Human Rights and Sustainable Development Challenges and Opportunities in the Mineral, Oil, and Gas Sector in West Africa

African Center for Economic Transformation (ACET) Policy Brief

The absence of an effective human rights framework has been a significant contributing factor to the low levels of sustainable development in several natural resource-rich states. Like weak governance and corruption, a poor human rights record undermines the relationships between governments and their citizens, particularly in contexts where government revenues are generated primarily through resource rents.

A poor human rights record also affects the ability of governments to develop effective private sector partnerships with multinationals or raise project finance through institutions like the World Bank. Many multinationals are wary of entering into partnerships that could expose them to legal and reputational risk or that may, by association, impact their ability to do business in other jurisdictions. As importantly, multinationals will price risk higher in countries with poor human rights records, thus making investment hurdles based on acceptable levels of risk-adjusted returns more difficult to achieve. The net result is likely to be lower levels of inward investment, an/or the development of partnerships with external operators operating according to lower standards.

While this fact is recognised by ECOWAS governments, there remains a clear gap between stated policy and practice. This gap will need to be narrowed if the extractive sector is to be empowered to contribute effectively to sustainable development in ECOWAS. This can be achieved through:

- Backing collective policy commitments, such as that in the ECOWAS Mining Directives, with effective regionally-based human rights enforcement, audit, and review mechanisms
- Clarifying the respective responsibilities of business and government vis-à-vis human rights in the extractive sector
- Developing guidance materials, training, and institutional capacity to this end

A further important human rights challenge relates to the large artisanal and small-scale mining (ASM) sector in West African states. Specifically, concerted steps are needed to eradicate child labor, protect vulnerable groups including women and ethnic/indigenous minorities, and capture the enormous development potential of this sector more effectively.

Defining Human Rights

Human rights are considered the inalienable and absolute rights inherent to all people, regardless of nationality, place of residence, sex, ethnic origin, color, religion, language, or any other status. These rights are interrelated, interdependent, and indivisible. Universal human rights are expressed and guaranteed by law, in the form of treaties, international law, general principles, and other sources of international statute. International human rights law in this area is intended to prescribe a set of irreducible obligations for Governments to ensure their citizens' fundamental freedoms are upheld.

Human Rights, Business, and Sustainable Development

The modern human rights paradigm has however evolved beyond prescribing the fundamental parameters of engagement between governments and individuals as set out in the International Bill of Human Rights and its constituent instruments. It now addresses labor conditions, freedom of movement, children's rights, environmental issues, and community rights—all of which are immediately pertinent to the extractives sector.

With the broadening of the human rights framework, a more sophisticated understanding of the synergies between human rights and sustainable development has also emerged. This is particularly important in resource-dependent economies where human rights concerns undermine the extractive sector’s contribution to sustainable development, pose risks to operations, and can potentially limit access to key markets. As critically, a poor human rights record now limits access to project finance. The World Bank and the IMF now have clear human rights-related criteria that must be met to secure project finance. Similarly, most large-scale private financial institutions are now aligned with the Equator Principles' which also delimit a set of clear human rights obligations as a prerequisite for project finance.

Until recently, there has been uncertainty regarding the respective responsibilities of different institutions involved in the extractives sector with respect to human rights. To clarify these responsibilities, the UN Human Rights Council endorsed the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" proposed by UN Special Representative, John Ruggie in June 2011.

The Equator Principles are currently on their third iteration and impose strict due diligence requirements on their participants. As with other normative benchmarks on human rights and business, they are aligned with the Ruggie Principles discussed in this paper.
Human Rights Challenges in the ECOWAS States

The human rights challenges in ECOWAS states are significant due to the impact of security, crime, and conflict. These issues are managed through the UN's 'Protect, Respect, and Remedy' framework, which aims to protect human rights by requiring states to address rights issues endemic to the ASM sector, while ensuring businesses undertake all necessary due diligence to avoid infringing on human rights norms. The UNGP guidance provides a blueprint for companies to fulfill their human rights responsibilities.

Environmental Rights

Environmental issues are increasingly articulated in terms of their human rights dimensions. While not explicitly referenced in core human rights instruments, environmental rights are now widely considered derivative of the right to health and the right to a livelihood. Similarly, they are considered to be constitutive of economic rights, where economic activity is derived from a healthy natural environment.

Children's Rights

While less of an issue for large-scale extraction operations, child labor remains a significant and ongoing problem in the ECOWAS artisanal and informal mining (ASM) sector (see case study). While clearly part of a broader sociological challenge, the use of child labor in the region is particularly problematic given the levels of chemical hazard, the sacrifice to their education, and how these undermine the human capital growth of those affected. It also distorts the economics of artisanal mining, generating unrealistic returns as a result of the cheapness of labor involved.

Community Rights

Community rights issues are exceptionally complex, especially in instances where national interest and community desires are not aligned. While the resolution of community rights issues can be slow and complex, the most effective mitigation option, from a risk management perspective, is to ensure that any mining affected communities are net beneficiaries from that operation on their own terms. Community rights instruments deal with questions of consultation and Free Prior and Informed Consent (FPIC), resettlement and compensation and indigenous peoples' rights.

The ECOWAS mining directives are very progressive in terms of stated commitments to community rights (Article 16). They not only reaffirm community rights to local development but also the rights of communities to “own, occupy, develop, control, protect and use their lands and natural resources” (Article 16.2) but also make a clear commitment to consultation as well as an almost uniquely clear assertion of adherence to the principle of Free Prior and Informed Consent (Article 16.3)

Labor Rights

Despite its considerable GDP contribution, the formal extractive sector is highly capital intensive and is hence a relatively small-scale employer in ECOWAS. It does however create considerable indirect employment in industries associated with the sector's procurement and service needs. Labor practices in the formal sector are generally mature and aligned with international standards in most areas, although rights to strike are curtailed in Nigeria's oil sector given its strategic importance. Workers' interests are similarly represented.
by well-established unions that have ensured scope for collective bargaining. A far greater challenge is in the artisanal and small scale mining sector which is a significantly larger employer than the formal sector and by its nature lacks the mechanisms to meet basic labor rights standards in terms of both employment conditions and health and safety standards.

A Framework for Human Rights Intervention: The UN Guiding Principles (UNGP)
The UN Human Rights Council adopted the Guiding Principles for Business and Human Rights in 2011 (UNGP). This clarifies the respective responsibilities of states and businesses with respect to human rights in terms of the “Respect, Protect Remedy” framework.

The UNGP asserts that it is the state’s duty to protect its citizens against human rights abuses by third parties, including businesses. This is achieved through developing appropriate legal structures and an adequate investigation and enforcement capacity.

The UNGP also asserts that it is the responsibility of corporate entities to respect human rights demands that businesses undertake all necessary due diligence to avoid infringing on human rights norms. The UNGP guidance provides a blueprint for companies to both “know and show” that they are meeting this responsibility.

Finally, the UNGP makes it clear that while the state is responsible for providing access to remedy through judicial, administrative, and legislative means, it is the responsibility of private sector actors to prevent and remediate any infringement of rights that they are party to.

Human Rights Challenges in the ECOWAS ASM Sector
A large artisanal and small-scale mining (ASM) sector in West Africa generates livelihoods for an estimated 2 million people. In contrast to formal sector operations, ASM operations are far more problematic from a rights perspective due to the lack of institutional controls on environmental impacts, safety standards, working conditions, child labor, and security. A number of recent reports have highlighted the hazardous safety conditions in particular vis-à-vis lead and mercury poisoning and child labor across West Africa and in Nigeria and Mali in particular. Significantly however, processes required for addressing rights issues endemic to the ASM sector require a different approach to those in the formal sector. Where formal sector operations can be managed through the UN’s ‘Protect, Respect, Remedy’ framework, artisanal mining requires a ground-up formalization process of which the human rights elements form an important constituent part.

Conclusions and Policy Options
Along with revenue transparency and eliminating corruption, the development of an effective human rights framework is vital to enable resource-driven development in the ECOWAS.

Towards a Common Framework for Human Rights and Sustainable Development
ECOWAS Governments clearly recognize that the protection of human rights is an essential element of sustainable natural resource-led development. However, there is still a considerable gap between stated policy and practice. With multinationals having embraced the Ruggie Principles, there is now a clear need for governments to flesh out their commitments in terms of implementable policy as per their obligations under the ECOWAS Mining Directive. While the responsibility for action falls on individual states, the ECOWAS Mining Commission should facilitate the process by:

- Clarifying Human Rights Due Diligence and Impact Assessment requirements and include them as mandatory components of standard licenses to operate for extractive operations
- Engaging internal stakeholder groups – including security services—to identify and clarify their respective responsibilities in terms of their roles in meeting the states’ obligation to protect human rights
- Developing appropriate training and guidance resources to this end

Enforcement, Redress, and Remedy
Human Rights Policy in ECOWAS with respect to mining is aligned to global standards albeit that considerable work needs to take place to flesh out the details of a framework for effective implementation. Steps need to be taken to elaborate an enforcement mechanism for human rights issues relating to extractives, both at the regional and national levels. The Protect, Respect, Redress framework outlined in the UN Guiding Principles provides clear guidance in this regard.

Addressing Community Rights Risks
The ECOWAS Mining Directives already enshrine a number of far-reaching commitments relating to community rights. If properly implemented these will dramatically reduce operational risk across the region. However, some of these commitments, like that
relating to FPIC are far from straightforward and will require the development of detailed guidance to facilitate their effective implementation in a manner that is both reasonable and realistic.

**Engaging with Human Rights Issues in the ASM Sector**

There are clear economic and humanitarian grounds to invest significantly in the sector’s formalization. Given that the problem is ECOWAS-wide it would benefit from being undertaken on a collaborative basis in line with the commitments made in the ECOWAS Mining Directives (Section 11.6). The formalization of this sector offers a tremendous opportunity in terms of both redressing ongoing rights violations, generating revenues for the state, and assisting local sustainable development. The costs of doing so would be minimal relative to the potential value this process could generate. The nature of the ASM sector is such that it would benefit from a region-wide approach led by the ECOWAS Commission.

**Environmental Rights**

Environmental rights are increasingly articulated as human rights. Similarly environmental issues are now often flashpoints for conflict between extractive operations and local communities. To mitigate this, human rights elements of environmental risks need to be integrated into formal requirements for Environmental Impact Assessments and associated environmental management plans. Likewise, governments need to audit their oversight processes on environmental issues to ensure that they meet their obligation to protect human rights vis-à-vis the environment.