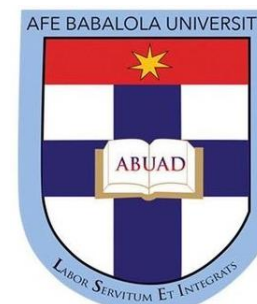




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MINERAL EXTRACTION AND GOVERNANCE IN THE NIGERIAN MINING INDUSTRY: AN EXAMINATION OF REGULATORY CONFLICTS AMONGST NIGERIA'S THREE TIERS OF GOVERNMENT

Ihase S.O Omoijuanfo,* Michael U. Ukponu and Zacheus O.
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ABSTRACT

Nigeria's abundant mineral potentials can be harnessed to significantly contribute to her socio-economic development if the regulatory framework of the Nigerian Mining Industry (NMI) is properly articulated and implemented, devoid of the regulatory conflicts that have been observed amongst various regulatory and government entities. This article analyses a 2019 – 2020 study undertaken by the Ministry of Mines and Steel Development in the Federal Capital Territory and 17 out of the 36 States of the Federal Republic of Nigeria which exposed mining sector-related regulatory conflicts amongst the Federal, State and Local Governments and their Ministries, Departments, and Agencies (MDAs). The study also revealed that, despite certain extant Constitutional and statutory instruments vesting

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the control of minerals and mining activities on the Federal Government and its Ministry of Mines and Steel Development, the implementation of other national and subnational statutory instruments has generated regulatory conflicts and controversial interferences in the governance of mineral resources in the country. This development has led to adverse political and socio-economic implications and outcomes. Thus, after an in-depth consideration of these regulatory conflicts and its implications, the article recommends, among other salient solutions, the amendment and/or repeal of all applicable mining statutes and regulations to remove these regulatory conflicts, and this will better position the NMI on the path to restoration and ultimately surpassing its glorious past.

Keywords: Mining Governance, Regulatory Conflicts, Minerals and Mining Act, National Inland Waterways Authority Act, Land Use Act, State Governments, Local Governments, Nigeria

1. INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 (“CFRN”)¹ and the Nigerian Minerals and Mining Act 2007 (“MMA”)² vest the governance and regulation of metals, minerals, and mining activities within the sole purview of the Federal Government who primarily exercises this mandate through the Federal Ministry of Mines and Steel Development for the overall benefit of all Nigerians. However, at a practical

¹ Constitution of the Federal Republic of Nigeria 1999 (4th alteration) (“CFRN”), Exclusive Legislative List, Item 39 <www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> accessed 21 February 2022; <www.nass.gov.ng> accessed 21 February 2022

² Nigerian Minerals and Mining Act 2007 (“MMA”), s 1

level, State and Local Governments (subnational governments)³ are incrementally involved in mineral resources management within their respective state territorial jurisdictions. On-field data and reports available to the Federal Ministry of Mines and Steel Development are replete with information that subnational governments, as well as traditional rulers and people with political influence, promote the exploitation and processing of gold and strategic metallic minerals within their domains, often deploying the use of heavily armed state security personnel to shield illegal mining activities. In some eastern and northern parts of Nigeria, rich deposits of Zinc, Lead, Cassiterite, Columbite, etc., are mined in a manner that is inimical to public health, safety and the environment. The 2010 Lead poisoning episode in Zamfara State, Northern Nigeria remains an unfortunate classic example.⁴

The incremental involvement of State and Local Governments in mineral resource governance can be linked to the developing awareness, campaigns and agitations for the implementation of subnational resource control by resource nationalists and indigenous peoples.⁵ Notwithstanding, from a critical analysis of

³ Organization for Economic Cooperation and Development (OECD), 'Subnational Government Investment' in *OECD Regions and Cities At A Glance* (OECD Publishing 2018) 114 <<https://www.oecd-ilibrary.org/docserver/959d5ba0-en.pdf?expires=1661814901&tid=id&accname=guest&checksum=1AE1F6384590CACF1BD23CAD10FB8FD0>> accessed 25 August 2022. See also AH Gutierrez, 'What Are We Talking About When We Talk About "Subnational" Government?' (World Bank Blogs, 26 August 2015) <<https://blogs.worldbank.org/governance/what-are-we-talking-about-when-we-talk-about-subnational-governments>> accessed August 25 2022

⁴ JA Awomeso et al, 'Human Health and Environmental Assessments of Small-scale and Artisanal Mining Activities in the Gold City of Ijeshaland, Southwestern Nigeria' (2017) 6 (18) *Environmental Systems Research* 1, 1 – 2

⁵ M Dickson and SA Asua, 'The Politics of Resource Control in Nigeria: Agitations and Innovation' (2016) 7(2) *International Journal of Politics and Good Governance* 1, 7 – 9 <<http://onlineresearchjournals.com/ijopagg/art/205.pdf>> accessed 18 July 2021; PO Okolo and OR Akpokighe, 'Federalism and Resource Control: The

the Federal Ministry of Mines' study undertaken between 2019 and 2020 as summarized in the Table reproduced in Part III of this article, it is the authors' observation that the unchecked involvement of subnational governments and non-state actors in mining breeds illegal mining and associated activities, production of low-grade minerals, disruption of a dependable minerals value chain, environmental hazards, and societal strife. It is instructive yet less emphasized that illegal miners usually employ the use of crude mining and processing methods which lead to the output of low-quality ore grades and the perpetuation of the underdevelopment of a reliable value chain in the Nigerian Mining Industry (NMI). Likewise, environmental concerns such as land use, management and rehabilitation, solid waste, water use, acid mine drainage, product toxicity, etc., are equally salient and cannot be neglected. These challenges could have been drastically curbed but for these regulatory conflicts under discourse. The development of a viable value chain is hinged on considerable legal, policy, economic, technical, and practical experiences; and so, with respect to developing a mining value chain for the NMI, these regulatory conflicts are a major clog in the wheel of progress.

Metals and minerals are essential to modern living and economic development.⁶ Ensuring the future supply and sustainable

Nigerian Experience' (2014) 4(2) Public Policy and Administration Research 99, 103 <<https://www.iiste.org/Journals/index.php/PPAR/article/view/11092/11393>> accessed 18 July 2021; see generally DA Yagboyaju and AO Akinola, 'Nigerian State and the Crisis of Governance: A Critical Exposition' (2019) 9(3) SAGE Open 1, 3 <<https://journals.sagepub.com/doi/pdf/10.1177/2158244019865810>> accessed 18 July 2021; PS Orogun, 'Resource Control, Revenue Allocation and Petroleum Politics in Nigeria: The Niger Delta Question' (2010) 75(5) GeoJournal 459, 486 and 490

⁶ P Christmann, 'Mineral Resource Governance in The 21st Century and A Sustainable European Union' (2021) 34 Mineral Economics 187 <<https://doi.org/10.1007/s13563-021-00265-4>> accessed 25 August 2022; 'Decisions by Topic: Mining', Sustainable Development Goals Knowledge Platform (Web Page)

management of metals is a key issue in politics, science, and economics because mineral resource deposits are finite. Thus, the need to ensure that there are no regulatory conflicts amongst national and subnational governments cannot be downplayed in order to guarantee the steady supply of high-quality metals and minerals, both locally and globally. When measuring the depletion of mineral resources, several indicators are used, one of which is based on the quality of the ore grade.⁷ A decrease in the quality of the ore grade is attributable to illegal and artisanal mining in the NMI over time and a possible sign of resource exhaustion.⁸ As far as productivity is concerned, the decrease in the production of high-grade minerals is a stumbling block against the achievement of maximum recovery of metals. The complexity of minerals also makes it difficult to profitably and sustainably extract metals using crude methods employed in illegal mining which an effective governance regime, devoid of regulatory conflicts and unnecessary bureaucracies, ought to discourage. Thus, as exposed by the 2019-2020 study, it suffices to state that the problems posed by regulatory frictions characterized by the undue incremental involvement of subnational governments in minerals extraction and mining governance in the NMI is hydra-headed.

An integrated mining complex consists of multiple components such as mines, crushers, stockpiles, leach pads, processing mills, waste dumps, metallurgical plants, means of transportation and customers. These components are interlinked to form the

<<https://sustainabledevelopment.un.org/index.php?menu=1259>> accessed 25 August 2022

⁷ T Ponomarenko, M Nevskaya, and I Jonek-Kowalska, 'Mineral Resource Depletion Assessment: Alternatives, Problems, Results' (2021) 13 *Sustainability* 862, 689 <<https://doi.org/10.3390/su13020862>> accessed 25 August 2022

⁸ Ibid

mineral value chain.⁹ The application of modern technological processing methods such as bioleaching technology (which is an alternative processing technology for treatment of low-grade sulphide ore other than the conventional pyrometallurgical technology); efficient transport system; customer and shareholders' satisfaction; and sustainable environmental management will contribute to the achievement of better socio-economic outcomes in the NMI. At the risk of overemphasis, an effective regulatory space, devoid of conflicts and undue bureaucracies, is key to institutionalizing these modern mining technology and practices. The development of an effective regulatory space and economic value chain for profitable outcomes is painstaking and time consuming, that is why these regulatory conflicts continue to undermine the role of regulation in ensuring the economic viability of the NMI.

Nigeria is blessed with abundant mineral deposits which, if properly harnessed, can significantly contribute to the socio-economic development of the country.¹⁰ We add that this potential would be imminent where the governance framework for the NMI is properly articulated in a manner that prevents copious regulatory conflicts that have been observed over time amongst the three tiers of government in Nigeria, i.e., the

⁹ D Kržanović et al, 'Maximizing Economic Performance in the Mining Industry by Applying Bioleaching Technology for Extraction of Polymetallic Mineral Deposits' (2019) 9(7) *Minerals* 400 <<https://doi.org/10.3390/min9070400>> accessed 25 August 2022; R Goodfellow and R Dimitrakopoulos, 'Simultaneous Stochastic Optimization of Mining Complexes and Mineral Value Chains' (2017) 49 *Mathematical Geosciences* 341, 342 <<https://link.springer.com/content/pdf/10.1007/s11004-017-9680-3.pdf>> accessed 25 August 2022

¹⁰ 'The Nigerian Mining Industry – An Underdeveloped Industry' (Mining Africa, 2017) <<https://www.miningafrika.net/mining-countries-africa/nigeria/>> accessed 19 June 2021; Oxford Business Group, 'New Roadmap for Nigeria's Mining Industry (2018)' <<https://oxfordbusinessgroup.com/overview/uncovering-potential-new-road-map-aims-to-help-industry-capitalise-its-substantial-and-diversified>> accessed 19 June 2021

Federal Government, State Governments and Local Governments. These three tiers of government usually exercise their respective regulatory powers in the NMI through their relevant ministries, departments and agencies (MDAs) or special taskforce units.

Based on the foregoing, the article attempts to address the following pertinent questions:

- a) What are the existing governance and regulatory challenges that hinder effective mining governance in Nigeria and how have they impacted on the development of the NMI?
- b) What legal and institutional measures have been/are being taken so far? What further institutional measures are recommended to address these governance and regulatory challenges?

The authors rely on an empirical study undertaken by the Federal Ministry of Mines and Steel Development to examine the regulatory and governance space in the NMI. The study was conducted through the collation of complaints to the Ministry by mining operators and the administration of structured questionnaires to collect primary field information. The study covered 17 States of the Federation and the Federal Capital Territory, Abuja and the field data were synthesized between 2019 and 2020. The study revealed that the implementation of certain federal minerals-related legislation such as the Minerals and Mining Act, No. 20 of 2007; the Land Use Act, No. 6 of 1978; the National Inland Waterways Authority Act, No. 13 of 1997; and some State Laws and Local Government By-Laws have generated regulatory conflicts regarding the control and management of mineral resources in Nigeria. This has resulted in the loss of lives, properties and livelihoods in affected host

communities; declining investments in the NMI and capital flight; huge revenue losses accruable from mining to the Federal Government; and the NMI's poor contribution of 0.3% to Nigeria's Gross Domestic Product (GDP).¹¹

Apart from the study, this article also relies on secondary sources from various literatures majorly on Nigeria's mining sector. The article also reviews and analyzes existing legal, institutional, and regulatory frameworks, as well as certain statutory and administrative actions of the Federal Government to reposition the NMI and address mining governance issues across Nigeria. The review not only corroborates the results of the study relating to regulatory conflicts in the NMI, but also extends the discourse by examining the regulatory conflicts in the context of federalism and resource control, as well as an oft-neglected but significant dimension – the 'Ministry-NIWA' regulatory conflict. In the final analysis, the article recommends salient and strategic solutions to manage these legal and regulatory conflicts, including the amendment (and/or repeal) of specified provisions of applicable minerals and mining laws to remove existing regulatory conflicts.

¹¹ S Kedem, 'All You Need To Know About Nigeria's New Mining Law', African Business (London, 21 November 2021) <<https://african.business/2021/12/energy-resources/all-you-need-to-know-about-nigerias-mining-law/>>accessed 15 December 2021.

2. OVERVIEW OF THE NIGERIAN MINING INDUSTRY (NMI)

2.1 Brief History of the NMI

Organized mining activities in Nigeria have been traced back to the 20th century.¹² Under colonial domination, the British Secretary of State for Colonies in 1903 commissioned mineral surveys in the old Northern and Southern Protectorates of Nigeria.¹³ The Royal Niger Company embarked on the earliest recorded mining activity in Nigeria when it discovered Tin in 1905.¹⁴ Gold mining later began in 1914 in present day Kogi and Niger States. In 1916, British miners began commercial Coal mining in Enugu.¹⁵ During these periods, the mining sector was majorly responsible for driving rapid industrialization in Nigeria. The rail network in Nigeria today was constructed in such a manner that facilitated the freight of mined minerals by connecting mining towns and fields to each other for onward transport to the seaport.¹⁶ The discovery of Tin also prompted the construction and installation of Nigeria's first power plant in 1928 at Kura Falls, near Jos.¹⁷ From then on, massive mining and industrial activities intensified across Nigeria. By 1940, Nigeria

¹² Ministry of Mines and Steel Development, Roadmap for the Growth and Development of the Nigerian Mining Industry 2016 – On the Road to Shared Mining Prosperity (2016) 79 <<http://www.minesandsteel.gov.ng/roadmap/>> accessed 8 April 2021

¹³ Ibid

¹⁴ Ibid

¹⁵ JK Fayemi, 'Nigeria's Solid Minerals Sector: Alternative Investment Opportunities' (Speech delivered at the All Party Parliamentary Group Nigeria Meeting, Chatham House Royal Institute of International Affairs, London, United Kingdom, 19 May 2016) 3 <<https://www.chathamhouse.org/sites/default/files/events/2016-05-19-Nigeria-solid-minerals-appg-transcript.pdf>> accessed 8 April 2021

¹⁶ Ministry of Mines and Steel Development (n 12)

¹⁷ Ibid

was a major global producer and exporter of Coal, Columbite and Tin.¹⁸

However, the development of the Nigerian Mining Industry (NMI) began to decline due to certain factors, notably the discovery of oil in 1957. The Federal Government neglected mining and agriculture to concentrate heavily on the exploration and production of petroleum resources. In 1972 and 1977, the Nigerian Military Government promulgated Indigenization Decrees¹⁹ which mandated the acquisition of majority shares in foreign-owned mining companies by Nigerians with the aim of eventually nationalizing these companies.²⁰ Consequently, mineral production and development levels in the NMI fell drastically and foreign mining companies began to exit the country, leaving local artisanal and small-scale miners (ASM) in the sector.²¹ This economic policy shift has led to the linear and accumulated underdevelopment of the NMI. However, having realized the disastrous consequences of this economic policy error, the Federal Government is now working to re-liberalize the NMI.²²

2.2 Current State of the NMI

In 1999, the Federal Government undertook a comprehensive study of extractive industries with the aim of identifying major challenges and positioning them to contribute to sustainable growth and development.²³ Having identified the potentials of

¹⁸ JK Fayemi (n 15) 19

¹⁹ Nigerian Enterprises Promotion Decrees 1972 and 1977 (Indigenization Decrees) – since repealed.

²⁰ Ministry of Mines and Steel Development (n 12)

²¹ O Alokolaro and A Akande, *The Legal and Regulatory Framework for Mining in Nigeria: A Catalyst for Investment* (Report, Advocat Law Practice, December 2015) 1

²² Ministry of Mines and Steel Development (n 12) 80

²³ *Ibid* 17

NMI towards achieving this goal, the Federal Government constituted a Presidential Committee which eventually recommended a policy to develop the NMI, improve technical and infrastructural capacity and better integrate ASM into the NMI.²⁴ The Federal Government moved to implement most of the policy recommendations of the Committee, the effect of which redefined its role in the NMI as an administrator-regulator,²⁵ while the private sector companies were to function as owners-operators.²⁶

Other notable reforms include the enactment of the Minerals and Mining Act 2007; development of the National Minerals and Mining Policy 2008²⁷ and Minerals and Mining Regulations 2011; the establishment of the Mining Cadastral Office (MCO) and the Mines Environmental Compliance (MEC); training, capacity building and support for indigenous mining companies and ASM formalization; and privatization of moribund state-owned mining enterprises.²⁸ These legal, policy and regulatory reforms, modelled after frameworks of some successful mining jurisdictions, were designed to set international best regulatory standards for the NMI away from the dark years of bureaucratic

²⁴ Ibid

²⁵ Ibid 18

²⁶ Ibid

²⁷ This policy articulates the Federal Government's plans to establish a transparent licensing regime, create employment opportunities in the mining sector, regularize the activities of ASM, ensure reliable generation of geosciences data and make NMI more attractive to local and foreign investors and generate more revenue for government. See generally: Ministry of Mines and Steel Development, National Minerals and Mining Policy 2008 <https://www.minesandsteel.gov.ng/wp-content/uploads/2016/04/National_Minerals_and_Metals_Policy.pdf> accessed 1 September 2021

²⁸ Ministry of Mines and Steel Development (n 12) 18

inefficiencies and lack of transparency, as well as increase local and foreign direct investment in the NMI.²⁹

2.2.1 Mineral Endowment and International Market Opportunities

Nigeria has commercially viable yet underdeveloped deposits of at least 34 different kinds of mineral resources, which are grouped into 5 broad classes:³⁰

1. Industrial minerals – e.g. Barite, Kaolin, Gypsum, Feldspar, Limestone, Marble;
2. Energy minerals – e.g. Coal, Bitumen, Uranium, Lignite (a type or class of Coal. Other classes of Coal include Bituminous, Sub-Bituminous, Anthracite and Peat);
3. Metallic ore minerals – e.g. Gold, Aluminium, Cassiterite, Iron Ore, Lead-Zinc, Copper, Niobium (Niobium dominant coltan mineral is called Columbite, while Tantalum dominant coltan mineral is called Tantalite);
4. Construction minerals – e.g. Laterite, Gravel, Sand, Granite; and
5. Precious stones – e.g. Tourmaline, Sapphire, Emerald, Topaz, Amethyst, Garnet.

This list is not exhaustive.³¹ However, out of this list, Federal Government identified Barite, Bitumen, Coal, Gold, Iron Ore, Lead-Zinc and Limestone as “priority minerals” which it concluded has a higher propensity to stimulate economic benefits for the country.³² There is hardly any part of Nigeria

²⁹ Ibid 79

³⁰ MT Ladan, No. 8: Mineral Resources Law and Policy in Nigeria (Prof. Ladan’s Law and Policy Review Research Working Papers, January – March 2014) 2 and 41. In May 2016, JK Fayemi, the Minister of Mines and Steel Development (as he then was) stated that Nigeria has 44 mineral resources in substantial commercial deposits: JK Fayemi (n 15) 4; Ministry of Mines and Steel Development (n 12) 19

³¹ Ministry of Mines and Steel Development (n 12) 18; JK Fayemi (n 15) 4

³² Ministry of Mines and Steel Development (n 11) 18

without commercially viable mineral deposits.³³ Nigeria has proven reserves of 560 million metric tonnes of Limestone deposits and at least 40 million metric tonnes of Talc deposits.³⁴ Nigeria also has proven reserves of over 1 billion metric tonnes of Gypsum and 1 trillion metric tonnes of Coal, 10 million metric tonnes of Lead-Zinc, 1 million ounces of Gold and 15 million metric tonnes of Barite.³⁵ Nigeria has the world's second largest deposits of Bitumen – 2.7 billion barrels.³⁶ Sadly, Nigeria imports processed steel estimated at \$3.3 billion annually despite having the 12th largest deposits of Iron Ore in the world – over 2 billion metric tonnes.³⁷ The 2.8 million tonnes of Steel produced annually in Nigeria is produced entirely from scrap metal.

2.2.2 Legal and Regulatory Structures

The Constitution of the Federal Republic of Nigeria 1999 (“CFRN”) vests all minerals, mineral oils and natural gas within and under Nigeria’s territorial integrity in the Government of the Federation to the exclusion of every other person or authority.³⁸ Apart from the CFRN, the principal law governing the NMI is the Minerals and Mining Act 2007 (“MMA”)³⁹ which repealed the erstwhile Minerals and Mining Act 1999.⁴⁰ The MMA governs all matters relating to the exploration and mining of solid minerals including ownership and control,⁴¹ prospecting,⁴² mining,⁴³ quarrying,⁴⁴ small-scale mining,⁴⁵

³³ JK Fayemi (n 15)

³⁴ JK Fayemi (n 15); Ministry of Mines and Steel Development (n 12) 19

³⁵ JK Fayemi (n 15); Ministry of Mines and Steel Development (n 12) 19

³⁶ JK Fayemi (n 15)

³⁷ Ibid 6; Ministry of Mines and Steel Development (n 12) 19

³⁸ CFRN, s 44 (3). See also CFRN, exclusive legislative list, item 39

³⁹ Nigerian Minerals and Mining Act No 20 of 2007 (“MMA”) <www.lawsofnigeria.placng.org> accessed 19 June 2021

⁴⁰ Minerals and Mining Act No 34 of 1999 – since repealed.

⁴¹ MMA, ss 1, 2 and 3

⁴² MMA, ss 23 – 64

⁴³ MMA, ss 65 – 74

possession and purchase of minerals,⁴⁶ environment and host communities' rights,⁴⁷ offences and penalties,⁴⁸ and other supplementary provisions.⁴⁹ Thus, any mining operation executed without a license, lease or permit under this Act is an illegal operation and a punishable offence under the Act. The MMA also made provisions for effective collaboration between the Ministry and departments in charge of mines and other institutional stakeholders in regulating mining activities.⁵⁰ The MMA has a subsidiary legislation known as the Minerals and Mining Regulations 2011 ("MMR").⁵¹ The MMR enables efficient implementation of the MMA by detailing the procedures and processes for regulating exploration and mining operations.⁵²

The MMA and MMR are implemented by the Ministry of Mines and Steel Development ("the Ministry") headed by a Minister who is responsible for the effective administration of the NMI, grant of mining licences/leases, sustainable development of solid minerals and creating conducive environment for investors.⁵³ The Ministry also statutorily coordinates and supervises other departments and agencies of the Federal Government linked to the mining sector. They include the Mining Cadastral Office (MCO), Mines Inspectorate Department (MID), Mines Environmental Compliance Department (MECD), the Nigerian Geological Survey Agency (NGSA), and the Artisanal and

⁴⁴ MMA, ss 75 and 89

⁴⁵ MMA, ss 90 and 91

⁴⁶ MMA, ss 92 – 96

⁴⁷ MMA, ss 97 – 130

⁴⁸ MMA, ss 131 – 142

⁴⁹ Such as transfer, renewal, suspension, revocation and surrender of mineral titles: MMA, ss 143 – 165

⁵⁰ MMA, s 4(i)

⁵¹ Nigerian Minerals and Mining Regulations 2011 ("MMR")

⁵² MMR, r 3

⁵³ MMA, s 4

Small-Scale Mining Department (ASMD). The MCO is responsible for receiving, considering and managing applications for mineral titles and permits; issuing, suspending and revoking mineral titles and permits; and maintaining cadastral registers among other roles.⁵⁴ Upon the Minister's approval, the MCO issues and registers reconnaissance permits, exploration licenses, mining leases, small-scale mining leases, quarry leases and water use permits.⁵⁵ The MID supervises all reconnaissance, exploration and mining operations and health and safety regulations,⁵⁶ while NGSA is responsible for gathering geological and geophysical data with which mineral ore deposits are detected and analyzed. The MECD monitors and enforces compliance with all environmental requirements for the NMI,⁵⁷ while the ASMD assists and supports small-scale and artisanal mining outfits ensures that ASM operations are regularized and standardized.⁵⁸ The MCO issues a special mining permit for ASM operators called the Small-scale Mining Lease as part of efforts to standardize ASM.⁵⁹

Other ministries, departments, and agencies (MDAs) that are relevant to the mining sector but outside the Ministry include the Ministries of Environment, Finance, Justice, Health, Labour and Employment, Transport, and Science and Technology; Federal Inland Revenue Service; Corporate Affairs Commission; National Environmental Standards and Regulations Enforcement Agency; Central Bank of Nigeria; Council for Mining Engineers and Geoscientists; and Nigerian Investment Promotion Commission.

⁵⁴ MMA, s 5

⁵⁵ MMA, ss 7 and 46(1)

⁵⁶ MMA, s 16

⁵⁷ MMA, s 16

⁵⁸ MMA, s 16 (1) (c)

⁵⁹ MMA, ss 5 and 6

It is worthy of note that the State and Local Governments are also involved in the governance of minerals in Nigeria. Their involvement is justified by the fact that many mining fields are located in rural or remote areas of the country whose lands are under the statutory trusteeship of these subnational tiers of government as guaranteed by the Land Use Act.⁶⁰ However, by virtue of Section 19 of the MMA, the participation of State and Local Governments in governance and decision-making mechanisms within the NMI structure is limited to their membership and involvement in the advisory role of State Mineral Resources and Environmental Management Committee (“MIREMCO”) in each State of the federation. This situation has created a regulatory conflict in the NMI which is further exposed by Sections 6 and 12 of the Land Use Act which empower the State and Local Governments to manage mineral resources in lands which are not covered by a mining lease. This regulatory imbroglio vis-à-vis the CFRN and the MMA will be evaluated in ensuing sections of this article.

Other relevant laws include National Environmental Standards and Regulations Enforcement Agency Act,⁶¹ Environmental Impact Assessment Act,⁶² Mines and Quarries (Control of Buildings etc.) Act,⁶³ Water Resources Act⁶⁴ and Nigerian Extractive Industries Transparency Initiative Act.⁶⁵ There is also

⁶⁰ Land Use Act 1978, ss 1, 5, 6 and 12 <<https://lawsofnigeria.placng.org>> accessed 19 June 2021

⁶¹ National Environmental Standards and Regulations Enforcement Agency Act 2007 (NESREA Act) <www.nass.gov.ng> accessed 19 June 2021; <<https://lawsofnigeria.placng.org>> accessed 19 June 2021

⁶² Environmental Impact Assessment Act 1992 <<https://lawsofnigeria.placng.org>> accessed 19 June 2021

⁶³ Mines and Quarries (Control of Buildings etc.) Act <<https://lawsofnigeria.placng.org>> accessed 19 June 2021

⁶⁴ Water Resources Act 1993 <<https://lawsofnigeria.placng.org>> accessed 19 June 2021

⁶⁵ Nigerian Extractive Industries Transparency Initiative Act 2007 <www.nass.gov.ng> accessed 19 June 2021

the National Inland Waterways Authority Act (“NIWA Act”) which mandates the National Inland Waterways Authority (NIWA) to issue permits for quarrying and dredging (a type of mining procedure of seabed sand).⁶⁶ Some State Governments have enacted State Laws to govern mining activities within their States. Lagos State enacted the Lagos State Waterways Authority Law empowering the Lagos State Waterways Authority (LASWA) to grant dredging and quarrying permits within the State.⁶⁷ The implication and implementation of these Federal Acts and similar State Laws continue to foster regulatory conflicts between Federal Government agencies, as well as between Federal and State Government agencies. These regulatory conflicts are the focus of the article.

2.2.3 Fiscal Considerations: Taxes, Royalties and Incentives

Mining companies are mandated to pay Company Income Tax which is a tax levied on the companies’ profit from their mining operations at the rate of 30%.⁶⁸ Mining partnerships and individual partners are taxed Personal Income Taxes at 17.5%.⁶⁹ Mining companies are also mandated to pay mining, milling and quarrying fees in any States where they are imposed.⁷⁰ The Federal Inland Revenue Service collects all taxes on behalf of the

⁶⁶ National Inland Waterways Authority Act, ss 9(i) and 28(h)

⁶⁷ Lagos State Waterways Authority Law, s 5(p). The State Law purportedly repealed the application of the federal Act – National Inland Waterways Authority Act – in Lagos State. See: ‘NIWA Public Notice on Lagos State Intervention in Inland Waterways Regulation’ (Drill, Dredge & Haul, 7 November 2020) <<https://www.ddhmag.com/niwa-public-notice-on-lagos-state-intervention-in-inland-waterways-regulation/>> accessed 13 November 2021

⁶⁸ Companies Income Tax Act (CITA), Cap. C 21 Laws of the Federation of Nigeria 2004, s 40 (1) <www.nass.gov.ng> accessed 19 June 2021

⁶⁹ KPMG Nigeria, Nigerian Mining Sector Brief (Report, 3rd ed, KPMG Nigeria, February 2017) 17 <<https://home.kpmg.com/ng/en/home/insights/2017/06/nigeria-mining-sector-an-overview.html>> accessed 26 June 2021

⁷⁰ Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015, sch, para 3

Federal Government except mining, milling and quarrying fees which are payable to the State Governments through their respective State Revenue Boards.⁷¹ Despite these taxes being reserved for the State Governments, the agitation for resource control where the States would rather collect more mining revenues accruable are rife, and this continues to fuel regulatory conflicts between the Federal Government MDAs on one hand; and between the Federal Government MDAs and State/Local Governments on the other hand.

2.2.4 Informal Mining Activities and Environmental Degradation

The poor fiscal and regulatory performance of the NMI has led to burgeoning ASM activities, leaving 95% of the mining activities in the control of ASM operators.⁷² There are serious concerns about the environmental and health risks caused by ASM and illegal mining. The scale of mining operations and techniques is directly related to the extent of environmental degradation. Mining host communities continue to experience environmental degradation where mining activities are executed through crude methods or rudimentary technology typically associated with ASM. As they are the arms of government that are closer to the (indigenous) people, State and Local Governments respond by interfering in the regulation of mining activities, especially as it is their legal duty to protect the environment.

ASM activities were largely responsible for lead poisoning in Zamfara State, Northern Nigeria which killed at least 50

⁷¹ KPMG Nigeria (n 69) 17

⁷² IT Oramah et al, 'Artisanal and Small-Scale Mining in Nigeria: Experiences from Niger, Nasarawa and Plateau States' (2015) 2(4) *The Extractive Industries and Society* 694

children.⁷³ Currently, Artisanal and Small-scale Gold Mining (ASGM) is inadvertently fuelling banditry and terrorism as bandits/terrorists purchase gold from artisanal miners at cheap prices and later exchange them for guns and ammunition in obscure ammunition black markets across the Sahel region.⁷⁴ This has prompted the Federal Government to consider the temporary suspension of mining activities in Zamfara State.⁷⁵ Other localities affected by large-scale environmental damage are the Niger Delta communities as a result of petroleum exploration;⁷⁶ Sagamu, Okpella, Ewekoro, Ashaka and Gboko owing to quarrying of Marble and Limestone;⁷⁷ and in Jos and Enugu as a result of Tin and Coal mining respectively.⁷⁸ Thus, in addition to agitations for resource control, the curbing of

⁷³ EC Merem et al, 'Assessing the Ecological Effects of Mining in West Africa: The Case of Nigeria' (2017) 6 (1) *International Journal of Mining Engineering and Mineral Processing* 1, 14

⁷⁴ Channels Television, 'Experts Agree That Zamfara Govt Can Apply for License to Mine Gold in the State' (YouTube, 12 October 2020) 00:05:08 – 00:06:25 <https://www.youtube.com/watch?v=rUJ0_7oGv0U> accessed 25 July 2021

⁷⁵ Channels Television, 'Full Video: FG Considers Nationwide Ban On Motorcycles, Mining Activities Over Insecurity' (YouTube, 21 July 2022) 00:02:43 – 00:04:45 <<https://www.youtube.com/watch?v=pCEmkytIzvg>> accessed 22 July 2022

⁷⁶ ZA Elum, K Mopipi and A Henri-Ukoha, 'Oil Exploitation and Its Socioeconomic Effects On The Niger Delta Region of Nigeria' (2016) 23(13) *Environmental Science and Pollution Research International* 12880 <<https://www.proquest.com/docview/1797773635/fulltextPDF/DFE3E165BECD4D2CPQ/1?accountid=12372>> accessed 4 September 2021

⁷⁷ I Aigbedion and SE Iyayi, 'Environmental Effect of Mineral Exploitation in Nigeria' (2007) 2(2) *International Journal of Physical Sciences* 33 <<https://academicjournals.org/journal/IJPS/article-full-text-pdf/32F72A212872>> accessed 4 September 2021; JR Ediawe, *An Assessment of the Environmental Impact and Rehabilitation Practices of Artisanal and Small-scale Miners In Okpella, Edo State, Nigeria* (MSc. Project Report, Institute for Development Studies, University of Enugu, December 2011) 52 – 53 <[https://unn.edu.ng/publications/files/images/M.Sc%20Project%20Thesis%20\(IDS,%20UNEC\)%20R.%20Ediawe.pdf](https://unn.edu.ng/publications/files/images/M.Sc%20Project%20Thesis%20(IDS,%20UNEC)%20R.%20Ediawe.pdf)> accessed 4 September 2021

⁷⁸ AO Omotehinse and BD Ako, 'The Environmental Implications of the Exploration and Exploitation of Solid Minerals in Nigeria with A Special Focus On Tin in Jos and Coal in Enugu' (2019) 18(1) *Journal of Sustainable Mining* 18 <<https://www.sciencedirect.com/science/article/pii/S2300396018301113>> accessed 4 September 2021

environmental degradation arising from mining is another justification for the interference of State and Local Governments in the regulation of mining activities within their respective domains.

3. MINING GOVERNANCE CHALLENGES IN NIGERIA

Governance involves “interactions among structures, processes and traditions that determine how power is exercised, how decisions are taken, and how citizens or other stakeholders have their say.”⁷⁹ Fundamentally, it is about power, relationships and accountability: who has influence, who decides, and how decision makers are held accountable.⁸⁰ In the Nigerian Mining Industry (NMI), there are frequent executions of power and authority and interrelations among various stakeholders which are not devoid of friction. The governance of the NMI is legally vested on the Federal Government through the Ministry of Mines, but other federal government agencies like the National Inland Waterways Authority (NIWA) and even State and Local Governments tend to lay claim to regulating mining activities within their legal perimeters.

In federal constitutional democracies such as Australia, subnational governments exercise control over mineral resources onshore and up to three nautical miles offshore, while the Australian Federal Government exercises control over mineral

⁷⁹ J Graham, B Amos and T Plumtre, *Governance Principles for Protected Areas in the 21st Century* (Policy Brief, Institute on Governance, 30 June 2003) 2 – 3 <<http://st1.asflib.net/MEDIA/ASF-CD/ASF-M-00105/Protected%20Area%20Governance.pdf>> accessed 24 October 2021, cited in M Lockwood et al, ‘Governance Principles for Natural Resource Management’ (2010) 23(10) *Society and Natural Resources* 896, 897

⁸⁰ Ibid

resources from thence into the continental shelf.⁸¹ The Australian example shows that subnational governments have the capacity to govern mineral resources within their territorial competences where there is an enabling legal and regulatory framework. As solid minerals are essential to diversifying Nigeria's economy, subnational governments have a vital role to play in ensuring that the governance of the NMI impacts positively on the development of their respective territories. While admitting that the Constitution of the Federal Republic of Nigeria 1999 ("CFRN") gives the Federal Government sole control over all mineral and natural resources, the States wherein mineral resources are domiciled cannot be aloof in ensuring effectively regulated mining operations and the welfare and safety of the host communities.

Notwithstanding, State and Local Governments have sometimes overstepped their legal boundaries. The Ebonyi State Government shut down the mining operations of Greenfield Metals Limited in Ishiagu, Ivo Local Government over its alleged failure to pay mineral tax to the State Government.⁸² Against this backdrop, private sector stakeholders, particularly the Miners Association of Nigeria have called out the undue interference of the State and Local Governments in mining regulation and activities.⁸³

In providing an exposé into the major governance challenges bedevilling the NMI, the article emphasizes that this governance

⁸¹ Attorney-General's Department, *Offshore Constitutional Settlement: A Milestone in Constitutional Federalism* (Policy Paper, Australian Government, 1980) 6 and 7 <<https://www.ag.gov.au/international-relations/publications/offshore-constitutional-settlement-milestone-cooperative-federalism>> accessed 14 August 2021

⁸² K Olatunji, 'How State Governments Impede Mining Operations', *The Guardian Newspapers* (Abuja, 15 September 2020) <<https://guardian.ng/business-services/how-state-governments-impede-mining-operations/>> accessed 9 September 2021

⁸³ *Ibid*

challenge chiefly constitutes a double-headed conflict of statutory interests – firstly, the Federal Government (and/through their agencies, especially the Ministry of Mines and Steel Development and/or NIWA) versus the State Governments/Local Governments (and/through their agencies); and secondly, between Federal Government agencies (especially involving the Ministry and its internal departments) versus NIWA (supported by the Ministry of Transport, its supervising federal ministry).

3.1 Mining Governance and Conflict of Statutory Interests: The Federal Government v. State and Local Governments

3.1.1 Federalism and Resource Governance Challenges

“Federalism entails the devolution of governmental powers between the Central (Federal) Government and its component units (State/Local Governments) to be exercised within certain limits.”⁸⁴ However, the exercise of these powers often breeds conflicts and frictions between state and federal powers, jurisdictions and interests, and such instances are recurrent in the NMI. In their desire to raise their internally generated revenue, State and Local Governments interfere and usurp the exclusive constitutional powers of the Federal Government delegated to the Ministry with respect to minerals and mining.⁸⁵

⁸⁴ MU Ukponu, Y Sulayman and K Oyibo, ‘Role of Law in the Energy Transitions in Africa: Case Study of Nigeria’s Electricity Laws and Off-Grid Renewable Energy Development’ in VR Nalule (ed), *Energy Transitions and the Future of the African Energy Sector* (Palgrave Macmillan 2021) 141, 173 <https://link.springer.com/chapter/10.1007/978-3-030-56849-8_5> accessed 4 April 2021. See also DJ Elazar, *Exploring Federalism* (University of Alabama Press, 1991) 5–6 <<https://www.jstor.org/stable/pdf/2131811.pdf?seq=1>> accessed 3 April 2021

⁸⁵ HE Yemi Osinbajo, *Resurrecting Our Buried Prosperity* (Remarks by His Excellency, Prof. Yemi Osinbajo, SAN, GCON, Vice President of the Federal Republic of Nigeria at the Maiden Edition of the Strategic Engagement On Sustainable Mining, 1 July 2021) <<https://www.yemiosinbajo.ng/maiden-edition-of->

As earlier noted, a few State Governments have even enacted State Laws to regulate the mining sector and shut down mining activities in their States without consultation with the relevant Federal Government agencies. Lagos State continues to engage in a long-drawn legal battle with the National Inland Waterways Authority (NIWA) over the control of waterways and dredging (sand mining) within waterways running through the state.⁸⁶ The genesis of this regulatory friction began in 2007⁸⁷ when Lagos State Government enacted the Lagos State Inland Waterways Authority Law and the Lagos State Waterfront Infrastructure Development Law to regulate sand dredging within waterways and along waterways embankments respectively.⁸⁸ Both State Laws established the Lagos State Waterways Authority (LASWA) and the Lagos State Ministry of Waterfront Infrastructure Development (MWID) for these purposes, with the former Law purportedly repealing the National Inland Waterways Authority Act — the Federal Act governing inland waterways and sand dredging therein.⁸⁹ MWID and LASWA issued guidelines for sand dredging and even went as far as

the-strategic-engagement-on-sustainable-mining-titled-resurrection-our-buried-prosperity-on-01-07-2021/> accessed 23 September 2021

⁸⁶ 'NIWA Public Notice on Lagos State Intervention in Inland Waterways Regulation' (n 67); National Inland Waterways Authority (NIWA), 'NIWA Faults Lagos AG Over Inland Waterways Jurisdiction' [September 2020] 31 Nigerian Waterways – Newsletter of the National Inland Waterways Authority 12 – 13 <<https://niwa.gov.ng/wp-content/uploads/2022/02/NIWA-newsletter-Issue31-Sept-2020.pdf>> accessed 7 November 2021

⁸⁷ E Chilaka, 'The Jostle for the Rivers of Lagos: NIWA, Lagos Govt, Fed. Ministry of Mines, to the Fray' (Drill, Dredge & Haul, 3 November 2020) <<https://www.ddhmag.com/the-jostle-for-the-rivers-of-lagos-niwa-lagos-govt-fed-ministry-of-mines-to-the-fray/>> accessed 7 November 2021

⁸⁸ Lagos State Inland Waterways Authority Act 2008, ss 5(p) and 22; Lagos State Waterfront Infrastructure Development Law 2009, ss 1(2), 3(e) and 4

⁸⁹ 'NIWA Public Notice on Lagos State Intervention in Inland Waterways Regulation' (n 67).

banning sand mining within Lagos.⁹⁰ These regulatory conflicts have resulted in double taxation of miners, revenue loss to the Federal Government and investor apathy.⁹¹

The Federal Government has decried the lingering interference with the powers of the Federal Government in the NMI by some State Governors and has appealed to the States to desist from these interferences and rather focus on partnering with the Federal Government and the Ministry to develop mineral resources together equitably, profitably and sustainably in accordance with extant laws.⁹² These appeals have largely gone unheeded. It is also worthy to note that there are certain gaps within the regulatory and governance framework that nearly all State Governments capitalize upon to interfere in mineral exploration. This is particularly evident when States and Local Governments hide under the guise of their environmental protection powers. Since environmental issues abound in mining, including quarrying/sand mining, the States and Local Governments dabble into regulating quarrying/sand mining in order to curb environmental degradation. Clearly, the undue interference by the States in the management of mineral resources development is an impediment to national socio-economic growth.

Questionnaires were distributed to anonymous personnel of mining companies operating in 17 States and FCT Abuja to give brief accounts of State and Local Government interference in mining governance. Also, several mining operators autonomously reported State/Local Governments interferences

⁹⁰ E Chilaka, 'Why Lagos Governor Banned Sand Mining in the State' (Drill, Dredge & Haul, 24 November, 2020) <<https://www.ddhmag.com/why-lagos-governor-banned-sand-mining-in-the-state/>> accessed 7 November 2021

⁹¹ HE Yemi Osinbajo (n 85)

⁹² Ibid; MMA, s 4(i)

in mining activities to the Ministry. The table below is the collation of cases involving State/Local Government interferences in the federal governance structure of the NMI based on the questionnaires and reports.

STATE	NATURE OF INTERFERENCE
EBONYI	<p>Double Taxation: Ebonyi State Government, Local Governments, and the Host Communities collect Solid Minerals Development Levies from operating mining/quarrying companies.</p> <p>Surface Rent payment: The State Government collects Surface Rent meant for Land owners from operating companies at higher rates.</p> <p>Issuance of Permits: Local Governments issue permits to construction companies on burrow pits to excavate laterite for construction purposes and these Companies do not pay royalty to Federal Government.</p> <p>Closure of Licenced mining/quarrying sites: The State Government closed down all licenced operators in the State that failed to adhere to procedures laid down for engaging solid minerals development in the State.</p> <p>Blockade of haulage roads: Blockade of mining/quarrying companies by Host Mining Communities from gaining access in and out of mining sites unless demands for money on each loaded truck are met.</p>
EDO	<p>Development of Edo State Mineral Policy: The State Government through the State Ministry of Solid Minerals, Oil and Gas drew up the Edo State Solid Minerals Development Policy as a precursor towards the enactment of a proposed 'State Mining</p>

	<p>Law' empowering the State Government to govern and regulate mining operations within the State.</p> <p>Establishment of a State Taskforce: The State Government established a State Taskforce to enforce the implementation of the State Minerals Development Policy.</p> <p>Closure of licenced mining sites: The State Taskforce close down mining operations for refusal to pay mining taxes or under the guise of environmental regulatory infringements.</p> <p>Collection of multiple taxes and fees: The State Government through its Ministry of Environment and Sustainability collects environmental levies on all licenced sand burrow pits in the State. The State Government has been engaging in collection of revenue from mining operators in the form of haulage fees, environmental levies and taxes from mining operators in the state. Also some Local Governments demand and collect revenue in form of taxes from mining operators.</p> <p>Non-participation in MIREMCO activities: The Edo State Ministry of Solid Minerals, Oil and Gas declined to recognize the State MIREMCO and participate in its activities. However, other State MDAs which are members of MIREMCO do participate in the Committee's activities.</p> <p>Enforcement of compliance of mining operators with the State Environmental and Sanitation Law: Officials of the State Ministry of Environment backed up by armed Police personnel undertake visits to mines and quarries to enforce compliance by mining operators with the state Environmental and Sanitation Law. Some Local Governments visit mines and quarries to inspect and enforce compliance with their Environmental and Sanitation By-laws.</p>
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	Ordering of licenced mining operators to register with the Edo State Government.
ANAMBR A	<p>Blockade of haulage roads: Anambra State Government-sponsored mobile tax collectors collect ₦500 – ₦700 as tolls from trucks loaded with sand.</p> <p>Community Disturbances: Host Communities enabled by their respective Local Governments collect ₦100 – ₦200 per truck load of sand/laterite as Community Levies.</p>
ENUGU	<p>Illegal collection of Royalties: The State Government collects royalties from mining operators through the Enugu State Ministry of Environment and Mineral Resources and they instruct the operators not to pay royalties to Federal Government.</p> <p>Double Taxation: Some Local Governments also collect various forms of fees from mining operators.</p> <p>Community Interferences: Some Traditional and Community leaders demand money from mining Companies and on refusal they occupy the mines or obstruct mining operations.</p>
KANO	<p>Double Taxation: The State Government engaged consultants who collect various forms of fees from the mining/quarrying operators on behalf of the State Government.</p> <p>Closure of Licenced mining/quarrying sites: The State Government usually close down operational sites without seeking the advice of the regulatory Federal Ministry.</p> <p>Traditional Rulers’ Interference: Some of the Traditional Rulers within Host Communities place burdensome and unnecessary financial and infrastructural demands on the mining/quarrying</p>

	<p>operators.</p> <p>Police Interference: Some Police formations within the State wantonly close down mining sites in the State in the guise of acting on security reports without referring to the Federal Ministry in charge of mines, a blatant infringement of the MMA and MMR.</p>
LAGOS	<p>Ban on surface sand quarrying activities: Lagos State, through its Ministry of Energy and Mineral Resources, placed a ban on surface sand quarrying activities, thereby forcefully stopping activities of licenced operators by deploying state-sponsored thugs and Nigeria Police Force to compel compliance.</p> <p>Issuance of consent: Lagos State, through the Dredging and Monitoring Unit of the Lagos State Ministry of Waterfront and Infrastructure Development, issue consent to Sand Dredgers before they could engage in mining operations after the payment of rates ranging between ₦1.5 million to ₦10 million.</p> <p>Collection of multiple levies and fees: The State Government, through its Ministry of Waterfront and Infrastructure Development, collects ₦3,000.00 - ₦5,000.00 per truckload of sand sold from sand quarrying operators. These payments are not receipted.</p> <p>imilarly, fees ranging between ₦100,000 and ₦1,000,000 is usually collected from sand dredgers by Lagos State Government under various subheads.</p> <p>Local Governments in the State also demand payment of fees from mining operators.</p>
NASARA	<p>Community Interference: Some community leaders and youths disrupt mining activities and demand</p>

WA	money from the mining operators.
FEDERAL CAPITAL TERRITORY, ABUJA	<p>Double Taxation: Area Councils collect royalties and fees in form of operating, sign board, or loading permit, etc. from quarrying companies.</p> <p>Community Disturbances: Blockade of quarrying mining companies' trucks by host communities demanding for money on each loaded truck.</p> <p>Issuance of Permits: Area Councils issue permits to construction companies on burrow pits to excavate laterite for construction purposes and these companies do not pay royalty to the Federal Government.</p> <p>Environmental issues: As a result of issuance of permits to construction companies by Area Councils, the excavated pits are not reclaimed by the companies as stipulated by the federal statutory provisions.</p>
OGUN	<p>Issuance of Permits: The State issue permits to laterite quarrying companies, which should ordinarily be the constitutional/statutory responsibility of the Federal Government.</p> <p>Illegal Collection of multiple taxes and fees: The State Government collects at least ₦50,000 per company as monthly inspection fee and various forms of fees and levies.</p>
KOGI	The State Government collects Surface Rent meant for Land owners from operating Companies.
OSUN	<p>State Government Exploration Licences are issued for mining activities.</p> <p>Some Local Governments collect sundry fees and levies from mining/quarrying operators.</p> <p>The State Government is planning to collect reclamation fees and make all mining/quarrying</p>

	operators register with the State Government before they can operate in the State.
KATSINA	<p>Illegal collection of royalties: The State Government, through the Ministry of Resources Development, collects royalties from mining operators and collects 13% derivation from Construction Companies with contract worth ₦50 million and above.</p> <p>Collection of levies/fees: Local Governments and host mining communities collect ground rents, as well as development levies ranging from ₦500 – ₦1000 per truck from sand and laterite quarries.</p> <p>Booster to illegal miners: The collection of all forms of revenues by State Government encourages illegal miners as collection is made from both registered miners and illegal miners.</p>
OYO	<p>Illegal fees collection: The State and Local government come under the environmental laws of the State to collect haulage fee.</p> <p>Community interferences: Community leaders collect funds meant for Community Development Agreement (CDA) projects but such projects are poorly executed and in some instances not executed at all. The project capital is subsequently diverted to other non-purposes.</p> <p>Illegal collection of taxes/levies: Section 7(2) of the Oyo State Mineral Development Agency Act mandates all mineral-related companies to obtain consent certificates before operating.</p>
DELTA	<p>Double Taxation: The State Government demands payment of fees for permits from mining operators, hence such companies do not pay commensurate royalties to the Federal Government.</p> <p>Community Interferences: Some Traditional and</p>

	Community Leaders demand money from quarrying Companies to operate in their communities. When such money is not given, they occupy the mines and obstruct quarrying operations.
IMO	The State Government shut down mining activities in the State and demands for fees before mining operations could resume.
GOMBE	The State Government is yet to nominate a MIREMCO Chairman for the State as the appointment of the Chairman by the past state administration was cancelled. The traditional rulers in some communities have constituted themselves into collecting taxes and royalties against the provisions of the law.
RIVERS	The State Government is shielding some operating companies that have partnership with it from paying royalties to the Federal Government.
ONDO	The State Government has engaged consultants who collect fees from mining/quarrying operators in the State and defaulters are dragged to Court. The Local Governments in the State are also demanding for payment of fees and ₦500,000 as Operational Permit from operators.

TABLE: Summary of Cases Involving Subnational Governments' Interference in the Governance of the NMI.⁹³

From the particulars in the table above, the following are common denominators of interference by States/Local Governments in the NMI:

⁹³ Ministry of Mines and Steel Development, Official Subject Files and Records of the Ministry of Mines and Steel Development (MMSD, 2019 – 2020)

- Creation of parallel State Ministries for Solid Minerals in conflict with the provisions of the Constitution of the Federal Republic of Nigeria.
- Illegal introduction and enforcement of outrageous taxes, fees and levies on licenced mining operators.
- Oppression, suppression, continuous arrest and harassment of licenced miners and their workers using Federal Government security apparatus and State Government-backed touts.
- Attacks and outright closure of mining sites; threats to lives and properties of miners and mining companies.

Note that the involvement of the State and Local Governments can be statutorily justified. By virtue of Sections 6(3)(d) and 12(1) the Land Use Act, State and Local Governments are empowered to enter or permit the entrance of any person into lands that have not been hitherto covered under a mining lease under the Minerals and Mining Act and use such lands for public purposes or for the extraction of stones, sand, gravel, clay or any other substance not defined as a mineral under the Minerals and Mining Act. While stones, sands, gravel, and clay are defined as “quarriable minerals” or simply “minerals or mineral resources” under Sections 75 and 164 of the MMA respectively, the question for determination is what is the governance implication where the Mining Cadastre Office grants a mining lease/license over a land which hitherto had no covering mining lease/license prior to the State or Local Government’s (permitted) extraction of minerals over the same or part of the land? One argument may posit that where two legalities exists, the first in time prevails. Thus, as the State or Local Government had first gained access or permitted access to the land and its mineral resources before the Mining Cadastre Office of the Ministry of Mines granted a mining lease, the permit of the State or Local Government is most legal and takes precedence in the eyes of the

law. The natural counter-position would be that since the CFRN had already granted the ownership of minerals to the Federal Government; and the State or Local Government's permit for mineral extraction over a land which was not covered by a mining lease/license would be illegal; and the Land Use Act, to the extent that it permits mineral extraction by subnational governments and/or any other person would be null and void under Section 1(3) of the CFRN. This second argument, in our view, would likely be the legally prevailing position and statutory interpretation in this regard.

3.1.2 State Mineral Resources and Environmental Management Committees (MIREMCOs)

Despite the constitutional vesture of mineral ownership and control solely within the purview of the Federal Government, there is also a legislative window for the States and Local Governments to participate in the governance of the NMI without sharing in mineral ownership and control. The MMA provides for the establishment of a Mineral Resources and Environmental Management Committee (MIREMCO) in each State of the Federation,⁹⁴ whose main functions include advising the Federal Minister in charge of mines (and Departments under his supervision) on issues relating to the grant of mineral titles, compensation, and socio-economic and environmental challenges resulting from mineral activities.⁹⁵ Furthermore, the MIREMCO is charged with the responsibility of advising Local Governments on the implementation of programs for environmental protection and sustainable management of mineral resources,⁹⁶ advising and assisting engagements among State/Local Governments, mineral title holders, host mining

⁹⁴ MMA, s 19(1)

⁹⁵ MMA, s 19(3)(a)(b)(c)(e)

⁹⁶ MMA, s 19(f)

communities, civil societies and other stakeholders,⁹⁷ and advising the Minister on the resolution of disputes between the stakeholders.⁹⁸

The membership of the MIREMCO in each State consist of a representative of the Mines Environmental Compliance Department (MECD) in the Ministry who shall be the chairman of the Committee; a representative of the State Ministry responsible for land and mineral-related matters; the Mines Officer responsible for the State; and representatives of the State Ministry in charge of agriculture or forestry, State Surveyor-General, Local Governments, State Environmental Department/Agency, and the Federal Ministry of Environment.⁹⁹ In certain circumstances, such as where issues pertaining to a particular host community are to be discussed, a representative of the host community and such other person as the MIREMCO deems fit shall be co-opted into the meeting; provided that such persons shall not vote in the meeting and their presence shall not count towards the determination of the quorum.¹⁰⁰ Subject to the Minister's direction, each MIREMCO shall conduct meetings at least once every quarter of the year¹⁰¹ under their own determined procedures¹⁰² and shall forward reports of their meetings to the Minister.¹⁰³

The MIREMCO provides a viable platform for effective participation by State and Local Governments in mining sector affairs affecting their respective jurisdictions. The failure of some States to push for the activation of the MIREMCO has

⁹⁷ MMA, s 19(g)

⁹⁸ MMA, s 19(h)

⁹⁹ MMA, s 19(2)(a)-(h)

¹⁰⁰ MMA, s 19(7)

¹⁰¹ MMA, s 19(4)

¹⁰² MMA, s 19(5)

¹⁰³ MMA, s 19(6)

contributed to the poor governance of the sector at the local level where it matters most. Referring to the Table above, the example can be cited of Edo State Government's Ministry in charge of mineral resources which has allegedly refused to recognize the State MIREMCO and participate in its activities.

Another recurring challenge is the complaint by many State Governments regarding lack of funding for MIREMCO activities.¹⁰⁴ The MMA was silent on how the MIREMCOs would be funded as an inter-governmental body. While this is a major statutory gap, the Minister may apply omnibus powers under Section 4(s) and (t) of the MMA to set up a fund for this purpose.

Investing a seed fund to support MIREMCO activities should be regarded by State and Local Governments as the Federal Government's commitment to govern the NMI towards yielding socio-economic and environmental benefits for their States and communities. Local Governments in particular are closer to mining host communities. Accordingly, they have an important role to play in monitoring safe mining activities within their jurisdiction. Participating in the activities of MIREMCO will empower them to further protect host mining communities by ensuring that strong environmental monitoring mechanisms are set up by the Federal Government and housed within their respective State Ministries of Environment who could coordinate efforts with the necessary federal agencies or bodies empowered under the MMA. They will also be able to assist host mining communities to negotiate equitable terms in Community Development Agreements (CDAs) by providing them with the necessary legal, technical and financial assistance to give free, prior and informed consents to these CDAs and ensure their

¹⁰⁴ Olatunji (n 82)

effective implementation and monitoring as required under the MMA.¹⁰⁵

Rather than frustrate the efforts of the MIREMCO, it favours State and Local Governments to support the MIREMCO to promote the security of host mining communities, mining sites and miners by providing requisite security infrastructure and manpower. They can deploy regulated and responsible State/Local Government-sponsored vigilante groups to assist the Federal Government security agencies in policing the mining sites off illegal miners. For example, States within the South-West region of Nigeria can deploy the Amotekun regional security outfit to assist the Nigeria Police and Nigeria Security and Civil Defence Corps in ensuring the security of mineral resources within the region.

There is another often unexplored area regarding a potential conflict of interest between Federal and State/Local Governments in the NMI governance structure. It is the function of the MIREMCO to advise the Minister regarding the resolution of conflicts among the stakeholders in the NMI.¹⁰⁶ From the wordings of the Act, it is obvious that the MIREMCO is answerable to the Minister. A representative of the MECD (the Chairman of the MIREMCO) and the Mines Officer for each State are officers who are organizationally and operationally under the Minister's direction. They are staff within Departments that fall under the Minister's supervision. Where in the circumstance that there is a dispute between a State/Local Government and the Federal Government represented by its mining-related MDAs, would it not be a potential conflict of interest for the Minister to direct the State

¹⁰⁵ MMA, s 117

¹⁰⁶ MMA, s 19

MIREMCO to settle the dispute or for MIREMCO to advise the Minister with recommendations towards resolving the dispute? Furthermore, would it not be a conflict of interest for a State to use its officers such as the Surveyor-General of the State, Commissioners of Agriculture, Environment and Solid Minerals to make self-serving and non-altruistic representations that may influence the recommendations of the MIREMCO to the Minister? This is a grey area within the MIREMCO arrangement that requires legislative attention and further research.

The establishment of the MIREMCO can be said to be a legislative response to calls for resource control by the States and Local Governments over the years. We posit that the MIREMCO represents a democratization of mining governance. However, we view the MIREMCO only as a platform of inclusion and participation for the State/Local Governments and other relevant stakeholders to obtain their buy-in with respect to Federal Government programs and policies in the NMI. Thus, it does not mean that the States and Local Governments are now statutory co-owners of mineral deposits or statutorily allowed to partake in the fiscal derivatives that accrue from the grant of mineral titles and mining activities sanctioned by the Federal Government. For now, resource control of all mineral and natural resources remains with the Federal Government.

This matter remains contentious only in the context of resource control agitations rather than an ambiguity in the legal and governance framework. Assuming without conceding that the MIREMCO is construed to allow for the partaking of State and Local Governments in fiscal derivatives such as taxes and royalties, it is inconsistent with extant constitutional provisions and therefore null and void to the extent of that inconsistency.¹⁰⁷

¹⁰⁷ See CFRN, s 1(3). Consider together with CFRN, exclusive legislative list, item 39

Notwithstanding any legal provisions, we draw particular attention to Section 19(1)(d) of the MMA, which allows the MIREMCO to “consider such other matters relating to mineral resources development within the state as the Minister may refer from time to time to the Committee.” This provision is noteworthy because it presents a window for a political solution to sub-national resource control agitations. The Minister could refer a State MIREMCO to deliberate and advise the Ministry on how to ensure that a State/Local Government or host mining community could fiscally benefit from mining activities in a manner devoid of a flagrant infringement of the extant laws regarding mining rights and revenues accruing therefrom. The Minister could then direct the implementation of any resolution of the MIREMCO or any variation thereof by the Minister on this issue. In our view, it may be easier and apparently legal to achieve this political outcome in the case of host mining communities through the implementation and supervision of CDAs,¹⁰⁸ which should statutorily entail socio-economic benefits for the community¹⁰⁹ rather than fiscal derivatives in the form of a share in mineral ownership and taxes accruable to the Federal Government.

Yet, either way, this measure is subject to the government’s political will rather than statutory mandates, and can be withdrawn via administrative fiat or judicial review at any time. This fact is clear and unambiguous: mineral rights remain within the purview of the Federal Government and unless the CFRN is amended to allow for subnational resource control—a move the authors support as it is in line with best resource governance

¹⁰⁸ MMA, s 4(c)

¹⁰⁹ Such as employment for indigenes, and funding for educational scholarships, trainings and apprenticeships, infrastructural development, agricultural activities, socio-economic and environmental management, and local governance assistance/capacity building. See MMA, s 116(3)(a)-(e)

practices in successful federalist countries—mineral resource control remains solely and squarely within federal government powers. The Federal Government’s ownership of minerals is an exception to the legal doctrine which states that whoever owns land owns everything in it from the depths to the zenith.¹¹⁰ Thus, that the ownership of all land within a State or Local Government is vested in the State Governor or Local Government Chairman respectively does not extend to the ownership of mineral resources.¹¹¹

3.2 Mining Governance and Conflict of Interests Among Federal Government MDAs: The Case of the Ministry of Mines and Steel Development v. National Inland Waterways Authority (NIWA)

It is interesting, yet worrisome, that despite the settled legal position regarding ownership of minerals in the Federal Government, there appears to be continuous internal wrangling amongst the mining-relevant MDAs, particularly between the Ministry (and agencies/departments under its supervision) and National Inland Waterways Authority (NIWA), backed by its supervising Ministry of Transport. There is nothing more discouraging for investors in a sector than disorganization, conflicts and undue bureaucracies within the regulatory space for that sector.

In the case of the NMI, this conflict is peculiar to quarrying or sand dredging from the seabed of waterbodies. Quarrying is defined in Section 164 of the MMA to include any form of activity for the extraction of Mineral Resources for Construction, other than any activity conducted or to be conducted underground. Quarriable mineral resources include

¹¹⁰ Derived from the legal doctrine – *Cuius est solum, eius est usque ad coelum et ad inferos*

¹¹¹ Land Use Act 1978, ss 6(3)(d), 12(1) and 14

asbestos, china clay, fuller's earth, gypsum, marble, limestone, mica, pipe clay, slate, sand, stone, laterite, gravel, etc. which may also be lawfully extracted under Mining Leases, provided such area shall not exceed fifty square kilometres.¹¹²

Likewise, Part A.1 of the National Inland Waterways Authority (NIWA) Statutory Tariff Schedule 2017 ("Tariff Schedule"), which draws its 'legality' from the NIWA Act,¹¹³ defines Dredging as taking sand, gravel or stone from the waterways either by manual, hydraulic or mechanical methods (this definition is an aspect of Hydraulic Mining). In Part B.1 of the Tariff Schedule, Reclamation is defined as the use of dredged materials (sand, gravel rock etc.) from waterways for filling, improvement or creation of new lands. In Part C.1 of the Tariff Schedule, Canalization/Dredging of slots is defined as creating an artificial water channel by the removal of sand/gravel/rock and water diversion, including mud sweeping. Part E.1 of the Tariff Schedule defines Sand search as an activity which involves establishing the availability and quantity of sand by borehole or burrow pit. All the above activities are also provided for in the NIWA Act and are regulated with various Dredging Permits,¹¹⁴ as well as various Mining Licence/Leases under the MMA.¹¹⁵

From the foregoing, it is clear that there is a conflict of quarrying laws. The question that now arises: which agency of the Federal Government is legally and solely responsible for the governance and regulation of mining in Nigeria? The conflict of quarrying laws arises because while the MMA gives the Ministry the power to regulate mining (including sand mining from waterbodies),¹¹⁶

¹¹² MMA, s 75

¹¹³ NIWA, Act s 28(1) – (2)

¹¹⁴ NIWA Act, s 9(2)

¹¹⁵ MMA, ss 7 and 46(1)

¹¹⁶ MMA, ss 4, 7, 75 and 76(1)

the NIWA Act has also been interpreted to grant NIWA regulatory jurisdiction over sand mining.¹¹⁷ This regulatory conflict leaves investors in a dilemma — if they decide to deal with one regulator, the other regulator may still seek to enforce their own enabling statutes to compel investors to also deal with them. Also, if the investors deal with both regulators, they will often experience double taxation and undue bureaucracies and uncertainties because both regulators are not essentially coordinated and cooperating with each other.

There is a background to this sustained regulatory quagmire. Historically, it has always been within the powers of the Federal Ministry in charge of mining to regulate the NMI. Section 3 of the old Minerals Act 1990¹¹⁸ and Section 1 of the old Minerals and Mining Decree of 1999¹¹⁹ vest on the Federal Government the entire possession and control of all minerals and mineral oils in, under or upon any land in Nigeria and in all rivers, streams and water courses throughout Nigeria. Furthermore, the old Quarries Decree 1969 conferred the authority on the Federal Ministry of Mines and Steel Development to regulate the mining of all minerals by granting licences/leases to companies and individuals that meet the necessary requirement as provided in the Decree, as well as collect royalties, taxes, fees and rents from mineral title grantees.¹²⁰ It is interesting to note that NIWA was formerly known as the Inland Waterways Department, which was a department of the Federal Government at the time, and there was collaboration and cooperation between the Ministry and the Inland Waterways Department on the issue of carrying out mining operations within the nation's inland waterways. At

¹¹⁷ NIWA Act, s 9(2)

¹¹⁸ The since repealed Minerals Act 1946, LFN 1990

¹¹⁹ Repealed and replaced by the MMA in 2007

¹²⁰ Quarries Decree No. 26 of 1969, s 2; see also Minerals and Mining Decree 1999, s 194(1)

that time, prospective Quarry Operators within the nation's inland waterways took their application forms for quarrying licence/lease from the Ministry to the old Inland Waterways Department for its consent before taking their forms back to the Ministry to obtain the Mineral Title to operate within the inland waterways. Section 2 of the Navigable Waterways Declaration 1988 states that "no person, firm, state or corporation may obstruct a declared waterway, take sand, gravel or stone from any declared waterways or erect permanent structures within the right of way or divert water from a declared waterway, without the consent of the Inland Waterways Department and the approval of the Minister". This was the tradition. This corroborates the earlier assertion that the Ministry always had control of mineral rights in Nigeria.

Things changed in the early 90's when NIWA was created from the old Inland Waterways Department by the fiat of the Federal Military Government. NIWA began to contest the right to issue quarry permits to prospective quarry operators with the Ministry. Section 2 of the Navigable Waterways Declaration 1988, which required the consent and approval for quarrying purposes, was misconstrued and misinterpreted by NIWA at its emergence as its consent and the approval of its supervising Minister of Transport who is the Chairman of the NIWA Board, and not the Ministry of Mines. This is the genesis of the conflict and regulatory tussle between the Ministry of Mines and NIWA. In a bid to further stamp its authority and to wrest the power to regulate sand mining for industrial use or commercial purposes in the inland waterways out of the hands of the Ministry of Mines, the NIWA pushed ahead to obtain the NIWA Act 1997.¹²¹

¹²¹ NIWA Act, No 13 of 1997, LFN 2004

The Ministry of Mines later acted to recover its statutory mandate from NIWA with respect to quarrying through the enactment of the MMA in 2007, which expressly provides that: Notwithstanding the provisions of any other enactment, consent or approval provided for under an enactment and in particular, sections 9(1), 29(1), 10, 11, 12 and 13 of the National Inland Waterway Authority Act, every operation for the purpose of extracting any quarriable mineral from a quarry including sand dredging in the navigable water ways or elsewhere for industrial use (in this part referred to as a "quarrying operation") shall be conducted under a lease or licence granted by the Minister under this Act.¹²²

The Act went further to make a "Consequential Amendment" to the effect that:

A reference in any enactment (apart from this Act, the Factories Act and the Criminal Code Act) to a Mine or Mining Operations shall be construed, unless it is otherwise expressly provided or the context otherwise requires, as including a reference to a quarry or quarrying operations and effect shall be given to the enactment with any necessary modifications.¹²³

By the combined interpretation of both provisions above, it is within the powers of the Ministry of Mines to issue a Quarry Lease to the exclusion of all other Federal Government MDAs. Thus, royalties and mineral taxes are liable to be paid to the Federal Government for mining activities. The main purpose of NIWA is to promote the development and regulation of navigation within inland waterways, hence its supervision by the Ministry of Transport.¹²⁴ Thus, with respect to quarrying (sand dredging), NIWA can only give its consent, but the issuance of

¹²² MMA, s 76(1); see also MMA, s 76(3)

¹²³ MMA, s 80

¹²⁴ NIWA Act, preamble

quarrying leases remains within the statutory competence of the Ministry of Mines.

It is our further submission that these provisions of the MMA did little to erase the regulatory conflict of laws with respect to the lawful body to grant quarrying permits/leases. While enacting this provision of the MMA and repealing old mining laws, the Legislature should have also repealed Sections 9(i) and 13(2)(a) and (c) of the NIWA Act which empowers NIWA to issue quarrying permits.¹²⁵ Equally instructive is our position that Section 76(1) of the MMA did not convincingly assert the supremacy of the Ministry of Mines over NIWA with respect to quarrying leases. The use of the word “Notwithstanding” within the larger phrases “the provisions of any other enactment, consent or approval provided for under an enactment and in particular, Sections 9(1), 29(1), 10, 11, 12 and 13 of the NIWA Act” is respectfully a product of weak legislative draftsmanship which failed to appropriately superimpose the Ministry of Mines’ superiority.

The conflict regarding who bears responsibility for the issuance of quarrying leases between these two bodies has been judicially tested by bold Quarry Operators who instituted lawsuits against NIWA; they also joined the Ministry of Mines in these cases.¹²⁶ NIWA unsuccessfully defended these cases but the agency still continues to deploy the Marine Police to harass and intimidate Quarry Operators in order that they obtain permits from NIWA

¹²⁵ We will also advance the same argument for rock blasting and removal, and slot dredging (canalization) as provided in s 9(i) of the NIWA Act as these activities fall within the meaning of “mining operation” within the competence of the Ministry of Mines under Sections 80 and 164 of the MMA

¹²⁶ See the following decided cases: *River Niger Sand Dealers M.C Onitsha, Asaba v. National Inland Waterways Authority (NIWA) & Ors* (Unreported) Suit No FHC/B/CS/15,259/08; *National Inland Waterways Authority (NIWA) v. Construction Support Nigeria Limited* (Unreported) Suit No CA/L/589/2008

and pay exorbitant fees by issuing Demand Notices for Dredging, Dredging Permits and Receipts under the guise of relevant sections of the Tariff Schedule 2017. This regulatory imbroglio potentially scares investors away from investing their resources in the sector, thereby resulting in unemployment for Nigerians and loss of revenues accruable to the Federal Government.

3.3 Current Regulatory Reform Efforts

In current reforms efforts, the Federal Government of Nigeria is working with foreign research institutions and international development partners to upgrade its National Geoscience Research Laboratory and develop global best certification standards for minerals, metals and mines.¹²⁷ Several agreements to revive Ajaokuta Steel Company and the National Iron Ore Mining Company have been signed.¹²⁸ The Presidential Artisanal Gold Mining Development Initiative has given its support for internal processing of Gold and the curbing of illegal Gold mining through the establishment of the first Gold Refinery in the country.¹²⁹ These efforts are geared towards improving the ore grade and minerals value chain.

¹²⁷ S Cornelius, Implementation Completion and Results Report (IDA -40120) On A Credit In The Amount Of SDR 80.1 Million (US\$120 Million Equivalent) To The Federal Republic Of Nigeria For A Sustainable Management Of Mineral Resources Project (Report No. ICR 2258, World Bank, 28 November 2012) 21 – 22 <<https://documents1.worldbank.org/curated/pt/781161468100476965/pdf/NonAsciiFileName0.pdf>> accessed on 25 August 2022

¹²⁸ D Elumoye, 'FG Okays N853m Contracts for Concessioning of Ajaokuta Steel Company, National Iron Ore Complex', *ThisDay Newspapers* (28 April 2022) <<https://www.thisdaylive.com/index.php/2022/04/28/fg-okays-n853m-contracts-for-concessioning-of-ajaokuta-steel-company-national-iron-ore-complex/>> accessed 25 August 2022

¹²⁹ 'Everything You Need To Know About The Presidential Artisanal Gold Mining Development Initiative (PAGMI)' (State House, Abuja, 15 July 2020) <<https://statehouse.gov.ng/news/everything-you-need-to-know-about-the-presidential-artisanal-gold-mining-development-initiative-pagmi/>> accessed 25 August 2021

In November 2021, the Federal Government initiated the amendment of the MMA.¹³⁰ The Act was a welcome development at the time of its enactment in 2007 and had the potential to galvanize the NMI for socio-economic growth. But the Act is gradually becoming obsolete and has not optimally facilitated the NMI's projected development. Since 2007, Nigeria has been importing many minerals of which there are proven abundant reserves across the country. Consequently, it is disappointing, but not entirely surprising, that the NMI only constitutes the maximum of 0.3% of Nigeria's GDP, a poor statistic when compared to the petroleum industry which constitutes about 10% of the GDP and accounts for at least 65% of government revenues as at 2021.¹³¹

The new Bill proposes to give incentives to the State and Local Governments and host communities to curb illegal mining and associated environmental degradation by laying a framework to legally participate in mining governance and qualify them to benefit socio-economically from mining revenue.¹³² Notably, this proposed amendment strikes at the root of the underdevelopment of the NMI and its related regulatory conflict challenges. If passed into law, it will portend positive and far-reaching political, legal, regulatory and socio-economic implications in mining governance going forward. However, some experts believe that the Bill, if passed into law, will not still be a "game changer" on its own as associated challenges in other intersecting critical sectors would need to be addressed.¹³³ Mining activities rely on intensive and reliable electricity for optimal output while also requiring developed transport infrastructure like roads and rail to facilitate access to and transit

¹³⁰ Kedem (n 11)

¹³¹ Ibid

¹³² Ibid

¹³³ Ibid

of minerals from the mines to local markets and international exports. Importantly, these would need to be executed in a secured environment, considering the deteriorating security situation in the country, especially Northern Nigeria.

4. THE WAY FORWARD

4.1 True Federalism and Resource Control

The issue of resource control and restructuring of Nigeria's federal structure, which has been on the front burner of national discourse for a long time, permeates every sector of Nigeria's economy, including the Nigerian Mining Industry (NMI). Resource control is the main objective of agitations in the Niger Delta region.¹³⁴ It is recommended that the Federal Government should allow for mineral resource control to be shared between itself and the State Governments. This proposition is logical because the State Governments (and to some extent the Local Governments) hold and administer land titles in trust for the people, and whoever owns land owns everything in it, including mineral and natural resources beneath, on and above the ground. The situation where, despite the legal vesture of land ownership on the State Governor/Local Government Chairperson, the Federal Government owns mineral deposits in all lands throughout the federation, has proven to be problematic. The States also need to harness these resources within their territories to accrue revenue to finance their own developmental programmes.

¹³⁴ Orogun (n 5)

Implementing this recommendation would require the amendment of relevant provisions of the Constitution of the Federal Republic of Nigeria, Minerals and Mining Act, National Inland Waterways Authority Act¹³⁵ and the Land Use Act as stated in preceding sections to the extent that the States are allowed to manage mineral resources within certain geographical limits, as is the case in successful mining jurisdictions such as Australia. The All Progressives Congress, the current ruling political party in Nigeria, released a report of its Committee on True Federalism in 2018, wherein it was proposed that the States be allowed to control all mineral and natural resources on onshore land within their territories, while the Federal Government controls all mineral and natural resources within onshore and offshore waters.¹³⁶ This article re-echoes the Committee's recommendation of the control of mineral resources on onshore land by the States and the control of mineral resources on offshore waters by the Federal Government. However, we slightly depart from the Committee's proposal and propose instead that there should be a

¹³⁵ Having stayed with the National Assembly for over a decade, Nigeria missed the opportunity to pass the amended NIWA Bill 2019 into law when President Buhari denied his presidential assent in May 2019. See generally: 'Summary of a Bill for an Act to Repeal the National Inland Waterways Authority Act Cap N47 and to Enact the National Inland Waterways Authority Act' <<https://placng.org/i/wp-content/uploads/2019/12/Summary-of-a-Bill-for-an-Act-to-Repeal-the-National-Inland-Waterways-Authority-Act-Cap.-N47-LFN-2004-and-to-Enact-the-National-Inland-Waterways-Authority-Act.pdf>> accessed 25 August 2022. For detailed reasons for the decline of presidential assent, see: O Quadri, 'Buhari Rejects NIWA Bill' (Ships & Ports, 9 May 2019) <<https://shipsandports.com.ng/buhari-rejects-niwa-bill/>> accessed 25 August 2022; E Anyanwu, 'NIWA Bill, Other Maritime Bills and Presidential Assent' (Ships & Ports, 20 May 2019) <<https://shipsandports.com.ng/niwa-bill-other-maritime-bills-and-presidential-assent/>> accessed 25 August 2022

¹³⁶ All Progressives Congress Ad Hoc Committee on True Federalism, Volume 1: Main Report, Summary of Findings and Recommendations (Report, All Progressives Congress, 18 January 2018) 37 – 38 <<https://pgfnigeria.org/wp-content/uploads/2019/09/Volume-1-Main-report-summary-of-findings-and-arecommendations.pdf>> accessed 16 September 2021

joint ownership of quarriable minerals within inland waters between the Federal Government and the relevant State Government because of concurrent powers and integrated issues related to maritime transport, mineral resource revenue and environmental management shared between the Federal and State/Local Governments.

4.2 Revitalizing State MIREMCOs

The State Mineral Resources and Environmental Management Committee (MIREMCOs) are necessary for effective participation of State and Local Governments in mining governance affairs affecting their respective jurisdictions. Rather than frustrate the efforts of the MIREMCOs, State/Local Governments should seize the opportunity to gain better access and participation in mineral resource governance. Likewise, the Ministry should not view the participation of the States/Local Governments in the MIREMCOs as a means of wresting away its statutory mandate to regulate minerals nationwide. State/Local Governments can take advantage of the MIREMCOs to politically negotiate for some revenue derivatives in the NMI in a manner that does not contravene extant mineral laws. Apart from supervising Community Development Agreements to ensure that mining activities benefit host communities, the State and Local Governments can float mining companies to participate and compete in the mineral development space under the supervision of the federal Ministry in charge of mines. Ekiti State has floated its own state government-owned mining company¹³⁷ and other States are encouraged to do so within the existing governance framework.

¹³⁷ It is incorporated as Fountain Solid Minerals Development Company (FSMDC): 'FSMDC Held Its Inaugural Meeting' (Government of Ekiti State, 25 April 2012)

The article has indicated the complaint of inadequate funding of the MIREMCOs as one of the reasons for its underperformance and the lack of confidence in its mandate by the State/Local Governments. There is no legal provision for the funding of the MIREMCO, leaving the issue of funding to the administrative whim and omnibus powers of the Minister as provided for in the MMA.¹³⁸ The MMA should be amended to provide for the funding of the MIREMCOs so that State/Local Governments can effectively collaborate with the Federal Government to address peculiar mining-related issues within their respective territories and ultimately attract socio-economic and environmental benefits for their States and host communities.

Perhaps, one may wonder about the extinction or relevance of the MIREMCOs in the event that the CFRN and MMA are amended to vest mineral resources on the States as proposed above. The MIREMCOs would still be relevant in the circumstance because there would still be the need for continuous engagement and all-inclusive participation of the Federal, State and Local Governments in mining governance, especially if the recommendation for joint ownership of mineral resources on inland waterways is considered and adopted.

4.3 Effective Collaboration Between the Ministry and NIWA

The intra-federal government regulatory conflict is not only embarrassing; it is inimical to sustaining investors' confidence in the NMI regulatory space. Pending proposed legislative amendments, the article recommends a sustained synergy between the Ministry and National Inland Waterways Authority (NIWA) with respect to quarrying. The Ministry and its

<<https://www.ckitistate.gov.ng/fsdmc-held-its-inaugural-meeting/>> accessed 22 June 2021

¹³⁸ MMA, s 4(s)-(t)

departments and agencies, especially the Mining Cadastral Office (MCO), should have a desk at NIWA. Likewise, NIWA should have a desk at the MCO. This will help in organizing the quarrying license regimes and effectively obtain the input of NIWA before a decision to grant is made. It is further recommended that NIWA and MCO collaborate to delineate areas within inland navigable waters that are suitable for quarrying and sand dredging. It is only logical that quarrying and sand dredging should be carefully managed within navigable waters as the needs of these mining activities should be balanced with that of maritime transport, fishing, and environmental sustainability.

Importantly, to end the regulatory quagmire over quarrying, Sections 9(i) and 13(2)(a) of the NIWA Act and the Tariff Schedule as far as it empowers NIWA to grant quarrying permits should be repealed. Also, for avoidance of doubt regarding the superior mandate of the Federal Ministry of Mining over mining, the wordings of Section 76(1) of the MMA should be amended to include words and sentences with stronger effect such as the proposed provision:

1. Every operation for the purpose of extracting any quarriable mineral from a quarry including sand dredging in the navigable water ways or elsewhere for industrial use (in this part referred to as a "quarrying operation") shall be conducted under a lease or licence solely granted by the Minister or his delegated department(s) or officer(s) under this Act, to the exclusion of any other body, person, and provisions of any other enactment.
2. For avoidance of doubt, sections 9(1), 29(1), 10, 11, 12 and 13 of the National Inland Waterway Authority Act, in so far as they pertain to extraction activity involving any quarriable

mineral from a quarry, including sand dredging in the navigable water ways, are hereby repealed.

3. Prospective Quarry Operators shall also apply to the National Inland Waterways Authority for consent to the grant of a quarry lease on navigable waters, which shall not be unreasonably denied. Where a denial of consent is deemed by the Minister to be unreasonable, the Minister may override the requirement for consent and direct the grant of the quarry lease.
4. Notwithstanding the provisions of subsection (3) above, the Mining Cadastre Office shall engage and collaborate with the National Inland Waterways Authority to identify and designate navigable waters or areas within navigable waters that are suitable for quarrying activities including sand dredging.

5. CONCLUSION

In different parts and ways, the foregoing analysis has addressed the research questions posed for deliberation in Section 1.0 of this article. Our research identified the conflict of mineral laws and regulatory conflicts between the three tiers of government as the major bane of effective governance in the Nigerian Mining Industry (NMI). The article also highlighted certain measures taken by the Federal Government to ensure effective governance such as the enactment of the Minerals and Mining Act (MMA) to provide for the establishment of the State Mineral Resources and Environmental Management Committee (MIREMCO) and the proposed amendment to the MMA for the inclusion of States and Local Governments and host communities in mining revenue sharing (currently considered before the National Assembly). Not being adequate, the article proffered further workable solutions to re-engineer the regulatory space and position the NMI to contribute significantly to Nigeria's socio-economic growth and sustainable development, including

amending the MMA to devolve the ownership/control of minerals on land to the States within their territorial confines.

It cannot be overemphasized that the restructuring and implementation of the legal and regulatory framework based on the recommendations proffered herein will herald and influence the recovery of values from low-grade and complex minerals and their value chain that have being disrupted by regulatory conflicts and illegal mining, as well as the development of eco-friendly technologies and sustainable processes for this purpose. In other words, technically sustainable mining processes are best developed and institutionalized through effective, less bureaucratic and non-conflicting mining regulation.

It is worthy to note that the recommendations proffered in this article are best implemented in time phases. Achieving an administrative/political solution to the Ministry of Mines-National Inland Waterways Authority regulatory conflict over quarrying can be done within a short term period of three to six months. The proposed amendment of the Minerals and Mining Act, National Inland Waterways Authority Act and the Land Use Act and the repeal of the NIWA Tariff Schedule on the issue of quarrying and dredging permits can be concluded in the mid-term period of one year. However, the implementation of the recommendation on mineral resource control by the States is a long term activity because it would require either a constitutional amendment or the enactment of a new Constitution, both of which would involve extensive inputs from both the National Assembly and the State Houses of Assembly. Nonetheless, the Federal, State and Local Governments are called upon to adopt or adapt these recommendations as quickly as possible, as their successful implementation is germane to, not only setting the NMI on the

path to restoration, but also surpassing the laudable achievements of its promising beginnings.

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