

Management of Mineral Resources in Ethiopia's Federal System: Practical Challenges, Institutional Constraints and Constitutional Infringement

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Abstract

This article examines one of the critical issues in the governance of mineral resources in federal systems and the Management of the extraction of Mineral resources. In particular, it assesses how Ethiopia's identity-based federal system addresses the management of significant mineral resources in its design and operation. To this end, a qualitative approach that combines a doctrinal legal analysis with grounded empirical research has been employed. Document analysis, interviews, and an interdisciplinary literature review were used to collect data. The results have identified significant legal, institutional, and practical gaps in the management of mineral resources in the Ethiopian federal system. This is a stark contrast between the FDRE Constitution, which recognizes regional states as important actors in mineral resource management, and the subsequent legislative and institutional arrangements that have concentrated power within central agencies, leaving regional governments and local communities out of mining-related decision-making processes. Furthermore, this approach has enabled the Federal Government to create a highly centralized management practice that ignores the specific needs and concerns of subnational actors, as a result of which disagreement and conflict happen several times. The results further reveal that the Federal Government has recently attempted to improve the management of mineral resources, but lacks binding legal authority and strong institutional frameworks. It concludes by noting the urgent need for comprehensive reforms that foster a more inclusive and collaborative approach to mineral resource governance. Ultimately, it made important legal and practical recommendations to improve mineral resource management in Ethiopia's federal system, including restoring constitutional compliance, fostering intergovernmental cooperation, strengthening the capacities of regional government management, and enhancing the participation of local communities.

Key Words: Federalism, mineral, natural resources, power division, Ethiopia

1. Introduction

Management power over mineral resources encompasses a range of executive powers of the state that are essential for regulating the various stages of mining operations. In federal systems, the assignment of management of mineral resources often sparks competition between federal and subnational governments vying for control over extraction (Bauer et al. 2018; Choudhry and Stacey 2015; Haysom and Kane 2009; Jr and Stuart 2019). Moreover, non-state actors, including local communities and indigenous peoples, also maintain a claim in the management of mineral resources (Kurniawan et al. 2022; Que et al. 2018). Thus, constitutional designers guided by the literature on federalism, experience of the federal system, and international human rights law have to strike an equilibrium between national government priorities, regional government concerns, and local communities' rights and

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needs (Anderson 2019, 2020; Haysom and Kane 2009).

Ethiopia is characterized by diverse geological features associated with a wide range of mineral resources (Tadesse, et al., 2003). It has a long history of extracting minerals for various purposes (Debele 2020). For most of its history, the mining sector has been administered in a highly centralized governance system. However, with the introduction of the FDRE Constitution, the management of mineral resource underwent a substantial transformation (FDRE constitution 1995). This change was expected to bring about a more decentralized approach to resource management, including mineral resources. Furthermore, it introduced the concept of community participation in the decision-making process (Ibid). On top of this, Ethiopia has adopted a number of international and regional human rights instruments that serve as the basis for allowing communities to directly participate in matters affecting their affairs including the management of the mining sector (Enyew 2017; Hindeya 2019).

Despite these realities, the Ethiopian federal system has been implementing a centralized management system over mineral resources, for the majority of the last 30 years. Subnational actors have been playing a limited role in the management of mineral resources as their participation is often ad hoc and limited. Moreover, the mining sector has failed to deliver the promised economic benefits, to protect the environment, or to bring about social development (Melisha Charles, et al. 2022; Olkeba 2019; Regassa 2022; Stephens 2018). The centralized management power of the mineral resources, coupled with the adverse social and environmental impacts of mining operations, has resulted in significant grievances and opposition to mining projects (Africa news, 2021; Ethiopia Observer, 2021).

There is a notable scarcity of comprehensive research on this subject, resulting in substantial gaps in our understanding of the challenges and opportunities in this crucial sector. The existing research largely focuses on two main areas: the evolution and content of the legal framework and the adverse effects of the mining sector on the environment and the society (Hindeya, 2018; Melisha et al., 2022; Olkeba, 2019; Regassa, 2022; Walrond et al., 1991; Wondemagegnehu, 2008). Given these gaps, this work aims to contribute to the existing literature by undertaking an exhaustive examination of the legal and institutional framework governing the management of mineral resources in the Ethiopia's federal system.

To this end, this study, focusing on large scale mining operations, investigates the management power over mineral resources within Ethiopia's federal system. It intended to answer two questions: 1) How does the Ethiopian Federation administer management power over mineral resources? 2) What are the legal, practical, and institutional limitations in implementing the management of mineral resources? This study is grounded in the Critical Realist Research Paradigm to guide the research process and interpretation, which offers the methodological flexibility necessary to address complex research questions. Building on this foundational framework, it employed an exploratory qualitative research design as its investigative approach. It utilizes a variety tools and strategies to collect primary and secondary data sources. It uses an integrated analytical strategy, combining doctrinal and thematic analyses, to undertake a thorough and rigorous inquiry.

The article has been organized into five sections. The first section provides a synopsis of this work and outlines its structure. The subsequent section explores the conceptual and pragmatic underpinnings of mineral resource management within the federal framework. The third section evaluates the constitutional framework governing the management of mineral resources in Ethiopia. The fourth section critically evaluates the manner in which the federal and regional administrations exercise constitutional authority to manage mineral resources. The final part outlines the conclusions and recommendations that have been drawn from the analysis.

2. The Assignment of Management Power over Mineral Resources in Federal Systems

Mining is a long-term venture that covers a broad range of economic activities (Lodhia, 2018; Olawuyi, 2018; Yared 2025; Sigam & Garcia, 2012).¹ It is characterized by unique features and also social, environmental, and economic challenges that require the control and regulation of the state (Ibid). The state, which is entrusted with the stewardship of national wealth, uses its management power to regulate the extraction of mineral resources that lead to economic and social development, with a limited impact on environmental and social well-being. In particular, it exercises its management power over mineral resource development in several critical areas, including the regulation of the transfer of mineral rights, exploration and exploitation regulations, closure and post-closure monitoring, transportation networks, import and export permits and tariffs, and almost any other matter that can affect the development of mineral resources (Anderson, 2019, 2020; Haysom & Kane, 2009; Okpanachi, 2018; Olawuyi, 2018; Yared 2025)².

The politics surrounding the governance of mineral resource - ownership, legislative power, management, and revenue sharing-has been a long-standing issue in classic federal systems (Ibid). It is one of the critical issues administered in line with the cardinal rule of the federal system, the division of power (ibid; Bauer et al., 2016; Beardsworth Jr & Stuart, 2019). The literature on resource governance recommends several criteria to consider for the assignment of power to manage the extraction of mineral resources, including the capacity

¹As Yared, and other noted that the term "mining" has been subject to different interpretations. Some define it in a narrower sense, as it's just the extraction of minerals from the earth, while others use it in a broader sense; it extends to a wide range of commercial endeavors that stretch from the extraction of mineral resources to the final consumption of minerals. The Federal Mining Proclamation of Ethiopia follows a wider approach under Article 2. It covers several activities, including an extractive-related activity, including exploration, development, and mining; processing-related activities, such as processing or beneficiation, smelting and refining, and other added value activities; and the final marketing of the product to the ultimate consumer, which involves marketing, transport, and storage. Thus, it should be noted here that our discussion largely focuses on the first part of mining: extractive-related activity.

² As Yared, and other noted that the management power over mineral resources depending on their impact on mining operations, some of these powers can be considered primary, whereas others are secondary. The transfer of mineral title, administration exploration, exploitation, closure, and post-closure, which directly influence the mineral resource lifecycle, could be taken as primary management powers. Secondary management powers, which are not directly related to mineral extraction, give governments the power to influence decisions on mineral resource development and are considered secondary powers. It includes land management, regulation of imports and exports, etc., and has a profound impact on resource management. The current discussion focuses on the primary management of mineral resources.

of the government, the level of consistency required across the country, transparency, accountability, and national interests involved (Ibid). However, an examination of the experiences of federal systems reveals that decisions on the assignment of management power, in addition to the normative framework, depend on the unique political development of the host states, the economic impacts of the mining sector, and cheaper and safer means of extracting mineral resources (Ibid).

Federations treat the "management of natural resources" differently, reflecting the distinct political, economic, and social contexts of each federation. In some federations, it is explicitly addressed (Iraq's Constitution, 2005 Article 12). In most cases, constitutional drafters use all-encompassing terms (Anderson, 2020; Choudhry and Stacey, 2015; Haysom and Kane, 2009). There are also a few constitutions in which one cannot find reference to the management of natural resources (Ibid). Despite this difficulty, the assignment of management power over mineral resources in federal democracies can be categorized into single, split, and joint management systems, each system having its advantages and challenges.

Single management systems refer to federal systems that vest the management of mineral resources exclusively with one level of government, either central or state governments (Ibid). In most cases, the constitutions use a broad-brush approach that assigns management power over the extractive sector (Ibid; Heyman et al., 2014; Kwesike & Acholonu, 2011). The practice in such federal systems suggests two trends. In most classical federations, it is either part of the residual power of the state or expressly delegated to the sub-national government (Ibid). There are several reasons for such a trend, including the fact that subnational governments maintained their claim over mineral resources through communication and transport infrastructure barriers, lacked awareness of the existence of mineral resources, and limited the economic importance of the sector (Ibid).

On the other hand, in developing or emerging federations, it is common for the Federal Government to have strong control over the development of mineral resources (Ibid). The central government's strong involvement is justified based on its relative expertise, technical and coordination capacity, to balance local interests with national economic goal, the need to discourage the 'race-to-the-bottom policies, and to manage the mineral resource, which has national, economic, political, environmental, and social importance (Ibid).

Split management systems refer to federal systems that divide the specific management power over mineral resources between different levels of government (Anderson, 2020; Haysom & Kane, 2009). In recent times, with the increase in their ability to regulate mineral resource extraction, resource-producing regions have sought greater say in the management power over the extraction of mineral resources in a manner that enable them to exert more comprehensive control over the economic, social, and environmental effects (Ibid). On the other hand, there are compelling reasons for the central government to maintain a strong role in resource management, including its expertise and technical capacity to handle issues of national importance and its coordination capability (Ibid). Federal systems address this dilemma by dividing specific aspects of the management of mineral resources between central and subnational governments (Ibid).

Joint management systems refer to federal systems that share the management of mineral resources between central and subnational governments. It was introduced to address the unique challenges that arise in mineral resource management, such as the need for cooperation, difficulties in establishing a clear division of power, the need for uniform enforcement, and the avoidance of jurisdictional conflicts (Ibid; Kwesike & Acholonu, 2011). In order to address such limitations, Federal systems often introduce joint management structures that balance interest of the central government, and subnational governments (Ibid). However, it should be noted here that there are relatively few instances of truly "joint" management, as one level of government takes the lead in mineral resource management (Ibid). Despite these limitations, joint management system is applied in several countries (Ibid).

3. The Assignment of Management Power over Mineral Resources under the FDRE Constitution

The FDRE Constitution provides that the Federal Government has the power to enact laws that control the "utilization and conservation" of natural resources, while regional governments are in charge of managing such resources in conformity with these regulations (FDRE Constitution, 1995, Article 51/5, 52/2/d). The readings of the Constitutional texts imply a single management structure that vests the management of mineral resources exclusively with the regional states (Anderson, 2020; Haysom & Kane, 2009). The Constitution also establishes important principles and rights that allow the local community to have a voice and to influence decision-making on matters affecting their interests ((FDRE Constitution, 1995, Article 12 and 43 /2). Regional state constitutions also provide similar provisions (Revised constitution of Oromiya, 2001; Revised constitution of Amhara, 2003). Moreover, Ethiopia is a party to international human right instruments that allow the local community to have a voice in the management of mineral resources (Enyew 2017; Hindeya, 2019). Despite these clear provisions and guarantees, the practical implementation of these rights and the division of powers between Federal and regional states remain contentious within Ethiopia's federal system, highlighting ongoing challenges in balancing federal authority with regional autonomy and community engagement.

More specifically, over the last 30 years, the Federal Government has enacted mining laws that provide for a division of management power over mineral resources, deviating from the constitutional provisions. It enacted successive mining laws that provide a dual approach for the management of mineral resources (The Draft Mining Proclamation, 2023; Proclamation No.1213/2020; Proclamation Number 816/2013; Proclamation Number 678/2010). Whereas the Ministry of Mine has been designated as a "supervising body" at the federal level, the regional mining bureaus have been delegated to administer issues at the regional level. Accordingly, the state grants licenses to artisan mining, reconnaissance, exploration, and retention licenses concerning construction and industrial minerals and small-scale mining licenses for industrial minerals and construction material mining by domestic investors (Proclamation Number 678/2010 article 52/2). The Federal Government has the power to issue reconnaissance, exploration, retention, and mining licenses other than those

issued by a state licensing authority.³

The federal mining laws have allowed the Federal Government to dominate the management of mineral resources that have significant economic, social, and environmental impacts, without the consent and effective participation of the regional states and local people in the decision-making process. It upheld the limited role of the subnational government in the decision-making process, land administration, local security, and compensation for the expropriated land for mining, licensing of artisan miners, and mining of construction materials by domestic investors.⁴ The role of local communities is limited to environmental impact assessment, community development, and land compensation.

The successive revisions to the federal mining proclamation, as noted above, reveal that over the years, the Federal Government has adopted an aggressive approach to assert its dominance in the management of mineral resources. The Federal Government's stand has been acclaimed by some 'statists' on the pretext that that minerals are national assets, federal oversight ensures more efficient extraction and strategic resource deployment, and centralized management can better balance the interests of federal, regional, and local stakeholders. The Federal Government strongly believes that natural resources are national assets and that their management should not be left to a specific region alone.⁵ It believes that its management of mineral resources is essential to ensure the "common benefit" of the people. Moreover, it holds that its role in the management of mineral resources is essential for efficient extraction, as it has resources, expertise, and a broader national perspective to optimize the development of these assets.⁶ The Federal Government believes that it is best positioned to harmonize the often-competing interests of central authorities, regional governments, and local communities.⁷

For a long time, despite the introduction of an identity-based federal system, recognition of the right to self-determination, and immense pressure from politicians, the state government opted not to claim management power over mineral resources.⁸ Unlike mineral resource ownership, the subnational government failed to claim constitutional power over mineral resource management (Yared, 2024). The state constitutions did not directly provide state management power over mineral resources; while it provides that the regional states the power to administer the land and other natural resources in accordance with Federal laws (Revised constitution of Oromiya, 2001; Revised constitution of Amhara, 2003). Furthermore, few regional states enacted mining proclamations that are consistent with the federal mining

³ Currently, except for artisanal mining licenses, the Federal Government has the authority to provide licenses for the significant mining of industrial minerals, as well as metallic, precious, and semi-precious minerals. Moreover, the Federal Government also has the power to issue certificates of discovery for strategic minerals and certificates of professional competence for professionals who wish to engage in consultancy services in the mining sector, conduct testing, and provide permission to export mineral samples.

⁴ Interviews with expert at the Oromia Regional State Mining Bureau, June 2022, Addis Ababa, Ethiopia;

⁵ Interview with the Head of the Legal Division of the Ministry of Mine, June 2023, Addis Ababa, Ethiopia; Interview with the CEO of Mining License and Mineral Administration Directorate at the Ministry of Mine, June 2023, Addis Ababa, Ethiopia

⁶ Ibid

⁷ Ibid

⁸ Ibid; Interviews at supra note 4;

laws, while others decided to use the federal mining law (Oromia Mineral Development Proclamation No 223/2020, article 47)⁹.

However, some notable differences have recently emerged between federal and regional mining legislations regarding the division of management power. For instance, the Federal Mining Proclamation allocates a special small-scale mining to the central government (Proclamation Number 816/2013, article 2/44, Federal Mining Proclamation Number 678/2010, Article 52/2). On the other hand, Oromia Regional State has challenged this division of administrative power by assigning the power over special small-scale mining to the regional government (Oromia Mineral Development Proclamation No 223/2020, Article 47; Federal Mining Proclamation Number 678/2010, Article 52/2). Likewise, the Federal Mining Proclamation allocates the power to regulate the extraction of small-scale industrial minerals and any construction minerals by foreign investors to the Federal Government. On the other hand, the Oromia Regional mining law expands the authority of the Regional Government over special mining activities and regulates small-scale industrial minerals and construction minerals for any investor (Ibid). Thus, it is crucial to evaluate the above developments, especially the Federal Government, and regional states governments' roles in the management of mineral resources in light of the Federal Constitution and international human rights instruments.

The division of the management power over mineral resources is one of the essential features of federal systems (Assefa 2007). Accordingly, the FDRE Constitution, as noted above, has introduced a division of management power over mineral resources. It assigns the power to manage mineral resources to the regional states (The FDRE Constitution, 1995 Article 51/5, 52/2/d). It does not provide any division or criteria, including the scale and nature of mining operations, such as small-scale, large-scale, special small-scale, precious, and non-precious mineral divisions, to divide management power over mineral resources. The constitutional division of "large and small-scale" is used for the purpose of assignment of revenue from the extraction of mineral resources, which is administered by different considerations (The FDRE Constitution, 1995, Article 97-99; Anderson, 2020; Haysom & Kane, 2009). Contrary to this clear constitutional norm, federal and regional proclamations attempt to divide management power over mineral resources based on the nature of the resource, level of operation, and business activities (Ibid; Proclamation Number 678/2010). It has introduced highly centralized management power over mineral resources that largely excluded regional states from most decision-making processes. The almost complete exclusion of regional governments and the wide discretionary power of the Federal Government in the administration of mineral resources are in direct contradiction to the Constitution. In such cases, the Constitution provides clear rules, as it clearly states that any federal or state law that contradicts the Constitution is invalid (FDRE constitution, Article 9). Accordingly, any division of management power in the subsequent legal framework between federal and subnational governments has no effect.

The FDRE Constitution and the current mining legislation have different perspectives on the rights of local communities regarding the management of mineral resources. The FDRE

⁹ Ibid; Interviews with expert at the Benishangul Gumuz regional State Mining Bureau April, 2023, Addis Ababa

Constitution grants the local communities the right to have voices and influence decision-making on matters affecting their interests (Ibid Article 12, and 43/2). These constitutional provisions aim to ensure that local communities are not marginalized in decisions that directly impact their lives and livelihoods, including in the management of extraction of mineral resources, which often has profound effects on local environments, economies, and social structures. However, the Federal and State Mining Laws fail to include local communities in the major decision-making in the management of mineral resources (Oromia Mineral Development Proclamation No 223/2020; Federal Mining Proclamation Number 678/2010). This exclusion represents a significant missed opportunity to capitalize on the constitutional rights granted to these communities and paves the way for decisions that fail to consider local interests and concerns. Therefore, it is essential that the federal and state laws be applied in a manner that respects the constitutional provisions that explicitly enable local communities to participate in and influence decisions pertaining to mineral resource extraction in their localities.

Ethiopia's commitment to international human rights standards further reinforces the rights of local communities in mineral resources management. As noted above, Ethiopia is a party to major international human rights instruments that recognize people's procedural and substantive natural resources rights on their lands (Enyew, 2017). These instruments, which include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the African Charter on Human and People's Rights (ACHPR), grant marginalized groups procedural and substantive rights over natural resource (Miranda, 2012,) Ethiopia has undertaken considerable initiatives to integrate these international commitments into its national legal system. Accordingly, both the federal and regional state constitutions incorporate regional and international human rights instruments that Ethiopia has ratified into its domestic laws (FDRE Constitution, 1995, Article 13/2; (Revised constitution of Oromiya, 2001; Revised constitution of Amhara, 2003). Furthermore, Chapter Three of the Constitution clearly stipulates the fundamental rights and freedoms in line with the ratified international human rights treaties (Ibid). This constitutional incorporation of international standards creates a robust legal framework for protecting the rights of the communities in natural resource management. However, the federal and state laws that exclude local communities from mining operations decision-making processes that affect them stand in stark contrast to these international commitments and constitutional provisions. Thus, mining laws should be interpreted and applied in a way that respects and promotes participatory rights guaranteed to communities by domestic and international laws.

4. Management of Mineral Resources in the Ethiopian Federation

The Federal mining legislation and standard contracts in Ethiopia offer a set of standards that provide a comprehensive set of normative frameworks for the mining sector (Proclamation Number 678/2010; Oromia Mineral Development Proclamation No 223/2020). It encompasses fiscal terms, operational commitments, environmental responsibilities, health and safety obligations and social commitments. These multifaceted frameworks allow governments to significantly influence the economic, social, and environmental impact of mining operations. The federal and regional governments use their

management power to put these legal frameworks into action. The Federal Government, based on the division of power made by the federal proclamations, has been managing the lucrative part of the mining sector (Ibid). It has utilized a number of organizations to that effect. At the regional level, similar institutions are established to manage mineral resources within their jurisdictions, as per the federal mining proclamation. It should be noted from the beginning that our discussion focuses on large-scale mining operations that fall under federal agencies. Moreover, although federal management institutions are responsible for managing the various stages of extractive-related activity (from prospecting to post-closure), Ethiopia has yet to witness large-scale mining operations reaching the post-development stage, thus limiting our discussion to the early phases of mining operations.¹⁰ Hence, our discussion is largely limited to the exercise of management decisions to start mining, the transfer of mining titles, and the administration of exploration and exploitation processes on mining operations that fall under the jurisdiction of the Federal Government as per the mining laws.

4.1. Decision to start extraction and transfer of mining title

The FDRE Constitution vests ownership of mineral resources in the state (FDRE Constitution, 1995 Article 40). Furthermore, it provides that the government must ensure that the exploitation of mineral resources advances social progress in its capacity as a steward of the nation's wealth (Ibid, Article 89/6). Accordingly, the Federal Mining Law provides detailed rules that guide the government action in the initial stage of mineral extraction. It provides rules that regulate the decision to extract mineral resources and transfer mining titles to developers.

The first step in the extraction of mineral resource involves the government's decision to extract mineral resources from a particular location (Olawuyi, 2018; Sigam & Garcia, 2012).¹¹ In Ethiopia, the Federal Government has long decided that, except for areas that are designated as not subjected to mining operations, any place in the country is open to mining operations, with the exception to areas that are reserved from the Mining operation, every corner of the country is ready for mining operation.¹² Furthermore, prohibited areas can be made available for mining under certain conditions (Proclamation Number 678/2010).

The regional states and local populations have no place in the decision to determine mining areas.¹³ Moreover, unlike other countries, the subnational governments are not asserting a claim over the exercise of this power. Rather, they are focused on having a say in the later stage of mining. As they believe that controlling the latter stage is essential to protect their interest.¹⁴ The second step entails transferring mining titles to the developers. The Federal

¹⁰ Interviews at supra note 5,

¹¹ The government's decision to exploit mineral resources must be supported by information on the financial, social, and environmental costs of mining. To this end, in most jurisdictions, the government's decision to exploit mineral resources must be supported by environmental and social impact assessments and economic studies. However, this procedure has rarely been performed in Ethiopia.

¹² Interview with an expert in the Ministry of Mine, Environmental Administration Directorate, in June, 2023, Addis Ababa, Ethiopia

¹³ Ibid; Interviews at supra note 4;

¹⁴ Ibid

Mining Law mandates that commercial mining projects have state-issued licenses. It stipulates that the government, acting through the Licensing Authority, should control and administer the extraction of mineral resources. It aims to ensure that projects are developed in accordance with government goals for the economy, society, and the environment.

It provides that the Federal Government can either transfer mining license to itself or the regional state to develop mineral resources on its own, or provide mining rights to third-party developers.¹⁵ The first option is to develop the mineral resources through a state-owned monopoly, be it federal or state-owned. Accordingly, despite earlier attempts to privatize the sector, central and regional governments have been actively engaged in mineral resource extraction (Vaughan & Gebremichael, 2011; Wedekind, 2024). The Ministry of Mines (MoM) decisions are influenced by the capacities of the states, the mining sector's contribution, and investment availability.¹⁶

In most cases, the government prefers to use a second option and transfer mining titles to private developers.¹⁷ The MoM has transferred the right to explore and produce to developers by following open mineral access, or a competitive approach to allocating mining titles.¹⁸ In cases where proven mineral resources are ready for exploitation, the Ministry invites developers to submit proposals for the development of mineral resources (Proclamation Number 678/2010). It evaluates a company's financial and technical capabilities, economic and social contributions, and detrimental effects on the environment and the society. Based on this assessment, it chooses the best possible company, followed by awarding a contract subject to the approval of the Council of Ministers.

In most cases it utilizes an open-access system for transferring mining titles. Accordingly, mining companies have submitted their applications for the extraction of mineral resources. These applications are treated chronologically and administered on a first-come, first-served basis. Once an application is created, MoM uses its mining cadaster system to assess the rights of other developers regarding mineral resources. Once the availability of the license is ascertained, with the exception of the prospecting stage, the economic, social, and environmental impacts of mining operations and the technical capacity of the company are assessed (Ibid). As soon as the assessment is completed, it submits its proposal to the Minister for approval. The decision to accept an application is subject to approval from the Council of Ministers (Ibid).

The decision to transfer a mining license in either case requires a thorough analysis of a variety of factors, such as the firm's financial capacity, current and potential economic benefits, and social and environmental challenges that society may face. In this regard, MoM and the Environmental Protection Agency (EPA) play an important role in selecting the best candidate by conducting a thorough evaluation of the mining projects' economic,

¹⁵ Interviews at supra note 5

¹⁶ Ibid

¹⁷ Ibid, The MoM granted six types of licenses: reconnaissance, exploration, retention, artisanal mining, small-scale mining, and large-scale mining.

¹⁸ Ibid

environmental, and societal implications, as well as the financial and technical capabilities of the participating companies.¹⁹

The MoM evaluates the economic contribution of the extraction process by scrutinizing the development plan of the mining company, which outlines the overall development program of the mining operations.²⁰ EPA conducts environmental impact assessments (EIAs) and evaluates environmental management plans (EMPs) to guarantee that environmental concerns are adequately addressed and that the requisite safeguards are in place to mitigate any adverse consequences (Ibid; Environmental Impact Assessment Proclamation, proclamation Number 299/ 200). It also assesses the social impact (SIAs) of mineral extraction that seeks to detect and address social impacts of mining operations on employees and nearby communities (Ibid).²¹

Over the past 30 years, the Federal Government has issued numerous large-scale mining licenses, in a highly centralized arrangement (Ministry of Mines 2023). The role of regional states has been limited to sharing information about mining areas and assisting with the transfer of land to mining companies.²² Furthermore, local communities' involvement in large-scale mining license administration has been severely restricted. Their function has generally been limited to data collection and information sharing during the environmental and social impact assessment processes, with little to no influence on final decisions.²³

In the past, regional governments and local communities have not been successful in questioning the established system. However, in recent years, it started to demand for a more significant role (Yared, 2024). In response, the Federal Government has implemented measures aimed at improving the role of the regional states and local communities in the matters of transferring mining licenses (Ibid). It has encouraged regional states to share their views and engage in negotiations, demonstrating a willingness to include their perspectives in decision-making processes.

However, the administration of mining titles has not been subjected to a comprehensive reform. The decision to start the extraction and transfer of mining licenses remains heavily centralized, with the Federal Government as the primary decision-maker. The regional states' involvements are primarily limited to consultation about the availability of land and ensuring local security.²⁴ Furthermore, local communities' involvement in the transfer of mining licenses has received little attention from federal and regional governments.²⁵ As noted repeatedly, the exclusion of subnational actors from the decision to start the extraction and transfer of mining licenses, which is part of the management power of the state, is a clear violation of the FDRE Constitution and international human rights instruments.

¹⁹ Ibid; Interviews at supra note 13

²⁰ Ibid

²¹ Ibid

²² Interviews at supra note 4; Interviews at supra note 13

²³ Ibid

²⁴ Ibid

²⁵ Ibid

4.2. Management of Exploration, Development, and Exploitation Processes

Over the past three decades, the Ethiopian Federal Government heavily relied on the MoM, to manage the exploration, development, and exploitation of mineral resources, as mandated by the federal mining law.²⁶ During these stages, the MoM oversees and verifies that mining companies adhere to financial terms, operational commitments, environmental responsibilities, health and safety obligations, and social commitments that emanate from the legal framework and contractual agreements.²⁷ It has excluded and marginalized regional states and local communities from the decision-making process. The Regional states' roles are limited to safeguarding mining operations, and assisting federal agencies in enforcing and overseeing environmental requirements.²⁸ On the other hand, the local communities that are directly affected by mining operations have been largely excluded from the management process during these crucial stages.²⁹

In the meantime, the mining sector has failed to deliver the promised economic benefits, such as efficient resource extraction, economic linkages, and infrastructure development (Olkeba, 2019; Regassa, 2022; Regassa & Abebe, 2023; The New Humanitarian; Wedekind, 2024). Lack of participation and economic benefits from the extraction of mineral resources has created perceptions of inequitable extraction in regional states endowed with minerals (Abdurahman Alfa Shaban, 2019; VOA Horn of Africa, 2018).³⁰

Furthermore, centralized governance system has proven inability to adequately monitor or sanction non-compliance with environmental standards. The mining sector is responsible for serious environmental harm, posing major health, property, and lifestyle risks to the impacted populations, which led to confrontations between mining companies and local communities (Regassa 2022; Regassa and Abebe 2023; Haile & Konka, 2021; Mencho, 2022; Mulatu et al., 2018).³¹

The MoM monitors and enforces the social impact of mining operations and regulates the contributions made by mining companies to the society.³² However, it failed to closely

²⁶ Interviews at supra note 5

²⁷ Ibid

²⁸ Ibid; Interviews at supra note 4; Interviews at supra note 13

²⁹ Ibid

³⁰ Ibid, For instance, in the Sakaro gold mine, locals complained it received limited economic benefits compared to the scale of mining impacts. The locals argued that they did not receive fair economic benefits relative to their mineral endowment. A similar protest was held in major cement factories in Oromia, which consume most of the country's industrial minerals.

³¹ Ibid, It is important to note that the specific environmental impacts and the extent of their effects can vary depending on the mining practices employed, the management approaches, and the specific geographical context. The Lega Dembi Gold Mine, which has been in operation since the late 1990s, has had significant environmental impacts. The mine has been associated with deforestation, habitat destruction, and the contamination of nearby water sources with chemicals used in gold extraction. The Kenticha Tantalum Mine raised concerns about deforestation, soil erosion, and the potential contamination of water sources with chemicals used in the mining process. Dangote and Messobe cement have been involved in the extraction of limestone and other related minerals. Their operations have been associated with habitat destruction, soil erosion, and the alteration of landscapes.

³² Ibid

monitor mining activities, to assess their social impacts, and to verify the implementation of mitigation measures, contributing to community-firm conflicts. Moreover, it failed to effectively ensure the safety and health of the community and employees (Melisha Charles, et al. 2022; Olkeba, 2019; Regassa, 2022; Regassa and Abebe, 2023).³³ Local communities have long held the view that mining operations are detrimental to society (Ibid).³⁴

Despite the aforementioned limitations, the Federal Government has historically suppressed dissent using security forces and party apparatus with few exceptions.³⁵ On a few occasions, it held discussions with local communities aimed at addressing some of the complaints raised against mining companies.³⁶ It has also introduced the Community Development Fund (CFD) to address the demand that mining companies share some of the economic rent with communities in mining-affected areas (Ethiopia, 2018).

The 2015-2018 national protest marked a turning point as it was responsible for bringing the adverse economic, environmental, and social effects of mining operations into sharp focus. During this period, successive protests took place around the country's major mining areas, strongly condemning the environmental, social, and economic failures of mining companies and the government's complicity.³⁷ These protests have brought the apparent economic marginalization, environmental degradation, and social impacts of mining activities into national prominence³⁸ (Olkeba, 2019; Regassa, 2022; Regassa & Abebe, 2023; *The New Humanitarian*; Wedekind, 2024).

In an unprecedented manner, subnational governments have begun calling for their active roles in the management of mineral resources. The case demands meaningful subnational stakeholder participation in management power of mineral resources in their respective regions.³⁹ Moreover, local communities have pushed for the recognition of their right to play a meaningful role in the management of mineral resources.⁴⁰ In response, the Federal Government has taken several important steps to address the issues raised regarding the management of mineral resources. These include implementing CFD, taking action on mining operators, retroactive compensation, and introducing an intergovernmental relations (IGR) forum.

The MoM started to actively implement CFD as a mechanism to bridge the gap between mining operations and local communities. It collects the CDF and transfers it to regional

³³ Ibid

³⁴ Ibid; However, national discussions have largely overlooked the social impact of mining operations, except in conversations surrounding the local community development fund. This lack of emphasis on social issues is not unique to Ethiopia but rather a common occurrence in federations, where economic and environmental matters often take precedence.

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid; Interview with an expert, on the economic, environmental, and social impact of mining June, 2023, Addis Ababa, Ethiopia

³⁸ Interviews at supra note 4; Interviews at supra note 5, Interviews at supra note 13; Interview with an Official in Oromia Regional State Mining Bureau, June 2022, Addis Ababa

³⁹ Ibid

⁴⁰ Ibid

governments to be utilized by the local communities.⁴¹ This funding is essential to address immediate local needs while fostering collaboration between mining companies and affected communities, which is crucial for minimizing conflicts and ensuring a social license to operate. While challenges persist, since its introduction, CDF has shown promise in creating a better relationship between mining operators and local communities.⁴²

After a considerable public outcry, the MoM took decisive action against mining operations accused of environmental violations and adverse community impacts that stretched from suspending and revoking mining licences.⁴³ Notable examples include the Mohammed International Development Research and Organization Companies (MIDROC) Gold Lega Dembi site, Kenticha Tantalum Operation, Yayu coal mining project, and Okotie Mining Project. In the case of the MIDROC Gold Lega Dembi site, following widespread protests over its negative impacts and lack of operational transparency, the MoM ordered mine operations to be suspended for nearly three years.⁴⁴ Furthermore, in the case of the Kenticha Tantalum Operation, the Federal Government terminated the mining license of the state-owned enterprises, namely, Ethiopian Minerals, Petroleum, and Biofuel Corporation and transferred it to the Oromia Mining Share Company.⁴⁵ Moreover, the MoM has transferred mining rights from Metals and Engineering Corporation (METEC), a state-owned military-industrial conglomerate, which had been accused of using coal for no intended purpose and failed to pay land rent for 13,900 hectares of land it occupied.⁴⁶ Additionally, the MoM, in an attempt to address local grievances and protests, made a significant decision to transfer the Okotie Mining Project, held by MIDROC, to the local business group GODU General Trading S.C.⁴⁷ However, the MoM action did not bring significant change in the environmental, social and economic impacts of the mining operation (Olkeba Jima, 2019; Regassa, 2022; Regassa & Abebe, 2023; *The New Humanitarian*; Wedekind, 2024).

The Federal Government has also recently implemented measures to address the long-standing grievances of communities affected by mining operations, and to retroactively compensate communities for the harm caused by past mining activities. The landmark case of the MIDROC Gold Lega Dembi exemplifies this approach. In response to the public uproar, the MoM, Oromia Region, and communities agreed with the developer to reopen the mine on the basis of compensation to the local communities.⁴⁸ It represents a paradigm shift in Ethiopia's approach to managing mining-related conflicts and community relations. However, the communities still believed that the amount of compensation paid to them was insufficient and some parts of the communities did not receive payments at all (Regassa & Abebe, 2023).

⁴¹ Ibid

⁴² Ibid

⁴³ Interviews at supra note 4; Interviews at supra note 5; Interviews at supra note 13; Interview with an expert in ministry of Mine, mining License Administration directorate mining, Addis Ababa, June 2022;

⁴⁴ Ibid

⁴⁵ Ibid; Interviews at supra note 38

⁴⁶ Ibid,

⁴⁷ Ibid

⁴⁸ Ibid

The Federal Government enacted the Intergovernmental Relations (IGR) Proclamation aimed to establish the National Inter-sectoral Executive Forum, which would facilitate coordination between the federal and regional sectoral executive organs. However, the federal system failed to create a National Intersectoral Executive Forum.⁴⁹ Unfortunately, the intergovernmental relationship between federal and state governments still relies primarily on party channels and ad hoc arrangements.⁵⁰ Furthermore, consultations are frequently shallow and lack comprehensive methods for incorporating stakeholder feedback into the decision-making processes.⁵¹

It is clear from the above discussions that the Ethiopian federal system opted for a management structure that largely excluded subnational actors from the regulation of the exploration, development, and extraction of mineral resources. This exclusion is a clear violation of both the FDRE Constitution and the international human rights instruments that make the regional states and local communities as key actors in the management of mineral resources. Furthermore, the above-mentioned incremental progresses represent positive but insufficient steps towards a truly inclusive and devolved management of mineral resources. Moreover, it is not followed by a thorough overhaul of their mining sector governance, aligning it with the Constitution and international human rights instruments. Current practices still fail to align with constitutional mandates and international human rights standards.

5. Conclusion and Policy Recommendations

The management of mineral resources represents one of the critical issues in federal constitutional design. This study has comprehensively illustrated how the Ethiopian federal system approaches the management of mineral resources in its design and operation. It highlighted significant legal, institutional, and practical gaps that hinder effective management of mineral resources. The findings underscore a troubling disconnect between the FDRE Constitution, which envisioned a decentralized system that places regional states as key actors in mineral resource management, and federal practices and successive legislation that provide for a highly centralized management system that is misaligned with constitutional principles, international human rights standards, and the fundamental ideals of power devolution, especially in the case of nationally important minerals. This trend towards centralization has engendered a management architecture that has overlooked the unique needs, concerns, and rights of local communities directly affected by mining operations. Furthermore, the highly centralized management system failed to effectively address the complex economic, social, and environmental issues that arise in the extraction of mineral resources.

The over-centralization of management power, coupled with the adverse ecological, social, and environmental impacts of mining operations, has resulted in significant grievances, conflicts, and opposition to mining projects. Despite the federal government's recent attempt

⁴⁹ Ibid

⁵⁰ Interviews at supra note 5; Interviews at supra note 43

⁵¹ Interviews at supra note 4; Interviews at supra note 37

to address some of these issues by making minor and ad hoc improvements, these initiatives have not resulted in meaningful change in the overall management of mineral resources. Thus, Ethiopia's strategy for managing mineral resources is in a crucial phase, requiring thorough reform to conform to constitutional principles, international human rights standards, and the concept of decentralizing power.

The following recommendations have been forwarded to address the aforementioned challenges in the management of mineral resources within the Ethiopian federal system.

- The Federal and regional governments should prioritize the restoration of constitutional compliance in the management of mineral resources. Specifically, regional and federal policymakers need to undertake a thorough review of the current mining laws and regulations to ensure that the mining legislations are consistent with the constitutional division of powers. This could be achieved either by revising existing laws or by considering the issue to be resolved by the HoF, as an umpiring institution.
- The Federal Government need to urgently decentralize the management of mineral resources, which will empower regional governments, allowing them to tailor policies and management practices to local conditions and needs. To this end, regional states should be prepared in advance to develop institutions competent in exercising their management power over mineral resources.
- The Federal Government should amend the mining and environment-related proclamations, guidelines and directives to explicitly grant local communities the right to engage in mineral resource management. This revision will significantly empower the communities and ensure that their voices are integral to the decision-making processes, fostering a more inclusive and participatory approach.
- The Federal Government, in line with the Inter-Governmental Relations Proclamation, should urgently establish an intergovernmental forum that enhances cooperation between the federal and regional governments. This forum will facilitate the sharing of best practices and joint problem solving regarding mineral resource management.
- Further research is needed to explore how Ethiopia's centralized mineral resource management has impacted indigenous communities' rights, shedding light on the potential challenges and opportunities for the communities.

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