POLICY BRIEF

TOWARDS EFFECTIVE RESOURCE FEDERALISM IN NIGERIA'S MINING SECTOR

BY THE INDUSTRIAL POLICY COMMISSION

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1. Introduction

The mining industry has great potential to be a key growth sector in Nigeria given the country's wide range of mineral occurrences across the country Yet, despite the Federal Government's efforts to reform and modernize the mining sector through the Nigerian Minerals and Mining Act, 2007 and investments in growth initiatives, the mining sector is underperforming, accounting for less than 1 percent of the country's Gross Development Product (GDP). This is far below its contribution of about 4 percent of GDP between the 1950s and the late 1970s.[1]

In its mining industry diagnostic study titled "Nigeria's Mining Sector Governance Landscape and Prospects, " launched in February 2023, the Nigeria Economic Summit Group (NESG) identified an inappropriate resource federalism structure as one of the constraints behind the sector's underperformance. The structure, enshrined in the Constitution and Mining Act, of 2007, vested exclusive ownership and control of minerals in the national government with little or no role for the sub-national governments.[2] Several states have taken steps to have greater influence over the sector's regulation and development contrary to the express provisions of the constitution, creating policy uncertainties and affecting the investment climate for mining.

This policy brief presents the findings and recommendations from the NESG mining industry diagnostic study on the resource federalism structure in the Nigerian mining sector. Nigeria's investment climate for mining has declined partly due to the reactions of subnational governments to their exclusion from mineral resource governance and development. To strengthen the investment climate for mining, the NESG recommends that Nigeria adopt a mixed system of resource federalism to create a better investment climate for mining. Under this system, the Federal Government may control or regulate certain resources or aspects of mineral resource management centrally, and delegate others to state governments based on several factors.

[1]PwC Nigeria. (2023). Nigerian mining: Progress but still a long way to go. Retrieved from https://www.pwc.com/ng/en/assets/pdf/nigerian-mining-progress-but-still-a-long-way-to-go1.pdf

[2] Nigerian Economic Summit Group (NESG) (2023). Nigeria's Mining Sector Governance Landscape and Prospects - A Diagnostic Report. p 33. https://nesgroup.org/download_resource_documents/Mining%20Sector%20Report%2015022023_1676537407.pdf

2. Current Mineral Resource Federalism Framework in Nigeria

Nigeria, like most commonwealth jurisdictions, operates a 'state mineral rights system' where the mineral resources of the country is vested in the Federal Government. The Constitution of the Federal Republic of Nigeria, 1999 provides in section 44 (3) that ***"… the entire property in and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such a manner as may be prescribed by the National Assembly."*** Apart from this provision, the Exclusive Legislative List, Part I, Second Schedule to the Constitution lists item 39 dealing with **"Mines and minerals, including oil fields, oil mining, geological surveys, and natural gas",** as one of the matters which only the Federal Government has exclusive legislative competence.

The aforementioned constitutional and statutory provisions imply that the administration and governance of the sector is carried out exclusively by the Federal Government. The Federal Government issues mining licenses through the Mining Cadastre Office. It regulates mining operations through the technical departments of the Ministry of Solid Minerals, such as the Mines Inspectorate Department, Mines Environmental Compliance Department, and Artisanal Mining Department.

In addition to these technical departments, which retain officers at the state level, the Nigerian Mineral and Mining Act, 2007 provides in section 19 for the establishment in each of the states of the federation the Mineral Resources and Environmental Management Committee (MIREMCO) comprising of Federal and State Officers. The MIREMCO is the only platform that facilitates federal and state interaction concerning the administration of the mining sector.

However, the MIREMCO as presently constituted has not been able to perform its statutory role of coordinating federal-State[1] participation in the governance of the minerals sector due to some constraints, namely:

- The Committee has not been constituted in some states, and even where constituted, experience has shown that the right caliber of persons still needs to be appointed. The minister has allowed state governors to appoint the chairpersons for synergy, but some state governments have appointed politicians without the requisite qualifications and experience.
- The committee is expected to meet at least once every three months (4 times a year). However, due to financial constraints, meetings are held infrequently, negatively impacting the committee's efficiency and effectiveness in considering and recommending remedial actions to the minister.
- The committee is merely advisory, leaving the minister to accept or reject their recommendations. Even where the recommendations are accepted, there is no guarantee that they will be implemented.[3]

[3] Nigerian Economic Summit Group (NESG) (2023). Nigeria's Mining Sector Governance Landscape and Prospects - A Diagnostic Report. p 33. https://nesgroup.org/download_resource_documents/Mining%20Sector%20Report%2015022023_1676537407.pdf

3. Policy Impact of The Current Mineral Resource Federalism Framework in Nigeria

In its mining industry diagnostic study report, launched with funding from the Ford Foundation in February 2023, the Nigeria Economic Summit Group (NESG) identified four main governance challenges creating an atmosphere of regulatory uncertainty and hindering the sector's performance. One of those issues is the exclusion of state governments from the development and management of the mining sector. See Box 1.

Box 1

- **Constraints to Mining Sector Development:** In its mining industry diagnostic study report, the NESG identified four main issues hindering the sector from achieving its potential:

- **Absence of a regulatory commission for mining:** Compared to liberalised and reformed sectors like communications, pension, electricity, and petroleum, the mining sector lacks the establishment of an independent, well-resourced regulatory commission in its legal, regulatory, and institutional framework.

- **Resource Federalism Effects:** Nigeria's Constitution and Mining Act and Regulations lack clear roles for subnational governments, leading to agitation among state governments and their interference in regulations and mining operations. This situation has created an unfavorable investment climate for the mining sector.

- **Misaligned Exploration Strategies:** Nigeria missed the opportunity to attract global exploration and mining investments by not prioritising the revival of abandoned and nationalised mines and deposits from the colonial and post-colonial eras. A focused exploration program, as seen in other successful countries like Argentina, Burkina Faso, Mexico, and Tanzania, could have accelerated investments and modernised the mining sector. According to the World Bank, these countries experienced significant growth from the 1990s to the 2000s.

- **Insufficient linkages:** Inadequate linkages between the mining sector and other industries, such as the manufacturing, construction, steel, power, agricultural, and technology sectors, have limited opportunities for industrialisation, economic diversification, and job creation. The potential catalytic role of the mining sector in these aspects remains unrealised.

Over the past decade, several State Governments have assumed regulatory control over mining activities contrary to the express provisions of the Constitution.[4] This regulatory overreach by state governments ranges from establishing ministries and agencies to oversee mining activities, imposing an outright ban on mining with or without a license to imposing regulatory conditions over and above the obligations imposed on mining title holders under the enabling Act and regulations.

For instance, Taraba state is reported to have "set up a task force on Illegal Mining and Deforestation with a mandate to arrest, summarily prosecute and sentence anyone found culpable under its laws."[5] The Governor of Benue State has equally suspended mining activities in Benue State.[6] However, the ban in states such as Zamfara, Kebbi, and Borno states is attributable to insecurity, among others.[7] In the case of Borno, it was reported that apart from the ban on mining to curb insecurity, the government was working on a 'governance protocol for the mining sector in the state'.[8]

It is reported that these regulatory conflicts have arisen from the desire of state governments to accelerate socio-economic development by leveraging the mineral endowments within their domain and controlling the adverse impacts of mining in the host communities.[9] It is also an expression of their dissatisfaction with the arrangement that consigns them to the sharing of revenues from mining investment based on the principle of derivation.

In response to the regulatory activities and actions of state governors on miners, the Miners Association of Nigeria (MAN), which is the umbrella body of operators and investors in the mining sector value chain, has issued several statements asking the Federal Government to be more decisive in addressing the situation.[10]

[4] Kebbi, Zamfara, Taraba, Osun, Ebonyi, Enugu, and Cross River are some of the states that have placed ban on mining. See Sam Olatunji, Maiharaji Altine & Animasahun Salma (2023). "It's unconstitutional for States to regulate mining, says FG". October 12, 2023. Punch. Retrieved from https://punchng.com/its-unconstitutional-for-states-to-regulate-mining-says-fg/amp. Accessed 2 April 2024
[5] Ibid.
[6] Premium Times (2024). "Governor suspends mining activities across Benue" March 22, 2024 Retrieved from https://www.premiumtimesng.com/news/top-news/679733-governor-suspends-mining-activities-across-benue.html?tztc=1 Accessed 2 April 2024
[7] Premium Times (2023). "Borno bans mining activities" October 13, 2023. Retrieved from https://www.premiumtimesng.com/news/top-news/6333401-borno-bans-mining-activities.html Accessed 2 April 2024
[8] Ibid.
[9] Sami Tunji (2023). "Miners fault ban on mining by govts" August 9, 2023. Punch. Retrieved from https://punchng.com/miners-fault-ban-on-mining-by-govts/?amp Accessed 2 April, 2024
[10] Gabriel Ewepu (2023). "Miners to Tinubu, call state to order on banning mining activities" August 30, 2023. Vanguard. Retrieved from https://www.vanguardngr.com/2023/08/miners-to-tinubu-call-state-governors-to-order-on-banning-mining-activities/ Accessed 2 April 2024

4. Resource Federalism Model from other Jurisdictions

According to Sahla, Bauer & Kirk (2018), natural resource federalism represents the range of options available to policy-makers to give greater responsibilities to subnational institutions. It involves sharing power and responsibility for legislation, implementation, or monitoring between national and subnational governments via the constitution, legislation, or delegation by the national government. Although the constitution confers ownership of all natural resources on the sovereign nation in many resource-rich countries, many practice resource federalism to different degrees. Their primary aim is usually to improve the investment climate for mining by strengthening the "social license to operate" of companies in subnational jurisdictions.

As there is no single model for what resource federalism looks like, in broad terms these can be categorized as follows:

Source: Sahla, Bauer & Kirk (2018)

a**. Deconcentration:** an arrangement where the national government appoints and posts its officers at the subnational level to implement national policies. Even though the national institutions may consult the subnational institutions and involve them in decision-making, accountability resides with the national authorities. Nigeria's current structure falls here.

b. Decentralization/devolution: an arrangement where the national government transfers decision-making, accountability, and authority to subnational institutions to make policy decisions in certain areas such as directly collecting some revenues and delivering certain services.

c. Federalism: an arrangement where sovereignty is constitutionally divided between national and subnational institutions. In a purely federal system, the subnational level has a significant degree of constitutionally ascribed autonomy and responsibilities. Australia is at the most devolved end of the spectrum, practicing a pure federalism system, determining and issuing minerals licensing at the subnational level.

d. Mixed System: an arrangement where some responsibilities are held at the national level and others at the subnational level, combining centralised and decentralised approaches to resource management. This is the common practice in many countries as follows:

- Some countries establish minimum national environmental standards but give subnational institutions the right to complement these with more stringent regulations or give them the right to monitor and enforce them.

- Some countries jointly share responsibilities among the national and subnational governments.

e. In some countries, they only confer responsibility to lower levels of government, like local government authorities or non-governmental stakeholders like indigenous groups.

Box 2. Trends in Resource Decentralization in Several Countries

- **Set Standards:** Commonly, one level of government legislates or sets regulations while another level implements, monitors, and enforces those laws or regulations. Examples are where the national government determines the environmental and social legal frameworks but provides a role for subnational input in implementation and monitoring.

- **Share Responsibilities:** Many countries share responsibilities between national and subnational governments in certain areas. An example is in the provision of consent for companies to begin onshore oil, gas, or mineral production where the national governments grant mineral licenses but are subject to approval by local authorities and, in some cases, indigenous communities. In Australia, this is through a Joint Authority of national and state/territorial counterparts. Another example is in revenue collection where the national government collects major revenue streams, while subnational governments collect smaller taxes and fees

- **Subnational Responsibilities:** It is common to allocate some responsibilities to subnational governments because the impacts and information are localized. These include environmental monitoring, occupational safety and health monitoring, and licensing of artisanal and small-scale activities as well as some minor minerals such as building stones, gravel, clay, and sand.

- **National Responsibilities:** It is common to allocate some responsibilities to national governments because of the complexity of the tasks and the higher degree of administrative capacity needed to implement them. These responsibilities that are more commonly allocated to national governments include setting tax and royalty rates, collecting major revenue streams, and negotiating large- and medium-sized contracts.

Source: Sahla, Bauer & Kirk (2018)

Sahla, Bauer & Kirk (2018) assessed several countries in the Asia-Pacific region, namely: Australia, Malaysia, and India, which practice a federal system of government, and Indonesia, Mongolia, and the Philippines, which all practice a unitary system of government. Regardless of their system of government, all these countries reflect a diverse range of approaches to resource decentralization with subnational institutions playing a greater role in the mining than in the oil and gas sector. They also provide examples of the positive and negative policy impacts of resource decentralization on the governance, sustainable management, and investment climate for mining. Furthermore, their experiences demonstrate why coordination between subnational and national institutions is important and how to achieve it. Key trends from these countries are summarised in **Box 2**.

Despite its benefits, there are a range of challenges and risks associated with resource decentralization to subnational stakeholders that can weaken governance and affect investor confidence. They include a weak capacity of subnational governments to handle highly technical functions and ambiguity over where ultimate authority lies with certain issues. Another includes unhealthy competition by states to compete for investment.

In all these situations, the mining industry can exploit the situation to circumvent regulations, particularly on licensing, and revenue collection. and environmental and social matters. **See Box 3** for ways of addressing the challenges and risks associated with resource decentralization to subnational stakeholders.

Box 3

Key success factors in addressing the challenges and risks associated with resource decentralization to subnational stakeholders.

- Maintaining a minimum standard across the subnational and national levels of government.
- Defining roles and responsibilities between national and subnational institutions
- Avoiding duplicated efforts or gaps in enforcement
- Having clear lines of accountability.
- Ensuring funding and adequate technical, human, and financial capacity expertise is commensurate with responsibilities.
- Integrating non-state institutions into the monitoring process.

Source: Sahla, Bauer & Kirk (2018)

5. Policy Recommendations

The plethora of governance challenges experienced in the sector has created an atmosphere of regulatory uncertainty, which is unconducive for mining investment. State governments are not satisfied with the arrangement that consigns them to the sharing of revenues from mining investment based on the principle of derivation. States are interested in being involved in controlling the mineral development process along the entire value chain. They want to control the adverse effects of mining within their domain; hence the plethora of regulations being rolled out at the sub-national level to regulate mining operations.

For Nigeria to derive the benefits of its mineral resources, there is an urgent need to reform the present mineral resource federalism arrangement. The benefits of the reform are that it would:

- Strengthen governance at the local levels where national officers may not be able to effectively cover, thereby protecting local communities from the adverse effect of unregulated mining;

- Ease tensions between national and sub-national governments, which creates an unconducive operating environment for investors;

- Promote better coordination in implementing laws and policies and faster response to issues that impact stakeholders in the sector;

- Improve Nigeria's global competitiveness as an attractive destination for domestic and global mining investors.

As Nigeria is currently experiencing challenges with the deconcentration system, it may be prudent to explore the options of decentralization/devolution or pure federalism arrangements. However, based on the political, economic, social, and technical capacity context in Nigeria, the NESG recommends that Nigeria adopt a mixed mineral resource federalism arrangement system through the following arrangements:

- **Use Standards:** In this case, the federal government could legislate or develop basic yet robust national legal standards so that subnational governments can adopt such laws or regulations for monitoring and enforcement. This could apply to issues with proximate effects on them, such as environmental monitoring, occupational safety, and health monitoring.

- **Share Responsibilities:** The federal and state governments could share responsibilities in certain areas such as in the provision of consents by landowners in communities to mining companies and collection of taxes, where the Federal Government collects major taxes and royalties and state governments collect smaller taxes and fees for some minor minerals such as building stones, gravel, clay, and sand. They could also jointly participate in promoting the states and Nigeria to investors.

- **State Government Responsibilities:** The state governments could have full responsibility for licensing artisanal and small-scale mining and some minor minerals such as building stones, gravel, clay, and sand.

- **Federal Government Responsibilities:** Due to the complexity of the tasks and the higher degree of administrative capacity needed to implement them, the Federal Government should retain full responsibility for carrying out geological surveys, setting tax and royalty rates, collecting major revenue streams, and negotiating large- and medium-sized contracts following the conclusion of competitive bidding rounds of mineral title areas.

Ultimately, Nigeria will need to carefully weigh the demands of different stakeholders, taking into account the political, economic, social, and technical capacity context, and the urgent need to strengthen mineral governance in the country. This will likely require consequential amendments to the constitution and applicable enabling laws and regulations in Nigeria.

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ABOUT THE NESG

The NESG is an independent, non-partisan, non-sectarian organisation committed to fostering open and continuous dialogue on Nigeria's economic development. The NESG strives to forge a mutual understanding between leaders of thought so as to explore, discover and support initiatives directed at improving Nigeria's economic policies, institutions, and management.

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