## Summary Policy Brief

# REALIZING BENEFITS FROM NIGERIA'S ELECTRICITY CONSTITUTION AMENDMENT 2023

Clean Technology Hub
energy innovation centre

June 2023

# FOREWORD

This Summary Policy brief is a publication of Clean Technology Hub. It was prepared by Chinwendu Obed with contributions from Ifeoma Malo and Abel B.S. Gaiya.

| | |
|---|---|
| DisCos | Distribution Companies |
| ECN | Energy Commission of Nigeria |
| EPSRA | Electric Power Sector Reform Act 2005 |
| FAAC | Federal Account Allocation Committee |
| FRN | Federal Republic of Nigeria |
| GenCos | Generating Companies |
| GoN | Government of Nigeria |
| GW | Gigawatts |
| HoR | House of Representatives |
| IPPs | Independent Power Producers |
| MW | Megawatts |
| NERC | Nigerian Electricity Regulatory Commission |
| NESI | Nigerian Electricity Supply Industry |
| NGN | Naira |
| NIPP | National Integrated Power Project |
| TCN | Transmission Company in Nigeria |
| WB | World Bank |
| WHO | World Health Organisation |

# INTRODUCTION

Nigeria, a country with an estimated electricity demand of 98,000MW, supplies its over 200 million growing population less than 20,000MW. The country has only managed to achieve a total installed generating capacity of about 16,384MW, with an available 6,000MW currently serving the country. This generating capacity comprises the privatized generating companies (GenCos), Independent Power Producers (IPPs) and the generating stations under the National Integrated Power Project (NIPP). On the 28th of February, 2021, the country recorded the highest ever dispatched power of 5,615.40MW.

Self-generation in Nigeria is extremely prevalent; nearly 14GW capacity exists in small-scale diesel and petrol generators, and nearly half of all electricity consumed is self-generated.[1] This implies a huge unserved demand. As a result, the Senate had, in July 2022, passed the Electricity Bill 2022 to allow States and individuals to generate and distribute electricity in areas covered by the national grid.

Before the 16th of March 2023, the power that states had to generate, transmit, and distribute electricity according to item 14, schedule 2, concurrent list of the Constitution of the Federal Republic of Nigeria, 1999, was limited to areas not covered by the national grid. The persistent power sector challenges under this mode of national electricity governance created a need to decentralize electricity generation in Nigeria, prompting the former president, Mohammed Buhari to include the Electricity Bill among the 19 bills signed into law on the 16th of March, 2023. In the House of Representatives, 298 lawmakers voted in support of the Bill and 92 members of the Senator also voted in support of the same bill.[2]

On the 9th of June 2023, the newly elected president, President Bola Tinubu approved and signed the new Electricity Act, which replaces the 2005 Electricity and Power Sector Reform Act[3].

[1] https://energypedia.info/wiki/Nigeria_Electricity_Sector
[2] https://businessday.ng/news/article/devolution-of-power-states-to-benefit-from-new-electricity-law/

## BEFORE THE ELECTRICITY CONSTITUTION AMENDMENT 2023 WAS SIGNED

Prior to signing the signed constitutional amendment, the Nigerian Electricity Supply Industry (NESI) was characterized by the following:

1. The Nigerian Electricity Regulatory Commission (NERC) as the central regulatory body for licensing, generation, transmission and distribution of electricity in nigeria - Section 62 of the Electric Power Sector Reform Act 2005 provides that any person intending to engage in the business of electricity generation, transmission, system operation, distribution or trading shall be required to obtain an operator's license from the NERC.
2. The installed generation capacity on the national grid was about 13MW.
3. The energy supplied to DisCos is not equivalent to the electricity demand of their catchment areas. For example, 900 MW is distributed to Eko and Ikeja DisCos as opposed to over 7 GW of energy demand in Lagos merely from commercial and industrial activities.
4. Only one operational Transmission Company in Nigeria (TCN), which is 100% owned by the Federal Government.
5. DisCos are 40% owned by the Federal Government.
6. States were not allowed to establish electricity laws over areas covered by the national grid even though the power to generate was on the concurrent list. This was observed in the case of the 1999 Lagos Enron/AES Barge IPP. The project was frustrated by opposition resorting to the interpretation of "area not covered by the national grid" under para. 14(b), Concurrent Legislative List. This created ambiguity over whether it could set up by State law its own State electricity market with private sector-owned and operated generation and distribution players regulated by a Lagos State electricity regulator.

## POSSIBLE EFFECTS OF THE SIGNED ELECTRICITY CONSTITUTION AMENDMENT

Although the amendment is only recent, there are several effects that may be expected as State governments and other players seek to take advantage of its provisions:

1. **Legal clarity** – Though only a few states have explored the powers to generate, transmit and distribute electricity upon interpretation of the concurrent list exclusive

to areas covered by the national grid, many other states have not taken advantage of it. The powers outrightly stated in the constitutional amendment gives states a constitutional backing and unambiguous interpretation. This would encourage more states to explore these powers and be more self-aware of what they can do.

2. **Decentralization of electricity supply regulation in Nigeria** – NERC is the sole regulatory body responsible for governing the electricity in Nigeria in terms of licenses, permit, tariffs amongst others for the entire country. The signed amendment will bring about a decentralization of the NESI and would give states powers to establish their own autonomous regulatory bodies for generating and distribution companies.

3. **Investment** – The decentralization of power would in turn encourage investment in States by local and foreign developers as State Governments now have greater power to address investors' and developers' regulatory, infrastructural and policy concerns. Also, this amendment envisages better energy access and therefore greater economic and industrial development within states.

4. **Self-sufficient power generation** – Only 23 grid-connected power plants generate electricity for the entire country. These are not adequate to accommodate the country's energy demand. Giving states power to autonomously generate and supply electricity within their territories would increase generation capacity and reduce the effects of excess load on the national grid. States with the ability to generate through renewable energy could additionally explore generation from other sources such as hydro, solar, wind, geothermal amongst others.

5. **Grid stability** – According to THISDAY analysis of industry data, mostly from the NERC, the Nigerian power grid has suffered 222 partial and total collapses from 2010 to the first half of 2022[4]. When supply exceeds demand, the electrical frequency increases and in extreme cases, it causes some power plants to shut down.[5] This is also the case when demand exceeds supply and the frequency drops. The introduction of additional supply modes to sheds off some load from the grid would bring about stability and greatly reduce or eradicate the blackouts.

[4] https://www.thisdaylive.com/index.php
[5] Ibid

# CHALLENGES

Despite the potential benefits that could result from the constitutional amendment, several challenges remain that could work against realizing these potential benefits:

1. **Poor fiscal capacity of states** – For most states in Nigeria, there is a high dependency on federal government allocation to operate effectively and sustain recurring expenses and capital expenditure. According to the State of States Report 2022 from Budgit, only three states out of 36 states receive less than 50% of their state total revenue from Federal Account Allocation Committee (FAAC); Lagos with 25.39%, Ogun 42.15% and Akwa-ibom 47.68%.[6] 13 states relied on federal transfers for at least 70% of their total revenues. And where are there was a 52.53% increase in the capital expenditure of all 36 states, however, just 5 States—including Anambra, Ebonyi, Cross River, Kaduna, Rivers—prioritized capital expenditure over operating expenses[7]. Where there is less priority on capital expenditure, the Internally Generated Revenue won't level up, thereby creating greater dependency on FAAC. Without improving fiscal health most states will be unable to deploy large amounts of capital, partial risk guarantee and transmission infrastructure to improve electricity supply in their states.

2. **Over-concentration of power in certain states** – Institutional quality, ease of doing business and fiscal capacity wildly differ in Nigeria, which makes some states ahead of others in terms of policies. Lagos, for example, already has an existing Power Reform in place and a Light-up Lagos Project. In contrast, most states have not adequately explored their power generating potential. This fragmented pattern of state interest and capabilities in driving electricity initiatives means that some states would have an edge over others. International partners and the Federal Government would therefore need to ramp up technical assistance to State Governments willing to expand energy access on the basis of the new amendment. Given that power brings about development, a secondary implication could be that existing interregional inequalities in development outcomes could widen.

3. **Uneven distribution of renewable energy resources** – The generating power of each state is also greatly unbalanced in terms of the availability of renewable energy. Where some states have strong solar, wind and hydro potentials cumulatively, some only have substantial access to only one type of renewable energy resource, thereby reducing the generating capacity of such states when compared to others. The implication is that not all states would be able to ensure that renewable energy makes up a high

[6] https://yourbudgit.com/wp-content/uploads/2022/10/2022-State-of-States-Report.pdf
[7] Ibid.

percentage of their energy mix. This limitation could eventually be overcome if electricity generated from surplus renewable energy states is supplied to deficit states.

4. **Multiple regulatory systems** – Based on the constitutional amendment, states have powers to create autonomous laws for their generation, transmission and distribution of electricity.; Without proper intergovernmental coordination among states and between states and the Federal Government, this could lead to cumbersome, unnecessary and time-wasting regulatory procedures for developers and investors to obtain licenses and permits. It would be important for prospective state bodies and the existing federal body to establish synergies in this regard.

5. **Transmission Monopoly** – The TCN is still 100% owned by the Federal Government. Unless a workable policy is made around this, states will still have limits on the regulations they can enact towards transmission of electricity within their territories.

## CONCLUSION

The highlight of the electricity constitutional amendment is giving states the power to make laws as it affects the generation, transmission and distribution of electricity in areas covered by the national grid within their territory. The main aim of this power devolution is to increase access to energy given the poor outcomes from the centralized electricity supply industry for over two decades. This step has been highly commended. However, major challenges remain, and state efforts to expand electricity access based on their wider powers should not be taken to be automatically successful. Substantial technical assistance, state fiscal consolidation, inter-governmental coordination to avoid a convoluted regulatory system, and potential inter-state electricity interconnection projects will be required to realize the goals of the constitutional amendment.