



## CRITICAL REVIEW OF THE LEGAL FRAMEWORK ON ELECTRICITY FOR PROMOTION OF SUSTAINABLE RENEWABLE ENERGY IN NIGERIA

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### ABSTRACT

*This study examines the prospects and challenges of the Constitution and the Electricity Act 2023 (EA 2023) in the promotion of sustainable renewable energy. Nigeria is faced with electricity deficit which negatively affects its economic development, particularly in the sluggish development of its manufacturing industry. It is expected that a boost in the energy sector would reverse the trend. One of the ways suggested is the promotion of renewable and alternative energy sources via reform of the legal frameworks. This paper deploys critical analysis of doctrinal data (the Constitution, particularly the introduction of the 5<sup>th</sup> Constitution Alteration and EA 2023), to examine the extent to which they could improve the sector, the normative challenges and how these may be resolved. It finds huge potentials for renewable energy which could create a boost for Nigeria's electricity sector. These range from prioritisation, privatisation, involvement of individuals and all tiers of government, to championing developments in the sector. The challenges include potential exposure of Nigeria to security threats, subordination of indigenous inventions and general reactionary tone of the EA 2023. However, the legal regime creates framework for integrating developments in the renewable energy sector.*

**KEY WORDS:** Electricity, Fifth Alteration, Nigeria, Renewable Energy, Sustainability

### INTRODUCTION

One of the ways of improving access to sustainable and affordable electricity is through establishment of effective legal and institutional frameworks that promote renewable energy.<sup>1</sup> In Nigeria, the quest for sustainable electricity led to the enactment of the Electric Power Sector Reform Act, No 6, 2005 (EPSRA), and other electricity related laws.<sup>2</sup> However, as at 2015 Nigeria had 75 million people without access to electricity.<sup>3</sup> Today, about 86 million Nigerians still lack electricity.<sup>4</sup> This figure includes those living in urban and rural areas. This

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<sup>1</sup> E. N. Kumi "The Electricity Situation in Ghana: Challenges and Opportunities." (2017) CGD Policy Paper. Washington, DC: Center for Global Development, 8 < <https://www.cgdev.org/publication/electricity-situation-ghana-challenges-and-opportunities> > accessed 4<sup>th</sup> October 2023.

<sup>2</sup> See section 231 (2) listing the repealed laws.

<sup>3</sup> International Energy Agency (IEA) and the World Bank, 'Sustainable Energy for All 2015—Progress Toward Sustainable Energy' (June 2015), World Bank, Washington, DC. 3, < <http://hdl.handle.net/10986/22148> or <https://openknowledge.worldbank.org/entities/publication/a5a7d2e7-c291-530d-a6ff-3d09dd99316b> > accessed 6<sup>th</sup> October 2023.

<sup>4</sup> Thisday - Report: At 86 Million, Nigeria Ranks World's Top Country with Lack of Access to Electricity, Friday, June 9, 2023 < <https://stats.thisdaylive.com/index.php/2023/06/09/report-at-86-million-nigeria-ranks-worlds-top-country-with-lack-of-access-to-electricity> > accessed 6<sup>th</sup> October 2023.



situation was recently aggravated by spates of national grid collapses.<sup>5</sup> Access to energy thus remains one of the greatest challenges to development in Nigeria and in many developing nations.<sup>6</sup> Thus, after about 18 years of the EPSRA, the Electricity Act 2023 (EA 2023) is now enacted. This Act was heralded by the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (5th Alteration) Act, No 33, 2023. The EA 2023 prioritizes renewable energy subsector as a means of assuring energy sustainability and economic development in Nigeria.<sup>7</sup> This is on the premise that the most effective tool for resolving this challenge is technology and the reform of the laws to introduce and expand energy resources and exploitation.<sup>8</sup> The previous legal framework appeared not to be efficient as seen in the crippling of the manufacturing sector due to lack of electricity.<sup>9</sup>

The energy poverty situation has heightened the need to properly explore the potential for renewable energy in Nigeria. Renewable energy could be sourced from solar, wind, biomass, hydropower, geothermal, wave and tidal energy. These sources are inexhaustible and cause no harm to the environment as against fossil fuel.<sup>10</sup> Our perception however, is that an effective and efficient exploitation and utilisation of renewable energy should depend largely on the effectiveness of the legal framework that promotes optimum benefit without harming society. This is because in the pursuit of profit, possibility of abuse, misuse or neglect of the renewable energy sources is high, hence the need for a moderating mechanism.<sup>11</sup> In this

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<sup>5</sup> M. Izuaka 'Blackout across Nigeria as national grid collapses' Premium Times, September 14, 2023 < <https://www.premiumtimesng.com/news/625457-blackout-across-nigeria-as-national-grid-collapses.html> > accessed 6<sup>th</sup> October 2023; K. Jeremiah, 'Nigeria's national grid collapses again, electricity drops to 42.7WM' The Guardian, 19 September 2023 | 1:19 pm < <https://guardian.ng/news/nigerias-national-grid-collapses-again-electricity-drops-to-42-7wm/> > accessed 6<sup>th</sup> October 2023.

<sup>6</sup> About 759 million people still live without electricity. Majority of these people are found in Africa, see World Bank, 'Report: Universal Access to Sustainable Energy Will Remain Elusive Without Addressing Inequalities' World Bank June 7, 2021 < <https://www.worldbank.org/en/news/press-release/2021/06/07/report-universal-access-to-sustainable-energy-will-remain-elusive-without-addressing-inequalities> > accessed 6<sup>th</sup> October 2023.

<sup>7</sup> See Electricity Act 2023, s3(2)(a).

<sup>8</sup> see United Nations Economic Commission of Africa, 'Regulatory Review of the Electricity Market in Ghana: Towards Crowding-in Private Sector Investment' United Nations Economic Commission of Africa 2021; R. Kirchner and A. Salami 'Promoting a low cost energy future in Africa' [2014] (8)(2) *African Journal of Environmental Science and Technology* 91-98, 97 < <https://www.ajol.info/index.php/ajest/article/view/110477/100213> > accessed 5<sup>th</sup> October 2023.

<sup>9</sup> J. Olasunkanmi et al 'How Businesses Are Shutting Down Due To Poor Power Supply, Cost Of Fuel' Daily Trust < <https://dailytrust.com/how-businesses-are-shutting-down-due-to-poor-power-supply-cost-of-fuel/> > accessed 6<sup>th</sup> October 2023; T. Obiezu 'Small Businesses in Nigeria Face Downtime Amid Fuel, Electricity Shortages' VOA, March 18, 2022 1:42 PM < <https://www.voanews.com/a/small-businesses-in-nigeria-face-downtime-amid-fuel-electricity-shortages/6491396.html> > accessed 6<sup>th</sup> October 2023.

<sup>10</sup> O.O. Ajayi and O.O. Ajayi, 'Nigeria's Energy Policy: Inferences, Analysis and Legal Ethics toward RE Development' [2013] (60) *Energy Policy*, 61- 62.

<sup>11</sup> For example, see B. U. Ihugba, 'Law as an agent of growth in youth employment and sustainable development in Nigeria: a Corporate Social Responsibility (CSR) model' [2015] (7)(1) *Nigeria Journal of Legislative Affairs*; B. U. Ihugba and Onyisi I. S., 'International Intellectual property agreements as agents of

regard, the law could be the best moderator.<sup>12</sup> Nigeria has followed this route by the enactment of the 5<sup>th</sup> Constitution Alteration and the EA 2023. The effectiveness of this new legal framework is however, in question. This study examines what the new laws offer in relation to renewable energy in Nigeria, their prospects, challenges and solutions.

To address this purpose, the remaining part of the research is structured as follows. The next section provides clarification for key concepts and theory. This is followed by a literature review. Next is an explanation and justification of the research method adopted for the research. This is followed by an analysis of the legal and institutional frameworks on renewable energy in Nigeria. The paper ends with a presentation of recommendations and conclusion.

## CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

These concepts include *Renewable energy resources and sources*, *Electricity* and *Sustainability*. *Renewable energy resources* mean natural sources such as sunlight, wind, rain, tides and geothermal heat which are renewable and naturally replenished.<sup>13</sup> This list includes natural sources of energy that by their nature are self-replenishing. This feature of self-replenishing qualifies them as renewable.<sup>14</sup> *Renewable energy sources* means renewable non-fossil energy sources like wind, solar, geothermal, wave, tidal, hydropower,<sup>15</sup> biomass, landfill gas.<sup>16</sup> *Electricity* is electrical energy (a) *generated, transmitted, distributed and supplied or traded for any purpose; or (b) used for any purpose except the transmission of a message*.<sup>17</sup> And *Sustainability* is the provision of adequate and reliable energy services at an affordable cost, in a secure and environmentally friendly way and in accordance with social and economic development needs.<sup>18</sup>

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sustainable development of Developing Countries', [2015] (9)(1) *African Journal of Legal Studies*, 1-21. <<http://booksandjournals.brillonline.com/content/journals/17087384/9/1>> accessed 7<sup>th</sup> October 2023

<sup>12</sup> Lee, Yong-Shik 'General Theory of Law and Development' [2017] (50)(3) *Cornell International Law Journal* <<https://scholarship.law.cornell.edu/cilj/vol50/iss3/2>> accessed 6<sup>th</sup> October 2023.

<sup>13</sup> Electricity Act 2023, s232.

<sup>14</sup> (n3) 3.

<sup>15</sup> Hydropower is not hydro under the Act. Hydro under the Act means a(n) [electricity] project that has a generating capacity not exceeding 100 megawatts. See Electricity Act 2023, s232.

<sup>16</sup> Electricity Act 2023, s232.

<sup>17</sup> Ibid.

<sup>18</sup> I. Vera, L. Langlois, H.-H. Rogner 'Indicators for Sustainable Energy Development' International Atomic Energy Agency <[https://www.un.org/esa/sustdev/publications/energy\\_indicators/chapter2.pdf](https://www.un.org/esa/sustdev/publications/energy_indicators/chapter2.pdf)> accessed 6<sup>th</sup> October 2023; UN 'Energy Indicators for Sustainable Development: Guidelines and Methodologies' International Atomic Energy Agency, United Nations Department Of Economic And Social Affairs, International Energy Agency, Eurostat And European Environment Agency, <[https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1222\\_web.pdf](https://www-pub.iaea.org/MTCD/Publications/PDF/Pub1222_web.pdf)> accessed 6<sup>th</sup> October 2023.

General theory of law and development<sup>19</sup> anchors the analysis of this study. It is of the position that law can be effectively deployed as a tool for stimulating and maintaining development in society. Such law must possess at least three key elements. Law here is defined as a ‘specific rule or a set of rules binding on the members of a society’.<sup>20</sup> The law must have been made by the body constitutionally empowered as a law-making body and must have followed the constitutionally set procedures for law making and validation.<sup>21</sup> A law, to be effective in stimulating development, must possess three key mechanisms, also regarded as regulatory impact mechanism. These are *regulatory design*, *regulatory compliance* and *quality of implementation*.<sup>22</sup> These mechanisms determine the effectiveness of the law. In examining law from the law and development theory perspectives, the basic questions are whether the content, structure and process of making the law lends itself to these three mechanisms. In other words, the law’s coherency within itself and alignment with external laws to the extent that enables it meet its purpose. For clarity, ‘*regulatory design*’ deals with the extent a law is designed to optimally achieve its regulatory objectives. ‘*Regulatory compliance*’ is the attitude and extent of compliance with the law, while ‘*quality of implementation*’ assesses the extent to which the law and the state lends itself to requirements of law and fulfillment of its objectives.<sup>23</sup> It is on this theoretical framework that the discourse in this paper is anchored.

## LITERATURE REVIEW: LAW AND RENEWABLE ENERGY

A number of scholarly works, especially from African countries have explored the challenges and prospects of renewable energy. Some of their proposals have been tested in some jurisdictions. For example a 2020 AfDB *Country Priority Plan and Diagnostic of the Electricity Sector* for Kenya, highlighted the urgency of setting up a regulatory framework for greening the electricity sector. The document recognised the potentials of renewable energy, if frameworks are properly set and implemented, to transforming Kenya to an industrialised middle-income country.<sup>24</sup> Also E. N. Kumi on energy sufficiency in Ghana identified high level of losses in the distribution system, overdependence on thermal and hydro sources for

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<sup>19</sup> Lee, Yong-Shik ‘General Theory of Law and Development’ [2017] (50)(3) *Cornell International Law Journal* < <https://scholarship.law.cornell.edu/cilj/vol50/iss3/2> > accessed 6<sup>th</sup> October 2023.

<sup>20</sup> Lee, Yong-Shik, ‘Call for a New Analytical Model for Law and Development’, [2015] (8) *LAW & DEV. REV.* 1, 10– 27.

<sup>21</sup> CFRN 1999, ss 1 and 4. This includes regulations made on the power of the Constitution or enabling statute.

<sup>22</sup> Lee, Yong-Shik ‘General Theory of Law and Development’ [2017] (50)(3) *Cornell International Law Journal* 418 < <https://scholarship.law.cornell.edu/cilj/vol50/iss3/2> > accessed 6<sup>th</sup> October 2023.

<sup>23</sup> Ibid, 418 -419.

<sup>24</sup> AfDB ‘Kenya: *Country Priority Plan and Diagnostic of the Electricity Sector*’ [2021] *African Development Bank (AfDB) Group*.



electricity generation and poor tariff structures as some of the key challenges. Policy and legal framework reform to diversify the energy sources to include renewable energy sources is suggested. Others were strong system that would ensure private sector confidence and participation in the sector.<sup>25</sup> The argument is that with the diversification of the energy sector through renewable energy sources and private sector participation, economic development will be stimulated.<sup>26</sup> A UN review of the Ghana electricity sector also found that a diversified electricity sector would attract domestic and foreign investment. This however, is most sustainable through the instrument of effective law and policy.<sup>27</sup> The review suggested amongst others, a robust review of the legal framework on electricity and a movement towards open market system.<sup>28</sup> This recommendation must be viewed with caution. Each country should adopt an approach that best suits its peculiarity. An open market may not necessarily be positive for a developing economy.<sup>29</sup> In agreement with this observation, a 2021 review of Ghana's electricity sector suggested a careful design and implementation of energy policies to ensure supply of affordable, reliable and sustainable electricity. The review cautioned against selling government ownership of electricity businesses but should improve in its oversight activities. That emphasis should be on meeting the electricity needs of Ghanaians and less about influx of foreign investment or privatization.<sup>30</sup> Another paper argues on the necessity of political power in ensuring the success of improvement in the institutional and policy framework for electricity in Ghana.<sup>31</sup> This paper appears not realize that in constitutional democracies rule of law is the ultimate guide and not political power or individual discretion. There should be no question of political power as this undermines the effectiveness of the law by giving validity to discretion.<sup>32</sup> Also a literature review in 2022 on electricity concerns for Ghana confirms the value of laws, proper implementation, political

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<sup>25</sup> (n1).

<sup>26</sup> *ibid*, 20.

<sup>27</sup> United Nations Economic Commission of Africa, 'Regulatory Review of the Electricity Market in Ghana: Towards Crowding-in Private Sector Investment' United Nations Economic Commission of Africa 2021.

<sup>28</sup> *ibid*, 68.

<sup>29</sup> See M. U. Ukponu et al 'Globalization and the Sovereignty of African States in the Post-Colonial Era: A Contemporary Afrocentric Legal Perspective' [2022] (119) *Journal of Law, Policy and Globalization* < <https://www.iiste.org/Journals/index.php/JLPG/article/view/58424/60319> > accessed 5<sup>th</sup> October 2023; B. U. Ihugba and Onyesi I. S. (n 11).

<sup>30</sup> E. O. Essandoh et al, 'Review and Analysis of Ghana's Power Sector Policies, Programmes and Reforms' [2021] (6)(1) *JENRM*, 1-6.

<sup>31</sup> B. Dye, 'Structural reform and the politics of electricity crises in Ghana: tidying up whilst the house is on fire?' (2020) FutureDAMS Working Paper 0013, Manchester: The University of Manchester.

<sup>32</sup> (n1) 2.





will to abide by legal standards, proper financing as some key considerations and factors of improving access to energy.<sup>33</sup>

In Nigeria, a review of the EA 2023, also identified various potential benefits including capacity of expanding the electricity market by de-monopolising it, focusing on renewable energy and sustainability, consumer protection measures and tariff regulations and transparency as mechanism that would help expand electricity sector. Other benefits of the renewable energy component of the EA 2023 include more power projects, more power generation, and mini-grid and off-grid solutions.<sup>34</sup> Another review of the EA 2023 posits that the Act has expanded the energy market and now prioritises renewable energy. The review projects a vision of boundless opportunities for public and private investment in sustainable energy, investment opportunities in the State electricity markets and involvement of new players in the electricity market in Nigeria. Literature on renewable energy appear to agree that improved electricity law has benefits for renewable energy, economic development and growth in Nigeria. Against the plethora of literature in support of reform of the legal framework for renewable energy, this paper examines the capacity of the Constitution and the EA 2023 to fulfill these expectations.

## METHODOLOGICAL CONSIDERATIONS

This discourse is centered on law and how law may be interpreted and implemented to impact on socio-economic and legal relationships.<sup>35</sup> The discourse is anchored on constitutional principles, constitutional provisions and statutory interpretation of laws. Primary data is collected from constitutional provisions on role of government in ensuring the wellbeing of citizens, rights of citizens to embark on productive economic activity and provisions on electricity in Nigeria. Others are key provisions of EA 2023 on renewable energy. Primary data from CFRN 1999 and the EA 2023 are subjected to qualitative critical analysis.<sup>36</sup> This is the systematic analysis of data against selected themes, categories and criteria to adjudge the extent to which the findings meet expected objectives that convey certain implications of the

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<sup>33</sup> M. A. Nyasapoh et al. 'An Overview of Energy Resource and Future Concerns for Ghana's Electricity Generation Mix' [2022] *Hindawi Journal of Energy*, < <https://doi.org/10.1155/2022/1031044> > accessed 6<sup>th</sup> October 2023.

<sup>34</sup> A. Alex-Adedipe and Q. Ogunjimi, 'Powering Nigeria's Future: Introducing The Electricity Act 2023', Pavestones Legal, Modaq, 20 June 2023 < <https://www.mondaq.com/nigeria/renewables/1331724/powering-nigerias-future-introducing-the-electricity-act-2023> > accessed 6<sup>th</sup> October 2023.

<sup>35</sup> B. U. Ihugba B. .U. 'Introduction to Legal Research Method and legal writing' (Malthouse Press 2020) 5.

<sup>36</sup> (n35) 171.

law.<sup>37</sup> These include objectives like promotion of investment opportunities, research and development and economic growth. To contextualize the doctrinal data, secondary data is collected from extant literature on the value of legal framework in the promotion of renewable energy, their challenges and suggested solutions.

## PRESENTATION AND ANALYSIS OF LEGAL AND INSTITUTIONAL FRAMEWORKS ON RENEWABLE ENERGY IN NIGERIA

The presentation and analysis of the Constitution and the EA 2023 are as follows:

### i. The Constitution of the Federal Republic of Nigeria 1999 and Electricity

The Constitution is the primary law from which all laws derive their validity and legitimacy.<sup>38</sup> The Constitution sets the framework for the enactment of laws to resolve social challenges and the delivery of public goods to the citizenry. This is contained principally in Chapter II of the Constitution and the legislative list as provided for under section 4. Chapter II sets out the '*Fundamental Objectives and Directive Principles of State Policy*'. These fundamental objectives and directive principles guide all government activities.<sup>39</sup> These include the legislature, executive and judiciary. *Section 13* in Chapter II states categorically that 'It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.' To buttress the primacy of Chapter II, *section 14* sets out fundamentals of governance as sovereignty of the people, primacy of the security and welfare of the people and participation of the people in governance.<sup>40</sup> Against these fundamentals, government is mandated to meet certain primary objectives. These are political objectives<sup>41</sup>, economic objectives,<sup>42</sup> food security,<sup>43</sup> social objectives,<sup>44</sup> educational objectives,<sup>45</sup> foreign policy objectives,<sup>46</sup> environmental objectives,<sup>47</sup> and directive on Nigerian cultures.<sup>48</sup> It is interesting to note that access to energy is one of the public goods that should enhance the fulfilment and enjoyment of these objectives.

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<sup>37</sup> I(n36)

<sup>38</sup> CFRN 1999, s1.

<sup>39</sup> CFRN 1999, s13.

<sup>40</sup> CFRN 1999, s14(2)(a)(b) and (c).

<sup>41</sup> CFRN 1999, s15.

<sup>42</sup> CFRN 1999, s16.

<sup>43</sup> CFRN 1999, s16A.

<sup>44</sup> CFRN 1999, s17.

<sup>45</sup> CFRN 1999, s18.

<sup>46</sup> CFRN 1999, s19.

<sup>47</sup> CFRN 1999, s20.

<sup>48</sup> CFRN 1999, s21.

Accordingly, a legal framework that enhances access to energy must embrace the principles and obligations in Chapter II.

Perhaps for this reason, the importance of access to energy is confirmed in the Constitution. Its importance is demonstrated by the National and State Houses of Assembly being empowered to make laws on electricity under the Concurrent Legislative List. Until recently, State Houses of Assembly could only make laws on electricity generation and distribution within their states only for areas not covered by National Grid.<sup>49</sup> The 5<sup>th</sup> Constitution Alteration changed this position and empowers State Houses of Assembly to make laws on generation and distribution of electricity without restriction within the state.

The 5<sup>th</sup> Alteration ensures that there are no areas that are not covered by electricity. This demonstrates the importance of access to electricity towards the fulfillment of Chapter II objectives. States can take advantage of the 5<sup>th</sup> Constitution Alteration Act to meet the exhortation of the EA 2023 with respect to establishment of renewable energy sources including standalone renewable energy sources in all areas within the state.<sup>50</sup> In other words, States can develop and establish alternative sources of energy like solar, water, wind, biomass and hydrogen<sup>51</sup> irrespective of presence of the national grid.

## ii. The EA 2023

The EA 2023 replaces the EPSRA 2005 and consolidates laws in the electricity sector creating a more comprehensive single statutory framework for the electricity sector in Nigeria.<sup>52</sup> In this paper, we concentrate on the innovation of the Act in relation to renewable energy. We provide brief explanation on four key Parts of the Act. These are Part II *National Integrated Electricity Policy and Strategic Implementation Plan*, Part VII *Generation of electricity*, Part XVII *Renewable Energy and Energy Efficiency* and Part XIX *National Power Training Institute of Nigeria*.

First, under Part II, the Act strategically bases the development of electric power on optimal utilisation. This is a key principle of sustainable development. It means that generation of electricity should be for usage and not wastage. This include prioritising

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<sup>49</sup> See section 232 defines national grid as ‘any electrical power system that transcends the boundaries of one or more states in Nigeria or that is connected to a country outside Nigeria for the purpose of electricity generation, transmission, system operation, distribution, supply and trading’.

<sup>50</sup> Electricity Act 2023 s3(2) (b); I. Malo ‘Distributed Renewable energy: The answer to Nigeria’s Access challenge’ [2017] (16)(1) *Economic and Policy Review*, 26 < <https://www.ajol.info/index.php/epr/article/view/155865/145492> > accessed 5<sup>th</sup> October 2023.

<sup>51</sup> Electricity Act 2023, s3(2) (a).

<sup>52</sup> See Electricity Act 2023, s231(2) that list repealed electricity related Acts and enacted them under sections 82 and 172.





sources that will not negatively impact on the country.<sup>53</sup> The Act introduces renewable sources such as solar, wind, hydro, hydrogen, and other renewable sources as sources to be optimally exploited for development of energy in Nigeria.<sup>54</sup> To create room for scientific developments in renewable energy the Act uses words like ‘*such as*’ and ‘*and other renewable sources of energy*’ to keep the list open.<sup>55</sup> In fact, the Act specifically encourages policies that stimulate renewable energy development technologies and strategies including waivers and subsidies.<sup>56</sup> These are provided under Part II on *National Integrated Electricity Policy and Strategic Implementation Plan*.

Second, under Part VII *Generation of electricity*, renewable energy source is given a priority. Section 80 imposes a continuing obligation to promote the generation of electricity through renewable energy sources.<sup>57</sup> This is a signal to experts, entrepreneurs and individuals that government will support all positive electricity generation through renewable energy source. An example of such support is granting of licences.<sup>58</sup>

Third is Part XVII which provides more detail on the legal framework for government direction on Renewable Energy and Energy Efficiency. 164(1) gave the NERC<sup>59</sup> 21 specific powers for the promotion of renewable energy in Nigeria. These powers range from simplified and friendlier licensing regime for renewable energy generation and distribution to regulation for storage of energy generated from renewable energy sources.<sup>60</sup> Seven other sections under this Part are dedicated to the promotion of investment in renewable energy generation and distribution. These include guidelines for commercialisation, incentives and standards, purchase obligations, feed in tariff rates, approval and publication of feed in tariff rates, and finally connection of renewable energy to transmission and distribution systems.<sup>61</sup>

Finally, Part XIX established the National Power Training Institute of Nigeria with eleven functions and eight powers to promote electricity sector. Examples are its functions on workforce capacity building for research centres in matters related to electricity; provision of engineering and technical training courses; formulation and implementation of pilot projects;

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<sup>53</sup> A. A. Ajibade ‘National Strategies To Promote Renewable Energy Development: Whither Nigeria?’ [2019] (10)(1) *Journal of Sustainable Development Law and Policy*, < <https://www.ajol.info/index.php/jsdlp/article/view/188607> or [10.4314/jsdlp.v10i1.5](https://www.ajol.info/index.php/jsdlp/article/view/10.4314/jsdlp.v10i1.5) > accessed 5<sup>th</sup> October 2023.

<sup>54</sup> Electricity Act 2023, s3(2)(a).

<sup>55</sup> Electricity Act 2023, s3(2)(a).

<sup>56</sup> Electricity Act 2023, s3(2)(e).

<sup>57</sup> Electricity Act 2023, s80(1).

<sup>58</sup> Electricity Act 2023, s80(2).

<sup>59</sup> National Electricity Regulatory Commission.

<sup>60</sup> Electricity Act 2023, s164.

<sup>61</sup> Electricity Act 2023, ss165 to 170.



and consultancies on generation and distribution of energy.<sup>62</sup> An important power is the establishment of database on skill capacity and gap in the Electricity sector.<sup>63</sup> These functions and powers should assist Nigeria benefit optimally from the renewable energy. This is because it allows Nigeria to follow and even lead scientific development in the sector and be ready to promote capacity building in electricity generation and distribution.

There are other provisions of the Act which promote renewable energy, especially those provisions that seek to promote private investment in electricity generation.<sup>64</sup> Some of the provisions also encourage electricity generation and distribution by National, State and even local government level investment in renewable energy.<sup>65</sup> More importantly, in the investment sector is the capacity of States to regulate their own electricity markets. This alteration of the Constitution and the EA 2023 has two positive implications: it empowers States to provide alternative energy sources even in areas with national grid<sup>66</sup> and provides a framework for gradual decommissioning of non-renewable sources of electricity when the need arises.

An innovation of the Act's provision on privatisation is the capacity of anyone, individuals included, to construct, own, generate electricity without licences as far as generation is within 1 Megawatt (MW) at a site or distribute electricity with a capacity of not more than 100 kilowatts (KW) at a site, or as may be stipulated by NERC from time to time.<sup>67</sup> This is useful for communities that are far from national grids. They can now generate their own standalone electricity. Small factories, farms, manufacturing industries that are either located far from the national grid or prefer renewable electricity source can take advantage of this power. This means that even where there is national grid, generation from alternative energy sources is encouraged.

## **PROSPECTS AND CONCERNS FOR RENEWABLE ENERGY IN THE LEGAL FRAMEWORK**

The prospects and concerns for renewable energy as discussed in extant literature range from laws, funds to expertise.<sup>68</sup> However, this section dwells on the ones emanating from the legal framework occasioned by the Fifth Alteration and enactment of the EA. 2023.

<sup>62</sup> Electricity Act 2023, s187(1)(a),(b),(c) and (i).

<sup>63</sup> Electricity Act 2023, s187(2)(f).

<sup>64</sup> Electricity Act 2023, Part III.

<sup>65</sup> See Electricity Act 2023, Part XVI.

<sup>66</sup> CFRN 1999, s4, *paragraph 14, Part II, Second Schedule II*.

<sup>67</sup> Electricity Act 2023, s63(2).

<sup>68</sup> C. C. Okonkwo et al 'Renewable Energy in Nigeria: Potentials and Challenges' [2021] (56) *Journal of Southwest Jiaotong University*, 3 < <http://jsju.org/index.php/journal/article/view/924/0> > accessed 21<sup>st</sup> November 2023; Z A. ELUM, and A.S. MOMODU, 'Climate change mitigation and renewable energy for

i. Opportunities and Concerns for Renewable Energy Sector within the Constitution

The Constitution has expanded the opportunities for renewable energy in Nigeria in response to a long time call for the diversification of the control of this sector. By the 5<sup>th</sup> Alteration, States now have the constitutional power to develop, generate, distribute and sell energy.<sup>69</sup> They are no longer limited to only areas without national grid. This is advantageous for renewable energy for two reasons. Renewable energy is not hampered by the presence of a national grid.<sup>70</sup> Rather it may serve as an alternative source of energy even where there is national grid and may be established as standalone energy source. States can now develop renewable energy sources and specialise it to particular uses. For instance, national grid could be deployed for usage in huge industrial layouts and projects while renewable energy is concentrated for use in homes, street lights and small scale industries. This, however, raises the problem of a potential loop hole for international terrorism or national security. This is because if renewable sources are not properly integrated into national grid and thus not subject to national control, they may be susceptible to attack from outside as they may not be captured by national security strategy.<sup>71</sup> The way the section is structured, States are entirely autonomous and independent of the Federal Government. While this, to an extent, is positive, it would be reassuring to establish within the framework of the Constitution a policy direction requiring states to ensure compliance with national security and national development guidelines as a minimum requirement for the exercise of the powers conferred by the 5<sup>th</sup> Alteration.

ii. Opportunities and Concerns for Renewable Energy Sector within the EA 2023

The Act makes the development of electricity through renewable energy sources a priority in the *National Integrated Electricity Policy and Strategic Implementation Plan*. This is seen in the fact that in listing renewable energy sources, the Act is not limiting. It mentions known renewable energy sources and leaves rooms for new sources that are not known now but may become known later. This is evident in the use of the words ‘and other renewable sources of energy’ and ‘such other renewable sources as ... or may be developed.’<sup>72</sup> These sections

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sustainable development in Nigeria: A discourse approach’ [2017] (76) *Renewable and Sustainable Energy Reviews*, 72-80.

<sup>69</sup> CFRN 1999 s 4, paragraph 14, Part II, Second Schedule II

<sup>70</sup> Electricity Act 2023, s3(2)(a).

<sup>71</sup> See generally Mission Support Center ‘Cyber Threat and Vulnerability Analysis of the U.S. Electric Sector’ Mission Support Center Analysis Report, Idaho National Laboratory August 2016 < <https://www.energy.gov/policy/articles/cyber-threat-and-vulnerability-analysis-us-electric-sector> > accessed 5<sup>th</sup> October 2023.

<sup>72</sup> See Electricity Act 2023. ss3(2)(a) and 80(2).



underscore the necessity for Nigeria to keep the development of new renewable energy sources at the forefront.

Another opportunity is that the Act encourages development of electric power sector based on optimal utilization of resources.<sup>73</sup> In other words, the key guide is optimal use and sustainability. This means that the interest of Nigeria's development is put at the forefront and not targets mandated by external bodies. It prioritises renewable energy but recognises that its deployment should also be optimal, i.e., to the best advantage of Nigeria.

Another opportunity is the National Content Development Regulation mandate which sets out foundations for framework for capacity development of Nigerians and new indigenous developments in the electricity sector.<sup>74</sup> This is a provision which the Ministry responsible for power and the Power Training Institute should leverage in ensuring promotion of indigenous inventions in the power and electricity sector. Stories abound in the news of young Nigerians leading the way in renewable energy discoveries and how they are put to use.<sup>75</sup> More should be done to promote such innovations.

Concerns are however noted in relation to the capacity to establish standalone energy generation and distribution platforms.<sup>76</sup> It may pose potential security risk for the nation. It may be necessary to ensure the development and deployment of technology to forestall such occurrences. Another concern is the omnibus provision on National Integration that anchors development in the energy sector on *global development*.<sup>77</sup> This is a reactive provision that undermines initiative and proactiveness in the development of the energy sector in Nigeria. This is because relying on the concept of 'global development' to lead initiatives is reactive instead of proactive. What should guide development in the sector is scientific development including scientific developments in Nigeria. Nigeria can set the pace for others to follow and not waiting for so called 'global development'.<sup>78</sup>

Other concerns are in relation to the very limited scope of the functions of the National Power Training Institute. The Institute should lead the way in research and development on renewable energy sources and all energy mix. However, Part XIX is reactive

<sup>73</sup> See Electricity Act 2023, s164( I ).

<sup>74</sup> See Electricity Act 2023, s3(2)(b).

<sup>75</sup> F. Okoye 'Mustapha Gajibo: From Varsity Dropout To Building Electric Vehicles' Leadership < <https://leadership.ng/mustapha-gajibo-from-varsity-dropout-to-building-electric-vehicles/> > accessed 6<sup>th</sup> October 2023.

<sup>76</sup> See Electricity Act 2023, s3(2) (b) see note 71 above.

<sup>77</sup> See Electricity Act 2023, ss3(2)(g).

<sup>78</sup> M. F. Akorede et al 'Current Status And Outlook Of Renewable Energy Development In Nigeria' [2017] (36)(1) *Nigerian Journal of Technology (NIJOTECH)* < [CURRENT STATUS AND OUTLOOK OF RENEWABLE ENERGY DEVELOPMENT IN NIGERIA | Nigerian Journal of Technology \(ajol.info\)](https://www.ajol.info/ajol/article.php?id=10.4314/njt.v36i1.25) or [10.4314/njt.v36i1.25](https://www.ajol.info/ajol/article.php?id=10.4314/njt.v36i1.25) > accessed 5<sup>th</sup> October 2023.



instead of proactive. The Power Training Institute is rather invited to institute maintenance training programmes, offer certificate programmes on matters related to electricity, organise local and foreign training on managerial, financial and technical areas. No mention is made of research and development in renewable or alternative energy sources. And there appears to be too much focus on trainings abroad with foreign training and foreign institutions mentioned three times in one section. This seems like a tacit suggestion that sufficient training cannot be achieved locally.<sup>79</sup>

There also appears to be a misdirection to the Institute in its functions which may lead to role conflict with the Ministry responsible for electricity. This is in the function empowering the Institute to carry out pilot projects instead of specifically limiting it to research and development activities within its laboratories.<sup>80</sup> The language ‘pilot projects’ gives unnecessary room for the Institute to construe it to mean it can initiate electricity projects and tag them as pilot projects. It is an encroachment into the functions of the Ministry responsible for power. The Institute can develop new technologies, but testing through pilot projects should be left for the Ministry. A similar misdirection is evident in the function of disseminating new ideas and technologies to the power industry without first empowering and requiring the Institute to develop new ideas. The Institute should not only be a messenger but also originator of the message. This should give the Institute impetus to champion development of new discoveries and not just disseminating new discoveries of others.

## RECOMMENDATIONS AND CONCLUSION

The EA 2023 is a commendable legislation and with a lot of positive potentials for Nigeria. To improve these potentials, specific law reform and institution building need to be made. These include:

- i. States should take advantage of the 5<sup>th</sup> Constitution Alteration to enact laws for the development and exploitation of electricity and all that it offers. Renewable energy programmes may be the best place to start. This is feasible given the abundance of renewable energy resources like sunlight, water, biomass and wind.
- ii. The Federal Government of Nigeria must however as a matter of urgency consider the setting up of legal and institutional frameworks to safeguard Nigeria from the

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<sup>79</sup> See Electricity Act 2023, s186(1)(b) and (h).

<sup>80</sup> See Electricity Act 2023, s186(1)(c).



dangers of terrorism through standalone electricity networks. This could start with constitutional and policy directions to that effect.

- iii. The statutory mandate for prioritisation of renewable energy should commence immediately. It should not be allowed to lie fallow within the laws. This is one of such times that the National Assembly must take advantage of the opportunities available in post legislative scrutiny. To this end, while the Executive should commence action, the National Assembly, in not more than five years, must carry out a legislative scrutiny on the effectiveness and efficiency of the law.
- iv. A practical demonstration of this prioritisation is to require the National Power Training Institute to within five years submit a report to the National Assembly demonstrating what it has achieved towards the development of the renewable energy sector. Failure should attract sanctions.
- v. Federal and State governments must also make it a priority to strictly follow and implement the National Content Development Regulation. The National Power Training Institute should leverage on this regulation in ensuring promotion of indigenous inventions in the power and electricity sector.
- vi. Care should be taken in the establishment of standalone electricity generation and distribution platform.
- vii. Section 3(2)(g) that anchors development in electricity on ‘global development’ should be redrafted to read ‘scientific developments’.
- viii. The functions of the Power Training Institute should be redrafted to be proactive. For instance, the Institute should establish research and development centres for development of renewable energy sources.
- ix. Section 186(1)(c) empowering the Institute to carryout ‘pilot projects’ should be redrafted to read ‘pilot research projects within the Institute’. This will reduce role conflict with the Ministry responsible for power.

The above recommendations are mostly limited to the renewable energy sector and are indicative of what needs to be done to improve the renewable energy sector in Nigeria. Nigeria has made a tremendous effort by enacting the EA 2023. It contains quite a number of potentials for developing the energy and electricity subsector to a sustainable standard. Most interesting is the prioritisation of renewable energy and all the accommodations made to allow for plug-in of new developments in the renewable energy subsector as they arise. The establishment of the Power Training Institute is another provision that has the potential for



optimal development of the sector. However, a few re-evaluation and amendments are necessary. So also is the necessity for the government to start immediately in the implementation of the Act. All areas of gap should be resolved, awareness created, the legislature should conduct targeted oversight and post legislative scrutiny. The possibilities of renewable energy and all alternative energy sources are immense as the Constitution and EA 2023 have laid firm groundwork for its achievement.