Examination of the Recent Cases, New Regulations and Legislations in Renewable Energy in Nigeria.

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ABSTRACT

Nigeria, a state with numerous ethnic groups, rich in culture, natural resources and minerals has not maximised her resources for her benefits. Even at 65 years as an independent nation, the country still faces persistent blackouts, inadequate energy supply which has further crippled industries and small scale businesses among youths in the country. This might get worse as the population increases and economic development is calling for more demand of energy. The global demand for fossil fuels is diminishing and the effort to save the eco-system from global warming has seen nations turning to alternative sources to meet their energy demand. Renewable energy is energy generated from natural resources such as sunlight, wind, rain, tides and geothermal heat. It is derived from natural processes that are constantly replenished. Each of these renewable sources has unique characteristics which influence how and where they are used. This paper aims to critically study new regulations and legislations in Nigeria's renewable energy and there will also be an examination of recent decided cases which help to foster the development of renewable energy in Nigeria.

Key Words: Renewable Energy, Policies, Regulations, Legislations, Energy Sources, Nigeria

INTRODUCTION

Recent years have seen an appreciable growth in the level of understanding of the dangers facing the international environment and the extensive range of environmental problems is now the subject of serious international concern. This include atmospheric pollution, marine pollution, global warming and ozone depletion, the danger of nuclear and other extra hazardous substance and threatened wildlife species. Such problems have an international dimension in two obvious respects. First, pollution generated from within a particular country often has serious impact upon other countries. The prime example would be acid rain, where by chemicals emitted from factories rise in the atmosphere and react with water and sunlight to form acid. These are carried in the wind and fall eventually to earth in the rain, often thousands of miles away from the initial polluting event[1].

Secondly, it is now apparent that environmental problems cannot be resolved by states acting individually. Accordingly, co- operation between the polluting and the polluted state is necessitated. However, the issue becomes more complicated in those cases where it is quite impossible to determine from which country a particular form of environmental pollution has emanated. This would be the case, for example, with ozone depletion. In other words, the international nature of pollution, both with regard to its creation and the damage caused, is now accepted as requiring an international response[2].

Nigeria is yet to tap the benefit of abundant renewable energy for its socio- economic development despite the facts that the recently concluded bid round for the privatization of state power companies witnessed unprecedented influx of foreign companies biding either directly or in collaboration with local companies as technical partners. A private sector driven electric power sector is anticipated in the unfolding electric power sector industry in Nigeria[3].

Although the power sector of Nigeria has now been privatised, it is yet to be liberalized in practical terms due to lack of definitive regime for renewable energy. The availability of renewable energy or alternatives is vital to the provision of low- cost, affordable and regular electricity for industrial development, employment generation and poverty alleviation in Nigeria[4].

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[1] Malcolm N. S., 'International Law', 7th Edition, 2014.
[2] Malcolm N. S., 'International Law' (n 1).
[3] Yemi O., 'Nigerian Energy Resources Law and Practice', 2019.
[4] Yemi O., 'Nigerian Energy Resources Law and Practice' (n 2).

Definition of Concepts

Thornton and Bechwith defined renewable energy as energy generated from sources which occur naturally and repeatedly in the environment. Such as: wind, waves, the sun, biomass (trees, plants, animals and human decay). Recently renewable energy is preferred because of its environmental friendliness, availability and cost effectiveness. In summary, these are energy sources obtained from continuous or repetitive current of energy recurring in the natural environment and or energy flow which is replenished at the same rate as it is used[5].

Banji and Najeem on the other hand explained that renewable energy has been identified as an absolute substitute for fossil fuel in a sustainable and environmentally friendly way. Predominantly, renewable energy is significantly a viable approach to sustainable development to both developed and developing nations. Renewable energy is a solution to Nigeria's energy challenges. Aside from being sustainable and inexhaustible, it can be constructed in smaller units, hence appropriate for rural community management and ownership and could be crucial to economic development. Renewable energy is vital element of sustainable development, is essential in reducing green house gas emission and creates a diversity of energy supply and security[6].

Elum and Momodu defined the concept of renewable energy as energy derived from natural processes that can be replenished within a short time scale and can be derived directly or indirectly from the sun and from other natural mechanisms. These sources include hydropower, bio energy, thermal, geothermal, wind, photochemical, photoelectric, tidal, wave and solar energy. It excludes energy from fossil fuel sources (oil, coal and natural gas)[7].

Christian Breyer and 23 other on the meaning of 'hundred percent renewable energy', is subfield of energy system analysis that assesses solutions without the need for fossil fuels and

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[5] Ogugua V. C. Ikpeze, Ebiemere Osaro, Nnamdi G. Ikpeze, 'Analysis of Energy Sources, Impact on Environment and Sustainable Development Referencing Landmark Cases in the USA, South Africa and Nigeria', Vol. 5, No. 18, 2015, Journal of Environmental and Earth Science.

[6] Banji A. Olanipekun and Najeem O. Adelakin, 'Assessment of Renewable Energy in Nigeria: Challenges and Benefits', Vol. 68, Issue 1 Jan. 2020, International Journal of Engineering Trends and Technology (IJET), < https://www.reseachgate.net/publication/338798056. > Last accessed 3 May 2024.

[7] Z. A. Elum and A. S. Momodu, 'Climate Change Mitigation and Renewable Energy for Sustainable Development in Nigeria: A discourse approach', 2017, Renewable and Sustainable Energy Review, < https:// www.elsevier.com/locate/rser. > Last accessed 4 May 2024.

nuclear energy, while using bio energy, hydropower and geothermal energy within sustainable limits[8].

Keyinde Babaremu and 4 others defined renewable energy as a form of energy from a source that does not get used up in supply when used. Renewable energy could be generally defined as a form of energy which is collected from available resources that are replenishable on the timescale of humanity, which include sunlight (solar), tides, wind, rain, geothermal heat and waves. These are the energy sources that can be readily produced, regenerated or replenished rapidly through natural processes. Their availability is not affected by their consumption rate, hence cannot get exhausted in the nearest future. Though most of these renewable resources could be depleted via human indiscriminate consumption, but they can also be replenished thereby maintaining a steady flow. Renewable energy is said to provide energy in some important areas such as water heating/ cooling, air and transportation, electricity generation and rural (off grid) energy services[9].

Twidell and Weir defined Renewable Energy as energy obtained from the continuing and repetitive currents of energy occurring in the natural environment[10]. The Dictionary of Energy defines renewable energy as any energy source that is naturally regenerated over a short time scale and either derived directly from solar energy (solar thermal, photochemical and photoelectric), indirectly from the sun (wind, hydropower and photosynthetic energy stored in biomass) or from other natural energy flows (geothermal, tidal, wave and current energy)[11].

The Intergovernmental Panel on Climate change Working Group 3 (IPCC WG III) combined the definition of both Twidell and Weir and the Dictionary of Energy in explaining that: renewable energy is obtained from continuing or repetitive currents of energy occurring in the natural environment and includes non- carbon technologies such as biomass[12].

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[8] Christian Breyer and 23 other, 'On the History of Future of Hundred Percent Renewable Energy Systems Research', 2022, IEEEACCESS, < https://scholar.google.com. > Last accessed 4 May 2024.
[9] Keyinde O, Babaremu K. O, and 4 others, 'Renewable Energy in Nigeria: A Review', Vol. 9, 10 October 2018, International Journal of Mechanical Engineering and Technology (IJMET), ISSN Print: 0976- 6340.
[10] Aviel Verbruggen, Mantred Fischedick and 6 others, 'Renewable Energy cost, Potentials, Barriers: Conceptual Issues, 2010, < https://www.elsevier.com/locate/enpol. > Last accessed 1 May 2024.
[11] Ibid.
[12] Ibid.

Brief History of Renewable Energy

Nigeria is an energy rich nation with both fossil and renewable fuel. Its renewable energy potential base include biomass (animal agricultural and wood residues, fuel wood), solar, hydro, wind and geothermal. Only biomass and hydro power have been and are still being exploited. In recent times, the rate of exploitation of fuel wood is greater than its generation. If adequate intervening measures are no quickly implemented fuel wood may no longer be thought of as a type of renewable energy in the country[13].

In Nigeria, the prejudice for fossil fuels to the neglect of the abundant renewable energy resources is often acknowledged as improper. Shehu Shagari, the formal President of Nigeria put this clarion call more succinctly in his message to the United Nations Nairobi Conference on New and Renewable sources of Energy in 1981 when he said:

> "...for us developing countries which are moving from energy patterns dominated by wood fuels to more commercial energy forms, we now have an opportunity to take action before stumbling unto a fuel trap. We ought now to investigate the possibilities in at least three directions:
>
> i. We need to reinvestigate the use of crop and wood plantations as basis of renewable energy supplies. Fortunately, much of the developing countries lie in equatorial and tropical zones where such development is eminently feasible,
> ii. Solar energy seems an appropriate form given the very size of resources. Here, considerations of technology are of course paramount,
> iii. In an energy scarce period, we cannot afford to leave unutilized the potential for hydro- electric power scheme opportunities that remain in this field are in developing countries"[14].

Recent Renewable Energy Legislations

The Electricity Act 2023

The main regulation guiding renewable energy in Nigeria is the Electricity Act 2023. The Act replaces the Electric Power Sector Reform Act 2005 and governs electricity generation, transmission and distribution. The Act reinforces the importance of renewable energy in

[13] John- Felix K. Akinbami, 'Renewable Energy Resources and technologies in Nigeria: Present situation, future prospect and Policy framework', 2001, < https://scho;ar.google.com. > Last accessed 3 May 2024.
[14] Ibid.

electricity generation. It requires the Nigerian Electricity Regulatory Commission (NERC) and the Independent System Operator (ISO) to continuously promote the generation of electricity from renewable sources. The Act also introduces mechanisms to incentivise investment in renewable energy projects, such as feed- in- tariffs, a policy that guarantees a fixed price for renewable electricity feed into grid and tax incentives[15].

The Act mandates NERC to take measures to increase the contribution of renewable energy to Nigeria's energy mix. These include:

i. Ensuring that the licensing and free structure for issuing license to renewable energy service enterprises is simplified,
ii. Ensuring that regulations defining the function of generating licenses, transmission service providers and ISO distribution licenses in integrating renewable energy generated capacity into the national grid and distribution network are provided amongst others[16].

Another identifiable feature of the Act is a policy that is aimed at driving the development of renewable energy. Section 3 of the Act authorises the Federal Government through the Ministry of Power to adopt the National Integrated Electric Policy and Strategy Implementation Plan. It is apt to mention that policies have always been the precursor to birthing laws in Nigeria. The National Energy Policy 2003 birthed the Electric Power Sector Reform Act 2005, which was the primary law for the sector until the birth of the Electricity Act 2023[17].

The Act defines the scope of the policy to include driving the optimal utilization of multiple sources to generate electricity. The sources include renewable energy sources such as solar, hydro, wind, and biomass. It shall also contain measures for addressing the financial barriers to the development of the sector including waivers and subsidies. The Minister of Power is mandated to adopt the National Integrated Electricity Policy and Strategic Implementation Plan (NIEPSIP) within one year from the adoption of the Electricity Act 2023. They are also

[15] Seun T., Aderonke A., Nuratulahi Y., 'Renewable Energy Laws and Regulations in Nigeria, 2024', < https://iclg.com/practice-areas/renewable-energy-laws-and-regulations/nigeria. > Last accessed 4 May 2024.
[16] Ibid.
[1717] Ngozi C. O and Lynda U. E, 'The Electricity Act 2023 as a catalyst for the development and utilization of Renewable Electricity in Nigeria', 2023, < https://www.lexology.com/library/detail.aspxpg=4c6eb27d-d33f-4fcf-8eec-b5e50b04c7b7. > Last accessed 4 May 2024.

expected to review it every 5 years. The plan is approved by the Federal Executive Council before being published in the Federal Government Gazette[18].

Climate Change Act 2021

Part 1 Section 1 provides that:

"This Act provides a framework for achieving low greenhouse gas emission (GHG), inclusive green growth and sustainable economic development by

i. Ensuring that Nigeria formulates programmes for achieving its long term goals on climate change mitigation and adaptation,
ii. Facilitate the coordination of climate change action needed to achieve long term climate objective,
iii. Mainstreaming climate change actions in line with national development priorities,
iv. Facilitating the mobilisation of finance and other resources necessary to ensure effective action on climate change,
v. Ensuring that climate change policies and actions are integrated with other related policies for promoting socio economic development and environmental integrity,
vi. Setting a target for year 2050- 2070 for the attainment of a net- zero GHG emission in line with Nigeria's international climate change obligations,
vii. Indentifying risks and vulnerabilities, building resilience and strengthening existing adaptive capacities to the impacts of climate change,
viii. Implementing mitigation measures that promote low carbon economy and sustainable livelihood and
ix. Ensuring that private and public entities comply with stated climate change strategies, targets and National Climate Change Action Plan[19].

On how the Act is applied to protect the environment, Section 2 provides as follows:

> "This Act applies to the Ministries, Departments and Agencies (MDAs) of the Federal Government of Nigeria and to public and private entities..."[20]

[18] Tolulope Adebowale and Oluwabusayo Makinde, 'Overview of the Electricity Act 2023: Implications and Opportunities for Investors', Business Day, Andersen Digest (Nigeria, 29 August 2023) 13.
[19] Climate Change Act 2021, Part 1, Section 1 (a) - (i).
[20] Climate Change Act 2021, Part 1, Section 2.

The Nigerian Climate Change Act of 2021 provides for an ambitious framework for mainstreaming climate actions in line with national development priorities and set a net zero target for 2050- 2070. The Act codifies national climate actions by mandating the Ministry of Environment to set among others, a carbon budget, keeping average increase in global temperature within 2^0 C and pursuing efforts to limit the temperature increase to 1.5^0 C above pre- industrial levels. It further approves formation of a National Climate Change Action Plan in every five year cycle to ensure that the national emission profile is consistent with the carbon budget goal and prescribes measures for identifying actions for climate adaptation and mitigation[21].

The Environmental Impact Assessment Act 1992

The Act was amended by decree No. 86 by the Federal Military Government. Section 1 of the Act provides for its goals and objectives as follow:

" The objectives of any environmental impact assessment (hereafter in this Decree referred to as the Assessment) shall be-

a) To establish before a decision taken by any person, authority, corporate body or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent effect the environment or have environmental effects on those activities shall first be taken into account.
b) To promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas, ,consistent with all laws and decision making processes through which the goal and objective in paragraph (a) of this section may be realized;
c) To encourage the development of procedures for information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant environmental effects on boundary or trans-state or on the environment of bordering towns and villages"[22].

The Act sets out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects.

[21] Maria A. Tigre, 'A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation', < https://www.iuon.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increase-climate-litigation. > Last accessed 5 May 2024.
[22] Environmental Impact Assessment Act 1992, Decree No. 86, Section 1 (a) - (c).

Recent Renewable Energy Regulations and Policies

The Meter Asset Provider Regulations 2018

Inadequate metering in the retail end of the Nigerian Electricity Supply Industry (NESI) has been a bane of the NESI. It has been reported that as at December 31, 2017, the metering gap or shortfall for all Distribution Companies (Discos) in the NESI was about 4,740,275[23] meters. This is projected to significantly increase upon the conclusion of the ongoing customer enumeration exercise in the NESI. This menace has led to estimated billing of a large segment of the consumers in what is commonly referred to as 'crazy billing' where unmetered customers are billed based on an estimated quantity of consumed energy, rather than their actual consumption.[24]

This has also led to loss of goodwill in the NESI as customers believe that the Discos are unscrupulous and are benefitting from the metering gap. As a result, the portfolio of debts owed the Discos by their customers due to customer's apathy to pay the estimated charges has also increased. Earlier attempts to solve this problem led to the enactment of the NERC

(Methodology for Estimated Billing) Regulations 2012, which sought to regulate the billing of consumers without meters. Thereafter, the Nigerian Electricity Regulatory Commission (NERC) came up with the voluntary Credited Advance Payment for Meter Installation (CAPMI) which was designed to enable willing consumers to make upfront payment for meters, with the cost of such meters being gradually deducted by a reduction in such consumer's fixed charge over the amortized period.[25]

The CAPMI scheme which was intended to reduce the metering gap, improve revenue generation for the Discos, eliminate estimate billing and reduce commercial losses for the Discos did not achieve its intended objectives and was subsequently cancelled resulting in the enactment of the present NERC Meter Asset Provider Regulations 2018 (the MAP Regulation). The enforcement of the provisions of the MAP Regulations by NERC began in April 3, 2018.[26]

[23] See Clause 4 (2) the MAP Regulation
[24] Meter Asset Provider 2018, < http://www.templars-law.com. > Last accessed 7 May 2024.
[25] Ibid
[26] Ibid

Nigerian Electricity Regulatory Commission (NERC), Eligible Customer Regulation, 2017.

The Eligible Customer Regulation permits electricity generation companies (Gen Cos) and Independent Power Producers (IPPs) to by-pass the Bulk Trader (the Nigerian Bulk Electricity Trading Plc (NBET)) and distribution companies (DisCos) in order to sell electricity directly to Eligible Customers as defined by the regulation.[27]

Eligible customers were only permitted to purchase electricity from licensed distribution companies (DisCos) except for industrial, commercial, and residential customers (off-grid IPPs or captive generators) who generate their own power. Following a nationwide stakeholder consultation held by the Nigerian Electricity Regulatory Commission (NERC), the Eligible Customer Regulation was issued on the 6th of November, 2017.[28]

The regulation governs the supply of electricity to eligible customers – whose eligibility may be declared by the Minister of Power from time to time, and in line with Section 27 of the Electric Power Sector Reform Act (EPSRA) 2005. End use customers that meet the conditions specified in the declaration of the Minister may apply for Eligible Status upon provision of the requirements stated in the regulation.[29]

The legal foundation of the Eligible Customer Regulation is set out in the Electric Power Sector Reform Act (EPSRA) 2005 now repealed. The EPSRA on Eligible Customers states that "The Minister may issue a directive to the Commission specifying the class or classes of end-use customers that, from time to time, shall constitute eligible customers under this Act."[30] The regulation follows the Minister's declaration. Section 26, sub-section (1) (a), (b), (d) also provides obligations under which eligible customers shall purchase power from the electricity generation company or Independent Power Producer.[31]

This regulation applies to electricity actors across the value chain of the electricity market. Key private sector beneficiaries include:

i. High electricity consumers such as manufacturing, industrial, and commercial facilities.
ii. Independent Power Producers and Investors.

[27] NERC Eligible Customer Regulation 2017, < www.cleantechnologyhub.org. > Last accessed 7 May 2024.
[28] Ibid
[29] Ibid
[30] Section 27 of the Electric Power Sector Reform Act (EPSRA) 2005
[31] Section 26 (1) (a), (b), (d) of the Electric Power Sector Reform Act (EPSRA) 2005

iii. Electricity Generation companies.
iv. Electricity Distribution companies.[32]

The objective of the regulation is to provide standard rules to achieve the following:

i. Facilitate competition in the supply of electricity; promote the rapid expansion of generation capacity, as well as the opportunity for improvement in the quality of supply.
ii. Encourage third party access to transmission and distribution infrastructure as a precursor to full retail competition in the Nigerian electricity market.
iii. Allow licensed generation companies with un-contracted capacity to access un-served and underserved customers thus improving the financial liquidity of the electricity industry.
iv. Enhance the stability and operational efficiency of generation companies arising from the flatter load profiles of Eligible Customers and possibly lower technical losses, depending on the required network interconnection.[33]

The Nigerian Electricity Regulatory Commission (NERC) Mini Grid Regulation 2016

Under the interpretation section of the NERC Mini Grid Regulation 2016, Mini Grid means **"**any electricity supply system with its own power Generation Capacity, supplying electricity to more than one customer and which can operate in isolation from or be connected to a Distribution Licensee's network. Within this Regulation, the term Mini-Grid is used for any Isolated or Interconnected Mini-Grid generating between 0kW and 1MW of Generation Capacity.[34]

This regulation was enacted in 2016 during the President Buhari's Administration. The aim is to ensure proper conduct of Mini Grid Operation in Nigeria. The NERC regulation made proper conduct through the following: The regulation empowers the Commission to ensure that application for registration is complied with, structural arrangement of Mini Grid

[32] NERC Eligible Customer Regulation 2017, < https://www.cleantechnologyhub.org. > Last accessed 7 May 2024.
[33] NERC Eligible Customer Regulation (n 32).
[34] Section 3 Interpretation Section of the NERC Mini Grid Regulations 2016

Operation, geographical delineation of distribution systems[35]. The Commission is empowered to approve and award contract among Mini Grid Operators. [36]

The regulation divides Mini Grid in two. They are the Isolated and Interconnected Mini Grids. Chapter II empowers the Commission to ensure proper registration, award of grant of permit and mandatory conditions. Also, the formalities and the grant of Mini Grid Permit subject to mandatory conditions must be complied with.[37]Another unique aspect of the Act is that it provides for accountability and to ensure that the Commission inspects the accounting records of Mini Grid Operators.[38]

Chapter IV of the Regulation provides for mode of operation to ensure quality service delivery, safety, environmental protection and proper customer services delivery. Chapter V empowers the Commission to engage in Commercial Arrangement for the determination of tariff charges, rental charges and other charges. Chapter VI of the Regulation provides for miscellaneous provisions, the common seal of the commission, and samples of documents and interpretation of terms of sample documents.[39]

Nigeria Renewable Energy Market - Off- Grid Electrification Strategy

The Off-grid Electrification Strategy is aimed towards providing clean and sustainable electricity to all houses in Nigeria. The major objectives of this strategy are- promoting the use of decentralized energy solutions to power households, communities & businesses, developing 10,000 mini grids by 2023, providing uninterrupted power supply in federal universities and university teaching hospitals, deploying 5 million solar standalone systems for residential and Small and Medium Enterprises (SMEs) by 2023, supporting the Nigerian Government's climate change obligations under the Paris Agreement, with respect to promoting renewable and reducing carbon emissions[40].

[35] Section 4 and 5 of the NERC Mini Grid Regulations 2016
[36] Section 6 of the NERC Mini Grid Regulations 2016
[37] Section 7, 8, 9 and 10 of the NERC Mini Grid Regulations 2016
[38] Section 12 and 13 of the NERC Mini Grid Regulations 2016
[39] Chapter VI, V and VI of the NERC Mini Grid Regulations 2016
[40] Nigeria Renewable Energy Policy Handbook, 2023, < https://www.globaldata.com/store/report/nigeria-renewable-energy-government-regulation-policy-analysis/.> accessed 6 May 2024.

Nigeria Multi- Year Tariff Order

One of the primary functions of the NERC under the EPSRA, 2005 is to ensure that the prices charged by licensees are fair to customers and sufficient to allow the licensees to finance their activities and obtain reasonable profit for efficient operations. Multi-Year Tariff Order (MYTO), established by the NERC, is about the regulated prices to be paid to licensed electricity generation companies in providing electricity to distribution and retailing companies, pursuant to the authority given under the EPSRA, 2005[41].

Nigeria Feed- In- Tariffs

The Government of Nigeria approved a new regulation for Feed-in Tariffs in November 2015 with an effective date from February 2016. The Long Run Marginal Cost (LRMC) and Levelized Cost of Energy (LCOE) was the methodology used to set the FiT rates. The FiT is subject to review every three years from the date of publication and the revised FiTs shall be applicable only to the new plants commencing operations after the review. The PPA stands valid for a term of 20 years from the commercial date of operation. As per the FiT regulations, the tariffs are supposed to be reviewed every three years. Accordingly, the revision was scheduled in 2019; however, the same has not happened[42].

Solar Hybrid Mini Grid Fund

According to the official website of the Rural Electrification Agency, the Nigeria Electrification Project (NEP) solar hybrid mini grid component aims to support the development of private sector mini grids in rural areas across Nigeria. The component targets to electrify 300,000 households and 30,000 local enterprises. The objectives of this component are to:

i. Provide clean, safe, and affordable electricity to communities that are currently not connected to the national electricity grid.

ii. Increase business productivity by replacing generators, lanterns and candles with reliable electricity[43].

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[41] Nigeria Renewable Energy Policy (n 40).
[42] ibid.
[43] Rural Electrification Agency, 'Solar Hybrid Mini Grids for Rural Economic Development', < https://nep.rea.gov.ngsolar-hybrid-minigrid/. > accessed 6 May 2024.

Sub-components:

Minimum Subsidy Tender (MST) – aims to electrify pre-selected communities that have high economic growth potential though a competitive tender. The communities to be electrified under the MST are identified, verified and sensitized by the REA/NEP[44].

Performance-based Grant Program (PBG) – aims for the development of mini grids on a rolling basis. The communities are identified, verified and sensitized by mini grid developers and they may also use this window to support development of pre-planned projects in their portfolios. Eligible projects are solar and solar hybrid systems in rural areas, with generation capacity of not more than 1MW[45].

ENERGY TRANSITION PLAN 2022

In August 24, 2024, the Nigerian Federal Government launched its Energy Transition Plan (ETP) designed to simultaneously tackle the challenges of energy poverty and climate change crisis. Obviously, Nigeria is not exempted in the global warming problem caused by the burning of fossil fuel. Generally energy transition refers to a significant change of an energy system with respect to resources, structure, economics, usage and policy. A typical example is the change from a pre industrial revolution to a post industrial revolution era of energy systems[46].

Energy Transition is a significant change in an energy system from fossil based source to a zero carbon based sources. It is indeed a complete paradigm shift in energy sources. The need to address global warming has led many counties like Nigeria and its businesses to focus on Energy Transition Plan. However, due to various technical constraints, energy transition plan has not gained remarkable ground in Nigeria. Nigeria presently remains as one of the nations with the highest emission of carbon gasses in the sub Saharan countries[47].

The debate for energy transition took an increasing dimension in the 1990s when global warning became unbearable and climate change calling for global attention since the adoption of the COP21 Paris Agreement in 2015, all 196 participating parties and stakeholders agree to

[44] Rural Electrification Agency (n 43).
[45] ibid.
[46] Reagan N. Robinson and Anthony N. Njoku, 'A Review of Energy Transition in Nigeria: The Challenges', 2023, Journal of Agricultural Environmental Resources and Management, ISSN: 2245- 1800, < https://www.sarem.com. > Last accessed 6 May 2024.
[47] Ibid.

reach a zero carbon emission state by 2050. Parties to the agreement committed to bring down global warning to well below 2^0 C preferably 1.5^0 C compared to pre industrial levels. As a result the need to quickly ensure a rapid energy transition with a downshift of fossil fuel production was seen as paramount[48].

INDEPENDENT SYSTEM OPERATOR ESTABLISHED BY NERC 2024

On the 4th May 2024, the Chairman of NERC Sanusi Garba and the Vice Chairman Musiliu Oseni announced and ordered the unbundling of the Transmission Company of Nigeria (TNC) by establishing the Independent System Operator (ISO) to take over the market and system operation functions of the TNC. The order started that upon incorporation of the new entity, the TNC should transfer its system operations licence, assets and liabilities to the ISO.

It further stated that the Bureau of Public Enterprise (BPE) will incorporate the new company no later than 31st May 2024 which would be called Nigerian Independent System Operator of Nigeria Limited (NISO)[49].

RECENT DECIDED COURT CASES ON RENEWABLE ENERGY IN NIGERIA

In Gbemre v Shell Petroleum Development Company of Nigeria Ltd[50], the applicant, Gbemre, a representative of the Niger Delta Iwherekan community instituted an action against (i) the Nigerian government for its failure to stop the oil and gas company Shell in gas flaring for decades and (ii) Shell for engaging in massive and unceasingly intense gas flaring in the community, in the course of its exploration and production activities (jointly respondents). The applicant argues that Shell failed to consider the environmental impact of its activities on the communities' means of livelihood, collective survival, as well as the gas flaring contribution to the adverse and potentially life-threatening effects of climate change. The applicant claimed that such gas flaring activities violated the community's rights to life and human dignity as constitutionally guaranteed by sections 33 and 34 of the 1999 Nigerian Constitution, and reinforced by Articles 4, 16, and 24 of the African Charter on Human and Peoples Rights (ratified and domesticated by Nigeria as Cap. A9, Laws of the Federation of Nigeria, 2004).

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[48] Ibid.
[49] Opeoluwani Akintayo, 'NERC Unbundles TCN, Establishes Independent System Operator', (Channels News, 4 May 2024), < https://www.channelstv.com/2024/05/04/nerc-unbundles-tcn-establishes-independent-system-operator/. > Last accessed 10 May 2024.
[50] Gbemre v Shell Petroleum Development Company of Nigeria Ltd & Ords FCH/B/CS/53/05.

The Federal High Court held that these constitutionally guaranteed rights inevitably include the rights to a clean, poison and pollution free environment. The federal Judge ruled that the actions of the respondents in allowing and continuing to flare gas in the applicant's community are a violation of their fundamental rights to a clean and healthy environment. The judge further ruled that Shell's failure to carry out an EIA is a clear violation of the EIA Act and a violation of said rights. The Judge's ordered them to take immediate steps to stop gas flaring. The Judge further ordered the Attorney General of Nigeria to ensure speedy amendment of the Associated Gas Re-injection Act to be in line with Nigeria's human rights obligations under both the Constitution and the African Charter. The Judge made no award of damages, costs, or compensation.

In the case of NVT Power and Energy Ltd[51], the apex court's order dismissing the appeal made on 4 November was a sequel to an application by NVT Power for the withdrawal of the appeal. The communities involved include the Opu-Benibo Granville community; Orubibi Douglas community; Blackduke Oweredaba community; Ajumogobia-Bestman community; Oruwari community and Siri Young Jack community. Others are the Don-Pedro community and Membere Community, all in Abonnema Kingdom, Akuku Toru Local Government Area of Rivers. The host communities had, in October 2020, sued the firm at the High Court of Rivers State, in Port-Harcourt.

The communities had prayed the court to, among others, compel the firm to negotiate with them and "pay forthwith to their attorney/legal representative all agreed accruals, benefits and compensation that is due to the claimants communities by reason of the defendant's activities, operations and facilities within the lands of the claimants communities." The parties later agreed to terms of settlement, which Justice A. Enebeli adopted as the court's consent judgment in the case on 2 June.

The terms of the settlement agreement were that the communities, "being independent, autonomous communities and the location of the defendant's several facilities and activities, are entitled to participate and benefit directly from all accruals, rents, contracts, development and economic empowerment. They are also entitled to "compensation, environmental clean-up, scholarships and economic empowerment projects undertaken by all companies including the defendant for their host communities in Abonnema Kingdom in Akuku Toru Local Government Area of Rivers State of Nigeria."

[51] NVT Power & Energy Ltd SC/CV/849/2022.

They were also to "be included in all agreements and or Global Memorandum of Understanding to be executed or entered into between the defendant and its host communities in Abonnema Kingdom in Akuku Toru local Government Area of Rivers State of Nigeria." The firm was ordered to negotiate with the communities through their lawyers "and pay forthwith to their attorney/legal representative all agreed accruals, benefits and compensation that is due to the claimants communities by reason of the defendant's activities, operations and facilities within the lands of the claimants communities in Abonnema Kingdom, Akuku Toru Local Government an of Rivers State of Nigeria."

Justice Enebeli subsequently ordered NVT to pay each of the eight communities N1 million, an aspect of the consent judgment that the firm appealed against at the Court of Appeal, Port-Harcourt. In a ruling on 7 June, a three-member panel of the Court of Appeal in Port-Harcourt, led by Justice Joseph Ikyegh, struck out NVT's appeal for being incompetent, having been filed without first seeking the leave of the court. NVT then appealed the ruling of the Court of Appeal at the Supreme Court, an appeal it subsequently withdrew, which the apex court dismissed in its ruling.

In Ibadan Electricity Distribution Company Plc & 7 Ords v Nigerian Electricity Regulatory Commission (NERC)[52], the facts of this case are that the Commission had, through its Order No: NERC/181/2018 dated of 19th June 2018, suspended the Board of Directors and other key management staff of Ibadan Electricity Distribution Company (IBEDC) on account of the company's purported default in the recovery of an alleged inappropriate shareholder loan of Six Billion Naria (=N= 6,000,000,000.00) granted to Integrated Energy Distribution and Marketing Group Limited (IEDMG). The Commission had in its Order No: NERC/FN/166 directed IBEDC to fully recover the outstanding sum of Five Billion and Seven Hundred Million Naria (=N= 5,700,000,000.00) being the balance of the alleged unauthorized interest free loan granted to IEDMG.

IEDMG is the core investor in IBEDC following the privatisation of electricity distribution companies by the Federal Government. The loan was granted to IBEDC from funds released to all Distribution Companies (Discos) by the Central Bank of Nigeria (CBN) under the Nigeria Electricity Market Stabilisation Fund (NEMSF) programme for the purpose of improving the networks and reducing aggregate technical, commercial and collection losses.

[52] In Ibadan Electricity Distribution Company Plc & 7 Ords v Nigerian Electricity Regulatory Commission (NERC) Suit No FCH/ABJ/CS/665/2018.

IBEDC in seeking to challenge the suspension of its Board, filed a suit at the Federal High Court by way of an originating summons seeking an order of the court to declare the provisions of Regulation 18 of the Regulations as inconsistent with Section 63 of Companies and Allied Matters Act (CAMA) and sections 248 (1) and 262 (6) of the CAMA and that same amounts to unlawful interference with the composition of the Board of IBEDC.

The Federal High Court in considering the provisions of Regulation 18 of the Regulations and the provisions of Electric Power Sector Reform Act (EPSRA) and Companies and Allied Matter (CAMA) Act noted that the said Regulation which gave powers to the Commission to remove directors is ultra vires, and goes beyond the remit of EPSRA. The Court therefore held that the Commission cannot be an umpire in its own case and any allegations of fraud must be investigated not by NERC, but by the police authorities and tried by a competent court. The Court further held that the appointment and removal of directors must be in accordance with the provisions of the CAMA and the EPSRA. Specifically, the Court held that there is nothing in the EPSRA which permits NERC to make the removal orders.

In Nigerian Agip Exploration Ltd v GEC Petroleum Development Co Ltd[53], the claimant, Nigerian Agip Exploration Limited, is a Nigerian subsidiary of ENI SpA, an Italian energy company with multi-national business interests and operations. The defendant is a Nigerian company involved in the exploration and development of oil and gas reserves in Nigeria.

By a series of agreements, the claimant and the defendant entered into business together in relation to what was originally an offshore oil prospecting licence granted to the defendant by the Nigerian Government, given the code name OPL 2009. The agreements between these parties were: a Farm In Agreement, dated 16 July 2010; a Joint Operating Agreement, dated 11 April 2014; and a Technical Service Agreement, also dated 11 April 2014.

All three of those agreements contained a term requiring disputes, if they arose between the parties, to be referred to arbitration in London under the rules of the ICC. Disputes having arisen between the parties, the claimant commenced arbitration in August 2018.

The claimant made a primary claim for damages in excess of $200 million ($200,000,000.00), alleging misrepresentations by the defendant as to its financial capabilities, and an alternative damages claim for breach of contract in a sum a little in excess

[53] Nigerian Agip Exploration Ltd v GEC Petroleum Development Co Ltd 2023 EWHC 414 Comm.

of $30 million ($30,000,000.00). The defendant participated generally in the arbitration until November 2020. The arbitration has relatively recently culminated in a final award, dated 19 October 2022. By the final award, the arbitral tribunal, having considered the merits of the claimant's primary and alternative claims with conspicuous fairness and care, dismissed the primary claim, broadly speaking on the grounds that, whatever else may have been true, inducement and loss had not been made out in relation to any misrepresentation. However, they allowed, but in a reduced amount, the alternative claim for damages for breach of contract, awarding, prior to interest and costs, a sum of around $22 million ($22,000,000.00). For the purposes of this judgment, the precise amounts do not matter.

These proceedings were commenced by the claimant in March 2021 in response to proceedings commenced in Nigeria in late 2020 brought by the defendant (as claimant in Nigeria) against the claimant (as defendant in Nigeria), not joining the ICC arbitrators as defendants but in which the defendant (as claimant before the Nigerian court) obtained ex parte an injunction addressed to those arbitrators which directed them not to proceed further with the arbitration.

In consequence, this matter came before the court initially, ex parte, on 3 March 2021. On that occasion, HHJ Pelling KC (as he now is) granted an interim anti-suit injunction aimed at preventing the Nigerian court proceedings from proceeding any further. That interim relief effectively served its purpose in that the defendant, in response, filed a notice of discontinuance in those Nigerian proceedings. The injunction directed to the arbitrators therefore fell away and there was no ongoing restraint upon the completion of the arbitration.

In Federal Government of Nigeria & 6 Ords v Zebra Energy Limited[54], the facts of the case are not in dispute. The Respondent applied to the Nigerian Head of State for an oil prospecting licence (OPL) further to the indigenous exploration programme initiated by the Federal Government of Nigeria in 1991. The application was approved in a letter dated 8/3/99 on the conditions that the respondent will pay within 30 days, that is, by 7/4/99:

i. an application fee of Fifty Thousand Naria (=N=50,000.00),

ii. bidding fee of One Hundred US Dollars ($100, 000),

iii. a signature bonus and reserved value of 20 million US dollars ($20,000,000.00).

[54] Federal Government of Nigeria & 6 Ords v Zebra Energy Limited SC 268/ 2001, 2002, 7.

iv. statutory fees and confirmation acceptance of the offer (check statute)

The letter further stated that the Appellant may reallocate the concession without further reference to the Respondent if the above conditions were not met. The Respondent purportedly accepted the offer in a letter of 22/3/99 by paying a sum of Fifty Thousand Naria (=N=50, 000.00) being the application fee and Eight Hundred and Sixty Thousand Naria (=N=860,000.00) instead of 100,000.00 U.S. dollars being the bidding fee and promised to pay the signature bonus and reserved value of 20million U.S. dollars "in due course". In the same letter of "acceptance", the Respondent sought clarification on how much of the 20million U.S dollars represent the signature bonus and how much represents the reserved value. In a letter dated 15/4/19 (8 days after the time originally stipulated for acceptance of the offer), the Appellant stated that the sum of signature bonus and reserved value could be paid in two instalments within a period of three months from the date of the award, that is, on or before 7/6/99.

Subsequently, the Respondent made a part payment of 1 million U.S dollars on 28/5/99, one week before the expiration of the deadline and requested for an extension of time to pay the second instalment within 3months, that is, before 27/8/99. However the Appellant replied three days later on 31/5/99 and granted the Respondent a grace of 45 days within which to pay. That is, the time for the payment of the second instalment was extended from 7/6/99 to 15/7/99 instead of 27/8/99 requested by the Respondent. Meanwhile, there was a transition from military rule to civil rule on May 29 1999. The allocation was cancelled by the new civilian rule on 8/7/99 (before the expiration of the new deadline) based on the recommendation of a Panel headed by Dr. Christopher Kolado, which was set up by the Federal Government to review all contracts, licenses and appointments made between the 1st January and 28th May 1999. The Respondent commenced an action in the Federal High Court, Federal Capital Territory, Abuja, for breach of contract seeking an order of specific performance of the contract between it and the Appellant. Judgment was given to the Respondent. The Appellant appealed unsuccessfully to the Court of Appeal and finally to the Supreme Court.

The main issue before the Supreme Court was whether there was an existing contract between the parties on 8/7/99 when the Appellant cancelled the allocation. The Appellant answered the question in the negative and contended that the original offer made by it to the Respondent had lapsed. It was further argued that the offer to extend payment of the second

instalment by 45 days was a counter offer and up to the time the Appellant cancelled the allocation, the Respondent had not accepted the counter offer.

The Respondent contended that there was a binding contract and that the contract was revoked for no other reason except “in accordance with the recommendation of the 6th Appellant's Commission". The Supreme Court classified the contract as a unilateral one and held that the offer was accepted when the Respondent commenced performance of the conditions laid down by the Appellant, that is, when the Respondent paid the sum of N50, 000.00 as the application fee and N860, 000.00 as the bidding fee. Hence, a contract came into existence on 22/3/99. The Appellant was therefore obliged to keep the contract open until complete performance. Bello J.S.C. (as he then was), delivering the lead judgment stated thus:

> “.... It is settled law that the offer to enter into a unilateral contract is accepted on commencement of performance, even though completion of performance is condition precedent to the offeror's liability to perform his promise. In Errington v Errignton and Woods (1952) 1 All E.R.149 the facts support the above statement of law…Coming back to the case in hand, the Respondent had paid N50,000.00 and $10,000.00 U.S Dollars before the expiration of 30 days. It is therefore clear that the Respondent had commenced performance of the conditions laid down by the Appellants. The offer could not therefore be held to have lapsed after the expiration of 30 days”.

SUMMARY, RECOMENDATIONS AND CONCLUSION

In summary, Renewable energy is energy generated from natural resources such as sunlight, wind, rain, tides and geothermal heat. It is derived from natural processes that are constantly replenished. Nigeria is endowed with rich sources of renewable energy such as Ocean wave, solar sunlight, geothermal, biomass and hydro power. Nigeria’s Renewable Energy supply is ineffective and insufficient to meet the daily needs of Nigerians and this promoted the establishment of regulatory authorities such as the Nigerian Electricity Regulatory Commission, and the Government Ministries, Department and Agencies. These regulatory authorities promoted regulations such as NERC Customer Regulations, Energy Transition Plan, Multi- Year Tariffs Order, Feed- In- Tariffs and Solar Hybrid Mini Grid Fund.

Apart from the Environmental Assessment Impact Act 1992 which was a decree enacted by the Federal Military Government, we have the Climate Change Act of 2021 and Electricity Act of 2023. The Nigerian Courts have also assisted in promoting renewable energy policies through court decisions on issues such as resolving the dispute on licensing and power or regulatory authorities.

In other to promote Renewable Energy supply and achieve a net zero emissions, the following are hereby recommended in Nigeria:

1. Domestic production of renewable energy products for home and commercial use: When we watch the social media news on technology innovations and achievements, Electronic Vehicles popularly known as EV from industries such as Telsa, Gionee and Apple are now the forerunners of EV in the world. Cars can run on hydrogen, Ethanol, Animal waste, water, Solar and rechargeable batteries. Also there are now homes which completely depend on Wind and Solar energy for cooking, watching televisions, heating, lighting the home for 24 hours. These renewable energy products are domestically produced in countries such as the United States, China, European Countries, Brazil and South Africa.

   In Nigeria, these technology products should be locally produced the enable these products affordable, and cheep to maintain. Such an idea would also promote employment among youths and promote economic growth and development.

2. Promoting Private and Public Investments: One major challenge about government policies, regulations and laws is that government establishes these laws and regulations without enforcement and theses laws become ineffective after decades of enactments. For example, in the Bagagry Local Government of Lagos State, there is a Solar Generation Station but this station has been dormant for years with decaying renewable energy infrastructures. Also Local Communities such as Oke- Agi Community in Mopa Amuro Local Government Area of Kogi State had established infrastructure for Water Supply through Solar Power Generation but sadly, this infrastructures are decaying and do not supply water to the local communities.

3. High Tax on the supply and prevention of fossil fuel exploration and extraction: Fossil fuel products such as Fuel consumption cars, electric generators, motorcycles and tricycles are the major consumers of fossil fuel. These products should be

replaced with EVs, EV motor cycle and tricycles. Also there should be high tax on fossil fuel such as petrol, diesel, and kerosene to reduce customer's overdependence on fossil fuel.

4. Encouragement of Tree Planting and Gardens: Many urbanised societies do not have trees in the environments but the advantage of planting trees is that it prevents and reduces air pollution in the society. Trees are living organisms which convert harmful Carbon Monoxide emissions into Oxygen which ensures that the air is clean, fresh and smooth.

In conclusion, African needs to learn their lessons from their past mistakes. We are in a new age of opportunities and innovation. In other to prevent over reliance on western technology, we need to act fast before it is too late again by promoting industrial production of renewable energy products such as EVs, Solar Panels and Electric power generating stations.

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