

**CITIZEN'S RIGHT TO ACCESS TO SUSTAINABLE ENERGY AND SOCIAL CONTRACT THEORY:
A SUB-SAHARAN AFRICAN PERSPECTIVE***

Abstract

This paper is discussed under the following segments. The first segment considers an overview of Sub-Saharan African conventional energy access and sustainable energy access ; the second segment considers impacts of lack of access to modern energy in sub-Saharan Africa; the third segment examines social contract theory in relation to states contractual obligations of providing citizens with social amenities like energy complimentary to full enjoyment of constitutional rights to life, human dignity and property ownership .; the fourth segment interrogates Sub-Saharan African countries constitutional contractual obligations in relation to provision of energy services, Nigerian and South African examples were comparatively considered; the concluding segment, based on the on principles of social contract theory and the doctrine of accountability in democratic governance, makes appropriate recommendations.

Keywords: *Citizen's Right, Access to Sustainable Energy, Social Contract Theory, Sub-Saharan Africa*

1. Introduction

Given the centrality of energy to human existence and development, it is critical for every democratically elected government, being government of the people, for the people and by the people to see to it that its citizens have unfettered access to sustainable energy to live basic good life. *Sub-Saharan Africa region comparatively to other regions of the world has acute deficit of sustainable energy access. Relatively, the region has been identified as a region with the poorest access to sustainable energy in the world.* In 37 sub-Saharan African countries the number of people without electricity has increased since the year 2000 while the regional total rose by around 100million people. On a more positive note, about 145million people gained access to electricity since 2000, led by Nigeria, Ethiopia, South Africa, Ghana, Cameroon and Mozambique. Although, the electricity access rate for sub-Saharan Africa has improved from 23% in 2000 to 32% in2012. In North Africa, more than 99% of the total population has access to electricity. Nearly 80% of those lacking access to electricity across sub-Saharan Africa are in rural areas, an important distinction when considering appropriate energy access strategies and technical solutions.¹Lack of access to sustainable energy in the region has impacted on the environment, human capital development, industrialization, infrastructural development and realization of socio-economic rights of the people. *Thus, this critical energy need of the region justifies the intellectual interrogation energy access in the region vis-à-vis social contract theory that obligates governments to behave responsibly towards improving energy supply to its citizenry.*

2. Overview of Sub-Saharan African Energy Access

Access to Conventional Energy in Sub-Saharan Africa

The relative underdevelopment of Sub-Saharan African power sector as compared with other world regions has been noted by scholars. The result of this underdevelopment is that sub-Saharan Africa countries are regrettably at the world's lowest levels of poor access to electricity and of consumption of electric power.² Costs are high, and service quality low. Over the past decades, the region has lagged behind all others in power sector performance to the detriment of her industrialization, technological and human capital development and general economic advancement.

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¹IEA 2014; African Energy Outlook; Energy Prospects in Sub-Saharan Africa; 30

²A. Eberhard, V. Foster, C. Briceño-Garmendia, F. Ouedraogo, D. Camos, and M Shkaratan, 2008: "Underpowered: The State of the Power Sector in Sub-Saharan Africa"; Africa Infrastructure Country Diagnostic (AICD); May, 2008, (p.1-44).

The region's power crisis situation is a product of its alarming low level of power generation combined with a corresponding low rate of electrification. The impact of this situation on the people is that less than a quarter of the populations of Sub-Saharan Africans have access to electricity. Statistically, about 600 (six hundred million Sub-Saharan Africans lack access to electricity) this is comparable to half of South Asians and more than 80 percent in Latin America. This again, leaves Sub-Saharan Africa lagging behind other regions.³ In terms of electricity generation and supply improvement, since 1990, East Asia, Latin America, and the Middle East all have added at least 20 percentage points to their electrification rates, while overall access levels in Sub-Saharan Africa are now declining as population growth and household formation exceed the number of new connections. It has been predicted that given current trends and performance of Africa in the power sector, fewer than 40 percent of African countries will reach universal access to electricity by 2050.⁴

Currently, except South Africa, there appear to be little or no developmental roadmaps by most Sub-Saharan African countries towards future improvement of this poor state of electric supply in the region. The South African electricity access situation is an exception to what is generally obtainable in sub-Saharan Africa in terms of electricity access. While over the past 15 years, South Africa has more than doubled its access rates from a third of households to around 70 percent. Although, it has had to contend with load shedding in the recent past as a result of increasing industrial and household electricity consumption levels without a corresponding increase in electricity generation. Again Gabon access is better than some others. But these are exceptions. Generally, most countries of Sub-Saharan Africa lag far behind. There are peculiar situations in different countries of the region, that have made some countries better advantaged than others in terms of opportunities, resources, and energy resource potentials. Some countries have a much higher potential for making rural electrification advances more cost effective, as a higher proportion of their population lives close to existing networks. Thus Benin, Ghana, Lesotho, Rwanda, Senegal, and Uganda are more favorably positioned than, for example, Burkina Faso, Chad, Madagascar, Mozambique, Niger, Tanzania, or Zambia.⁵

Access to Sustainable Energy

An attempt at defining the concept of sustainable energy access otherwise referred to as modern energy access has been made by the Africa Energy Outlook 2014 as follows: The Africa Energy Outlook 2014 states that⁶ – Household access to a minimum level of electricity; Household access to safer and more sustainable (i.e. minimum harmful effects on health and the environment as possible) cooking and heating fuels and stoves; Access to modern energy that enables productive economic activities, e.g. mechanical power for agriculture, textile and other industries; and Access to modern energy for public services, e.g. electricity for health facilities, schools and street lighting. This definition of sustainable energy is holistic in that it touches on different sustainable energy uses within the economy including house hold, industrial, agricultural, and commercial energy usages and its relative advantage of house hold safety and environmental friendliness. Looking broadly through the lens of sustainability, clean energy could be viewed as “the provision of energy that meets the needs of the present generation without compromising the ability of future generations to meet their needs.” A further examination of the environmental and social impacts of specific technologies throughout their lifecycles helps to further define when energy sources can be considered “clean” or “sustainable”.⁷ The cleanness of sustainable energy when compared to fossil fuels is derived from its zero environmental impacts and non- hazardous emissions which is good for human health. *In September 2011 the United Nations Secretary-General launched United Nations Sustainable Energy for All (SE4ALL) initiative that aims to achieving the following objectives by 2030; (i) Universal access to modern energy services (ii) doubling the rate of improvement in energy efficiency and (iii) doubling the share of renewable energy*

³Ibid.

⁴S. Banerjee, Q. Wodon, A. Diallo, T. Pushak, H. Uddin, C. Tsimpo, and V. Foster, 2008. “Access, Affordability and Alternatives: Modern Infrastructure Services in Sub-Saharan Africa.” AICD, World Bank, Washington DC.

⁵ Ibid.

⁶IEA 2014; 291.

⁷Access to Energy for the poor; The Clean Energy Option Elizabeth Bast and Srinivas Krishnaswamy, with contributions by Heike Mainhardt-Gibbs, Traci Romine, Anuj Gurung, and Frikk Nesje; Charles Stewart Mott Foundation and Rockefeller Brothers Fund for their financial support of this report, 2011.

in the global energy mix.⁸ This is a global action aimed at encouraging nations of the world towards the drive for increasing sustainable energy policies, legislation and initiatives that will promote investments in renewable energy sub-sector.

The Sustainable Energy for All initiative also acts in support of the 2014-2024 Decade of Sustainable Energy for All. It is worthy of note that Africa has been at the center of the implementation of this programme with the facilitation of international organizations like, African Development Bank (AfDB), African Union Commission (AUC), NEPAD Planning and Coordination Agency (NPCA) and United Nations Development Programme (UNDP).⁹ However, despite both regional and country's efforts, Sub-Saharan Africa has continued to lag behind other world regions in sustainable energy access. The region's economic and human capital developments have been hugely undermined by lack of access to sustainable energy.

3. Impacts of Lack of Access to Sustainable Energy on Sub-Saharan Africa

The lack of access to modern energy services constrains the ability of the population of Sub-Saharan Africa to benefit from opportunities for economic development and increased living standards.¹⁰ This paper seeks to examine the following impacts of lack of access to sustainable energy on Sub-Saharan Africa; (i) Impacts on Socio-Economic, Human and Peoples rights, (ii) Environmental injustice and Climate Change Impacts. (iii) Energy Poverty among Vulnerable Groups and Rural Dwellers arising from exclusion

Impacts on Social-Economic, Human and Peoples Rights

Access to sustainable energy is critical to the enjoyment of social economic, human and people's rights. In most Sub Saharan African countries, the right to life, the right to human dignity, child's right to attain the highest standard of health to combat disease and malnutrition, right to development, etc. are daily infringed upon by the failure of Governments to provide access to clean energy. Children read with lanterns, women cook with fire wood and charcoal, while many people inhale harmful Carbon monoxide from combustions and other fossil fuel sources to the detriment of their health. These have multiplier effects of untimely death, illiteracy, social injustice, inequality and discriminative deprivations. The African Charter also enjoins states to act both individually and collectively to ensure their citizens enjoy the right to development.¹¹ Access to sustainable energy services is therefore a justifiable right in African Union legal framework especially when it is subsumed under the rights guaranteed under the African Charter. States can be made to take reasonable steps to progressively provide access to sustainable energy under this human right framework.

Environmental Injustice and Climate Change Impacts on Citizens' Right to Life and Dignity

There has been an unabated flagrant abuse of citizens' rights to life and dignity by Multinational Oil Companies (MNOCs) in oil bearing communities in the cause of oil and gas exploration and exploitation in the region. State actors in sub-Saharan Africa have failed to ensure the utilization of sustainable energy resources and developmental technologies in the oil sector in oil and gas mining. Thus, States collaborate with MNOCs in degrading the environment and violating citizens' environmental right, rights to life and human dignity and inflicting water and air borne diseases on the citizens. Failure of state actors to muster necessary political will and put in place policy and legal frameworks that could, mitigate environmental injustice have compounded citizens' rights problems. In countries like Nigeria and Angola with high volume of oil and gas exploitation, untold environmental degradation and environmental justice issues arise from unsustainable methodology of oil exploration and exploitation. The environment, fauna, flora and human life are endangered as a result of unsustainable sophisticated machineries and massive installations used for oil exploration, exploitation and

⁸ IEA (2014:29).

⁹ Ibid.

¹⁰ N. Avila, J.P. Carvallo, B. Shaw, and D. M. Kammen. The Energy Challenge in Sub Saharan Africa; A guide for Advocates and Policy Makers. Part 1; Generating Energy for Sustainable and Equitable Development. Oxfam Research Backgrounder Series (2017); <http://www.oxfamamerica.org/static/media/files/Oxfam-RAEL-energySSA-pt1.pdf>. Nk. World Energy Assessment 2004 Update, Part III.

¹¹ African Charter on Human and Peoples' Rights, 1986. Art. 22(2).

pipelines for transportation of oil and gas to different destinations. Sometimes these pipelines are inter-boundary in nature warranting a lot of environmental impacts either through Government compulsory acquisitions or as a result of pipeline vandalism.

Energy Poverty among Vulnerable Groups and Rural Dwellers in sub-Saharan Africa

Energy Poverty among Vulnerable Groups and Rural Communities is largely contributed by failure of Sub-Saharan African states in running inclusive energy systems. Over-centralized energy policies and legislation making processes, fail to address energy needs of rural and venerable people. Inclusiveness of vulnerable groups like rural women, children, physically would input their views and recommendations to energy reform policy and legal frameworks and consequently result in the reduction of energy poverty. Lyndon Johnson's biography¹² contains graphic descriptions of life without electricity in rural Texas, USA, detailing the harsh rigors of washing clothes, fetching water from far streams or deep wells, preparing animal feeds by hand, and working the long dawn-to-dusk hours that have been the fate of the rural poor for centuries. This perfectly fits into the description of access to electricity and energy poverty in sub-Saharan Africa today.

4. Social Contract Theory

The theory of social contract is derived from the ideology that from the beginning, man lived in the state of nature without law and government in a society riddled with hardship, oppression and complete anarchy. Therefore in pursuit of order and security in the society, people decided to enter into agreement for two main reasons: (i) *Pactum Unionis*¹³ (agreement to form a union of society for protection of lives and properties, respect each other, and live in peace and harmony) and (ii) *Pactum Subjectionis*¹⁴ (people united together and pledged to obey an authority and surrendered the whole or part of their freedom and rights to the authority). The authority is to guarantee everyone, protection of life, property and to a certain extent liberty. In today's society this authority is referred to as government at different levels which has the constitutional duty to guarantee people's basic rights to life, liberty and property which they had in nature before surrendering same to the Government.

History or Evolution of Social Contract

The history of social contract dates back to the transition period from feudalism to capitalism where there was a contention against the feudal system which was based on absolutism and the absolute right of kings. The theory was propounded as an intellectual instrument for the explanation and justification of the emergence of government i.e. governments should come from the will of the people. The theory was thus invented to challenge the system of absolutism that existed in the monarchies. Later, the theory was reflected in the English Revolution,¹⁵ the French Revolution¹⁶ and the American Declaration of Independence¹⁷. Right to life cannot be said to be fully enjoyed when basic necessities of life like energy, water, good road are considered to be privileges to the rich instead of rights to the ordinary citizen. How does one enjoy the right to human dignity in estates without electricity? Most people seek to follow these principles but the problem is lack of explicit written laws that leads to uncertainty and

¹² Johnson B. Lyndon was elected vice president of the U.S. in 1960 and became the 36th president in 1963. See Robert Caro, 1990: pg.52-53 and 504-505.

¹³ M. Elahi, What is Social Contract Theory? Sophia Project, Philosophy Archives, 2005.

¹⁴ Ibid.

¹⁵ English Revolution also called the Puritan Revolution, general designation for the period in English history from 1640 to 1660. It began with the calling of the Long Parliament by King Charles I and proceeded through two civil wars, the trial and execution of the king, the republican experiments of Oliver Cromwell, and, ultimately, the restoration of King Charles II.

¹⁶ French Revolution, major transformation of the society and political system of France, lasting from 1789 to 1799. During the course of the Revolution, France was temporarily transformed from an absolute monarchy, where the king monopolized power, to a republic of theoretically free and equal citizens.

¹⁷ Declaration of Independence, document in American history used by the 13 British North American colonies to proclaim their independence from Great Britain. The Declaration of Independence was adopted in final form on July 4, 1776. It can be divided into three parts: a statement of principle concerning the rights of man and the legitimacy of revolution, a list of specific grievances against England's King George III, and a formal claim of independence.

difficulty to resolve disputes. And a solution to the problems under state of nature becomes a social contract where people agree to obey the state, let the state make and enforce laws and people pay the state for its services. The state sets up legislatures, impartial judges and enforcers. The government's duty is to protect everyone's rights and if the government violates the social contract, people may overthrow it.¹⁸ Social contract theory expresses two fundamental ideas to which the human mind always clings the value of liberty; the idea that "will" and not "force" is the basis of government; and the value of justice or the idea that "right" and not "might" is the basis of all political society and of every system of political order¹⁹. Through a democratic process of election the people submit their will to elected leaders to provide leadership, security and socio-economic benefits. Collectively owned resources derived from natural resources, taxes and other government generated revenue are to be utilized for the running of government and provision of security and public goods including roads, electricity, pipe born water and other amenities for the wellbeing of the people. Any government who fails to achieve this has defeated the real essence of the social contract theory and therefore should be booted out of government howbeit, through a democratic means.

Proponents of the Idealism

The philosophical ideas of the social contract is dated back to Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), John Locke (1632-1704), Jean Jacques Rousseau (1712-88) and, more recently, John Rawls who wrote in the second half of the 20th Century. However, it is said that the use of social contract as a definite concept in political and legal controversy can be traced back to the Italian Marsilius of Padua (1270-1343) who fought against the supremacy of the church in other than spiritual matters. He developed the idea that the people are the source of all political power and government is by mandate of the people, and with their consent²⁰. On the part of Hugo Grotius, social contract is a justification for absolute obedience of the people to the government, a basis for legally binding and stable relations among states, which also preceded the constitution of each state by means of people choosing the form of government which they considered suitable for them. To Hobbes, social contract evolved out of pragmatic self-interest. He argued that sovereign's power should be unlimited because the state originated in a so called social contract whereby individuals accepted a common superior power for protection and made possible certain human desires. Whereas there may be little divergence in perceptions, but one consensus among social contract theorists is their agreement on the people's choice to surrender their will or sovereignty to a central government and empower same to coordinate and run their affairs for their common good.

John Locke and Social Contract Theory

John Locke on the other hand accepted much of Hobbes social contract theory but argued that sovereignty resided in the people for whom governments were trustees and that such government could be legitimately overthrown if they fail to discharge their functions to the people. He attempted to erect effective safeguards against violations of natural law by the government²¹. To Locke, the sovereign did not take all rights; the principal rights remained with the people hence the social contract devoted to sovereignty and law. Sovereignty derived from the people's will. This will remained with the people. He contended that sovereignty did not reside in the state but with the people, and that the state was supreme, but only if it was bound by civil and natural law²². That is why republican government is regarded as a form of government in which sovereignty resides with the people. John Locke used the phrase "there and there only" to emphasize the importance of the WILL of the people in forming a political society.

Thus, every member of the community surrendered his natural power with free will explicitly or implicitly and resigned it into the hands of the community in exchange for the discharge of functions to the people, hence a political society becomes with power to preserve property and punish offences. Again John Locke agrees with view of Hobbes and Grotius and adds the element of "discharge of functions to the people". I totally align myself with

¹⁸ Ibid.

¹⁹ E. Barker (1960) *Social Contract Essays by Locke, Hume, and Rousseau*; Oxford University Press; USA; p.viii

²⁰ W. Friedmann. *Legal Theory*, Universal Law Publishing CO. PVT. LTD, India, 1999

²¹ Nyamaka, DaudiMwita (2011), "Social Contract Theory of John Locke (1632-1704) in the Contemporary World" Available at: <http://works.bepress.com/dmnyamaka/5>

²² "John Locke", Microsoft ® Student 2007[DVD], op cit.

this view. I submit further that these state functions are to be discharged by providing good governance, for which primary purpose, the people surrendered their individual wills to the central coordinating government. The constitution being the binding contractual agreement between the state and the people imposes upon the government the right of accessing common resources and the obligation of utilizing same for the common good of the people. It is my considered view that by surrendering the people's sovereignty to the state the State should not only guarantee individuals' liberty but also create all necessary enabling environments to ensure that citizens enjoy socioeconomic benefits that are incidental to the enjoyment of individual liberties like Rights to Life, Human Dignity, Property Ownership, Development and Access to Sustainable Energy.

5. State's Constitutional Obligations towards Provision of Access to Energy: Examples of Nigeria and South Africa

A Constitution of a country is the most important legal document, and has been described as the great law before which all other laws of a society must bow. It is a flame of dynamic power that infuses the nation's life, orders its being and moulds its future²³. It has been said that a constitution is a political document crystallizing national consensus on the modalities of how the State is going to be ruled and within what limitations, which comprises a collection of the basic rules that govern a country and hence all other legal rules in the country derive their authority from it. All the laws, by-laws, rules and regulations find their legitimacy from the Constitution. Therefore the legitimacy of State policy and sovereign existence emanates from the Constitution²⁴. This implies that the constitution is the foundation upon which political unions and systems of governance are built. All other laws, regulations and administrative rules, not only takes legitimacy from the constitution, but must also not conflict with any constitutional provisions in any ways. Being the supreme law of the land, the Constitution of a country has also been regarded as the "social contract." It is the contract between the rulers and the ruled and therefore it is more than just a document as it embodies the wishes and aspirations of the country²⁵. As the Constitution of a country is a document that signifies the social contract between the rulers and the ruled, it must be voluntarily agreed upon by the country's people for their common good and well-being²⁶. An ideal Constitution of a nation implies prior participation of the people in constitution making.

Therefore, it should be a document that bears all the blessings of the people²⁷. The following elements are pivotal in determining the legal nature of the social contract; peoples wishes and aspirations, voluntariness in entering into the contractual relationship by the parties, public participation in constitution making and legally binding effects of the constitutional document. In a modern sense, a constitution may be defined to mean a product of national consensus forming the basis of the organisation of the people in their state. People decide on the basis for their co-existence which is then reflected in the constitution, based on the relationship of the state and the citizens on one side, and to communities in the other side. The constitution must come from the people, the people are the authority, and thus, the constitution is the people themselves. The term authority may be ascribed into political legitimacy and legal authority.

Nigeria's Energy Access and Constitutional Frameworks

Given Nigeria's demographic strength, its current energy access is relatively poor when compared with similar emerging economies like South Africa. At over 150 million, Nigeria is ranked as the seventh largest country in the world and the largest in Africa. Nigeria's population accounts for nearly half of the total population of West Africa

²³ H. I. Juma (1996) "Constitutional-Making in Tanzania: The Case for a National Conference" in Oloka-Onyango, J., et al (eds); *Law and the Struggle for Democracy In East Africa*; claripress; Nairobi.

²⁴ W. H. O. Okoth-Ogendo (1991) *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, In Shivji, I. G. (ed); *State and Constitutionalism: An African Debate on Democracy, Human Rights and Constitutionalism*; Series No. 1; Southern African Political Economic Series (SAPES) Trust; Harare Zimbabwe.

²⁵ C. M. Peter (1999), *Constitutional Making Process in Tanzania: The Role of Civil Organizations*, A Case Study Prepared for the Civil Society and Governance in East Africa Project (Tanzania Side).

²⁶ H. I. Juma, , (1996); *Ibid*

²⁷ *Ibid*

and more than 15% of the total population of Africa.²⁸ Only 45% of the nation's populations have access to electricity supply. Currently, Nigeria has an installed capacity of about 12,522MW,²⁹ available generation capacity of approximately 4,000MW as against immediate national demand of 10,000 to 15,000MW. Poor energy access in Nigeria is largely attributable, but not limited to the following: (i) the absence of constitutional frameworks imposing upon governments, the obligation of providing access to electricity to the citizens as a matter of citizens constitutional rights and; (ii) failure of successive governments in doing enough in addressing the issue of access to energy; (iii) poor-implementations of energy policies, laws and regulations and (iv) leakages in Nigeria energy systems through corrupt practices and inefficiencies in energy administration. Chapter IV of the 1999 Nigerian Constitution makes general provisions for Fundamental Human Rights of Nigeria citizens.³⁰ Particularly, section 33 provides for Right to life, section 34 provides for right to human dignity, while section 43 provides for right to ownership to property. Though this section is completely silent on the right to access to energy, it is however argued that there is a correlation between rights to life, human dignity, property ownership and right to access to sustainable energy. Access to sustainable energy, will compliment enjoyment of rights to life and human dignity. A woman, who travels 5kms on foot to fetch firewood for her family to cook and eat, cannot be said to be enjoying the right to human dignity. Access to energy generally boosts access to primary health care delivery necessary for good health, longevity, and reduced infant mortality and maternal deaths.

South African energy access and constitutional frameworks

South Africa is a country endowed with abundant energy resources. Coal, uranium, liquid fuels, and gas, play a central role in the socio-economic development of the country, while simultaneously providing the necessary infrastructural economic base for the country to become an attractive host for foreign investments in the energy sector.³¹ Under the apartheid government, prior to 1994, government policies were tilted to serving the needs of the minority white. Government developmental policies, including electricity provision, focused on ensuring sufficient supply for the mining, chemical and agricultural industries, which formed the backbone of the South African economy.³² South African energy generation capacity currently stands at 51,309MW.³³ Unlike Nigeria, the Constitution of the Republic of South Africa, 1996,³⁴ makes provisions allocating to national, provincial and municipal authorities, specific responsibilities in relation to provision of access to electricity and other utilities to South Africa citizens and residents. Section 156 (1) of the South African constitution 1996, vests on municipalities the executive authority in respect of and the right to administer - (a) Local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the constitution, and (b) any other matter assigned to it by national or provincial legislation. Part B of Schedule 4 of the constitution, mentions electricity and gas reticulation as part of municipalities responsibilities while part B of Schedule 5 allocates provision of local amenities as another responsibility, of municipalities to the citizenry. Should the municipal authority fail in their responsibilities, section 139(1) of the constitution mandates the provincial government, to intervene through appropriate steps towards ensuring the performance of its functions. These steps could be either by: (a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfill its obligations and stating any steps required to meet its obligations; (b) assuming responsibility for the relevant obligation in that municipality and perform the obligation

²⁸ B. Nnaji, "Power Sector Outlook in Nigeria: Challenges, Constraints and Opportunities" in "Green Energy and Energy Security: Options for Africa", Proceedings of the 2011 NAEE Conference, edited by Adeola Adenikinju, Akin Iwayemi and Wumi Iledare, 2012.

²⁹ USAID, Nigeria Power Africa Fact Sheet, as at November, 2018. Available at: https://www.usaid.gov/sites/default/files/documents/1860/Nigeria_-_November_2018_Country_Fact_Sheet.pdf accessed 11/03/2019

³⁰ The 1999 CFRN, CAP. C23, Laws of the Federation of Nigeria, 2004.

³¹ D.O. Akabuiro, Legislation Impact Assessment on Power Sector Reforms in Sub-Saharan Africa: A Comparative Study of South Africa and Nigeria, A Dissertation in the Centre for Petroleum, Energy Economics and Law (CPEEL), University of Ibadan, Nigeria, July, 2014.

³² D. Malzbender, "Domestic Electricity Provision in the Democratic South Africa", with a case study conducted by Bright Kamoto, Group for Environmental Monitoring (GEM), September, 2005, AWIRU, CiPS, University of Pretoria.

³³ USAID, South Africa Power Africa Fact Sheet, available at: <https://www.usaid.gov/powerafrica/south-africa> accessed 14/03/2019

³⁴ The 1996 Constitution of the Republic of South Africa.

to the citizens in that municipality.³⁵ Again, Section 155 (7) of the Constitution empowers the national government the powers to utilize both legislative and executive authorities to see to the effective performance by municipalities of their functions in respect of matters in Schedule 4 and by regulating the exercise by municipalities of their executive authority referred to in section 156(1).

In compliance with the foregoing, constitutional provisions, the following legislations have been enacted by South African national legislative authorities *inter alia*. Electricity Regulation Act 4 of 2006³⁶ which was amended by Electricity Regulation Act 28 of 2007.³⁷ The objects of this Act are to achieve the efficient, effective, sustainable and orderly development and operation of electricity supply infrastructure in South Africa; ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic. The National Energy Act No.34, 2008:³⁸ The objects of this Act are *inter alia*, to: ensure uninterrupted supply of energy to the Republic; promote diversity of supply of energy and its sources; facilitate effective management of energy demand and its conservation; promote energy research; promote appropriate standards and specifications for the equipment, systems and processes used for producing, supplying and consuming energy; facilitate energy access for improvement of the quality of life of the people of Republic.

6. Conclusion

The underlying legal foundations of social contract theory could be summarized thus; the will of the people to live together and renounce their basic rights which they had against one another in a state of nature as a way of escaping the state of nature; the resolve of the people to form a union aimed at maintaining order in the society; collective decision of the people to surrender their basic rights to life, liberty and property to the sovereign whom they agreed to protect them in the union. In reciprocity therefore, the government owe the people social contractual obligations of guarantying their enjoyment of these basic rights and ensuring order in all segments of the society. In keeping with the principle of democratic accountability, every elected government should be held accountable by the people by regularly evaluating its performance score card in terms of guaranteeing of these basic rights and right to access to sustainable energy that facilitates enjoyment of basic rights as well as delivery of other dividends of democracy. It is contended that most Sub-Saharan African State actors with exception of South Africa are in breach of their social contractual obligations, particularly right to access to energy, towards their citizenry. This is mainly due to fundamental constitutional loopholes arising from failure of country's constitutions to specifically allocate well defined contractual obligations of ensuring rights to access to sustainable energy and other social amenities to government authorities at different levels. This unacceptable lacuna in the *grundnorm* should therefore be cured. To forestall this continued breach, it is recommended that Sub-Saharan African countries should embark on constitutional reforms mechanisms that utilizes public participation constitution making processes that are aimed at achieving a people oriented constitution. This inclusive constitutional framework would not only provide for basic rights to life, human dignity, property and access to sustainable energy, water and other social amenities but also allocate to the central, provincial/state and local governments authorities, defined and specific constitutional contractual responsibilities towards providing access to sustainable energy and guaranteeing citizen's enjoyment of same. Finally, in furtherance to the accountability concept, guaranteeing basic rights inclusive of right to access to sustainable energy should henceforth be a yard stick for measuring performance in governance in Sub-Saharan African region. Any government that is in breach thereof should be relieved of its duties by the people, howbeit, through a constitutional means.

³⁵ Ibid.

³⁶ Electricity Regulation Act, 2006, Government Gazette, Republic of South Africa.

³⁷ Act No.28, Electricity Regulation Amendment Act, 2007, Government Gazette, 21 January, 2008.

³⁸ Act No. 34, The National Energy Act, 2008, Government Gazette.