the basic requirements that firms must meet in relation to non-shareholder stakeholders.¹⁵⁰ Since its inception, the code

¹⁴⁶ Nkechinyere Edith Dinkpa, 'Corporate Governance and Behavioral Change in the Oil and Gas Industry: – The Case of Gas Flaring' 9 (2016) *International Journal of Arts & Sciences* 299, 300.

¹⁴⁷ *ibid.*

¹⁴⁸ Olufemi Amao, 'Corporate Social Responsibility, Social Contract, Corporate Personhood and Human Rights Law: Understanding the Emerging Responsibilities of Modern Corporations' (2008) 33 *Australian Journal of Legal Philosophy* 100,112.

¹⁴⁹ Olufemi Amao, 'Corporate Social Responsibility, Social Contract, Corporate Personhood and Human Rights Law: Understanding the Emerging Responsibilities of Modern Corporations' (2008) 33 *Australian Journal of Legal Philosophy* 100,112.

¹⁵⁰ Nigeria Corporate Governance Code 2018.

has been voluntary, which has rendered it largely ineffective. Nigeria's Code of Best Practices on Corporate Governance also does not refer to issues affecting non-shareholder stakeholders.¹⁵¹ The Shareholder-centric framework is unsuitable for Nigeria's institutional environment; hence it is necessary to adopt a different framework. Important factors to be considered when creating corporate governance framework include: realistic implementation of the codes to ensure that their objectives are realised; incorporation of stakeholders into the boards of the companies. These points are extensively discussed in chapter five.¹⁵²

The need for a suitable corporate governance framework in Nigeria cannot be overstated. However, the development of a suitable corporate governance framework in Nigeria is not without its challenges, one of which is the issue of faulty legal transplantation. The faults and limitations of legal transplantations have made it necessary to adopt a different framework that is better suited to Nigeria's institutional environment. As in this section, Nigeria's existing corporate governance mechanisms have been inadequate in protecting stakeholders, including host communities. The adoption of a stakeholder-centric framework would ensure that the rights of host communities are better protected, and mining companies are held accountable for their actions.

In the next section, we will examine the challenges associated with legal transplantation and its impact on the effectiveness of corporate governance in Nigeria. We will also explore the different approaches to legal transplantation and their suitability for Nigeria's institutional environment. By doing so, the thesis hopes to provide insights into the best approach for

¹⁵¹ *ibid.*

¹⁵² Nkechinyere Edith Dinkpa, 'Corporate Governance and Behavioral Change in the Oil and Gas Industry: – The Case of Gas Flaring' 9 (2016) *International Journal of Arts & Sciences* 299, 300.

developing a corporate governance framework that is effective, sustainable, and suitable for Nigeria's mining sector.

4.5 Problems Stemming from the Legal Transplantation of Corporate Governance

As mentioned in this chapter, the corporate governance framework of Nigeria is an offshoot of a legal transplant from the United Kingdom. Most Nigerian laws owe their traces and origin to the English law system. This is the outcome of the colonial heritage which Nigeria derived from Britain. The transplantation of the English corporate governance system is not without criticism. While Nigeria was under British rule, the British companies oversaw the Nigerian private sector. Nigeria became an independent country in the year 1960.¹⁵³ Before Nigeria gained its independence from Britain, the existing corporate law framework was based on the Anglo-Saxon system.¹⁵⁴ Thus, Nigeria practised the Anglo-Saxon structure of corporate governance.¹⁵⁵ Although Nigeria's independence heralded changes in some of its extant laws, such as replacing the Companies Ordinance 1922 with the Companies Act, the UK corporate law regime remains a foundational basis for corporate law in Nigeria.¹⁵⁶ Even recent updates to Nigerian company laws still bear the footprints of the Anglo-Saxon corporate governance model.¹⁵⁷ The impact of colonialism on the laws and policies of Nigeria cannot be overemphasized. The colonial administration left a lasting legacy on the legal system of Nigeria, particularly on corporate governance and the recognition of stakeholders. The legal system that was transplanted from the colonial masters had a significant influence on the legal framework that Nigeria operates today.

¹⁵³ Nigeria gained independence on 1st October 1960.

¹⁵⁴ GA Yakasai, 'Corporate Governance in a Third World Country with Particular Reference to Nigeria', (2001) 9 *Corporate Governance: An International Review* 239, 238.

¹⁵⁵ *ibid.*

¹⁵⁶ Elewechi Okike E N M., 'Corporate Governance in Nigeria: The Status Quo', (2007) 15 *Corporate Governance International Review* 173.

¹⁵⁷ *ibid.*

Despite potential opposition from legal professionals or legislators, the transplantation of legal rules from one jurisdiction to another is generally embraced smoothly and accepted within the Nigerian system.¹⁵⁸ However, transplanting regulations can face challenges, particularly in Nigeria, where the legal system has been described as ineffective.¹⁵⁹ In Nigeria, corporate governance is frequently seen as a relatively recent development and a by-product of the country's colonial history with the United Kingdom. The important question is: does legal transplantation,¹⁶⁰ the process of borrowing law from another jurisdiction, work? This question arose due to the number of legal transplants evident in colonial and post-colonial frameworks in Nigeria. The concept of legal transplantation will be further illustrated as follows: its influence on legal culture, how different legal systems mutually influence each other, and the legal transplantation processes in relation to corporate governance.

In this section on Problems Stemming from the Legal Transplantation of Corporate Governance, the implications of legal transplantation in corporate governance will be critically assessed, especially in the Nigerian context. By discussing the problems and potential solutions, to contribute valuable insights to the field and demonstrate a thorough understanding of the topic. This section also aligns with the flow of the thesis, as it follows discussions on corporate governance frameworks and regulations in Nigeria.

4.5.1 Defining Legal Transplantation

Legrand defined legal transplantation as moving or transferring rules, regulations, or legal systems between countries or groups of people.¹⁶¹ According to Watson, the object of legal

¹⁵⁸ T. O. Elias, *The Nigerian legal system*, (Oxford University Press 1963) 3, 39, 58, 113.

¹⁵⁹ J. A. Arewa, 'Evolution of the Nigerian legal order: implication for effectiveness, economic growth and sustainable development' (2012) 1 *NIALS Journal of Law and Public Policy* 3,5.

¹⁶⁰ Mindy Chen-Wishart, 'Legal Transplant and Undue Influence: Lost in Translation or a Working Misunderstanding?' (2013) 62 *International and Comparative Law Quarterly* 1, 2.

¹⁶¹ Pierre Legrand, 'The Impossibility of 'Legal Transplants' (1997) 4 *Maastricht Journal of European and Comparative Law* 111.

transplantation is ‘rules, not just statutory rules-institutions, legal concepts and structures that are borrowed, not the spirit of the legal system’.¹⁶² Legal transplantation is also defined as adopting foreign rules into a country’s legal system.¹⁶³ According to Miller, legal transplants are divided into four different types: entrepreneurial transplant, legitimacy-generating transplant, cost-saving transplant and externally dictated transplant.¹⁶⁴ Entrepreneurial transplant entails a situation where entrepreneurs have a vested interest in the country which adopts specific foreign rules, thereby motivating the country to transplant the law into a country for economic or political gain.¹⁶⁵ Therefore, these individuals are ready to invest in the transplanted law because of the future benefits they stand to gain. For the cost-saving transplant, the recipient country may decide to transplant laws of a foreign system to save the time and cost of developing new laws.¹⁶⁶ Watson stated that most transplantation is done for practical reasons because it is cheaper to transplant law.¹⁶⁷ However, it is unlikely that a country would transplant a legal rule mainly to save expenses.¹⁶⁸

A legal rule may also be transplanted by the adopting country because countries usually want to attain legitimacy and share achievements gained by other countries (legitimacy-generating transplants).¹⁶⁹ Externally dictated transplants occur when external factors, such as satisfying a foreign government or entity.¹⁷⁰ When a foreign body or government dictates that another country must adopt a foreign model as a condition to conduct business with them, the recipient

¹⁶² Alan Watson, ‘From Legal Transplants to Legal Formants’, (1995) 43 *The American Journal of Comparative Law* 469, 472.

¹⁶³ Daniel W Drezner, ‘Globalization and Policy Convergence’, (2001) 3 *International Studies Review* 53, 56-57.

¹⁶⁴ Jonathan M. Miller, ‘A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process’ (2003) 51 *The American Journal of Comparative Law* 839, 842.

¹⁶⁵ *ibid.*

¹⁶⁶ Jonathan M. Miller, ‘A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process’ (2003) 51 *The American Journal of Comparative Law* 839, 842, 845.

¹⁶⁷ Alan Watson, ‘Aspects of Reception of Law’ (1996) 44 (2) *American Society of Comparative Law* 335, 337.

¹⁶⁸ *ibid.*

¹⁶⁹ Jonathan M Miller, ‘A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process’ (2003) 51 *The American Journal of Comparative Law* 839, 847.

¹⁷⁰ *ibid.* 848.

country will have to accept this condition to satisfy the foreign body.¹⁷¹ A country might also transplant legal rules from another country to get a foreign grant or financial aid from an international institution, particularly when the transplanted legal rules favour foreign investors.¹⁷² For instance, countries adopt foreign financial or legal rules from the IMF or World Bank as a requirement for acquiring loans. Laws may also be transplanted in response to the threat of trade sanctions. Developing countries had to adopt the WTO's principles on intellectual property as a result of the threat received from the United States.¹⁷³

Miller's analysis on legal transplant is divided into two phases: the first focuses on the forms of adoption, which can be categorized according to the extent to which the donee/donatee is free to either adopt wholesale or adopt the legal system of the donor. The second phase analyses the outcome of the passage, rather than the transfer, with outcomes resembling those of a culinary recipe.¹⁷⁴ Miller proposes the existence of additional legal transplant typologies in recognition of a substantial body of scholarship, suggesting that contemporary legal transplants are complex, typically involving ingredients from more than one donor and one done/donatee state.¹⁷⁵ He also proposes that external influences overflow onto the transplanted law and that this "spill-over effect" influences the adoption of the law along informally and formally recognized routes. The complexity of transplants in the Middle East is an example of this.

Based on the analysis by Miller, the adoption of foreign laws, particularly from Europe, was imposed on these states by international financial institutions such as the IMF as a condition for liquidity assistance. In most cases, these laws were adopted verbatim without regard for

¹⁷¹ *ibid.*

¹⁷² Mathias Siems, *Comparative Law* (Cambridge University Press, 2014) 847.

¹⁷³ Jonathan M Miller, 'A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process' (2003) 51 *American Journal of Comparative Law* 839,847.

¹⁷⁴ Jonathan M Miller, 'A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process' (2003) 51 *American Journal of Comparative Law* 839,845.

¹⁷⁵ David Nelken, 'Comparativists and Transferability' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transition* (CUP 2003) 329.

local context, resulting in short-lived laws detrimental to the law and economy of the adopting states. Miller further emphasises that the essential underpinnings of the foreign legal system must be set up to support the transplant for it to flourish, which was not the case in many independent states.¹⁷⁶

Legal transplants involve the adoption of legal provisions from other legal systems, ranging from the wholesale adoption of an entire system of laws to copying a single rule.¹⁷⁷ With the current trend of legal globalization, legal transplants are becoming more widespread, not only within the region or country of reception but also further afield.¹⁷⁸

In the event of a legal transplant, the country that transplanted a law applies foreign law to its local circumstances. Therefore, the interpretation of legal rules will differ more within a transplanted system than the original one.¹⁷⁹ An example of this is the enforcement of the freedom of contract principle in a society governed by kinship relations or *Guangxi*.¹⁸⁰ Another instance is the introduction of the corporate form in pre-revolutionary mainland China, where mistrust in the state discouraged entrepreneurs from registering their businesses with the state.¹⁸¹ In this instance, the transplanted law was largely ineffective.¹⁸²

¹⁷⁶ Jonathan M Miller, 'A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process' (2003) 51 *American Journal of Comparative Law* 839.

¹⁷⁷ D. Berkowitz, K. Pistor and J. F Richard, 'The transplant effect' (2002) 51 *American Journal of Comparative Law* 170.

¹⁷⁸ H. Kanda and C. J. Milhaupt, 'Re-examining legal transplants: The director's fiduciary duty in Japanese corporate law' (2003) 51 *American Journal of Comparative Law* 887

¹⁷⁹ *ibid.* 169.

¹⁸⁰ This is a Chinese term which refers to the norms of reciprocity or more generally, human emotions. GG Hamilton, 'Patriarchy, Patrimonialism, and Filial Piety: A Comparison of China and Western Europe' (1990) 41 *British Journal of Sociology* 77.

¹⁸¹ William Kirby, 'China Unincorporated: Company Law and Business Enterprise in Twentieth- Century China', (1995) 54 *The Journal of Asian Studies* 63.

¹⁸² Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, 'The Transplant Effect.' (2003) 51 *The American Journal of Comparative Law* 163.

According to Watson,¹⁸³ the autonomy of law manifests in the potential to easily transplant a law from one country to another. However, contemporary comparative law scholars¹⁸⁴ argue that law is culture specific. Therefore, the main question here is whether a transplanted law can have the same effect in its host country as in its origin.¹⁸⁵

Rizal¹⁸⁶ believes that at the beginning of the transplantation process, the laws will not be as effective as laws which have been created within the country. This is because the country's specific legislative process can sometimes be as important as the law itself, if not more. Evidence of weaknesses has been found in transplanted laws when applied to their new jurisdiction or society.¹⁸⁷ It has also been posited that Western approaches to the law are sometimes rejected or are slow to gain acceptance.¹⁸⁸ Djankov supported the view that transplanted legal systems and procedural policies are ineffective due to high levels of procedural formalism.¹⁸⁹ Another main reason for the ineffectiveness of transplanted laws is the inability to adapt them to indigenous laws.¹⁹⁰ This usually happens when there are socio-cultural differences between the law's country of origin and the country adopting the law. This is frequently the case with Western law that is transplanted to non-Western countries.¹⁹¹ Chiba argued that it was very common for Western laws to conflict with indigenous non-western laws when governments attempt to impose them.¹⁹²

¹⁸³ Alan Watson, 'Aspects of Reception of Law' (1996) 44 (2) *American Society of Comparative Law* 335,469.

¹⁸⁴ Jaakko Husa, 'Comparative Law, Literature and Imagination: Transplanting Law into Works of Fiction' (2021) *Maastricht Journal of European and Comparative Law* 1, 10.

¹⁸⁵ Salim Mohammad Rizal, 'Legal Transplantation and Local Knowledge: Corporate Governance in Malaysia', (2006) 20 *Australian Journal of Corporate Law* 55, 60.

¹⁸⁶ *ibid.*

¹⁸⁷ Kathrina Pistor, Yoram Keinan, Jan Klenheisterkamp and Mark D West, 'Innovation in Corporate Law' (2003) *Journal of Comparative Economics* 676.

¹⁸⁸ Simeon D Djankov, 'Courts: The Lex Mundi Project', (2002) 118 *Quarterly Journal of Economics* 1,3.

¹⁸⁹ *ibid.*

¹⁹⁰ Salim Mohammad Rizal, 'Legal Transplantation and Local Knowledge: Corporate Governance in Malaysia', (2006) 20 *Australian Journal of Corporate Law* 55, 60.

¹⁹¹ *ibid.*

¹⁹² Masaji Chiba, *Asian Indigenous Law* (Routledge 2009) 7.

According to Chiba, the issue with the concept of law— which was a by-product of extensive Western history and was skewed toward Western culture— led to issues with integration. However, academic literature focused on how Western law has been embraced rather than whether indigenous systems have rejected it, and why.¹⁹³ He asserted that the priority should be the overall design of the indigenous systems on which these legal systems are imposed; emphasising that they should firmly preserve their cultural identities while integrating the received laws.¹⁹⁴ In the words of Geertz, the law is ‘local knowledge.’¹⁹⁵ To be clear, this does not imply that adopted laws are completely worthless and should be disregarded. However, it cannot be assumed that laws that apply across borders operate the same way and have the same outcomes.¹⁹⁶

The discussion on legal transplants highlights the significant problems linked with building a legal system through adopting foreign models. Numerous debates exist on the benefits, prerequisites, consequences, functions, implementation, and compatibility of legal transplants. The obstacles associated with transplanting become apparent when borrowing occurs through wholesale transplants, but even selective borrowing has its barriers.¹⁹⁷ Wholesale transplantation of laws refers to importing and applying a foreign legal system or framework, without significant modification or adaptation to the local context.¹⁹⁸ Nigeria has a long history of wholesale transplantation of laws, particularly during the colonial era when the British legal system was imposed on the country.

¹⁹³ *ibid.* 8.

¹⁹⁴ *ibid.*

¹⁹⁵ Clifford Geertz, *Local Knowledge: Further Essays in Interpretative Anthropology* (3rd ed. Basic Books, 2000) 215.

¹⁹⁶ Salim Mohammad Rizal, ‘Legal Transplantation and Local Knowledge: Corporate Governance in Malaysia’, (2006) 20 *Australian Journal of Corporate Law* 55, 72.

¹⁹⁷ Jakko Husa, “Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law” (2018) 6 *The Chinese Journal of Comparative Law* 129, 130.

¹⁹⁸ Jakko Husa, “Developing Legal System, Legal Transplants, and Path Dependence: Reflections on the Rule of Law” (2018) 6 *The Chinese Journal of Comparative Law* 129, 132.

The main issue is that the adoption of wholesale legal transplants has largely been unsuccessful in the post-colonial era, particularly in the context of the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD). Newly independent states that experienced financial difficulties sought help from organizations such as the IMF, which often required them to adopt foreign laws, especially those from Europe, on mining, banking, finance procurement, and other areas.¹⁹⁹ However, these laws were frequently implemented without taking into account the local context or requirements, and as a result, they were short-lived and negatively affected the economy and legal system of the adopting countries. This situation persists to the present day.²⁰⁰

The second major concern relates to the application of the transplant metaphor to the legal system. The wholesale transplantation of legal elements may only thrive if the essential foundations of the foreign legal system are also established to support it. Unfortunately, the newly independent states did not have such support systems in place. Transplanting a law along with its institutions is a complex process that requires full compatibility with the overall legal system of the transplanting state and constant adjustments that balance the needs of the transplanting state and ongoing developments in the transplant state.²⁰¹

In Nigeria, there have been instances of wholesale transplantation of laws. The wholesale transplantation of laws has been criticized for its potential negative impact on the effectiveness of the legal system, particularly in relation to the protection of stakeholders. For instance, the corporate governance framework in Nigeria, which the Anglo-Saxon/US model heavily influences, is often criticized for its inadequate protection of stakeholders. Furthermore,

¹⁹⁹ Ruth Hall, 'Land Grabbing in Southern Africa: The many faces of the investor Rush' (2011) 38 *Review of African Political Economy* 193.

²⁰⁰ Ilias Bantekas, 'Transplanting English Law in Special Economic Zones in Asia: Law as Commodity' (2022) 17 *Asian Journal of Comparative Law* 305, 306.

²⁰¹ Ilias Bantekas, 'Transplanting English Law in Special Economic Zones in Asia: Law as Commodity' (2022) 17 *Asian Journal of Comparative Law* 305, 306.

wholesale transplantation of laws may not be effective in promoting good governance practices, as it does not take into account the unique social, cultural, economic and political context in which the legal system operates. This could result in the adoption of laws and policies that are ill-suited to the local context and fail to address the specific challenges and needs of society. While wholesale transplantation of laws has played a significant role in shaping the legal system in Nigeria, there is a growing recognition of the need for a more contextual approach that takes into account the unique challenges and needs of Nigerian society.

Having examined the concept of legal transplantation and its potential effects, the discussion now shifts towards the specific context of transplant and corporate governance in Nigeria. By doing so, the next section aims to provide a comprehensive understanding of Nigeria's current state of corporate governance and the role of legal transplant in shaping its development.

4.5.2 Problems Stemming from Nigeria's Transplantation of Corporate Governance

As mentioned in this chapter, the corporate governance framework of Nigeria is an offshoot of a legal transplant from the United Kingdom. Most Nigerian laws owe their traces and origin to the English law system. This is the outcome of the colonial heritage which Nigeria derived from Britain. The transplantation of the English corporate governance system is not without criticism. While Nigeria was under British rule, the British companies oversaw the Nigerian private sector. Nigeria became an independent country in the year 1960.²⁰² Before Nigeria gained its independence from Britain, the existing corporate law framework was based on the Anglo-Saxon system.²⁰³ Thus, Nigeria practised the Anglo-Saxon structure of corporate

²⁰² Nigeria gained independence on 1st October 1960.

²⁰³ G.A Yakasai, 'Corporate Governance in a Third World Country with Particular Reference to Nigeria', (2001) 9 *Corporate Governance: An International Review* 238, 239.

governance.²⁰⁴ Although Nigeria's independence heralded changes in some of its extant laws, such as replacing the Companies Ordinance 1922 with the Companies Act, the UK corporate law regime remains a foundational basis for corporate law in Nigeria.²⁰⁵ Even recent updates to Nigerian company laws still bear the footprints of the Anglo-Saxon corporate governance model.²⁰⁶

After Nigeria gained independence, one of the actions of the Nigerian government was to promote domestic ownership and control of the Nigerian private sector.²⁰⁷ Nigeria experienced an economic increase that led to the indigenisation programme, which promoted the state's and citizens' participation in the country's economic activities.²⁰⁸ However, this approach was utilised in an environment with weak institutions and corruption. These factors led to a defective and collegial corporate governance framework. Thus, there was little or no form of challenge to the arbitrariness exhibited by managers of corporations.²⁰⁹ Also, there was a lack of institutional independence and accountability in governance.²¹⁰ The foregoing suggests that Nigerian corporate governance is characterised by a non-transparent disclosure of information, and the corrupt practices of managers, directors, and government shareholders.²¹¹

To guarantee a good and effective corporate governance system, it seems logical that a developing country should fashion its corporate governance framework after that of a

²⁰⁴ *ibid.*

²⁰⁵ Elewechi Okike E N M., 'Corporate Governance in Nigeria: The Status Quo', (2007) 15 *Corporate Governance International Review* 173,175.

²⁰⁶ *ibid.*

²⁰⁷ Elewechi Okike E N M., 'Corporate Governance in Nigeria: The Status Quo', (2007) 15 *Corporate Governance International Review* 173.

²⁰⁸ FC Beveridge 'Taking Control of Foreign Investment: A Case Study of Indigenization in Nigeria' (1991) 40 (4) *The International and Comparative Law Quarterly* 302, 306.

²⁰⁹ Vincent O Nmehielle, & Enyinna S Nwauche, 'External-internal Standards in Corporate Governance in Nigeria', (2004) *GWU Law School Public Law Research Paper* 115.

²¹⁰ *ibid.*

²¹¹ Franklin Nakpodia and Emmanuel Afolabi Adegbite, 'Corporate Governance and Elites' (2017) 1 *Academy of Management Proceedings* 1,17.

developed country.²¹² However, evidence shows that UK laws do not always adapt to Nigerian context²¹³ Although the UK corporate governance system structure seems reliable for the UK, it would be reckless to think the same can apply to Nigeria wholesome. The application and enforcement of regulations, including those related to corporate governance, are generally weak in Nigeria.²¹⁴ Thus, Nigeria has found it difficult to provide answers to issues relating to specific corporate law and governance issues due to the country's socio-cultural and institutional peculiarities.²¹⁵

A clear example of corporate law with faulty transplantation is the CAMA. Nigeria's Corporate Affairs Commission Act (CAMA) does not provide enough support for stakeholder protection in the country. CAMA follows the shareholder primacy model of corporate governance, which limits corporate responsibility towards stakeholders other than shareholders, such as employees, creditors, local communities, and suppliers.

Moreover, the provisions of section 279(4) and (9) of CAMA reinforce the limited support for stakeholders in Nigeria, particularly with regard to employee rights. Although sub-section 4 obliges corporate managers to consider and balance employee-related issues and interests in their decision-making processes, sub-section 9 clearly states that employees cannot enforce this right. Only the company, the shareholders, can take legal action if corporate manager and corporate managers have violated their interests.

²¹² *ibid.*

²¹³ Akande Oyebola Bejide, 'Compliance with Regulations: Path to Adequate Corporate Governance in the Nigerian Banking Industry for Business Sustainability and Enhanced Financial Performance', (2019) 7 *Journal of Business and Management Sciences* 31, 33.

²¹⁴ Elewechi Okike E N M., 'Corporate Governance in Nigeria: The Status Quo', (2007) 15 *Corporate Governance International Review* 173.

²¹⁵ Vincent O Nmehielle, & Enyinna S Nwauche, 'External-internal Standards in Corporate Governance in Nigeria', (2004) *GWU Law School Public Law Research Paper* 115.

The act also provides no provisions for considering important stakeholder interests or disclosing non-financial matters. The provisions for accountability, transparency, and corporate responsibility under the act are solely geared towards protecting shareholders, with little or no protection for other stakeholders such as employees, contractors, government, the environment, and the local community. Interestingly, neither CAMA nor the English Companies Act provides a sufficiently conducive corporate law ideological model for effective stakeholder protection.

The English corporate governance system, which now follows the "enlightened shareholder value" model, also has its logical foundation deeply rooted in the shareholder primacy model.²¹⁶ Ultimately, shareholders retain ultimate control over corporate managers, and investors are promised returns and benefits from the company's profits.

Although there are some similarities between the UK and Nigeria in terms of their emphasis on shareholder interests in corporate governance, there are also significant differences in enforcement and effectiveness. The lack of similarities in enforcement and effectiveness stems from the transplant effect, the "transplant effect" refers to the notion that when a legal system is transplanted to a new jurisdiction without being adapted to local conditions or without a population that is familiar with the transplanted law, the effectiveness of the legal order is diminished compared to the original system or transplants that have been adapted to local conditions. This is evident in Nigeria and the ineffectiveness of transplanted laws. The UK's membership of the EU has led to a different approach to corporate responsibility regulation, as companies are encouraged to disclose non-financial matters in their reports due to the Accounts

²¹⁶ A.N Mohd-Sulaiman, 'Internalising Corporate Social Responsibility (CSR) – Looking Beyond Directors' Duties' (2011) 7 *Journal of Applied Sciences Research* 2411, 2418; English Companies Act, sec 172. The provisions of Sarbanes Oxley have also confirmed the shareholder-oriented corporate culture of corporate America; see Armour et al, id at 10-11. See also Australian Corporations Act, 2.

Modernisation Directive.²¹⁷ This requirement is reflected in the English Companies Act, which mandates the disclosure of non-financial matters. However, in contrast, CAMA does not require annual reports on non-financial Corporate Responsibility matters, such as environmental impact.

Another example of faulty legal transplantation in Nigeria is evident in the transplantation of the NEITI. The legal transfer of the EITI Standard into the 2007 NEITI Act is fundamentally flawed. It seems that the drafters of the act did not consider the legal, institutional, and socio-economic realities of the Nigerian system.²¹⁸ The NEITI Act seems to force a square peg into a round hole. In contrast, many countries that adopt transparency and accountability standards ensure that the adopted framework is consistent with their corporate law model. For example, the US has enacted hard law mandatory regulations, such as Sarbanes-Oxley and the Foreign Corrupt Practices Act, to address critical economic issues such as accountability. The Foreign Corrupt Practices Act prohibits the payment of bribes to foreign officials to obtain or retain business, and extends to publicly traded companies and their officers, directors, employees, stockholders, and agents, anywhere in the world.²¹⁹

The UK's approach to Corporate Responsibility regulation is consistent with its general corporate law model, which relies on a disclosure regime and reporting on non-financial matters. This is evident in section 417(5) of the Companies Act and in compliance with the EU Accounts Modernisation Directive.²²⁰ In contrast, Nigeria's corporate law model, as reflected

²¹⁷ EU Directive 2014/95/EU on Disclosure of Non-Financial and Diversity Information by Certain Large Undertakings and Groups, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>> accessed 04 May 2023.

²¹⁸ Nojeem Amodu, 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria,' 61(2017) *Journal of African Law* 105, 120.

²¹⁹ "Foreign Corrupt Practices Act." The United States Department of Justice. February 3, 2017. <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> accessed 4 May 2023

²²⁰ Nojeem Amodu, 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria,' 61 (2017) *Journal of African Law* 105, 120.

in CAMA and ISA, does not provide for the disclosure of non-financial matters to stakeholders, which is a primary objective of EITI.²²¹

Legal transplantation of laws to Nigeria has failed to provide adequate support for stakeholder protection, as demonstrated by Nigeria's limitations of The Companies and Allied Matters Act (CAMA).²²² CAMA follows the shareholder primacy model of corporate governance, which restricts corporate responsibility towards stakeholders other than shareholders. Furthermore, CAMA provides no provisions for the consideration of stakeholder interests or the disclosure of non-financial matters, and the provisions for accountability, transparency, and corporate responsibility are geared towards protecting shareholders with little or no protection for other stakeholders. The UK's corporate governance system, which also prioritizes shareholder interests, is enforced and more effective due to its membership in the EU and the encouragement of non-financial disclosure. However, despite some similarities, legal transplantation has not been successful in providing adequate stakeholder protection in Nigeria.

To successfully borrow legal rules from another legal system, there must be familiarity with the system being used as a model.²²³ Nigeria, which has its legal system based on the UK due to colonial ties, exemplifies this point. However, sharing a common root does not guarantee successful transplantation, as seen in how European countries developed distinct legal systems from Roman Law.²²⁴ Nevertheless, this argument does not apply to Nigeria and the UK, as there are UK laws already embedded in Nigeria's corporate legal and judicial sphere. The

²²¹ Nojeem Amodu, 'Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria,' 61 (2017) *Journal of African Law* 105, 120.

²²² The Companies and Allied Matters Act (Chapter C20) Laws of the Federation of Nigeria 2004 ("CAMA 1990").

²²³ D. Berkowitz, K. Pistor and J. F Richard, 'The transplant effect' (2002) 51 *American Journal of Comparative Law* 170,180

²²⁴ D. Berkowitz, K. Pistor and J. F Richard, 'The transplant effect' (2002) 51 *American Journal of Comparative Law* 170,180

perceived inefficiency of these laws stems from the lack of evolution or updates as implemented in the UK.

As stated earlier there is a notion that countries that transplant laws may suffer from the "transplant effect," and that those who develop their laws have a comparative advantage. This thesis agrees with this, although Nigeria has not practised internal law development, most of its legal regulations are transplanted and amended to suit local applicability which is sometimes problematic as demonstrated above, so it is worth it to develop laws internally that suit the local circumstances of the country.²²⁵

The section has examined legal transplantation and its effects on Nigerian laws, specifically corporate ones. The effectiveness of corporate governance in Nigeria is limited by various factors including faulty legal transplantation of corporate governance laws as well as inadequate legal provisions for stakeholder protection, amongst others. The failure of legal transplantation has led to adopting a legal model that is not well suited to local conditions and has resulted in limited stakeholder protection. Furthermore, other limitations to effective corporate governance in Nigeria need to be addressed. These include issues related to regulatory enforcement, weak institutional capacity, lack of transparency and accountability, and a general lack of awareness and understanding of the importance of good corporate governance practices. Therefore, the next section will discuss these limitations in more detail.

4.5.3 Other Inefficiencies and Gaps in the Current Corporate Governance Framework in Nigeria

While the previous section explored the challenges of legal transplantation in Nigeria and its impact on effective corporate governance, it is important to also consider other limitations that

²²⁵ D. Berkowitz, K. Pistor and J. F. Richard, 'The transplant effect' (2002) 51 American Journal of Comparative Law 170.

hinder the achievement of effective corporate governance practices in the country. This section will delve into these limitations and provide insights into how they affect corporate governance in Nigeria.

Despite the legislative and institutional efforts, corporate governance in Nigeria remains ineffective. Several challenges have plagued or limited effective corporate governance in Nigeria.²²⁶ Most of these challenges, as shall be seen, are context-specific, due to the dominance of economic and social systems in Nigeria. This section examines these issues.

4.5.3.1. Weak Corporate Regulation

For corporate governance to be effective in a country, the regulation(s) must be firmly imposed. Berglöf and Claessens²²⁷ argue that enforcement is crucial for an effective business environment and good corporate governance. Also, Nmehielle and Nwauche²²⁸ assert that the major issue of corporate governance is the gap between the principles of the law and its application. The corporate governance mechanisms in Nigeria will always remain weak if the politicians and the business owners mutually benefit from bribes and patronage. According to Okpara,²²⁹ enforcing Nigerian laws is a significant challenge for corporate governance. The country's regulations are contravened by the political elites and their allies in the corporate world, and they face no sanctions.

²²⁶ G.A Yakasai, 'Corporate Governance in a Third World Country with Particular Reference to Nigeria', (2001) 9 *Corporate Governance: An International Review* 239, 242.

²²⁷ Erik Berglöf, and Stijn Claessens, 'Corporate Governance and Enforcement', (2004) World Bank Policy Research Working Paper No. 3409 <https://www.researchgate.net/publication/252304539_Corporate_Governance_and_Enforcement> accessed 1 February 2021.

²²⁸ Vincent O Nmehielle, & Enyinna S Nwauche, 'External-internal Standards in Corporate Governance in Nigeria', (2004) GWU Law School Public Law Research Paper 115.

²²⁹ Godwin Chigozie Okpara, & Eugene Iheanacho, 'Banking Sector Performance and Corporate governance in Nigeria: A Discriminant Analytical Approach', (2014) 2 *Expert Journal of Finance* 10, 12.

According to Adekoya,²³⁰ the elites are considered untouchable; no one can penalise them for contravening the law.²³¹ Therefore, it can be argued that the effective enforcement of corporate regulations is a core concern. When the power of the operators is higher than that of the regulators, the enforcement mechanisms are weakened and become less effective. Given this situation, Tauringana and Mangena argue that Nigerian regulators lack the required means to execute their ascribed responsibilities.²³²

4.5.3.2 Corporate Corruption

Government corruption tends to harm their relationship with citizens.²³³ In a country with a high level of government corruption, the citizens will suffer from the effect of corruption.²³⁴ Uzochukwu asserts that corruption is a significant problem in the Nigerian economy.²³⁵ Nigeria is a country rife with corruption, which is embedded in every aspect of its economy. As a result, corporate governance is also rife with the damaging effects of corruption. If corruption is not reduced to a manageable level, corporate governance will be continually open to corruption.²³⁶ The corruption in Nigerian corporate governance is so entrenched that the CAC cannot effectively control small and medium-scale enterprises.

²³⁰ Ayodele Adelaja Adekoya, 'Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions' (2011) 6 *Journal of Business Systems, Governance and Ethics* 38, 42.

²³¹ T Ademola Oyejide, & Adedoyin Soyibo, 'Corporate Governance in Nigeria', (2001) 29 *Conference of Corporate Governance* 3.

²³² Venancio Tauringana & Musa Mangena, 'From SAS to IFRS: An Investigation of Nigeria Transition Road Map Implementation Problems', (2012) 12 *Accounting in Africa* 155.

²³³ Z Jun Lin and Ming Liu, 'The Impact of Corporate Governance on Auditor Choice: Evidence from China' (2009) 18 *Journal of International Accounting, Auditing and Taxation* 44, 46.

²³⁴ *ibid.*

²³⁵ Onyeizugbe Chinedu Uzochukwu, 'Corporate Governance as An Imperative for Business Sustainability: Nigerian Experience' 1 (2) *US Open Business Administration & Management Journal* 5.

²³⁶ Elewechi Okike E N M., 'Corporate Governance in Nigeria: The Status Quo', (2007) 15 *Corporate Governance International Review* 173,187.

Jain²³⁷ and Aid²³⁸ identify three factors which contribute to continual corruption. These are the exercise of discretionary power, extraction of economic rents and the presence of weak institutions. These conditions explain the increase in corporate crime in Nigeria.²³⁹ It has also been shown that these are the core factors that aid and abet corruption in Nigeria.²⁴⁰ Corruption affects good governance, sustainable development, fair business practices, and the democratic process. These elements also tend to weaken the strength and effectiveness of corporate governance. Therefore, it is necessary to manage these conditions if good corporate governance is to thrive in a country like Nigeria.

4.5.3.3 Weak Institutional Structures

The importance of institutional arrangements in corporate governance cannot be over-emphasised. For governance practices to be effective, effective institutions must be put in place. According to Adegbite and Nakajima,²⁴¹ the institutional structures in Nigeria are weak. They argue that a country's institutional structure determines its model of corporate governance regulation. Weak institutional structures in Nigeria have added to the governance problems and legitimacy issues. Therefore, it is important to establish a strong institutional framework for corporate governance.

The effectiveness of corporate governance is dependent on the establishment of proper regulations and compliance with existing regulations. According to Wilson,²⁴² in Nigeria and other countries, a blend of voluntary and mandatory legal mechanisms are used to ensure

²³⁷ Arvind K Jain, 'Corruption: A Review', (2001) 15 *Journal of Economic Surveys* 71.

²³⁸ Toke S Aidt, 'Economic Analysis of Corruption: A Survey', (2003) 113 *The Economic Journal* 491.

²³⁹ Micheal M Ogbeidi, 'Political Leadership and Corruption in Nigeria Since 1960: A Socio-Economic Analysis', (2012) 1 *Journal of Nigeria Studies* 1, 5.

²⁴⁰ Toke S Aidt, 'Economic Analysis of Corruption: A Survey', (2003) 113 *The Economic Journal* 491, 495.

²⁴¹ Emmanuel Adegbite, & Chizu Nakajima, 'Institutions and Institutional Maintenance: Implications for Understanding and Theorizing Corporate Governance in Developing Economies', (2012) 42 *International Studies of Management and Organization* 69, 71.

²⁴² I Wilson, 'Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation', (2006) 12 *Nigerian Economic Summit Group (NESG) Economic Indicators* 1, 4.

compliance with corporate governance principles. However, Nigeria is filled with people trying to live above the law without any regard for the consequences of non-compliance.

Adekoya²⁴³ argued that this behaviour is more frequent when there is a lack of transparency, accountability, and disrespect for the law. These behaviours are also influenced by the collapse of societal values, poverty across the country, a low standard of education and weak regulatory institutions. There is, therefore, the need for a strong regulatory regime combined with enforcement strategies, which could make Nigerians more favourably disposed to regulatory compliance.

Having examined the inefficiencies and gaps in Nigeria's current corporate governance framework, it is essential to shift our focus towards the concept of corporate responsibility. Corporate responsibility goes beyond compliance with laws and regulations, encompassing companies' broader obligations and impacts on society and the environment. The next section will delve into the role of corporate responsibility in promoting stakeholder protection and sustainable development within the mining sector, drawing insights from the practices of the Dangote Group in Nigeria. By exploring the principles and practices of corporate responsibility, we aim to shed light on its significance in shaping ethical business conduct, fostering community engagement, and ensuring the long-term sustainability of mining operations.

4.6 Corporate Responsibility

Corporate responsibility, also known as corporate social responsibility (CSR), is a fundamental aspect of ethical business practices that has gained increasing recognition in recent years. It

²⁴³ Ayodele Adelaja Adekoya, 'Corporate Governance Reforms in Nigeria: Challenges and Suggested Solutions' (2011) 6 *Journal of Business Systems, Governance and Ethics* 38, 44.

goes beyond the traditional focus on profit maximization and entails the commitment of businesses to consider the broader social and environmental impacts of their operations.²⁴⁴

Various definitions have emerged attempting to capture the essence of Corporate Social Responsibility (CSR), but a universally accepted meaning is yet to be agreed upon. Despite its widespread popularity and increased awareness among firms and individuals, CSR remains ambiguous and lacks coherence.²⁴⁵ It is a concept that holds significance but may carry different interpretations for different people in various contexts. This leads to diverse perspectives on CSR, ranging from environmental concerns to community empowerment. The understanding of CSR differs among society members, civil society groups, business practitioners, and academics, contributing to the multitude of definitions on the subject.²⁴⁶

The absence of a universally accepted definition has hindered the establishment of a solid consensus that could guide actions in this domain.²⁴⁷ Over time, the concept of CSR has not only evolved in its definition but also in its practice and the motivations behind it, as well as whether its adoption by firms should be mandatory. While the evolution has resulted in diverse interpretations of the concept, it has also fuelled the ongoing debate and contributed to its growth.²⁴⁸ Burchell and Cook, consolidated the various definitions of CSR into four distinct approaches regarding how businesses perceive its implementation.²⁴⁹ The first approach emphasises the role of CSR in promoting economic progress and gaining a competitive edge.

²⁴⁴ Thomas Donaldson, 'The Values Realignment in Modern Industrial Society' (2010) 20 *Business Ethics Quarterly* 728.

²⁴⁵ Esben Rahbek Pedersen, 'Making Corporate Social Responsibility (CSR) Operable: How Companies Translate Stakeholder Dialogue into Practice' 111 (2006) *Business and Society Review* 137, 140.

²⁴⁶ Kenneth M. Amaeshi and Bongo Adi, 'Reconstructing the corporate social responsibility construct in Utlish' 16 (2007) *Business Ethics: A European Review* 3, 10.

²⁴⁷ Micheal lowfield, and George FrynasJedrzej. 'Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World.'(2005) 81 *International Affairs* (Royal Institute of International Affairs 1944-) 499, 501.

²⁴⁸ Micheal lowfield, and George Frynas Jedrzej. 'Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World.' (2005) 81 *International Affairs* (Royal Institute of International Affairs 1944-) 499, 501.

²⁴⁹ Jon Burchell, Joanne Cook, (2004) 'Confronting the Corporate Citizen: Expanding the Challenges of CSR', Working Paper No.9 of the Brunel Research in Enterprise, Innovation, Sustainability, and Ethics.

The second and third approaches focus on using CSR as a strategy to enhance the company's relationship with local communities and manage reputational damage, respectively. The fourth and final approach centres around stakeholder identification and management, fostering strong relationships between the firm and its stakeholders.

Carroll proposed a comprehensive framework encompassing the fundamental pillars of CSR, namely the economic, legal, ethical, and discretionary societal expectations of businesses.²⁵⁰ This framework implies that companies should strive to achieve their economic objectives while adhering to legal requirements and demonstrating sensitivity to their actions' social impact. Over time, there has been a growing emphasis on the latter aspect of this definition, as highlighted by Egels²⁵¹, who considers it both comprehensive and highly influential among various authors. This four-part definition is esteemed for breaking down CSR into the expectations encompassing businesses' economic, legal, ethical, and philanthropic responsibilities.

Friedman argued against the necessity of CSR, asserting that a business's sole responsibility is to its shareholders to maximise wealth.²⁵² He viewed allocating a firm's resources towards social programs, charity, or non-profit activities as a burden on consumers and investors.²⁵³ According to Friedman, such diversion of resources reduces overall societal wealth and satisfaction.²⁵⁴ Despite numerous criticisms, it's important to note that Friedman's work included a caveat. He proposed that maximising wealth is the primary focus of business as long

²⁵⁰ Archie B Carroll, 'A Three-Dimensional Conceptual Model of Corporate Social Performance' (1979) 4 *Academy of Management Review*, 497.

²⁵¹ Niklas Egels-Zandén 'Sorting out the mess. A Review of Definitions of Ethical Issues in Business' (2005) Centre for Business in Society, Gothenburg Research Institute, GRI:rapport 4.

²⁵² Milton Friedman. (1970) *The Social Responsibility of Business is to Increase its Profits*; New York Times 13 September.

²⁵³ Milton Friedman. (1970) *The Social Responsibility of Business is to Increase its Profits*; New York Times 13 September.

²⁵⁴ Simon Knox, Stan Maklan, Paul French, *Corporate Social Responsibility: Exploring Stakeholder Relationships and Programme Reporting across Leading FTSE Companies*. (2005) 61 *Journal of Business Ethics* 7,8.

as it is done within the boundaries of the law. This indicates that while businesses are expected to generate profits for their owners, they must also comply with legal expectations, which can vary across locations.²⁵⁵ Furthermore, it can be argued that if engaging in CSR activities contributes to increasing shareholder wealth, the firm is permitted to do so. This raises the question of government and its role in ensuring businesses operate legitimately worldwide, as companies will always strive to maximise profit. Therefore, it becomes crucial for governments to establish regulations that promote companies' compliance and enforce existing regulations. Friedman's perspective implicitly acknowledges stakeholder relationships, suggesting that undertaking social responsibilities beyond maximising shareholder wealth is equivalent to taking from shareholders and employees to appease society. He implies that maintaining shareholder and employee relationships is essential for the firm's existence. This aligns with Freeman's broad categorisation of stakeholders, which includes shareholders and employees. Although Friedman²⁵⁶ expressed disagreement with CSR, the concept has gained significant popularity over time, with authors advocating for its adoption in accordance with societal demands. Bowen observed that CSR revolves around recognising society's essential needs in shaping business policies, decision-making, and actions as early as the mid-eighteenth century.²⁵⁷

In the context of the mining sector, corporate responsibility encompasses the responsibilities of mining companies towards their stakeholders, including local communities, employees, the environment, and society at large. The importance of corporate responsibility within the mining sector cannot be overstated. Mining activities often have significant social, economic, and environmental consequences for host communities and regions. Responsible mining practices

²⁵⁵Milton Friedman. (1970) The Social Responsibility of Business is to Increase its Profits; New York Times 13 September.

²⁵⁶Milton Friedman. (1970) The Social Responsibility of Business is to Increase its Profits; New York Times 13 September.

²⁵⁷ Howard R Bowen, (1953) Social Responsibilities of the Businessman. New York: Harper & Row.

are crucial for sustainable development, stakeholder protection, and the overall well-being of the affected communities.²⁵⁸

4.6.1 Why Corporate Responsibility

Corporate responsibility, often referred to as corporate social responsibility (CSR), encompasses a company's commitment to uphold ethical, social, and environmental standards in addition to its primary business objectives.²⁵⁹ The advent of political CSR emerged from a discontent with the instrumental conception of CSR that put the political domain at a distance.²⁶⁰ Acting responsibly in business can have a profound impact on a company's reputation and brand image. When companies prioritize ethical, social, and environmental standards alongside their core business goals, consumers and stakeholders tend to hold them in higher regard, viewing them as socially responsible entities. This positive perception can lead to a bolstered reputation and a stronger brand presence in the market.

Shareholders, employees, customers, and the host community now have heightened expectations for corporations to operate ethically and contribute positively to society. Meeting these stakeholder expectations has become an integral aspect of responsible business conduct. It is no longer merely a competitive advantage, but a fundamental requirement for companies aiming to thrive in a socially conscious world. Embracing corporate responsibility not only aligns with societal expectations but also offers a competitive edge. Companies that integrate responsible practices into their business model stand out in markets where consumers highly

²⁵⁸ Thomas Donaldson, 'The Values Realignment in Modern Industrial Society' (2010) 20 Business Ethics Quarterly 728,729.

²⁵⁹ Thomas Donaldson, 'The Values Realignment in Modern Industrial Society' (2010) 20 Business Ethics Quarterly 728,729.

²⁶⁰ Thomas Donaldson, 'The Values Realignment in Modern Industrial Society' (2010) 20 Business Ethics Quarterly 728.

value ethical and sustainable approaches. This differentiation can lead to increased market share and customer loyalty.

Moreover, engaging in socially responsible activities has a positive impact on employee morale, job satisfaction, and productivity. Employees take pride in working for companies that are committed to making a positive impact on society and the environment. This fosters a sense of purpose and unity among the workforces.

Corporate responsibility is both a moral imperative and a strategic business decision. It not only aligns with societal expectations but also reduces risks, enhances brand value, and contributes to long-term business success. By incorporating responsible practices into their operations, companies have the power to create a positive impact on society and the environment while ensuring their own sustainability and profitability.

To improve CSR initiatives in Nigeria's mining sector, there should be oversight mechanisms to ensure that all forms of accountability by those who voluntarily promise to provide welfare supplies and services to the host communities are complied with. Rules to determine the mining companies' compliance should not be created by the mining companies themselves. There should also be a balance of power between the government and businesses, with the government holding regulatory power to prevent corporations from exploiting governance gaps and exerting undue influence or manipulating regulators.

Companies have a responsibility to consider the impact of their operations on the environment and society. Corporate Social Responsibility (CSR) is a concept that encourages businesses to go beyond profit-making and prioritize the well-being of their stakeholders. To further understand the implementation of CSR and its effectiveness the next section will explore the role of CSR in stakeholder protection and sustainable development, using the Dangote Group in Nigeria as a case study. Specifically, we will examine how the Dangote Group has

implemented CSR initiatives to address the needs of its stakeholders and contribute to sustainable development in the region.

4.6.2 The Role of CSR in Stakeholder Protection and Sustainable Development within the mining sector: Insights from the Dangote Group in Nigeria

The legal debate on CSR that started in the 1930s²⁶¹ has evolved to become related to the humanitarian and charitable deeds that corporations perform to give the impression that they are good corporate nationals.²⁶²

When the topic of stakeholder protection comes up in corporate governance, it is often discussed in relation to CSR.²⁶³ CSR is the connecting factor between corporate governance and stakeholder protection. While CSR may be befuddled by various definitions and ideas, it is argued that CSR can be a means to integrate social values into commercial practices.²⁶⁴ The company's business policies and operations consider stakeholders' interests.²⁶⁵ To attain social development while also achieving professional success, CSR focuses on a company's social, environmental, and financial success. Conversely, CSR can be seen as a duty (social or legal) that addresses the actual and potential social impacts of the corporation's activities, regardless of whether those activities are intended to increase the profitability of that corporation.²⁶⁶

²⁶¹ Olufemi O Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States' 52 (2008) *Journal of African Law*, 8990.

²⁶² Adefolake O Adeyeye, *Corporate Social Responsibility of Multinational Corporations in Developing Countries* (Cambridge University Press, 2012).

²⁶³ Nojeem Amodu, 'Stakeholder Protection and Corporate Social Responsibility from a Comparative Company Law Perspective: Nigeria and South Africa' (2020) 64 *Journal of African Law* 425, 426.

²⁶⁴ *ibid.*

²⁶⁵ *ibid.*

²⁶⁶ Tom Campbell, 'The Normative Grounding of CSR: A Human Rights Approach', in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press, 2007) 529, 541-542.

Maak argues that the essence of CSR lies in establishing enduring and mutually beneficial relationships with relevant stakeholders.²⁶⁷ This definition emphasizes the importance of cultivating long-term and mutually advantageous connections with stakeholders deemed significant by the company.²⁶⁸ This perspective highlights the shared responsibility of firms and the societies in which they operate, working in harmony to achieve optimal outcomes for everyone. While CSR is generally seen as a sound business practice, Andrioff and Waddock assert that successful implementation relies on the support of stakeholders through various formal and informal relationships that solidify their confidence in the company's strategic direction.²⁶⁹ These relationships are fostered through stakeholder engagement, which Lindgreen and Swaen (2010) refer to as the active implementation of CSR, allowing businesses to undertake CSR initiatives in mutually beneficial ways.

CSR has been attributed to playing a significant role in community development, particularly in Less Developed Countries (LDCs) where government institutions often fall short in meeting the needs of the population.²⁷⁰ This inadequacy results in low living standards and limited access to essential infrastructure in these regions.²⁷¹ Consequently, companies operating in these countries, especially multinational corporations, are expected to contribute to or support the provision of necessary infrastructure.²⁷² There is a common misconception among some citizens that these companies should solely drive all aspects of development, as they are

²⁶⁷ Thomas Maak, 'Responsible Leadership, Stakeholder Engagement and the Emergence of Social Capital'. (2007) 74 *Journal of Business Ethics*, 329.

²⁶⁸ Gabriel Eweje, 'The Role of MNEs in Community Development Initiatives in Developing Countries: Corporate Social Responsibility at work in Nigeria and South Africa'. (2006) 45 *Business and Society* 93.

²⁶⁹ Jörg Andriof and Sandra Waddock, (2002) *Unfolding Stakeholder Engagement*. In: Jörg Andriof, Sandra Waddock, Bryan Husted, Sandra Sutherland Rahman. (eds.) *Unfolding Stakeholder Thinking: Theory, Responsibility and Engagement*. Sheffield: Greenleaf Publishing, 19-42.

²⁷⁰ U.E Ite, *Changing Times and Strategies: Shell's Contribution to Sustainable Community Development in the Niger Delta, Nigeria*. (2007) 15 *Sustainable Development*, 1.

²⁷¹ U.E Ite, *Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria*. (2004) 11 *Corporate Social Responsibility and Environmental Management* 1.

²⁷² U.E Ite, *Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria*. (2004) 11 *Corporate Social Responsibility and Environmental Management* 1.

perceived to be the main beneficiaries of these countries' resources. However, Labonte defines community development as a deliberate effort by states and institutions to enhance the well-being of the most vulnerable members of society.²⁷³ It emphasizes that community development should not solely be the responsibility of governments but involve various societal actors working together to address societal challenges.²⁷⁴ The concept of donors and recipients is discouraged, and instead, all actors strive to collaborate and find collective solutions to the problems and challenges they face.²⁷⁵

Today's global community, particularly developing nations, has realised that the efforts of governments and individuals are insufficient to address development difficulties with the necessary experience.²⁷⁶ Fortunately, more businesses are now active in non-financial spheres like human rights, business ethics, environmental regulations, community development, and corporate governance, thanks to the recognition of CSR as a worldwide corporate culture.²⁷⁷

Companies implement extensive non-profit programmes within communities, providing the community with health care, education, and other practical advantages. A few international conglomerates have recognised the benefit of connecting their business strategy with CSR. Although this strategy aims to promote a sustainable means of subsistence, CSR has evolved from being a feel-good component or public relations tool to a crucial factor in maintaining organisations' openness and transparency.²⁷⁸

The mining industry is very slowly adopting the idea of CSR. This may be because the link between the mining industry and resource-rich nations makes the sector an enclave industry

²⁷³ R Labonte, Social Capital, and Community Development: Practitioner Emptor. Australian and New Zealand (1999) 23 *Journal of Public Health*, ABI/INFORM Global 430.

²⁷⁴ Jan Kooiman, 'Social-Political Governance: Overview, Reflections and Design'. (1999) 1 *Public Management*, 67.

²⁷⁵ Sue Kenny, 'Toward Unsettling Community Development'. 46 (2011) *Community Development Journal*, 17.

²⁷⁶ Amita V Joseph, 'Successful Examples of CSR' (2009) 44 (3) *Indian Journal of Industrial Relation* 402, 403.

²⁷⁷ *ibid.*

²⁷⁸ Some of which include Tata and Mahindra in India. *ibid.* 404.

that may operate and extract mineral resources with little regard for the interests of the indigenous community.²⁷⁹ Moreover, the detrimental social repercussions of the mining industry have led to a ‘resource curse’, evidenced in the underdevelopment of host communities, poor political management, and armed conflict.²⁸⁰

Companies in Nigeria have engaged in CSR. However, whether the companies consider CSR a business strategy designed to achieve their financial aim is unclear. According to Lantos, strategic CSR occurs when a company engages in caring corporate community service activities that achieve strategic commercial goals.²⁸¹ Lewis believes that CSR may become a competitive advantage for firms that can effectively leverage it.²⁸² Porter shared the same viewpoint when he said that for businesses to be more competitive, they should incorporate CSR into their commercial strategies.²⁸³ According to 80% of the general public, huge corporations have a moral obligation to society. However, 61% say businesses do not care about the environment or social responsibility.²⁸⁴

An example of a mining company in Nigeria is the Dangote Group, whose involvement in CSR activities led to the creation of the Dangote Foundation.²⁸⁵ The foundation was established to make a difference in empowerment, health, and education, emphasising helping those affected by natural diseases.²⁸⁶ With a review of the mission and vision of the Dangote group, it is unclear whether the Dangote group considers CSR a moral responsibility or a business strategy.

²⁷⁹ Jędrzej George Frynas, ‘Corporate Social Responsibility and Societal Governance: Lessons from Transparency in the Oil and Gas Sector’ (2010) 93 *Journal of Business Ethics* 163, 164.

²⁸⁰ *ibid.*

²⁸¹ Geoffrey P Lantos, ‘The Ethicality of Altruistic Corporate Social Responsibility’ (2002) 19 *Journal of Consumer Marketing* 205, 207.

²⁸² Stewart Lewis, ‘Reputation and Corporate Responsibility’ (2003) 7 *Journal of Communication Management* 356.

²⁸³ M Porter, ‘CSR— A Religion with too many Priests?’ (European Business Forum, 2003)

<<https://www.kommunikationsforum.dk/Log/portercsr.pdf>> accessed 17 September 2022.

²⁸⁴ Stewart Lewis, *supra* (note 1406) 358.

²⁸⁵ Aliko Dangote Foundation (2022) <<https://dangote.com/foundation/about-foundation/>> accessed 9 September 2022.

²⁸⁶ *ibid.*

The CSR policy of Dangote, as described on its website, is unclear in terms of its goals and guiding principles. Rather, it offers more of a summary of charitable deeds performed for the less fortunate. Charity or philanthropy has a distinct function in CSR.²⁸⁷ While the former promotes a positive company image, the latter adheres to the corporate spirit and influences all of the firm's stakeholders.²⁸⁸ The Dangote Group has yet to be successful in eschewing the antiquated concept of corporate philanthropy in favour of the modern CSR model, which aims to enhance the capacity of stakeholders other than shareholders. Should one take a closer look at how Dangote conceptualises and implements CSR, it becomes clear that the company views the initiative as nothing more than a commercial strategy meant to help Dangote reach its financial objectives.²⁸⁹

A careful review of Dangote's conception and implementation of CSR leads to the observation that it regards CSR as nothing more than a business strategy to attain a financial goal.²⁹⁰ This worldview is reactive rather than proactive in the group's approach to societal duties. This may be seen in Dangote's lists of 'social responsibility' activities, which include: rebuilding classroom blocks, sinking boreholes in local communities, financial disbursements to the destitute, and providing relief materials to disaster victims.²⁹¹ Suppose conflicts arise between the host community and the Dangote Group. In that case, Dangote Cement tries to calm the host community's heightened emotions in their customary reactionary fashion by giving

²⁸⁷ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 *Journal for Sustainable Development Law and Policy* 98,105.

²⁸⁸ Aliko Dangote Foundation (2022) <<https://dangote.com/foundation/about-foundation/>> accessed 9 September 2022.

²⁸⁹ Dinah Rajak, "Uplift and Empower": The Market, the Gift and Corporate Social Responsibility on South Africa's Platinum Belt' (2008) 28 *Research in Economic Anthropology* 297, 244.

²⁹⁰ Paul Kapelus, 'Mining, Corporate Social Responsibility and the Community: The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi' (2002) 39 *Journal of Business Ethics* 275, 276.

²⁹¹ Adedoyin Akinsulore, The effects of legislation on corporate social responsibility in the minerals and mines sector of Nigeria (2016) 7 *Journal for Sustainable Development Law and Policy* 98,113.

money, awarding scholarships, and constructing temporary social amenities for those impacted by the mining activities.²⁹²

Research shows that inadequate contributions and compensation companies extend to the community, and corrupt individuals within the communities, who divert public funds to their private accounts, may contribute to this threat. However, the primary cause is successive governments' failure to address the governance challenges and the inability to strengthen CSR regulations. Therefore, legislation and governance are insufficient to effectively protect host communities' rights.²⁹³

The case of the Dangote Group in Nigeria highlights the importance of distinguishing between philanthropy and CSR. While the group has engaged in charitable activities, its CSR policy focuses solely on achieving commercial objectives. Owokalu, Fanisi, Kelvin & Omotayo in Kogi State conducted research which shed light on the impact of Dangote Cement Plc's interventions in various aspects of development. Firstly, the study reveals that the health interventions of the company have a noticeable adverse effect on health development in the region. Despite its efforts to improve the local population's health, the interventions are considered insufficient, particularly when compared to the environmental and health hazards caused by the company itself. Consequently, the company's interventions are negatively impacted instead of positively contributing to the state's health development.²⁹⁴

Similarly, the study uncovers a significant negative effect of Dangote Cement Plc's educational interventions in Kogi State. This finding contradicts a previous report by Kukwa-Yanor, which

²⁹² *ibid.*

²⁹³ Adaeze Okoye, 'Exploring the Relationship Between Corporate Social Responsibility, Law and Development in an African Context' (2012) 54 *International Journal of Law and Management* 364, 365.

²⁹⁴ Owokalu, Olufemi & Fanisi, Babatunde & Agbakwuru, Kelvin & Omotayo, Adeshina. 'An Analysis of Dangote Cement PLC's Corporate Social Responsibility and the Socio-Economic Development of Kogi State, Nigeria'. (2023) 4 *International Journal of Research Publication and Reviews* 518.

commended the company's annual bursary program for indigent students in the Gboko community of Benue State.²⁹⁵ The absence of a similar initiative in Kogi State and the unsatisfactory nature of the company's educational interventions could explain the observed negative effect on educational development in the state. On a more positive note, the study finds that the job opportunities created by Dangote Cement Plc positively influence the employment rate in Kogi State. This aligns with a report by Sunday, which states that over 1,000 student engineers from Obajana, Kogi State, were employed in various company subsidiaries. However, the study highlights a significant negative effect of Dangote Cement Plc's infrastructural interventions on the infrastructural development of Kogi State. While there have been reports of commendable infrastructural interventions in Obajana, as stated by Bello, the findings suggest that the local population is dissatisfied with the level of infrastructural support provided by the company in other areas of the state. This dissatisfaction indicates a need for more comprehensive and inclusive infrastructural interventions to meet the developmental needs of the region.

The study also reveals a significant negative impact of Dangote Cement Plc's security interventions on the reduction of crime rates in Kogi State, specifically in Obajana. Despite the company's efforts to enhance security, the findings suggest that the interventions have not effectively deterred or reduced crime in the state.²⁹⁶ The study brings to light the shortcomings of Dangote Cement Plc's interventions in various aspects, including health, education, infrastructure, and security, in Kogi State. While the company's job creation efforts are perceived positively and have positively impacted employment rates, there is a clear need for

²⁹⁵Samson Kukwa-Yanor, Makurdi, 'Host community commends Dangote for bursary to indigent students' <<https://guardian.ng/business-services/host-community-commends-dangote-for-bursary-to-indigent-students/>>accessed 25 May 2023.

²⁹⁶Owokalu, Olufemi & Fanisi, Babatunde & Agbakwuru, Kelvin & Omotayo, Adeshina. 'An Analysis of Dangote Cement PLC's Corporate Social Responsibility and the Socio-Economic Development of Kogi State, Nigeria'. (2023) 4 International Journal of Research Publication and Reviews 518.

improvement and more comprehensive interventions in other areas to ensure sustainable socio-economic development in the region. This study finds that the corporate social responsibility initiatives undertaken by Dangote Cement Plc in Nigeria are insufficient to improve the region's socio-economic development effectively. As a result, conflicts between the state and the company arise frequently, leading to a negative perception of the company among the host community members. These shortcomings have had a detrimental impact on the company's reputation and public trust, highlighting the need for a re-evaluation of their interventions and a more concerted effort to address the developmental needs of the region. Considering the significant challenges in recognizing and protecting the rights of host communities within the regulatory framework of mining in Nigeria, it is crucial to assess the overall impact of these challenges.

4.7. Conclusion

Corporate governance plays a crucial role in ensuring that companies operating in Nigeria act in the best interest of their stakeholders. This chapter has provided an overview of the current laws on corporate governance in Nigeria, examining various aspects such as best practices, transparency, corporate citizenship, fairness, and responsibility. It has discussed the emergence of corporate governance frameworks in Nigeria, including external mechanisms like the SEC Code of Corporate Governance for Public Companies as well as internal mechanisms.

The assessment of corporate governance in the Nigerian mining industry has revealed challenges and opportunities. The colonial influence on corporate governance and stakeholder protection has been explored, highlighting the concept of legal transplantation and its impact on the corporate governance framework in Nigeria. Furthermore, inefficiencies and gaps in the current corporate governance framework have been identified, including weak corporate regulation, corporate corruption, and weak institutional structures.

The importance of corporate responsibility has been emphasized, focusing on its role in stakeholder protection and sustainable development within the mining sector. The case study of the Dangote Group in Nigeria has provided valuable insights into the shortcomings of corporate social responsibility initiatives and the need for more comprehensive interventions to address the socio-economic development of host communities.

It is evident that there are significant challenges and opportunities in the realm of corporate governance in Nigeria, particularly within the mining industry. Addressing these challenges requires robust corporate regulation, eradicating corporate corruption, and strengthening institutional structures. Furthermore, there is a need for companies to embrace corporate responsibility as a means of protecting stakeholders and fostering sustainable development. By addressing these issues and implementing effective corporate governance practices, Nigeria can pave the way for a more transparent, accountable, and responsible business environment that benefits all stakeholders, including host communities, investors, and the overall economy. The next will explore theoretical perspectives and alternative models for corporate governance. This exploration aims to foster stakeholder inclusivity and illuminate strategies to enhance governance practices. By considering different perspectives and models, the thesis can gain insights into how corporate governance can be further improved to ensure stakeholders' active involvement and representation.

CHAPTER FIVE

EXAMINING THEORETICAL PERSPECTIVES AND ALTERNATIVE MODELS FOR CORPORATE GOVERNANCE TOWARDS STAKEHOLDER INCLUSIVITY

5.1 Introduction

Chapter Four provided an overview of Nigeria's current corporate governance framework and the mechanisms in place to protect stakeholders. It also identified several inefficiencies and gaps in the system, such as faulty legal transplantation, weak regulation, corporate corruption, and institutional weaknesses. In light of these issues, Chapter Five will delve deeper into the theoretical underpinnings of corporate governance and explore alternative models that could provide a more effective framework for protecting stakeholders in the Nigerian mining context.

Corporate governance stands as the cornerstone of effective organisational management, guiding decision-making processes, and ensuring accountability to stakeholders.¹ Over the years, diverse theoretical perspectives and models have emerged, each offering unique insights into governance structures.² In this comprehensive exploration, we delve into three critical models: the agency theory, shareholder model, and stakeholder model. Additionally, we include the Emerging Shareholder Value (ESV) model, a recent entrant that holds potential for revolutionizing conventional governance practices.

¹ Catherine M. Dalton and Dan R. Dalton, 'Corporate governance best practices: The proof is in the process'. (2006) 27 *Journal of Business Strategy* 5.

² Sorin Nicolae BORLEA and Monica-Violeta, 'Theories of Corporate Governance' (2013) 23 *Economics Series* 117.

The chapter begins with an overview of the purpose of corporate governance, highlighting the importance of effective corporate governance in promoting the long-term sustainability of businesses and its role in promoting stakeholder protection. This will be followed by a detailed analysis of Agency and Stakeholder theories, the primary theoretical frameworks that inform corporate governance practices. The application of these theories in Nigeria will also be discussed, focusing on the mining sector.

Understanding these theories and models separately is imperative for several reasons. Firstly, each theoretical perspective offers a distinct lens through which to view corporate governance, illuminating specific aspects of organizational behaviour and decision-making. By examining them individually, we can extract nuanced insights and evaluate their applicability in contemporary business landscapes. Secondly, considering the shareholder model, which traditionally held sway, and contrasting it with the stakeholder model, brings to light a pivotal shift in governance paradigms. This transition from a shareholder-centric approach to a more inclusive stakeholder-centric one signifies a growing recognition of the multifaceted interplay between businesses and their broader ecosystem.

The agency theory, on the other hand, offers a valuable perspective on the principal-agent relationship within corporations, shedding light on potential conflicts of interest and avenues for mitigating them. By dissecting the nuances of this theory, we gain valuable tools for fostering transparency, accountability, and trust within organizational hierarchies.

Finally, the ESV model, a nascent entrant in the realm of corporate governance, introduces innovative elements that promise to bridge gaps between traditional models. This warrants an in-depth examination to discern its potential for harmonizing diverse stakeholder interests and driving sustainable, long-term value creation.

This exploration aims to illuminate the strengths and limitations of each theoretical perspective and model, offering a comprehensive understanding of their roles in modern corporate governance. By doing so, the thesis lays a groundwork for a more inclusive, stakeholder-driven approach to governance, fostering environments where businesses thrive in harmony with their broader societal context.

In the subsequent section, the chapter examines what parts of each theory are most relevant and should be incorporated into a new, more effective corporate governance model. The chapter will critically analyse each theory and its strengths and weaknesses before making recommendations on which parts should be adopted.

This analysis will inform the subsequent discussion in the next chapter on best practices and areas for improvement in adopting an integrative stakeholder model in the Nigerian mining sector, drawing from insights from the Indian and German corporate governance framework. Together, these discussions provide a comprehensive analysis of the theoretical foundations and practical applications of corporate governance in Nigeria.

This chapter concludes by offering insights into the competing theories informing corporate governance (CG) and advocates for a specific theory to guide future CG development. It will primarily focus on two influential theories - Agency and Stakeholder theory - which have been significantly influenced by historical, ethical, political, societal, and cultural contexts. The following sections will examine these theories, scrutinizing the essence and goals of corporate governance before examining their application in the Nigerian context. This review aligns with the study's research questions and objectives.

5.2 Agency Theory of Corporate Governance

The disciplinary origin of agency theory is (information) economics.³ Agency theory focuses on the pervasive agency relationship, whereby one party (the principal) assigns work to another (the agent), who performs that task on behalf of the principal. Agency theory tries to portray this relationship using a representation of a contract.⁴ Since the unit of analysis is the contract binding the relationship between the principal and the agent, the main purpose of the theory is to determine the most effective contract governing the principal–agent relationship, given the assumptions about people (e.g. self-interest, bounded rationality, risk aversion), organisations (e.g. goal conflict among members) and information (e.g. information as a commodity that can be purchased).⁵

Generally, the agency theory concept refers to the relationship that represents the basic agency arrangement between a principal and an agent, both of whom are involved in cooperative behaviour, recognising their divergent goals and different attitudes towards risk.⁶ According to Moe, agency theory research has started to examine more general inquiries around incomplete information and risk sharing. Ross,⁷ Arrow⁸ and Spence and Zeckhauser⁹ are all considered the pioneers of agency theory and have been studied by other authors such as Jensen,¹⁰ Moe¹¹

³ Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' (1989) 14 *Academy of Management Review* 57, 58.

⁴ Mark Bergen, Shantanu Dutta, and Orville C Walker, 'Agency Relationships in Marketing: A Review of the Implications and Applications of Agency and Related Theories' (1992) 56 *Journal of Marketing* 1, 2.

⁵ Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' 14 (1999) *Academy of Management Review* 57.

⁶ Mark Bergen, Shantanu Dutta and Orville C Walker, *Agency Relationships in Marketing: A Review of the Implications and Applications of Agency and Related Theories* (1992) 56 *Journal of Marketing* 1,5.

⁷ Stephen Alan Ross, 'The Economic Theory of Agency: The Principal's Problem' (1973) 63 *American Economic Review* 134.

⁸ Kenneth J Arrow, 'Political and Economic Evaluation of Social Effects of Externalities' in M Intriligator (ed), *Frontiers of Quantitative Economics* (Oxford University Press, 1971).

⁹ Micheal Spence and Richard Zeckhauser, 'Insurance, Information and Individual Action' (1971) 61 *American Economic Review* 380.

¹⁰ Micheal C Jensen, 'Self-Interest, Altruism, Incentives, and Agency Theory' (1994) 7 *Journal of Applied Corporate Finance* 40.

¹¹ Terry M Moe, 'The New Economics of Organization' (1984) 28 *American Journal of Political Science* 739.

and Eisenhardt. These authors have studied agency theory along two streams, known respectively as the positivist and principal–agent streams.¹²

5.2.1 **Positivist Stream**

Theoretically, the positivist stream focuses on defining the governance methods that resolve the agency problem. There are two main propositions within the positivist stream. The first is that, outcome-based contracts effectively limit and curb opportunism.¹³ The core of this proposition is that such contracts combine the preferences of agents with those of the principal, which means that, their benefit is dependent on the agent and principal's joint actions. In such a case, there would not be any form of conflict arising from the self-interest of either the principal or the agent, as both parties would be working towards the same positive outcome.¹⁴ Thus, when the contract between the principal and agent is outcome-based, the agent is more likely to act in the interests of the principal.

The second proposition is that information systems also limit agent opportunism.¹⁵ The argument is that, since they update the principal about the agent's activities, information systems are likely to limit agent opportunism, since the agent will recognise that he or she cannot mislead or cheat the principal.¹⁶ Fama described 'the information effects of efficient capital and labour markets on managerial opportunism'.¹⁷ Fama and Jensen further 'described the information role that boards of directors play in controlling managerial behaviour'.¹⁸ In the

¹² Michael C Jensen, 'Theory of the firm: Managerial behavior, agency costs and ownership structure', (1976) *Journal of Financial Economics* 305,310.

¹³ Gloria Cuevas-Rodríguez, Luis R Gomez-Mejia, and Robert M Wiseman, 'Has Agency Theory Run Its Course? Making the Theory More Flexible to Inform the Management of Reward Systems' (2012) 20 *Corporate Governance: An International Review* 526, 527.

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ Eugene F Fama, 'Agency Problems and the Theory of the Firm.' (1980) 88 *Journal of Political Economy* 288,293.

¹⁸ Eugene F Fama and Michael C Jensen, 'Agency Problems and Residual Claims' (1983) 26 *The Journal of Law & Economics* 327, 334.

event that the principal has sufficient information to ascertain the agent's activities, the agent is more likely to act in accordance with the interests of the principal.¹⁹

The positivist stream has been influential in shaping agency theory research. However, some critiques have been levelled against this stream.²⁰ For instance, some argue that outcome-based contracts might not be effective in all cases and that other mechanisms, such as monitoring and sanctions, might be necessary.²¹ Critics argue that outcome-based contracts may not be universally effective due to a variety of reasons. The complexity and uncertainty of business environments can render predetermined outcomes inadequate in accounting for unforeseen circumstances or market fluctuations. Additionally, information asymmetry between principals and agents can lead to issues of moral hazard and adverse selection, necessitating monitoring to mitigate risks. Factors beyond the control of individual agents, such as global economic conditions, may also impact outcomes. Therefore, mechanisms like monitoring and sanctions are seen as crucial complements, providing a safety net to ensure agents act in the best interests of principals, even in situations where outcomes are uncertain or influenced by external factors.

Additionally, information systems might not always be effective, especially when the principal cannot fully observe the agent's activities. In summary, the positivist stream of agency theory focuses on defining governance methods to resolve the agency problem. This stream suggests that outcome-based contracts and information systems can limit agent opportunism. However, while this stream has contributed significantly to agency theory research, its propositions are not without criticisms.

¹⁹ Eugene F Fama and Michael C Jensen, 'Separation of Ownership and Control' (1983) 26 *The Journal of Law and Economics* 301, 325.

²⁰ Aiysha Dey. (2008). 'Corporate governance and agency conflicts.' *Journal of Accounting Research*, 46, 1143-1181.

²¹ *Ibid.*

5.2.2

Principal-Agent Stream

The principal-agent stream of research focuses on the general theory of the principal-agent relationship as a theory that applies to the employer-employee or buyer-supplier relationship and other types of agency relationships.²² The formal principal-agent paradigm characteristically involves careful assumptions and specifications, followed by logical deduction and mathematical proof.²³ Therefore, the agency theory is abstract, mathematical, and less accessible to logistic scholars. The focus of the literature on the principal-agent stream aims to balance the optimal contract behaviour against the outcome between the principal and the agent.²⁴

The principal-agent stream of research in agency theory is focused on exploring the theory of the principal-agent relationship as a general theory that applies to a wide range of agency relationships beyond just the corporate context. This research stream formalises the principal-agent relationship through assumptions and specifications, followed by logical deduction and mathematical proof.

One of the primary goals of the principal-agent stream is to determine the optimal contract behaviour that will balance the interests of the principal and the agent.²⁵ This means identifying the incentives and monitoring mechanisms that can be used to align the interests of the two parties and ensure that the agent acts in the principal's best interest. While the principal-agent stream of research is characterized by its abstract and mathematical approach, it has significant

²² Some incentive contracts have application to education and employment, health insurance and law enforcement. See: Milton Harris and Artur Raviv, 'Optimal Incentive Contracts with Imperfect Information' (1979) 20 *Journal of Economic Theory* 231.

²³ Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' 14 (1999) *Academy of Management Review* 57,60.

²⁴ *ibid* 59.

²⁵ Milton Harris and Artur Raviv, 'Optimal Incentive Contracts with Imperfect Information' (1979) 20 *Journal of Economic Theory* 231.

implications for various practical applications, including corporate governance, employment relationships, and buyer-supplier relationships. By providing a theoretical framework for understanding the dynamics of agency relationships, the principal-agent stream can help organizations design more effective governance systems and contracts that align the interests of principals and agents and minimize opportunistic behaviour.

However, some scholars have criticized the principal-agent stream for its narrow focus on optimal contract behaviour and its relative lack of attention to broader social and institutional factors that can influence the dynamics of agency relationships. They argue that this perspective places excessive emphasis on the mechanics of optimal contract behaviour between principals and agents, often overlooking the broader social and institutional contexts that can significantly impact the dynamics of these relationships. By fixating on contract design and incentives, this approach may neglect crucial aspects such as cultural norms, ethical considerations, power dynamics, and legal frameworks that are intrinsic to understanding and managing agency relationships effectively. This criticism highlights the need for a more holistic and contextually grounded approach to studying and managing agency relationships. Additionally, some have argued that the emphasis on formalization and mathematical proof can obscure important contextual and behavioural factors that may be critical for understanding agency relationships in practice.²⁶ This argument stems from the concern that it may inadvertently overshadow crucial contextual and behavioural elements that are vital for comprehending agency relationships in real-world settings. By relying heavily on mathematical models and formalized proofs, there is a risk of oversimplifying the complex and multifaceted nature of human interactions and organizational dynamics. This approach may not adequately capture the nuances of trust, social norms, cultural influences, and individual

²⁶ Daily C. M., Dalton D. R., Rajagopalan N. 'Governance through ownership: Centuries of practice, decades of research'. 46 (2003) *Academy of Management Journal*, 151.

motivations that play a significant role in shaping agency relationships. Thus, critics assert that a purely quantitative and formalized approach can potentially lead to an incomplete understanding of the realities and intricacies of agency dynamics in practice. This argument underscores the importance of adopting a more balanced and inclusive approach that integrates both formal models and a nuanced understanding of human behaviour and organisational contexts.

5.2.2.1 Navigating the Dynamics of Principal-Agent Relationships

Even though the two streams have divergent perspectives on agency theory, they still share a common analysis: the contract between the principal and the agent and some of the common assumptions of agency theory. Jensen stated that ‘both kinds of literature address the contracting problem between self-interest maximising parties, and both use the same agency cost minimising tautology.’²⁷ Regardless of the common assumptions and interests that the two ideas on agency theory may share, there are also clear and specific differences. The literature on the principal–agent stream is concerned with the principal–agent relationship, a theory that is similar to that of the landlord–tenant relationship or the employer–employee relationship.²⁸ The other agency theory stream, the positivist approach, focuses more on pinpointing circumstances wherein the principal and the agent are likely to have contradictory objectives and examining the governance systems that limit the agents’ self-serving attitudes.²⁹ Academics who have studied the positivist agency theory have concentrated more on intra-hierarchical principal–agent relationships, particularly shareholder–manager relationships.³⁰

²⁷ Michael C Jensen, ‘Theory of the firm: Managerial behavior, agency costs and ownership structure’, (1976) *Journal of Financial Economics* 305,310.

²⁸ Kathleen M Eisenhardt, ‘Agency Theory: An Assessment and Review’ 14 (1999) *Academy of Management Review* 57,61.

²⁹ *ibid* 62.

³⁰ Mohammad Namazi, ‘Role of the Agency Theory in Implementing Managements Control’ (2013) 5 *Journal of Accounting and Taxation* 40, 46; Kathleen M Eisenhardt, ‘Agency Theory: An Assessment and Review’ 14 (1999) *Academy of Management Review* 57, 59.

Although there is a difference between the research on positivist agency theory and principal–agent agency theory, it is also important to note that these two areas of research complement each other.³¹ The positive theory recognises the agent’s conduct, and the idea demonstrates which contract is most efficient within a particular situation.³² Agency theory originates from an economic view of risk-sharing between two parties (the principal and the agent). However, the two parties have different ways of resolving problems.³³ This cooperative behaviour is considered to produce outcomes desired by the principal.³⁴ At the exact core of the agency problem is the issue of self-interested behaviour that may encourage an over-achieving agent to act out of line with the desires of the principal.³⁵ To the principal, this divergence is a source of concern, one that changes the agency costs.³⁶ At the inception of the principal–agent relationship, the agency cost is always specified and agreed upon by the parties.³⁷ However, in a situation in which the agent decides to act in contradiction to the agreement, the principal perceives that they have taken up more risks.³⁸ This is the first agency problem- a change in risk sharing. The first agency problem arises from a change in risk sharing between the principal and the agent. It occurs when the agent acts in contradiction to the agreed-upon terms, leading the principal to perceive that they have taken on more risks. This shift in risk-sharing dynamics can create concerns for the principal, altering the agency costs associated with the arrangement.³⁹ This problem is a concern because it introduces a potential misalignment of

³¹ Kathleen M Eisenhardt, ‘Agency Theory: An Assessment and Review’ 14 (1999) *Academy of Management Review* 57,61.

³² *ibid* 60.

³³ Stephen A Ross, ‘The Economic Theory of Agency: The Principal’s Problem’ (1973) 63 *American Economic Review* 134.

³⁴ *ibid*.

³⁵ *ibid*.

³⁶ Eugene F Fama, ‘Agency Problems and the Theory of the Firm.’ (1980) 88 *Journal of Political Economy* 288,291.

³⁷ Meri Boshkoska, ‘The Agency Problem: Measures for its Overcoming’ (2014) 10 *International Journal of Business and Management* 204, 205.

³⁸ *ibid*.

³⁹ Eugene F Fama, ‘Agency Problems and the Theory of the Firm.’ (1980) 88 *Journal of Political Economy* 288, 291.

interests between the principal and the agent. When the agent deviates from the agreed-upon terms, it may lead to a situation where their actions are no longer in line with the desires or objectives of the principal. This can create a conflict of interest, as the agent's behaviour may be driven by their own self-interest rather than the best interests of the principal. As a result, the principal may face increased risks and uncertainties in the relationship, which can impact the overall success and effectiveness of the agency arrangement. The problem lies in the potential for self-interested behaviour on the part of the agent, which can undermine the achievement of the principal's objectives.

The second agency problem is generated from the first agency problem. Agency theory suggests that when agents have 'equity in the firm', they are expected to regard the principal's activities as their own.⁴⁰ Eisenhardt stated that, when their actions are result-based, the agent is anticipated to act in the principal's interests.⁴¹ However, when there is a lack of equity, the agent will probably act in favour of their self-interest.⁴² Where the agents act in favour of their self-interest, there will be irregularities in the information received by the principal,⁴³ and the principal will find it difficult to supervise and control the agent's behaviour effectively.⁴⁴ Thus, there will be a shift in the measurability of outcomes, creating the second agency problem-supervising the agent's behaviour.⁴⁵

⁴⁰ Eugene F Fama and Michael C Jensen, 'Agency Problems and Residual Claims' (1983) 26 *The Journal of Law & Economics* 327, 387.

⁴¹ Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' 14 (1999) *Academy of Management Review* 57,67.

⁴² *ibid.*

⁴³ Meri Boshkoska, 'The Agency Problem: Measures for its Overcoming' (2014) 10 *International Journal of Business and Management* 204, 205.

⁴⁴ *ibid.*

⁴⁵ Josh Bendickson, 'Agency Theory: Background and Epistemology' (2016) 22 *Journal of Management History* 437, 442.

Using Eisenhardt's view, agency theory has created a worldwide lens with which to examine all corporate governance concerns.⁴⁶ The theory assumes that a firm's ability to increase its wealth is made possible through the reduction of likely conflicts among its main actors.⁴⁷ Where a shareholder's main expectation and want is to maximise profit, management has the fiduciary duty to support the achievement of that objective.⁴⁸ Hart posited that corporate governance issues arise when two conditions are in existence. The first condition is the agency problem. Hart argued that without the agency problem, corporate governance would not be needed.⁴⁹ Thus, it is sufficient to say that the agency problem has given rise to the existence of corporate governance scholarship.

One good thing about this theory is that it avoids distractions from outside the firm that might affect the managers of the company. However, the avoidance of distractions will, in turn, lead to the abuse of power by managers empowered to focus solely on running the company. It is against the theory to give out any part of the profits meant for the shareholders to answer ethical or environmental considerations.

Agency theory advocates for the introduction of members of the board that work in the interests of the shareholders. Generally, there is no specified size for a board of directors; a large board size is challenging to organise, whereas a small board size is easier to manage but might suffer from a lack of experience or competence among its members. Agency theory does not restrict the number of members on a board. It tacitly excludes stakeholders, as it is silent about the position of stakeholders on board positions and decision-making within organisations. The

⁴⁶ Kathleen M Eisenhardt, 'Agency Theory: An Assessment and Review' 14 (1999) *Academy of Management Review* 57.

⁴⁷ Jonathan L Johnson, Catherine M Daily and Alan E Ellstrand, 'Boards of Directors: A Review and Research Agenda' (1996) 22 *Journal of Management* 409.

⁴⁸ Rafael la Porta, 'Agency Problems and Dividend Policies around the World' (2000) 55 *The Journal of Finance* 1, 7.

⁴⁹ Stuart L Hart, 'A Natural-Resource-Based View of the Firm' (1995) 20 *The Academy of Management Review* 986, 988.

glaring omission of stakeholders could be noted as a clear omission of host communities as stakeholders, ignoring the potential for them to hold board positions in the organisations operating within their communities.

To summarize, agency theory is a valuable framework for understanding the dynamics of principal-agent relationships. Scholars have studied agency theory through two main streams: the positivist stream and the principal-agent stream. The positivist stream is focused on defining the governance methods that resolve the agency problem, while the principal-agent stream aims to balance the optimal contract behaviour against the outcome between the principal and the agent. These streams offer different perspectives and approaches to understanding agency relationships, and both have contributed to our understanding of the topic. After a discussion on the theoretical underpinnings of agency theory, it is important to examine the criticisms of the agency theory.

5.2.2.2 Criticisms of the Agency Theory

Agency theory has attracted significant attention from corporate governance researchers.⁵⁰ The pioneering works of Berle and Means⁵¹, Jensen and Meckling,⁵² and Fama and Jensen⁵³ shed light on the potential of agency theory, leading researchers to utilize its assumptions, models, and arguments in various areas such as ownership structure, board practices, agency conflicts, corporate governance reform, capital structure, debt, and more. Despite the theory's

⁵⁰ Beth Arnold, Paul de Lange, 'Enron: an examination of agency problems' (2004) 15 *Critical Perspectives on Accounting* 751; Pieter-Jan Bezemer, Stefan C. Peij, Gregory F. Maassen & Han van Halder. 'The changing role of the supervisory board chairman: the case of the Netherlands (1997–2007)'. 16 (2012) *J Manag Gov* 37 ; Elston, Julie Ann and Goldberg, Lawrence G., 'Executive Compensation And Agency Costs In Germany' (2003) 27 *Journal of Banking and Finance* 1391; Renders Annelies and Ann Gaeremynck. 'Corporate Governance, Principal-Principal Agency Conflicts, and Firm Value in European Listed Companies.' *Corporate Governance: (2012) 20 An International Review* 125.

⁵¹ Berle, A. and Means, G. (1932) *The Modern Corporation and Private Property*. Commerce Clearing House, New York.

⁵² Jensen, Michael C., and William H. Meckling. 'Theory of the firm: Managerial behavior, agency costs and ownership structure. (1976) 3 *Journal of Financial Economics* 305.

⁵³ Fama E., Jensen M. 'Separation of ownership and control'. (1983) 26 *Journal of Law and Economics*, 301.

prominence, a growing body of literature seeks to explore alternative perspectives and approaches.

The agency theory of corporate governance is not without criticism. Various criticisms and concerns continue to plague the fundamental assumptions made by the agency and shareholder theories of corporate law.⁵⁴ The divergent views from the literature seem to undermine the presumed overriding influence and practical relevance of agency theory. Ross argues that the use of agency theory is universal.⁵⁵ However, this has been refuted by Hirsch and Friedman, who have argued that the theory is narrow, with a restrictive viewpoint.⁵⁶ Considering the significant criticisms of agency theory, Letza and others suggested a new theory with a pluralistic viewpoint instead of a singular point of view that focuses only on shareholders.⁵⁷ Letza and others also propose that changes within the internal procedures and the external environment refute conventional dualistic methodologies and advocate for the integration of social and other non-financial elements (including and not limited to power, laws, culture and social relations) into corporate governance, thereby making a case for integrating other theories – an approach this thesis favours.⁵⁸

Critics of agency theory have argued that the theory ‘lacks validity outside a specific social context’.⁵⁹ They stress that agency theory relies on the assumption of self-interested agents who are only interested in maximising wealth with minimal effort.⁶⁰ The core of the criticisms

⁵⁴ Christine A Mallin, *Corporate Governance* (6th edn, Oxford University Press, 2019) 19.

⁵⁵ Stephen A Ross, ‘The Economic Theory of Agency: The Principal’s Problem’ (1973) 63 *American Economic Review* 134.

⁵⁶ Paul M Hirsch and Ray Friedman, ‘Collaboration or Paradigm Shift? Economic vs. Behavioral Thinking about Policy?’ in J Pearce and R Robinson (eds), *Best Paper Proceedings* (Chicago Academy of Management 1986) 31, 33.

⁵⁷ Steve Letza, Xiuping Sun and James Kirkbride, ‘Shareholding versus Stakeholding: A Critical Review of Corporate Governance’ (2004) 12 *Corporate Governance* 242, 244.

⁵⁸ *ibid.*

⁵⁹ Brahmadev Panda and NM Leepsa, ‘Agency Theory: Review of Theory and Evidence on Problems and Perspectives’ (2017) 10 *Indian Journal of Corporate Governance* 74, 78.

⁶⁰ James H Davis and others, ‘Toward a Stewardship Theory of Management’ (1997) 22 *The Academy of Management Review* 20, 23.

is that the one-dimensional assumptions about human nature exclude acknowledging the different social contexts wherein institutional conventions and social norms may encourage very different interests.⁶¹ According to Hofstede, managers are not affected by their jobs alone but also by the cultural norms they bring to a firm.⁶² He suggested that agency theory lacks validity outside a narrow setting, as it ignores the principal-agent relationship's social and institutional context.⁶³ Therefore, it seems impractical to adopt the agency theory view that individuals and firms are primarily motivated by financial gain. Accepting the principle that a person is rational, selfish and opportunistic does not undermine the role of non-monetary incentives (such as reputable awards) as an effective means of reducing agency problems.⁶⁴

Adapting the underlying assumptions of this theory is unacceptable and a corporate waste of time; it is not worth sacrificing profits that would otherwise be divisible among the shareholders for the sake of some environmental concerns held by certain stakeholder groups.⁶⁵

Within the mining context, agency theory advocates that corporate law should focus on creating an enabling environment in which businesses can thrive (and maximise their profits).⁶⁶ In contrast, issues relating to stakeholder protection against abuses committed by a corporate form should be handled by other areas of law, such as environmental or human rights law.⁶⁷ Agency theory does not provide room for the inclusion of stakeholders.

⁶¹ Brahmadev Panda and NM Leepsa, 'Agency Theory: Review of Theory and Evidence on Problems and Perspectives' (2017) 10 *Indian Journal of Corporate Governance* 74, 78.

⁶² Geert Hofstede and Micheal Minkov, 'Long- versus Short-Term Orientation: New Perspectives' (2010) 16 *Asia Pacific Business Review* 493. See also: Andi Manggala Putra, Gagaring Pagalung and Abdul Hamid Habbe, 'Level of Agency Cost Driven by Cultural and Corruption and Earnings Management: Evidence of Southeast Asia Countries' (2018) 14 *Intangible Capital* 499.

⁶³ Geert Hofstede and Micheal Minkov, *ibid.*

⁶⁴ Paul Hirsch, Stuart Michaels and Ray Friedman, "'Dirty Hands" versus "Clean Models?"' (1987) 16 *Theory and Society* 317, 320.

⁶⁵ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20 *The Academy of Management Review* 65, 88.

⁶⁶ *ibid.*

⁶⁷ *ibid.*

Agency theory posits that behaviours and outcomes are relatively the same and can be easily controlled. However, this is not the reality today.⁶⁸ For example, in a complex network of bilateral relationships, the simplicity of the dichotomy between monitoring and proposing incentives to control behaviour or outcomes is ineffective. In addition, shielding oneself from opportunistic behaviour can lead to corporate restraint, restrictions on creativity, entrepreneurship and innovation and the associated costs, which issues agency advocates ignore.⁶⁹

The next criticism is that advocates of agency theory seem to embrace the zero-sum attitude, whereby it is presumed that the implementation of the stakeholder theory of corporate governance will be detrimental to the company and its shareholders.⁷⁰ However, there has been little or no evidence to show that a company and its managers will suffer any form of damage as long as they aim to act in a socially responsible way.⁷¹ The theory does not recognise the other parts of the corporation, such as the environment, employees, suppliers and creditors.

In the past, the ability of the agency theory to define the existential nature of modern companies has also been questioned. One major criticism of the shareholder theory is that it may not accurately capture the essence of modern companies, which are typically organized and managed by highly skilled professionals and depend on significant investments and risk-taking by shareholders to operate safely and harmoniously with their surrounding communities, as opposed to the more factory-like enterprises of the past.⁷² Given the nature of modern corporate structures, it appears unreasonable to limit corporate objectives to solely maximizing revenue

⁶⁸ Felix Zogning, 'Agency Theory: A Critical Review' (2017) 9 *European Journal of Business and Management* 1, 5.

⁶⁹ *ibid.*

⁷⁰ Ruth V Aguilera and others, 'An Organizational Approach to Comparative Corporate Governance: Costs, Contingencies, and Complementarities' (2008) 19 *Organization Science* 475, 481.

⁷¹ Bidhan L Parmar and others, 'Stakeholder Theory: The State of the Art' (2010) 4 *Management Faculty Publications* 99, 109.

⁷² At which stage entrepreneurs provided essentially all of the capital and gathered all of the factors of production, and therefore did business only to increase their profits.

for shareholders, as they rely on the skills and knowledge of employees, undertake significant risks, and aim to ensure harmonious relationships with host communities. While shareholder investment is crucial for a company's success, it is equally important to acknowledge and consider the contributions of stakeholders.⁷³

Furthermore, advocates for communitarian team production have identified criticisms of the shareholder/agency theory. The advocates argue that the board's objective should be to create and develop wealth-generating potential for the whole corporate team, not just for the shareholders.⁷⁴ The advocates emphasize that wealth is not limited to shareholder profits and stock valuation. They argue that the board should also focus on reducing creditor risk, improving employee health benefits, promoting opportunities and benefits for managers, and offering better customer appreciation. Additionally, the board should prioritize good corporate citizenship within the community.⁷⁵

Agency theory is questionable because it has unjustifiably focused all of a corporation's resources on the shareholder. As such, this theory is dangerous, as it is detrimental to the continued existence of humans and the sustainability of the corporation itself.⁷⁶

5.2.2.3 The application of agency theory in the Nigerian mining sector

The application of agency theory in the Nigerian mining sector presents an intriguing perspective. Agency theory, which primarily focuses on the relationship between shareholders (principals) and managers (agents), can be applied to understand the dynamics within mining

⁷³ John Farrar, *Corporate Governance* (3rd edn, Oxford University Press 2006) 12.

⁷⁴ Margaret M Blair, and Lynn A Stout, 'Specific Investment: Explaining Anomalies in Corporate Law' (2006) 1 *Journal of Corporate Law* 719; I O Bolodeoku, 'Economic Theories of the Corporation and Corporate Governance: A Critique' (2002) *Journal of Business Law* 420, 421; Luh Luh Lan and Loizos Heracleous, 'Rethinking Agency Theory: The View from Law' 35 (2010) *The Academy of Management Review* 294.

⁷⁵ Margaret M Blair, and Lynn A Stout, *ibid*; IO Bolodeoku, *ibid*.

⁷⁶ Micheal Jensen, 'Non-Rational Behavior, Value Conflicts, Stakeholder Theory, and Firm Behavior' (2008) 18 *Business Ethics Quarterly: The Journal of the Society for Business Ethics* 167.

companies. In this context, shareholders entrust managers with the responsibility of efficiently and profitably operating the mining ventures. However, due to the separation of ownership and control, potential conflicts of interest may arise. Managers might pursue objectives that diverge from the shareholders' interests, such as maximizing their own benefits or making decisions that do not align with long-term shareholder value.

This dynamic is especially critical in the Nigerian mining sector, which plays a significant role in the country's economy. It involves numerous stakeholders, including government agencies, local communities, investors, and regulatory bodies. Each of these parties has specific interests and expectations from mining operations. Applying agency theory allows for an examination of how these various stakeholders' interests are managed and aligned. For instance, government agencies act as stewards of the country's natural resources and are responsible for setting regulations and policies that govern mining activities. They play the role of principals, ensuring that mining operations are conducted in a manner that aligns with national interests, such as environmental sustainability, revenue generation, and community development. On the other hand, mining companies' managers, as agents, are tasked with efficiently extracting and processing minerals while adhering to legal and environmental standards.

The cultural and contextual specificities of Nigeria introduce another layer of scepticism. Nigeria's socio-cultural and political landscape significantly influences business practices within the mining sector. Agency theory, often rooted in Western business norms, may not seamlessly align with the unique intricacies of the Nigerian context. The assumptions and prescriptions of agency theory may not hold true in a setting characterized by distinct cultural values and socio-political dynamics.

Information asymmetry and limited transparency represent additional stumbling blocks. The Nigerian mining sector may grapple with imbalances in information and a dearth of

transparency, posing challenges to accurately assess the performance and actions of agents. Agency theory hinges on the availability of reliable information, an aspect that may be constrained in this sector. This limitation can hinder the effectiveness of agency relationships and the precision of their application.

The weak institutional environment within Nigeria emerges as another concern. Factors such as weak institutional frameworks, corruption, and regulatory instability can intensify agency problems. The implications of these challenges are far-reaching, impinging on the ability to establish and maintain effective agency relationships within the mining sector. In such an environment, relying solely on agency theory may fall short in addressing the intricate governance needs of the sector.

Environmental and social considerations represent a growing area of contention. Agency theory traditionally emphasizes economic incentives, potentially overlooking the escalating importance of environmental and social concerns in the global mining industry. Striking a balance between economic interests and environmental and social sustainability necessitates additional frameworks or considerations that transcend the scope of agency theory. A central tension arises between short-term profit maximization and long-term sustainability objectives. Agency theory may lean towards the former, focusing on immediate financial gains. However, in a sector like mining, which increasingly demands a commitment to long-term sustainability, this orientation may prove insufficient. Achieving the delicate equilibrium between economic interests and sustainable practices necessitates a more comprehensive approach than what agency theory alone can offer.

5.3 Shareholder Theory

The shareholder perspective considers the corporation a legal tool enabling shareholders to maximize their interests, specifically in terms of investment returns.⁷⁷ This perspective places a strong emphasis on shareholders as the primary stakeholders of a company. It argues that any actions taken for social purposes beyond the shareholders' interests may provide opportunities for managers to abuse their power and for government intervention in corporate decision-making. Consequently, it suggests that diverting corporate resources towards social responsibilities could lead to inefficiencies.⁷⁸ In essence, the shareholder perspective takes an extreme stance against the stakeholder view by asserting that maximizing shareholder returns should be the sole social responsibility of businesses and engaging in other social responsibility activities may pose risks to the company.

Shareholder theory posits that the foremost goal of management is to optimize shareholder value, prioritizing shareholders over other corporate stakeholders like employees, suppliers, customers, and society. According to this theory, shareholders are viewed as the ultimate proprietors of a company's assets. Therefore, managers and boards have a primary duty to safeguard and increase these assets for the benefit of shareholders. Shareholder theory operates on the assumption that shareholders appraise corporate assets through two quantifiable metrics: dividends and share price. Consequently, management should make decisions that maximize the combined value of dividends and share price appreciation. Nevertheless, this theory overlooks the possibility that shareholders and corporations may have other objectives that do not solely revolve around financial performance. For example, as far back as 1932, Berle and Means argued that corporations possess a variety of purposes and interests, including

⁷⁷ Ruth V. Aguilera and Gregory Jackson, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants', (2003) 28 *Academy of Management Review* 447; Andrew Gamble and Gavin Kelly 'Shareholder Value and the Stakeholder Debate in the UK' (2001) 9 *Corporate Governance: An International Review* 110.

⁷⁸ Steve Letza, Xiuping Sun and James Kirkbride. 'Shareholding Versus Stakeholding: a critical review of corporate governance,' (2004) 12 *Corporate Governance: An International Review* 242.

promoting entrepreneurship, fostering innovation, and contributing to communities.⁷⁹ This broader perspective has gained traction in recent decades, exemplified by a growing interest in ethical investment funds. This suggests that shareholders and potential investors are not only concerned with financial gains but also value corporate social responsibility. In the shareholder primacy framework, shareholders are the principals, while managers are the agents. The shareholders entrust their capital to the managers to operate the company on their behalf. The agency theory recognizes that managers may act in their self-interest, which may not align with the shareholders' interest, leading to agency problems. The shareholders' concern is that managers may not work to maximize shareholder wealth or may not take sufficient risk to create value for shareholders. Therefore, the shareholder model suggests that corporate governance mechanisms should be established to align the interests of managers and shareholders, minimize costs, and ensure that managers act in the best interest of the shareholders.⁸⁰ Therefore, the shareholders must be vigilant in monitoring management to ensure that they are acting in the shareholders' best interest. The shareholder theory thus highlights the need for strong corporate governance mechanisms that provide shareholders with the appropriate information, tools, and incentives to monitor and control management effectively.

5.3.1 Criticisms of the Shareholder Theory

The shareholder theory has the advantage of allowing management to focus solely on maximizing returns for the business owners without distractions from external pressures or ethical considerations.⁸¹ Advocates argue that this prevents abuse of corporate powers by

⁷⁹ Berle, A. and Means, G.: *The Modern Corporation and Private Property*, (Macmillan, New York 1932).

⁸⁰ Steve Letza, Xiuping Sun and James Kirkbride. 'Shareholding Versus Stakeholding: a critical review of corporate governance,' (2004) 12 *Corporate Governance: An International Review* 242,243.

⁸¹ D Henderson., 'Misguided Virtue: False Notions of Corporate Social Responsibility' (2001) cited in Miller, R. T., 'The Coasean Dissolution of Corporate Social Responsibility' [2014] 17 (2) *Chapman Law Review* 1, 2.

managers who may be tempted to pursue other goals.⁸² However, this narrow focus on shareholder wealth maximization means that corporate responsibility matters relating to society, labour, creditors, or the environment are given little attention in boardrooms. For shareholder primacy theorists, the economic distribution of resources in society is achieved through wealth maximization for shareholders and sacrificing profits for ethical or environmental considerations is unacceptable. This attitude is based on the idea that businesses are the private property of investors and should operate freely in a perfect market, as deemed fit by the incorporators and their agents, the corporate managers.⁸³

However, while the shareholder primacy theory may have some benefits, it has been criticized for its narrow focus on shareholder returns and the exclusion of other stakeholders, such as employees, customers, and the broader community. This criticism is particularly relevant in the Nigerian context, where businesses have a significant impact on the social and economic development of the country.

5.3.2 Application of the Shareholder Theory in the Nigerian Mining sector

In the UK/US corporate governance model, the shareholder theory is central to the system's design, where the board of directors represents shareholders' interests and monitors the executives.⁸⁴ The board of directors is responsible for the oversight of the company's management, strategy, and risk management. The board is also responsible for selecting the CEO, setting their compensation, and ensuring that they act in the best interest of shareholders.

⁸² Ibid.

⁸³ L Whitehouse, 'Corporate Social Responsibility as Regulation: The Argument from Democracy' in O'Brien, J., (ed), *Governing the Corporation, Regulation and Corporate Governance in an Age of Scandal and Global Market* (John Wiley & Sons, West Sussex, 2005) 156.

⁸⁴ Darryl Reed, 'Corporate governance reforms in developing countries' (2002) 37 *Journal of Business Ethics* 223.

In the UK/US model of corporate governance, the shareholder theory is incorporated into the system's design to ensure that shareholders' interests are adequately protected and that managers act in the best interest of shareholders. The shareholder approach to corporate governance is most aligned with the Anglo-American model, which is prevalent in common law countries such as the US, UK, Canada, Australia, and New Zealand.⁸⁵ This perspective, also known as the Anglo-American model, emphasizes the interests of shareholders and is characterized by several key features. Firstly, it involves a single-tiered board structure that prioritizes shareholder interests. Secondly, financial markets play a dominant role, serving as the primary source of investment funds and as a disciplinary mechanism to address the agency problem. Thirdly, banks have a relatively weak role in this model. Lastly, firms have limited involvement in industrial policy or cooperation with government agencies and labour bodies.⁸⁶

The shareholder perspective argues that the most effective approach to addressing the agency problem is to establish efficient contracts governing the principal-agent relationship and to design optimal incentive schemes that align managers' behaviour with the interests of owners.⁸⁷ To safeguard shareholders' interests and ensure high governance standards, a three-tier hierarchical governance mechanism is implemented, consisting of shareholders' general meetings, boards of directors, and executive managers. This structure serves as a system of checks and balances within the corporate framework.

The model of shareholder theory has become very influential in corporate culture, especially in Anglo-American countries. In these jurisdictions, almost all corporate governance activities

⁸⁵ Ruth V. Aguilera and Gregory Jackson, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants', (2003) 28 *Academy of Management Review* 447; Andrew Gamble and Gavin Kelly 'Shareholder Value and the Stakeholder Debate in the UK' (2001) 9 *Corporate Governance: An International Review* 110; Darryl Reed, 'Corporate governance reforms in developing countries' (2002) 37 *Journal of Business Ethics* 223.

⁸⁶ Darryl Reed, 'Corporate governance reforms in developing countries' (2002) 37 *Journal of Business Ethics* 223.

⁸⁷ Steve Letza, Xiuping Sun and James Kirkbride. 'Shareholding Versus Stakeholding: a critical review of corporate governance,' (2004) 12 *Corporate Governance: An International Review* 242,243.

and mechanisms are focused on maximizing returns for shareholders. Some argue that corporate governance activists in the US, in particular, have been more concerned with short-term financial performance rather than long-term productive investment.⁸⁸ Although the UK has attempted to establish a third-way model, known as the "Enlightened Shareholder Value"⁸⁹ (ESV), which seeks to balance the competing interests of stakeholders for the long-term benefit of shareholders, there are concerns that the underlying ideology of ESV remains rooted in the shareholder primacy model.

The shareholder primacy model, which emphasizes the maximization of shareholder value as the primary objective of a corporation, has been widely adopted in Nigeria, owing to the country's colonial ties with Britain and the domestication of British laws into local laws.⁹⁰ Nigerian company law, for instance, reflects the shareholder primacy model, as directors are considered trustees of the company's assets and must exercise their powers in the best interest of the company and all shareholders, rather than their own or sectional interests.⁹¹

Despite this criticism, the shareholder theory remains the dominant corporate culture in Nigeria, with little attention given to the interests of other stakeholders. This can be seen in the prevalence of pyramidal business forms, exit systems, and stock market capitalism, which prioritize the interests of business owners over those of other stakeholders.

The theory seems inconsistent with the growing demand for companies to consider the socially and environmentally adverse effects of their activities.⁹² Unless the justification of a shareholder-centric business model is intellectually challenged and its core assumptions are

⁸⁸ Andrew Keay, 'Stakeholder Theory in Corporate Law: Has It Got What It Takes?' [2010] 3 (9) *Rich. J. Global L. & Bus.* 249.

⁸⁹ Murray, R., and Villiers, C., eds (Edward Elgar, Cheltenham, 2008) 85.

⁹⁰ S. 279, 314 and 315 Companies and Allied Matters Act (CAMA), Cap C20 Laws of the Federation of Nigeria, 2004; Orojo, J. O., *Company Law in Nigeria* (3rd edn, Mbeyi & Associates, Lagos, 1992) 1.

⁹¹ S.283(1) Companies and Allied Matters Act (CAMA), Cap C20 Laws of the Federation of Nigeria, 2004.

⁹² *ibid.*

properly called into question, the model may be profitable, albeit coming with dangerous consequences.⁹³ Shareholder theory is also hazardous to the company's continued existence, as other excluded stakeholders have been shown to react unfavourably to the company's exclusion policy and mismanagement of stakeholders.⁹⁴

The exclusion of stakeholders like the host communities has resulted in decades of social, environmental, and economic problems for these communities.⁹⁵ These problems have led to conflict, loss of life, property destruction, the deterioration of social well-being and challenges relating to insecurity. An example of this conflict is the Ken Saro-Wiwa period of activism in the oil-rich Niger Delta, which started as a result of the forced mismanagement of stakeholders by the Shell Petroleum Development Company of Nigeria.⁹⁶

Within a mining context, there have been criticisms of shareholder theory based on two grounds. The first criticism is that the theory overlooks the company's social, ethical and moral responsibilities as an essential societal institution.⁹⁷ The second criticism is that it only narrowly defines a company's stakeholders.⁹⁸ Regarding the first part, it has been argued that companies should equally maximise the interests of a wider stakeholder group.⁹⁹ This group may include employees, creditors, suppliers, customers, the environment and host communities that have long-term relationships with the company and consequential impact on its long-term

⁹³ Ole Kristain Fauchald and Jo Stigen, 'Corporate Responsibility before International Institutions' (2009) 40 *The George Washington International Law Review* 1027, 1034

⁹⁴ Robert D Nixon, Micheal A Hitt, Ho-Uk Lee and Eui Jeong, 'Market Reactions to Announcements of Corporate Downsizing Actions and Implementation Strategies' (2004) 25 *Strategic Management Journal* 1121.

⁹⁵ Damilola Olawuyi, 'Legal and Sustainable Development Impacts of Major Oil Spills' (2013) 4 *Consilience Journal of Sustainable Development* 1.

⁹⁶ Salil Tripathi, 'On the Life and Legacy of Ken Saro Wiwa: The View from the Ground' (*IHRB*, 2020) <<https://www.ihrb.org/focus-areas/commodities/on-the-life-and-legacy-of-ken-saro-wiwa-i>> accessed 7 January 2022.

⁹⁷ Max E Clarkson, 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 92, 98.

⁹⁸ *ibid.*

⁹⁹ Brahmadev Panda and NM Leepsa, 'Agency Theory: Review of Theory and Evidence on Problems and Perspectives' (2017) 10 *Indian Journal of Corporate Governance* 74,79.

success.¹⁰⁰ Thus, it has been argued that the exclusive emphasis of shareholder theory on the powers and rights of shareholders leads to the neglect of the interests of other legitimate stakeholders.¹⁰¹

A similar criticism from scholars of the stakeholders' school of thought is that the theory cannot consider ethical and moral issues.¹⁰² A widespread but sometimes debatable ethical and moral criticism is that shareholder theory encourages disproportionate or even 'obscene' executive remuneration.¹⁰³ In this case, the shareholder's governance method is criticised for 'unethically' further empowering already wealthy and influential individuals in society (i.e. shareholders and directors) instead of empowering the weaker individuals in society (lower-level employees, local communities, the poor, women and children).¹⁰⁴ Based on the above criticisms, scholars have advocated for stakeholder governance.¹⁰⁵

Overall, while the shareholder primacy model has its benefits, it is important to recognize its limitations and the need to adopt a more inclusive approach that considers the interests of all stakeholders. This is particularly important in the Nigerian context, where businesses significantly impact the country's social and economic development.

After an examination of the challenges of the theoretical underpinnings of the current corporate governance model in Nigeria and other theories, it is worth exploring potential alternatives that could help address these issues.

¹⁰⁰ *ibid.*

¹⁰¹ Margaret M Blair, 'Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century' (1996) 39 *Challenge* 62.

¹⁰² *ibid.*

¹⁰³ *ibid.* 63.

¹⁰⁴ Elaine Sternberg, 'The Defects of Stakeholder Theory' (1997) 5 *Corporate Governance* 3, 6.

¹⁰⁵ Laura Dunham, R Edward Freeman, and Jeanne Liedtka, 'Enhancing Stakeholder Practice: A Particularized Exploration of Community' (2006) 16 *Business Ethics Quarterly* 23, 24; Jaepil Choi and Heli Wang, 'Stakeholder Relations and the Persistence of Corporate Financial Performance' (2009) 30 *Strategic Management Journal* 895; Kevin Gibson, 'The Moral Basis of Stakeholder Theory' (2000) 26 *Journal of Business Ethics* 245, 246.

5.4 Stakeholder Theory and Stakeholder Perspective of Corporate Governance

A direct counterpart to shareholder theory is stakeholder theory, which considers a wider group of actors instead of focusing only on the shareholders.¹⁰⁶ Stakeholder theory argues that the firm's managers should consider the interests of all stakeholders in a firm.¹⁰⁷ The stakeholder theory of corporate governance emphasises the effect of corporate activity on all recognisable stakeholders in a corporation.¹⁰⁸ The theory posits that managers (officers and directors) should consider each stakeholder's interests in the company's governance process. This includes trying to reduce or minimise any struggle between stakeholders' interests.¹⁰⁹

Stakeholder Theory recognizes that companies have multiple stakeholders, including shareholders, employees, customers, government, and the community.¹¹⁰ This theory emphasizes the need for organizations to manage the interests of these various stakeholders and acknowledge their responsibilities towards traditional interest groups as well as other stakeholders such as the local community and the environment.¹¹¹

Stakeholder theorists argue that a company cannot produce value if the interests of its stakeholders are ignored.¹¹² Generally, the active involvement of stakeholders, the quest for long-term firm value, the trust bond between the firm and its stakeholders and the interconnection among stakeholders are the main themes in the stakeholder model of corporate

¹⁰⁶ Gerry Johnson, *Exploring Strategy* (10th edn. Pearson, 2014).

¹⁰⁷ *ibid.*

¹⁰⁸ R Edward Freeman, 'The Politics of Stakeholder Theory: Some Future Directions' (1994) 4 *Business Ethics Quarterly* 409; K Gibson, 'The Moral Basis of Stakeholder Theory' (2000) 26 *Journal of Business Ethics* 245, 246.

¹⁰⁹ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 *The Academy of Management Review* 65, 67.

¹¹⁰ Dima Jamali, 'A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice'. (2008) 82 *J Bus Ethics* 213.

¹¹¹ Dima Jamali, 'A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice'. (2008) 82 *J Bus Ethics* 213.

¹¹² Laura Dunham, R Edward Freeman, and Jeanne Liedtka, 'Enhancing Stakeholder Practice: A Particularized Exploration of Community' (2006) 16 *Business Ethics Quarterly* 23, 24; Jaepil Choi and Heli Wang, 'Stakeholder Relations and the Persistence of Corporate Financial Performance' (2009) 30 *Strategic Management Journal* 895; Kevin Gibson, 'The Moral Basis of Stakeholder Theory' (2000) 26 *Journal of Business Ethics* 245, 246.

governance.¹¹³ Stakeholder theorists suggest that companies that can effectively handle their relationships with their stakeholders are the ones that will thrive.¹¹⁴ Ultimately, these themes can be considered recommendations for constructing stakeholder firms and executing stakeholder management.¹¹⁵ While the shareholder model is predominant in Anglo-American jurisdictions such as the UK, Australia, and the United States, the stakeholder model has mainly been adopted in East Asia and continental Europe, especially in the Netherlands and Germany.¹¹⁶

Different proponents of the stakeholder theory have presented varying definitions of the term "stakeholder". Freeman defined a stakeholder as any group or individual that can influence or be influenced by the attainment of the organization's goals.¹¹⁷ On the other hand, Carroll and Nasi defined stakeholders as those individuals or groups that have a legitimate stake in the company, meaning that they have a valid interest in the company's actions and operations.¹¹⁸ This interest may be based on legal grounds, which are supported by the legal system, or on moral grounds, which are based on established ethical principles within the social context.

In Freeman's work, Rhenman and Stymne are quoted as defining stakeholders as individuals and groups who rely on the firm to achieve their own goals, and on whom the firm relies for

¹¹³ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 *The Academy of Management Review* 65, 67.

¹¹⁴ Bidhan L. Parmar, R. Edward Freeman, Jeffrey S. Harrison, 'Stakeholder Theory: The State of the Art', (2010) *Management Faculty Publications* 99.

¹¹⁵ R Edward Freeman, 'The Politics of Stakeholder Theory: Some Future Directions' (1994) 4 *Business Ethics Quarterly* 409,410.

¹¹⁶ Klaus Hopt and Patrick Leyens, 'Board Models in Europe: Recent Developments of Internal Corporate Governance Structures in Germany, the United Kingdom, France, and Italy' (2004) 2 (1) *European Company and Financial Law Review* 135, 141; David Block and Anne-Marie Gerstner, 'One-Tier vs Two-Tier Board Structure: A Comparison Between the United States and Germany' (2016) *Comparative Corporate Governance and Financial Regulation* 1.

¹¹⁷ R Edward Freeman, *Strategic management: A stakeholder approach*. (1984 Boston: Pitman) 46.

¹¹⁸ Archie B. Carroll and Juha Nasi, 'Understanding Stakeholder Thinking: Themes from a Finnish Conference' (1997) 6 *Business Ethics: A European Review* 46.

its existence.¹¹⁹ Based on the above discussion, for this research, the term "stakeholder" refers to any individual or group, including organizations, whose actions or presence can have an impact on, be impacted by, or benefit from the achievement of a company's objectives. The involvement of these stakeholders with the company should be justifiable on legal and/or moral grounds. Using this definition, stakeholders of Nigerian companies include suppliers, customers, creditors, host communities, government, industry regulators, competitors, shareholders, management and employees, external consultants, activist groups, individuals acting independently, non-governmental organizations, and media organizations. The institutional frameworks within their environment influence the various stakeholder groups, and they express their interests and expectations accordingly. The company's activities and processes impact these groups, and in turn, can also have an effect on them.¹²⁰

5.4.1 Stakeholder Groups Classification

The number of stakeholders in a business is usually large. Generally speaking, they are classified into six stakeholder groups: shareholders, employees, customers, managers, suppliers and the community.¹²¹ This is not a restrictive list, as the group may change over time due to changes in business activities, and the lists of stakeholders cannot be quickly closed. The main stakeholder groups now include creditors, suppliers, consumers, employees, host communities, society, and the environment.¹²² The stakeholder groups of corporations are sometimes classified into primary and secondary stakeholders.¹²³ Primary stakeholders have

¹¹⁹ Eric Rhenman, And Bengt Stymne,. (1965) *FoÈretagsledning I en foÈraÈnderlig vaÈrld*. Stockholm: Aldus/Bonniers. As cited in R Edward Freeman, *Strategic Management* (Cambridge University Press, 2010)

¹²⁰ Robert Boutilier, (2009). *Stakeholder Politics: Social Capital, Sustainable Development, and the Corporation* (1st ed.). Routledge.

¹²¹ Laurie J Mullins, *Management and Organizational Behaviour* (Prentice 2002).

¹²² J Timothy Rowley, 'Moving beyond Dyadic Ties: A Network Theory of Stakeholder Influences' (1997) 22 *The Academy of Management Review* 887, 889.

¹²³ Max E Clarkson, 'A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 92, 98.

official and economic relationships with the company, without which support a company cannot exist. They include the shareholders, employees, customers, and others who ensure the company's survival. The secondary stakeholders are those who influence, affect, or are influenced or affected by the corporation but are not in direct connection with the company nor needed for it to survive.¹²⁴ The host community is an example of secondary stakeholders because they influence and are influenced by the company's activities. Primary and secondary stakeholders are sometimes referred to as internal and external stakeholders respectively. It has also been suggested that these groups should be further categorised¹²⁵ into active and passive stakeholders,¹²⁶ strategic and ethical stakeholders;¹²⁷ and core and environmental stakeholders.¹²⁸

Donaldson and Preston suggested an important yardstick for identifying a company's legitimate 'stakeholders' and 'influencers'.¹²⁹ Therefore, they posit that the stakeholder group does not extend to such a broad group of anything that influences or is influenced by the company's activities.¹³⁰ Other scholars assert that parties that influence corporate decisions, such as the media, should not be considered stakeholders, as they do not directly influence the company, nor do they have any stakes of interest in or against the corporation.¹³¹

¹²⁴ *ibid.*

¹²⁵ Based on their core interests and expectations.

¹²⁶ Xin Liang, Tao Yu and Li Guo, 'Understanding Stakeholders' Influence on Project Success with a New SNA Method: A Case Study of the Green Retrofit in China' (2017) 9 *Sustainability* 1927.

¹²⁷ Robert Boutilier, *Stakeholder Politics* (Greenleaf Publishing, 2009).

¹²⁸ Robert A Phillips, 'Stakeholder Legitimacy' (2003) 13 *Business Ethics Quarterly* (2003) 25.

¹²⁹ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' (1995) 20 *The Academy of Management Review* 65, 85.

¹³⁰ *ibid.*

¹³¹ S Benn, R Abratt and B O'Leary, 'Defining and Identifying Stakeholders: Views from Management and Stakeholders' (2016) 47 *South African Journal of Business Management* 1; Jan Tullberg, 'Stakeholder Theory: Some Revisionist Suggestions' (2013) 42 *The Journal of Socioeconomics* 167.

Sometimes, even some legitimate stakeholders do not have any form of influence on the company.¹³² Tullberg proposed that stakeholders be divided into ‘influences’ (powerful and significant to the firm) and ‘claimants’ (less powerful and susceptible to the firm’s actions).¹³³ He agreed with Kaler, saying that a narrow definition should exclude ‘influences’ and only include ‘qualified claimants’ (those who can exert power over the firm but lack a strong connection).¹³⁴ On this basis, he has suggested the exclusion of rivals, NGOs, and the media. Tullberg has acknowledged that practically everyone can indirectly impact a company but thinks this is insufficient to make them a stakeholder without them contributing to or playing a part in the company.¹³⁵ Carroll and Nasi, suggest that managers of a company should ask critical questions, such as who the stakeholders are, what their interests are, and what opportunities or challenges they present to the company to determine their importance.¹³⁶ They also need to know their economic, legal, ethical, and philanthropic responsibilities to stakeholders and determine the best strategies and actions to respond to these responsibilities. Leading researchers believe these questions are fundamental to understanding and managing stakeholder expectations efficiently.¹³⁷

The Stakeholder groups classification is an important process in understanding the different groups that can impact or be impacted by a company's activities and decisions. By categorizing stakeholders into different groups based on their level of power, legitimacy, and urgency,

¹³² Jan Tullberg, ‘Stakeholder Theory: Some Revisionist Suggestions’ (2013) 42 *The Journal of Socio-Economics* 167.

¹³³ Jan Tullberg, ‘Stakeholder Theory: Some Revisionist Suggestions’ (2013) 42 *The Journal of Socio-Economics* 167.

¹³⁴ Jan Tullberg, ‘Stakeholder Theory: Some Revisionist Suggestions’ (2013) 42 *The Journal of Socio-Economics* 167; John Kaler, ‘Morality and Strategy in Stakeholder Identification’ (2002) 39 *Journal of Business Ethics* 91.

¹³⁵ Jan Tullberg, ‘Stakeholder Theory: Some Revisionist Suggestions’ (2013) 42 *The Journal of Socio-Economics* 167; John Kaler, ‘Morality and Strategy in Stakeholder Identification’ (2002) 39 *Journal of Business Ethics* 91.

¹³⁶ Archie B. Carroll and Juha Nasi, ‘Understanding Stakeholder Thinking: Themes from a Finnish Conference’ (1997) 6 *Business Ethics: A European Review* 46,47.

¹³⁷ R Edward Freeman, *Strategic Management* (Cambridge University Press, 2010); Jörg Andriof Sandra Waddock, *Unfolding Stakeholder Engagement: Theory, Responsibility and Engagement* (1st edn, Routledge 2017)

companies can prioritize their engagement efforts and allocate resources accordingly. This can help companies establish positive relationships with stakeholders and build a strong reputation, which can ultimately lead to improved performance and profitability.

Moving on to the next section on stakeholder salience, it's important to note that not all stakeholders are equally important or relevant to a company's success. Some stakeholders may have a greater impact on the company's performance or be more affected by the company's actions, making them more salient. Therefore, understanding stakeholder salience is crucial in identifying the key stakeholders that companies need to focus on and engage effectively.

5.4.2 Stakeholder Salience

The definition of stakeholders has sparked debates regarding their attributes or elements.¹³⁸ These attributes or elements are crucial in determining who or what can be identified as stakeholders.¹³⁹ Stakeholder attributes are characteristics that enable stakeholders to assert or disregard their interests in a firm.¹⁴⁰ However, these attributes are only meaningful and effective when utilized by stakeholders to enhance their significance.¹⁴¹

¹³⁸ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853; Jan Jonker and David Foster, 'Stakeholder excellence? Framing the evolution and complexity of a stakeholder perspective of the firm' (2002) 9 *Corporate Social Responsibility and Environmental Management* 115.

¹³⁹ Cathy Driscoll & Mark Starik, 'The Primordial Stakeholder: Advancing the Conceptual Consideration of Stakeholder Status for the Natural Environment'. 49 (2004) *Journal of Business Ethics* 55; Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853; Jan Jonker and David Foster, 'Stakeholder excellence? Framing the evolution and complexity of a stakeholder perspective of the firm' (2002) 9 *Corporate Social Responsibility and Environmental Management* 115.

¹⁴⁰ Benjamin A. Neville and Bulent Menguc, 'Stakeholder Multiplicity: Toward an Understanding of the Interactions between Stakeholders'. (2006) 66 *J Bus Ethics* 377.

¹⁴¹ Bradley R. Agle, Ronald K. Mitchell, Jeffrey A. Sonnenfeld, 'Who Matters to CEOs? An Investigation of Stakeholder Attributes and Salience, Corporate Performance, and CEO Values' 42 (1999) *The Academy of Management Journal* 507,510.

Stakeholder salience refers to the degree to which managers prioritize the competing claims of stakeholders.¹⁴² Wolfe and Putler agree that stakeholder salience depends on a combination of these attributes but emphasize that a claim must be considered urgent by managers in order to contribute to the salience of a stakeholder.¹⁴³ The aforementioned authors have made significant contributions to the discussion on stakeholder salience, highlighting how various attributes, features, or elements influence it.

The importance of stakeholders to corporations differs, so Mitchell and others created a framework describing the salience of stakeholders' relations.¹⁴⁴ One proposition suggests that the level of stakeholder salience is dependent on the presence of at least one of three relationship characteristics: the stakeholder's ability to exert influence over the organization, the legitimacy of the stakeholder's relationship with the organization, and the urgency of the stakeholder's demand on the organization.¹⁴⁵ Managers using these criteria can determine stakeholder salience or the extent to which managers prioritise competing stakeholder claims.¹⁴⁶ Stakeholders with only one of these attributes should be given low salience; those with only two attributes should be given medium salience; those with all three attributes should be given high salience.¹⁴⁷ Highly salient stakeholders are perceived as influencing the firm's operations significantly.

¹⁴² Bradley R. Agle, Ronald K. Mitchell, Jeffrey A. Sonnenfeld, 'Who Matters to CEOs? An Investigation of Stakeholder Attributes and Salience, Corporate Performance, and CEO Values' 42 (1999) *The Academy of Management Journal* 507,510.

¹⁴³ Richard A. Wolfe and Daniel S. Putler, 'How Tight Are the Ties That Bind Stakeholder Groups?' (2002) 14 *Organization Science* 64,68.

¹⁴⁴ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853,855.

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid* 869.

¹⁴⁷ *ibid.*

The first attribute of salience is power; stakeholders who have this attribute can attain their desires through coercion, utilitarian or normative means.¹⁴⁸ Hardy argued that power comes from resources.¹⁴⁹ Coercion is attained from physical resources such as force, violence, and constraints. Utilitarian power emanates from material or financial resources and normative power emanates from significant resources.¹⁵⁰ The first dimension of power originates from the ownership of resources. Anyone or any group of people in possession of some resource will probably force others into acting according to their will. Power also comes from the decision-making process and people in possession of control over such processes are entitled to force others by using or not using procedures and constitutional routines.¹⁵¹ Thus, power, in this context, refers to a scenario wherein stakeholders possess an important level of control over the access to power of the material, natural or financial resources to enforce their will within the relationship. Stakeholders who possess power over an organization are those who can coerce, utilize, or have significant normative influence over the organization. For example, large shareholders, government regulators, or powerful labour unions. These stakeholders may have the ability to exert significant influence over the organization's decisions and operations, and as such, their claims would likely be prioritized highly by managers.

The second attribute of salience is legitimacy. This can be defined as the presumption that an organisation's act is desirable and responsible within a socially constructed system of norms, values, beliefs and concepts.¹⁵² Stakeholders who possess legitimacy are those whose claims are considered desirable and responsible within the socially constructed system of norms,

¹⁴⁸ *ibid* 866.

¹⁴⁹ Cynthia Hardy, 'Understanding Power: Bringing About Strategic Change' (1996) 7 *British Journal of Management* S3, S7.

¹⁵⁰ *ibid*.

¹⁵¹ *ibid*.

¹⁵² Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853, 866.

values, beliefs, and concepts.¹⁵³ Stakeholders may be legitimate, but if they cannot or do not influence the firm, they are likely to be minor stakeholders who are given little weight by the firm's top management. For example, customers, suppliers, or local communities. These stakeholders may have a legitimate claim to the organization's operations but may not have significant power or urgency, and as such, their claims may be given less priority by managers.

Urgency is the level at which stakeholder claims call for urgent action. It is also related to the conditions through which this type of relationship happens.¹⁵⁴ Thus, the term 'urgency' refers to the importance and attention given to a claim. This factor is also attributed to time sensitivity (the speed at which the claims need to be managed) and criticality (the extent to which the claims are vital to the relationship with the stakeholder).¹⁵⁵

Stakeholders who possess urgency are those whose claims require immediate action due to time sensitivity or criticality. For example, employees on strike, activist groups protesting the company's practices, or customers experiencing a major product safety issue. These stakeholders may have an urgent need for the organization to address their claims, but may not necessarily have significant power or legitimacy, and as such, their claims may be given medium to high priority by managers, depending on the level of urgency and potential impact on the organization's reputation or operations.

The urgency attribute shows whether the company should respond immediately to a stakeholder claim. As such, the timing and importance of the stakeholder's claim is a critical factor. Therefore, Mitchell and others' argument that just legitimacy or urgency is insufficient to garner managers' attention is supported by the idea that significant stakeholders have at least

¹⁵³ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853, 866.

¹⁵⁴ *ibid.* 867.

¹⁵⁵ *ibid.*

some authority.¹⁵⁶ According to Neville and others, legitimacy should be understood as moral legitimacy, which results from the organisation's good normative judgment.¹⁵⁷ Additionally, they stated that the interest of managers should not be about who the stakeholder is but how legitimate the issue is.¹⁵⁸ This is because organisations evaluate a problem and, if necessary, deal with it. Therefore, the stakeholder's salience is determined by the problem they raise. It is further contended that urgency is only useful for ranking stakeholder claims, not for identifying stakeholders. The corporation will not be interested in an identifiable stakeholder who lacks authority and moral validity.¹⁵⁹

The three attributes are not mutually exclusive, and stakeholders can possess more than one attribute. Stakeholders who possess all three attributes (power, legitimacy, and urgency) would likely be given the highest priority by managers. However, managers must carefully evaluate each stakeholder's claims and the extent to which they possess each attribute before prioritizing them. Stakeholder academics differ in their conceptualisations of the attributes that determine stakeholder salience. The different sorts of stakeholders can be classified based on the attributes of stakeholder salience; the distinction is predicated on the degree to which managers prioritise competing stakeholder claims (i.e. the degree to which managers give importance to competing stakeholder claims).¹⁶⁰

There has been a growing recognition of the need to redefine stakeholder salience, where managers prioritize stakeholder claims based on their assessment of the stakeholder's level of influence, the claim's level of moral legitimacy, and its urgency.

¹⁵⁶ *ibid.* 869.

¹⁵⁷ Benjamin A Neville, Simon J Bell, and Gregory J Whitwell, 'Stakeholder Salience Revisited: Refining, Redefining, and Refueling an Underdeveloped Conceptual Tool' (2011) 102 *Journal of Business Ethics* 357, 364.

¹⁵⁸ *ibid.*

¹⁵⁹ *ibid.* 369.

¹⁶⁰ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* 853,854.

Stakeholders can be categorized into three groups based on their level of salience: latent, expectant, and definitive. Latent stakeholders have only one of the three attributes (power, legitimacy, or urgency); expectant stakeholders have two attributes; definitive stakeholders have all three attributes. Managers pay more attention to the types of stakeholders in the expectant stakeholder group because they are more likely to have a greater influence on the organisation. This means that managers need to recognize the type of crisis and the stakeholders who have the greatest influence over the company when there is conflict. This increases the level of engagement between managers and expectant stakeholders and improves the level of managers' responsiveness to these stakeholders' interests.

The key finding of Mitchell et al. was that each stakeholder's position changes over time and is influenced by organisational decision-makers.¹⁶¹ This thesis lends credence to this idea by arguing that corporate managers must not only recognise the type of crisis but also recognise and address the stakeholders who have the greatest influence over the company when there is conflict, as is frequently the case in the mining industry.¹⁶²

It is important to recognise stakeholder salience and adaption to changes in stakeholder positions over time. Managers must also balance institutional norms' pressures with stakeholder interests and demands.

Based on the discussion of stakeholder salience, it is clear that not all stakeholders have the same level of influence and importance for an organization. Stakeholders with higher salience, particularly those in the expectant stakeholder group, are more likely to impact the organization's decisions and outcomes. This understanding highlights the need for managers to

¹⁶¹ *ibid* 867.

¹⁶² *ibid*.

identify and prioritize stakeholders based on their salience to improve stakeholder engagement and responsiveness.

5.4.3 Are Mining Host Communities Stakeholders?

The mining industry is often associated with significant environmental and social impacts, particularly in the communities where mining operations take place. The impacts on these host communities can be both positive and negative, and it is important to consider their perspectives and interests as stakeholders in the mining industry. In this section, we will explore the question of whether mining host communities should be considered stakeholders in the industry and, if so, how their stakeholder salience should be assessed and prioritized. We will also delve into the concept of stakeholder legitimacy and its relevance to mining host communities as stakeholders.

Mining host communities refer to the local communities living in the vicinity of a mining operation.¹⁶³ These communities are directly affected by the mining company's activities, and their social, economic, and environmental well-being is significantly impacted. As such, they have a legitimate claim to be considered stakeholders in the mining industry.¹⁶⁴

Regarding stakeholder salience, the level of the salience of mining host communities as stakeholders can be assessed based on their power, legitimacy, and urgency.¹⁶⁵ Mining host communities may have limited power compared to mining companies, especially if the company is a large multinational corporation. However, they can still exercise some power through community organizing, lobbying, and advocacy efforts. Mining host communities

¹⁶³ Ali I. Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities Also Matter!' (2020) 8 *Journal of Geoscience and Environment Protection* 212, 214.

¹⁶⁴ Ali I. Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities Also Matter!' (2020) 8 *Journal of Geoscience and Environment Protection* 212, 214.

¹⁶⁵

have a strong claim to legitimacy as stakeholders, given the direct and significant impact of the mining company's activities on their lives. As such, their voices and concerns should be taken seriously and incorporated into decision-making processes.

With companies operating in host communities where exploration takes place, members of the host communities, who are stakeholders, are directly affected by the companies' exploration activities.¹⁶⁶ Environmental or social hazards, whether pollution, massive layoffs, or various violations, affect these stakeholders and legitimatise their claims.¹⁶⁷ This is because the stakeholders are directly affected by the mining companies' activities. Engagement of the host communities within the mineral development process is critical. Indeed, there have been conflicts between the host communities and the mining companies.¹⁶⁸ At different times, host communities have tried to resist the entrance of mining companies into their community, although this has been stymied by the imbalance of power between the two parties.¹⁶⁹

In terms of urgency, mining host communities may have high urgency as stakeholders. This is because the impacts of mining on their communities can be immediate and long-lasting, affecting their health, livelihoods, and environment. Urgent concerns may include the need for adequate compensation, protection of natural resources, and mitigation of environmental damage.

Overall, mining host communities can be considered stakeholders in the mining industry, and their level of salience should be recognized and considered by mining companies in their decision-making processes.

¹⁶⁶ Adeyinka O Omotehinse and Bankole D Ako, 'The Environmental Implications of the Exploration and Exploitation of Solid Minerals in Nigeria with a Special Focus on Tin in Jos and Coal in Enugu' (2019) 18 *Journal of Sustainable Mining* 18, 20.

¹⁶⁷ *ibid.*

¹⁶⁸ Carlo Koos and Jan Pierskalla, 'The Effects of Oil Production and Ethnic Representation on Violent Conflict in Nigeria: A Mixed-Methods Approach' (2015) 28 *Terrorism and Political Violence* 888, 890.

¹⁶⁹ *ibid.*

Identifying mining communities as stakeholders can sometimes be difficult, as host communities vary in their perceptions and expectations of mineral development. It has also become sensitive in cases where host communities are underrepresented. Therefore, the identification of stakeholders by mining corporations is not a finite process and is likely to last beyond the scoping stage, through exploration, building, production, closure, and remediation.¹⁷⁰ However, the interaction with the community as a stakeholder group encourages further participation in the engagement process and helps the immediate identification and management of potential problems. When companies do not engage or interact with the host communities, this can lead to a conflict of interest, violence, and unrest.¹⁷¹

When the gap of corporate irresponsibility exists, it affects the relationship between the host communities and the mining companies. Therefore, it is imperative to integrate host community representation to meet stakeholder expectations and obtain commitments. Azapagic has asserted that, although determining the boundaries of rights and obligations has remained difficult, recognising mining stakeholders is necessary to boost the good relationship between the mining corporations and the host communities.¹⁷²

¹⁷⁰ Ali I Naibbi and Murtala Chindo, 'Mineral Resource Extractive Activities in Nigeria: Communities also Matter!' (2020) 8 *Journal of Geoscience and Environment Protection* 212,215.

¹⁷¹ Isaac Olawale Albert, Yejide Teslimat Olarinde and Olumayowa Oreoluwa Albert, 'Order Outside the Law? Rethinking Amnesty as an ADR Mechanism in Nigeria' (2019) 10 *Beijing Law Review* 913.

¹⁷² Adisa Azapagic, 'Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry' (2004) 12 *Journal of Cleaner Production* 629.

5.4.4

Depictions of the Stakeholder Theory

After the release of Freeman's milestone book in 1984,¹⁷³ many articles¹⁷⁴ and books¹⁷⁵ about stakeholder theory were published. In a budding literature corpus, stakeholder theory has been depicted in three ways: descriptive, instrumental, and normative.¹⁷⁶ Descriptive stakeholder theory aims to describe specific corporate characteristics and behaviours. Some of the issues it addresses include how economic activity is organised through the law's and other institutions' instrumentality.¹⁷⁷ It investigates what directors think about management and what they do in practice.¹⁷⁸ The descriptive approach serves to describe or clarify precise corporate behaviour and features. It describes past, present, and future structural affairs related to corporate stakeholders.¹⁷⁹

In comparison, the instrumental theory aims to shape the connection between stakeholder management and firm performance.¹⁸⁰ It establishes a structure used to investigate the connections between the act of stakeholder management and the accomplishment of various corporate performance objectives.¹⁸¹ The main idea is that corporations that practise stakeholder management will perform more effectively in terms of their profitability, stability

¹⁷³ R Edward Freeman, 'The Politics of Stakeholder Theory: Some Future Directions' (1994) 4 *Business Ethics Quarterly* 409.

¹⁷⁴ R Edward Freeman, 'The Politics of Stakeholder Theory: Some Future Directions' (1994) 4 *Business Ethics Quarterly* 409; R Edward Freeman, 'Divergent Stakeholder Theory' (1999) 24 *Academy of Management Review* 233; R Edward Freeman and Robert A Phillips, 'Stakeholder Theory: A Libertarian Defence' (2002) 12 *Business Ethics Quarterly* 331.

¹⁷⁵ R Edward Freeman, Jeffrey S Harrison, and Stelios C Zyglidopoulos, *Stakeholder Theory* (Cambridge University Press, 2018); R Edward Freeman, *Strategic Management* (Cambridge University Press, 2010).

¹⁷⁶ IM Jawahar and Gary L McLaughlin, 'Toward a Descriptive Stakeholder Theory: An Organizational Life Cycle Approach' (2001) 26 *The Academy of Management Review* 387, 405.

¹⁷⁷ John Kaler, 'Differentiating Stakeholder Theories' (2003) 46 *Journal of Business Ethics* 71.

¹⁷⁸ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20 *The Academy of Management Review* 65,70.

¹⁷⁹ IM Jawahar and Gary L McLaughlin, 'Toward a Descriptive Stakeholder Theory: An Organizational Life Cycle Approach' (2001) 26 *The Academy of Management Review* 387, 405.

¹⁸⁰ Thomas M Jones, 'Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics' (1995) 20 *The Academy of Management Review* 404, 406.

¹⁸¹ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20 *The Academy of Management Review* 65,71.

and development if everything is done right.¹⁸² Thus, depending on the specific type of behaviour, specific results are expected if certain acts are carried out.¹⁸³ This theory addresses whether managers can meet specific performance goals by adopting the stakeholder approach.¹⁸⁴ Although Jensen does not categorise the enlightened value as instrumental, his recommendations subtly articulate this opinion.¹⁸⁵ According to Jensen's enlightened stakeholder theory, stakeholders should only be engaged if they can be used to maximise overall company value in the long run.¹⁸⁶ Schreck, van Aaken and Donaldson suggest that the instrumental basis of economic concerns for engaging stakeholders might be leveraged to attain normative ends.¹⁸⁷ They claim that instrumental stakeholder theory may help organisations understand how, when and why they should participate in CSR to achieve normative goals such as stakeholder involvement.¹⁸⁸

Normative stakeholder theory essentially attempts to prescribe procedures for corporate governance, especially those related to how firms ought to be administered and who supervises the directors' actions.¹⁸⁹ A vast range of research has been undertaken on how stakeholder theory revolves around its normative foundations.¹⁹⁰ According to the prominent supporters of this concept, management decisions should not solely be based on the requests of managers, stockholders or customers.¹⁹¹ Instead, the theory's proponents assert that a well-structured

¹⁸² *ibid.*

¹⁸³ *ibid.*

¹⁸⁴ Michael C Jensen, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) 12 *Business Ethics Quarterly* 235, 242.

¹⁸⁵ *ibid.* 245.

¹⁸⁶ *ibid.* 246.

¹⁸⁷ Philipp Schreck, Dominik van Aaken and Thomas Donaldson, 'Positive Economics and the Normativistic Fallacy: Bridging the Two Sides of CSR' (2013) 23 *Business Ethics Quarterly* 297.

¹⁸⁸ *ibid.*

¹⁸⁹ Samuel F Mansell, *Capitalism, Corporations, and the Social Contract: A Critique of Stakeholder Theory* (Cambridge University Press, 2013).

¹⁹⁰ Okechukwu Enyinna, 'Is Stakeholder Theory Really Ethical?' (2013) 7 *African Journal of Business Ethics* 29, 82.

¹⁹¹ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20 *The Academy of Management Review* 65,72.

corporation should take into account the interests of other stakeholders affected by these decisions.¹⁹² The theory further posits that the ethically managed corporation will gain the trust of its stakeholders and, therefore, is expected to develop cooperative relationships.¹⁹³ The cooperation between parties in a corporation and its stakeholders is anticipated to lessen any contracting expenses, leading to more efficient transactions and giving the corporation a competitive advantage.¹⁹⁴

Freeman argued that the corporation is responsible to groups other than the shareholders.¹⁹⁵ He asserts that the normative aspect is based on the importance of corporate equality.¹⁹⁶ However, this definition restricts the relative meaning of stakeholder theory, as the author instructs managers to eliminate unimportant, weak, or insignificant stakeholders. Goodpaster asserts that stakeholder theory is understood as ‘either in strategic or multi-fiduciary’ dimensions.¹⁹⁷ This implies that stakeholders are to be taken seriously. Managers owe a fiduciary sense of accountability to shareholders.¹⁹⁸ This is a view supported by Langtry,¹⁹⁹ who criticises Freeman’s definition of normative stakeholder theory.²⁰⁰ Langtry argues that this theory ‘offers a controversial revisionary account of the nature and ends of the firm and the moral claims to which it is subject’.²⁰¹ Both authors argue that moral obligations and fiduciary obligations are two distinct ideas and so should be treated differently.²⁰² Freeman does not agree with this

¹⁹² Emerson Wagner Mainardes, Helena Alves and Mario Raposo, ‘Stakeholder Theory: Issues to Resolve’ (2011) 49 *Management Decisions* 226, 233.

¹⁹³ *ibid.*

¹⁹⁴ Elaine Sternberg, ‘The Defects of Stakeholder Theory’ (1997) 5 *Corporate Governance* 3, 6.

¹⁹⁵ R Edward Freeman, ‘The Politics of Stakeholder Theory: Some Future Directions’ (1994) 4 *Business Ethics Quarterly* 409.

¹⁹⁶ *ibid.*

¹⁹⁷ Kenneth E Goodpaster, ‘Business Ethics and Stakeholders Analysis’ (1991) 1 *Business Ethics Quarterly* 53, 54.

¹⁹⁸ *ibid.*

¹⁹⁹ Bruce Langtry, ‘Stakeholders and the Moral Responsibilities of Business’ (1994) 4 *Business Ethics Quarterly* 431, 436.

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

²⁰² R Edward Freeman, ‘The Politics of Stakeholder Theory: Some Future Directions’ (1994) 4 *Business Ethics Quarterly* 409; Bruce Langtry, ‘Stakeholders and the Moral Responsibilities of Business’ (1994) 4 *Business Ethics Quarterly* 431, 436.

differentiation, which is entrenched in ethics and business literature. This is because the purpose of stakeholder theory is to remove this gap.²⁰³

This thesis agrees with Donaldson and Preston, who suggested that stakeholder theory can be broken down into a few different stakeholder theories.²⁰⁴ Each part has its normative core, intricately connected to how firms are administered and how management should act.²⁰⁵ The normative approach focuses on what is best for society, and the core of stakeholder theory is normative. This thesis sees the stakeholder model as better than the shareholder one because the former is more open to embedding the core values of social responsibility and sustainability in corporations. By doing so, more companies can act (or decide not to act) in the interests of their shareholders and stakeholders, including the host communities and the environment. Thus, this thesis agrees with the Freeman notion, namely, that stakeholder theory is supposed to remove the absence of stakeholders, as it covers the interests of both shareholders and stakeholders.

Some scholars consider stakeholder theory to be primarily or solely an ethical theory; that is, they have found that it is supported by a moral basis, which they use to demonstrate its superiority over management's concern for shareholder wealth.²⁰⁶ While such an approach may be attractive to an ethicist, it is weak because it does not separate ethical concerns from business concerns. According to Freeman's first formulation, written in 1994, the separation theory

²⁰³ R Edward Freeman, 'The Politics of Stakeholder Theory: Some Future Directions' (1994) 4 *Business Ethics Quarterly* 409,415.

²⁰⁴ Thomas Donaldson and Lee E Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20 *The Academy of Management Review* 65,67.

²⁰⁵ *ibid.* 68.

²⁰⁶ *ibid.*, Kenneth E Goodpaster, *supra* (note 418); John R Boatright, 'Fiduciary Duties and the Shareholder-Management Relation: Or, What's so Special about Shareholders?' (1994) 4 *Business Ethics Quarterly* 393.

states that ‘business discourse and ethical discourse can be separated so that statements like “x is a business decision” no longer exist’.²⁰⁷

As stated earlier, although the theorists make a clear case that stakeholders’ interests should be considered, they often fail to provide the conceptual specification of how to make trade-offs among different constituencies with varying and even opposing interests. As a result, the stakeholder interest is often condemned as incompatible with business. All substantive objectives detrimental to both accountability and private property are, thus, ‘incapable of providing better corporate governance, business performance or business conduct’.²⁰⁸ In this regard, Jensen proposes that stakeholder theory can add the specification that the firm’s objective function is to maximise the total long-term firm value.²⁰⁹ When the total long-term value is maximised, the satisfaction array can be achieved.²¹⁰ In this way, corporate executives can be in a better position to assess the trade-offs among competing constituencies.

In this regard, Gray discusses a collaborative perspective.²¹¹ Her viewpoint is based on the need for a stakeholder representative to be appointed; who can present stakeholders’ needs as agreed upon by interested parties.²¹² This approach aims to resolve disputes and encourage a shared vision.²¹³ Writing in the late 1980s, Gray stated that competing parties would be brought together in the last years of the twentieth century when the chaotic change would be the only constant at all levels of society.²¹⁴ Each party would then rely on the others to further their own goals. In the various domains where industry, government, the labour force and communities

²⁰⁷ R Edward Freeman, ‘The Politics of Stakeholder Theory: Some Future Directions’ (1994) 4 *Business Ethics Quarterly* 409,413.

²⁰⁸ Elaine Sternberg, ‘The Defects of Stakeholder Theory’ (1997) 5 *Corporate Governance* 3, 6.

²⁰⁹ Michael C Jensen, ‘Value Maximization, Stakeholder Theory, and the Corporate Objective Function’ (2002) 12 *Business Ethics Quarterly* 235, 247.

²¹⁰ *ibid.*

²¹¹ Barbara Gray, *Collaborating: Finding Common Ground for Multiparty Problems* (Jossey-Bass, 1989).

²¹² *ibid.*

²¹³ *ibid.*

²¹⁴ *ibid.*

find their activities interconnected, Gray argued that opportunities for collaboration would keep appearing.²¹⁵

5.4.5 Criticism of the Stakeholder Theory

Although stakeholder theory was proposed to solve some of the problems of the shareholder theory of corporate governance, it is not without its criticism. Key²¹⁶ proposes that there is a deficient connection between the theory's internal and external variables, as an actor can be a part of different stakeholder groups.²¹⁷ Donaldson²¹⁸ pointed out the need for the theory to establish criteria that will identify stakeholders and form an ethical foundation. The authors assert that the theory has the problem of delimitation, with different actors not clearly defined. There is sometimes confusion about the stakeholders around the firm, particularly those in the firm's immediate environment and those in the extended environment, who are sometimes confused with each other.²¹⁹ However, Freeman²²⁰ posits that stakeholder groups can be identified as separable entities.²²¹ The point is that the theory graphically shows the relationship between the stakeholder and the firm and the dependence and reciprocity.²²² The stakes of each separate stakeholder are reciprocal since each can mutually affect the other, either harmfully or beneficially.²²³ Donaldson and Preston suggest that stakeholders should be recognised by

²¹⁵ *ibid.*

²¹⁶ Susan Key, 'Toward a New Theory of the Firm: A Critique of Stakeholder Theory' (1999) 37 *Management Decision* 317, 319.

²¹⁷ *ibid.*

²¹⁸ T Donaldson, *The Ethics of International Business* (Oxford University Press, 1989); Susan Key, 'Toward a New Theory of the Firm: A Critique of Stakeholder Theory' (1999) 37 *Management Decision* 317, 319.

²¹⁹ *ibid.* 320.

²²⁰ R Edward Freeman, Jeffrey S Harrison and Stelios C Zyglidopoulos, *Stakeholder Theory* (Cambridge University Press, 2018).

²²¹ *ibid.*

²²² *ibid.*

²²³ *ibid.*; R Edward Freeman, Jeffrey S Harrison and Andrew C Wicks, *Managing for Stakeholders* (Yale University Press 2007).

the ‘interests they represent’.²²⁴ This means that companies must endeavour to achieve a fair balance when distributing corporation benefits to several stakeholders; doing so prevents the corporation from going after a single objective function that favours particular groups.²²⁵ However, this is not compatible with the business concept, which is focused on investing shareholders’ wealth into a corporation and increasing and maximising that investment over the long term.²²⁶

Another criticism of the stakeholder theory relates to the scope of the definition of stakeholders. Since the term ‘stakeholders’ refers to those who can affect or be affected by the business, the percentile range of the number of people whose benefits need to be considered is not specified.²²⁷ This means that stakeholders, by definition, could be anyone or anything from any place or everywhere.²²⁸ Thus, they could range from employees, creditors and government personnel to extremists and corporate thieves.²²⁹ Nevertheless, the stakeholder theory gives directives that allow a balance to be struck when allocating benefits to stakeholders,²³⁰ although the vague and somewhat unclear definition of who is a stakeholder implies that perfectly balancing different stakeholders’ interests is not a feasible goal.²³¹

Stakeholder theory conflicts with the concept of corporate governance. A fundamental corporate governance concept is accountability: the accountability of directors to shareholders, the accountability of managers to directors, and the accountability of company employees and

²²⁴ Thomas Donaldson and Lee E Preston, ‘The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications’ (1995) 20 *The Academy of Management Review* 65, 78.

²²⁵ *ibid.*

²²⁶ R Edward Freeman, Jeffrey S Harrison, and Stelios C Zyglidopoulos, *Stakeholder Theory* (Cambridge University Press, 2018).

²²⁷ Susan Key, ‘Toward a New Theory of the Firm: A Critique of Stakeholder Theory’ (1999) 37 *Management Decision* 317, 321.

²²⁸ *ibid.*

²²⁹ *ibid* 322.

²³⁰ Elaine Sternberg, ‘The Defects of Stakeholder Theory’ (1997) 5 *Corporate Governance* 3, 6.. .

²³¹ *ibid.*

other corporate agents to shareholders.²³² However, stakeholder theory also proposes that corporations should be accountable to all their stakeholders instead of focusing on their shareholders alone.²³³

Finally, a similar criticism to the previous one is that stakeholder theory does not state nor give an adequate objective standard against which company agents can be judged.²³⁴ Corporate agents are delegated to control and manage the company in such a way that balances all stakeholders' interests. It is, however, argued that stakeholder theory does not serve as an efficient goal performance measurement because it provides corporate agents in charge of its interpretation and implementation with unwarranted freedom to go after their interests, including incentives consumption and other private benefits of control.²³⁵

While stakeholder theory has been proposed as a way to address the limitations of the shareholder theory, it is not without its criticisms. Critics have pointed out issues with the delimitation of stakeholders, the scope of the definition of stakeholders, and conflicts with traditional corporate governance concepts. However, the theory provides valuable directives for corporations to strive for a fair balance when allocating benefits to stakeholders. As such, it is important for corporations to carefully consider the criticisms of stakeholder theory and continuously evaluate and improve their approach to stakeholder management.

5.4.6 Application of the Stakeholder Theory in the Nigerian mining sector

In Nigeria, the mining sector plays a significant role in the economy, impacting a wide range of stakeholders. These include host communities near mining sites, government agencies

²³² *ibid.*

²³³ R Edward Freeman and David L Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' (1983) 25 *California Management Review* 1.

²³⁴ *ibid.*

²³⁵ Frank Jan de Graaf, 'Corporate Social Responsibility, Governance and Stakeholders: A Bank in the Upbeat of the Crisis' (2016) 12 *Critical Perspectives on International Business* 338, 345.

overseeing regulatory compliance, environmental groups advocating for sustainable practices, and investors seeking financial returns. While there is an increasing awareness of the importance of considering stakeholder interests in the Nigerian mining sector, the full application of Stakeholder Theory in corporate governance systems is still a work in progress. Some mining companies have started to recognize the value of engaging with and addressing the concerns of various stakeholders.

Efforts have been made to implement community development programs, provide employment opportunities, and contribute to local infrastructure.²³⁶ Additionally, companies are increasingly considering environmental impact assessments and adopting sustainable practices in their operations.²³⁷ Regulatory bodies and government agencies are also working towards enhancing the inclusivity of stakeholder perspectives in policymaking and oversight within the mining sector.²³⁸ However, it is essential to note that challenges and gaps remain. Some mining companies may still prioritize shareholder interests over broader stakeholder concerns. Achieving a comprehensive and effective application of Stakeholder Theory in the Nigerian mining sector will require continued efforts in policy development, regulatory enforcement, and corporate governance practices.

In Nigeria, there exist notable provisions within primary corporate legislation that mandate corporate executives to protect the interests of stakeholders. Section 279 (3) and (4) of the Companies and Allied Matters Act (CAMA) for instance oblige directors to act in the overall best interests of the company, inclusive of considerations for the company's employees. This demonstrates that Nigerian primary corporate law acknowledges the need for stakeholder safeguarding. However, the practical application and benefits of these provisions for corporate

²³⁶ The Community Development Agreement formed part of the Nigerian Minerals and Mining Act (NMMA), 2007.

²³⁷ The Nigerian Minerals and Mining Act, 2007

²³⁸ Nigerian Code of Corporate Governance 2018 (Nigerian Code).

stakeholders in overseeing the company's operations raise questions. For example, even though section 279 (3) and (4) aim to protect crucial stakeholder groups like employees, sub-section (9) of the same section potentially weakens the effectiveness of such provisions. It states that if corporate executives fail in responsibly safeguarding stakeholder interests, only the "company" can lodge a complaint. The issue arises from the fact that these sections align with the shareholder-centric common law perspective of what constitutes the "company" or the "interest of the company" in such situations. The 'company' is interpreted to mean the members or shareholders collectively, and the best interest or prosperity of the company is construed to be what benefits the (economic) interests of the shareholders.²³⁹

Regarding corporate disclosure in financial statements, Nigerian primary corporate legislation primarily adheres to the shareholder primacy model. It lacks provisions for the consideration of vital stakeholder interests, such as the impact on community well-being or the environment.²⁴⁰

Certainly, these regulations introduce innovative principles and recommended practices aimed at safeguarding stakeholders, which is a noteworthy effort. Notably, Principles 26, 27, and 28 of the 2018 Nigerian Code of Corporate Governance stand out in this regard. However, when considering the effectiveness of a stakeholder management system for genuine stakeholder protection, despite these policy advancements, they may not entirely ensure real protection for stakeholders. The concern lies in the potential for cases of CSR greenwashing and superficial integrated reporting to persist. This scepticism arises from the fact that even with these codes in place, qualified, substantial, and legitimate stakeholders will still ultimately depend on the company itself, primarily through its directors who may also be shareholders with share option

²³⁹ Nojeem Amodu, 'Stakeholder Protection and Corporate Social Responsibility from a Comparative Company Law Perspective: Nigeria and South Africa' (2020) 64 *Journal of African Law* 425, 436.

²⁴⁰ Nojeem Amodu, 'Stakeholder Protection and Corporate Social Responsibility from a Comparative Company Law Perspective: Nigeria and South Africa' (2020) 64 *Journal of African Law* 425, 436.

schemes, to safeguard their interests. Moreover, within the corporate law system, a ‘company’ continues to refer to the shareholders collectively, acting as principals for corporate executives and directors, thus emphasizing shareholder primacy.

It is essential to note that challenges and gaps remain. Some mining companies may still prioritize shareholder interests over broader stakeholder concerns.

5.5 Enlightened Shareholder Value (ESV)

In recent years, there has been a growing recognition of the importance of balancing the interests of all stakeholders in corporate decision-making.²⁴¹ Enlightened Shareholder Value (ESV) is a concept that seeks to achieve this balance by integrating the interests of all stakeholders, including shareholders, into corporate decision-making.²⁴² The ESV emphasizes the idea that a corporation should operate with a long-term view that considers all stakeholders' interests, including shareholders, employees, customers, and the broader community.²⁴³

This approach recognizes that a corporation's success is measured not just by financial performance but also by its ability to create social and environmental value. ESV recognizes that shareholders have a legitimate interest in receiving a return on their investment, but also recognizes that this cannot be achieved at the expense of other stakeholders.²⁴⁴ Instead, ESV seeks to create sustainable value for all stakeholders, including shareholders, by prioritizing long-term strategic planning and responsible decision-making.

²⁴¹ Andrew Key and Taskin Iqbal, ‘The Impact of Enlightened Shareholder Value’. (2019) 4 Journal of Business Law, 304.

²⁴² Andrew Key and Taskin Iqbal, ‘The Impact of Enlightened Shareholder Value’. (2019) 4 Journal of Business Law, 304.

²⁴³ David K Millon., Enlightened Shareholder Value, Social Responsibility, and the Redefinition of Corporate Purpose Without Law (June 16, 2010). Washington & Lee Legal Studies Paper No. 201011., <<http://dx.doi.org/10.2139/ssrn.1625750>> accessed 4 July 2023.

²⁴⁴ David K Millon., Enlightened Shareholder Value, Social Responsibility, and the Redefinition of Corporate Purpose Without Law (June 16, 2010). Washington & Lee Legal Studies Paper No. 201011., <<http://dx.doi.org/10.2139/ssrn.1625750>> accessed 4 July 2023.

Jensen propounded the ESV after he had identified issues in the shareholder and stakeholder theories.²⁴⁵ He did not reject either of the theories but sought to combine them.²⁴⁶ However, it is also important for companies to take good care of their stakeholders.²⁴⁷ The relationship between a company and its stakeholders goes beyond commercial and contractual exchanges.²⁴⁸ It has been recognised that the extent of this relationship depends on the company's ability to establish and maintain good relationships with its stakeholders, which is one of the defining factors affecting the long-term sustainability of a business.²⁴⁹

Jensen formulated ESV to try to merge and create a balance between shareholder primacy and stakeholder theories.²⁵⁰ While doing so, he used the corporate objective as a starting point, combining it with ethics and economics.²⁵¹ ESV adds one more aspect to business activity: the moral one. Thus, ESV theory is aimed at deterring the argument brought forward by the shareholder theory: that corporate managers should not be permitted to pursue moral goals at the expense of profitability, since this is the only objective function of the company.²⁵² It is important to note that corporations are not expected to take the place of governments or NGOs primarily in charge of social responsibility.²⁵³ However, being socially responsible and ethical does not go against the business's main objective of profit maximisation.

²⁴⁵ Micheal C Jensen, 'Self-Interest, Altruism, Incentives, and Agency Theory' (1994) 7 *Journal of Applied Corporate Finance* 40.

²⁴⁶ *ibid.*

²⁴⁷ Andrew Keay, 'Stakeholder Theory in Corporate Law: Has It Got What It Takes?' [2010] 3 (9) *Rich. J. Global L. & Bus.* 249.

²⁴⁸ *ibid.*

²⁴⁹ James E Post, Lee E Preston, and Sybille Sachs, 'Managing the Extended Enterprise: The New Stakeholder View' (2002) 45 *California Management Review* 6, 9.

²⁵⁰ Micheal C Jensen, 'Self-Interest, Altruism, Incentives, and Agency Theory' (1994) 7 *Journal of Applied Corporate Finance* 40.

²⁵¹ *ibid.*

²⁵² Manuel Castelo Branco and Lucia Lima Rodrigues, 'Positioning Stakeholder Theory within the Debate on Corporate Social Responsibility' (2007) 12 *Electronic Journal of Business Ethics and Organization Studies* 5.

²⁵³ Margaret Blair and Lynn Stout, 'Director Accountability and the Mediating Role of the Corporate Board' (2001) 79(2) *Washington University Law Quarterly* 403, 419.

After Jensen proposed the combination of the two theories, the enlightened value theory gained a lot of traction in both the academic and corporate worlds.²⁵⁴ According to Brickley, Smith and Zimmerman, the theory suggests that companies create profits for their shareholders by allocating resources to all groups involved in the process, but only when the expenses incurred in doing so don't exceed the profits generated.²⁵⁵ Thus, the theory evolved quickly, since it was the centre of attraction in both the academic and corporate worlds, leading to the ESV theory as it is known today.²⁵⁶ This theory is a hybrid of both the shareholder primacy theory and stakeholder theory, which implies that, while still retaining shareholder theory objectives (namely, the maximisation of shareholder profit), it should still promote a healthy relationship with and ensure the welfare of stakeholders.²⁵⁷

The importance of the ESV theory was acknowledged in the UK when it was adopted into the Companies Act 2006.²⁵⁸ This act demonstrated an important development in corporate governance and a move away from shareholder theory.²⁵⁹ Although the theory was carefully formulated as a hybrid, it was an autonomous method; it was not developed to fill any loophole within previous theories but to propose a different alternative to corporate managers. According to Roach, ESV encourages long-term in the company's affairs.²⁶⁰ There is no other way to balance the conflicting interests of all stakeholders but through consideration of all the factors

²⁵⁴ Micheal C Jensen, 'Self-Interest, Altruism, Incentives, and Agency Theory' (1994) 7 *Journal of Applied Corporate Finance* 40.

²⁵⁵ JA Brickley, CW Smith Jr and JL Zimmerman, *Designing Organizations to Create Value: From Strategy to Structure* (McGraw Hill, 2002).

²⁵⁶ Osama Mustafa Mudawi and Elfadil Timan, 'Does the Concept of Enlightened Shareholder Value Succeed in Bridging the Gap Between the Shareholders and Stakeholders Value Theories?' (2018) 8 *Business and Economic Research* 56,58.

²⁵⁷ *ibid.* 60.

²⁵⁸ Companies Act 2006 (Commencement No 3, Consequential Amendments, Transnational Provisions and Savings) Order (SI 2007/2194), art 2(1)(d) and 2(1)(g).

²⁵⁹ Richard Williams, 'Enlightened Shareholder Value in UK Company Law' (2012) 35 *Unsw Law Journal* 360,361.

²⁶⁰ Richard Williams, 'Enlightened Shareholder Value in UK Company Law' (2012) 35 *Unsw Law Journal* 360,361.

that affect the company's long-term performance and prosperity, highlighting the importance of trust and sustainability.²⁶¹

5.5.1 Criticisms of the Enlightened Shareholder Value Theory

Although this was considered a good combination of theories, The ESV theory is not without its weaknesses.²⁶² One of the main criticisms is that there is no clarity about the stakeholders and no hierarchy among them.²⁶³ This is also one of the criticisms of stakeholder theory, but the ESV theory has not addressed this problem.²⁶⁴ This shortcoming adds to the burden of directors.²⁶⁵ ESV theory only emphasises areas of relevance that represent broader expectations of responsible business behaviour, such as the company's employees' interests and the impact of its activities on the community and the environment.²⁶⁶ It may be difficult for directors to classify stakeholders according to priority, thereby promoting their success.

The theory has been criticised for still being shareholder-centric. The interests of the corporation's shareholders remain the company's only objectives, in that, the directors are to act in a manner that advances the corporation's success for the benefit of its members. The directors are expected to consider several factors when deciding how to carry out this function

²⁶¹ Lee Roach, 'The Legal Model of the Company and the Company Law Review' (2005) 26 *The Company Lawyer* 98, 103.

²⁶² Osama Mustafa Mudawi and Elfadil Timan, 'Does the Concept of Enlightened Shareholder Value Succeed in Bridging the Gap Between the Shareholders and Stakeholders Value Theories?' (2018) 8 *Business and Economic Research* 56, 60.

²⁶³ Lee Roach, 'The Legal Model of the Company and the Company Law Review' (2005) 26 *The Company Lawyer* 98, 103.

²⁶⁴ UK Company Act 2006 (Explanatory Notes) para. 326.

²⁶⁵ Stelios Andreadakis, 'Enlightened Shareholder Value: Is it the New Modus Operandi for Modern Companies?' (2012) *Corporate Governance* 415, 424.

²⁶⁶ *ibid.* 425.

effectively.²⁶⁷ However, the result of their doing so has appeared to remain shareholder-oriented.²⁶⁸

It needs to be clarified what will happen when the interests of one or more stakeholders come in conflict with advancing the company's success.²⁶⁹ Keay asserts that the legislation provides little to no guidance to directors making corporate decisions or to the courts reviewing such decisions.²⁷⁰ This drawback may lead companies to grant directors broad discretionary power and demand less accountability, considering stakeholders add an element of CSR.²⁷¹ Another disadvantage of ESV theory is that no real rights are given to stakeholders since there is less enforceability.²⁷² ESV theory does not hold directors accountable to stakeholders; therefore, stakeholders cannot institute an action when their interests are ignored.²⁷³ ESV theory is not a viable option for stakeholders in host communities, as it is uncertain whether the courts will accept a non-shareholders application or not. Within the ESV theory, there is more leverage only for stakeholders listed in the company provisions, not non-shareholding stakeholders, which is the category under which host communities are classified.

In conclusion, the Enlightened Shareholder Value (ESV) concept was formulated to merge shareholder primacy and stakeholder theories and gained popularity in both the academic and corporate worlds. It was even adopted into the Companies Act 2006 in the UK, marking an important development in corporate governance. However, the ESV theory is not without its

²⁶⁷ Virginia Harper Ho, 'Enlightened Shareholder Value: Corporate Governance Beyond the Shareholder–Stakeholder Divide' (2010) 36 *Journal of Corporation Law* 59, 79.

²⁶⁸ *ibid.*

²⁶⁹ Andrew Keay, 'Risk, Shareholder Pressure and Short-Termism in Financial Institutions: Does Enlightened Shareholder Value Offer a Panacea?' (2011) 5 *Law and Financial Markets Review* 435, 437.

²⁷⁰ *ibid.*

²⁷¹ Stelios Andreadakis, 'Enlightened Shareholder Value: Is it the New Modus Operandi for Modern Companies?' (2012) *Corporate Governance* 415, 425.

²⁷² J Lian Yap, 'Considering the Enlightened Shareholder Value Principle' 31 (2010) *Company Lawyer* 35, 38.

²⁷³ Stelios Andreadakis, 'Enlightened Shareholder Value: Is it the New Modus Operandi for Modern Companies?' (2012) *Corporate Governance* 415, 425.

weaknesses, including the lack of clarity about stakeholder hierarchy and the continued focus on shareholder interests. Additionally, directors have little guidance when stakeholders' interests conflict with advancing the company's success, and non-shareholder stakeholders have limited leverage under ESV theory.

5.5.2 Application of the theory in the Enlightened Shareholder Value (ESV) mining sector Nigeria

The application of the Enlightened Shareholder Value (ESV) theory in the Nigerian mining sector brings forth an intriguing perspective. ESV theory posits that corporate directors should not only consider the interests of shareholders, but also take into account the well-being of various stakeholders, including employees, host communities, and the environment. In the context of the mining industry in Nigeria, this theory holds relevance.

In Nigeria, The Companies and Allied Matters Act 2020 (2020 CAMA) marks a significant departure from the traditional Shareholder Primacy Model (SPM) in company law. This model, as seen in the old CAMA of 1990, gave minimal attention, if any, to corporate responsibilities towards stakeholders like employees, creditors, host communities, and the environment (as evident in s. 279(3) of the old CAMA). The 2020 CAMA embraces the 'Enlightened Shareholder Value' (ESV) paradigm, where corporate directors are now obligated to consider and balance the interests of various stakeholders, even if it means long-term benefits for shareholders. The ESV model is also present in the company laws of the UK (s. 172, 2006 Companies Act), Kenya (s. 143, 2015 Companies Act), and South Africa (ss. 7 and 72, 2008 Companies Act 2008). While the old CAMA limited boardroom considerations to shareholders and, to a limited extent, employees in determining the company's best interests, the 2020 CAMA expands this to include a broader spectrum of corporate stakeholders. Notably, s. 305(3) of the 2020 CAMA mandates directors to, in addition to shareholder interests, also take

into account the impact of the company's operations on the environment in the community where it operates. While the introduction of s.305(3) represents a positive legal obligation for boards to factor in the environmental repercussions of corporate activities in their decisions, it prompts the question of whether this alone is sufficient for the comprehensive protection of stakeholder interests, particularly those of host communities and the environment in which companies operate. The application of Enlightened Shareholder Value (ESV) theory in the Nigerian mining sector has garnered criticism on various fronts. Firstly, it tends to prioritize shareholder interests, potentially neglecting the concerns of vital stakeholders like host communities and environmental preservation. This approach may fall short in addressing the intricate socio-environmental challenges inherent in mining activities. Secondly, ESV assumes that maximizing shareholder value invariably leads to long-term sustainable success, a notion that may not always align with the unique challenges of the mining industry. Short-term gains may conflict with long-term environmental and social sustainability. Additionally, the practical implementation of ESV in the Nigerian mining sector faces hurdles due to existing regulatory frameworks, socio-economic dynamics, and institutional capacities. Strict adherence to ESV principles might not adequately capture the intricacies of the local mining landscape. Moreover, ESV may not sufficiently address corporate accountability and transparency, pivotal aspects in an industry where responsible resource extraction is paramount. Lastly, ESV may not comprehensively consider the cultural and social context of host communities in Nigeria, potentially leading to social tensions and conflicts. In conclusion, while ESV holds merits, its applicability in the Nigerian mining sector necessitates a thorough reassessment, considering the industry's specific challenges and nuances.

5.6 Analysing the Feasibility and Effectiveness of Alternative Models for Corporate Governance

The previous sections have discussed the potential alternative models for corporate governance in Nigeria, it is important to analyse each of these models to understand their potential effectiveness and suitability for the Nigerian context. In this section, we will delve deeper into the analysis of these alternative models and assess their strengths and weaknesses.

In analysing the feasibility and effectiveness of alternative models for corporate governance in Nigeria, it is important to critically analyse the most prominent existing theories of corporate governance. In this thesis, three theories were the shareholder theory, the stakeholder theory, and the enlightened shareholder value (ESV) theory.

The shareholder theory posits that the primary goal of a corporation is to maximize shareholder value, typically through the pursuit of profit. This theory has been criticized for placing too much emphasis on short-term gains at the expense of long-term sustainability and for neglecting the interests of other stakeholders, such as employees and the community. The shareholder theory posits that a company's primary responsibility is to maximize profits for its shareholders.²⁷⁴ This theory assumes that shareholders are the only group with a legitimate interest in the company's activities, and thus, the company's management should prioritize their interests above all others. However, critics argue that this narrow focus on shareholder interests can negatively affect other stakeholders such as employees, customers, and the environment.²⁷⁵

On the other hand, the stakeholder theory suggests that corporations should consider the interests of all stakeholders, including shareholders, employees, customers, suppliers, and the

²⁷⁴ Christine A Mallin, *Corporate Governance* (6th edn, Oxford University Press, 2019) 19.

²⁷⁵ Bidhan L Parmar and others, 'Stakeholder Theory: The State of the Art' (2010) 4 *Management Faculty Publications* 99, 109.

wider community. Stakeholder theory argues that a company has a responsibility to consider the interests of all stakeholders, including shareholders, employees, customers, suppliers, and the community at large. This theory emphasizes the need for companies to balance the interests of multiple stakeholders and promote the long-term sustainability of the business.²⁷⁶ This theory has gained popularity in recent years as a more balanced approach to corporate governance. However, some critics argue that it is difficult to prioritize and balance the competing interests of various stakeholders, particularly when their interests' conflict. Critics also argue that stakeholder theory can be too broad and vague in its approach, making it difficult to implement effectively.

The enlightened shareholder value theory seeks to balance the interests of shareholders with those of other stakeholders by emphasizing the long-term growth and sustainability of the company.²⁷⁷ This model recognizes the importance of considering the interests of other stakeholders and the impact of the company's activities on the environment and society. The ESV theory attempts to bridge the gap between the shareholder and stakeholder theories by arguing that corporations should prioritize the long-term interests of shareholders, but only in a way that takes into account the interests of other stakeholders and the broader social and environmental context.²⁷⁸ While this theory has been praised for its attempt to balance competing interests, it has also been criticized for lacking clear guidelines on how to do so in practice. Critics also argue that this model is still focused on shareholder interests and may not go far enough in addressing the concerns of other stakeholders.²⁷⁹

²⁷⁶ Elaine Sternberg, 'The Defects of Stakeholder Theory' (1997) 5 *Corporate Governance* 3, 6.

²⁷⁷ Richard Williams, 'Enlightened Shareholder Value In Uk Company Law' (2012) 35 *Unsw Law Journal* 360.

²⁷⁸ Michael C Jensen, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2001) 14 *Journal of Applied Corporate Finance* 8, 10.

²⁷⁹ Osama Mustafa Mudawi and Elfadil Timan, 'Does the Concept of Enlightened Shareholder Value Succeed in Bridging the Gap Between the Shareholders and Stakeholders Value Theories?' (2018) 8 *Business and Economic Research* 56, 66.

In the context of analysing the feasibility and effectiveness of alternative models for corporate governance in Nigeria, it is important to consider the strengths and weaknesses of each theory and how they apply to the specific context of Nigerian corporations. Nigeria's unique social, economic, and political landscape may require a customized approach to corporate governance that considers the needs and interests of local stakeholders. In the next section, we will discuss some potential alternative models for corporate governance in Nigeria that may better suit the specific needs of the Nigerian context.

Based on the analysis of the alternative models, the stakeholder theory appears to be a more inclusive and sustainable approach to corporate governance in Nigeria. It recognizes that corporations do not exist in a vacuum but are part of a larger ecosystem that they influence and are influenced by. Therefore, it is essential for corporations to take into account the long-term effects of their actions on all stakeholders, not just the shareholders who seek short-term profits. Moreover, the stakeholder theory aligns with the principles of sustainable development and corporate social responsibility, which are increasingly relevant in Nigeria's context. By adopting the stakeholder theory, corporations can build stronger relationships with their stakeholders, reduce reputational risks, enhance their social license to operate, and create shared value for both the company and society.

However, the thesis will also acknowledge some of the challenges associated with implementing the stakeholder theory in Nigeria. For example, it may require a shift in the mindset of some corporate leaders who are accustomed to prioritizing shareholder interests above all else. Additionally, there may be tensions among stakeholders with competing interests, which may require careful management and negotiation. Nonetheless, the thesis will argue that the stakeholder theory offers a more sustainable and inclusive framework for

corporate governance in Nigeria, one that recognizes the interdependence between the corporation and society and the importance of long-term thinking.

After critically analysing the shareholder theory, stakeholder theory and the Enlightened Shareholder Value, the thesis will focus on the feasibility and effectiveness of the stakeholder theory as an alternative model for corporate governance in Nigeria. The stakeholder theory suggests that a corporation has a social responsibility to consider the interests of all its stakeholders, including employees, customers, suppliers, the environment, and the community, in addition to the shareholders.

5.7 Rationale for the Adoption of Stakeholder Theory

Due to the importance of the theory to this thesis, regardless of its critics, it is important to state why the construct has been adopted as the model used by this thesis. According to Freeman and others, the core idea of stakeholder theory is a focus and emphasis on organisational management and business ethics that addresses morals and values in organisational leadership.²⁸⁰ The stakeholder theory is a good theory to adopt for the thesis proposal as it recognizes the importance of not only the shareholders but also the other stakeholders, such as employees, customers, suppliers, and the community, in a company's governance. This theory proposes that the interests of all stakeholders should be considered in decision-making processes rather than just the interests of the shareholders.

In the case of Nigeria, where the current corporate governance model is heavily skewed towards shareholder primacy, the stakeholder theory can provide a more balanced approach to governance. By incorporating stakeholders' interests, the company can create long-term value

²⁸⁰ R Edward Freeman, Andrew C Wicks and Bidhan Parmar, 'Stakeholder Theory and 'The Corporate Objective Revisited'' (2004) 15 *Organization Science* 346.

for all parties involved, not just the shareholders. This can lead to increased trust, loyalty, and a positive reputation, which can ultimately benefit the company's financial performance.

Moreover, adopting the stakeholder theory can help companies in Nigeria address some of the social and environmental challenges they face. Companies can ensure that they operate sustainably and responsibly by considering the interests of stakeholders such as the community and the environment.

The stakeholder theory is a suitable alternative to consider for the job of corporate governance in Nigeria, as it promotes a more inclusive and holistic approach to decision-making, which can lead to long-term value creation for all stakeholders.

There is a skewed relationship between mining and community participation in Nigeria's decision-making process. According to Freeman and others, host community involvement will usher in an era of belonging instead of the current sense of alienation.²⁸¹ However, community involvement and contribution to mining operations' design, implementation and oversight remain minimal. For example, mining companies, especially those operating in borderline conditions, tend to make decisions from within a closed system that is largely cut off from public opinion. By adopting the stakeholder theory, managers in Nigeria can shift their focus from solely satisfying the interests of shareholders to also taking into account the interests of other stakeholders. This approach aligns with the recommendations in the thesis proposal for the inclusion of stakeholders' representatives on the non-executive board to voice their concerns and influence decision-making processes. Furthermore, the stakeholder theory emphasizes the importance of building strong relationships with stakeholders, which can help companies achieve their objectives and create long-term value for all parties involved.

²⁸¹ John H Freeman and Pino G Audia, 'Community Ecology and the Sociology of Organizations' (2006) 32 *Annual Review of Sociology* 145, 147.

For the purpose of the thesis proposal, we will be using the normative version of the stakeholder theory. This version emphasizes the ethical responsibilities of corporations towards all stakeholders and the need to balance the interests of all stakeholders in decision-making processes.²⁸² It argues that corporations have moral obligations beyond maximizing shareholder value and should consider the interests of all stakeholders, including employees, customers, suppliers, communities, and the environment.²⁸³

The thesis has chosen this version of stakeholder theory because it aligns with the modern-day understanding of corporate responsibility and sustainability.²⁸⁴ In today's business environment, there is an increasing recognition of the interconnectedness of businesses with their stakeholders and the impact that businesses have on society and the environment.²⁸⁵ The normative version of stakeholder theory provides a framework for corporations to act ethically and responsibly towards their stakeholders, which ultimately benefits the long-term sustainability of the business.²⁸⁶

The normative version of stakeholder theory emphasizes the ethical responsibilities of corporations towards all stakeholders, including the community and the environment. It proposes that the interests of all stakeholders should be taken into account in decision-making processes, rather than just the interests of the shareholders.²⁸⁷ By adopting stakeholder theory, mining companies in Nigeria can shift their focus from solely satisfying the interests of

²⁸² Cedric Dawkins, 'The Principle of Good Faith: Toward Substantive Stakeholder Engagement,' (2014) 121 *Journal of Business Ethics*, Springer, 283.

²⁸³ Cedric Dawkins, 'The Principle of Good Faith: Toward Substantive Stakeholder Engagement,' (2014) 121 *Journal of Business Ethics*, Springer, 283.

²⁸⁴ John Hendry, 'Missing the Target: Normative Stakeholder Theory and the Corporate Governance Debate' (2001) 11 *Business Ethics Quarterly* 159,163.

²⁸⁵ Nachoem M. Wijnberg, 'Normative Stakeholder Theory and Aristotle: The Link Between Ethics and Politics' (2000) 25 *Journal of Business Ethics* 329.

²⁸⁶ Nachoem M. Wijnberg, 'Normative Stakeholder Theory and Aristotle: The Link Between Ethics and Politics' (2000) 25 *Journal of Business Ethics* 329.

²⁸⁷ Darryl Reed, 'Employing Normative Stakeholder Theory in Developing Countries A Critical Theory Perspective' (2002) 41 *Business & Society* 166.

shareholders to also taking into account the interests of other stakeholders, including the community and the environment.

Stakeholder theory can help mining companies in Nigeria address their social and environmental challenges. Companies can ensure that they operate sustainably and responsibly by taking into account the interests of stakeholders such as the community and the environment. The stakeholder theory emphasizes the importance of building strong relationships with stakeholders, which can help companies achieve their objectives and create long-term value for all parties involved. For instance, mining companies can engage with the community to ensure that their operations are conducted in an environmentally responsible manner to preserve the local ecosystem and minimize the negative impact of mining on the community.

With the socioeconomic realities of modern times, companies can no longer survive without depending on resource contributions from other stakeholders, including the host communities and the environment. This fact is enough reason to consider the integration of stakeholders and their interests in managing these corporations.²⁸⁸ The imminent danger of climate change and the unfair effects of companies' activities on the environment justifies the need for sustainable development in society and within the business community is now vital.²⁸⁹ Sustainable development aims are better implemented through the integrative stakeholder theory, as this thesis proposes, under which more companies will act more responsibly in the interests of their shareholders and the relevant stakeholders, including the environment and host communities.

Stakeholder engagement is important to developing both semi-active and proactive attitudes towards sustainability and can be the sole influence on passive companies. There are different types and levels of stakeholder engagement, which can have different meanings in different

²⁸⁸ John F McVea and R Edward Freeman, 'A Names-and-Faces Approach to Stakeholder Management' (2005) 14 *Journal of Management Inquiry* 57, 58.

²⁸⁹ *ibid.*

contexts.²⁹⁰ Gao and Zhang correlated the level of involvement with the number of participants, arguing that accurate and meaningful stakeholder engagement should be a process of exchange via genuine dialogue between the stakeholders and the organisation's management.²⁹¹

By adopting stakeholder theory, companies in Nigeria can shift their focus from solely satisfying the interests of shareholders to also taking into account the interests of other stakeholders. This approach can lead to increased trust, loyalty, and a positive reputation, ultimately benefiting the company's financial performance. In the context of mining, the integration of stakeholder interests can help to address some of the social and environmental challenges faced by mining companies in Nigeria. The integrative stakeholder model aims to bring together the interests of all stakeholders involved in a business, specifically the host communities, to create long-term value and ensure sustainable development. Stakeholder theory, which emphasizes the ethical responsibilities of corporations towards all stakeholders and the need to balance their interests in decision-making processes, aligns well with these aims.

For example, by involving community representatives in the decision-making process, mining companies can ensure that the interests and concerns of host communities are taken into account. This can help to address the issue of community participation, which is currently minimal in Nigeria. Furthermore, by taking into account the interests of stakeholders such as the environment, companies can ensure that they operate sustainably and responsibly. By adopting the integrative stakeholder model and incorporating stakeholder theory, mining companies in Nigeria can create long-term value for all parties involved and contribute to sustainable development.

²⁹⁰ Simon S Gao and Jane J Zhang, 'Stakeholder Engagement, Social Auditing and Corporate Sustainability' (2006) 12 *Business Process Management Journal* 722.

²⁹¹ *ibid.*

This chapter has provided an overview of the purpose of corporate governance and some of the theories that underpin corporate governance practices. It has also discussed the application of these theories in Nigeria and the rationale for the adoption of stakeholder theory. The Shareholder theory is a traditional theory of corporate governance that focuses on maximizing shareholder value. This theory has been criticized for its narrow focus and failure to consider other stakeholders' interests such as employees, customers, and the environment. The stakeholder theory proposes that the primary objective of corporations is to maximize shareholder value, while the stakeholder theory advocates for a more inclusive and holistic approach to decision-making that considers the interests of all stakeholders. In Nigeria, the current corporate governance model is heavily skewed towards shareholder primacy, but there is a growing recognition of the need for a more balanced approach that considers the interests of all stakeholders.

In response to these criticisms, stakeholder theory has emerged as an alternative approach to corporate governance. Stakeholder theory recognizes that corporations have a responsibility to all of their stakeholders, not just shareholders. By taking a more inclusive approach, stakeholder theory aims to create a more sustainable and equitable system of corporate governance.

In Nigeria, there has been an attempt to integrate both shareholder and stakeholder theories, mirroring the Enlightened Stakeholder model seen in the UK Companies Act. However, the dominance of the Shareholder theory has shaped the corporate governance landscape. Consequently, this prioritizes the concerns of shareholders, often neglecting the interests of other stakeholders. This imbalance has given rise to various issues, such as environmental harm, social tensions, and a diminished trust in corporate entities.

Stakeholder theory offers an alternative approach to corporate governance that can address these problems. By recognizing the importance of all stakeholders and considering their interests in decision-making, corporations can create a more sustainable and equitable system of governance. The adoption of stakeholder theory in Nigeria can provide a more balanced approach to corporate governance that can create long-term value for all parties involved, not just the shareholders. Moreover, it can help companies in Nigeria address some of the social and environmental challenges they face by taking into account the interests of stakeholders such as the community and the environment. The theory is a better alternative for corporate governance in Nigeria as it provides a framework for corporations to act ethically and responsibly towards their stakeholders, ultimately benefiting the long-term sustainability of the business. By engaging with stakeholders and considering their interests in decision-making processes, companies can achieve their objectives and create long-term value for all parties involved.

Overall, the adoption of stakeholder theory in Nigeria can lead to better corporate governance practices and promote sustainable development in the country. The next chapter will examine the practical implications of adopting stakeholder theory in Nigeria and explore some approaches to corporate governance used in other countries which can be adopted to achieve these goals in Nigeria.

CHAPTER SIX

EXAMINING CORPORATE GOVERNANCE FRAMEWORKS IN OTHER JURISDICTIONS

6.1 Introduction

Corporate governance is a critical aspect of business operations and has become an important issue globally, particularly in emerging economies such as Nigeria. The mining sector faces unique challenges in terms of stakeholder engagement, environmental sustainability, and community participation. In response to these challenges, this thesis proposes adopting a more integrative stakeholder model of corporate governance, which recognizes the importance of engaging with a range of stakeholders beyond just the shareholders.

However, questions remain as to how best to implement this model in the Nigerian context. Chapter six addresses this question by examining corporate governance models in other countries, specifically, Germany and India, and identifying key lessons that can be adapted to the Nigerian context.

In the quest for effective stakeholder protection, it is imperative to consider corporate governance models that have demonstrated success in balancing the interests of various parties involved. Germany and India emerge as pertinent case studies in this context. Germany's stakeholder-oriented model, characterised by robust employee representation and cooperative labour relations, holds promise for ensuring the protection of stakeholders, particularly host communities, in Nigerian mining ventures. The emphasis on codetermination and collaborative decision-making mechanisms may offer valuable insights into fostering a mutually beneficial relationship between mining companies and their host communities.

India, with its mixed governance model influenced by both British and indigenous legal traditions, presents a unique framework to examine. This amalgamation of practices provides an intriguing perspective on how diverse ownership structures and family-owned conglomerates can navigate stakeholder interests, which is particularly relevant in the Nigerian context where similar dynamics exist. Exploring India's approach may yield strategies for Nigerian mining companies to effectively engage and safeguard the interests of their host communities.

However, it is crucial to acknowledge the limits of direct comparison. The legal and institutional landscapes of Germany and India differ significantly from Nigeria. While the principles and practices can offer valuable insights, they must be adapted to suit the specific legal and cultural contexts of Nigeria. Moreover, considering the varying levels of economic development in these countries, the strategies employed may need to be tailored to accommodate Nigeria's unique position in the global economic landscape.

By examining the corporate governance models of Germany and India through the lens of stakeholder protection, particularly in the context of host communities in mining operations, this approach seeks to distil pertinent lessons. The goal is to develop recommendations that align with Nigeria's specific economic, legal, and cultural milieu. This nuanced, context-specific approach acknowledges that safeguarding stakeholder interests, especially those of host communities, requires tailored strategies that respect the distinct intricacies of each setting.

Therefore, the chapter begins by exploring case studies of corporate governance models in Germany and India, which are analysed for their relevance to the Nigerian context. Based on the case studies, the chapter identifies key lessons learned and challenges that may arise when adapting these global corporate governance models to the Nigerian context. The chapter concludes by proposing adaptations to the Nigerian corporate governance model, including

incorporating traditional governance structures and emphasizing the importance of engaging with a range of stakeholders in the Nigerian mining sector. The chapter will then present case studies on selected companies in Germany and India, examining how they approach corporate governance and highlighting best practices that could be adapted for Nigeria. Specifically, the case studies will analyse the governance structures, board compositions, and stakeholder engagement strategies of German and Indian companies, and assess how these practices have contributed to their success or challenges.

The first case study will focus on German companies, which are known for their two-tier board structure and emphasis on co-determination between management and workers. This case study will examine the corporate governance practices of Volkswagen AG, a multinational automotive manufacturer headquartered in Germany.

The second case study will examine Indian companies that have adopted a more shareholder-focused approach to corporate governance, emphasising independent directors and minority shareholder protections. This case study will analyse the corporate governance practices of Infosys Limited, a multinational IT company headquartered in India.

Overall, this chapter seeks to offer a comprehensive understanding of the corporate governance models employed in Germany and India, highlighting their distinctiveness, and evaluating how these models might be pertinent to Nigeria. The intention behind this examination is to extract valuable insights and lessons from the corporate governance systems of Germany and India, which have shown significant effectiveness in their respective contexts. By scrutinizing and understanding these successful practices, Nigerian companies and policymakers can gain crucial knowledge about what works well in corporate governance. Additionally, they can pinpoint areas that might benefit from enhancement within their own corporate governance frameworks. By analysing successful practices from other countries, Nigerian companies and

policymakers can identify best practices and areas for improvement in their corporate governance structures.

6.2 Germany

The first case study focuses on Germany, which is known for its strong emphasis on stakeholder-oriented corporate governance.¹ The German model emphasizes a collaborative approach between management, employees, and other stakeholders, and has been successful in promoting long-term sustainability and value creation. This case study will examine the key features of the German model and explore how they can be adapted to the Nigerian context.

Corporate governance frameworks, laws and regulations in continental Europe are quite different from those in the United States (US) and the United Kingdom (UK).² The German corporate governance system is characterized by its distinctive approach, which emphasizes stakeholder participation and the inclusion of stakeholder directors in company boards. In contrast to systems that primarily prioritize shareholder interests, Germany recognizes the importance of considering the diverse interests of various stakeholders, including employees, suppliers, customers, and the community.

Stakeholder orientation in Germany has a rich historical background. Following the Second World War, Western Germany established a social market economy model that combined elements of free markets with strong social welfare systems and coordinated market actors.³ The reconstruction period emphasized the empowerment of key stakeholder groups, particularly employees. This occurred through two significant phases of strengthening their

¹ Anja Tuschke and Marius Luber, 'Corporate Governance in Germany: Converging towards Shareholder Value-Oriented or Not so Much?' [2012] *The Convergence of Corporate Governance* 75.

² The Netherlands, Germany and Austria are case studies in this thesis.

³ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165, 168.

rights.⁴ In 1951, the Cooperative Management Law (Montan-Mitbestimmungsgesetz) was introduced, laying the foundation for a cooperative approach to shareholder and employee rights in the governance of publicly traded companies. Subsequently, in the 1970s, the Co-determination Law (Mitbestimmungsgesetz) further solidified the role of employee representatives in corporate decision-making processes.⁵ However, after the reunification of Germany in 1990, German firms faced pressures to adopt a more shareholder-oriented management style due to globalization and the internationalization of capital and product markets. Influenced by the Anglo-American shareholder value model, firms introduced practices such as stock-based executive compensation, transparent accounting standards, and market-based control systems to enhance competitiveness in global markets.⁶

While some researchers anticipated a convergence toward the Anglo-American shareholder-oriented governance model, the introduction of such practices often clashed with the prevailing institutional norms in Germany.⁷ The societal and legislative forces were resistant, as they feared that embracing shareholder-oriented practices would come at the expense of other stakeholder groups. Therefore, a concerted effort was to preserve the traditional norms and values of an egalitarian governance model.⁸ Despite increasing integration of German firms into global institutional contexts that encouraged market-oriented changes, the country remained committed to protecting stakeholder interests.⁹ The core features of the traditional

⁴ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165, 169.

⁵ Anja Tuschke, Wm. Gerard Sanders, 'Antecedents and consequences of corporate governance reform: The case of Germany'. (2003) 24 *Strategic Management Journal*, 631.

⁶ Anja Tuschke and Marius Luber, 'Corporate Governance in Germany: Converging towards Shareholder Value-Oriented or Not so Much?' [2012] *The Convergence of Corporate Governance* 75.

⁷ Cagman Palmer, 'Has the Worldwide Convergence on the Anglo-American Style Shareholder Model of Corporate Law yet Been Assured?' (2011) 6 *Opticon* 1,4.

⁸ Anja Tuschke, & Marius Luber, 'Corporate Governance in Germany: Converging Towards Shareholder Value-Oriented or Not So Much?'. (2012). *The Convergence of Corporate Governance* 75,76.

⁹ Anja Tuschke and Marius Luber, 'Corporate Governance in Germany: Converging towards Shareholder Value-Oriented or Not so Much?' [2012] *The Convergence of Corporate Governance* 75,76.

stakeholder model, such as co-determination regulations, have persisted amidst transformations in corporate governance. Germany's stakeholder orientation has evolved over time.¹⁰ While there were pressures to adopt a shareholder-oriented approach, the country's institutional and societal forces prioritized the preservation of stakeholder rights.¹¹ This commitment to a balanced governance model has allowed Germany to maintain the central characteristics of stakeholder involvement, ensuring the representation of various stakeholder groups in corporate decision-making processes.

6.2.1 Main Features of Germany's Corporate Governance

The German corporate governance model comprises a two-tiered board of directors: the executive board (which includes the board of executives); and the supervisory board (which represents shareholders and employees). This approach is also referred to as the 'insider model'. In describing this model of corporate governance, Franks and Mayer used the terms 'outsider' and 'insider systems' to differentiate between the ownership and control systems.¹² According to them, dispersed corporate equity ownership exists among a group of outsider investors in the outsider system, as seen in the UK and the United States.¹³ Institutional investor ownership is predominant in outsider systems, although institutional investors do not have significant shareholdings in any given company and have minimal control.¹⁴ In contrast, in an

¹⁰ Konstantin Bottenberg, Anja Tuschke, and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165,168.

¹¹ Konstantin Bottenberg, Anja Tuschke, and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165.

¹² Julian Franks and Colin Mayer, 'Corporate Ownership and Control in the UK, Germany, and France' (1997) 9 *Journal of Applied Corporate Finance* 30.

¹³ Julian Franks and Colin Mayer, 'Corporate Ownership and Control in the UK, Germany, and France' (1997) 9 *Journal of Applied Corporate Finance* 30.

¹⁴ *ibid.*

insider system such as that seen in several continental European countries, ownership tends to be much more focused;¹⁵ the shares are owned either by holding corporations or families.¹⁶

Aside from ownership structures, there are other significant differences in countries' corporate governance codes within continental Europe, including employee representation, social/stakeholder issues, stakeholder rights, board structure and the role of the independent supervisory body and leadership.¹⁷ The two-tier boards are required in Germany, Holland, France and Italy.¹⁸ 'The rules and regulations in the European countries are not strictly enforced due to the applicability of the principle of "comply or explain"'.¹⁹ The corporate governance framework in continental Europe allows for deviations, as long as there is a definite cause for non-compliance.²⁰ This free rein on the rules and regulations is conceivably possible because the influencing stakeholders are more diverse and observe the firm's performance carefully and prudently.²¹ The stakeholders' diversity requires incorporating principles of accommodation to achieve cooperative decision-making when making judgments.²² This corporate governance system is more open to the inclusion of stakeholders. Employee representatives have seats on supervisory boards in Germany.²³ This form of corporate governance will be open to the inclusion of stakeholders like host communities, as it allows the voices of stakeholders to be heard.

¹⁵ Christine A Mallin, *Corporate Governance* (5th edn, Oxford University Press, 2016) 278.

¹⁶ *ibid.*

¹⁷ *ibid.*; Holly J Gregory and Robert T Simmelkjaer, 'Comparative Study of Corporate Governance Codes Relevant to the European Union and its Member States' (European Commission Internal Market Directorate General 2002); European Commission Internal Market Directorate General as given here: <<https://ecgi.global/code/comparative-study-corporate-governance-codes-relevant-european-union-and-its-member-states>> accessed 20 September 2022

¹⁸ Luca Enriques and Paolo Volpin, 'Corporate Governance Reforms in Continental Europe' (2007) 21 *Journal of Economic Perspectives* 117, 128.

¹⁹ *ibid.*

²⁰ *ibid.* 130.

²¹ *ibid.* 133.

²² *ibid.*

²³ Stilpon Nestor and John Thompson, 'Corporate Governance Patterns in OECD Economies: Is Convergence Under Way?' <<https://www.oecd.org/corporate/ca/corporategovernanceprinciples/1931460.pdf>> accessed 20 September 2022.

Germany's corporate governance system exhibits a unique characteristic related to the supervisory board and employee co-determination. This feature ensures that a significant proportion of seats on the supervisory board of listed companies are reserved by law for employee and union representatives.²⁴ As a result, employees have a meaningful role in monitoring and providing advice on strategic and governance decisions made at the highest level of the company. The presence of highly organized works councils in most larger firms further strengthens employee representation.²⁵

There is a legal requirement for the board chairman to mediate and reconcile conflicting interests between employee representatives and shareholder representatives to address potential conflicts that may arise from the strong employee representation on the supervisory boards.²⁶ This provision, known as *Interessenausgleich*, helps mitigate conflicts and promote cooperation between different stakeholder groups.²⁷ Moreover, the emphasis on monitoring within German boards is balanced by the practice of fostering close relationships, open communication, and seeking consensus among the chairman, board members, and the top management team.²⁸

Germany's corporate governance system stands out due to the inclusion of employees in the supervisory board through co-determination.²⁹ This arrangement grants employees a voice in

²⁴ Dennis C Mueller, 'Corporate Governance and the State'. (2014) 15 *Competition and Regulation in Network Industries*, 177.

²⁵ Dennis C Mueller, 'Corporate Governance and the State'. (2014) 15 *Competition and Regulation in Network Industries*, 177.

²⁶ Dennis C Mueller, 'Corporate Governance and the State'. (2014) 15 *Competition and Regulation in Network Industries*, 177.

²⁷ Dennis C Mueller, 'Corporate Governance and the State'. (2014) 15 *Competition and Regulation in Network Industries*, 177.

²⁸ Ruth V. Aguilera, Gregory Jackson. 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants' (2003) 28 *The Academy of Management Review* 447.

²⁹ Konstantin Bottenberg, Anja Tuschke, and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165,167.

important decision-making processes and is supported by the presence of works councils.³⁰ Conflicts between employee and shareholder representatives are managed through legal requirements and the facilitation of harmonious relationships and consensus-building among board members and top management.³¹

The German model is characterized by the separation of the Management Board and the Supervisory Board and is influenced by national economic and social conditions, such as the structure of ownership, the composition of boards of directors, the banking sector, and the financial markets.³² In Germany, the insider model is preferred, with a low number of creditors and equity holders, and banks often have a persistent presence in the Supervisory Board as both shareholders and creditors.³³ Additionally, share ownership in Germany is heavily concentrated, with non-financial entities owning over half of all shares.³⁴ Bayer AG a global company in Germany with three divisions - Pharmacy, Consumer Health and Culture Science - has adopted the stakeholder model in its corporate governance system, which is different from the shareholder value orientation commonly found in the Anglo-American area.³⁵ This is due to the unique cultural, historical, and technological context of the German model of corporate governance, which prioritizes production-oriented, long-term, risk-averse, and consensus-driven values.³⁶

³⁰ Andreas Rühmkorf, 'Stakeholder Value versus Corporate Sustainability: Company Law and Corporate Governance in Germany' in Beate Sjøfjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press 2019) 238.

³¹ Konstantin Bottenberg, Anja Tuschke, and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation' (2016) 26 *Journal of Management Inquiry* 165,167.

³² Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi 'The Main Features of The German Corporate Governance System. Case Study: Bayer Ag', (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 228.

³³ Marc Goergen, Miguel C Manjon and Luc Renneboog, 'Is the German System of Corporate Governance Converging towards the Anglo-American Model?' (2008) 12 *Journal of Management & Governance* 37,39.

³⁴ Marc Goergen, Miguel C Manjon and Luc Renneboog, 'Is the German System of Corporate Governance Converging towards the Anglo-American Model?' (2008) 12 *Journal of Management & Governance* 37,39.

³⁵ Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi 'The Main Features of The German Corporate Governance System. Case Study: Bayer Ag', (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 228.

³⁶ Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi 'The Main Features of The German Corporate Governance System. Case Study: Bayer Ag', (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 228.

The system of co-determination, where employee and union representatives are included in decision-making processes, is a unique feature in the German approach.³⁷ The dual two-tier board structure of management and supervisory boards is also distinct. The supervisory board includes representation from banks, but usually only one member. The average size of supervisory boards in Germany is 13 members, and they meet about 3.8 times per year.³⁸ Transparency, one of the corporate governance best practices, is highly valued in German companies. Bayer AG, for example, regularly publishes reports and holds press conferences to keep interested parties informed about its activities and financial situation.³⁹

The German model of corporate governance stands in stark contrast to that of the UK and the US. It features a concentrated ownership structure of public companies, which are typically controlled by a small number of major shareholders.⁴⁰ The capital used to finance these companies comes from within the organization, either through shareholder contributions or through banks, which often have a significant stake in the business.⁴¹ This approach results in a closed form of capital creation that leads to a smaller market capitalization compared to the UK and the US, where mass ownership is more common.⁴² For example, the New York Stock Exchange has a market capitalization of \$19.2 trillion, making it the largest in the world, while the London Stock Exchange ranks third with a market capitalization of \$6.1 trillion.⁴³ In

³⁷ Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi ‘The Main Features of The German Corporate Governance System. Case Study: Bayer Ag’, (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 229.

³⁸ Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi ‘The Main Features of The German Corporate Governance System. Case Study: Bayer Ag’, (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 229.

³⁹ Radu-Adrian Moraru, George Ungureanu, Dan Constantin Șumovschi ‘The Main Features of The German Corporate Governance System. Case Study: Bayer Ag’, (2018) 6 *Lucrări Științifice Seria Agronomie* 227, 230.

⁴⁰ Martin Gelter, ‘Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance’ (2009) 50 *Harv. Int’l L.J.* 129,130.

⁴¹ T. Bucki, A. Shahrini, S. Winter, ‘Executive Stock Options in Germany: The Diffusion or Translation of US-Style Corporate Governance?’ (2004) 8 *Journal of Management and Governance* 173,175.

⁴² Martin Gelter, ‘Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance’ (2009) 50 *Harv. Int’l L.J.* 129,131.

⁴³ Rolando Y. Wee, “Biggest Stock Exchanges in the World,” *WorldAtlas*, April 25, 2017, <<https://www.worldatlas.com/articles/biggest-stock-exchanges-in-the-world.html>> accessed 11 May 2023.

contrast, Germany ranks tenth with a market capitalization of only \$1.7 trillion.⁴⁴ Unlike public companies in the UK and the US, German public companies tend to rely on financing from within rather than attracting more shareholders through the securities market. This approach ensures that shareholder ownership and control changes are not as radical.⁴⁵

The managing directors of a limited liability company and the management board of a stock corporation generally have legal obligations to the company and are required to operate primarily in the company's best interests in Germany. In contrast to the Anglo-Saxon shareholder model, the company's best interests are not restricted to shareholder interests, nor do shareholder interests always take precedence. Management must instead take into account and balance the different interests of stakeholders and shareholders.⁴⁶ Through their participation on the supervisory board in cases of co-determination and its operational co-determination rights through (group or joint) works councils, employees play a significant role. The works council has numerous monitoring, consultation, information, and negotiating rights and primarily represents employees' workplace interests (e.g., working conditions and social issues).⁴⁷ The Corporate Governance Code advocates providing employees with a safe way to disclose legal infractions within the organisation, such as through an anonymous whistleblowing mechanism. Stakeholders may also have an indirect influence on their ESG-related expectations.⁴⁸

⁴⁴ Rolando Y. Wee, "Biggest Stock Exchanges in the World," WorldAtlas, April 25, 2017,

<<https://www.worldatlas.com/articles/biggest-stock-exchanges-in-the-world.html>> accessed 11 May 2023.

⁴⁵ T. Bucki, A. Shahrini, S. Winter, 'Executive Stock Options in Germany: The Diffusion or Translation of US-Style Corporate Governance?' (2004) 8(2) *Journal of Management and Governance* 173.

⁴⁶ Eva Nase, 'Germany: Cooptae governanace Comparative Guide' (Mondaq, 15 March 2023) <<https://www.mondaq.com/germany/corporatecommercial-law/1294392/corporate-governance-comparative-guide>> accessed 10 May 2023.

⁴⁷ Eva Nase, 'Germany: Cooptae governanace Comparative Guide' (Mondaq, 15 March 2023) <<https://www.mondaq.com/germany/corporatecommercial-law/1294392/corporate-governance-comparative-guide>> accessed 10 May 2023.

⁴⁸ Eva Nase, 'Germany: Cooptae governanace Comparative Guide' (Mondaq, 15 March 2023) <<https://www.mondaq.com/germany/corporatecommercial-law/1294392/corporate-governance-comparative-guide>> accessed 10 May 2023.

The long-standing tradition of stakeholder orientation in Germany fosters equitable relationships within organizations.⁴⁹ An important aspect of this approach is worker co-determination, which has been subject to varying perceptions regarding its impact on decision-making quality.⁵⁰ While some argue that co-determination may compromise decision quality, others emphasize that its effectiveness depends on the quality of the relationship itself.⁵¹ Worker co-determination can yield positive outcomes when it contributes to trust, commitment, and motivation.⁵²

In governance, settings focused on markets and shareholders, employees typically have limited influence over strategic decisions and often bear the brunt of cutbacks during periods of change.⁵³ This dynamic reduces the likelihood of positive employee responses and contributions to change initiatives. In contrast, the German corporate governance framework provides robust protection for workers' rights and establishes institutional mechanisms for their involvement in decision-making processes.⁵⁴ This becomes particularly significant during strategic adaptations that may adversely affect employees. Research suggests that the success of change initiatives heavily relies on the attitudes and reactions of employees. Employee participation in strategic changes is known to decrease resistance and increase commitment. It can also foster a willingness to accept temporary personal sacrifices to aid the firm's survival.

⁴⁹ Martin Gelter, 'Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance' (2009) 50 *Harv. Int'l L.J.* 129,133.

⁵⁰ Gary Gorton, Frank A. Schmid. 'Capital, Labor, and the Firm: A Study of German Codetermination.' 5 (2004) *Journal of the European Economic Association* 863.

⁵¹ Larry Fauver, Michael E. Fuerst, 'Does good corporate governance include employee representation? Evidence from German corporate boards', 82 *Journal of Financial Economics* 673.

⁵² Larry Fauver, Michael E. Fuerst, 'Does good corporate governance include employee representation? Evidence from German corporate boards', 82 *Journal of Financial Economics* 673.674.

⁵³ Andrew Griffiths and Raymond Zammuto. 'Institutional Governance Systems and Variations In National Competitive Advantage: An Integrative Framework'. (2005) 30 *Academy of Management Review* 823.

⁵⁴ JP Kotter and D Cohen (2002) *The Heart of Change: Real-Life Stories of How People Change Their Organizations*. Boston, MA: Harvard Business School Press.

Germany frequently demonstrates positive outcomes resulting from co-determination during organizational crises and intense strategic changes.⁵⁵ A notable example is Opel, a German subsidiary of General Motors, which faced bankruptcy in 2008.⁵⁶ In this critical situation, unions and employee representatives, top management, and the local government engaged in negotiations that led to an egalitarian solution.⁵⁷ By accepting substantial wage reductions and shares as compensation for job security, employees played a crucial role in averting bankruptcy.⁵⁸ Such an outcome would have been challenging to achieve without the influential voice of employee representatives and their willingness to collaborate despite the severe crisis.⁵⁹ Germany's stakeholder-oriented corporate governance model values worker co-determination, which can positively impact trust, commitment, and motivation. Protecting workers' rights and involvement in decision-making processes contribute to more favourable employee responses during organizational crises and strategic changes.⁶⁰ This, in turn, enhance a potential for successful outcomes and cooperative solutions.⁶¹

The more sustainable and comprehensive perspective of Germany's corporate governance model raises concerns that strategic decisions may prioritize factors other than maximizing profits. Critics argue that stakeholder-oriented governance allows influential stakeholder

⁵⁵ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation: Lessons From Germany' (2017) 26 *Journal of Management Inquiry* 165, 171.

⁵⁶ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation: Lessons From Germany' (2017) 26 *Journal of Management Inquiry* 165, 172.

⁵⁷ 'GM Europe: Opelaner Billigen Gehaltsverzicht' *Der Spiegel* (3 November 2009) <<https://www.spiegel.de/wirtschaft/unternehmen/gm-europe-opelaner-billigen-gehaltsverzicht-a-658980.html>> accessed 13 September 2023.

⁵⁸ 'GM Europe: Opelaner Billigen Gehaltsverzicht' *Der Spiegel* (3 November 2009) <<https://www.spiegel.de/wirtschaft/unternehmen/gm-europe-opelaner-billigen-gehaltsverzicht-a-658980.html>> accessed 13 September 2023.

⁵⁹ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation: Lessons From Germany' (2017) 26 *Journal of Management Inquiry* 165, 171.

⁶⁰ Pursey P.M.A.R. Heugens, Frans A. J. van den Bosch, and Cees B. M. van Riel, 'Stakeholder integration building mutually enforcing relationships' (2002) 41 *Business & Society* 36,40.

⁶¹ Pursey P.M.A.R. Heugens, Frans A. J. van den Bosch, and Cees B. M. van Riel, 'Stakeholder integration building mutually enforcing relationships' (2002) 41 *Business & Society* 36,40.

groups to pursue their own interests at the expense of the firm.⁶² However, it is important to recognize that valuable resources often require time to develop fully. Therefore, managing stakeholder relations in a manner that aligns with the needs of both the firm and its stakeholders can potentially enhance the overall welfare of all parties involved.⁶³

In this context, Germany's stakeholder orientation and management can be viewed as valuable resources with various benefits and potential challenges. Germany's corporate governance system seeks to achieve mutually beneficial outcomes for all stakeholders by prioritising stakeholder interests alongside the firm's objectives. While this approach may deviate from a strict profit-maximization focus, it acknowledges the long-term benefits that can be derived from nurturing stakeholder relationships and creating shared value.

However, it is crucial to acknowledge the potential problems that can arise from stakeholder-oriented governance. Balancing the interests of multiple stakeholders may present challenges, as there might be conflicting priorities among different groups.⁶⁴ Additionally, there is a need for effective stakeholder management to ensure that the firm's strategic decisions consider the broader welfare of all stakeholders and maintain the firm's competitiveness in the market.⁶⁵

The stakeholder-oriented corporate governance system in Germany offers potential benefits and challenges. This model aims to enhance overall welfare and create long-term value by prioritising stakeholder interests and managing relationships effectively. However, striking a

⁶² Bobby Parmar, R Edward Freeman, Jefferey Harrison, A Purnell, Simone De Colle. 'Stakeholder Theory: The State of the Art'. (2010) 3 The Academy of Management Annals 403.

⁶³ Jefferey Harrison and Joseph Coombs. 'The Moderating Effects from Corporate Governance Characteristics on the Relationship Between Available Slack and Community-Based Firm Performance'. (2012) 107 Journal of Business Ethics 409.

⁶⁴ Jefferey Harrison and Joseph Coombs. 'The Moderating Effects from Corporate Governance Characteristics on the Relationship Between Available Slack and Community-Based Firm Performance'. (2012) 107 Journal of Business Ethics 409,411.

⁶⁵ Konstantin Bottenberg, Anja Tuschke and Miriam Flickinger, 'Corporate Governance Between Shareholder and Stakeholder Orientation: Lessons From Germany' (2017) 26 Journal of Management Inquiry 165, 172.

balance between stakeholder needs and firm objectives requires careful navigation to avoid conflicts and maintain the firm's financial performance and competitiveness.

Germany's corporate governance framework reflects the country's unique economic and social conditions, resulting in a system that prioritizes stakeholders, including employees and unions, in decision-making processes. The co-determination system and the dual two-tier board structure provide a distinctive approach to corporate governance that differs from that of the UK and the US. While the German system features a concentrated ownership structure, it prioritizes transparency and provides a unique approach to decision-making that considers the interests of all stakeholders.

6.3 India

India is one of the largest developing economies globally in terms of its market capitalisation. In theory, the Indian corporate governance system is based on the best corporate governance practices, a combination of the Anglo-American and German models.⁶⁶

At the time of independence, colonial legislation was clear in its desire to protect shareholders for firms to attract capital.⁶⁷ Corporate law played no role in taking into account the interests of non-shareholder constituencies.⁶⁸ This posture was maintained shortly after independence, but the shift in philosophy began in the 1960s with modifications to the Companies Act, of 1956 (the forerunner of the 2013 legislation).⁶⁹ Consistent with the country's journey through

⁶⁶ Ruchi Kulkani and Balasundram Maniam, 'Corporate Governance — Indian Perspective' (2014) 5 *International Journal of Trade, Economics and Finance* 364, 365.

⁶⁷ Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

⁶⁸ Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

⁶⁹ Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

years of socialism, the role of company law in India has expanded beyond simple shareholder protection.⁷⁰ It includes employee, creditor, consumer, and societal protection.⁷¹ Employees, for example, have some unique rights under company law, such as preferred payment of dues in the event of a lawsuit. Therefore, even before the 2013 clarification of directors' obligations, Indian company law (both under common law and statute) did acknowledge stakeholder interests.

6.3.1 Main Features of the Indian Corporate Governance System

The Companies Act of 2013 was legislated on the 12th of September 2013 to replace the Companies Act of 1956. The regulatory agencies are the Ministry of Corporate Affairs (MCA) and India's Securities and Exchange Board (SEBI).⁷² SEBI supervises the corporate governance for listed companies through Clause 49, which is incorporated in the listing agreement of the stock exchange with companies. MCA teams up with its different delegated panels and the National Foundation for Corporate Governance (NFCG) to work with more dialogue about corporate governance. Further disclosures provided a corporate governance framework that enhanced reporting, transparency, and compliance. For this thesis, the focus is on the stakeholder protection section which is Section 166 of the Indian Companies Act 2013. Section 166 (2) Indian Companies Act 2013 directs executives to protect the rights of employees, shareholders, the host communities and the environment. This is different from the shareholder-centric framework, as it gives the directors the duty beyond protecting just the shareholders.⁷³ The UK Companies Act only states that the directors should consider stakeholders in their decision-making process without making it mandatory for the directors to

⁷⁰ Tarun Khanna & Krishna Palepu, 'Globalization and Convergence in Corporate Governance: Evidence from Infosys and the Indian Software Industry' (2004) 35 J Int'l Bus Studies 484

⁷¹ Companies Act, 1956, s. 529-A; Companies Act 1956, s. 391.

⁷² *ibid.*

⁷³ Section 166 (2) Indian Companies Act 2013.

do so.⁷⁴ Section 166 of the Indian Companies Act of 2013 takes a pluralist approach by treating all interests equally, without creating a hierarchy between shareholders and stakeholders. It addresses the obligation of the director to act in good faith.⁷⁵

Section 166(2) of the Indian Companies Act 2013 mandates that the board of directors of a company must act in the best interests of its stakeholders, including shareholders, employees, creditors, and the community in which the company operates. This provision is aimed at ensuring that the interests of stakeholders are taken into account while making business decisions, rather than just focusing on maximizing profits for shareholders.⁷⁶ The protection of stakeholder rights is crucial for ensuring the long-term sustainability of a company and its ability to create value for all stakeholders. The Indian Companies Act 2013 recognizes this by providing various provisions for the protection of stakeholder rights, such as the requirement for board members to act in the best interests of stakeholders, the mandatory appointment of at least, one-woman director on the board and the requirement for companies to have a whistleblower policy to protect employees who report any wrongdoing within the company.

By requiring companies to take a stakeholder-oriented approach to business decision-making, the Indian Companies Act 2013 promotes corporate social responsibility and sustainable development. This approach also helps to build trust between companies and their stakeholders, which is crucial for maintaining a healthy business environment.

⁷⁴ Section 172 UK Companies Act.

⁷⁵ Angel Shaji and Bensha C Shaji, 'Duties of Directors Under the New Indian Companies Act 2013- Section 166 Classification in Connection with Corporate Governance' (2021) *Law Audience Journal* 133,134.

⁷⁶ Mihir Naniwadekar and Umakanth Varottil, *The Indian Yearbook of Comparative Law* 2016 (OUP 2018) 111

6.3.2 Interpretation Issues in India's Corporate Governance

While the Indian stakeholder protection framework seems impressive, it is not without criticism. Section 166(2) of the Indian Companies Act 2013 imposes a duty on directors to act in good faith in the best interests of the stakeholders, in addition to promoting the objects of the company. The question is, who are these duties owed to and how can they be enforced?

One argument is based on the literal interpretation of the section. Since section 166 states that directors must act in good faith in the best interests of the stakeholders. It can be inferred that there is a specific obligation to act in the best interests of the stakeholders.⁷⁷ Furthermore, the absence of a provision similar to section 170(1) of the English Companies Act, which clarifies that the duties are owed to the company, suggests that the duties are also owed to individual stakeholders.⁷⁸ Therefore, it can be argued that stakeholders have the right to bring a civil claim against the company if they believe the directors have not fulfilled their duty to act in their best interests.⁷⁹ This interpretation suggests that the protection of stakeholder rights is an essential element of the Indian Companies Act 2013.

Also, it has been found that there is weak enforcement of the Indian companies act due to slow, overburdened courts and corruption.⁸⁰ The current provision regarding stakeholder rights poses a challenge as granting too much power to stakeholders may have unintended consequences,

⁷⁷ Mihir Naniwadekar And Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' (2016) NUS Centre for Law & Business Working Paper 16/03 <file:///C:/Users/tt17127/Downloads/StakeholderApproachandDirectorsDuties.pdf > accessed 13 September 2023.

⁷⁸ Umakanth Varottil, 'India' in Bruce Aronson and Joongi Kim (eds), *Corporate Governance in Asia* (1st edn, Cambridge University Press 2019) 186.

⁷⁹ Mihir Naniwadekar And Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' (2016) NUS Centre for Law & Business Working Paper 16/03 <file:///C:/Users/tt17127/Downloads/StakeholderApproachandDirectorsDuties.pdf > accessed 13 September 2023.

⁸⁰ Ruchi Kulkarni and Balasundram Maniam, 'Corporate Governance — Indian Perspective' (2014) 5 *International Journal of Trade, Economics and Finance* 364,366.

and any changes made by the judiciary may have broader implications for common law.⁸¹ It is therefore recommended that any changes regarding stakeholder remedies should be addressed through legislative reforms, and careful consideration should be given to the type of remedies provided to stakeholders.⁸²

Some authors have argued that there are potential risks and benefits to providing legal protections to stakeholders, particularly in the context of the Indian Companies Act 2013.⁸³ They suggest that while the Act does provide some protection for stakeholders, there may be limitations to its effectiveness, particularly if the judiciary attempts to expand the scope of these protections beyond what the law currently allows.⁸⁴ Instead, they recommend that any changes to stakeholder protections be made through legislative reform, rather than relying on judicial interpretation. They argue that stakeholders should have access to legal remedies in cases where their rights have been violated. This could include the ability to file civil claims against companies that fail to act in good faith in the best interests of stakeholders.⁸⁵

Despite some of the criticisms, there is still a lot for the Nigerian corporate governance framework to learn from the Indian companies act. The primary corporate legislation in Nigeria should be amended mainly to show that it is no longer shareholder-centric or based on the ESV model. Nigerian corporate governance can learn from the Indian system by placing more

⁸¹ Ruchi Kulkani and Balasundram Maniam, 'Corporate Governance — Indian Perspective' (2014) 5 *International Journal of Trade, Economics and Finance* 364,366.

⁸² Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

⁸³ Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

⁸⁴ Ruchi Kulkani and Balasundram Maniam, 'Corporate Governance — Indian Perspective' (2014) 5 *International Journal of Trade, Economics and Finance* 364,366.

⁸⁵ Mihir Naniwadekar and Umakanth Varottil, 'The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis' NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03 < <http://dx.doi.org/10.2139/ssrn.2822109>> accessed 10 May 2023

emphasis on protecting the rights of stakeholders. As we have seen, the Indian Companies Act 2013 provides for specific obligations on directors to act in the best interests of stakeholders. Nigeria could adopt similar provisions in its Companies and Allied Matters Act (CAMA) to better protect the rights of stakeholders. Stakeholder rights are important because they help to ensure that businesses operate responsibly and sustainably. By taking into account the interests and expectations of all stakeholders, companies can build trust, manage risks, and create value over the long term.

This work postulates that there is a need to incorporate specific duties of companies into the corporate law system to ensure that core stakeholders' rights are considered and protected. This would affect and complement the environmental, social and governance reporting under principle 28 of the Nigerian Code of Corporate Governance. Therefore, the company's duty implies that the shareholders guarantee committed and careful compliance with sustainability, integrated reporting, and disclosure requirements.⁸⁶ This is because they know that infringement of the legal interests of any core stakeholder may be detrimental to the company.⁸⁷

The framework for protecting stakeholder rights should promote a company's success. The Indian experience indicates the possibility of incorporating the ISM into the Nigerian mining institutional regime. The Indian model recognises the indigenous communities as stakeholders, as is suggested in this thesis. Additionally, it acknowledges the organisation that speaks for indigenous peoples. This shows that provided the Nigerian government is prepared to adopt the model, the legal and institutional frameworks suggested in this thesis are feasible.

⁸⁶ Nojeem Amodu, 'Stakeholder Protection and corporate Social Responsibility from a Comparative Company Law Perspective: Nigeria and South Africa. (2020) 64 Journal of African Law 425,227.

⁸⁷ Nojeem Amodu, 'Stakeholder Protection and corporate Social Responsibility from a Comparative Company Law Perspective: Nigeria and South Africa. (2020) 64 Journal of African Law 425,227.

Recognising a group of people shows the Indian government's commitment to upholding the group's rights, a value the Nigerian government should adopt.

6.3 Learning from Germany and India

In this chapter, two case studies, Germany and India, were examined to explore each country's prevailing corporate governance systems. The chapter focused on highlighting the corporate governance practices and regulatory frameworks in these jurisdictions. The objective was to assess which model could potentially serve as the most suitable and appropriate for Nigeria to adopt. Therefore, it is crucial to analyse them individually in order to understand their unique characteristics and implications for corporate governance. The case studies on advocating for a stakeholder-inclusive approach to corporate governance highlight some key lessons that can be learned from Germany and India.

A notable insight derived from these case studies lies in the advocacy for a stakeholder-inclusive approach to corporate governance. Germany and India have both adopted the stakeholder model, which places substantial emphasis on involving stakeholders in the decision-making processes. This model fundamentally acknowledges the diverse interests of various stakeholders, encompassing employees, customers, suppliers, and the wider community. It seeks a delicate equilibrium between these interests and those of the company's shareholders. Nigeria can draw profound lessons from this approach, particularly in the mining sector, to ensure that the concerns of stakeholders, especially host communities, are thoughtfully integrated into decision-making processes.

Another pivotal aspect is the system of co-determination witnessed in Germany. This mandates a significant representation of employees and trade union representatives on the supervisory board, thus guaranteeing that the voices of workers are elevated to the highest echelons of

decision-making within the company. Nigeria could replicate this practice, ensuring that the voices of host communities and their representatives resonate in the governance structure of mining companies.⁸⁸ Nigeria can adopt a similar approach and ensure that the voices of host communities and their representatives are represented in the governance structure of mining companies.

In India, the Companies Act of 2013 introduces a provision compelling director to act in the best interests of stakeholders, in addition to those of the company and its shareholders. This provision stands as a testament to the significance of incorporating stakeholder interests into decision-making processes, affording them a certain degree of protection. Nigeria can potentially incorporate a similar provision into its corporate governance framework, assuring stakeholders that their interests hold weight in pivotal decisions.⁸⁹

Moreover, both Germany and India provide legal avenues for stakeholders to seek redress in cases where companies infringe upon their rights. This pivotal recourse offers stakeholders a means to seek justice if their interests are marginalized. Nigeria can glean invaluable insights from this approach, embedding similar mechanisms to ensure stakeholders possess accessible legal remedies in the face of corporate misconduct.⁹⁰

These case studies demonstrate the importance of stakeholder participation, co-determination, and protecting stakeholder rights in corporate governance. Nigeria can adopt similar approaches to ensure that its mining sector is more inclusive and responsive to the needs and interests of all stakeholders.

⁸⁸ Larry Fauver, Michael E. Fuerst, 'Does good corporate governance include employee representation? Evidence from German corporate boards', 82 *Journal of Financial Economics* 673,675.

⁸⁹ Section 166(2) of CA 2013.

⁹⁰ *MK Ranjitsinh vs Union of India* 2021 SCC OnLine SC 326.

6.4 Advocating for a Stakeholder-Inclusive Approach to Corporate Governance in the Nigerian Mining Sector

As discussed in the previous chapter, the corporate governance framework in Nigeria is similar to that of the UK model, which strongly emphasises shareholders' interests. While companies in these countries are encouraged by their statutes to consider the interests of stakeholders, no specific provisions enable stakeholders to actively participate in public companies' governance.⁹¹ It should be noted that the UK and Nigerian models of corporate governance share two fundamental characteristics: investor ownership and delegated management. Investor ownership means that stockholders typically have some degree of control over the company through general meetings, while delegated management means that the directors are responsible for the company's daily operations.⁹² The traditional perspective suggests that corporate governance is solely the responsibility of the management and shareholders. However, this viewpoint has been disputed as it fails to acknowledge that corporate governance involves more than just the board and shareholders at general meetings, It encompasses other stakeholders as well.⁹³

According to Dine and Koutsias, the distinction between shareholders and other stakeholders in the Anglo-American model is clear and privileges shareholders over others.⁹⁴ This separation suggests that non-shareholder constituencies are less important in the company. Clarke also argues that the capitalism promoted by the Anglo-American model creates economic inequality

⁹¹ See section 172 of the UK's CA 2006 and section 279(4) of the CAMA: however, as analysed in chapter 4, the CAMA is only employee-friendly; it excludes other stakeholders.

⁹² R. Kraakman, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (Oxford university Press 2009) 65

⁹³ M. Clarkson, 'A Stakeholder Framework for Analysing and Evaluating Corporate Social Performance' (1995) 20 *Academy of Management Review* 92.

⁹⁴ Janet Dine and Marios Koutsias, *The Nature of Corporate Governance: The Significance of National Cultural Identity* (Cheltenham: Edward Elgar Publishing, 2013) 242.

that affects the wider society.⁹⁵ CEOs' control of boards allows them to appropriate vast wealth for themselves at the expense of other stakeholders' and directors' social objectives. This results in rapidly increasing salaries and stock options for CEOs.

The German model of corporate governance is based on social institutions that promote relationships and interactions between the corporation, shareholders, and stakeholders. This is evident in the two-tier board structure of German companies, which has a separate management board and a supervisory board where stakeholders' representatives can sit.⁹⁶ This creates an additional layer of monitoring and control on management, which is lacking in the Anglo-American model. In the UK/US, there is only a one-tier board structure with management running the company and non-executive directors providing advisory and supervisory roles. Although the Anglo-American model also involves scrutiny of management by owners, the participation of other stakeholders further guarantees strict controls over management, which is lacking in the UK/US.⁹⁷ The shareholder-centric model advocated by the Anglo-American model creates a problem of short-termism, where directors under pressure to maximize shareholder value take unwarranted risks, ultimately leading to the company's demise, loss of investment by shareholders, and loss of jobs for employees.⁹⁸ The Enron scandal is an example of this problem, where the former CEO inflated share prices using risky and unauthorized accounting methods to attract investments and increase the company's value.⁹⁹

⁹⁵ Clarke, Thomas, A Critique of the Anglo-American Model of Corporate Governance (July 29, 2009). CLPE Research Paper No. 15/09, <<http://dx.doi.org/10.2139/ssrn.1440853>>accessed 11 May 2023

⁹⁶ Jens Grundei & Till Talaulicar, 2002. 'Company Law and Corporate Governance of Start-ups in Germany: Legal Stipulations, Managerial Requirements, and Modification Strategies,' 6 (2002) *Journal of Management & Governance*, Springer; *Accademia Italiana di Economia Aziendale (AIDEA)*, 1.

⁹⁷ Janet Dine and Marios Koutsias, *The Nature of Corporate Governance: The Significance of National Cultural Identity* (Cheltenham: Edward Elgar Publishing, 2013) 243.

⁹⁸ Andrew Keay, *The Enlightened Shareholder Value Principle and Corporate Governance* (Routledge, 2013) 232

⁹⁹ Rezart Dibra, 'Corporate Governance Failure: The Case Of Enron And Parmalat' 12 (2016) *European Scientific Journal* 283, 285.

The UK Corporate governance system prioritizes financial returns, profit for shareholders, and investment growth, thus fitting into the Kaldor-Hicks efficient doctrine.¹⁰⁰ However, this model does not take into account the risk and inequality created for the deprived. In contrast, the German model focuses on the overall well-being of stakeholders and society, promoting social protection and welfare as a way to reduce poverty, inequality and ensure growth. However, this may result in lower profitability and financial returns.¹⁰¹ Moreover, European countries that adopted the German model have experienced lower economic growth and higher unemployment rates since the mid-1990s, except for Germany.¹⁰² Despite this, the German model is more socially desirable as it promotes fairness, equality, and better stakeholder protection in the corporate setting.

Germany has incorporated a stakeholder model into their corporate governance structure. This involves having stakeholders' representatives sit on a supervisory board, where they can sometimes have a decisive role in the company's decision-making. However, this approach requires a two-tier board structure, with a separate supervisory board and management board. In contrast, Nigeria follows a unitary board structure similar to that of the UK/US, where a single board is composed of both executives responsible for running the company and non-executives responsible for supervising its functions.¹⁰³

The thesis suggests that the inclusion of individual stakeholders, such as employees, and host communities, in the actual management of the company or the adoption of the German two-tier board structure is not necessary. Instead, the thesis proposes the implementation of

¹⁰⁰ T. Bucki, A. Shahrimi, S. Winter, 'Executive Stock Options in Germany: The Diffusion or Translation of US-Style Corporate Governance?' (2004) 8(2) *Journal of Management and Governance* 173.

¹⁰¹ T. Bucki, A. Shahrimi, S. Winter, 'Executive Stock Options in Germany: The Diffusion or Translation of US-Style Corporate Governance?' (2004) 8(2) *Journal of Management and Governance* 173.

¹⁰² T. Bucki, A. Shahrimi, S. Winter, 'Executive Stock Options in Germany: The Diffusion or Translation of US-Style Corporate Governance?' (2004) 8(2) *Journal of Management and Governance* 173.

¹⁰³ Paul, Akhalumeh, Ohiokha Friday and Ohiokha Godwin. 'Board Composition and Corporate Performance: An Analysis of Evidence from Nigeria.' 2 (2011) *Research Journal of Finance and Accounting* 64.

mechanisms that would allow stakeholder representatives to serve in advisory roles on the non-executive board. This would allow them to voice their concerns directly to the directors of the company. This approach would be more effective than the existing approach where directors are only required to consider the interests of stakeholders. With this new approach, stakeholder representatives in advisory/supervisory roles would have some influence over the decisions of the executive directors and would have a say in corporate matters that affect individual stakeholder groups.

6.5 Conclusion

This chapter has discussed the importance of adapting global corporate governance models to the Nigerian context to promote a stakeholder-inclusive approach to corporate governance in the mining sector. It has also analysed case studies of corporate governance models in Germany and India and identified key lessons that can be learned from these models. The case studies of Germany and India have provided valuable insights into best practices and areas for improvement in adopting an integrative stakeholder model. The key lessons learned from these case studies include the importance of stakeholder engagement, the need for clear legal frameworks, and the significance of transparency and accountability in corporate governance.

The case studies of corporate governance models in Germany and India demonstrate that adopting a stakeholder-inclusive approach to corporate governance can significantly benefit both companies and their stakeholders. From the German model, we learn that including employee representatives and banks on the supervisory board can enhance transparency and accountability in the decision-making process. The Indian model, on the other hand, highlights the importance of clear definitions of stakeholder groups and their roles in the governance structure. Both models demonstrate the value of stakeholder engagement and the need for clear

communication between companies and their stakeholders. However, there are challenges in adapting global corporate governance models to the Nigerian context, including cultural differences, weak institutional frameworks, and a lack of enforcement mechanisms.¹⁰⁴ Despite the challenges of adapting global corporate governance models to the Nigerian context, including the country's unique political, economic, and cultural factors, Nigerian policymakers and stakeholders must continue advocating for a stakeholder-inclusive approach to corporate governance. This approach can enhance the sustainability and competitiveness of the Nigerian mining sector, as well as contribute to the country's overall economic development. As such, any adaptation of global models must take into account the unique context of the Nigerian mining sector. To ensure that the Nigerian mining sector operates ethically and sustainably, there is a need for a stakeholder-inclusive approach to corporate governance. This requires the involvement of all stakeholders in the decision-making process, specifically host communities, civil society organizations, and the government. Furthermore, there is a need for clear accountability and transparency mechanisms, including regular reporting, auditing, and monitoring of mining activities. The integrative stakeholder model of corporate governance is essential in the Nigerian mining sector as it ensures that the interests of all stakeholders are taken into account. This approach is necessary as stakeholders, including local communities, must be considered in any decision-making process that affects them.

Therefore, it is recommended that Nigerian policymakers and stakeholders collaborate to develop a comprehensive legal framework that promotes stakeholder participation and protection, while also ensuring corporate accountability and transparency. Additionally, the adoption of best practices from global corporate governance models, such as those discussed in this chapter can contribute to the development of a more sustainable and inclusive mining

¹⁰⁴ Umakanth Varottil, 'India' in Bruce Aronson and Joongi Kim (eds), *Corporate Governance in Asia* (1st edn, Cambridge University Press 2019) 186.

sector in Nigeria. Thus, this chapter demonstrates how mining companies can institute an inclusive stakeholder model for corporate governance to stimulate the development of Nigeria's mining industry and protect the rights of stakeholders specifically host communities. The next chapter will propose a framework for stakeholder-inclusive corporate governance in the Nigerian mining sector.

CHAPTER SEVEN

INTEGRATIVE STAKEHOLDER CORPORATE GOVERNANCE MODEL FOR MINING COMPANIES

7.1 Introduction

Chapter Five examined different corporate law theories to investigate the corporate objective or the purpose of corporate actions and their level of protection of stakeholders other than shareholders. The theoretical examination discovered two main theories: Shareholder theory and Stakeholder theory. The two theories were each assessed in the light of their practical applicability to the governance of mining companies and the protection provided for the stakeholders, including the host communities.

As seen in Chapter Five, the Shareholder Theory is normatively weak and ethically indefensible regarding holistic and long-term sustainability considerations.¹ The shareholder theory, which emphasises maximising shareholder value as the primary goal of a company, has faced criticisms for its potential to neglect other stakeholders' interests.² This theory may lead to a narrow focus on short-term financial gains, potentially at the expense of long-term sustainability and the welfare of employees, customers, and the host community. It tends to prioritise profit generation over social and environmental responsibilities.³ This myopic focus

¹ Andrew Keay, 'Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model' (2008) 71 *Modern Law Review* 663.

² Maeve O'Connell and Anne Marie Ward (2020) Shareholder Theory/Shareholder Value. In: Idowu S., Schmidpeter R., Capaldi N., Zu L., Del Baldo M., Abreu R. (eds) *Encyclopedia of Sustainable Management. Shareholder Theory/ Shareholder Value* 1,2.

³ Friedrich Hayek 'The Corporation in a Democratic Society: In Whose Interest Ought It and Will It Be Run?' in M Anshen, and G Bach (eds.) *Management and Corporations* (1985, McGraw-Hill) at 100.

on immediate profits can lead to decisions like cost-cutting measures or neglect of environmental practices, which may boost short-term gains but have detrimental consequences in the long run.⁴ This can result in a lack of consideration for the broader societal and environmental impacts of business activities. Attempting to respond to the criticisms levelled against the shareholder Primacy Model has presented the Stakeholder Model, which has been criticised as an impractical system that has still not clarified stakeholders' identities and how to balance stakeholders' interests successfully.⁵

While the stakeholder theory recognises a broader range of stakeholders beyond just shareholders, it can sometimes struggle to provide clear guidance on how to balance conflicting stakeholder interests.⁶ This can lead to ambiguity in decision-making, making it challenging for companies to effectively manage their obligations to various stakeholders.⁷

The normative stakeholder theory, however, offers a more comprehensive framework for stakeholder protection.⁸ It advocates for a balanced consideration of the interests of all stakeholders, encouraging companies to proactively identify, engage, and address the needs of employees, customers, communities, and shareholders.⁹ This approach fosters a more inclusive and sustainable business model that aims to create value for society at large, rather than prioritizing the interests of one group over others.

⁴ Fredrich Hayek 'The Corporation in a Democratic Society: In Whose Interest Ought It and Will It Be Run?' in M Anshen, and G Bach (eds.) *Management and Corporations* (1985, McGraw-Hill) at 100.

⁵ Andrew Keay, 'Stakeholder Theory in Corporate Law: Has It Got What It Takes?' (2010) 3 *Rich. J. Global L. & Bus.* 249, 270.

⁶ Thomas Donaldson and Lee Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implication' (1995) 20 *Academy of Management Review* 65, 66.

⁷ Thomas Donaldson and Lee Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implication' (1995) 20 *Academy of Management Review* 65, 70.

⁸ Nachoem M. Wijnberg, 'Normative Stakeholder Theory and Aristotle: The Link Between Ethics and Politics'. 25 (2000) *Journal of Business Ethics* 329, 331.

⁹ Nachoem M. Wijnberg, 'Normative Stakeholder Theory and Aristotle: The Link Between Ethics and Politics'. 25 (2000) *Journal of Business Ethics* 329, 331.

By adopting the normative stakeholder theory, companies can establish more robust mechanisms for stakeholder engagement and incorporate stakeholder concerns into their decision-making processes.¹⁰ This not only helps in managing potential conflicts of interest but also contributes to building trust, enhancing reputation, and ultimately achieving long-term business success.

Moreover, embracing the normative stakeholder theory not only addresses the shortcomings of existing corporate governance models but also brings to light persisting challenges in protecting stakeholders, particularly those in host mining communities in Nigeria. This extends beyond theoretical frameworks and delves into practical issues, such as the transposition of foreign legal systems into the Nigerian context, a topic thoroughly examined in Chapter Five. These complexities highlight the need for more effective and tailored approaches to corporate governance, especially within the mining sector, where regulatory measures have often fallen short of their intended impact. Instead, what we often see is a mere veneer of compliance on paper, while deeply rooted issues of corruption persist across various spheres of Nigerian corporate governance.¹¹

Upon thorough examination of various corporate governance theories, it becomes evident that corporate law must not only prioritise shareholders' interests but also take into account the concerns of stakeholders. Nevertheless, this approach may potentially clash with the goal of attaining broader social efficiency.¹² Therefore, it becomes necessary to balance stakeholders' interests in corporate decision-making and implementation, which should be considered a crucial goal of corporate law. To this end, thesis proposes a system that includes host

¹⁰ Nachoem M. Wijnberg, 'Normative Stakeholder Theory and Aristotle: The Link Between Ethics and Politics'. 25 (2000) *Journal of Business Ethics* 329, 331.

¹¹ Benjamin James Inyang, 'Nurturing Corporate Governance System: The Emerging Trends in Nigeria' (2009) 4 *Journal of Business Systems, Governance and Ethics* 1,9.

¹² Ruth V. Aguilera and Gregory Jackson, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants' 28 (2003) *The Academy of Management Review* 447, 448.

communities in the company's management. The proposal suggests a standard and assumed regulation that would apply to all companies, irrespective of the provisions mentioned in their articles and memorandum of association.¹³ The model is called the integrative stakeholder model. The proposed model presumes that the main objective of corporations is not only to maximise shareholder value but to be essentially conditioned by another assumption that protects the constituents with legitimate stakes, such as the host communities.¹⁴ The integrative stakeholder model for mining companies envisions a paradigm shift in corporate governance, prioritising a broader spectrum of stakeholders beyond just shareholders. By recognising host communities as integral constituents with legitimate interests, this model seeks to harmonize corporate objectives with societal well-being. Under this framework, host communities would have formal representation in the company's administrative structures, ensuring that their concerns are not only heard but also factored into decision-making processes. This representation would not be contingent on the provisions outlined in a company's articles or memorandum of association, providing a standardized approach to stakeholder inclusion.

Therefore, this Chapter answers the sixth subsidiary question: to what extent can an integrative stakeholder model provide a better corporate governance system for mining companies in Nigeria? The Chapter provides an applicable proposal based on the study's findings to answer this. The Chapter focuses on the potential use of the integrative Stakeholder Model of corporate governance in mining companies in Nigeria and suitable structures and factors that may aid or impact its smooth application.

¹³ Brain R Cheffins, *Company Law: Theory, Structure and Operation* (Clarendon Press, 1997) 218, 219.

¹⁴ This thesis in chapter five has established host communities as stakeholders with genuine and legitimate interests which will be crucial to the company's success and long-term survival.

The integrative stakeholder corporate governance model has been proposed by the author to develop an inclusive stakeholder regime. The underlying theory of the model is the stakeholder theory.¹⁵ This model builds on the stakeholder theory of corporate governance, recognising that corporations have social responsibilities beyond maximising shareholder value.¹⁶ This concept recognises that companies must create value for their shareholders and all stakeholders, including the host communities.¹⁷ This approach acknowledges that financial, social, and environmental values are interconnected and must all be considered in decision-making.

The stakeholder theory has been chosen as the basis for the integrative stakeholder model proposed in this thesis because it recognises that corporations have broader responsibilities beyond just maximising shareholder value.¹⁸ This theory recognises that corporations are obligated to various stakeholders, including employees, customers, suppliers, local communities, and the environment.¹⁹ Compared to other theories of corporate governance, such as shareholder primacy, which focuses solely on maximising shareholder value, the stakeholder theory takes a more balanced and inclusive approach to decision-making.²⁰

The stakeholder theory has its limitations, such as difficulty holding management accountable for multiple goals and the tendency to focus only on stakeholders directly involved with the

¹⁵ Umar BELLO & Martins Mustapha ABU 'Shareholder and Stakeholder Theories. Understanding Corporate Governance Practice' 17 (2021) Nile Journal of Business and Economics 93, 95.

¹⁶ Ronald K. Mitchell, Bradley R. Agle, Donna J. Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' 22 (1997) The Academy of Management Review 853.

¹⁷ Umar BELLO & Martins Mustapha ABU 'Shareholder and Stakeholder Theories. Understanding Corporate Governance Practice' 17 (2021) Nile Journal of Business and Economics 93, 95.

¹⁸ Umar BELLO & Martins Mustapha ABU 'Shareholder and Stakeholder Theories. Understanding Corporate Governance Practice' 17 (2021) Nile Journal of Business and Economics 93, 96.

¹⁹ Shuili Du, C.B. Bhattacharya and Sankar Sen, 'Maximizing Business Returns to Corporate Social Responsibility (CSR): The Role of CSR Communication' 12 (2010) International Journal of Management Reviews 8.

²⁰ Ruth V. Aguilera and Gregory Jackson, 'The Cross-National Diversity of Corporate Governance: Dimensions and Determinants' 28 (2003) The Academy of Management Review 447, 448.

company.²¹ A stronger model will build on the traditional stakeholder theory by addressing these limitations and integrating financial, social, and ecological value for decision-making and accountability. The Integrative Stakeholder Model (ISM) proposes the integration and inclusivity of stakeholders, which for this study, are the host communities, through voting rights, voice representation, participation, and early notification. The proposal for the Integrative Stakeholder Model of corporate governance stems from a comprehensive analysis of the existing corporate governance frameworks, particularly within the context of the mining industry in Nigeria. This model is not only a response to identified shortcomings but also an effort to align with international best practices and address the unique challenges posed by the mining sector. The legal foundation for the Integrative Stakeholder Model is rooted in both existing corporate governance principles and emerging global trends. It draws on established legal frameworks that recognise the rights and interests of various stakeholders, including host communities, in corporate decision-making processes.

The relevance of the Integrative Stakeholder Model lies in its potential to create a more balanced and sustainable approach to corporate governance, particularly in industries with significant social and environmental impacts, such as mining. By integrating host communities into the decision-making process, this model aims to foster responsible business practices, enhance community relations, and contribute to the overall socio-economic development of the region. Moreover, it aligns with global trends towards greater stakeholder engagement and accountability in corporate governance, ensuring that mining companies operate in a manner that benefits not only shareholders, but also the host communities and the environment.

²¹ All of which has been addressed in chapter four of this thesis.

The current attitude of the Nigerian government portrays a lack of commitment towards the inclusivity of host communities in the affairs of the mining industry.²² Despite international obligations and the prevailing global discourse on inclusive natural resource management, the current stance of the Nigerian government towards host community involvement in the mining sector leaves much to be desired. As a country that is a party to the Treaty on a Human Rights-based Approach to Natural Resource Governance²³ and the International Covenant on Civil and Political Rights,²⁴ the Nigerian government is also aware of the era of effective public participation in management as advanced by the international community. Implementing the participatory rights of host communities requires the commitment of all stakeholders and the government's determination to promote participatory development. For effective communication between mining companies and host communities, the government must provide a platform for representatives of the host communities to voice their concerns to the relevant stakeholders. However, the current situation in Nigeria shows that host communities may sometimes become discouraged if their concerns are not taken seriously.²⁵ Therefore, the government must be prepared to address their complaints by imposing appropriate sanctions on mining companies when their host communities suffer environmental degradation from their operations. Proper and prudent management of resources and prior consultation held with host communities before the issuance of mining licenses is also essential for the peaceful co-existence of all the stakeholders.

²² This is evident in the legal framework of the mining industry as analysed in chapter two of this thesis.

²³ Adopted May 2012 at the 51st Ordinary Session, ACHPR 224.

²⁴ Adopted 16 December 1966, (entered into force 23 March 1976) 999 UNTS 171.

²⁵ Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness During Mineral Mining Activities in Nigeria' 14 (2018) *European Scientific Journal* 165,166.

7.2.1 Defining Inclusivity and Implementing the Inclusive Approach

Inclusivity, in the context of corporate governance, encompasses the deliberate effort to involve a diverse range of stakeholders in the decision-making processes of a company.²⁶ It goes beyond the conventional focus on shareholders and extends to include the broader community impacted by the company's operations. This approach recognises that a company's responsibilities extend beyond profit generation, and it must actively consider the interests and well-being of all parties involved. The inclusive approach necessitates the integration of stakeholder perspectives into the decision-making process. This involves actively seeking input, considering feedback, and incorporating stakeholder concerns into the company's strategies and policies. It may require adapting existing governance structures or even establishing new mechanisms specifically designed to accommodate diverse stakeholder involvement.

Strong inclusivity depends mainly on the inclusive process, evidence, and frameworks to ensure that policies and their application show and integrate the perspectives of different stakeholders.²⁷ This is supported by transparent, open, and collaborative public mechanisms that update the citizens on the government's intentions and action plans and provide them with avenues to express their opinions. Furthermore, a better balance is achieved through a solid structure for checks and balances, making the management more accountable and transparent through independent institutions and administrative control tools.²⁸ Various methods have been developed to promote citizens' participation in policymaking. Some of these methods include

²⁶ Jeffrey Meli and James C. Spindler, 'The Promise of Diversity, Inclusion, and Punishment in Corporate Governance' (Texas Law Review, 18 July 2021) <<https://texaslawreview.org/the-promise-of-diversity-inclusion-and-punishment-in-corporate-governance/>> accessed 20 October 2023.

²⁷ Essien D Essien, 'Ethical Appraisal of the Role of Civil Society in Nigeria' (2016) 3 International Journal of Civic Engagement and Social Change 938, 940.

²⁸ *ibid.*

participatory inclusion of stakeholders and the public, transparency to create opportunities for citizens, and government creation of better policies and delivery of better services. It also includes engaging citizens in continuous and constructive dialogue.²⁹

This form of engagement implies giving citizens a better role in decisions that impact their standard of living, not just through consultation but also collaborations and joint deliberation so that policies reflect and integrate the perspectives of those affected.³⁰ Ultimately, improved public engagement could increase trust in public institutions and close the gaps between citizens' expectations and government responses, resulting in better public policies. Importantly, achieving significant engagement depends on strong leadership, adequate communication channels, effective guidance, and proper incentives to facilitate both parties' involvement.³¹

Therborn submits five categories of inclusion that are needed to promote effective inclusivity.³² The steps are visibility, consideration, access to social interaction, rights, and resources to participate in society fully. There would be a successful inclusion with recognition, respect, time, or energy. Hence, all these elements need to be taken into consideration. The concept of inclusion is about recognition on various levels.³³

The inclusivity of host communities as stakeholders targets and considers the host community members' opinions to mitigate the risk of developing a feeling or perception of being excluded or deceived. This will more likely lead to higher public acceptance of the mining companies'

²⁹ Cezar Busatto, 'Solidary Governance for Creating Inclusive Societies, a Contribution to the Expert Group Meeting on Creating Inclusive Society: Practical Strategies to Promote Social Integration', (2007).

³⁰ Christopher Ansell and others, 'Understanding Inclusion in Collaborative Governance: A Mixed Methods Approach (2020) 39 Policy and Society 570, 571.

³¹ *ibid.*

³² Goran Therborn, 'Presentation', Expert Group Meeting on Creating and Inclusive Society: Practical Strategies to Promote Social Integration. Paris, France, 10 - 13 September 2007.

³³ Nicola M Pless and Thomas Maak, 'Building an Inclusive Diversity Culture: Principles, Processes and Practice' 54 (2004) Journal of Business Ethics 129, 133.

projects and maximise social benefits. The host communities, engagement aims, and engagement process must be examined throughout the mining project cycle to maximise benefits. Using the feedback from the host community will help improve the project and ensure the result reflects the needs of beneficiaries.³⁴ Therefore, unless the government properly regulates the mining sector accordingly, community problems will continue to happen within the mining sector. Recognising host communities as significant stakeholders and developing dialogue and relationships are essential to ensuring they attain maximum benefit from the mining sector.

Considering Ruggie's³⁵ argument that regulation cannot be uniformly applied to all companies, it becomes evident that jurisdictions exhibit unique features, rooted in their distinct cultural and socio-economic characteristics. Thus, the necessity arises for the establishment of a tailored and pragmatic regulatory framework, aimed at circumventing the challenges witnessed in Nigeria as a consequence of unsuccessful legal transplantation.

The proposal aligns with Ruggie's three differentiated but complementary responsibilities to protect, respect and remedy under the United Nations Guiding Principles Framework. It confirms the integration and protection of stakeholder rights by internalising a practical self-regulatory framework to mitigate corporate abuses.³⁶ When this area of corporate law and practice is founded adequately on the inclusivity of host community rights as stakeholders, the corporate world will most likely experience a better-organised and responsible business community.

³⁴Global Hub, 'Stakeholder Identification, Engagement and Empowerment' (Inclusiveinfra) <<https://inclusiveinfra.gihub.org/action-areas/stakeholder-identification-engagement-and-empowerment/>> accessed 19 May 2021.

³⁵ John Gerard Ruggie, 'Reconstituting the Global Public Domain — Issues, Actors, and Practices' (2004) 10 *European Journal of International Relations* 499, 451.

³⁶ *ibid.*

It is crucial at this juncture to identify the policy implications of my proposed corporate governance system in comparison to analogous concepts like public governance. Numerous arguments have been posited within network-driven public governance studies, diverging from traditional state-centric or state-commissioned policymaking approaches. This shift in approach can yield superior, more broadly endorsed, and robust solutions.³⁷ Part of the argument is that such collaborative platforms and processes must include various stakeholders and opinions from multiple industries.³⁸ To put it another way, they must be inclusive. It has been argued that this has a democratising effect, as it grants opportunities for the public to participate.³⁹ Even though public governance research favours inclusivity, the level of engagement and inclusivity is still a contentious subject.⁴⁰ Broader inclusiveness may result in higher transaction costs, lower quality deliberations, and muddier negotiations. There is also evidence that larger groups with broader inclusivity are more awkward tools for group problem-solving.⁴¹

Inclusion, according to Northway, will necessitate a much broader policy response, one that incorporates both measures for social policy that are specific and those that are more general.⁴² It is accepted that achieving inclusion will be problematic because it contradicts the fundamental ways society is constructed and organised. As it becomes more widespread, it will become murkier.⁴³ Inclusion is faulty since it is inherently binary, implying that there must also

³⁷ Christopher Ansell and others, 'Understanding Inclusion in Collaborative Governance: A Mixed Methods Approach' (2020) 39 *Policy and Society* 570, 571.

³⁸ *ibid.*

³⁹ Eve Sørensen & Jacob Torfing, 'Co-initiation of Collaborative Innovation in Urban Spaces.' (2018) 54 *Urban Affairs Review* 388; Carolyn Hendriks, 'On Inclusion and Network Governance: The Democratic Disconnect of Dutch Energy Transitions' (2008) 86 *Public Administration* 1009; Iris Marion Young, *Inclusion and Democracy* (Oxford University Press, 2002).

⁴⁰ *ibid.*

⁴¹ Sharon Hodges and others, 'Who's in Charge Here? Structures for Collaborative Governance in Children's Mental Health' (2013) 37 *Administration in Social Work* 418; Nicola Ulibarri and Tyler A Scott, 'Linking Network Structure to Collaborative Governance' (2016) 27 *Journal of Public Administration Research and Theory* 168.

⁴² Ruth Northway, 'Integration and Inclusion: Illusion or Progress in Services for Disabled People?' (1997) 31 *Social Policy and Administration* 157.

⁴³ *ibid.*

be exclusion wherever there is inclusion.⁴⁴ It has been contended that to include individual groups properly, and we must examine the concept of integration.⁴⁵

The integrative stakeholder model redirects attention from the broader debate on inclusion to advocate for the involvement of a more specific group: the host communities. This stance emphasises that environmental protection is an integral facet of development and inseparable from it. Embracing a participatory approach becomes imperative. Recognizing that the host communities are pivotal to growth, it is only through their inclusive participation that development can be meaningfully defined. Therefore, this thesis contends for crucial domestic reforms within local corporate law legislation.⁴⁶

7.2.2 The Concept of Community in ISM

One of the fundamental needs in modern day Nigerian mining is recognising the community as a critical stakeholder, therefore it is essential to clearly define the term "community" and its significance within the Nigerian legislative framework for mining.

The definitions of community and mining communities as outlined in the Nigerian Minerals and Mining Act, 2007⁴⁷ and the Mineral Regulations of 2011⁴⁸ and discussed in chapter 3 are at the heart of this conversation. The Act and Regulations define a mining community as any community situated near mining operations and affected by such mining operations.⁴⁹ This definition implies that mining operations have an impact on the host communities, which must be recognised and addressed by mining companies. However, the issue with the definition of

⁴⁴ Lesley Chenoweth and Daniela Stehlik, 'Implications of Social Capital for The Inclusion of People with Disabilities and Families in Community Life' (2004) 8 *International Journal of Inclusive Education* 59, 60.

⁴⁵ *ibid.*

⁴⁶ 'United Nations Conference on Environment & Development' (United Nations, 1992) <<https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>> accessed 13 September 2022.

⁴⁷ Anri Heyns, 'Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept "Community"' (2019) 12 *Law and Development Review* 561, 571.

⁴⁸ *ibid.*

⁴⁹ The Nigerian Minerals and Mining Act, 2007 and the Mineral Regulations of 2011.

‘community’ as outlined in the Nigerian Minerals and Mining Act of 2007 and the Mineral Regulations of 2011 lies in its potential narrowness. According to these regulations, a mining community is described as any community located in proximity to mining operations and directly impacted by them. While this definition is accurate in recognizing that mining activities have repercussions on the host communities, it might not encompass the full scope of those affected. The concern arises from the fact that the proposed definition might inadvertently exclude other groups that are indirectly affected by mining operations. These could include neighbouring communities or even larger societal segments impacted by the industry's activities.

On the other hand, the concept of community proposed can be broader. It can encompass all groups of people that may be affected by mining operations, including but not limited to the host communities. This broader interpretation acknowledges that the influence of mining is not confined solely to those immediately adjacent to the operations, but also extends to a wider network of stakeholders. Consequently, this prompts a reconsideration of how communities are defined and included in the regulatory framework to ensure that all pertinent parties are duly recognized and addressed.

Within the context of the development paradigm, the definition of a community is first approached through international law and legal policy and secondly through how the community is reflected in Nigerian mining laws. According to Heyns, within the context of mining community development, when the term community is interpreted widely, the law recognises three categories of commonality.⁵⁰ Shared tradition and communal land rights, on the one hand, and shared mining effects, on the other, are considered commonalities around

⁵⁰ Anri Heyns, ‘Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept “Community”’ (2019) 12 Law and Development Review 561, 571.

which community is established in the mining context.⁵¹ Furthermore, the law recognises that people who live in the same geographic area might form a community. A larger perspective reveals that mining policy and other laws dealing with communities consider poverty common in all three circumstances.⁵² Mining frequently occurs on a property where indigenous groups and traditional communities exercise aboriginal rights.⁵³

Finding a community can be complex and contentious.⁵⁴ Communities can be recognised based on similar characteristics such as geography, religion, culture, history, kinship, etc.⁵⁵ Communities can also be recognised based on a subsurface identity designation that may alter over time due to external factors. Identifying a community is difficult since there is often 'contention' between those who are included and those who are excluded.⁵⁶

In the context of the Integrative Stakeholder Model (ISM), the delineation of communities takes on a nuanced significance. Unlike conventional models of corporate governance, which often adopt a rigid or one-dimensional view of host communities, the ISM embraces a more dynamic and inclusive perspective. Defining host communities and the specific acreage is essential.⁵⁷ The affected communities are not restricted to only where the first stage of the mining process occurs, although the Nigerian Minerals and Mines Regulation 2011 has tried to define host community as the community in which the mineral is found, the community that is relatively close to it, or through a cumulative verification by state or federal agencies in a

⁵¹ Anri Heyns, 'Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept "Community"' (2019) 12 Law and Development Review 561, 571.

⁵² Anri Heyns, 'Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept "Community"' (2019) 12 Law and Development Review 561, 571.

⁵³ Anri Heyns, 'Mining Community Development in South Africa: A Critical Consideration of How the Law and Development Approach the Concept "Community"' (2019) 12 Law and Development Review 561, 571.

⁵⁴ Paul Kapelus, 'Mining, Corporate Social Responsibility, and the "Community": The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi'. 39 (2002) Journal of Business Ethics 275,276.

⁵⁵ Paul Kapelus 'Mining, Corporate Social Responsibility, and the "Community": The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi'. 39 (2002) Journal of Business Ethics 275,276.

⁵⁶ *ibid.* 281.

⁵⁷ William Hughes, 'The Mining Process: 5 Lifecycle Stages Explained from Exploration to Reclamation' (Crux Investor, 2020) <<https://www.cruxinvestor.com/articles/the-stages-of-mining>> accessed 1 August 2021.

report to the Minister, or wherever the Minister determines it to be.⁵⁸ The current definition excludes most stages within the mineral mining process. This is an unsustainable definition which will further encourage strife and conflict.⁵⁹

Host communities, within the context of the integrative stakeholder model, are defined as the communities located within the project site, as outlined by the United Nations Framework Convention for Climate Change – Clean Development Mechanism (UNFCCC-CDM) Projects.⁶⁰ This definition is crucial for ensuring clarity and specificity regarding the affected communities. Unlike a narrower definition based solely on the location of the mineral deposit, this broader characterization encompasses the entire project site, encompassing the broader areas influenced by the project's activities. This definition serves to provide a more accurate assessment of the actual acreage and population involved, prioritising the well-being and interests of these host communities.

7.2.3 Component of the Integrative Stakeholder Model

The proposed Integrative Stakeholder Model (ISM) is a comprehensive framework for corporate governance, particularly tailored for mining industries with significant social and environmental impacts like mining. It incorporates various components to ensure a balanced and inclusive approach to decision-making and resource management.

7.2.3.1 Host Community Engagement within the Integrative Stakeholder Model (ISM)

⁵⁸ Regulation 193 (5) (a), (b), (c) of the Minerals and Mines Regulation 2011.

⁵⁹ Farah Dagogo, 'New Definition of 'Host Community' in Passed PIB, a Day-Break Robbery –Rivers Rep, Dagogo' (*Punch*, 2021) <<https://punchng.com/new-definition-of-host-community-in-passed-pib-a-day-break-robbery-rivers-rep-dagogo/>> accessed 18 August 2021.

⁶⁰ 'Hostcom Queries NASS on Definition of Host Communities' (*Vanguard*, 2021) <<https://www.vanguardngr.com/2021/07/hostcom-queries-nass-on-definition-of-host-communities/>> accessed 6 August 2021.

Within the context of the Integrative Stakeholder Model (ISM), engaging host communities is pivotal. The process of Host Community Engagement involves a thorough identification and assessment of all parties linked to or influenced by mining activities. This goes well beyond shareholders, encompassing a wide array of individuals, groups, and entities within and around the community. Host communities can include residents, local authorities, environmental organizations, and more. By comprehensively grasping the distinct concerns, requirements, and perspectives of the host community, mining companies can develop customised approaches that recognize the diverse impacts and viewpoints. This ensures a more inclusive, responsive, and mutually beneficial relationship between the mining enterprise and its immediate surroundings.

7.2.3.2 Inclusive Decision-Making Structures

Within the ISM, one of the foundational features is the establishment of governance structures that are inclusive. This means that representatives from stakeholder groups, particularly host communities, are integrated into the governance mechanisms of mining companies. This inclusion serves to ensure that the voices of those directly affected by mining activities are not only heard but also actively considered in the decision-making process. Representatives from host communities, for instance, provide first-hand insights into the local context, enabling more informed and nuanced decisions. It enhances accountability and helps to avoid situations where decisions are made without considering the full scope of impacts. By incorporating diverse perspectives, these inclusive structures foster a more holistic approach to governance, ultimately leading to more balanced and sustainable outcomes.

In an inclusive society, the public has a right to participate and engage in managing things.⁶¹ To achieve this, legal, regulatory and policy frameworks must be integrative to uphold and promote just and inclusive processes in all implementation aspects. This will protect access to public space, facilities, and information.⁶² At the heart of inclusion is active participation, going beyond mere access to society's activities to engage in them actively. It instils a sense of responsibility toward others, the community, and its institutions, influencing decisions and providing access to the decision-making process.

The OECD statement underscores the critical significance of inclusivity, emphasising its dual role in fostering a fairer society and a stronger economy.⁶³ It highlights a concerning trend of widening income disparities between different socioeconomic groups, noting that such inequalities not only lead to social injustices but also bear negative consequences for economic advancement.⁶⁴ This situation strains the relationship between governments and their citizens, necessitating a concerted effort to address these disparities. To tackle the challenge of inclusivity, nations are actively exploring innovative approaches that aim to elevate living standards while ensuring that the fruits of economic progress are distributed more equitably across society. The statement attributes a crucial role in this endeavour to the public sector. This role encompasses three pivotal dimensions: firstly, the public sector itself must embody inclusiveness. This entails implementing policies and practices that promote diversity and accessibility within government institutions. Secondly, the policy-making process should be characterized by inclusivity. This means actively engaging a diverse array of stakeholders, including groups that may have been historically marginalized or underrepresented, in the

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ OECD 'Inclusive Government for a more Inclusive Society', (OECD, 2015) <https://doi.org/10.1787/gov_glance-2015-6-en>accessed 12 September 2022.

⁶⁴ OECD 'Inclusive Government for a more Inclusive Society', (OECD, 2015) <https://doi.org/10.1787/gov_glance-2015-6-en>accessed 12 September 2022.

formulation and execution of policies. Lastly, governments should champion policy outcomes that are inherently inclusive, designed to benefit all segments of society, especially those who have faced historical disadvantages.

In relation to the Integrative Stakeholder Model (ISM), the OECD's statement provides a robust theoretical and practical foundation for the ISM's principles. The ISM inherently aligns with the concept of inclusive governance. Moreover, the ISM draws from the OECD's emphasis on inclusivity in policy-making processes. By actively involving host communities, government entities, and various stakeholders in the decision-making processes of mining companies, the ISM endeavours to foster more balanced and socially responsible choices. This not only mirrors the OECD's core principles but also addresses the pressing need for more inclusive and equitable resource management practices within the mining sector.⁶⁵

Public and stakeholder engagement helps to acquire information about the needs of the stakeholders, answers to those needs, and their possible impacts on stakeholders.⁶⁶

7.2.3.3 Transparent Communication Channels

Effective communication forms the backbone of successful stakeholder engagement within the ISM. It involves establishing clear and transparent channels for the flow of information between various stakeholders. This encompasses mining companies, host communities, regulatory bodies, governmental agencies, and other relevant parties. Transparency builds trust, which is crucial for fostering positive relationships among stakeholders. It ensures that all parties are well-informed about decisions, actions, and developments related to mining operations. Furthermore, transparent communication allows for meaningful participation and

⁶⁵ Zana Marie Lutfiyya and Nadine A Bartlett, 'Inclusive Societies' (2020) Oxford Research Encyclopedia of Education 1, 2.

⁶⁶ Essien D Essien, 'Ethical Appraisal of the Role of Civil Society in Nigeria' (2016) 3 International Journal of Civic Engagement and Social Change 938, 940.

input from stakeholders, as they can provide feedback and raise concerns with confidence. Clear channels also facilitate the timely dissemination of information about potential impacts, mitigation measures, and community development initiatives. This open dialogue promotes a culture of shared responsibility and accountability, contributing to more informed and collaborative decision-making processes.

Transparent communication is the cornerstone for building and maintaining strong relationships among stakeholders, and it is fundamental to the success of the ISM. This was also established in chapter five of the thesis.

7.2.4 Purpose and Benefits of the ISM

According to Hessen, a corporate law theorist, the shareholders bring the company into existence.⁶⁷ Thus, they should be allowed to gain relatively from their profits.⁶⁸ Although increasing shareholder wealth is essential, such a push for shareholder maximisation should not come at the expense of the company's fundamental stakeholders, specifically here, the host communities. Apart from a company's survival, it is reasonable to claim that the host communities' constant acknowledgement, interaction, and concession are crucial for the mining company to operate, succeed, and realise financial gains. However, the strategies and practices companies employ to attain these goals may vary depending on factors such as the nature of their business and the management style of their executives. The Integrative Stakeholder Model does not necessarily oppose the idea of maximising shareholder wealth, but it recognises that corporations should not exist solely for this purpose. Instead, the model emphasises the importance of distinguishing between the overall goal of corporations and how they should be managed to ensure that all stakeholders' interests are adequately considered and protected.

⁶⁷ Robert Hessen, 'A New Concept of Corporations: A Contractual and Private Property Model' (1979) 30 *Hastings Law Journal* 1327, 1378.

⁶⁸ Robert Hessen, 'A New Concept of Corporations: A Contractual and Private Property Model' (1979) 30 *Hastings Law Journal* 1327, 1378.

This thesis recommends a tailored internal corporate governance framework that mining companies can adopt to promote a balanced and responsible consideration of the interests of all stakeholders by the company's directors and executives. The primary purpose of ISM is to promote a more balanced and sustainable approach to governance, ensuring that the interests of all stakeholders, including host communities, are actively considered in decision-making processes. The ISM addresses a critical gap in traditional corporate governance models, which often prioritise shareholder interests above all else. In industries like mining, where operations can have substantial social and environmental implications, this approach can lead to conflicts, mistrust, and even legal disputes with host communities.⁶⁹ The ISM seeks to rectify this by allowing the host communities in the decision-making process. This inclusive approach acknowledges that stakeholders extend beyond shareholders to include the communities directly impacted by mining activities. Furthermore, the ISM recognises that host communities have legitimate stakes in the outcomes of mining projects. These stakes encompass a range of concerns, from environmental protection to socio-economic development. By involving host communities in governance, the ISM aims to ensure that their interests are not only heard but integrated into the strategic planning and execution of mining operations. This, in turn, can lead to more sustainable and socially responsible business practices.

One of the key benefits of ISM is its potential to mitigate conflicts of interest by integrating host communities into the governance structure of mining companies. By doing so, it helps establish a framework for responsible business practices that not only safeguard the rights and well-being of host communities but also contribute to the overall socio-economic development

⁶⁹ Tope Adebayo 'Overview of the Nigerian Mining Sector: Challenges and Opportunities,' Legal Developments, August 9, 2023, <<https://www.legal500.com/developments/thought-leadership/overview-of-the-nigerian-mining-sector-challenges-and-opportunities/#:~:text=Amongst%20those%20already%20mentioned%20above,knowledge%20of%20the%20sector%2C%20including>> accessed 29th September 2023.

of the region. Moreover, ISM aligns with global trends towards greater stakeholder engagement and accountability in corporate governance. This means that mining companies adopting ISM are more likely to comply with evolving societal expectations and regulatory standards, positioning them as responsible and ethical entities within the industry.

Additionally, ISM fosters stronger community relations, enhancing trust between mining companies and the local populations. This trust-building process is crucial for establishing a positive and mutually beneficial working relationship, which, in turn, can lead to smoother operations and increased overall project success. The ISM's purpose is to create a more inclusive, equitable, and sustainable approach to corporate governance, particularly in industries with significant social and environmental impacts like mining. By prioritizing the interests of all stakeholders, it aims to balance economic progress with social and environmental responsibility, ultimately benefiting not only the shareholders but also the broader community and the environment.

7.3 Engaging Stakeholders in ISM

Within the Integrative Stakeholder Model (ISM), ensuring comprehensive representation of stakeholders is paramount to promoting inclusive and responsible decision-making within the mining sector. The ISM recognises the significance of engaging all relevant stakeholders, including those directly impacted by mining activities and those with substantial interests in the sector. To ensure representation of host communities within the ISM, specific approaches can be adopted.

By implementing these techniques, the ISM can ensure comprehensive representation of host communities within the governance structures of the mining sector. This fosters a more inclusive and participatory decision-making process, strengthens accountability, and

contributes to the sustainable development of both the mining industry and the host communities.

7.3.1 Stakeholder Recognition Techniques in (ISM)

Implementing an effective integrative stakeholder model requires an enabling legal and institutional framework as its foundation. The Nigerian Government and mining companies' commitment to inclusive development of the host communities starts with making necessary legal and institutional reforms. Applying the integrative stakeholder model as a normative instrument to promote and protect the rights of the host communities affected by the management of mining activities in Nigeria depends on recognising stakeholders and practical implementing all interconnected aspects of the proposed model. Failure to comply with any of the themes can reduce the productivity of the approach and lead to wasted attempts.

7.3.1.1 Notifying Host Communities of Mining Projects

The first step is notification of host communities. Notification involves a one-way communication in which the public receives information from the government or corporations.⁷⁰ Thus, it should be appreciated that notification is not consultation, but it can be an excellent first step.⁷¹ From this perspective, prior notification to host communities allows time to prepare for upcoming discussions and prevent conflicts.

A significant aspect of the proposed model is a prior notification to all stakeholders, specifically the host communities, to have sufficient time to learn about the mining project and contribute to the process. In Nigeria, most mining companies only consult with the government before

⁷⁰ Bethel Ihugba and Onyeka Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance' (2011) 16 *Electronic Journal of Business Ethics and Organization Studies* 28, 32.

⁷¹ *ibid.*

starting a mining project, leaving the host communities in the dark about the process.⁷² The government fails to inform the host communities about the information received from the mining companies, which is disadvantageous to the host communities.⁷³ Therefore, there is a need to give early notification to the host communities, as the mining process will happen where they reside, and they need to be aware of the process and what it entails. This gives them ample time to decide on a representative and consult with experts about the proposed mining projects.

Mining companies must provide the host communities with transparent, honest, and precise information. Needless formalities and ambiguities can confuse representatives of host and affected communities.⁷⁴ Therefore, the notification must be communicated in a language that everyone can understand. This will help everyone make informed judgments about the changes affecting their lives.⁷⁵

Furthermore, the initial notification process applies to mining companies and involves other stakeholders, including the government. The early notification allows the host communities to also decide on their representative who will be the stakeholder director on the board of the mining companies.⁷⁶

7.3.1.2 Stakeholder Consultation and Participation

⁷² Okechukwu Ibeanu, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria' (Environmental Change & Security Project Report, 2000).

⁷³ Ibronke T Odumosu-Ayanu, 'Governments, Investors and Local Communities: Analysis of a Multi-Actor Investment Agreement Framework' (2014) 15 Melbourne Journal of International Law 473, 478.

⁷⁴ Bethel Ihugba and Onyeka Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance' (2011) 16 Electronic Journal of Business Ethics and Organization Studies 28, 32.

⁷⁵ International Finance Corporation, 'Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets' (World Bank Group, 2007) 29.

⁷⁶ This is the core of the Proposed integrative stakeholder model.

The provisions of the Nigerian mining regulations related to the grant of mining leases are currently applied without consulting the members of the host communities, compensation of the host community members for a certificate of occupancy,⁷⁷ damages and pollution⁷⁸ lease,⁷⁹ amongst others, contradicts the proposed integrative stakeholder model.

Active participation is a vital element of the integrative stakeholder model. Lamb, Varettoni & Shen have emphasised the significance of participation in the success of any project, particularly industrial development.⁸⁰ Participation is 'diverse forms of direct public participation in which people, individually or in organised groups, can exchange information, express opinions and articulate interests and have the potential to make decisions, meet or influence the outcome of certain problems'.⁸¹ In terms of resource management, participation is considered a situation where individuals, host communities and stakeholders can communicate information, express their interests, and have the opportunity to discuss the potential outcomes of issues that relate to natural resource management.⁸²

Sustainable mining sector management depends upon the participation of core stakeholders - the host communities, executives, industry, financial institutions, civil society, and the public.⁸³ Identifying stakeholders, seeking participation, and consulting with them is critical to successfully managing the mining sectors and their effects. Stakeholders must be consulted in

⁷⁷ Section 104 Nigerian Minerals and Mining Act, 2007.

⁷⁸ Section 125 *ibid.*

⁷⁹ Section 112 *ibid.*

⁸⁰ Robert Lamb, Bill Varettoni & Chunli Shen, 'Participatory Development and the World Bank' 14 (2005) *International Affairs Review* 171.

⁸¹ *ibid.*

⁸² Adrienne Mckeehan and Theresa Buppert. 'Free, Prior and Informed Consent.' (2014) 35 *Harvard International Review* 48, 50.

⁸³ Peter D Cameron and Michael C Stanley, 'Oil, Gas, and Mining: A Sourcebook for Understanding the Extractive Industries' (Open Knowledge Repository, 2021) <<https://openknowledge.worldbank.org/bitstream/handle/10986/26130/9780821396582.pdf?sequence=2&isAllo wed=y>> accessed 14 May 2021.

any matter with an essential impact on the management of the mining sector and, at each time, be expected to contribute to the process.⁸⁴

With host communities as core stakeholders, the principle of free, prior, and informed consent is essential.⁸⁵ The notion is that host communities have the right to give or withhold their consent to proposed mining projects that will probably affect the environment they customarily own, reside in or use. It has become imperative to incorporate or reinforce the principles of consultation with host communities and ensure free, prior, and informed consent (FPIC) within domestic laws and regulations. Additionally, establishing or enhancing state remedy mechanisms for individuals affected by mining activities is of paramount importance.⁸⁶

Consultation requires meetings with village chiefs, social groups, and resident interviews. Representatives with sufficient project understanding are required for this phase. Host communities, mining firms, and other interested parties gather to discuss their concerns, assess the project, and decide whether to move forward or not.

7.3.1.2.1 Purpose of Stakeholder Consultation

Stakeholder consultation, particularly with host communities in mining operations, is a multifaceted process that serves several pivotal purposes and employs various strategies to accomplish its objectives. The purpose of stakeholder consultation, especially with host communities in mining operations, extends beyond a mere formality. It is a cornerstone of inclusive governance, ensuring that the concerns and perspectives of those directly impacted by mining activities are integrated into decision-making processes.⁸⁷ By affording host

⁸⁴ *ibid.*

⁸⁵ Adrienne Mckeehan and Theresa Buppert, 'Free, Prior and Informed Consent' (2014) 35 *Harvard International Review* 48, 50.

⁸⁶ *ibid.*

⁸⁷ Kujala J and others, 'Stakeholder Engagement: Past, Present, and Future' (2022) 61 *Business & Society* 1136,1140.

communities a seat at the table, it acknowledges their rightful stake in the outcomes and emphasizes their vital role in shaping the project's trajectory. This inclusivity goes beyond tokenism; it seeks genuine representation, empowering community members to actively engage in discussions about their own environment and future.⁸⁸

Stakeholder consultation also serves as a conduit for transparent information flow. It is imperative to provide comprehensive and understandable details about the project, ranging from its scope and potential impacts to the safety measures in place.⁸⁹ This dissemination of accurate information builds a foundation of trust between the mining company and the host communities. It allows community members to make informed decisions, understand the implications of the project, and align their expectations with reality. This transparency is vital in preventing misinformation or misconceptions that can lead to friction.

Mining projects are inherently complex, involving diverse interests and potential points of contention. Meaningful stakeholder consultation acts as an early warning system for conflicts. By creating a forum for open communication, it uncovers differing viewpoints, concerns, and potential sources of tension. This proactive approach allows for collaborative problem-solving, mitigating conflicts before they escalate. It also facilitates the development of tailored solutions that balance the interests of the mining company and the host communities, promoting a harmonious coexistence.⁹⁰

Another reason for consultation is risk mitigation, host communities often possess invaluable local knowledge, deeply rooted in the specificities of their environment. Consultation taps into

⁸⁸ Bert Fraussen, Adrià Albareda and Caelesta Braun, 'Conceptualizing consultation approaches: identifying combinations of consultation tools and analyzing their implications for stakeholder diversity' (2020) 53 Policy Sciences 473, 476.

⁸⁹ Bert Fraussen, Adrià Albareda and Caelesta Braun, 'Conceptualizing consultation approaches: identifying combinations of consultation tools and analyzing their implications for stakeholder diversity' (2020) 53 Policy Sciences 473, 476.

⁹⁰ Mark Aakhus and Michael Bzdak, 'Stakeholder engagement as communication design practice' (2015) 15 Journal of Public Affairs 188,189.

this wealth of information, enabling the identification of potential risks and opportunities that might escape conventional assessments.⁹¹ Whether it's insights into fragile ecosystems, cultural heritage sites, or unique social dynamics, this local knowledge contributes to a more nuanced understanding of the project's context. This, in turn, informs targeted strategies to mitigate adverse impacts and adapt plans to local conditions, enhancing the project's overall sustainability.

Consultation also builds trust and credibility. Trust is the bedrock of successful stakeholder engagement. Consistent and transparent consultation builds trust by demonstrating a genuine commitment to hearing and incorporating community perspectives.⁹² When community members see their input reflected in decisions, it engenders a sense of credibility and goodwill. This trust is pivotal for the ongoing success of the project, as it forms the basis for continued collaboration, information sharing, and conflict resolution.⁹³

Stakeholder consultation serves a dynamic, ongoing process, rather than a static event. It establishes a feedback loop that allows for iterative improvements. This mechanism ensures that evolving concerns, new information, or changing circumstances are integrated into decision-making throughout the project's lifecycle.

7.3.1.2.2 Methods of Consultation

According to the World Bank, meaningful and effective consultation is a two-way method from inception.⁹⁴ During the identification process, there must be proof of environmental and social

⁹¹ Mark Aakhus and Michael Bzdak, 'Stakeholder engagement as communication design practice' (2015) 15 *Journal of Public Affairs* 188,195.

⁹² Martha S. Feldman & Kathryn S. Quick, 'Generating Resources and Energizing Frameworks Through Inclusive Public Management', (2009) 12 *International Public Management Journal* 137,141.

⁹³ Martha S. Feldman & Kathryn S. Quick, 'Generating Resources and Energizing Frameworks Through Inclusive Public Management', (2009) 12 *International Public Management Journal* 137,142.

⁹⁴ World Bank (The World Bank Group Consultation Guidelines, 12 June 2019) <<https://thedocs.worldbank.org/en/doc/248301574182372360-0290022019/original/WorldBankconsultationsguidelines.pdf>> accessed 10 October 2023.

impacts and effects on the host communities. This must be a continuous premise as dangers and effects emerge. It must be founded on the prior exposure and propagation of important, transparent, practical, and easily accessible data, which is in a socially acceptable local language(s) and design that is understandable to the host communities that will be affected by the impacts of the mining operations, adopt feedbacks, when necessary, focus inclusive engagement on the host communities affected by mining operations. There must be freedom from external interference, hobnobbing, pressure or terrorising to encourage significant participation and be archived by the borrower.

Separate consultations need to be held by companies with the least fortunate and most vulnerable members of the host community, including the female gender and youth groups, to make direct findings on how the mining operations are and will affect their lives and needs. This is essential in empowering them to have a solid voice in the company-community area discourse and in the decisions that will impact their lives.⁹⁵ Consultations can be a valuable tool in assessing the impact of mining operations on vulnerable and marginalised groups. To ensure maximum participation, it is essential to schedule consultations at a convenient time and location for community members and encourage their active involvement. Additionally, to promote open and honest dialogue, it is recommended that consultations be led by a trusted local community member rather than an outside party, such as a mining or government official.⁹⁶

Corporations can establish a trustworthy, mutually beneficial, and economically sound relationship with host communities if the consultation process can effectively achieve these

⁹⁵ Eleodoro Alba, 'Extractive Industries Value Chain: A Comprehensive Approach to Developing Extractive Industries' (2009) Working Paper of the Oil, Gas, and Mining Policy Division, World Bank, Washington, DC, 21.

⁹⁶ Andrés Liebenhal, Ethel Tarazona and Roland Michelitsch, *Extractive Industries and Sustainable Development* (1st edn, The World Bank, 2005) 139.

goals. Maintaining the host communities as partners is crucial for achieving successful outcomes.⁹⁷ A better set of principles will improve the chances of better relations with the host communities. Therefore, this must be considered a vital feature of any mining operation.

7.4 Oversight

Oversight within the Integrative Stakeholder Model (ISM) involves a systematic approach to monitor and manage the interactions and relationships between the mining company and its stakeholders, particularly the host community.

Through these steps, oversight within the Integrative Stakeholder Model can help build trust, transparency, and mutually beneficial relationships between the mining company and the host community, ultimately contributing to sustainable and responsible mining practices.

7.4.1 Including Stakeholder Members on as Board of Directors

After notification of host communities and consultations with them, the ISM proposes the addition of stakeholder directors to the board of mining companies, as this allows the host community to have direct communications with the mining companies. This point is explained further below.

7.4.1.1 Stakeholder Directors

There have been codes of corporate governance that show stakeholders' interest, but they rarely propose representatives of non-shareholder stakeholders on the board.⁹⁸ There has been little

⁹⁷ 'Public Regulation and Corporate Practices in the Extractive Industry a South–South Advocacy Report on Community Engagement' (2017) <<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/mandela-institute/documents/research-publications/Public%20Regulation%20and%20Corporate%20Practices%20in%20the%20Extractive%20Industry,%20a%20Mandela%20Institute%20report.pdf>> accessed 2 June 2021.

⁹⁸ , Section 279(3) and (4) of the Companies and Allied Matters Act (CAMA) 2020 of Nigeria.

or no research on stakeholder directors in corporate governance research. Environmental (and CSR) policies give rise to a separate set of issues from the agency conflict management, and shareholder interests are somewhat aligned and focused on maximising profits, unconcerned about the community's welfare.⁹⁹ Based on this position, it is essential to distinguish directors who will probably protect the interests of the shareholders and management over the interests of host communities from those directors who can be determined to be more likely to protect the host communities¹⁰⁰ without neglecting the need for balance.

Taking a point from the Resource Dependency Theory, it provides a proposition for the board's stakeholder directors. This theory highlights the role of directors as resource providers, the fundamental differentiation of inside and outside directors does not effectively cover this role.¹⁰¹ Inside directors refer to current or former directors of the firm. At the same time, the outside directors are active or retired executives who serve on other corporate boards. Based on business experience, they bring functional knowledge of strategic decision-making and internal company operations. Additionally, the experience from outside the company helps them to grant alternative viewpoints, providing managers with information about how other companies deal with similar problems and issues, successfully.¹⁰²

However, according to resource-dependence logic, the board of directors requires more resources besides know-how, skills, information, and possible connections from business experts.¹⁰³ Different stakeholder directors can give valuable resources due to their business

⁹⁹ George Kassinis and Nikos Vafeas, 'Corporate Boards and Outside Stakeholders as Determinants of Environmental Litigation' (2002) 23 *Strategic Management Journal* 399, 342.

¹⁰⁰ Silvia Ayuso-Siart and Antonio Argandoña, 'Responsible Corporate Governance: Towards A Stakeholder Board of Directors?' (2009) 6 *Corporate Ownership and Control* 9, 12.

¹⁰¹ Amy J Hillman, Albert A Cannella and Ramona L Paetzold, 'The Resource Dependence Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change' (2000) 37 *Journal of Management Studies* 235, 371.

¹⁰² *ibid.* 258.

¹⁰³ *ibid.*

associations with the firm (for example, clients, providers, and banks) or non-business connections (government authorities, scholastics, and local area agents).¹⁰⁴

Even though directors in mining companies with a business foundation can use their experience on CSR adopted from other boards, the consideration of stakeholder directors will ostensibly prompt more unequivocal recognition of stakeholder and host community's issues.¹⁰⁵

Advocates of resource dependence theory argue that the board of directors should act as representatives and protectors of the company's core stakeholders, which is in line with the principles of stakeholder theory. These representatives' role is to promote the company's financial and social performance.¹⁰⁶

Integrating stakeholders on corporate boards increases 'board capital'.¹⁰⁷ This capital comprises human capital¹⁰⁸ and social capital.¹⁰⁹ Human capital refers to the knowledge, skills, and experience that individuals bring to the board, and stakeholder representatives can contribute valuable insights and perspectives based on their specific stakeholder group. For example, a stakeholder representative from a host community can provide a better understanding of the community's needs and concerns related to the company's operations.

Social capital refers to the networks and relationships that board members have with external stakeholders.¹¹⁰ Stakeholder representatives can help build and maintain positive relationships

¹⁰⁴ Patrice Luoma and Jerry Goodstein, 'Research Notes. Stakeholders and Corporate Boards: Institutional Influences on Board Composition and Structure' (1999) 42 *Academy of Management Journal* 553, 554.

¹⁰⁵ Amy J Hillman, Albert A Cannella and Ramona L Paetzold, 'The Resource Dependence Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change' (2000) 37 *Journal of Management Studies* 235, 258.

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.* 390.

¹⁰⁸ Human capital includes expertise, experience, information, skill and abilities.

¹⁰⁹ Social capital binds deliberately significant associations.

¹¹⁰ Matteo Alpino and Halvor Mehlum, 'Two Notions of Social Capital', (2021) 47 *The Journal of Mathematical Sociology* 255, 256.

between the company and its stakeholders. This can lead to better communication, collaboration, and cooperation between the company and its stakeholders.

Integrating stakeholders on corporate boards can help increase board capital, leading to better decision-making, improved corporate performance, and stronger relationships with stakeholders. The Integrative Stakeholder Model emphasises the importance of considering the interests of all stakeholders in corporate decision-making, and stakeholder representation on corporate boards is one way to achieve this goal.

Stakeholder directors are more likely to exercise proficiency in the group's interest from which they are drawn and bring in a more extensive viewpoint on the interest of stakeholders in general.¹¹¹ Simultaneously, companies with host communities as stakeholders on their boards signal their obligation to stakeholders' visibility. By so doing, they tend to increase the legitimacy credit of the mining company and the firm's linkages to significant internal and external possibilities. Having host communities as stakeholders on a company's board is a powerful signal of its obligation to its stakeholders, including the host communities. The mining company can increase its legitimacy and credibility by improving its relationships with stakeholders. The company can also enhance its linkages to significant internal and external opportunities, leading to more sustainable business practices and benefits for all stakeholders.

As stakeholder directors, these individuals should not only have the authority to represent the interests of the stakeholders within the company but should also possess voting rights during decision-making processes. This dual role ensures that the directors can actively voice the concerns and perspectives of the stakeholders they represent, while also participating in the crucial process of shaping the company's decisions through their voting power. This

¹¹¹ Patrice Luoma and Jerry Goodstein, 'Research Notes. Stakeholders and Corporate Boards: Institutional Influences on Board Composition and Structure' (1999) 42 *Academy of Management Journal* 553, 554.

Corporations exploit this provision to their advantage, leaving the communities with little or no compensation.¹¹⁶

Furthermore, when some community members say no, they find it challenging to make a case as to why they say no to mining or how their farming projects will also generate employment to improve the standard of living and bring in revenue to the community, which will have a lower impact on the natural environment compared to mining.¹¹⁷ The government is unwilling to project the long-term performance of farming ventures. Still, it is only interested in the income that will come in from mining operations without considering the community's voice and opinion.¹¹⁸ The voices of the host communities have been mainly neglected.¹¹⁹ Several forms of environmental degradation in the host communities impact the lives of those who reside there.¹²⁰ These degradations include a general environmental threat, impact on the communication system and other networks and noise hazards. However, community members have no means to voice their concerns and they die in silence daily.¹²¹ The inability to communicate their plights sometimes leads to conflicts and unrest. Therefore, there is a need to offer host communities a solid seat at the table and not consider their participation as an attachment to the deliberations on mining projects.¹²² This would also warrant sufficient information and knowledge regarding options, enforcement mechanisms and corresponding rights and obligations of the corporations and the government.¹²³

¹¹⁶ Faisal Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness During Mineral Mining Activities in Nigeria' (2018) 14 *European Scientific Journal* 165,171.

¹¹⁷ Adedoyin Akinsulore, 'The Effects of Legislation on Corporate Social Responsibility in the Minerals and Mines Sector of Nigeria' (2016) 7 *Journal of Sustainable Development Law and Policy* 97,99.

¹¹⁸ *ibid.*

¹¹⁹ As seen from the 1999 Constitution and the Land use Act 1979, only the government has a say in this matter.

¹²⁰ Kehinde Olatunji, 'Addressing Environmental Impact of Mining on Host Communities' (*The Guardian*, 2020) <<https://guardian.ng/business-services/addressing-environmental-impact-of-mining-on-host-communities/>> accessed 20 September 2022.

¹²¹ Chilenye Nwapi, 'Legal and Institutional Frameworks for Community Development Agreements in the Mining Sector in Africa' (2017) 4 *The Extractive Industries and Society* 202, 215.

¹²² *ibid.* 213.

¹²³ Bethel Ihugba and Onyeka Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance', (2011) 16 *Electronic Journal of Business Ethics and Organization Studies* 28, 33.

Starting a new mining project should call for a review of the host community engagement approach. There is a need to have community representatives for the impacted communities. The government or the mining companies should not select these representatives. This is notwithstanding that some community representatives had failed to effectively represent community interests but personal or compromised interests. Therefore, communities should also be free to recall, remove or replace such representatives.

7.4.1.1.2 Voting Rights

As an element of the ISM, stakeholders' interests should be made one of the themes of decision-making. This implies that decisions are subject to the voluntary, accessible, and fair deliberations of all parties. Voting encourages the recognition and respect of each stakeholder's opinion by giving equal weight to their points of view because it represents the uniqueness of each stakeholder and the group they represent.¹²⁴

For the integrative stakeholder model, equal and unforced participation is essential. Decision-making processes must be conditioned by the willingness of those involved to reach an agreement without coercion or threat of force. A crucial part of having a voice on the board is the right to vote, especially on matters relating to the negotiation of mining projects during the life of the mine and at the mine closure. The voice of the host community should be solid enough within the company to influence policies, especially those related to the mine and its environs. The position should not just be one of a yes or no response. They should also be able to pass enforceable resolutions and start remedial action on issues such as environmental degradation and social discontent. Host communities are invariable natural partners in the industry, and discussions about their interests need to go beyond seeking compensation after the damage has been done to generate sustainable development.

¹²⁴ David Miller, 'Deliberative Democracy and Social Choice' (2007) 40 (1) Political Studies 54.

CAMA¹²⁵ expressly prohibits disproportionate rights and the limitation of voting rights.¹²⁶ A company may not issue shares that carry more than one vote in respect of each claim, or which carry no voting right. By its articles or memorandum of association, a company must authorise the allocation of shares granting its shareholders the right to vote. As this does not relate to non-shareholder stakeholders, the application of ISM advocates for change to this provision be thereby recognising the voting right of stakeholders (representatives of host communities).

7.5 Enforcing the Integrative Stakeholder Model: Challenges

The thesis understands that the introduction and enforcement of ISM may face challenges in some ways. Enforcing the ISM can be challenging for mining companies, as it involves navigating complex relationships with host communities, government agencies, and other stakeholders. Despite the potential benefits of implementing this model, there may be resistance from some stakeholders who are sceptical of the mining industry's commitment to sustainable development and responsible mining practices. Additionally, enforcing the model may require significant investments in community engagement and development initiatives, which can be challenging to justify in the short term. This section explores four challenges that mining companies may face in enforcing the integrative stakeholder model and discuss strategies for overcoming these challenges.

7.5.1 Enforcement Challenges

While the Integrative Stakeholder Model (ISM) presents a promising framework for inclusive and sustainable corporate governance, its effective implementation faces several notable enforcement challenges. These hurdles arise from a combination of institutional, regulatory, and practical complexities that demand careful consideration.

¹²⁵ Section 140 (1) Companies and Allied Matters Act 2020.

¹²⁶ Section 140 (2) *ibid.*

Mining regions in Nigeria have dynamic social, economic, and cultural natures. Enforcing the Integrative Stakeholder Model (ISM) encounters a significant hurdle in the ever-evolving social, economic, and cultural landscapes of mining regions in Nigeria. These areas are characterised by complex, interdependent factors that can rapidly change over time.¹²⁷ Economic fluctuations, often tied to global commodity prices, make adherence to the ISM challenging during periods of downturn when companies may face financial constraints.¹²⁸

Furthermore, companies might want to maintain control, host communities may misuse power, and the corporations will lose the opportunity of using public relations antics.¹²⁹ Mining companies often have a vested interest in maintaining control over their operations. They may be hesitant to cede decision-making power to host communities, fearing it could lead to conflicts or disruptions in their operations. This reluctance can impede the smooth integration of the ISM, as it requires a willingness to share decision-making authority. On the flip side, if host communities are granted significant decision-making power, there is a risk that this authority could be misused.¹³⁰ This might lead to biased or self-serving decisions that do not necessarily align with the broader interests of all stakeholders, including the company itself. Striking a balance between empowerment and responsible decision-making can be a delicate process.

Other difficulties may include unbalanced powers and resources between host communities, lack of financial capability for the host communities and lack of education. These difficulties

¹²⁷ ISSAfrica.org, 'How Illegal Mining Is Driving Local Conflicts in Nigeria' (ISS Africa, 16 June 2020) <<<https://issafrika.org/iss-today/how-illegal-mining-is-driving-local-conflicts-in-nigeria>>> accessed 4 October 2023.

¹²⁸ Group ADB, 'Nigeria Economic Outlook' (African Development Bank Group - Making a Difference, 23 June 2023) <<<https://www.afdb.org/en/countries-west-africa-nigeria/nigeria-economic-outlook>>> accessed 4 October 2023.

¹²⁹ Bethel Uzoma Ihugba and Onyeka K Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance' (2011) 16 *Electronic Journal of Business Ethics and Organization Studies* 28, 35.

¹³⁰ Bethel Uzoma Ihugba and Onyeka K Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance' (2011) 16 *Electronic Journal of Business Ethics and Organization Studies* 28, 36.

may affect the ISM model's introduction into the mining companies' corporate governance system. Host communities may not always have equal bargaining power or resources compared to mining companies. This can create an uneven playing field in negotiations or decision-making processes.

Another challenge arises when host communities lack sufficient access to the necessary information for making informed decisions and actively engaging in the integrative stakeholder model. This can be especially challenging for communities that may not have access to the same resources and information as mining companies. There is a tendency to bury information deep under unnecessary details.¹³¹ As a result, host communities cannot understand details of the mining project and come to learned conclusions. The host community should be well informed with fewer formalities to remedy this problem. The thesis encourages stakeholders and businesses to consider the larger picture and how their choices will impact them in the long run.¹³²

An additional issue might be the lack of trust. A lack of trust between stakeholders can hinder effective collaboration and communication, making implementing the integrative stakeholder model challenging. Building trust takes time and effort and may require mining companies to demonstrate their commitment to responsible mining practices.¹³³ Mining corporations are primarily motivated to sell minerals at the highest price possible to maximize their profits. Conversely, other stakeholders, such as host communities, may hold contrasting priorities and concerns. This disparity in interests can complicate the process of reaching consensus and effectively applying the ISM. For instance, community members may place a high emphasis

¹³¹ Bethel Uzoma Ihugba and Onyeka K Osuji, 'Corporate Citizenship and Stakeholder Engagement: Maintaining an Equitable Power Balance' (2011) 16 *Electronic Journal of Business Ethics and Organization Studies* 28, 35.

¹³² *ibid.* 35.

¹³³ Lotta Sihvo Matikainen, 'Addressing Sustainability in the Mining Industry Through Stakeholder Engagement' (2022) 11 *South Asian Journal of Business and Management Cases* 35, 45.

on environmental protection, aiming to safeguard their surroundings from potential harm caused by mining activities. In contrast, mining companies are often focused on prioritizing profitability, seeking to minimize costs associated with mineral extraction.

Although it is believed that the government will also be interested in the development of the people, the mining companies appears to be more significant to the Nigerian government.¹³⁴

The government aims to boost the inflow of mining income, and the host communities desire environmental sustainability and growth. Stakeholders may become antagonistic and rigid during discussions of these conflicting interests.¹³⁵ This sort of conflict is inevitable; it does not deter the integration of host communities. Also, the governments may have limited resources and capacity to enforce regulations related to mining operations. This can make it challenging to ensure mining companies meet their obligations to host communities and other stakeholders. Even when regulations are in place, enforcement can be inconsistent. This can create uncertainty for mining companies and make planning and investing difficult.

While the Integrative Stakeholder Model (ISM) presents certain limitations, its advantages notably outweigh the disadvantages. One notable drawback is the extended duration of decision-making due to the active involvement of host communities. The consultation process can be time-consuming and demanding, which may not align with the urgency of mining corporations eager to commence operations promptly. Consequently, the initial prerequisites for commencing mining activities, including the procedure for obtaining operating licenses, may experience delays if the ISM is implemented in Nigeria's mining management. This prolonged process could potentially deter mining investors. However, it's imperative to

¹³⁴ Faisal C. Emetumah and Anthony Okoye, 'Role of Government in Ensuring Safety Consciousness During Mineral Mining Activities in Nigeria' 14 (2018) *European Scientific Journal* 165, 168.

¹³⁵ *ibid.*

acknowledge that the subsequent increase in profit margins and the enhancement of reputation serve as substantial incentives that offset this initial hurdle.

Overcoming these challenges requires a collaborative and proactive approach from all stakeholders involved. Therefore, integrating relevant stakeholders in a mutually agreed manner that lessens harm, advances the common good and accomplishes specific mutually beneficial aims should be the aim of mining companies. Hence, this thesis reiterates that host community-corporate relationships can progress beyond engagement to integration in governance systems based on the analysis above without prejudice to the challenges.

7.6 How ISM Response to problems in Nigeria.

The Integrative Stakeholder Model (ISM) offers a comprehensive response to the critical problems plaguing the Nigerian mining sector, addressing the research questions and findings from this thesis.

In response to the issues of host community rights not being adequately protected under Nigerian mining regulations, the ISM provides tangible solutions. By actively involving host communities in the decision-making process, the model ensures that their rights are not only recognized but integrated into the operational framework of mining activities. This stands in stark contrast to the existing regulatory framework, which has struggled to provide adequate protection for host communities.

A clear response to the challenges faced in Nigeria involves acknowledging the rights of communities and respecting their traditional communication systems. Existing Nigerian laws do not sufficiently recognise the communal values of local communities.¹³⁶ Nigeria, being a

¹³⁶ Benjamin Ajuibe Eheazu, 'Antecedents of Environmental Adult Education', in Benjamin A Eheazu, CN Barikor, & IS Nzeneri, (eds) *Readings in Adult and Non-Formal Education* (University of Port Harcourt Press, 2013) 1, 21.

diverse nation, boasts a rich tapestry of traditions and modes of acceptance.¹³⁷ Therefore, it becomes imperative to understand and appreciate the symbiotic relationship between traditional culture and the effectiveness of the aforementioned strategies. It is worth noting that attempts to introduce new institutional services can sometimes be met with cultural resistance, particularly when they seek to replace existing traditional ones.¹³⁸ Thus, a crucial stride towards the effective implementation of inclusivity measures is the recognition and respect of community values and leaders. This not only fosters a more inclusive approach but also lays the bedrock for trust and cooperation—precisely what the ISM aims to achieve. By valuing and involving local leaders and understanding the unique perspectives of communities, the ISM helps forge stronger bonds and ensures that strategies are tailored to the specific needs and aspirations of each community involved. This inclusive ethos forms the cornerstone of the ISM's approach to sustainable mining practices.

Furthermore, in light of the inadequacies in corporate governance in Nigeria¹³⁹, particularly regarding stakeholder protection, the ISM represents a significant advancement. It introduces a more inclusive and participatory approach, extending beyond conventional shareholder-focused models. By recognising host communities as integral stakeholders, the ISM establishes a balanced power dynamic, allowing for a more equitable distribution of benefits and responsibilities. This directly addresses a critical limitation of the prevailing governance framework, which often falls short in safeguarding the interests of non-shareholder stakeholders.

Additionally, when considering the limitations of existing theories and rules governing corporate governance in the Nigerian mining sector, the ISM emerges as a compelling

¹³⁷ Roxanne T Ornelas, 'Understanding Sacred Lands' (2007) 17 *Journal of Natural and Social Sciences* 165.

¹³⁸ *Ibid* 166.

¹³⁹ Ayandele, I. A, and Isichei Ejikeme Emmanuel, 'Corporate Governance Practices and Challenges in Africa' (2013) 5 *European Journal of Business and Management* 51, 57.

alternative.¹⁴⁰ Its emphasis on stakeholder inclusivity aligns with global best practices, offering a viable model for future implementation. By placing host communities at the core of decision-making processes, the ISM addresses the inherent shortcomings of traditional governance theories, which may not adequately account for the complex interplay of interests within the mining industry.¹⁴¹

Moreover, in light of the challenges arising from legal transplantation and the adoption of shareholder primacy, the ISM presents a coherent and effective countermeasure. It advocates for a shift towards an integrative approach, wherein the interests of all stakeholders, including host communities, are given due consideration. This contrasts with the prevailing approach, which has shown significant inadequacies in protecting the rights and interests of non-shareholder stakeholders.

7.7 Strategies for implementing the ISM.

To strengthen the Integrative Stakeholder Model (ISM) for corporate governance in the Nigerian mining sector, several key strategies should be implemented in a coordinated manner. Firstly, it is essential to establish a robust legal framework that clearly defines the rights and responsibilities of all stakeholders, encompassing corporate governance, environmental protection, social responsibility, and community engagement provisions. This comprehensive framework will enhance enforceability and ensure companies are held accountable for their actions. Furthermore, an enhanced regulatory oversight mechanism must be put in place to effectively monitor and enforce compliance with the ISM.

¹⁴⁰ Stephen Letza James Kirkbride Xiuping Sun Clive Smallman, 'Corporate governance theorising: limits, critics and alternatives', (2008) 50 *International Journal of Law and Management*, 17.

¹⁴¹ Stephen Letza James Kirkbride Xiuping Sun Clive Smallman, 'Corporate governance theorising: limits, critics, and alternatives', (2008) 50 *International Journal of Law and Management* 17,25.

To effectively oversee compliance with the Integrative Stakeholder Model (ISM) in the mining industry, regulatory bodies must be fortified with adequate authority, resources, and capacity. They should conduct regular inspections, audits, and implement robust reporting mechanisms to ensure companies are upholding the principles and guidelines of the ISM.¹⁴² Additionally, a system of incentives and penalties should be integrated into the ISM framework to encourage responsible corporate behaviour. This could involve offering inducements such as tax benefits, preferential treatment, or access to additional resources to motivate companies towards adopting sustainable practices. Conversely, penalties for non-compliance, including fines, sanctions, or license revocations, can serve as deterrents and strengthen adherence to the ISM.

In instances where regulatory oversight is lacking, especially in terms of fairness and responsibility on the part of corporations, the government must shoulder the responsibility for rectifying the consequences, be it directly or indirectly.¹⁴³ This primarily applies to cases of environmental mismanagement and degradation impacting local communities. Such governmental shortcomings are at odds with the principles outlined in Articles 1, 10, 18, 21, and 26 of the United Nations Declaration of the Rights of Indigenous Peoples (2007).¹⁴⁴

Given these considerations, the government could restructure its provincial and district frameworks. This restructuring should encompass the establishment of functional committees representing both communities and mining companies in each mining locality. These committees should wield the authority to pass resolutions and take corrective action when issues arise. This approach should be made a mandatory component in all areas affected by

¹⁴² Roderick Eggert, 'Mining and Economic Sustainability: National Economies and Local Communities' Mining, Minerals and Sustainable Development Working Paper 19 (International Institute for Environment and Development, 2001).

¹⁴³ Roderick Eggert, 'Mining and Economic Sustainability: National Economies and Local Communities' Mining, Minerals and Sustainable Development Working Paper 19 (International Institute for Environment and Development, 2001).

¹⁴⁴ Gabriel Eweje, 'Multinational Oil Companies CSR Initiatives in Nigeria: The Scepticism of Stakeholders in Host Communities' (2007) 49 *Managerial Law* 218, 220.

mining activities. For the full integration of the Integrative Stakeholder Model in Nigeria's mining sector, the government must steadfastly adhere. Noncompliance could lead to consequences for the well-being and livelihoods of host communities. In such instances, the government should take resolute measures, potentially including license revocation and enforcing environmental rehabilitation. In addition to legal and regulatory mechanisms, ensuring meaningful stakeholder participation in corporate governance is crucial for sustainable and responsible decision-making. The specifics of stakeholder participation on boards require further elaboration to address crucial questions.

The board's composition should also reflect the importance and salience of different stakeholder groups. The specific number of stakeholders who sit on the board can vary depending on the context and dynamics of the mining sector. It is essential to strike a balance between adequate representation of stakeholders and maintaining the efficiency and effectiveness of board decision-making processes. The selection of board members from stakeholder communities should be based on their expertise, credibility, and ability to contribute to the governance process. To establish transparency and accountability, it is crucial to clearly define the criteria and processes for selecting stakeholders to serve on the board. This can involve open nominations, vetting processes, and possibly a voting mechanism to ensure fairness and legitimacy. The decision-making process should be documented and accessible to all stakeholders, promoting transparency and trust. In addition to active participation in board meetings, host community representatives should be involved in relevant sub-committees or working groups. This allows them to engage in specific areas of decision-making, such as environmental sustainability, community development initiatives, or health and safety policies.

7.8

Conclusion

This Chapter analysed the proposed integrative stakeholder model as a viable approach for protecting and promoting the host community. It examined the legal and theoretical bases for proposing the integrative stakeholder model through an analysis of legal instruments that protect the rights of host communities; international and regional instruments binding on Nigeria to establish a framework to safeguard the rights of host communities. Effective stakeholder engagement is crucial for the success of mining operations and the development of sustainable communities. The integrative stakeholder model provides a framework for mining companies to engage with host communities and other stakeholders collaboratively and inclusively. This thesis has focused on enforcing the inclusive rights of the host communities in the corporate governance of mining companies as a solution to the challenges within the host communities. The thesis argued that effective solutions to corporate irresponsibility should be sought at domestic corporate law since corporations typically responsible for these corporate abuses were created in the first instance through the instrumentality of corporate law at the domestic law level.

The proposal is made against recognising the constant societal changes and societal expectations from companies. Other policies were considered in this Chapter towards a re-evaluation of the ideological establishments of companies and possibly integrating corporate law rules and guidelines while considering the interests of the host communities and social welfare. The proposed regulatory framework and enforcement system aligns with international best practices. It achieves the subtle balance between statutory government principles to protect the legitimate rights of the host communities and the provision of a safe environment for them while still maximising a company's profits in the long run.

The proposal considers that the company has a network that requires contributions from other constituents to survive in the long run. Within the framework of the proposed corporate

governance changes, the impacts suffered by the host communities within Nigeria in the form of environmental degradation due to mining operations may be significantly reduced. If a company is found in contravention, the company should be made, amongst other consequences, to restore the host community stakeholders to the position that such stakeholders would have been if the company had acted responsibly. The company should also be made to forfeit its mining license.

Legal and institutional frameworks were proposed to incorporate ISM into Nigeria's mining sector. As earlier stated, incorporation of the ISM does not need to enact a new law but the amendment of the existing laws. Required modifications to relevant laws were identified, as legal and institutional frameworks will effectively provide the bases for implementing the ISM. Recognising host communities as stakeholders in Nigerian mining management is the foundation for incorporating the ISM.

However, implementing this model can be challenging, especially when enforcing it and addressing issues related to power dynamics and conflicting interests. One of the main challenges of enforcing the integrative stakeholder model is the lack of regulatory frameworks and the difficulty of holding companies accountable for their actions. Additionally, there may be resistance from certain stakeholders, particularly those who feel their interests are not being adequately represented. Despite these challenges, mining companies must continue working towards effective stakeholder engagement and implementing the integrative stakeholder model. By doing so, they can promote sustainable development and responsible mining practices while building solid relationships with host communities and other stakeholders.

CHAPTER EIGHT

CONCLUSIONS AND DIRECTIONS

8.1 Introduction

The primary aim of this thesis has been to address critical questions concerning the integration of mining host communities into the corporate governance framework, particularly as an informal institution representing stakeholders. Additionally, it sought to propose strategies for restructuring Nigeria's corporate governance system to effectively address institutional voids within the mining industry. These research questions were formulated with the recognition that the mining sector in Nigeria, like in many resource-rich nations, grapples with complexities surrounding stakeholder representation, regulatory oversight, and equitable distribution of benefits.¹⁴⁵

The inquiry into the integration of mining host communities into corporate governance stems from the fundamental ethical imperative to safeguard the rights and interests of all parties affected by mining operations. This perspective acknowledges that the conventional shareholder-centric approach often falls short in accounting for the unique circumstances and concerns of host communities. Also, the need for restructuring Nigeria's corporate governance system in the context of the mining industry arises from the recognition of institutional voids. The existing regulatory framework, while undoubtedly possessing merit, has shown limitations in fully addressing the intricate challenges posed by the mining sector. This includes issues related to enforcement, stakeholder representation, and environmental protection.

¹⁴⁵ Chuku Chuku VA and others, 'Nigeria's Petroleum Industry Act: Addressing Old Problems, Creating New Ones' (Brookings, 9 March 2022) << <https://www.brookings.edu/articles/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/> >> accessed 4 October 2023

Considering these imperatives, the concluding chapter, brings together the key findings and insights from the thesis on the need to enhance corporate governance in the Nigerian mining sector. This chapter is a culmination of the process outlined in chapter one, which examines the integration of host communities as stakeholders in Nigerian mining companies. The previous chapters identified critical issues associated with the corporate governance framework of the mining sector in Nigeria. The preceding chapters demonstrate that, in practice, host communities are denied the benefits of mining and subjected to the harsh effects of environmental degradation. To reduce this adverse situation, the thesis proposed the modification of policy aims and execution procedures in addition to supervising and assessment standards. The central position of the thesis is that corporations in the mining industry ought to be held accountable for their activities and to be more attentive to the needs of the host communities.

Throughout this study, the thesis has explored the complexities and challenges associated with stakeholder engagement, transparency, accountability, and efficiency in the mining industry. It examined how the ISM, as a proposed framework, addresses these issues and can promote responsible corporate behaviour. It critically evaluated various model dimensions, considering its transparency, accountability mechanisms, stakeholder representation, and alignment with international standards. By engaging with relevant literature, and case studies, we have sought to provide a thorough understanding of the ISM and its implications for the Nigerian mining sector.

Throughout the research, there has been an emphasis on the importance of stakeholder participation as integral components of effective corporate governance. The thesis has recognised the significance of host communities as key stakeholders impacted by mining operations and possessing valuable insights and perspectives. The thesis has explored

approaches to ensure their representation and influence in decision-making processes. Additionally, the thesis has examined the concept of stakeholder salience and its relevance to determining stakeholder communities, including host communities, as vital actors in corporate governance. By incorporating stakeholder salience principles, we have highlighted the potential to guide the selection and representation of host communities on corporate boards.

In the following sections, the thesis will consolidate the findings and draw conclusions on the feasibility of the ISM, its enforceability, and its ability to influence corporate behaviour positively.

8.2 Nigerians existing mining laws

The existing mining laws in Nigeria, while providing a framework for mineral extraction, face several challenges when it comes to safeguarding the rights and interests of host communities. These laws, though comprehensive in their provisions, often encounter difficulties in enforcement and fail to address critical nuances in community engagement.

Chapter two of this thesis provides a comprehensive understanding of the historical development of mining in Nigeria and its profound impact on both the environment and the health of host community residents. It offered a detailed overview of mining activities, shedding light on their environmental repercussions and effects on human well-being. Additionally, it delves into the organizational structure of Nigeria's mining industry, highlighting key stakeholders and their influence on host communities. The chapter scrutinizes the evolution of mineral and mining policies in Nigeria, spotlighting critical legislations like the Environmental Impact Assessment Act of 1992 and the Mineral and Mining Act of 2007. The role of community development agreements in safeguarding host community rights, as well as the formalization of the Extractive Industry Transparency Initiative in Nigeria, are also discussed. Furthermore, the chapter addresses the research question regarding the degree to

which host community rights are upheld and safeguarded within the regulatory framework of Nigerian mining.

The chapter found that despite the comprehensive provisions of the Mineral and Mining Act of 2007¹⁴⁶ in environmental and community protection, actual enforcement of these regulations remains notably deficient. Notably, there are clear gaps in the act, particularly regarding the acquisition of consent for mineral licenses, the power dynamics in negotiations between leaseholders and host communities and the protection of host communities. Another primary concern lies in the enforcement mechanisms of these laws. Despite robust provisions, there is a notable gap between policy formulation and actual implementation. This gap arises from various factors, including limited resources allocated to the solid minerals sector and a need for more stringent regulatory oversight. As a result, host communities may not receive the level of protection envisaged in the legal framework. Furthermore, the process of obtaining consent for mineral licenses, a pivotal aspect of protecting host communities from unwarranted land eviction, lacks clarity. The ambiguity surrounding this procedure can lead to uncertainties and potential misuse, leaving communities in a precarious position. Additionally, the requirement for leaseholders to establish community development agreements under specific sections of the 2007 Act¹⁴⁷ may inadvertently disadvantage local communities due to their relatively weaker bargaining position.

While the mining industry appears to have some legislative solutions to some of its problems, the challenge has been that the enforcement mechanism is either weak or neglected. It has also been shown that it extends beyond this, as there are issues with the legislation being faulty for reasons which include being based on improperly transplanted corporate law models. An

¹⁴⁶ Nigerian Minerals and Mining Act, 2007 Act, No 20.

¹⁴⁷ Nigerian Minerals and Mining Act, 2007 Act, No 20.

example is the NEITI Act¹⁴⁸, which provides for utilising funds from the exploitation of solid mineral resources to help develop mining towns and for the mining corporations to pay what is required by law.

An examination of existing mining sector laws shows that none of these regulations provides for the protection of the host communities. Instead, they leave loopholes for mining companies to exploit against host communities. The exclusive right to control, ownership and management of mineral resources, which the 1999 Constitution confers on the federal government, infracts host communities' rights.¹⁴⁹ The conferment of land ownership on the governor by the Land Use Act withdraws control and management of lands from the family and host community.¹⁵⁰ This has alienated host communities from their land and resources, leading to conflicts and violence.

Therefore, while Nigeria some commendable mining regulations, their effective implementation remains a pressing concern. The challenges faced by the current legal framework underscore the necessity for a more robust and comprehensive approach to protect the environment and the rights of host communities. Strengthening enforcement mechanisms and addressing key ambiguities in the legal framework are essential steps towards achieving this goal.

8.2.1 The Problems with Nigeria's Approach and the Shareholder Primacy

Nigeria's approach to corporate governance, particularly within the mining sector, faces significant challenges, prominently in its allegiance to the doctrine of shareholder primacy. This paradigm prioritizes shareholders' interests in decision-making, sometimes to the

¹⁴⁸ Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007.

¹⁴⁹ Section 43 of the Constitution of the Federal Republic of Nigeria 1999.

¹⁵⁰ Section 1(1) The Land Use Act 1979, Section 1 of the Mining Act (2007).

detriment of other stakeholders, notably host communities.¹⁵¹ One of the foremost issues arises from the limited consideration of the broader stakeholder interests.¹⁵² Although shareholders wield a pivotal role in corporate governance, an exclusive focus on their interests can inadvertently side-line the concerns of host communities and other affected parties. This potential oversight can result in imbalances in decision-making, potentially neglecting crucial aspects of environmental protection and community well-being.

This study finds that shareholder primacy and Enlightened Shareholder Value (ESV) considerations share striking similarities and largely reflect the Anglo-American corporate governance model.¹⁵³ It also underscores the pivotal role of corporate governance in guiding companies operating in Nigeria towards actions that prioritize the interests of their stakeholders. Despite the existence of corporate governance mechanisms in Nigeria, stakeholders remain susceptible to potential harm due to identified loopholes and weaknesses in the current system. The insufficiency of the existing corporate governance framework in adequately safeguarding stakeholders has been substantiated, pinpointing areas of inefficiency and gaps. The thesis emphasizes the need to enhance corporate governance practices in Nigeria, highlighting potential advantages such as heightened accountability, transparency, more robust stakeholder inclusivity, and the promotion of sustainable operations.

The challenges facing corporate governance in Nigeria are multifaceted and serve to undercut its overall effectiveness. Beyond mere legal frameworks, there are issues stemming from faulty legal transplantation, leading to inadequate protection for stakeholders. This underscores the necessity of adopting corporate governance models tailored to local conditions, with a deliberate focus on safeguarding the interests of host communities. Furthermore, limitations in

¹⁵¹ Peterson K Ozili, 'Corporate governance research in Nigeria: a review'. (2021) 17 SN Bus Econ 1,21.

¹⁵² Peterson K Ozili, 'Corporate governance research in Nigeria: a review'. (2021) 17 SN Bus Econ 1,22.

¹⁵³ Eric Pichet, 'Enlightened Shareholder Theory: Whose Interests Should Be Served by The supporters Of Corporate Governance?' (2011) 8 Corporate Ownership & Control 354,355.

regulatory enforcement, institutional capacity, transparency, and accountability further impede effective governance in the country. Addressing these challenges necessitates collaborative efforts from both governmental and industry stakeholders. Improving corporate governance practices will yield numerous benefits for all stakeholders, encompassing amplified accountability and transparency, more robust stakeholder engagement, and the cultivation of more sustainable operations. Consequently, the Nigerian mining sector must strive to incorporate best practices in corporate governance to bolster stakeholder protection and ensure the sector's long-term viability.

8.3 Alternative versions of Corporate Governance

The study identified different theories of corporate governance,¹⁵⁴ and highlighted how ineffective governance structures can ultimately result in company failure. These theories generally establish a connection between different attributes of the board and the overall performance of the company. The research has revealed several institutional voids contributing to Nigerian mining sector governance challenges. These voids include inadequate enforcement mechanisms, limited transparency and accountability, weak stakeholder engagement, and deficiencies in regulatory oversight. Another significant issue is the lack of coherence between the relevant primary legislation and applicable subsidiary instruments such as corporate governance codes. For instance, Principle 32.2 of the 2016 Private Sector National Code of Corporate Governance requires businesses to report annually on the scope and nature of their social, ethical, safety, health and environmental policies and practices. This requirement conflicts with CAMA¹⁵⁵ and ISA's¹⁵⁶ pertinent corporate reporting provisions. It is, thus,

¹⁵⁴ These theories include: agency theory, stewardship theory, resource dependency theory and stakeholder theory.

¹⁵⁵ Companies and Allied Matters Act (CAMA)2020.

¹⁵⁶ Investments And Securities Act (ISA) 2007.

asserted that such development is a formula for compliance with such requirements, often damaging successful company operations.

The study also underscores the implications of the faulty legal transplantation into Nigeria and the incoherence in primary and secondary legislations on effective corporate governance regulations, which also affect the enforcement of such regulations within the Nigerian mining industry. While shareholder primacy has long been the prevailing model, it's imperative to explore alternative approaches that prioritise the interests of a wider array of stakeholders. Germany and India, two economic powerhouses with distinct corporate governance paradigms, provide compelling case studies for such alternatives. The thesis explored the Indian and German models of corporate governance. The thesis examined the nuances of these alternative corporate governance frameworks, assessing their efficacy in safeguarding the rights and interests of all stakeholders, particularly the host communities. By juxtaposing these models, the thesis aimed to glean invaluable lessons, paving the way for more equitable, sustainable, and responsible economic practices in Nigeria.

Germany boasts a stakeholder-oriented model, emphasising collaboration between management, employees, and various stakeholders.¹⁵⁷ This approach, recognised for its success in fostering long-term sustainability and value creation, offers valuable insights for nations seeking to balance economic prosperity with social and environmental responsibility. The dual-tiered board structure and substantial employee representation exemplify how Germany incorporates diverse voices into corporate decision-making.¹⁵⁸ The German corporate governance system stands as a testament to a stakeholder-oriented approach, emphasizing collaboration between management, employees, and other stakeholders. This

¹⁵⁷ Jean du Plessis, 'The German Two-Tier Board and the German Corporate- Governance Code' 15 (2004) *European Business Law Review* 1139, 1141.

¹⁵⁸ Jean du Plessis, 'The German Two-Tier Board and the German Corporate- Governance Code' 15 (2004) *European Business Law Review* 1139, 1144.

model has proven successful in fostering long-term sustainability and value creation. It operates through a two-tiered board of directors - the executive board (which includes top-level executives) and the supervisory board (representing both shareholders and employees). This system, known as the 'insider model', contrasts sharply with the dispersed ownership seen in countries like the UK and the US. The thesis found that the model has a unique emphasis on concentrated ownership, either by holding corporations or families, ensuring a more focused approach. Additionally, employee representation on supervisory boards is a key feature, reinforcing a cooperative approach to decision-making. This stakeholder-centric model in Germany is underpinned by strong involvement of banks in corporate governance, ensuring a balanced approach to financing and control.

The thesis found that, India, on the other hand, combines elements of the Anglo-American and German models, acknowledging the critical role of stakeholders in corporate governance. The Companies Act of 2013 reflects this broader perspective by directing executives to safeguard the rights of employees, shareholders, host communities, and the environment.¹⁵⁹ This stands in contrast to the UK Companies Act¹⁶⁰, which merely suggests that directors consider stakeholders in decision-making.¹⁶¹ The Indian approach treats all interests equally, acknowledging the importance of various stakeholders in a pluralist society.¹⁶² This provision, coupled with a pluralist approach to stakeholder interests, sets India apart as an exemplar of

¹⁵⁹ Vivek Sadhale, Vikas Agarwal, Amit Atre 'Corporate Governance Situation in India as compared to other countries with specific reference to Corporate Governance in US' 2 (2008) *International In-house Counsel Journal* 675,676

¹⁶⁰ S.172, UK Companies Act 2006.

¹⁶¹ Vivek Sadhale, Vikas Agarwal, Amit Atre 'Corporate Governance Situation in India as compared to other countries with specific reference to Corporate Governance in US' 2 (2008) *International In-house Counsel Journal* 675,676.

¹⁶² Vivek Sadhale, Vikas Agarwal, Amit Atre 'Corporate Governance Situation in India as compared to other countries with specific reference to Corporate Governance in US' 2 (2008) *International In-house Counsel Journal* 675,678.

inclusive corporate governance. Over time, Indian company law evolved beyond mere shareholder protection to encompass the interests of non-shareholder constituencies.

The case studies on stakeholder-inclusive corporate governance in the Nigerian mining sector draw significant insights from Germany and India. Both countries emphasize stakeholder participation in decision-making, acknowledging the interests of employees, customers, suppliers, and communities alongside shareholders. This approach can be invaluable for Nigeria's mining sector, ensuring a balanced representation of stakeholder interests. Germany's co-determination system, with employee and union representatives on the supervisory board, exemplifies how worker voices are integrated at the highest decision-making levels. This practice could be adapted by Nigeria to ensure host communities have a say in mining companies' governance. Additionally, both Germany and India provide legal remedies for stakeholders in cases of rights violation, offering a means to seek redress. Nigeria could learn from this approach, ensuring stakeholders have access to legal avenues when their interests are overlooked or neglected by corporations.

These case studies spotlight the vital role of stakeholder participation, co-determination, and the protection of stakeholder rights in effective corporate governance. Nigeria has an opportunity to adopt comparable practices, creating a mining sector that is more inclusive and responsive to the diverse needs of stakeholders. In Nigeria's current corporate governance framework, which aligns closely with the UK/US model, shareholders' interests dominate, leaving limited provisions for stakeholder involvement. It is imperative to recognise that corporate governance encompasses a broader spectrum of stakeholders beyond just the board and shareholders at general meetings. The Anglo-American model starkly separates shareholders from other stakeholders, favouring the former. This separation may inadvertently

downplay the significance of non-shareholder constituencies within the company.¹⁶³ Nigeria's governance structure mirrors the unitary board model, where a single board encompasses both executives responsible for operations and non-executives tasked with supervision. To bridge this gap, the thesis proposes mechanisms enabling stakeholder representatives to serve in advisory roles on the non-executive board. This approach empowers them to directly voice their concerns to the company's directors, a more effective strategy than the existing paradigm.

8.4 Developing and ISM- A New Corporate Governance System for Mining Companies

The thesis examined the limitations of existing corporate governance systems within the mining industry and their implications for sustainable development. It also analysed mining companies' specific challenges, including environmental impact, social responsibility, and community engagement. Traditional corporate governance frameworks often struggle to address the mining sector's unique aspects adequately. In the mining industry context, corporate governance plays a pivotal role in ensuring responsible and sustainable practices. However, conventional corporate governance systems frequently fail to address mining companies' specific challenges. Given the complexity of mining operations, the potential for environmental and social impacts, and the involvement of various stakeholders, a tailored governance approach is necessary. Building on this analysis, the thesis proposed a new corporate governance system that can effectively address these challenges and promote responsible mining practices. The proposed new corporate governance system for mining companies encompasses several key elements, including stakeholder engagement mechanisms, board composition and expertise, transparency and disclosure requirements. Integrating these

¹⁶³ Jean du Plessis, 'The German Two-Tier Board and the German Corporate- Governance Code' 15 (2004) *European Business Law Review* 1139, 1144.

elements into the governance framework will promote responsible mining practices and mitigate potential negative impacts.

By adopting the Integrative Stakeholder Model (ISM), inclusivity can be achieved, thereby protecting the rights of host communities. Implementing this proposed regulatory framework and enforcement system would strike a balance between statutory government principles, protecting host communities' legitimate rights and expectations, and maximising long-term profitability for mining companies. It is suggested that implementing ISM does not require new legislation but rather the amendment of existing mining laws in Nigeria. Host community participation in the boards of mining companies would encompass representation in company meetings and stakeholder forums, exercising voice representation, voting rights, consultation rights, and membership in the board of directors.

Adopting a new corporate governance system tailored to the mining sector is vital for ensuring responsible and sustainable practices. By addressing the unique challenges faced by mining companies and incorporating key elements such as environmental standards, stakeholder engagement, transparency, and regulatory oversight, this new system has the potential to transform the mining industry. Embracing this approach will not only mitigate risks and enhance performance but also foster trust, improve community relations, and contribute to the long-term sustainability of the mining sector.

8.4.1 Reframing Corporate Governance for Host Community Rights

The thesis examined corporate governance within the context of host community rights in the mining sector. The study finds that corporate governance regulations and enforcement in the Nigerian mining sector have been grossly undermined by faulty legal transplantation and inconsistent provisions within the existing primary and subsidiary legislations. Existing corporate governance systems often overlook the unique dynamics and challenges faced by

host communities in mining regions. These communities bear the brunt of environmental impacts, socio-economic disruptions, and cultural changes resulting from mining operations. Mining companies operating in Nigeria engage in activities that are detrimental to the health of the host communities. However, due to inadequate regulatory mechanisms resulting from institutional voids, they are not held accountable for their actions. The thesis found that it is essential to reframe corporate governance to ensure that the rights, interests, and well-being of host communities are central to the decision-making processes of mining companies.

The thesis proposes that the inclusion of host communities will give them a sense of recognition and allow the government and mining companies to address the negative perceptions of host communities about mining exploration in their communities.¹⁶⁴ Effective stakeholder inclusion enhances trust between the parties as all the stakeholders decide.¹⁶⁵ The stakeholders will be able to voice their concerns and explain their decisions. Also, stakeholders' input enables a robust process. Host communities could grant advice on the community norms and values, while the mining companies can inform the host communities of the details of their operations. The proposed method of inclusivity will reduce conflicts and violence in host communities, thereby advancing communal growth and development of host communities.

The proposed reframing of corporate governance for host community rights involves several key elements. Firstly, it requires the recognition of host communities as legitimate stakeholders with rights that must be respected and protected. This entails establishing mechanisms to enable their active participation in decision-making processes and ensuring their voices are heard and considered. The proposed model of corporate governance exhibits a unique and more precise

¹⁶⁴ Emeka Duruigbo, 'Managing Oil Revenues for Socio-Economic Development in Nigeria: The Case for Community-Based Trust Funds' (2005) 30 North Carolina Journal of International Law & Commercial Regulation 121.

¹⁶⁵ Emeka Duruigbo, 'Managing Oil Revenues for Socio-Economic Development in Nigeria: The Case for Community-Based Trust Funds' (2005) 30 North Carolina Journal of International Law & Commercial Regulation 121,122.

means of examining stakeholder relationships, effectively allowing a better understanding of stakeholder and shareholder relationships. Identifying stakeholders' core interests and expectations is important, as identification is often founded on whether the stakeholder is acting from within or outside the company.¹⁶⁶ To this end, host communities where mining operations occur should be considered stakeholders since they are directly affected by the mining companies' activities. Environmental or social hazards through pollution or massive layoffs and standard violations affect them as stakeholders and legitimise their claims because they are directly affected by the mining companies' activities.

Reframing corporate governance for host community rights is crucial for ensuring a more equitable and sustainable mining industry. Mining companies can foster trust, collaboration, and mutually beneficial relationships by recognising host communities as legitimate stakeholders and incorporating their rights into the corporate governance framework. This reframing process requires a multi-dimensional approach that involves legal reforms, stakeholder engagement, transparency, and robust monitoring and enforcement mechanisms. Ultimately, it aims to create a mining industry that respects and upholds the rights and well-being of host communities while promoting responsible and sustainable practices.

8.4.2 Protecting Host Communities Through Integrative Stakeholder Model in the Mining Sector

The main objective of this thesis was to develop an approach to corporate governance that would enhance stakeholder relations between Nigerian mining companies and their host communities. It proposed the integration of host community rights as those of stakeholders

¹⁶⁶ Laszlo Zsolnai, *Spirituality and Ethics in Management* (1st edn. Springer Science, 2005).

within the corporate governance of mining companies. The model is proposed as a viable approach for advancing the participation of the host communities. The thesis examined the legal and theoretical bases for proposing the ISM by analysing legal instruments that safeguard the participatory rights of the host communities in Nigeria. Thus, the proposal for an integrative framework was based on the advancement and protection of the rights of host communities through the integration of host communities as stakeholders of mining companies in Nigeria.

The thesis identified and highlighted amendments necessary to the mining sector's current corporate governance legislation. These includes the need for host communities to be acknowledged as stakeholders in the mining companies' management. The years of failure to recognise the rights of host communities within Nigeria have been identified as a basis for the prevailing violence and challenges plaguing the mining sector's growth.¹⁶⁷ This argument was backed by enumerating the importance of effective host community inclusion in Nigerian mining companies' management in Chapter 7. It is argued that effective management will encourage trust between stakeholders, reduce conflict, advance environmental sustainability, promote community growth, promote effective accountability of stakeholders and, above all, advance sustainability, and inclusivity.

The thesis also noted that, despite the defects found in other current models discussed, the proposed ISM framework rides on some of the elements of the existing theories, specifically the stakeholder model. It is, thus, argued that to protect host community (stakeholder) rights, host communities should be effectively embedded within the Nigerian mining companies by amendment of existing laws to accommodate the alternative regulatory principles of ISM.

¹⁶⁷ Oluwabunmi Temitope Akinleye, 'Realization of Rights of Host Community Under Nigerian Mineral And Mining Act 2007 To Foster Sustainable Community Development' (2023) 14 NAUJILJ 1,3.

This is an improvement on the existing models, as it fills the gap for the need to investigate critical approaches to stakeholder theory from a non-corporate perspective by bringing a community stakeholder perspective to the fore in comprehending the limitations of Western-centric corporate governance and stakeholder dialogue techniques. The thesis questions the applicability of Western-developed corporate governance theories in developing countries with different operating conditions. The orientation of Western-centric corporate governance methods does not align with Nigeria's needs and culture. They also do not apply to business case logic, particularly in countries where governments are unable or unwilling to impose requirements on companies to effectively compensate and support infrastructure development in impacted host communities, as well as in countries where populations are poor and have unequal power in their interactions with both government and business.

The thesis has clarified the stakeholder theory's criticisms and demonstrated the inadequacy of current ways to tackle the primary impediments to peaceful cohabitation in a developing country. The stakeholder theory is voluntary, and no sanctions exist for non-inclusivity, they are not the primary concern of the company directors. The stakeholder theory also sees the host community as a secondary stakeholder that should not be involved in mine planning decisions. On the contrary, the host communities are the primary stakeholders within the mining sector and are, therefore, indispensable as established in this thesis.

The proposed model advocates for reorientating the stakeholder theory from a firm-centric perspective to a community-centric one, especially in the mining industry. While critical stakeholder theories focus on external stakeholders, they do not directly address affected communities.¹⁶⁸ The proposal placed the community at the centre of this reorientation, represented their perspectives and underlined the necessity to incorporate them into a non-firm-

¹⁶⁸ Jörg Andriof and Sandra Waddock, 'Unfolding Stakeholder Engagement' (2017) *Unfolding Stakeholder Thinking* 19.

centric theory. While critical stakeholder theories have focused on external stakeholders (entities outside the company), they have not necessarily placed explicit emphasis on the communities directly affected by the company's operations. This proposed model seeks to rectify that by placing the community at the forefront. It aims to represent their viewpoints and stresses the importance of including them in a theory that doesn't revolve solely around the interests of the company itself ('non-firm-centric theory'). In essence, it's about recognising and prioritising the interests and well-being of the communities impacted by the mining operations, rather than primarily prioritizing the company's interests.

The implementation of the Integrative Stakeholder Model (ISM) offers a promising approach to protecting host communities in the mining sector. By promoting their active participation, ensuring transparency and accountability, and fostering collaboration, the ISM seeks to address the challenges faced by host communities and promote their rights and well-being. Mining companies, government agencies, and other stakeholders must embrace the ISM and work together to create a mining industry that respects and safeguards the interests of host communities while promoting sustainable development.

8.5 Viability of Integrative Stakeholder Model in Nigeria

The viability of the Integrative Stakeholder Model (ISM) in Nigeria has been explored in this thesis. By examining the unique challenges and dynamics within the Nigerian context, the thesis has assessed the potential effectiveness and feasibility of implementing the ISM as a governance framework. The thesis has analysed Nigerian laws and judicial decisions to identify the gaps and limitations in the current governance framework. It has underscored the need for practical and viable solutions to address the rights and interests of host communities and emphasised the importance of balancing statutory principles with the long-term profitability of

mining companies. Furthermore, the thesis has highlighted the potential of the ISM to bridge the existing gaps in the corporate governance system and promote responsible and sustainable practices in the mining sector. By empowering host communities, facilitating their representation on boards, and ensuring their active participation in decision-making processes, the ISM can contribute to more equitable outcomes and foster positive social and environmental impacts.

The thesis advises that the Nigerian legislature and executive should effectively consider the proposed approach to protecting host communities' rights. However, there is a need for a statutory enforcement mechanism which makes stakeholder decisions binding and recognised; precisely, a legally binding policy that covers the duties of stakeholders, punitive sanctions for defaulters and access to legal remedies against those who contravene the laws through judicial recourse. Faulty legal transplantation of mining laws should be corrected by making necessary amendments that factor in local peculiarities. The host communities should also lobby the government to make appropriate changes to the law to protect their livelihood, community, and land.

The thesis has thoroughly examined the viability of the Integrative Stakeholder Model (ISM) in Nigeria and its potential to address the deficiencies of the current corporate governance framework, ultimately fostering sustainable development in the mining sector. Despite the existence of challenges and considerations, the ISM presents a valuable opportunity to enhance stakeholder engagement, safeguard host community rights, and promote responsible mining practices in the country.

A combination of an integrative model and robust legal enforcement mechanisms has been proposed to ensure the effective implementation of the ISM in the governance of Nigeria's mining industry. This approach seeks to balance contractual obligations and legal compliance, providing binding agreements among stakeholders and a legal foundation for adherence to the integrative stakeholder model. The contract model offers a quasi-regulatory mechanism, enabling decision-making through contractual obligations. Simultaneously, the legal compliance mechanism establishes a legal basis for adherence, encompassing penalties for non-compliance and access to remedies for any harm caused by the actions of involved parties. These proposed mechanisms align with the principles of collaborative development and acknowledge the human rights responsibilities of governments and mining companies. Moreover, the positive impacts of the ISM on all stakeholders must be emphasised throughout the implementation process.

By embracing and reinforcing the integrative stakeholder model with appropriate legal frameworks, Nigeria can foster a more inclusive and sustainable mining industry. This approach enhances stakeholder participation and host community empowerment and facilitates effective governance and accountability in the sector. Regulatory bodies, mining companies, and host communities must work together to implement and uphold the ISM, thereby realising its potential for positive change and long-term development.

In summary, the thesis's findings support the adoption of the Integrated Stakeholder Model as a transformative corporate governance approach in Nigeria's mining sector. Through a combination of contractual agreements and legal enforcement mechanisms, the ISM can drive responsible mining practices, protect host community rights, and ensure the sustainable development of the mining industry. The implementation process must prioritise collaboration,

human rights considerations, and the overall well-being of all stakeholders involved. By doing so, Nigeria can pave the way for a more equitable, accountable, and socially responsible mining sector that contributes to the country's sustainable development goals.

8.6 Broader Significance

The fundamental purpose of mining lies in fostering development. Countries leverage their resources to propel development and well-being among their populace, with the revenue generated from mineral investments primarily intended to enhance the quality of life for citizens.¹⁶⁹ Additionally, effective resource management entails devising strategies to ensure continued prosperity for generations yet to come. This overarching goal forms the basis for most policies governing mining.¹⁷⁰ Consequently, the establishment of an ISM framework within the mining sector is intended to have a tangible impact on developmental outcomes.

The significance of the research conducted in this thesis extends beyond its immediate focus on the corporate governance framework and host community rights in the Nigerian mining sector. It has broader implications and offers valuable insights for policymakers, regulators, mining companies, and other stakeholders involved in natural resource governance and sustainable development. Firstly, exploring institutional voids and shortcomings in the existing corporate governance framework highlights the need for tailored governance approaches in resource-rich countries. The thesis emphasises the importance of addressing these issues through effective governance mechanisms by identifying the challenges the mining industry faces, such as environmental impact, social responsibility, and community engagement. This

¹⁶⁹ Darryl Reed, 'Resource Extraction Industries in Developing Countries' (2002) 39 *Journal of Business Ethics* 199,200.

¹⁷⁰ Darryl Reed, 'Resource Extraction Industries in Developing Countries' (2002) 39 *Journal of Business Ethics* 199,200.

recognition can serve as a starting point for reform efforts in other countries grappling with similar challenges in their mining sectors.

Secondly, the proposed Integrative Stakeholder Model (ISM) presents a holistic and inclusive approach to corporate governance beyond shareholder-centric perspectives. By incorporating the interests and voices of various stakeholders, including host communities, the ISM promotes a more equitable distribution of benefits, fosters sustainable practices, and enhances social license to operate. The model's applicability extends beyond the mining sector, as it can inspire discussions and innovations in corporate governance practices across different industries and sectors.

Successful stakeholder engagement builds confidence between parties by ensuring that decisions are made with the input of all the stakeholders. During the dialogue, parties can explain the reasons for their actions, giving other stakeholders a better knowledge of their positions and decreasing uninformed thoughts. ISM will allow mining firms to explain some of their activities and dispel misconceptions about mineral extraction among local populations. This will improve the parties' amicable relationship and offer the host communities a sense of ownership.

ISM also encourages long-term (sustainable) development that meets current demands without affecting the ability of future generations to satisfy their needs.¹⁷¹ It instigates community participation which tends to increase resource sustainability and infrastructure quality. ISM has sustainability foresight of how current acts corporations are likely to impact future generations,¹⁷² hence, the need to take measures to nip it in the board. Sustainable development

¹⁷¹ World Commission on Environment and Development, *Our Common Future* (Oxford University Press, 1990) 43; Section 2 Canada Federal Sustainable Development Act, S.C. 2008, c.33.

¹⁷² Christopher Clague, *Institutions and Economic Development: Growth and Governance in Less-Developed and Post Socialist Countries* (John Hopkins University Press, 1997); Environment Canada, 'Sustainable Development' (2014) <<http://www.ec.gc.ca/dd-sd/>> accessed 17 October 2021.

is concerned about improving living by safeguarding human health, conserving the environment, efficiently employing resources, and enhancing long-term economic competitiveness. It necessitates the integration of environmental, economic, and social concerns into policies, programmes and actions from citizens, businesses, and governments at all levels.

The importance of participatory development will lead to sustainable development.¹⁷³ The ability of the host and impacted communities to participate in mining management will result in their active and productive opposition to oil firms' environmentally degrading actions. Through inclusion, host communities can express their unhappiness with spills and gas flaring by mining firms and persuade the government to act against defaulting oil companies. This will encourage the government to take a more active role in supervising and sanctioning mining corporations for spills and gas flaring, encouraging environmental sustainability in mining communities. The main aim is to stop the trend of poverty and reduce the life expectancy of the residents of the mining communities, giving future generations better lives and opportunities to grow.

Furthermore, the thesis underscores the critical role of transparency, accountability, and regulatory oversight in corporate governance. The analysis of existing legal frameworks and the proposal for stronger enforcement mechanisms highlight the necessity of robust regulations and effective monitoring to ensure compliance and promote responsible behaviour. These insights contribute to the broader discourse on corporate governance and regulatory frameworks, serving as a reference point for policymakers seeking to strengthen governance systems in the natural resource sector.

¹⁷³ Beatrice Hedelin, Mariele Evers, Johanna Alkan-Olsson and Anna Jonsson, 'Participatory modelling for sustainable development: Key issues derived from five cases of natural resource and disaster risk management' (2017) 76 *Environmental Science and Policy* 185, 186.

In conclusion, the research conducted in this thesis holds wider significance beyond the specific context of the Nigerian mining sector. It contributes to advancing knowledge and understanding of corporate governance, stakeholder engagement, and sustainable development in resource-rich countries. The findings and recommendations presented in this thesis offer valuable insights for policymakers, regulators, and industry practitioners seeking to enhance governance practices, protect community rights, and achieve sustainable outcomes in the mining and natural resource sectors worldwide.

8.7 Final Remarks: Integrative Stakeholder Model and the Future of Corporate Governance

This thesis' central argument is that the Nigerian mining industry's current corporate governance system is ineffective. Based on this premise, the study proposes adopting a stakeholder-inclusive corporate governance model that integrates host communities into the governance structure of Nigerian mining companies. The shareholder-primacy model that currently operates in Nigeria has significant shortcomings, making the stakeholder model a more sustainable and suitable alternative. The proposed stakeholder-friendly corporate governance framework recognises host communities as informal regulatory institutions within the mining sector.

The thesis highlights the existence of institutional voids and regulatory loopholes in the Nigerian mining sector, demonstrating the adverse impacts experienced by host communities due to mining activities, such as mine tailings, gas flaring, water pollution, sinkholes, and health issues. Host communities are victims of mining explorations' harm in the form of mine tailings, gas flaring, water pollution, sinkholes and health impact. This is notwithstanding the efforts of the government to minimise these effects.

As a result of the foregoing, the thesis proposed ISM. By this, mining companies are enjoined to integrate host communities as stakeholders into their corporate management structure. Under the proposed system, a company must meet with the host community representatives before the commencement of mining exploration activities within a community. They will be included in the management affairs of the mining company in the community. The community members will choose the representatives through free and fair means. The host communities are the main actors within the mining area. Thus, they should be involved in the decision-making process and operations of mining companies within their locality.

In Nigeria, it is crucial to improve resource management rights through a fair and transparent system of governance. This includes regulating mining industries by the government, enforcing laws and overseeing firm operations to enable the mining sector to contribute to growth and development. All stakeholders, particularly host communities, should have their expectations negotiated fairly and transparently through participatory procedures, leading to mutually agreed-upon outcomes.¹⁷⁴

The thesis puts forth the Integrative Stakeholder Model (ISM) in response to these challenges. Under this model, mining companies are required to incorporate host communities as stakeholders in their corporate management structures. Before commencing mining exploration activities within a community, companies must interface with representatives from the host community. The selection of these representatives should be conducted through fair and transparent means, ensuring their genuine inclusion in the mining company's decision-making processes and operations.

¹⁷⁴ Mercy O Erhun, 'The Contribution of the Minerals and Mining Industry to Poverty Alleviation and Sustainable Development in Nigeria – A Legal Perspective' (2015) 5 *Journal of Energy Technologies and Policy* 96, 97.

Overall, the thesis highlights the need for a fundamental shift in the corporate governance framework of the Nigerian mining industry. A more equitable, sustainable, and mutually beneficial mining sector can be achieved by embracing the principles of the Stakeholder Model and integrating host communities into decision-making processes.

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