INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES

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To Link this Article: http://dx.doi.org/10.6007/IJARBSS/v12-i11/15256 DOI:10.6007/IJARBSS/v12-i11/15256

Received: *10* September *2022,* ***Revised:*** *13* October *2022,* ***Accepted:*** *27* October *2022*

Published Online: *16* November 2022

In-Text Citation: (Keita et al., 2022)

To Cite this Article: Keita, K., Yeon, A. L. B., Razak, A. B. A., & Abdullah, N. A. (2022). Guinea's Efforts to Achieve the Sustainable Development Goals through Legal Implication on Foreign Direct Investment in Mining Sector: Issues, Challenges and Prospects. *International Journal of Academic Research in Business and Social Sciences*, *12*(11), 2142 – 2153.

Vol. 12, No. 11, 2022, Pg. 2142 – 2153

http://hrmars.com/index.php/pages/detail/IJARBSS	JOURNAL HOMEPAGE

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ISSN: 2222-6990

Guinea's Efforts to Achieve the Sustainable Development Goals through Legal Implication on Foreign Direct Investment in Mining Sector: Issues, Challenges and Prospects

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Abstract
The mining industry is viewed as the backbone of Guinea's economy, due to its significant contribution to tax revenues of the country. Since the Sustainable Development Goals (SDGs) has adopted by the United Nations in 2015, in which the countries have been pursuing the achievement of seventeen (17) of the goals by the year 2030. This study explored the legal implication of foreign direct investment (FDI) in the mining sector of Guinea, which have been considered as one of country's biggest legal challenges. The aim of this study is to demonstrate Guinea's efforts in achieving SDG 8 (decent work and economic growth) by examining the regulatory framework governing FDI in mining sector. The research used a qualitative methodology, with an empirical evaluation of the body of knowledge on the topic both locally and internationally. The national plan for Guinea's 2015–2020 period noted that the SDGs had been achieved, however, despite this, a difficulty in the FDI framework was exposed by the legal concerns surrounding the SDGs. Additionally, the Guinea mining code 2013 previously underlined the importance of local communities' economic involvement in mining projects. The FDI in the mining sector beneficed international investment agreements (IIAs) protection requirements in the adoption and application of laws and policies. The conclusion of the study highlighted the intention of the Guinean government to show a real concern to end the nation's more than 50 percent poverty rates through a legal and policies

implication. It is stated that there is a considerable interest in the mining sector's legal and policy implications for achieving SDG 8 goal of ending poverty in Guinea.
Keywords: Sustainable Development Goals, Foreign Direct Investment, Eradication Of Poverty, International Investment Agreements, Economic Growth, Decent Work.

Introduction

In 2015, the United Nations (UN) adopted a list of seventeen (17) Sustainable Development Goals (SDGs) encapsulated as the 2030 Agenda as a shared blueprint for peace and prosperity for all countries in the world. Each goal ensures that efforts are made to achieve the specific targets enlisted in the years leading up to 2030. The goals cumulatively constitute the universal integrated and transformative vision for a sustainable world for the United Nations (Frey and Machaughton, 2016, p. 2). However, the top priority of the international community is to eliminate global poverty in a sustainable manner. The SDGs are defined in different concepts and contexts. It is characterized as an advancement that addresses the problems of the present difficulties in the ability of people in the future to solve their problems. (CISDL, 2005, p. 1-4) The SDGs must make improvements and provide personal satisfaction for people in their systems of life. Also, their supportability alludes to the requirement that their growth needs to be coordinated (Neacsu, 2005*)*

Currently, 193 nations have fully committed to working together to end poverty and have adopted the SDGs to realize this goal, including the Republic of Guinea (SGDs Voluntary review, 2018). In the conference, the Republic of Guinea was represented by its Foreign Ministry, and Guineans oversea, His Excellency Mr. Lounceny Fall. The ministry has called for synergy action for poverty eradication globally through national and international involvement in prioritizing access to the population's basic needs (Fall, 26/09/2015). It is possible to understand that the primary and principal aim of the conference, is to end poverty, as the SDGs have been adopted by the UN. The goals have been endorsed as a common objective through a creative and innovative approach to address development challenges by each country's government, private sector, and civil society (Morton, 2017, p. 83). The SDGs are widely considered as the most potent development objectives and are globally accepted by the countries as worthy concepts. However, implementing and monitoring of the SDGs is also tied to national development plans and strategies to reflect the specific needs of the people in-country, taking into account demographic, geographic, social, and economic factors because the goals' implementation and success will rely on countries' sustainable development policies, plans, and programs (Kenroye et al., 2018, p. 5).

Moreover, the conference reaffirmed the mutually beneficial relationship between economic, social, and environmental policies to attain the 2030 objectives. Of this, the goal of SDG (8) is to promote "sustained inclusive and sustainable economic growth, full and productive employment and decent work for all." Therefore, there is no doubt that IIAs are fundamentally focused on foreign investment protections and have no avenues for these goals' achievement, which is considered as public interest (Mann, 2013, p. 517*)*. As a result, this study refers to decent work and economic growth as public interests from FDI in mining sector because this is the aspect that is not covered by the IIAs standard. The standard is the foreign investor protection rules, which are designed to attract foreign investors into the country. Hence, the main focus of this research is the legal implications for protecting public interests seen from foreign direct investors in SDGs accepting countries. such as the Republic of Guinea.

Therefore, the eradication of poverty is a duty of each State. The government, business enterprises, civil societies, and all relevant parties must co-operate to avoid miscommunication to that end. In other words, the FDI in mining sector can have a direct impact on employment and economic growth in the importing country, thereby achieving SDG goal (8). However, the implementation of SDG (8) provides a comprehensive rule and regulatory perspective that will govern FDI's activities and ensure rights equity and balance between foreign direct investors and host states (Aisbett et al., 2018, p.108). For an effective rebalance of the foreign investment regime, a system of investor obligation would need to be enforceable (Aisbett, 2018, p. 108) As a result, the FDI in mining sector should be promoted based on the peoples' needs as indicated in the 2030 United Nations agenda.

Conceptual and legal background for SDGs to eradicate the poverty in Guinea

In this light, the concept of sustainable development in international law requires accommodation, reconciliation, economic growth, social justice, and environmental protection. The application of sustainability goals has been objectively discussed on two (2) factors: guiding lawmakers at the national level and enforcing sustainable development goals (UN, 2017, p. 32). However, achieving the SDGs required significant contributions from the government, private sector, and civil society. The United Nations Conference on Trade and Development (UNCTAD) in 2017 emphasised the importance of IIAs in achieving the SDGs. Even though Guinea law makers have ready introduced the term local sustainability in mining code 2013 (Article 130) through FDI participation in local economic. The term "sustainable development law" describes an emerging body of international legal principles and instruments that address the intersections between international economic, environmental, and social law in order to promote development for present and future generations (CISD, 2005, p. 3)

Therefore, the Guinea government adopted "*le plan national de dévéloppement économique et social"* (PNDES) in anticipation of SDGs achievement in June 2017. Parliament approved the plan in the same year. From 2016 to 2020, the period of achievement is fostering higher and more inclusive growth, which may refer to sustainable economic and decent work (SDGs 8*) in 2030 global goals. Therefore, the Guinean authorities intend to respond to the various development challenges posed by the socio-economic and environmental situation in mining sector by application of the article 130 of the Guinea mining code 2013 which have given 0.5% up to 1% of the investment dividend to the impacting communities. The plan was based on the ensuring post-Ebola health monitoring; alignment with international development agendas: the SDGs through the PNDES 2016-2020. The PNDES is based on four (4) principles: (1) the promotion of good governance, (2) the democratic transition and public expenditure efficiency, (3) fostering inclusive human capital accumulation, and (4) sustainable management of natural resources. However, policy slippages, delays in structure reforms, and external vulnerabilities have been identified as the main risks to the success of the PNDES and Guinea's outlook as they could dampen medium- and long-term growth. The medium-term growth is mainly driven by the investment in mining sector, whereas the long-term prospect is resourced from the balance of payments and development. In brief, supporting the PNDES plan may strengthen the policy mix relating to sustainable and inclusive growth. This is despite the current situation where Guinea faces shortcomings in its existing policy and legal framework in mining sector. In the Guinea constitution 2010, Guineans have the right to work and wealth under Articles 20 and 21. For example, Article 20 (1) states that everyone has the right to work, and Article 21(2) establishes an inalienable right in Guinea wealth (natural

resources) to Guinean people. Therefore, it is a duty of the government to create a clear conditions for exercising these rights, and the FDI activities in mining sector are under the supervision of the Guinea government.
Decent work is a broad agenda encompassing a wide range of issues. However, from the standpoint of the SDGs, decent work is not a set of rules or normative standards because it is an organizing concept or framework(Bell and Usher, 2007, p.7,8). The idea was thoroughly recommended to countries for policy implementation. Some policies can be classified as belonging to one of the different pillars. These are just examples of policy areas that could be pursued. Numerous foreign investment managers cite incidents of theft, low productivity, and difficulty in terminating an employee as major significant issues (Cisse, et al., 23/5/2013, p. 43). Therefore, they affirmed that the integration of the formal national system for monitoring and evaluating interventions on employment in Guinea does not promote the optimization of resources or the capitalization of experiences. This may due to the country's institutional weaknesses in the mining sector in which most foreign companies have the greatest impact on the population, has not produced the expected benefits for the local population.

Legal implication for sustainable development goals in mining sector in Guinea
Without a doubt, every state is responsible for the satisfaction of its own population, which can be accomplished through the application of legal rules. The investment legal framework has the most legitimacy in the country. The aim of this is to avoid miscommunication between the government, business enterprises, civil societies, and all other relevant parties in mining sector. In other words, FDI in mining sector can directly impact economic development in the importing country, thereby ending poverty in the country. However, the legal reform in mining sector requires a comprehensive rule and regulatory framework to govern FDI's activities and ensure rights equity and balance between foreign investors and host states (Aisbett et al., 2018, p. 108). An enforceable system of investor obligations would be required for an effective rebalancing of the foreign investment regime (Aisbett et al., 2018, p. 108). It can be concluded that, the legal framework for FDI in the mining sector should meet the peoples' needs, as indicated by the Guinea development objective.
In addition to this, a legal infrastructure promotes trade in international markets for the countries (Lukacs, 2005, p. 7). It may ensure the creation of a safe environment and encourage FDI in the mining sector (Lukacs, 2005, p. 7). The claims are based on economic growth theories concerning dependency and endogenous growth of the host state. Nevertheless, it has been shown that an interdependence between FDI, and the need for effective rule of laws implication exists. For example, the host country's role in how FDI plays an essential role through economic development in accumulation and transfer of technology capital (Javaid, 2016, p. 15). Moreover, some of studies show that foreign investors have a positive impact, such as the interdependence of domestic investment, and FDI, the improved and appropriate level of the legal framework for open markets regimes, and well-developed financial markets. Therefore, the governments, whose responsibility is to enhance the country's development, must continue to work hard to ensure wellbeing of the population in the country. That should be done through a legal framework and implications for a strong and healthy financial market, promoting entrepreneurs, productivity, and development of the state (Aisbett et al., 2018, p. 108). Therefore, a legal framework based on investment is one in which the nation's productive capacity is continuously increased (Sefriani, 2018, p. 8). At the same time, the policy integration may often raise challenges that must emerge as legitimate concerns in

contexts where there is a conflict with the pre-existing rule of laws goals, norms, and interests in the development economy for instance. Thus, a comprehensive understanding of balancing the interests of the host state and foreign investors will provide a new BITs model for FDI in mining sector in Guinea.

Economic development in a country is often regarded as the political objectives rather than the legal rule. That is why, (Nagan, 2017, p. 57) suggested that the new deal's role in regulating the legal foundations of its economic emphasis has permitted government action to limit the private sector's unrestricted power, which is frequently justified by the basic law. So, even the willingness of host state national regulation for foreign investor protection may not affect the IIAs suitably adopted the public interests**.** In summary, these effects can mitigate the negative impact of foreign investors on economies through profit repatriation, reduced investments, and inequality.

Legally achieving development goals necessitates the practise and theory of liberal law, which is distinctive of modernity. The modern method is predicated on a concept of language that presupposes the existence of words and ideas (Bozo de Carmona, 1998, p. 7&12). These existences can objectively capture the significance of the events that the law purports to describe and regulate a comprehensive objective. Since the ninth century, however, the natural law approach has argued for the use of moral law in critiquing the development of positive law, both legislative and judicial (Koerner, 1957, p. 145). The idea of a definite and universal moral law has grown in strength over time. The honest admission that there is no substitute group of principles with comparable generality and adaptability is becoming less apparent over time (Koerner, 1957). Modern philosophy is based on American law and incorporates sociological jurisprudence, legal and economic determinism, and legal realism (Koerner, 1957). The argument behind this is that if these modern theories are perfected, a system of law based on the real philosophical psychology of human nature will be created. Additionally, the contemporary theory served as the foundation for a comprehensive scientific explication of the many notions. For example, in legal notions, the approach is intended to convey the concepts of obligation, rights, and powers, which are regarded as the bedrock of the legal system. Therefore, the modern theory may aid in the completion of the research.

Additionally, the operation of legal thought paradigms suggests that legal systems might serve as vessels for adaptation and desire to transit across time in the form of law. This is due to the legal paradigms to which legal systems can adapt, which frequently refer to self-referential, self-reproducing, self-validating, and autotelic (formalist) capabilities (Barrozo, 2018, p. 319). The implication for legal historians is that any kind of legal history will fall short of adequately accounting for the perspective of legal actors unless it incorporates the way paradigms influence thoughts and attitudes into its narrative. Thus, domestic legal systems are connected transnationally and separately to the system of international law; the connection of law contributes to its universality (Barrozo, 2018, p. 319). That is why, through these pragmas, the legal framework on FDI in mining sector based on public interests' concept may reach in national law level.

Previously, in 2003 an academy article has demonstrated unequivocally the importance of a legislative framework governing FDI for public interests (Europe, 2003, p. 3). The legislative framework can guide the host state comply with bilateral and multilateral investment treaties. These agreements have the potential to impact the State's legal proceedings against multi-national companies directly (Europe, 2003, p. 3). Therefore, the article argued that lawmakers must focus on two (2) perspectives on foreign investment regulation: first, whether the international legal instruments and the international rules apply to some aspects of customary laws in developed and developing countries; and second, foreign direct investors are willing to invest in negotiating rules transnational investment through domestic laws and policies in such instances. The State may amend the regulation unilaterally, and it may be jointly approved for future reasons. While bilateral and multilateral rights and obligations seek mutual agreement in order to attract FDI through the treaties that provide substantial protection for investors. The treaties must consider their impact on local economic development. As a result, public interests can only be protected and defended within a mutual legal framework.

The issues and challenges in achieving legal implication in mining sector for SDGs in Guinea
In Guinea, the legal implementation for SDGs has become a challengeable directive at a national level, and this issue is globally observed. The challenges include the adoption of workable legal frameworks to balance FDI interests with public needs in order to ensure the implementation of the 2030 agenda's sustainability goals (Frey et al., 2016, p. 3). For example, the decent work as the primary source of ending poverty among the population, does not imply a set of normative mechanisms, policies, or objectives. Still, it should be achieved through various legal and policies framework, or development programs to contribute to social protection or employment opportunities to be use or promotion of the basic standards. However, numerous researchers have argued that the scope of IIAs must include terms that are compatible with a wide range of civil actions. These terms will undoubtedly reassure local residents about FDI in the mining sector. In other words, balancing foreign and local interests may even help harmonize the investment interests, such as providing reliable protection in IIAs and public interest policies. Furthermore, the IIAs may have ambiguous definitions and are managed as public policy in the host state (Frey et al., 2016, p. 4). Such ambiguities could become normative in administrative and judicial activities, benefitting foreign investors. Consequently, issues involving the receipts of assets in such investments are perceived to benefit only foreign investors within the ambit of IIL.
The significant role of FDI in mining sector is to contribute to the economic improvement in host states. Economic development must positively impact the population's living standards and sustain their future orientation. Because of this, the SDGs have become essential tools for FDI in the mining sector. Therefore, FDI in the mining sector should promote the economic development of beneficiary countries. Nonetheless, transnational investment activities can also pose long-term challenges (Manjiao, 2018, p. 1). The most dominant challenges are significantly projected in some developing countries that lack rigorous legal systems, vigorous law enforcement, and a lower investment governance competency (Manjiao, 2018, p. 2).
Also, many developing countries face difficulties reconciling and harmonizing these seemingly conflicting goals in investment governance, for example, coordinating the interests of states and investors to promote transnational investment and pursue sustainable development. The question of host state sustainability has quickly become a pressing and outstanding issue within the scope of the primary source of the legal norms in the existing global investment governance; FDI is comprised of various types of agreements or treaties. The agreements include BITs, investment chapters of free trade agreements, and regional or BITs (Manjiao, 2018, p. 2). It is commonly accepted that IIAs are not primarily designed to facilitate and promote SDGs (Vanduzer, 2016, p. 143). Nevertheless, the SDGs is given the fundamental role of IIAs in the global governance of investments and require sustainable economic growth as well as address. jobs challenges faced by the local communities. Thus, a legal framework

governing for these aspects mentioned on Goals (8) in mining sector is crucial for SDGs achievement, and ending the poverty in the countries.

In 2017, the President of the Republic, Prof. Alpha Conde had taken a decree to implement Article 130 of the mining code of 2013. The Article state that the law is provided with the directive for modalities and local communities' development fund (FODEL). Therefore, the Fund comes from the participation of all mining companies in the operational phase in Guinea, and those holding permits to operate permanent quarries. Nonetheless, the issue arises regarding how the Fund should effectively impact local communities through investments and response of their needs. Moreover, the IIAs have had an impact on the code's implementation. This is because the code eliminates the need for such issues to be incorporated into the contract. Many countries have to adopt the economic participation to the communities. This is why, in September 2015, the United Nations General Assembly adopted the 2030 Agenda for Sustainable Development.

Implementing Article 130 of the 2013 Guinea Mining Code is the philosophy underlying the goals 8* of the United Nations 2030 agenda. The Article is mandatory implication for local communities in mining section in Guinea, as it guides the development, economic, and social funds' direction and management. Therefore, a mining company must comply with the local community's development fund rules without exception, as this is part of the rules applied by the local communities. However, other aspects of the investment agreement are not concerned about the application of the mining code. In addition, UN report in 18 February, 2020 highlighted that the National Fund for Local Development did not yet appear to be operational in all areas of the country and requests about the steps taken to ensure that mining activities benefited all Guinean, So, most investors in the mining sector, particularly foreign investors, believe that they no longer have any other responsibilities to the local communities after contributing to the development Fund. In the interest of local populations, legal implication for public interests has become necessary.

The prospect of legal implication for SDGs (8) in Guinea

Sustainable economic growth, high productivity level, technological innovation, entrepreneurship boost, and job creation are essential to eliminate forced labor, slavery, and human trafficking and ending poverty. Therefore, promoting the SDGs 8* is also contributing to the realisation of vision Guinea 2040, which seeks to achieve "a valued human capital and ending poverty among the population by giving every chance to the country to move towards emergence" (USAID, 2016, p. 77). Two (2) strategic outcomes are achieved concurrently: firstly, the quality of human capital is to improve; secondly, the inclusion of vulnerable groups is ensured as a strategic outcome of the improved quality of social capital. Furthermore, the Guinea Government must always seek to improve the skills and knowledge of young people and adult workers to ensure a productive workforce (USAID, 2016, p. 78). To this end, the design and recognition of socio-economic governance policies must create jobs while encouraging investment in labor-intensive sectors.

In addition to this, the SDGs' insight promotes a legal infrastructure and free trade in international markets for the countries (Lukacs, 2005, p. 7). It ensures the establishment of a safe environment and encourage FDI in mining sector. In contrast to the Millennium Development Goals agenda, which has been widely criticized as a product of an opaque and elitist decision-making process that excluded all but a "triad" of powerful countries, the SDGs have been perceived as the product of a participatory drafting exercise (Rai, 2019, p. 368). These claims have been asserted based on economic growth theories related to dependency and endogenous growth of the host state. Nevertheless, it has been shown that an interdependence between FDI in mining sector and economic growth and the need for effective legal integration exists. For example, apart from the accumulation and transfer of technological capital, the host country's role in how FDI in mining sector plays an important role in economic growth through development training and skill acquisition (Javaid, 2016, p. 15). This claim shows a positive effect on economic growth, such as the interdependence between domestic and foreign direct investors, the improved and appropriate level of human capital, open trade regimes, and well-developed financial markets.

FDI in mining sector is positively related to Guinea's economic growth, even though a negative relationship between economic growth and other variables has also been revealed. Therefore, policymakers, whose responsibility is to enhance the country's development, must continue to work hard to ensure price stability in the country. These should be done through a legal framework and as a result of a strong and healthy financial market, promoting entrepreneurs, productivity, and growth (Le and Pham, 2017, p.1054). Growth based on investment in mining sector is one in which the nation's productive capacity is sustainably increased (Sefriani, 2018, p.8). While it is true that the policy integration often raises challenges that must emerge as legitimate concerns in contexts where there is conflicted with pre-existing policy goals, norms, and interests, such as the case for employment issues, economic growth, and human rights, a comprehensive understanding of balancing the interests of the host state and foreign investors will provide a new BIT model for Guinea.

Most countries usually limit the factors to achieve the SDGs due to financial pressures. Many writers have discussed global economic challenges; the argument developed here is that developing countries cannot depend on foreign funding to achieve the SDGs. The developed countries can only be considered associates in terms of FDI. However, FDI in the mining sector can help to leverage their existing budget resources to fund and launch SDGs' implementation, but only if a legal framework is provided (Akenroye et al., 2018, p. 6). Moreover, the group responsible for its direction should consist of senior civil servant representatives from crucial ministries to provide the necessary knowledge and information to achieve the targeted SDGs. In brief, these effects can reduce the negative impacts of economies according to foreign investors due to repatriation of profits, lower reinvestment, and income inequality.

Conclusion

The persistence of poverty in the Republic of Guinea, and the conflicts that arise between the foreign investors in mining sector and local authorities derived from the lack of economic participation through local projects and the lack of adequate employment opportunities in the existing legal framework governing FDI in mining sector. Even though, the Guinean mining Code 2013, has introduced a systematic and innovation rule for re-orientation of FDI in mining sector objectives into public interests. But the issues still in the application of the provision referred to local population interest. Such as article (130) started that the (0.05) up to (1%) per cent of the interests in the mining sector are freely given to local communities impacted by mining companies. However, the question still whether the population affected can be interpreted the safeguarding public policy objectives about the decent employment and economic impact on local community lifestyle in SDG 8 approaches. Or the interpretation can be more because, the conversions of the international rules for SDGs achievement still need to be clarify in its conceptual and context focused for the needs of realities of the country, and at the same time are pioneers in standard-setting motion in sustainability's objective.

According to the World bank report 2016 on doing business in Guinea have indicated that the governments often faced challenges of the legal implication and transparency in the application of rules the law between foreign investors in mining sector and local communities. The foreign investors focused, by design, on the protection of investments while balancing the investors' rights and responsibilities by host countries are often sought out as against their interests. However, the basic needs of communities are consisted of participating in social developments through employment opportunities and economic participation. In this aim, if the IIAs have opened the window for SDGs application for these needs will gladly be accepted by local populations. Previously, the proper claim of SDGs could not generally be verified at IIAs levels on the initiative of host state courts and international investment arbitration tribunals because of the lack of regulation.
The issues of SDGs enclose many factors of state viability that have designed and continued to its future development character. Usually, the investment involves transferring capital, machinery, equipment, technology, and other components related to the investment project, from the home country to the host country (Akinsanya, 2014). The proper law for SDGs, the Republic of Guinea is one of the countries in which FDI in mining sector is playing its hopeless role as the locomotive of local economic growth, employment of communities, and guarantee suitable work for local employees. However, lack of the application and the harmonisation issues in the current legal context in Guinea are constituted to be a source of conflict between investors and local authorities. The proper legal and policy guideline still need to meet the "Guinea emerging country 2040" objective. This orientation must positively impact the present and future of the local population and allow them to benefit from FDI in mining sector in Guinea. However, foreign investors can infringe the rights of local employees, which are documented in international treaties and agreements approved by the Republic of Guinea.

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