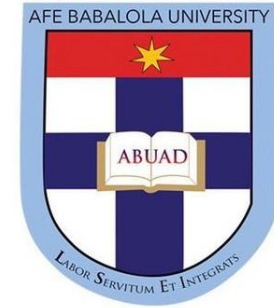




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A CRITICAL APPRAISAL OF THE LEGAL AND POLICY FRAMEWORK FOR SUSTAINABLE MINING IN ETHIOPIA

Yared Hailemariam*

ABSTRACT

The integration of the concept of sustainable mining into major legal frameworks presents a complex challenge of balancing short-term economic gains with the long-term objectives of economic and social development as well as environmental well-being. This article provides a comprehensive analysis of how the Ethiopian legal framework incorporates the principles of sustainable mining. Employing a qualitative research methodology, this study examines the adequacy of the legal framework in addressing sustainability issues arising from mineral resource extraction. Through document analysis, the article investigates the legal challenges associated with achieving sustainable mining practices. It scrutinizes constitutional provisions, mining laws, and policies governing mineral resources in Ethiopia. The findings indicate that the Ethiopian government has made notable efforts to develop a competitive legal framework that ensures that mining activities are conducted in an economically efficient, environmentally conscious, and socially responsible manner. However, this research uncovers significant gaps and inconsistencies within the existing legal framework, which results in uncertainty and confusion among various stakeholders. These problems impede the effective and sustainable management of mineral resources and ultimately undermine their potential contribution to Ethiopia's economic growth and social development.

Considering these findings, this article proposes several recommendations to address the identified legal and practical challenges associated with regulating mineral resources.

Keywords: Sustainable development, Mining, Sustainable mining, Ethiopia, legal framework, policy.

1. INTRODUCTION

Extraction of mineral resources creates substantial economic opportunities.¹ It also poses threats to the environment and society, which need appropriate governance and regulation. International best practices stress the need for the incorporation of sustainability into every facet of mining governance to prevent these issues. Sustainable mining aims to strike a balance between social and economic justice, environmental conservation, and economic gain.² Mining is a significant contributor to the Ethiopian economy. It also has social and environmental effects. Sustainable mining practices are being explored to promote the economic advantages of the mining

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¹ Segura-Salazar, J and Tavares, LM, 'Sustainability in the Minerals Industry: Seeking a Consensus on Its Meaning' (2018) 10(5) Sustainability 1429 <https://doi.org/10.3390/su10051429> accessed January 2022

² Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (2020) 9(12) Journal of Sustainable Mining 147 <https://doi.org/10.1016/j.jsm.2020.01.001> accessed March, 2022; United Nations Development Programme and United Nations Environment, Managing mining for sustainable development: A sourcebook (UNDP Bangkok Regional Hub and Poverty-Environment Initiative Asia-Pacific of UNDP and UN Environment, April 2018) < <https://www.undp.org/publications/managing-mining-sustainable-development> > accessed January 2022.

industry, while reducing environmental degradation and social issues. With the Constitution outlining the guidelines for environmental preservation and community participation, Ethiopia has taken measures to create a legal framework for sustainable mining. Mining legislation and regulations provide a more detailed legal framework that links social, environmental, and economic objectives. The main goal of this study is to evaluate the degree to which Ethiopia has incorporated sustainability into its mining laws. Considering the government's stated goals, this article looks at major constitutional clauses and statutes, pointing out any potential gaps in the law. The article uses a structured approach to do this. A definition of sustainable mining is provided in the introductory section along with background information. The next section goes into detail on the explore idea of sustainable development in Ethiopia. Mining legislation and regulations were then assessed according to global norms for social, environmental, and economic sustainability. Finally, recommendations are suggested for the required changes that must be made to improve Ethiopia's governance and guarantee that the mining industry brings about long-term advantages. Starting with a theoretical foundation and moving on to constitutional principles and mining-specific regulations, this transition guarantees a logical flow for a thorough assessment of Ethiopia's framework. Additionally, it makes it easier to pinpoint opportunities to improve the sustainability of the mining industry. Following this organized format, this study seeks to offer a thorough evaluation of Ethiopia's mining governance and propose actions to enhance sustainability.

2. THE NOTION OF SUSTAINABLE MINING

Mining is one of the oldest human activities, historically focused on meeting economic needs with little regard to the environment or local communities.³ The perspective about the mining sector began shifting with the introduction of the idea of sustainable development. The evolution of the notion of sustainable development has paved the way for the emergence of a global move toward sustainable mining. The 1992 United Nations Conference on Environment and Development (UNCED) catalyzed the global movement for sustainable mining.⁴ The Rio Conference was followed by several international initiatives by mining companies, government, civil society, international agencies, and research institutions that aim to operationalize the idea of sustainable development in the mining sector.⁵ These initiatives contributed to the consolidation of sustainable mining. Despite these efforts, and the prominence of the concept in the mining sector, the literature lacks consensus on sustainable mining's elements, scope, and interrelationships, posing challenges. Different institutions and scholars have worked to build agreement on a comprehensive model integrating diverse views.⁶ Many efforts

³ Ibid; Eggert RG, 'Mining and Economic Sustainability: National Economies and Local Communities' (A Study Prepared for the Mining, Minerals, and Sustainable Development Project, Colorado School of Mines, (2001) 17; Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (2020) 9(12) *Journal of Sustainable Mining* 147

⁴ Segura-Salazar, J and Tavares, LM, 'Sustainability in the Minerals Industry: Seeking a Consensus on Its Meaning' (2018) 10(5) *Sustainability* 1429 <https://doi.org/10.3390/su10051429> accessed January 2022

⁵ Ibid Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (n 3)

⁶ Ibid

took the triple bottom line (TBL) framework as a foundation.⁷ The TBL model, based on weak sustainability, identifies environmental, economic, and social sustainability as pillars of sustainable mining. Additional perspectives and priorities have been incorporated into these pillars.⁸

Economic sustainability refers to mining's capacity to constructively contribute to economic growth through revenue creation, employment, infrastructure development, and other advantages.⁹ It entails using resources effectively to satisfy urgent economic demands while protecting reserves and prospects for future generations. The range of considerations includes the economic efficiency of mining operations, contribution to GDP development, interconnections with other industries, transparency, and the equitable sharing of economic gains.¹⁰ Environmental sustainability requires preserving long-term ecosystems while allowing human activities that do not irreversibly damage nature, emphasizing proactive management, and eco-friendly technologies.¹¹ It involves the

⁷ Ibid

⁸ Segura-Salazar, J and Tavares, LM, *Sustainability in the Minerals Industry: Seeking a Consensus on Its Meaning* (n 1); Anderson, George. 'Ownership, Management, and Revenue Sharing of Petroleum Resources in Federal and Devolved Regimes' in Alexander Huurdeman and Anastasiya Rozhkova (eds), *Balancing Petroleum Policy, Toward Value, Sustainability, and Security* (2019) 199

⁹ International Institute for Environment and Development (IIED), 'Breaking New Ground: The Mining, Minerals and Sustainable Development Project (MMSD)' (Report, 2002) <https://www.iied.org/sites/default/files/pdfs/migrate/9084IIED.pdf> accessed 20 January 2023.

¹⁰ Hunter, Tina. 'Comparative Perspective on Exhaustible Resource Development in Ethiopia: Lessons from the Norwegian Legal Framework and Experience, 2017 (2018) *Ethiopian Yearbook of International Law*, 47, https://link.springer.com/chapter/10.1007/978-3-319-90887-8_3; United Nations Development Programme and United Nations Environment, *Managing mining for sustainable development: A sourcebook* (n 1)

¹¹ Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (n 3)

management of exploration-, operation-, and closure-related consequences on land, water, air, biodiversity, and climate. The main determinants were resource efficiency, pollution prevention, waste management, and conservation. Technologies, standards, assessments, and compliance play key roles.¹² Social sustainability places strong emphasis on preserving people's rights, means of subsistence, culture, health, and the development of communities and society at large.¹³ It comprises a fair distribution of risks and rewards, job creation, income sharing, social services, cultural preservation, and the avoidance of mining-related conflicts. It also emphasizes engaging in ethical behavior, openness, and conversation. The three pillars are interconnected: economic benefits should not put the environment or society at risk, ecological preservation should take community needs into consideration, and social advancement should be consistent with economic and environmental reality. There is a need for balanced regulatory measures, trade-off considerations, and integrated, comprehensive policymaking. Sustainability calls for coordinated action from all stakeholders at all levels of governance, including government, businesses, communities, and civil society. Thus, sustainable mining is an ongoing process that promotes strategies in which these three elements are equally important and cumulatively enforced in a balanced manner during the project lifecycle.¹⁴

¹² Ibid

¹³ Eggert RG, 'Mining and Economic Sustainability: National Economies and Local Communities' (n 3)

¹⁴ Brosio, G, 'The Assignment of Revenue from Natural Resources' in E Ahmad and G Brosio (eds), *Handbook of Fiscal Federalism* (Edward Elgar Publishing Limited 2010) 431; Anderson, George. 'Ownership, Management, and Revenue Sharing of Petroleum Resources in Federal and Devolved Regimes' (n 8); Choudhry, S and Stacey, R, 'Combating Corruption: Constitutional Frameworks for the Middle East and North Africa' (Report, The Center for Constitutional Transitions,

For decades, sustainable mining has been a key consideration in the design of the legal frameworks that regulate the mining sector.¹⁵ It has driven reforms in the extractive sector, with serious attempts to incorporate ideals into the legal systems of both developing and developed countries. However, significant differences exist in the organization, content, and enforcement of legal frameworks due to contrasting governance systems, interests, resource dependence, and development levels in the host country.¹⁶ Still, host countries have undertaken various efforts to integrate economic activities with environmental integrity, social concerns, and good governance for sustainable mineral development.¹⁷ Thus, Ethiopia would benefit from comprehensive legislation outlining sustainability responsibilities for the government, companies, and communities coupled with inclusive policymaking and responsiveness.

International IDEA and United Nations Development Program, 2015) , <https://www.idea.int/sites/default/files/publications/combating-corruption-constitutional-frameworks-for-the-middle-east-and-north-africa.pdf> accessed on January 2023

¹⁵ Bastida, Elizabeth. 'Integrating sustainability into legal frameworks for mining in some selected Latin American Countries.' (2002) 120, *Mining, Minerals and Sustainable Development*, 1-33; Bond, Alan James. *Sustainability assessment: Pluralism, practice and progress*. Routledge, 2013.

¹⁶ Brown, Oli, 'Natural Resource Management and Peacebuilding in Afghanistan. United Nations Development Programme, 2013.

¹⁷ Deb, Mihir, and Sanjib Chandra Sarkar. *Minerals and allied natural resources and their sustainable development*. (2017) Springer Geology 978-981; Fuisz-Kehrbach, Sonja-Katrin. A three-dimensional framework to explore corporate sustainability activities in the mining industry: Status and challenges ahead. 2015(46) *Resources Policy*: 101-115.

3. SUSTAINABLE DEVELOPMENT IN THE ETHIOPIAN LEGAL SYSTEM

The FDRE Constitution introduced the concept of sustainable development into Ethiopia's legal system, which was influenced by international and domestic developments.¹⁸ However, neither the Constitution nor subsidiary laws provide an elaborate definition of the concept or its key elements.¹⁹ This lack of clarity has sparked debate around the meaning and model of sustainability recognized in Ethiopian law. On one hand, some argue that the constitutional right to sustainable development solely indicates economic growth.²⁰ This group of scholars based their argument on the Amharic version of Article 43(3) of the constitution, which uses the ‘unstoppable or continuous growth’ early government policy documents that focus on economic development, and the existence of separate rights for environmental protection under Article 44.²¹ On the other hand, some scholars contend that Articles 43, 44, and 89 of the constitution incorporate contemporary understandings of sustainable development that integrate economic, social, and

¹⁸ Krueger, James, K. G. Aman, and A. Inku. Environmental Permitting in Ethiopia: No Restraint on ‘Unstoppable Growth?’ 2012, (1 (1)) *Haramaya Law Review*: 73-102; Asfaw, Gedion, Kifle Lemma Woldeamayyat, and Sebsebe Demissew, Ethiopia: Protecting nature in a developing decentralized country’ in *Environmental Governance and Decentralization*. Edward Elgar Publishing, 2007; Environmental Impact Assessment Proclamation Number 299/2002 (Ethiopia); Environmental Pollution Control Proclamation Number 300/2002 (Ethiopia); Federal Mining Proclamation Number 678/2010 (Ethiopia).

¹⁹ *ibid*

²⁰ Ghebretekle, Tsegai Berhane, ‘Interrogating the economy-first paradigm in ‘Sustainable Development’: towards integrating development with the ecosystem in Ethiopia’ (2017) 11 (1) *Mizan Law Review* 64, 87; Krueger, James, K. G. Aman, and A. Inku. Environmental Permitting in Ethiopia: No Restraint on “Unstoppable Growth?” (n 18)

²¹ *ibid*

environmental dimensions.²² They further argue that the Constitution contains sufficient rights and principles directing modern sustainable development.²³

Ethiopia's legal and policy framework recognizes the concept of sustainable development, as evident from the constitution and policy documents of the country. Although the Amharic version of the constitution uses the term "unstoppable or continuous growth" instead of "sustainable development," it is important to look beyond this specific provision to understand the nature of sustainable development that is recognized.²⁴ Upon a comprehensive reading of the FDRE constitution, it is evident that sustainable development is acknowledged as a guiding principle. The Constitution establishes crucial pillars of sustainable development, including the right to development, environmental rights, the right of society to be consulted on activities that affect it, and principles for environmental protection and management. Article 43 of the Constitution explicitly states that the people of Ethiopia have a right to sustainable development and improved living standards.²⁵ Regardless of the ongoing debate surrounding the Amharic and English versions of the Constitution, it is worth noting that this article at least recognizes the right to economic development. Moreover, the FDRE Constitution encompasses basic environmental rights, policy guidelines, and principles that are essential for the realization of sustainable development.²⁶ It

²² Ayana, Teferi Bekele, and Weggari Dulume Sima, 'Sustainable development laws in Ethiopia: Opportunities and challenges of their implementation, 20(2) (2018) *Journal of Sustainable Development Law and Policy* 23 - 47.

²³ *Ibid*

²⁴ The Constitution of the Federal Democratic Republic of Ethiopia 1995 (Ethiopia), article 43

²⁵ *Ibid*

²⁶ Khushal, Vibhute, ENVIRONMENTAL POLICY AND LAW OF ETHIOPIA: A POLICY PERSPECTIVE. 2008 (22) *Journal of Ethiopian Law*: 75-101.

guarantees the right to live in a clean and healthy environment,²⁷ imposes an obligation on the government to restrain development activities that impact the environment,²⁸ and impose a duty on the government to ensure that development projects do not cause harm to the environment.²⁹ The Constitution also includes important social development rights and guiding principles that are crucial for sustainable development. It stipulates that the government, as the owner of natural resources, should ensure that its development activities benefit society and are equitably distributed across communities.³⁰ Furthermore, it grants the local community affected by policy and development activities the right to be consulted, and provides them with the right to compensate for any adverse impacts.³¹ Additionally, the Constitution offers significant protection for employees and women.³² Considering these provisions, it can be strongly argued that the FDRE Constitution has effectively incorporated ideas of sustainable development throughout its entire text. The inclusion of these provisions demonstrates the commitment of the Ethiopian legal system to promote sustainable development and underscores the importance of aligning mining practices with sustainability objectives.

Ethiopia's commitment to sustainable development can be observed in the implementation of medium-to long-term plans and policies. The examination of Ethiopian government policy will also reveal that it has come a long way to recognize the ideas of sustainable development. Even before the introduction

²⁷ The Constitution of the Federal Democratic Republic of Ethiopia (no 24) article 44

²⁸ Ibid

²⁹ Ibid article 92

³⁰ Id article 89

³¹ Id article 43/2 & 44/2

³² Id article 35, 42

of the FDRE constitution, the Derg and transitional government attempted to integrate the idea of sustainable development into the Ethiopian political economy.³³ Since the 1990s, the EPRDF-led government has implemented a series of medium-to long-term plans and focused policies that explicitly recognize the important pillars of sustainable development to varying degrees.³⁴ Initially, development plans primarily emphasized economic and social development.³⁵ However, federal and subnational governments have demonstrated progressive efforts to implement the pillars of sustainable development, seeking to strike a balance between economic growth and the social and environmental dimensions of sustainability.³⁶ The integration of the environmental pillar with the economic and social development pillars began during the formulation of the Sustainable Development and Poverty Reduction Program (SDPRP).³⁷ Subsequent plans, such as the Plan for Accelerated and Sustainable Development to End Poverty (PASDEP), incorporated environmental considerations into the development framework and established clear

³³ Asfaw, Gedion, Kifle Lemma Woldeamayyat, and Sebsebe Demissew, 'Ethiopia: Protecting nature in a developing decentralized country, (n18)

³⁴ Sustainable Development and Poverty Reduction Program (SDPRP), Federal Democratic Republic of Ethiopia (FDRE) Ministry of Finance and Economic Development (MOFED), 2002; Plan for Accelerated and Sustained Development to End Poverty (PASDEP), Ministry of Finance and Economic Development (MoFED) (2006); Federal Democratic Republic of Ethiopia Growth and Transformation Plan 2010/11 -2014/15, Ministry of Finance and Economic Development November, 2010; Federal Democratic Republic of Ethiopia, Growth and Transformation Plan II (GTP II) (2015/16-2019/20), National Planning Commission, May 2016; Federal Democratic Republic of Ethiopia, National Planning Commission, A Homegrown Economic Reform Agenda: A Pathway to Prosperity, National Planning Commission, 2020.

³⁵ Ibid

³⁶ Ghebretsele, Tsegai Berhane. Interrogating the economy-first paradigm in 'Sustainable Development': towards integrating development with the ecosystem in Ethiopia (n 17)

³⁷ Sustainable Development and Poverty Reduction Program (SDPRP), (n 34)

indicators and targets.³⁸ Growth and Transformation Plans (GTP) I and II represent the most ambitious efforts to incorporate sustainable development principles and objectives.³⁹ Furthermore, the Homegrown Economic Reform Agenda identified sustainable development as one of its key pillars.⁴⁰ Thus, even at the time of writing the above-mentioned article, several policy instruments were in place that aimed to encourage sustainable development.

Once the content of the concept of sustainable development recognized under the Ethiopian legal framework is clarified, the next question that arises is the nature of the recognized sustainable development model and how it addresses conflicts between economic, social, and environmental elements. There are two views on the nature of the sustainable development model under the Ethiopian legal system. On the one hand, Teferi et al. argue that the Constitution aims to promote a strong sustainability model.⁴¹ On the other hand, those such as Tsegai, based on constitutional texts and various policy documents, contend that Ethiopia follows a weak sustainable development approach with greater emphasis on social and economic development.⁴² The latter view aligns with the Constitution and successive economic policy documents. A closer examination of the constitution acknowledges the importance of economic growth while also recognizing the

³⁸ Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (n 34)

³⁹ Growth and Transformation Plan I (GTP I) 20 10/ 11 -20 14/ 15,(n 34); Growth and Transformation Plan II (GTP II) (2015/16-2019/20), (n 34); A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

⁴⁰ A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

⁴¹ Ayana, Teferi Bekele, and Wekgari Dulume Sima. 'Sustainable development laws in Ethiopia: Opportunities and challenges of their implementation' (n 22)

⁴² Ghebretekle, Tsegai Berhane. 'Interrogating the economy-first paradigm in 'Sustainable Development': towards integrating development with the ecosystem in Ethiopia' (n 17)

need to safeguard social equity and environmental protection. The successive economic policy documents of the Ethiopian government reveal a preference for prioritizing economic sustainability.⁴³ Moreover, if one considers the strong sustainable development model and the constitutional text literary, it is impossible to have an extractive sector. As noted here, the mining proclamation is a good example in this regard, as it recognizes elements of sustainable development, such as economic and social development and environmental protection, as guiding principles for government action. It attempts to create a balance between the competing elements. Therefore, it is reasonable to argue that Ethiopia follows a weak sustainable development model that emphasizes balancing economic development with social and environmental wellbeing. By adopting this model, Ethiopia can pursue sustainable development objectives while considering its specific circumstances and development priorities.

Once the nature of the sustainable development model is established, the next question is which element prevails when there is a conflict between the economic, social, and environmental elements. Ideally, it would be advisable to avoid such conflicts.⁴⁴ However, it is well-documented that conflicts are inevitable in practice. The response to these conflicts depends on whether the sustainable development model is weak or strong. In the case of a strong sustainable development model, the principle of sustainability takes precedence over the economic development needs when conflicts arise. However, in

⁴³ Growth and Transformation Plan I (GTP I) 20 10/ 11 -20 14/ 15,(n 34); Growth and Transformation Plan II (GTP II) (2015/16-2019/20), (n 34); A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

⁴⁴ Ghebretekle, Tsegai Berhane, 'Interrogating the economy-first paradigm in 'Sustainable Development': towards integrating development with the ecosystem in Ethiopia' (n 17)

a weak sustainable development model, the choice depends on finding a balance between economic and sustainability objectives. As noted above, Ethiopia has recognized a weak, sustainable development model. Accordingly, in such cases, the response depends on a balance between the pillars of sustainable development.

4. SUSTAINABLE MINING UNDER THE ETHIOPIAN MINING LAW

The Federal Democratic Republic of Ethiopia (FDRE) Constitution expressly recognizes and embraces the idea of sustainable development, making it a key legal instrument that establishes the guiding ideals and rights associated with sustainable development.⁴⁵ This acknowledgment emphasizes the importance of striking an appropriate balance between social equity, economic progress, and environmental protection. By explicitly including sustainable development in its Constitution, Ethiopia demonstrates a strong commitment to pursuing long-term prosperity while safeguarding the environment and promoting social well-being. This constitutional endorsement offers a strong foundation for incorporating sustainable development ideas into multiple policy domains including the mining industry. The Constitution's acknowledgment of sustainable development shows that Ethiopia recognizes the need to prioritize economic progress while ensuring that it is carried out in a way that benefits all facets of society and protects the environment. This commitment is in line with widely recognized sustainability principles that emphasize the interconnection of economic,

⁴⁵ The Constitution of the Federal Democratic Republic of Ethiopia (n 24) article 44 article 43

social, and environmental aspects. The Constitution's framework serves as the cornerstone for the creation of comprehensive laws that support environmentally friendly mining methods. It offers a legal foundation for social safeguards, environmental protection measures, and economics in the decision-making process related to mining activities. Ethiopia strives to promote sustainable mining practices that improve the general welfare of its population and preserve its natural resources by incorporating sustainable development ideas into its legislative system.

The federal government has also taken an active role in several international agreements, such as investment treaties, international human rights legislation, and environmental conventions and treaties.⁴⁶ This proactive involvement strengthens Ethiopia's dedication to environment-friendly mining methods. The government shows its commitment to sustainable investment in the mining industry by agreeing to be party to these agreements. Ethiopia's involvement in investment treaties is noteworthy. These treaties incorporate provisions that encourage environmentally responsible mining operations, community engagement, and protection of human rights. By taking part in these agreements, Ethiopia makes it apparent to potential investors that it supports sustainable practices and is dedicated to ensuring that mining operations consider social and environmental repercussions. Ethiopia's commitment to international human rights laws, environmental conventions, and treaties is indicative of its commitment to sustainable development in the mining sector. These accords provide crucial frameworks for the protection of human rights,

⁴⁶ Ghebretekle, Tsegai Berhane, 'Interrogating the economy-first paradigm in 'Sustainable Development': towards integrating development with the ecosystem in Ethiopia' (n 17)

particularly those of impacted communities and indigenous peoples. In addition to addressing environmental issues, they also promote pollution prevention, biodiversity preservation, and sustainable resource management. International human rights legislation emphasizes the right of local communities to be consulted and participate in decision-making processes related to mining activities. It also aims to prevent and address social and environmental injustices that may arise during mining operations. Environmental conventions and treaties offer recommendations for sustainable mining. They emphasize the necessity of preventing environmental destruction, safeguarding ecosystems, and fostering the responsible use of natural resources. These treaties support the use of environmental impact studies, adoption of best practices, and integration of environmental considerations into decision-making processes. Additionally, it supports responsible investing and human rights protection, and addresses environmental issues. Thus, international instruments have an impact on shaping the mining industry's social and environmental well-being and economic results.

The Ethiopian federal government has made significant progress in creating a legal framework for the exploitation of mineral resources. The principal law regulating Ethiopia's mining industry is the Mineral Resources Development Proclamation.⁴⁷ It tackles different aspects of natural resource extraction with the goal of ensuring that the use of these resources is carried out in an orderly and ecologically sustainable way while simultaneously supporting fair and equitable social and economic growth. To accomplish these goals, it contains a wide range of regulations and guidelines. It includes a detailed set of regulations that govern the economic

⁴⁷ Federal Mining Proclamation Number 678/2010 (n 18)

contribution of the mining sector. It also establishes rules controlling the environmental impact of exploitation of mineral resources, Moreover; it regulates the social impact of mining operations. Thus, the legislation integrates rules and principles that prioritize ecological sustainability and justifiable social and economic development, thereby contributing to the effective governance of the mineral resources sector.

The Ethiopian federal government also passed the Environmental Impact Assessment Proclamation in 2002.⁴⁸ It plays a vital role in promoting sustainable development by establishing a framework for environmental development, management, protection, regulation, and monitoring. It was created to make sure that all development projects, including those in the mining industry, were carried out in an ecologically friendly manner. It requires that each project that is being considered must first undertake a thorough environmental impact assessment (EIA) to analyze any potential negative effects on the environment and society. It seeks to identify and mitigate negative impacts on the environment, local communities, and public health by requiring EIAs. The possible dangers and effects of mining activities are thoroughly evaluated during this phase, and solutions are suggested to reduce or mitigate them. Additionally, environmental management and protection are emphasized by the Act. The legislation also emphasizes the importance of environmental management and protection. To guarantee that mining operations follow sustainable practices and abide by environmental legislation, it provides guidelines and criteria for environmental management plans. These rules support the preservation of biodiversity, the preservation of natural resources, and the reduction of pollution. The Environmental

⁴⁸ Environmental Impact Assessment Proclamation Number 299/2002 (n 18)

Impact Assessment Proclamation also creates enforcement and monitoring procedures. It necessitates the creation of monitoring systems to evaluate continuing environmental standards compliance and the efficacy of mitigating measures. This monitoring framework helps to ensure that mining activities continue to meet the required environmental criteria throughout the project's lifecycle.

The federal government has implemented several targeted policies and medium-to-long-term plans that expressly acknowledge the key components of sustainable development to varying degrees.⁴⁹ The policy framework acknowledges the value of environmental protection, social and economic development, and governance in the mining sector. Additionally, the federal system has designed programs that are meant to increase the mining industry's participation. Moreover, the Ministry of Mine created numerous drafts of its mineral policy, including those from 2008 and 2019. Many of them are yet to adopted. A number of explanations could be forwarded in response to the federal government's failure to come up with a binding policy framework, including frequent changes in leadership, limited attention to the issue, and constant reshuffling within the ministry.⁵⁰ The present draft mining policy framework acknowledges the value of governance, social and economic growth, and environmental protection in the mining industry.⁵¹ It places a strong emphasis on the necessity of reducing the negative effects of mining

⁴⁹ Sustainable Development and Poverty Reduction Program (SDPRP) (n 34); Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (n 34); 49 Growth and Transformation Plan I (GTP I) 2010/11-2014/15, (n 34); Growth and Transformation Plan II (GTP II) (2015/16-2019/20), (n 34); A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

⁵⁰ Moore Stephens LLP, Ethiopian Extractive Industries Transparency Initiative (EITI): Third EITI Report for the year ended 7 July 2016

⁵¹ Draft-Mineral-Resources-Development-Policy of Ethiopia 2021

operations on the environment, fostering sustainable resource management, and ensuring the welfare of nearby communities. It also acknowledges the significance of accountability, transparency, and good governance in the industry.

However, there has not been any detailed investigation into whether Ethiopia's legal system is enough to ensure sustainable mining activities. It is essential to look at how far the Ethiopian legal system reflects the core values of sustainable mining. The examination of the Ethiopian legal framework's integration of these pillars is essential to assess the effectiveness of existing laws and regulations in promoting sustainable mining practices. By evaluating the alignment of the legal framework with these pillars, we can identify potential gaps, strengths, and areas for improvement. Hence, an attempt will be made to examine to what extent the Ethiopian legal framework integrated the pillars of sustainable mining: economic development, environmental protection, and social development. In terms of economic development, it examines whether the legal system supports responsible mining methods that maximize economic gains while avoiding adverse effects. The assessment of environmental protection focuses on how much the legal system integrates environmental protections, pollution control measures, land reclamation regulations, and biodiversity conservation. Additionally, the social development analysis evaluates the legislative framework that upholds the rights and welfare of impacted communities, employees, and vulnerable groups.

4.1 Economic Sustainability

Mineral resources are non-renewable natural resources, and their extraction is seen as a depletion of natural wealth. Economic sustainability requires the extraction of mineral resources in a manner that leads to the generation of maximum economic benefits for the current and future generations. The

government uses regulatory and taxation powers to generate optimal economic benefits from the extraction of mineral resources and reinvestments.⁵² The Government uses its regulatory and fiscal power to enhance the economic contribution of the mining sector by regulating the extraction of mineral resources and enhancing forward and backward economic linkages, and infrastructure development. The Ethiopian legal framework has followed the same trend.⁵³ It also provides fiscal tools to collect economic benefits from the extraction of mineral resources concurrently and to the regional government.⁵⁴

The Federal mining proclamations, regulations, and draft policies have attempted to regulate mineral resource extractions. It provides a detailed legal framework that enables the government to control the start of extraction, the rate of production, the efficiency of extraction, and the full development of mining fields. It uses a field development plan, notification of production, use of suitable technology, and limits on the renewals of a license, relinquishment requirements, and fees to ensure the efficient extraction of mineral resources. The Federal Mining Proclamation,⁵⁵ regulation,⁵⁶ and draft mining policy⁵⁷ require a person engaged in the exploration and exploitation of mineral resources to submit a field development plan that optimizes field extraction. The government is expected to approve and monitor the work

⁵² Hunter, Tina. "Comparative Perspective on Exhaustible Resource Development in Ethiopia: Lessons from the Norwegian Legal Framework and Experience (n 17)

⁵³ Federal Mining Proclamation Number 678/2010 (n 18)

⁵⁴ The Constitution of the Federal Democratic Republic of Ethiopia (n 24)

⁵⁵ Federal Mining Proclamation Number 678/2010 (n 18) Article 28/1/a, 30/1/a, 33, 38

⁵⁶ Regulation to Provide for Mining Operation, Council of Ministers Regulation No 423/2018 (Ethiopia) articles 35

⁵⁷ Draft Mineral Resources Development Policy (n 54)

program to ensure that the optimal extraction of mineral resources and mining fields is not left without the extraction of mineral resources. The extraction of mineral resources must be based on economic principles. The federal mining proclamation⁵⁸ and regulation⁵⁹ require notifications of the production rate. The notification of the production rate is essential to ensure that there is no excessive increase or decrease in the production rate. The use of modern technology is essential to ensure that the maximum mineral resources are extracted, with a limited impact on the environment and society. The Federal Mining Proclamation,⁶⁰ and regulation,⁶¹ require the extraction of mineral resources to be carried out by sound engineering and suitable technologies. The Federal Mining Proclamation,⁶² and regulation,⁶³ use limits on the renewals of a license, relinquishment requirements, and fees to encourage an efficient exploration and exploitation of mineral resources. However, the efficiency of these tools in enhancing efficiency is questionable.⁶⁴

The contribution of the mining sector to the overall economic development deepens the backward and forward linkages of the sector to the rest of the economy. The linkage of the mining industry to the rest of the economy is essential to ensure structural transformation and industrialization. The federal mining proclamation, regulation, and draft policy attempted to enhance linkages between the mining sector and the rest of the

⁵⁸ Federal Mining Proclamation Number 678/2010 (n 18) Article 36/1/a, 38/1, 58

⁵⁹ Regulation to Provide for Mining Operation (n 55) article 50/2 and 54

⁶⁰ Federal Mining Proclamation Number 678/2010 (n 18) articles 45 and 36

⁶¹ Regulation to Provide for Mining Operation, (n 55) article 54

⁶² Federal Mining Proclamation Number 678/2010 (n 18) Article 24, /1,29, 31, and 41

⁶³ The Federal Mining Regulation Number 423/2018, (2018). article 16-18, 47/3

⁶⁴ Ibid

economy. However, federal mining proclamation⁶⁵ and regulation⁶⁶ provide a relatively limited legal framework that encourages backward linkages, i.e., local procurement of goods and services. The mining sector is mostly capital-intensive, and its direct employment opportunities are relatively limited. However, it is also known for its unique ability to create significant indirect and induced jobs.⁶⁷ The federal mining proclamation⁶⁸ and regulation⁶⁹ obligate the license holder to give preference to the employment of Ethiopians who have the required qualifications. Moreover, mining companies must ensure that employees receive the training and education necessary for mining operations.⁷⁰ It does not provide consultation with the local government or affected communities. However, the draft mineral policy lists several actions that the government must undertake to maximize the employment of Ethiopian nationals in the mining sector, including the preferential treatment of its citizens and consultation.⁷¹ Moreover, the federal mining proclamation⁷² and

⁶⁵ Federal Mining Proclamation Number 678/2010 (n 18) Article 36/1/I It states that the licensee has to give preference to Ethiopian goods and services, where they are readily available at a competitive price and are of comparable quality to goods and services outside Ethiopia.

⁶⁶ Regulation to Provide for Mining Operation, (n 55) article 54

⁶⁷ United Nations Development Programme and United Nations Environment, Managing mining for sustainable development: A sourcebook (n 1)

⁶⁸ Federal Mining Proclamation Number 678/2010 (n 18) Article 38/1/h

⁶⁹ Regulation to Provide for Mining Operation, (n 55) Article 39/1 The regulations contain more precise language as it requires the holder of a license “may employ a qualified foreign national if he can provide evidence that shows qualified Ethiopian national cannot be found to fill a position and obtained approval thereof from the licensing authority”. It also requires that the foreign national should transfer their knowledge to domestic developers. It also provided that “the foreign national shall be replaced by Ethiopian national where it is ensured by the licensing authority that the foreign national has been working for enough time to transfer his skills and knowledge to an Ethiopian national”.

⁷⁰ Federal Mining Proclamation Number 678/2010 (n 18) Article 4/1, 34/1/c, h72/3

⁷² Draft Mineral Resources Development Policy (n 54), the draft policy recommends actions that aim to enhance the capacity of the local workforce, enhance the

regulation⁷³ do not provide an effective legal framework that regulates the forward linkage of the mining industry to the rest of the economy.⁷⁴ However, the Homegrown economic reform program and draft mining policy placed significant emphasis on the need to enhance the forward and backward development of mineral resources.⁷⁵

Infrastructure development is one of the crucial issues in mineral resource development. Infrastructure created to support mining may also be useful for other economic activities, and vice versa. It is common for a legal system to require mining corporations to finance the required infrastructure. The federal mining proclamation⁷⁶ and regulation⁷⁷ regulate the development of infrastructure in Ethiopia, including the obligation of the Licensee to cooperate and financially contribute to the construction of infrastructure, and the right of third-party access to infrastructure. Moreover, draft mining policies have encouraged the development of infrastructure projects.⁷⁸ The detailed rules that regulate infrastructure development are regulated by the mining agreement.

employment potential of the local workforce, and assist companies in recruiting local employees.

⁷² Federal Mining Proclamation Number 678/2010 (n 18) Article 54/4/g, 77/1/b

⁷³ Regulation to Provide for Mining Operation, (n 55) Article 53

⁷⁴ Federal Mining Proclamation Number 678/2010 (n 18) Article 54/4/g, 77/1/b, the federal mining law only provided that the government has the power to compel developers to sell their output to the national government. In line with such requirements, the federal government has been regulating the supply of gold and industrial minerals.

⁷⁵ Draft Mineral Resources Development Policy (n 54)A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

⁷⁶ Federal Mining Proclamation Number 678/2010 (n 18) Article 36/1/e

⁷⁷ Regulation to Provide for Mining Operation, (n 55) article 29

⁷⁸ Draft Mineral Resources Development Policy (n 54)

It is common for countries to utilize their fiscal power to advance to shape the economic benefit from the extraction of mineral resources. Specifically, it uses its fiscal power to regulate the exploitation of mineral resources, fostering forward and backward economic connections, and infrastructure development. In the case of Ethiopia, the government's use of fiscal powers is very much limited. Even though, the federal government rarely uses its fiscal power to shape the extraction of mineral resources. It provides an important incentive for mining companies to engage in the mining sector. It failed to directly incentivize efficient exploitation of mineral resources. It failed to use fiscal power to maximize the economic benefits over mining lifecycles. It failed to shape the extraction of mineral resources, fostering forward and backward economic connections, and infrastructure development.

In conclusion, a comprehensive and integrated regulatory and fiscal policy is essential for Ethiopia to maximize the sustainable development of its mineral resources. The federal legal framework attempts to a regulatory and fiscal framework that aims to administer the mining process to ensure that the extraction of mineral resources is conducted in a manner that generates maximum economic benefits without causing significant social and environmental harm. It provides a legal framework that regulates the extraction of mineral resources, forward and backward economic linkages, employment, and infrastructure development. However, like most developing countries, the government focused on meeting the current needs.⁷⁹ It has given limited emphasis to the need for feature generation for economic development. As noted above, the legal framework failed to incorporate important elements that are essential for ensuring sustainable mining, including forward

⁷⁹ A Homegrown Economic Reform Agenda: A Pathway to Prosperity, (n 34)

and backward economic linkages and employment opportunities. Moreover, it failed to use fiscal power to maximize the economy from the extraction of mineral resources.

4.2 Environmental Sustainability

Extraction of mineral resources leads to the generation of large volumes of waste, air emissions, discharge of liquid effluents, damage to land, and habitat destruction.⁸⁰ The environmental impacts of mining cause serious and lasting damage to human health and livelihoods. Environmental sustainability, as noted above, calls for the preservation of environmental quality on a long-term basis while allowing human activities in ways that do not have indefinite consequences on ecosystems.⁸¹ Governments use legal instruments to provide traditional and nontraditional means of regulating the environmental impact of mining activities.⁸² The FDRE Constitution provides fundamental human rights, including the right to a clean environment, land, territories, and resources, free prior and informed consent, and protection from involuntary resettlement.⁸³ Ethiopia is a party to the major international

⁸⁰ Bauer, Andrew, Uyanga Gankhuyag, Sofi Halling, David Manley, and Varsha Venugopal. 'Natural resource revenue sharing.' New York: Natural Resource Governance Institute (NRGI) and United Nations Development Programme (UNDP) (2016).

⁸¹ Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (n 3)

⁸² United Nations Development Programme and United Nations Environment, *Managing mining for sustainable development: A sourcebook* (n 1)

⁸³ The Constitution of the Federal Democratic Republic of Ethiopia (no 24) article 44, article 40

instruments that guarantee environmental rights.⁸⁴ Federal mining proclamations and regulations have attempted to address the environmental problems that arise in the extraction of mineral resources. It has established traditional forms of environmental regulations, including environmental impact assessment, environmental management, land reclamation, notification of operational risks, land reservation, monitoring, and auditing, to address the environmental impact of mining operations.

Environmental impact assessment is the primary tool used to address the environmental impacts of mining operations. The federal mining proclamation⁸⁵ and regulation⁸⁶ provided that except for a reconnaissance license, retention license, or artisanal mining license, any applicant for a license and renewal shall submit an environmental impact assessment and obtain all necessary approvals from the competent authority. However, it failed to provide a detailed legal framework for implementing an environmental impact assessment. The draft mineral policy provides an environmental impact assessment and includes “no-go” options, where the risk to the environment is considered unacceptably high.⁸⁷ The Environmental Impact Assessment Proclamation also requires environmental impact assessments for projects that could impact the environment.⁸⁸ The

⁸⁴ Asfaw, Gedion, Kifle Lemma Woldesemayat, and Sebsebe Demissew Ethiopia: Protecting nature in a developing decentralized country (n18)

⁸⁵ Federal Mining Proclamation Number 678/2010 (n 18) the preamble of the proclamation, article 46/1, 62,63/1. The preamble to the Proclamation stated that one of the objectives of the Proclamation is to enable the government to protect the environment for the benefit of present and future generations and to ensure that the extraction of mineral resources is carried out in an ecologically and sustainable manner.

⁸⁶ Regulation to Provide for Mining Operation (n 55) article 39

⁸⁷ Draft Mineral Resources Development Policy (n 54)

⁸⁸ Environmental Impact Assessment Proclamation Number 299/2002 (n 18) there is a reference to the requirement for a project EIA to be completed before the granting

environmental policy addresses the need for environmental impact assessments.⁸⁹

The other important tool to address the adverse impact of mining operations is the Environmental Management Plan. The federal mining proclamation⁹⁰ and regulation⁹¹ calls for an Environmental Management Plan. However, the federal mining proclamation and regulations failed to develop mine-specific environmental management directives and guidelines. The environmental policy contains general provisions that apply to the environmental management of Mineral Resources.⁹² It calls for the adoption of standards for mining applications. However, it failed to provide a detailed legal framework for regulating its application. The draft Mineral Policy calls for an Environmental Management plan.⁹³

Once the Environmental Management Plan is approved, the license holder needs to present progressive updates and periodic reports. The Federal Mining Proclamation failed to require a

of a mineral license. However, the policy notes that the processes of considering the mining license application and the EIA will be undertaken concurrently and that there is a shared responsibility between Federal and State Environmental Offices.

⁸⁹ Federal Democratic Republic of Ethiopia, Environmental Protection Authority, Environmental Impact Assessment Guideline Document (Addis Ababa, July 2000), <https://www.eia.gov.et/wp-content/uploads/2020/03/EIA-Guideline-Document.pdf>, accessed January 2023; Environmental Impact Assessment Proclamation Number 299/2002 (n 18); Republic of Ethiopia, Environmental Protection Authority, 'Environmental Impact Assessment Guideline For Mineral and Petroleum Operation Projects' (2003), <https://www.ccacoalition.org/en/resources/republic-ethiopia-2003-epa-environmental-impact-assessment-guideline-mineral-and-petroleum> accessed January, 2023; Federal Democratic Republic of Ethiopia, Environmental Policy (Environmental Protection Authority, 1997) § 2.3, <https://leap.unep.org/countries/ethiopia/national-legislation/environmental-policy-ethiopia>, accessed January, 2023

⁹⁰ Federal Mining Proclamation Number 678/2010 (n 18) Article 62

⁹¹ Regulation to Provide for Mining Operation, (n 55) article 39

⁹² Environmental policy (n 89)

⁹³ Draft Mineral Resources Development Policy (n 54)

license holder to submit progressive updates and periodic reports from the Environmental Management Plan.⁹⁴ The mining regulation provides that a license holder is required to notify issues that have an impact on the environment.⁹⁵ However, it failed to provide detailed directives and guidelines that regulate the periodic reports on the environmental impact of mining. The draft mining policy requires mineral resource developers to present progressive updates and periodic reports of the Environmental Management Plan.⁹⁶

The reports by the license holder need to be verified by the appropriate government agency. The federal mining proclamation⁹⁷ and regulation⁹⁸ provides an important legal framework that regulates the monitoring of mining operations. It provides the government with an obligation to monitor the performance of mining operations and their impact on the environment. Moreover, it provides the government with the authority to suspend and even terminate mining tiles when such operations harm the environment. However, it failed to develop mine-specific environmental management directives and guidelines to oversee environmental audits during the mining process. The draft Mineral Policy also requires the creation of effective monitoring and auditing that regulates the adverse effects of mining operations.⁹⁹

It is widely advised that there should be broad consultations at different stages of the mining lifecycle. The federal mining and environmental proclamations, as noted herein, provide very

⁹⁴ Federal Mining Proclamation Number 678/2010 (n 18)

⁹⁵ Regulation to Provide for Mining Operation (n 55) article 39/2

⁹⁶ Draft Mineral Resources Development Policy (n 54)

⁹⁷ Federal Mining Proclamation Number 678/2010 (n 18) article 44/1

⁹⁸ Regulation to Provide for Mining Operation (n 55) article 39/2

⁹⁹ Draft Mineral Resources Development Policy (n 54)

little reference to public participation and consultation in the environmental management of the mining sector.¹⁰⁰ It failed to provide community consultation, engagement, and protection mechanisms. As noted above, the Environmental Management Proclamation provides public participation in the environmental impact assessment process.¹⁰¹ Despite its lack of clarity, the Environmental Policy provides public consultations for the appraisal of environmental impact assessment.¹⁰² The draft Environmental impact assessment guideline for mining and petroleum operations requires public views on development projects in the environmental impact assessment stage.¹⁰³ On the other hand, the draft Mineral Policy provided public participation, an appeal process, and access to information during the EIA process.¹⁰⁴

The extraction of mineral resources will have a significant effect on the natural environment. The mining companies should allocate sufficient funds that will enable them to mitigate the adverse effects of the operations. The federal mining proclamation¹⁰⁵ and regulation¹⁰⁶ provides that license holders

¹⁰⁰ Federal Mining Proclamation Number 678/2010 (n 18) Article 58

¹⁰¹ Ibid. The closest thing it provides to public consultation is a negotiation between the land user/owner and the license holder in terms of compensation that may be paid because of loss or damage caused by mining activities.

¹⁰² Environmental policy (n 89)

¹⁰³ (Environmental Impact Assessment Guideline for Mineral and Petroleum Operation Projects (n 89). However, it failed to define what "consultation" means, the information that will be provided to the public, and the nature of the consultation, an ongoing process, or only occur at the EIA approval stage.

¹⁰⁴ Draft Mineral Resources Development Policy (n 54)

¹⁰⁵ Federal Mining Proclamation Number 678/2010 (n 18) Article 62

¹⁰⁶ Regulation to Provide for Mining Operation (n 55) article 39, provides detailed laws that regulate the environmental fund. It provided a detailed rule that regulates the environmental rehabilitation fund including requiring mining areas to be completely restored and reclaimed for future use, progressive management of the environment, financial guarantees for environmental rehabilitation, controlled decommissioning, closure procedures, procedures for determining possible latent

should allocate funds to cover the costs of reclamation and the environmental impact of mining operations. The Environmental policy highlights the need to reclaim land used for mining operations.¹⁰⁷ Moreover, the draft mining policy contains a detailed policy statement regarding the purpose and utilization of environmental rehabilitation funds.¹⁰⁸

The extraction of mineral resources damages the land and natural environment that surrounds the mining operations. Legal systems commonly provide off-limit areas for mining operations. Federal mining proclamation provides important areas that are not subjected to mining operations.¹⁰⁹ It also empowers the federal government to designate areas that have not been designated. However, it has wide discretion for the government to subject any area to mining operations when it believes that it is in the best interests of the country. Moreover, the draft mining policy underscores the need for an area that is not subjected to mining operations.¹¹⁰

In addition to traditional regulatory approaches, it is crucial to introduce incentives that promote environmental stewardship within the mining sector. The government needs to use non-traditional forms of regulation such as performance standards, and economic instruments to regulate the environmental effect of mineral extraction. However, the mining law framework was unable to offer non-conventional measures, such as financial incentives, to encourage the production of mineral resources in an environmentally acceptable manner. Ethiopia should adopt

environmental risks after mine closure, and the retention of responsibility by a mine until an exonerating certificate is granted.

¹⁰⁷ Environmental policy (n 89)

¹⁰⁸ Draft Mineral Resources Development Policy (n 54)

¹⁰⁹ Federal Mining Proclamation Number 678/2010 (n 18) article 6

¹¹⁰ Draft Mineral Resources Development Policy (n 54)

non-traditional strategies like tax incentives linked to social spending or penalties for non-compliance, which are inspired by global best practices. Ethiopia may reduce negative effects and encourage sustainable practices by establishing tailored incentives that encourage responsible mining, such as tax credits for social initiatives and reduced import duties for cleaner technology.

It is clear from the above discussion that the legal and policy framework attempts to address the environmental impact of the extractive sector by providing traditional environmental protection mechanisms. However, it has failed to provide non-traditional forms of regulation, including the use of performance standards and economic instruments. Moreover, the traditional instruments have also failed to incorporate sufficient community consultation. Furthermore, it failed to provide a legal framework essential for implementing environmental impact assessments, environmental Management plans, and environmental rehabilitation funds.

4.3 Social Sustainability

Mining has a direct impact on communities surrounding the mining sites.¹¹¹ Social sustainability, as noted above, focuses on ensuring people's rights, means of subsistence, culture, health, and development of communities and society at large.¹¹² Governments use regulations and fiscal power to address the social impact of mineral resource extraction.¹¹³ Federal and state

¹¹¹ Bauer, Andrew, Uyanga Gankhuyag, Sofi Halling, David Manley, and Varsha Venugopal. 'Natural resource revenue sharing' (80).

¹¹² Moomen A-W, Lacroix P, Bertolotto M and Jensen D, 'The Drive Towards Consensual Perspectives for Enhancing Sustainable Mining' (n 3)

¹¹³ Bauer, Andrew, Uyanga Gankhuyag, Sofi Halling, David Manley, and Varsha Venugopal. 'Natural resource revenue sharing' (80). it uses its regulatory power to provide legal requirements and guidelines, including areas that are not subjected to mining, impact assessments, setting standards, providing oversight mechanisms,

mining laws provide an important legal framework that ensures a fair distribution of risks and rewards. These include social impact assessment, community development plans, compensation for the disposition of land, and health and safety standards.¹¹⁴

Social impact assessment is essential to identify the possible impact of mining on society. The Federal Mining Proclamation failed to provide a social impact assessment.¹¹⁵ The federal mining regulation provided that any applicant for a mining license shall submit a social impact assessment.¹¹⁶ However, it failed to provide a detailed legal framework essential for the implementation of social impact assessment. The draft mineral policy highlights the need for a social impact assessment.¹¹⁷ Moreover, the Ethiopian mining legal and policy framework failed to provide social management plans, auditing, and reporting tools.

Community development is essential for building trust between mining companies and local communities. The Mining Proclamation provides that mining license holders and, as appropriate, exploration licenses participate in community development.¹¹⁸ Federal mining regulations provide a detailed legal framework that regulates the obligations of license holders

benefit-sharing, compensation for disruption of livelihoods, social management plans, auditing, and reporting tools, public participation in decision-making, and access to information. Furthermore, it uses fiscal instruments that aim to share the benefits of mineral resource extraction. The latter point will be addressed in upcoming works.

¹¹⁴ Ibid

¹¹⁵ Federal Mining Proclamation Number 678/2010 (n 18) Article 62

¹¹⁶ Regulation to Provide for Mining Operation (n 55), article 6,

¹¹⁷ Draft Mineral Resources Development Policy (n 54)

¹¹⁸ Federal Mining Proclamation Number 678/2010 (n 18) Article 62/3

to community development.¹¹⁹ The Ministry of Mining issued a detailed directive that provided the role of the regional state, local, and federal governments.¹²⁰ However, it failed to regulate important decisions in development including, process project selection, procurement, supervision, management, and community direct participation. The draft mining policy underlines the importance of community development funds, mechanisms, and institutional arrangements in its implementation.¹²¹

Consultation between different actors at every stage of the mining process is essential for ensuring sustainability. The FDRE Constitution provides the basis for public consultation.¹²² International human rights instruments, as noted above, provide important procedural rights that ensure the participation of local communities in mineral resource extraction. However, no specific law regulates public participation in Ethiopia; rather, it is provided by different laws. The Federal Mining Proclamation provides a limited reference to the requirement for consultation at any stage of the exploration.¹²³ It only provides for limited participation by the local community in the case of environmental and local development funds. The Environmental Management Proclamation provides public participation in the

¹¹⁹ Regulation to Provide for Mining Operation (n 55) article 40, provides a detailed legal framework that regulates the administration of community development funds. It specifically provides the contribution to be made by the special small-scale, small-scale, and large-scale mining license holders at different stages of mining. Moreover, it provides that the contribution of the exploration license is determined by an agreement with the licensing agency.

¹²⁰ Directive for regulating the community development fund from the exploration and exploitation of mineral resource, directive number 270/2021, Ethiopia

¹²¹ Draft Mineral Resources Development Policy (n 54)

¹²² The Constitution of the Federal Democratic Republic of Ethiopia (no 24) article 43/2, 12

¹²³ Federal Mining Proclamation Number 678/2010 (n 18) Article 60.

environmental impact assessment process and requires participation in community development planning.¹²⁴ The environmental policy requires public views on development projects during the environmental impact assessment stage.¹²⁵ Moreover, the draft mining policy calls for stakeholder participation in environmental impact assessments, open information access, social issues, and appeal procedures.¹²⁶

The extraction of mineral resources requires land, which will be expropriated from the local inhabitants. Mineral developers are required to compensate the local community for the loss of land and other properties attached to it. Moreover, the local communities should also be entitled to resettlement. Under the FDRE Constitution, land ownership is vested in the state, which transfers possessory rights.¹²⁷ The government exercises its expropriation power to transfer the land to private investors, which is deemed to be of public interest.¹²⁸ It provides that the local community affected by government action is entitled to have a right to compensation, based on a negotiation between the mining companies and the local communities.¹²⁹ However, unlike the regional states, the federal mining law failed to recognize the preferential rights of the local community.¹³⁰

¹²⁴ Environmental Impact Assessment Proclamation Number 299/2002 (n 18) However, it failed to define “consultation” and “participation”. Despite such limitations, it provides for public participation at the EIA/ESMP stage of mining license approval.

¹²⁵ Environmental policy (n 89)

¹²⁶ Draft Mineral Resources Development Policy (n 54)

¹²⁷ The Constitution of the Federal Democratic Republic of Ethiopia (no 24) article 40/3

¹²⁸ Federal Rural Land Administration and Land Use Proclamation Number 456/2005, Ethiopia; Federal Mining Proclamation Number 678/2010 (n 18) Article 2.5, the public purpose is understood as an activity that provides direct and indirect benefits to society.

¹²⁹ Federal Mining Proclamation Number 678/2010 (n 18) article 44/2

¹³⁰ (A Proclamation to Amend Oromia Region Mineral Development Operation Administration No 223/2020, 2020, Oromia, Ethiopia)

Moreover, it failed to recognize the issue of resettlement of those affected by the environmental impact of mining. Furthermore, the draft mining policy failed to incorporate internationally accepted standards and principles of resettlement.

Governments use regulatory power to address the health and safety issues that arise in the extraction of mineral resources. The FDRE Constitution provides the right of a worker to a healthy and safe work environment.¹³¹ The Federal mining laws¹³² and regulations¹³³ provide workplace safety. However, it does not contain a detailed legal framework that regulates the health and safety issues in the mining sector. The federal labor proclamation is not different.¹³⁴ The Ministry of Labour, failed expected to develop directives and guidelines that address specific health and safety issues in the mining sector. The draft policy provides detailed ways in which the ministry promotes healthy and safe working conditions in all mines.¹³⁵

The federal and regional mining legal framework attempted to address the social sustainability of mining operations by providing traditional mechanisms including impact assessments, benefit-sharing, compensation for disruption of livelihoods, public participation in decision-making, and health and safety protection. However, it failed to incorporate essential elements including the participation of the local community, principles of resettlement, specific directives that regulate labor issues,

¹³¹ The Constitution of the Federal Democratic Republic of Ethiopia (no 24) Article 42 (2)

¹³² Federal Mining Proclamation Number 678/2010 (n 18)

¹³³ Regulation to Provide for Mining Operation (n 55) article 38 Article 40

¹³⁴ (Labour Proclamation, Proclamation Number 1156/2019, Ethiopia, article 89

¹³⁵ Draft Mineral Resources Development Policy (n 54)

social management plans, auditing, and reporting tools, and community engagement or profit-sharing in mining.

5. CONCLUSION

The Federal Democratic Republic of Ethiopia's (FDRE) constitution establishes the basic rules, and guiding principles that control the extraction of mineral wealth. It makes sustainable development a core right and guiding principle. It expressly acknowledges the pillars of sustainable development. The recognition of the idea of sustainable development is influenced by both global and domestic development. The mining legal framework has attempted to integrate the concept of sustainable mining in the industry. However, despite these efforts, gaps and inconsistencies in the legal framework have undermined its effectiveness and efficiency. In addition, the lack of detailed regulations to support the legal framework also hinders implementation. Therefore, legal framework reform is necessary to address economic, environmental protection and social development issues in the mining sector. Reform should focus on strengthening the existing legal framework through targeted amendments rather than fundamental constitutional reform. Specifically, amendments to the Federal Mining and the Environmental Impact Assessment proclamation could fill this gap. It should start with strengthening the legal and fiscal powers to increase the economic contribution of the mining industry by regulating the exploitation of mineral resources, promoting upstream economic linkages and downstream and support infrastructure development. It should also Strengthen environmental protection measures under these laws including stricter guidelines on environmental impact assessments, requirements for responsible environmental management plans, and the application of non-traditional tools to regulate the

environmental impact of mining activities. Furthermore, it should also incorporate important tools to address the social impact of mineral resource exploitation, focusing on improving health and safety standards, promoting community participation and consultation as well as improving health and safety standards. In the meantime, the completion and implementation of Ethiopia's draft mining policy framework is also extremely important. This framework can provide additional legal leverage and guidance for sustainable mining practices, thereby strengthening mining governance systems. By implementing these reforms, Ethiopia can strengthen its mining governance system, promote sustainable mining practices, and maximize long-term benefits from the industry. This comprehensive approach will contribute to the existing literature on sustainable mining, providing valuable insights and a roadmap for other countries facing similar challenges in achieving sustainable development for their mining industry.