

RENEWABLE ELECTRICITY LAW AS A PANACEA FOR NATIONAL GRIDSYSTEM COLLAPSES IN NIGERIA

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Abstract

Electricity Law in Nigeria has endowed a chequered history as research has shown. The journey has been fraught with inadequate legislation, unrealistic policies, and inefficient governance among others leading to terrible effects of power failure. This paper examined factors that are responsible for this slate of affairs in a country that is richly endowed with energy resources. It argued the inseparable link between power supply, good governance and the impact of electricity law to achievement of efficient and regular power supply to enhance economic growth and development. It further argued that the extant laws fall short of the present global interest in the role of renewable energy and law to national stability, economic development and energy security. It was concluded by going further to proffer suggestions in the area of strengthening development with the appropriate legal framework dedicated to renewable energy-sourced electricity which would effectively tackle the problem of unabated power failures in the country.

Introduction

Electricity law, being a component of energy law, governs electricity generated from the flow of little charged particles called electrons that are separated from atoms by some outside force. Electricity is a product derived from energy resources such as renewable and non-renewable resources just as fossil fuels that are transformed from hydrocarbon energy. Research has shown that Nigeria is endowed with abundance of these energy resources and electricity is the most multipurpose energy carrier in the modern global economy, and therefore primarily linked to human and economic development.¹

However, the abundant energy resources in the country do not reflect in the consumption pattern of its population. This means that the greater number of Nigerians either lack access to energy use or inadequate supply to meet their energy requirements. The excessive fixation and overdependence of the country on oil to drive its economy has slowed down the development of other sources of energy even when the need is compelling. As a result, the electric power sector in Nigeria being driven by fossil fuel has not realized its potentials. The reason lies in the poor performance of electric power utilities facing the challenges of frequent system collapses. There have been cases of national grid collapses for about six times in July 2022.² Ozekhome, writing in the Sun Newspaper stated incident of serial reports of grid collapse in Nigeria, pointing out that the development made it the 29th time in the last three years that national grid collapse had occurred. Between 2013 to 2020, national grid failed 54 times and partially collapsed 43 times.³ This state of affairs does not suggest a bright future for any country looking for ways to support economic growth and development.

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¹ A.A. Bazmi and G. Zahedi; "Sustainable Energy Systems: Role of Optimization Modeling in Power Generation and Supply - A Review" [2011] (15) Renewable and Sustainable Energy Review 3480-3500.

² C. Omegoli, "Economic Downturn; Expects X-Ray Problems, Proffer Solutions" Daily Sun (Lagos, August, 7, 2022) 6.

³ M. Ozekhome, "The NEPA in PI-ICN: How Nigerians Pay for Darkness" Daily Sun (Lagos, June 21, 2022) 21.

Historical Perspective of Electricity Law in Nigeria

Electricity Law in Nigeria has a long history. There was the Electricity Corporation of Nigeria (ECN) which was created pursuant to Electricity Corporation Ordinance 1950⁴, which replaced the earlier Ordinance that invested electricity supply company with power to operate.⁵ Acting under the powers conferred on it by the later Ordinance, the ECN integrated all the existing electricity infrastructure in Nigeria since 1896 prior to its creation into one indivisible national grid. This integration into one national grid did not extend the grid to other parts of the country that had no electricity at the time. This singular act was the beginning of lack of access to electricity by the rural areas of the country and the genesis of electricity supply disequilibrium between rural and urban areas in Nigeria.

In 1972, the military regime of General Yakubu Gowon created National Electric Power Authority Decree⁶ with the National Electric Power Authority (NEPA) as the institutional body to take over the responsibility for generation and distribution of electricity in Nigeria. All this while hydropower and coal prevailed in use with the electricity sector being the largest user of coal resource after railway transportation. Over time the Electricity Act⁷ was enacted to regulate and take control of all aspects of electricity in Nigeria. This Act was comprised of four regulations. The Electricity Act was amended in no distant time and it served as the last straw that divested NEPA of its monopoly in terms of power generation to allow Independent Power Producers (IPPs) to come in.⁸ This set the stage towards the reform and liberalization of the power sector in Nigeria.

For a proper regulation of the energy sector, there was also enacted the Energy Commission of Nigeria Act⁹ and the Utilities Charges Commission Act.¹⁰ The institutional bodies of these Acts were the Energy Commission of Nigeria and the Utilities Charges Commission which, principal responsibilities were for co-ordination and maintenance of general surveillance over systematic development of the various energy resources in Nigeria and to regulate tariff charged by public utilities respectively. The outcome of the reform resulted in the enactment of the Electric Power Sector Reform (EPSR) Act.¹¹ The EPSR Act was passed into law on 11th March 2005 for the purpose of reforming the electricity sector in Nigeria. The enactment brought to an end the existence of the Electricity Act and the National Electric Power Authority Act, which were repealed pursuant to the provision of the EPSR Act.¹² It established the Rural Electrification Agency which set up the Rural Electrification Fund pursuant to the powers conferred on it by the Act. The purpose of the fund was to promote, support and provide rural electrification programmes in order to achieve more equitable regional access to electricity, to develop isolated and mini-grids as well as renewable energy sources such as wind, solar among others. The further objectives, according to Aderibigbe

⁴Electricity Corporation of Nigeria Ordinance No, 15 of 1950.

⁵Electricity Ordinance of 1929.

⁶National Electric Power Authority Decree, No. 4 of June 7, 1972

⁷Electricity Act of 1990.

⁸Electricity (Amendment) Act No. 28 of 1998.

⁹Energy Commission of Nigeria Act (Cap 109) Laws of the Federation of Nigeria 2010.

¹⁰Utilities charges Commission Act (Cap U17) Laws of the Federation of Nigeria 2010.

¹¹Electricity Power Sector Reform Act (EPSRA) No. 6 of 2005.

¹²EPSRA, Section 99.

is for Nigeria to have a robust and flexible energy supply system to avail the country access to energy every second of the day and every day of the year.¹³

The Nigerian Constitution

The Constitution of the Federal Republic of Nigeria as amended is the foundational core for the regulation of supply of both conventional and renewable electricity in Nigeria.¹⁴ The Constitution empowers both the Federal and State governments to legislate and exercise power over electric power concurrently.¹⁵ The power covers generation, transmission and distribution of electricity.¹⁶ The jurisdictional area that the Federal Government covers in this assignment is any part of the Federation and from one State to another State, while a State Government covers its State not covered by a national grid system.

Unarguably, the Federal Government or State Government could cover generation, transmission and distribution of electric power from any available energy source since the Constitution is silent about type of energy source. The provision limiting the role of State Government to off-grid generation is plain and clear in the Constitution, while the Federal Government's power is limitless and enjoys monopoly of generation from the national grid. The intention is to maintain a centralized grid electricity to serve the entire country since the bulk of generation and transmission of electricity are from the grid. Under this concurrent power it is implied that the Constitution has taken care of any question of overlap that might arise in the exercise of the Federal Government's and State Government's powers by virtue of the inconsistency provision in the Constitution¹⁷ or the Federal government in its wisdom deems it necessary to exercise its power to apply the doctrine of covering the field.¹⁸

Parliamentary Enactments

This section is divided into two parts. They are the National Electricity Supply Industry (NESI) enactment and Non-Nesi enactments. This Non-Nesi enactment, although not specifically made for electricity industry, they contain provisions intended to address the promotion of electricity supply in the country to include the following:

(i) *Company Income Tax Act (CITA)*¹⁹

This Act provides for incentives for companies engaged in gas utilization including power generation companies. The incentives include a three-year income tax holiday with possible renewal for additional two years. Other incentives include accelerated capital allowances after the tax free period in form of annual allowances of 90 percent, with 10 percent retention for investment allowance (uplift on the cost of asset) of 15 percent which

¹³ D.A. Aderibigbe, "Power Supply Industries: Pros and Cons of Available Options," A Presentation made at the one-day Conference of the Nigerian Society of Chemical Engineers, held at the Ikeja Sheraton Hotel, Lagos on October 7, 2010 1-5.

¹⁴ Constitution of the Federal Republic of Nigeria (CFRN) Second Schedule Part II Item F.

¹⁵ *ibid*, paragraphs 13, 14.

¹⁶ *Ibid* .

¹⁷ Cap. 23 LFN 2010 Sections 1(3), 4(5); 1.0 Agbede, "Conflict of Laws in a Federation: The Nigerian Experience" [1975] (7) Nigerian Law Journal 48; A.G. Lagos State v. Eko Hotels Limited and Anor [2017] LPELR43713(SC).

¹⁸ P. Mgbeoma, "Critical Analysis: Constitutional Doctrine of Covering the Field and Its Applicability in Nigerian Courts", AAA Chambers, 6th August 2019, Available at <w\vw.aaachambers.com/articles/critical-analysis-constitutional-doctrine-of-covering-the-field-and-its-applicability-in-nigerian.courts?>.

¹⁹ Cap. C21.LFN2010.

does not reduce the value of the asset. Companies are also to enjoy tax-free dividends during the tax free period where the investment for the business was made in foreign currency.

(ii) Value Added Tax Act (VAT)²⁰

This Act provides for exemption from value Added Tax under certain circumstances. For instance, pursuant to part 1 and 1 of the First Schedule to the Act, plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations are exempted from Value Added Tax. Company Income Tax Act defines 'Gas Utilization as the marketing and distribution of natural gas for commercial purpose and includes power plants liquefied natural gas, gas to liquid plant, gas transmission and distribution pipelines', and it is believed that this definition cures the lacuna in the Value Added Tax Act, which did not provide a definition of gas utilization. Unarguably, it then follows that, power plant imported into the country should benefit from VAT exemption at the port of entry.

(iii) Industrial Development (Income Tax, Relief) Act²¹

The Act provides tax holiday period of three years with possible extension up to a maximum of an additional two years relief for industries including 'independent power generation utilizing gas, coal and renewable energy sources as a pioneer 'product'.

Observers have shown that, in practice, NIPC normally grants the three years tax holiday and the two years additional period in one fell swoop of a straight 5-years tax holiday. Tax exemption is also accorded to dividends paid out to pioneer profits when being paid to shareholders of the company; capital expenditure on qualifying assets are regarded as having been incurred on the first day after the tax relief period even if it had been incurred during the tax relief period.

(iv) Customs, Excise Tariff, Etc (Consolidation) Act (CETA)²²

The Act exempts equipment or spare parts imported into Nigeria by an industry in the exploration, processing or power generation through the utilization of Nigerian gas, for its business.

Having earlier discussed EPSRA Act, it is important to quickly rehash the reform that birthed the Act.

Electricity Power Sector Reform

The roadmap to the enactment of the Electricity Power Sector Reform Act kick started in 1999 by the Federal Government of Nigeria.²³ The Federal Government had to inaugurate the National Council on Privatization (NPC) in 1999 which, on its own part, constituted the Electric Power Sector Implementation Committee (EPIC) in the same year for purposes of helping out to design modalities for a meaningful reform in the energy sector and to comprehensively study the electric power industry. As a result, the EPIC came up with National Electric Power Policy (NEPP) in 2001 as the outcome of the study and was approved by the Federal Executive Council. The NEPP created roadmap for the unbundling of NEPA, liberalization of the power sector and creation of an independent regulatory agencies among other things, such as the setting up of an initial holding company, the subsequent transfer of assets and liabilities of the National Electric Power Authority to the initial holding company and the incorporation of a

²⁰Cap. V-1, LFN 2010 as amended by the Value Added Tax (Amendment) Act No. 12 of 2017 First Schedule item 8 and section of the Act. This Act was further modified by Value Added Tax (Modification Order) 2020 by the Minister pursuant to the Powers conferred on him under the Act.

²¹Cap. i-7, LFN 2010.

²²CAP. C49, LFN 2010.

²³M. T. Ladan *Electricity Law, Policy and Reform Implementation in Nigeria* (Zaria: Ahmadu Bello University Press, 2013) 31.

successor company, to NEPA which was done, and as a result, the Power Holding Company of Nigeria (PHCN) emerged as the successor company.²⁴

However, the implementing reform suffered setbacks at a later stage due to the fact that some important aspects failed to be completed at the target time, which affected the activities of PHCN. Onyekpere and Essiet, observed that the maintenance of very low tariffs constituted an impossible task for private sector to build independent power plants after being granted licenses.²⁵ What, in fact, this means, is that the low tariff prevented investments in new generation capacity and necessary upgrades to the transmission and distribution networks. The reform problem was heightened by the government policy of subsidizing retail or customer tariffs set at a cost lower than the cost of producing electricity.²⁶

In order to fulfill the objectives emphasized by the roadmap on the need to develop independent power projects and transfer ownership to private entities through concession or outright sales the federal government divested itself of the interest in the electricity generating plants to various private generation companies (GenCos) on 26 August 2010.²⁷ The roadmap is a strategy to boost the implementation of the Electric Power Sector Reform (EPSR) Act and to facilitate the removal of legal, commercial and regulatory obstacles to private sector investments in Nigeria's power sector. The Presidential Action Committee (PAC) created to perfect the work of unbundling the PHCN, in furtherance of its other assignments, divided the function of electricity industry into three separate functions to wit: generation, transmission and distribution which resulted in the unbundling of PHCN and the emergence of privatized commercial entities in the electricity industry. The entities are 6 generating companies (GenCos), 1 Transmission Company and 11 Distribution Companies (DisCos), which since 2013 have been saddled with the function of electric generation, transmission and distribution in the country.²⁸

The completion of the unbundling of the PHCN automatically divested PHCN of its interest in the distribution network in favour of the DisCos whose responsibility to supply electricity to end-users has become fully established.²⁹ According to Ladan, the roadmap deserve commendation for having greatly improved project planning and management efficiency in Nigeria's electric power system in preparation for private sector management.³⁰ In recognition of

²⁴Electric Power Sector Reform Act, 2005, SS 1,31, 88.

²⁵E. Onyekpere and J. Essiet, *Electric Power Sector Reforms: Challenges for Needs 2* (Lagos: Socio-economic Rights Initiative, 2007) 1-70.

²⁶Op cit (n23)130.

²⁷Presidential Task Force on Power, *Roadmap for Power Sector Reform*, (The Presidency, August 2010) 1-50; Heks Dagogo-Jack, "Status Report on the Nigeria Power Sector Reform" (Annual West African Industry Convention, Lagos, 19-21 November 2013 Available at <https://www.csi.africa.com/wp-content/uploads/Dcks-DagORo.pdf>). The roadmap is to be reviewed from time to time, the first revision being in 2013. See also Nigeria Electricity Hub, *Roadmap for Power Sector Reform. Revision 1* (2013) (7 November 2016) at <https://www.nigeriaelectricityhub.com/download/roadmap-for-power-sector-reform-revision-1/>.

²⁸S. Amadi. "Improving Electricity Access through Policy Reform: A Theoretical Statement on Legal Reform in Nigeria's Power Sector" in Yinka Omorogbe and Order A. Okoye (eds) *Ending Africa's Energy Deficit and the Law: Achieving Sustainable Energy for All in Africa* (Oxford: Oxford University Press 2018) 345.

²⁹M. Akpaka & Others, *Alternative Energy and Power 2020: Law and Practice*, Sreamsowners and John, 22 July 2020.

³⁰<https://practiceguides.com/practice-guides/comparison/500/5380/8517-8523-g534>. Last visited 9th August 2022.

³⁰M.T. Ladan, Op cit (n 23) 132-133

this huge milestone created by the roadmap, the Daily Trust Newspaper did not mince words to qualify the roadmap's effort to 'turn words into action'³¹ as worthy of commendation.

Policy Framework for Renewable Electricity in Nigeria

There are plethora of policies for the energy sector in Nigeria and it is important to discuss the relevant policies here and as follows:

i. National Electric Power Policy 2001

In 1999, the National Council on Privatization (NCP) constituted the Electric Power Sector Implementation Committee (EPIC) to comprehensively study the electric power industry. The National Electric Power Policy (NEPP) 2001 was the outcome of the study by the EPIC and was approved by the Federal Executive Council. The roadmap for unbundling of National Electric Power Authority was the creation of NEPP, as well as liberalization of power sector and creation of an independent regulatory agency among other things. The outline of the framework for the power reform agenda was the main objective of NEPP which it did. It also sets a target of a ten percent renewable energy mix for all new connections by 2020. This, of course, is evidently an acknowledgement of the importance of the different renewable energy sources available in Nigeria and how they can be effectively utilized.

Eventually, no concrete target for renewable energy sources was set. This, indeed, negates the underlining assumption of the policy, that increasing the uptake of renewable energy would result to generation of more megawatts. For an explanation to that, Okedu and Others have an answer by pointing out that, the high cost of renewable energy projects is affecting Nigeria's aspiration to increase production of electricity from renewable sources.³² They mentioned that deployment, of up-to-date and environmentally friendly technologies are capital intensive and involve substantial initial investment funding, especially as they are not readily available in Nigeria.³³ Monroy and Hernandez explained the reason for anticipated initial cost for installation of the technology in Nigeria.³⁴ They point out that transition, in the case of Nigeria, from fossil-based electricity to clean electricity from renewable sources would involve major changes of electricity infrastructure and the pattern of energy usage.³⁵

ii. National Energy Policy 2003

The National Energy Policy (NEP) has its thrust on the optimal utilization of the country's energy resources for sustainable development and to facilitate international trade and co-operation³⁶. NEP made relevant provisions for the development of the policy guidelines. However, critics have not been fair to the provisions relating to some of the policy objectives and strategies developed by the policy. For example, Okeke and Others pointed out lack of

³¹Presidential Task Force on Power, "Nigeria's Power Crisis: Reversing Decades of Government Monopoly and Stagnation" Daily Trust Newspaper (Abuja, 11 April 2011) 36-37

³²K. E. Okedu and Others, "Renewable Energy in Nigeria: The Challenges and Opportunities in Mountainous and Riverine Regions" [2015] (5) International Journal of Renewable Energy Research 222, 223

³³Ibid

³⁴C.R. Monroy, and A.S. Hernandez, "Strengthening Financial Innovation in Energy Supply Projects for Rural Exploitations in Developing Countries" [2008] (12) (7) Renewable and Sustainable Energy Review 1928; Christopher Flavin and Molly Hull Aeck, "The Potential Role of Renewable Energy in meeting the Millennium Development Goals" (Paper prepared for the Renewable Energy Policy Network for the 21st Century, Worldwatch Institute) 17

³⁵ibid

³⁶M.T, Udan, Op Cit(n23)-210.

clarity in policy objectives and strategies, using the policy objectives and strategies on solar energy policy as an example. They condemned the objectives and strategies spelt out in the National Energy Policy, as not only being verbose but woolly, tautological and elitist and therefore can hardly galvanize citizens into action.³⁷ They concluded that not the attempted comprehensiveness of a national energy policy that would lead to energy security in any nation, but the implementation of worthwhile policies, using worthwhile strategies.³⁸ The solar energy policy objectives and strategies springing up quarrel for lack of clarity is recast hereunder:³⁹

Policy objectives

- (i) To develop the nation's capability in the utilization of solar energy
- (ii) To use solar energy as a complementary energy resource in the rural and urban areas
- (iii) To Develop the market for solar energy technologies
- (iv) To develop solar energy conversion technologies locally.

Policy Strategies

- (i) Intensifying research and development in solar energy technology.
- (ii) Promoting training and manpower development
- (iii) Providing adequate incentives to local manufacturers for the production of solar energy systems.
- (iv) Providing adequate incentives to suppliers of solar energy products and services.
- (v) Introducing measures to support the local solar energy industry.
- (vi) Setting up extension programmes to introduce solar technology into the energy mix.
- (vii) Providing fiscal incentives for the installation of solar energy systems,
- (viii) Setting up and maintaining a comprehensive information system on available solar energy resources and technologies.

iii. Renewable Electricity Policy Guidelines (REPG) and Renewable Electricity Action Programme (REAP).

The Renewable Electricity Policy Guidelines was approved by the government in 2006. It encapsulates the country's vision for renewable electricity for the exploration of renewable energy through the policy guidelines to generate electricity for sustainable development in the country.⁴⁰ The purpose for this, is to achieve electricity generation target through inclusion of renewable energy in the national electricity supply mix and at the same time achieve diversification to renewable energy and to meet electricity supply demand to rural Nigeria.⁴¹

The policy guidelines also targets to achieve its objectives through the adoption of support schemes, such as Feed-in-Tariffs (FiTs) among others, to enhance effective exploitation of renewable energy sources in the country.⁴² Worika captured the essence of Renewable Electricity Trust Fund (RETF) created by REPG as a means of giving support to renewable electricity for rural electrification by improving same through the use of small scale renewables.⁴³

³⁷R.C. Okeke and Others, "Energy Security and Sustainable Development in Nigeria" [2014] (4) (3) Arabian Journal of Business and Management Review (Oman Chapter) 63-72 at 70.

³⁸Ibid

³⁹ECN, National Energy Policy (2003) 29.

⁴⁰EMPS, Guideline on Renewable Electricity Policy 3

⁴¹Ibid

⁴²Federal Ministry of Power and Sled (FMPS), Guideline on Renewable Electricity Policy ,15.

⁴³I.L. Wonka, "Rural Applications of Energy Efficiency and Renewable Energy" in M.T. Ladan, Electricity Law,

On the other hand, Renewable Energy Action Programme (REAP) was approved in the same year as the Renewable Electricity Policy Guidelines⁴⁴, with the aim of lending support to REPG to attain objectives relating to national development. Targets were set and strategies specified with laid down time-frame for the attainment of the renewable electricity targets.⁴⁵ It intends to achieve this as a strategy of creating a level playing field, between renewable energy by removing subsidies from conventional electricity sources, which constitutes distortion in the energy market. The intention for this strategy is to allow consumers pay the actual cost of electricity consumed for conventional sourced electricity, which would entail a new tariff regime that investors would find favourable and be attracted to investing in renewable electricity.⁴⁶

iv. Vision 20:2020 Programme

This vision is an economic blueprint set in motion in the earliest decade of the 21st century, whereby Nigeria targets to be one of the 20 leading industrialized economies in the world by the year 20:2020.⁴⁷ The programme was the outcome of the National Technical Group on Energy Sector inaugurated in 2009 to reappraise the country's economic plans and electricity generation.⁴⁸ The programme actually believed that the energy sector will play the role as a hub in driving the nation's economy in all its ramifications in the social, economic and industrial spheres, that would lead the country to the enjoyment of affordable and uninterrupted energy services for the benefit of every sector of the economy.⁴⁹ It was also the expectation that a target of not less than 25,000MW and 40,000MW of installed electricity capacity by 2020 and a minimum of 35,000MW production out of which, 1000MW would come from renewable resources is necessary for the country to realize its dream of becoming one of the 20 leading economies in the world.⁵⁰

The sources of renewable energy from which the expected 1000MW would come include solar, biomass, wind and nuclear. The intention was to minimize dependency of the country on gas-fired plants.⁵¹ The programme targets to achieve its goal through five strategic areas as outlined for the energy sector. These areas include:

- (a) energy security;
- (b) commercial and market incentive;
- (c) economic reforms to establish an effective institutional and regulatory framework;
- (d) diversification of the energy mix through utilization of renewable energy; and
- (e) development of efficient and sustainable energy generation, and consumption pattern.⁵²

Policies and Reform Implementation in Nigeria (Zaria: Ahmadu Bello University Press, 2013)269

⁴⁴FMPS, Renewable Electricity Action Programme. (FRN, 2006) 9. 55. *ibid*, 52.

⁴⁵*ibid*, 10, 52.

⁴⁶*ibid*, 61; FMPS Renewable Electricity Policy Guidelines (FRN, 2006) 15.

⁴⁷47.National Planning Commission (NPC), Report of the Vision 20:2020 National Technical Working Group on Energy Sector (The Presidency 2009).

⁴⁸*Ibid*

⁴⁹National Planning Commission (NPC) 91

⁵⁰*Ibid* 179, 113

⁵¹*Ibid* 13

⁵²*Ibid* 13, 92

In addition the programme divided the time-frame within which to actualize the dream into short-term, medium term and the long term covering the period 2010-2012, 2013-2015 and 2016-2020 respectively.⁵³

v. National Renewable Energy and Energy Efficiency Policy (NREEEP)

This document is a high-level policy one that overrides all other prior policy documents prepared for engaging renewable energy in the electricity sector.⁵⁴ The policy has the optimal utilization of energy resources in the country as its primary aim for sustainable development.⁵⁵ The policy also targets an uptake of renewable energy sources in the country's energy mix to 16% by 2030, as against 1.3% it was in 2015. The make-up of the expected 16% would be hydropower, biomass, solar and wind proportioned to 7.07%, 2.78%, 5.90% and 0.25% respectively.⁵⁶

The policy divided energy supply pattern in the country wherein electricity supply from the national grid takes care of the urban areas while the rural areas, make use of supplies from different renewable energy sources available in different areas of the country.⁵⁷ What this means in effect is to express the government admission of the inability of the national grid in providing adequate energy supply, hence the urgent need to pursue the deployment of renewables in the rural areas, where off-grid system will serve them and ease off the challenges of grid electricity in Nigeria.

Other key provisions in the policy include, renewable portfolio standards which could be either mandatory or voluntary, as well as FiTs and incentives for promotion of renewable energy projects.⁵⁸ It recognizes the framework for vision 20:2020 programme with regards to electricity target and identifies with eliminating barriers to private sector investment in the electricity sector as a necessary task to be achieved.⁵⁹

vi. Sustainable Energy for All Action Agenda (SE4ALL-AA)

Following the United Nations Initiative in 2011, Nigeria launched SE4ALL-AA in response to the initiative to align with the global sustainable energy development goals.

There are three principal objectives of SE4ALL-AA which include:

- (i) energy access;
- (ii) energy efficiency; and
- (iii) renewable energy.

⁵³Ibid 118

⁵⁴ Federal Ministry of Power (FMP) National Renewable Energy and Energy Efficiency Policy (Federal Republic of Nigeria); National Council on Power (NACOP) Sustainable Energy for All Action Agenda (SE 4 LL-AA) (2016) 26.

⁵⁵ Federal Ministry of Power (FMP) National Renewable Energy and Energy Efficiency Policy (Federal Republic of Nigeria); National Council on Power (NACOP) Sustainable Energy for All Action Agenda (SE 4 LL-AA) (2016) 26.

⁵⁶ NACOP, National Renewable Energy Action Plans 2015 -2030 (2016) 6

⁵⁷ Ibid iv, viii, 7, 10

⁵⁸ FMP, (n54) 4.

⁵⁹ Ibid 3, 7

Nigeria's vision 20:2030 is embodied in SE4ALL-AA in respect of the electricity sector and aims at generating 30GW of electricity by 2030 with 30% renewable energy in the make-up and a further breakdown to 18% off grid; and 12% captive generation and the remaining 70% on-grid. The target of the strategy is to increase access to 7.5% and 90% by 2020 and 2030 respectively with at least 10% coming from renewable energy in the energy mix.⁶⁰

Flowing from the foregoing, Nigeria has set several policies in motion to address electricity challenges in the country through the deployment of renewable energy, but the policies have not been driven by law reform. Arguably, the inequality in electricity access between urban and rural areas continues to be one of the fundamental concern for the country.⁶¹ Had (hose policies been translated into law, this inequality would have been addressed through the application of difference energy sources into the nation's energy mix. There is no affirmative law in the country for the regulation of renewable energy electricity.

vii. Renewable Energy Master Plan (KEMP)

The policy made specifically for renewable energy is Renewable Energy Master Plan drafted in 2005. It emphasized the nation's vision of the importance of renewable energy in sustainable, development, and the need to explore renewable energy in order to address electricity challenges in the country.⁶² Strategies for power generation through solar, biomass, wind and hydro were set by the policy just as other issues peculiar to renewable energy development were among the planning target. Such issues are legal and institutional framework, capacity building to reflect human and infrastructural development, renewable energy portfolios and FiTs.⁶³

Renewable Electricity Law in Nigeria

From the breakdown the law already examined, beginning from the Electricity Corporation of Nigeria ordinance 1929 to the Electric Power Sector Reform Act of 2005, there is no law specifically enacted as renewable electricity law in Nigeria, even till date. None of the acts, not even the EPSR Act, made any explicit reference to renewable energy sources in order to identify or explain energy sources that qualify as renewable as in some countries that have enacted laws for the development of renewable energy. Turkey, for example has two main laws for promoting renewable energy sources based power plants. Law No. 4628 together with the related secondary legislation, and Law No. 5346 which is the main promotion law⁶⁴ are renewable energy specific laws for electricity. The only reference to renewable energy in the EPSR Act restricted it to power generation for the rural electrification programme.⁶⁵ Save only for the fleeting reference in the provision of the Act enjoining NERC to promote the optimal utilization of resources for electricity, the Act did not set guidelines on the use of renewable energy sources for electricity.⁶⁶

⁶⁰Sublies Bhattacharyya, "Energy Access and Development" in Andreas C Goldthou (ed), *The Handbook of Global Energy Policy* (John Wiley and Sons, 2013) 227.

⁶¹Ibid

⁶²Energy Commission of Nigeria (ECN), *Renewable Energy Master Plan* 3.

⁶³Energy Commission of Nigeria (ECN), *Renewable Energy Master Plan*, 6

⁶⁴O. Topkaya, "A Discussion on Recent Development Turkey's Emerging Power Market" (2012) (16) *Renewable and Sustainable Energy Review* 3754-3765

⁶⁵Electricity Power Sector Reform Act S.88 (9)

⁶⁶Ibid S. 32.

The Law ensures that changes in the electricity sector address modality for including renewable sourced electricity and the only way to see that this is achieved is by, making a comprehensive enactment in the form of enacting a new law for renewable electricity or by making a partial enactment, in which part is dedicated to renewable energy.⁶⁷ The essence of this is in line with Danwitz opinion, that renewable energy development cannot be achieved without a legal regime dedicated to it.⁶⁸

The envisaged outcome of law based on Renewable Energy Technology (RET) on energy security or sustainability, is the likelihood of it eliminating the problem of acceptance and the uncertainties and controversies surrounding the effects of climate change. However, the issue of acceptance may no longer become a problem with severe depletion of conventional energy reserves, and as the social acceptance engenders the normative force of the law. If norms are seen as the actual constraints placed on human actions, inviting or enforcing, inhibiting or prohibiting specific types of behavior, then the need to ensure energy security⁶⁹ through energy sustainability enables these technologies to have a normative force of the law.

The EPSRA, being the latest and now the principal law for governance of electricity supply industry in Nigeria, failed to give any legislative prominence regarding generation of electricity from renewable energy sources.⁷⁰ This corroborates the assertion that 'the EPSRA is not renewable energy oriented.'⁷¹ This also is a contradiction of the provisions contained in the country's various policy documents, both general and specific policies, for the development of renewable energy sources for electricity generation. This therefore, amounts to a gap being created as these policy documents have continued to remain without being strengthened by the force of legislative enactment,

Law acts as a policy enabler when it aligns with the law.⁷² Vision 20:2020 made adequate provisions for generation of electricity from renewable energy sources in order to minimize the nation's overdependence on gas for electricity generation. The National Renewable Energy and Energy Efficiency Policy (NREEEP) has similar provisions and targets an uptake of renewable energy sources in Nigeria's energy mix to 16% by the year 2030, In the Sustainable Energy for All Action Agenda, which was a response to the United Nations Initiative in 2011 to align with the global sustainable energy goals, targets electricity generation of 30GW by 2030 out of which, 30% of the volume to be generated would come from renewable energy. Like the foregoing policies, the Renewable Energy Master Plan set strategies for power generation through renewable energy sources.

⁶⁷AJ. Bradbrook, "Sustainable Energy Law.: The Past and the Future (2012) (3) *Journal of Energy and Natural Resources Law* 511,515

⁶⁸T. Danwitz, "Regulation and Liberalization of the European Market - A German View" (2006) (27) *Energy Law Journal* 423-432.

⁶⁹M. Hildebrandt, "Legal and Technological Normativity: More (and Less) than Twin Sisters" (2008) (12) (3) *Techno. Research in Philosophy and Technology*.

⁷⁰M.T. Ladan, "Overview of Energy Resources Law in Nigeria" (2011) (4) *National Judicial Institute Law Journal* 120-182 at 145.

⁷¹O. Aigbovo and E. Ogboka, "Electric Power Sector reform Act 2005 and the Development of Renewable Energy in Nigeria" (2016) (7) *Renewable Energy Law and Policy Review* 20, 26

⁷² Y.O. Oinorogbe, "Promoting Sustainable Development through the use of Renewable Energy: The Role of the Law" in Donald Zillman and Others (eds), *Beyond Carbon Economy: Energy in Transition* (Oxford: Oxford University Press, 2008) 39-59

The point being established here is that there, is the need to have a legal framework autonomous to renewable energy to improve on the nation's electricity generation. The renewable energy policies already mentioned, even as they contain ample provisions for the development of renewable energy and incorporating same in the country's energy mix, failed by reason of these policies being unable to translate into law. Law, as earlier highlighted, acts as a policy enabler when it aligns with law. Law plays a critical role in sustainable energy by creating binding precepts for policy. Needless to say that most policies are time-bound, because the world economic system do change. For example, Vision 20:2020 is time-bound, meaning that by the year 2020, the objectives of the vision would have been over and would not be useful beyond then. -Having not achieved the objectives, the vision ended up being a mere fiction and wishful thinking. The increase in Nigeria's electricity capacity hoped to be actualized through the Vision 20:2020 Programme never became a reality and, so are other similar policies such as NREEEP and SE4LL-AA. It is one thing to draw up policies, but quite another to make policies work. Neither of these policies was reduced into a legal enactment to steer the country's electricity industry as far as incorporating renewable energy sources into Nigeria's energy mix is concerned.

The importance of law to drive policies has been highlighted by Friedman stating that:

...Legal systems are part of political social and economic development, just as are educational systems and other areas of the culture. No major social change occurs or is put into effect in a society which is not reflected in same kind of change in its laws.⁷³

This gap between renewable energy policies and law is quite a big one. In failing to translate the renewable energy policies into law, Nigeria has overlooked a major dimension of the very process required for policies to be actualized. In failing systematically to enact a law autonomous to renewable electricity, the Nigerian government has shown a surprising lack of interest in one of the tools that make policies to attain their objectives. This failure repositioned the acute shortage of electricity supply witnessed in the country and never let go year on year. Within this year alone, Nigeria has had not less than five occasions that the national grid system has collapsed leaving the country in pitch darkness again and again. Causes being pinpointed for this unfortunate situation have been many and varied, some of which include shortage of gas supply to power the grid, dilapidated infrastructure among other reasons. It is high time the country saw reason to legislate for an affirmative new law for the development of renewable electricity. The existing legal framework embodied in EPSRA and other pieces of legislations offer insufficient provisions towards the development of this vital aspect of the economy.

Recommendation

Constant Power Supply in Nigeria cannot be achieved in absence of the existence of a robust and resilient energy supply. There is no doubt, that the power sector in Nigeria is in a crisis situation, and can only be salvaged from the situation through adoption of the most effective ways of tackling them to meet the energy needs of Nigeria. In order to achieve this ideal of revitalizing the power sector, Nigeria should draw a line between the different types of energy sources in the country and create separate legal framework for each. The current legal

⁷³L. M Friedman, " Legal Culture and Social Development" (1969) (4) Law and Society Review, 29-44

framework having all of them in a hotch-potch of a legal framework, confers competitive advantage on some without the required attention given to others which suffer lack of inclusion in the country's energy mix.

Nigeria's overdependence and excessive fixation on oil has been the major reason that look the minds of the country away from developing other energy sources. There is no gainsaying, that an oil powered economy is subject to dance to the tunes and dictates of the Dutch Disease and suffer the consequences of non-diversification. Seeing that a lot of failures are associated with power generation, transmission and distribution, it is imperative to have recourse to the use of renewable energy, such as solar strengthened by the force of law in order to reduce reliance on the use of these utilities, for production of electricity for the betterment of our human well-being. By so doing, there is the likelihood that other factors contributing to grid collapses such as grid equipment, gas supply, decayed infrastructure, etc will be reduced to the barest minimum. Hydrocarbons produced today must be used to develop other critical areas of the culture that benefit and advance society for generations to come. It is an effective way to render ineffective the Dutch-Disease that has traditionally effected most oil-rich dominated economies.

The exhaustive nature of petroleum resources and, in fact hydrocarbon energies generally, makes it pertinent for Nigeria to begin to look beyond oil. The foreclosure effect of oil consumption is that the availability of oil consumed in one generation can never remain for the next generation. This is the more reason behind the general belief that, there is an opportunity loss if a barrel of oil equivalent of hydrocarbon being produced in this generation is not produced efficiently, effectively and equitably.

Conclusion

This paper has shown a comprehensive review of the legal framework for electricity supply industry in Nigeria, which has come a long way from 1896. The findings are that the history of the legal framework for the electricity sector till date, negates the principles of sustainability for being lopsided and inadequate. The disconnect between the renewable energy policies and the legal framework to drive them, remains incontrovertible by reason of the fact, that none of the policies was translated into law for the polices to realize their objectives. Lest, one should forget that no matter how beautiful the provision of a policy is, it cannot take the place of law to drive it. The extant laws are failures regarding this aspect of resorting to law to drive policy for development of renewable electricity, which is more enduring and sustainable for socio-economic development than restricting one's hope on oil. By the imperatives of the concept elucidated, the recommendations of this paper have provided a useful direction to follow in any effort towards ameliorating continuous national grid system collapses for lack, or inadequate gas supply among others in the country.