

AN ASSESSMENT OF THE LEGAL INCENTIVES FOR THE PROMOTION OF RENEWABLE RESOURCES AND GREEN ECONOMY IN NIGERIA*

Abstract

A renewable resource is a natural resource with the capacity to replenish itself and does less harm to the environment and human health. Such resources constitute an alternative to non-renewable resources which are limited in nature and lack the capability to ensure regular resource supply base to drive economies. The concern for this shortcoming inherent in non-renewable resources has necessitated the need to find a viable option in renewable resources to guarantee a reliable, constant and sustainable resource supply to drive economies, protect the environment and human health. Nigeria, like many other countries in the world, has enacted laws to incentivise the country's renewable resources for the green growth of her economy. This article examines the legal framework and government regulations in place with a target to incentivize renewable resources for green economic growth in Nigeria. The paper adopts doctrinal research approach. It found that there are insufficient provisions with regard to incentivising renewable resources in the extant laws in Nigeria and offers recommendations for expansion of the existing laws and/or a comprehensive new law autonomous and dedicated to incentivising renewable resources to achieve Nigeria's green economic mission.

Keywords: Renewable Resource, Environment, Nigeria, Incentive, Green economy, Sustainable development.

1. Introduction

Renewable resources such as sunlight, wind, tides and geothermal heat, rain, etc when harnessed and incorporated into the economic process fare better than non-renewable resources like coal, oil, etc in terms of resilience, abundance and emission of carbondioxide into the earth's atmosphere. The present reliance on non-renewable resources to drive Nigeria's economy is unhealthy as such resources are known for their emissions that pose danger to the environment and human health not to mention their detrimental effects on the climate. The use of a country's renewable resources not only increases the security of resource supply for the country because of their constant availability but also reduces the level of greenhouse gas emission. The idea behind incentivising renewable resources is also based on the cost effectiveness. It has been established that renewable resources are historically more expensive to harness due to certain factors which include location in remote areas with the attendant costly power lines for them to be able to access the market. Adding to the foregoing is the novel and less efficient technology to harness them. In the absence of support mechanisms such as legal incentives, it will be difficult to bring at par the playing field between non-renewable resources and renewable resources. Instances show that the current dominance of non-renewable resources in the energy market does not enable renewable sourced electricity to penetrate the market.¹ Energy experts like Espinoza and others argue that without support scheme like legal incentives, renewable technologies cannot compete against non-renewable energy technologies.² Goodland and Daly are of the same opinion with Espinoza that environmental sustainability requires maintenance of renewable and non-renewable resource capital for the benefit of future generations.³ Nigeria's environmental policy has its focus on making sure that sustainable utilization of the resources and the conservation of natural and human made habitats are realizable through an effective utilization of green energy

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¹H. Wiseman and others, "Formulating a Law of Sustainable Energy: The Renewable Component" [201 28) Pace Environmental Law Review, 827,829.

²C.A Espinosa and Others, "Optimal Regulation of Renewable Energy: A Comparism of Feed-in Tariffs and Tradeable Green Certificates in the Spanish Electricity System" [2017] (68) Energy Economics, 387-399.

³R. Goodland and H. Daly, Environmental Sustainability: Universal and Non-Negotiable" [1996] (6) (4) Ecological Applications 1002-1017 at 1008.

technologies in a bid for such policy to reconcile the competing interests of Nigeria's energy and environmental policies.⁴ The advantage of leaving behind a proportion of non-renewable resource capital ensures that a host of other environmental problems associated with their exploitation and production are avoided. What this means is that the non-renewable reserves ensures a critical balance in the ecosystem which in turn helps to preserve not only the earth's ecosystem but also biosphere.

It may not be seen as a sustainable practice to go to the extreme in the name of exploiting for oil such as happened in the Arctic Circle in 2015 which resulted in the Green Peace raising protest of the likely potential and irreversible damage being created to the immediate polar environment.⁵ By adopting renewable technologies supported by legal incentives, the volume of carboniferous fossil fuels produced reduces as the volume of production generated from renewable sources overwhelms the volume of the reduction from the non-renewable sources, meaning also that emission mitigation has been achieved as renewable sources has less emissions than non-renewable sources. In fact, non-renewable energy, for instance, has been proven not to satisfy the essential ingredients of sustainable development and clean power.⁶

The need for legal incentives to promote renewable resources for green economic development cannot be over-emphasized notwithstanding the opposition to that effect. Non-renewable energy producers had raised serious concern about what becomes of their traditional sources of income in the event of a shift to renewable energy sources. Levy observes that US companies in the coal, oil, automobile, utility, and chemical industries formed industry associations, lobbied politicians, challenged the science of climate change and pointed out to the high cost of reducing emissions.⁷ This indicates a sharp contrast with the opinion of Omoregbe that promotion of renewable resources is a catalyst for development in areas of the world, like rural Nigeria, with limited access to electricity.⁸ The truth is that there is no way the natural ecosystem can keep up with the current consumption pattern without resorting to renewable resource technologies which are in abundance if it is true that it took several years to produce the oil consumed in a year.⁹ Other authorities had given support for legal incentives for promotion of renewable resources development. Heaton and Banks and the G8 leaders are noted for their support in this respect. Heaton and Banks state that the pivotal place new technology holds in solving environmental problems has by now assumed the status of an almost conventional wisdom; that in an arena not noted for consensus, the world wide community concerned with environmental policy is in remarkable agreement about the need for a new generation technology.¹⁰

The opinion of Heaton and Banks runs parallel with that of the communiqué of the world leaders at the G8 leaders summit in Genoa which declared that they recognized the importance of renewable energy for sustainable development, diversification of energy supply, and preservation of the environment; that they would ensure that renewable energy sources are adequately considered in their national plans and would encourage others to do so as well and also encourage continuing research and investment in renewable energy technology throughout the world.¹¹

⁴ M. Jarvola and S. Juhola (eds) *Energy, Policy and the Environment: Modeling Sustainable Development for the North* (Springer Science Business Media LCC (2011) 3.

⁵ "Greenpeace Activists Scale Oil Rig to protest Drilling in Arctic Ocean" Available at <http://www.itv.com/news/2005-4-7/greenpeace-activists-scale-oil-rig-to-protest-drilling-in-arctic-ocean/visited7/6/2024>.

⁶ O.V. Ojo, "An Overview of the Legal and Regulatory Framework for Renewable Energy Projects in Nigeria: Challenges and Prospects" [2017] (1) (1) *Unilag Law Review*

⁷ D.L. Levy, "Business and the Evolution of the Climate Regime". *The Dynamics of Corporate Strategies* in David I. Levy and Peter J Newell, (eds) *The Business of Global Environmental Governance* (Massachusetts Institute of technology, 2005) 73

⁸ Y.O. Omoregbe, "Promoting Sustainable Development Through the Use of Renewable Energy: The Role of Law" in Donald N. Zillman and Others (eds), *Beyond Carbon Economy. Energy in Transition* (Oxford University Press 2008).

⁹ S. Onusosa, "Sustainable Development of the Petroleum Resources: The Rumpus of the Revolution" in Z. Gao (ed) *Environmental Regulation of Oil and Gas* (London: Kluwer Law International 1998) 441.

¹⁰ G.R. Heaton and R.O Banks, "Towards a New Generation of Environmental Technology" [1997] (1) *INDUS Ecology*, 23-24

¹¹ Communiqué from the G8 in July 2001-Available at <http://www.g8.utoonto.ca/summit/2001genoa/finalcommuniquetttm> visited June 1st 2024.

2. Conceptual Framework

The concept adopted to support this article is the concept of sustainable development. It emerged in 1987 with the Brundtland Report defining it as “the development that meets the needs of the present without compromising the ability of future generations to meet their own needs”¹² Adam has described this concept as a concept that has enjoyed attractiveness merely because many different ideas about development can be grafted unto it.¹³ Some authors like Vera and Langlois are of the view that the concept reflects the link existing between development and energy use thereby giving rise to the term sustainable energy.

The concept emerged as a form of societal evolution in addition to the traditional developmental objectives which is meeting basic needs of people and also has the objectives of ecological sustainability.¹⁴ This has been interpreted as socio economic change which embodies renewable resources. Sustainable development is with the intention that sustainability of the ecological conditions necessary to support human life at a specified level of well-being through future generations could be achieved.¹⁵ It is a reformatory move to redirect development efforts away from the kinds of development policies that had neglected environmental protection in the past, to policies and practices which would enable the attainment of a kind of development which ensures environmental conservation and protection.¹⁶

The foregoing aligns with the role of law when applied in the implementation of policies and principles of sustainable development. Law is an important instrument of governance when used to effectively manage the environment. Ghai called it an assumption that could probably be justified on the ground that law has a traditional function of being a useful tool for implementing many kinds of reforms¹⁷. Using the concept of sustainable development as its analytical touchstone, this paper underscores the extent in which the concept could be a core basis for promoting renewable resource to attain green economy in Nigeria.

3. Theoretical Framework

The theory of environmentalism posits that the environment should be protected, preserved and the resources of the environment be used in a manner that would not be detrimental to the next generation.¹⁸ The theory began as an offshoot of the awareness created by Rachel Carson in her book titled *Silent Spring* about the need to protect the environment. Environmentalism became a movement during the period of industrial revolution when many nations started setting up industries and using machines for production of goods and services.¹⁹ After the awareness created by Carson that highlighted the obvious deleterious effects of industrial wastes on the environment came other international environmental groups such as Friends of the Earth and Green Peace, among others. The main objectives advanced by these environmental groups centered on the preservation of the environment both flora and fauna.

It is not until 1972 did this the campaigns to protect the environment begin to effectively attract global attention. In that year, the Conference on Human Environment was held in Stockholm, Sweden, and the issues for the protection of the environment were discussed by the global community and as a result the conference became the defining moment for international environmentalism. The

¹²World Commission on Environment (WCED), *Our Common Future* (Oxford: Oxford University Press (1987) 46.

¹³W.M. Adam, “Green Development: Environment, Development and Sustainability in the Third World

¹⁴S.M Lele, “Sustainable Development: A Critical Review” [1991] (19) (6) in *World Development* 607-621.

¹⁵*Ibid.*

¹⁶T. De La Court, “Beyond Brundtland: Green Development in the 1990s” cited by A. Ibrahim, “Land and Policy for Environmental Protection and Sustainable Development in Nigeria with Special Reference to Water Resources Development Projects “A Ph.D Thesis Submitted to the London School of Economics and Political Science (1997) pp. 42-43.

¹⁷Y.P. Ghai, “The Role of Law in the Transition of Societies: The African Experience [1991] (35) (1) and (2) *Journal of African Law*, 8-20.

¹⁸United Nations Convention on Human Environment 1972.

¹⁹Industrial Revolution Age 1730-1850.

importance of mitigating pollution from industries is to ensure that the environment is saved from the potential harm arising from productions of goods by those industries. Therefore such harm can be seen as a wrong to the environment and the jurisprudential implication is that some activities which cause pollution goes against the natural order of the society especially if there is a potential harm to humanity.²⁰

4. Methodology

This paper is tailored to provide an answer to the very arduous question of why in the midst of global pursuit of renewal resources through support mechanisms such as incentive to attain green economy, Nigeria's effort towards that direction still tethers in the balance despite the much acclaimed legal incentives set for that purpose. The paper presents a critical assessment of the legal incentives and adopts the citation style of the Nigerian Association of Law Teachers (NALT). It also applies doctrinal research method by using primary and secondary sources of data collection such as statutes, case laws, articles in peer-reviewed journals, internet sources among others.

5. Legal Framework for Promotion of Renewable Resources in Nigeria

This legal frameworks include but not limited to the Constitution of the Federal Republic of Nigeria 1999 as amended, Nigerian Electricity Act, Energy Commission of Nigerian Act, Nigerian Climate Change Act, Environmental Impact Assessment Act, among others.

5.1 Constitution of the Federal Republic of Nigeria 1999 as amended

The Constitution of the Federal Republic of Nigeria 1999 as amended laid the foundation for incentivising renewable resources by providing for generation of power from renewable sources such as the provision granting the component states of Nigeria the right to embark on power generation in their states in areas not covered by the national grid.²¹ This initial grant to the states has been improved from restricting the states to off-grid generation of power to areas not covered by national grid to areas covered by the national grid. This is as a result of the Constitution Amendment Alteration Bill signed into law on March 17th 2023 by the then president of the Federal Republic of Nigeria, Muhammadu Buhari. Since then the amendment has been regarded as a big win not only by the component states of the country but also as evidence that renewable resources are indispensable in Nigeria's march to green economy growth.

The Amendment Alteration Act serves the dual purpose of lending encouragement for the exploitation of renewable resources that would not need the use of the national grid to function and at the same time increase access with no or minimal effect to the environment. Going by the World Bank estimate in 2021, not less than eighty million Nigerians lack access to grid electricity.²² The beauty of the law is that more people will have access to clean electricity without increasing the deleterious influences of greenhouse gas which affects the environment and human health.

Bearing the safety of the environment, animal, humans and plants in mind, the Constitution provides that states shall protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria.²³ This provision stands strong to be the foundational basis for the enactment of other environmental protection laws in Nigeria even as it is known that the provision is non-justiceable. The bottom line is that the provision is a window through which it can be argued that the Constitution as a law has provided incentives through which green economy can be achieved in Nigeria. Law is a useful tool to protect the environment not only for the sole benefit of the present but also that of the future generations.

²⁰ AAgunba, "Sustainable Groundwater Management in Lagos, Nigeria: The Regulatory Framework" [2016] AJOL (23) 76-see p39 Okwuokwu

²¹ Constitution of the Federal Republic of Nigeria (CFRN) 1999 as Amended, First Alteration No. 17 Act. 2023.

²² World Bank Press Release No. 2021 /088/AFR

²³ CFRN, section 20

5.2 Nigerian Electricity Act 2023

This is an Act enacted on 8th June, 2023 as the principal instrument for the regulation of renewable resources in Nigeria. The Act defines renewable resources as natural resources such as sunlight, wind, rain, tides, and geothermal heat which are renewable and naturally replenished.²⁴ One of its targets is to provide legal and institutional frameworks for the power sector in Nigeria as well as provide a holistic integrated resource plan and policy that recognize all sources for the generation; transmission and distribution of electricity including the integration of renewable energy and attraction of investment.²⁵ Its predecessor, the electricity power Sector Reform Act, was repealed by the Act and so it became the principal law for the regulation of Nigeria's Power Sector. Recognizing the importance of incentives for promotion of renewable resources, the 2023 Act further empowers the Federal Ministry of Finance to introduce such tax incentives as are necessary to promote and facilitate the generation and consumption of energy from renewable sources and also to foster such reliefs that would incentivise the implementation of renewable energy projects in Nigeria.²⁶ It took cognizance of the importance of including different types of renewable resources in the energy mix and also recognized the need for introduction of feed-in-tariff for renewable resources to up to twenty years to guarantee buyers under standard power purchase agreement. The Act functioned and promoted its lofty objectives through the Nigerian Electricity Regulatory Commission which it established²⁷ and empowers it to promote the generation of electricity from renewable sources²⁸ and increase the contribution of renewable resources to Nigeria's energy mix.²⁹

5.2.1 Nigerian Electricity Regulatory Commission (NERC)

As earlier stated, the Nigerian Electricity Regulatory Commission (NERC) hereinafter called the Commission was established by the Nigerian Electricity Act 2023. The Act empowered it to promote generation of electricity from renewable sources and increase the contribution of renewable energy to Nigeria's energy mix.³⁰ The commission introduced feed-in tariff to guarantee buyers under standard power purchase argument.³¹ In further exercise of its powers, the Commission ensures that any feed-in tariff chargeable by a public utility must have been the one approved by the Commission in relation to electricity generated from renewable energy sources.³²

The objective of the foregoing provision is to ensure that there is a balance between the need for affordable electricity and the financial viability of the sector. The feed-in tariff policy of the Commission is also aimed at guaranteeing a fixed price for renewable electricity fed into the grid as a mechanism to incentivise investment in renewable energy projects.³³ The Commission's power also extended to the regulation of competition and market power in renewable energy sector. The purpose is to prevent market dominance by a few companies³⁴ by fixing arbitrary tariff rates of their own.

As important as foreign investment is to the Nigerian economy, so it is to the Nigerian legal framework to encourage any effort geared towards attracting such investment in renewable energy which can promote sustainable development. However, this is not without a caveat. In other words, such foreign investors must be prepared to comply with the applicable guidelines which apply to

²⁴E34lectricity Act 2023, section 232

²⁵Electricity Act 2023, section 33(i) (ii) see also section 164

²⁶Electricity Act 202, section 166(1)

²⁷Ibid section 33 (1)

²⁸Section 164 (1)

²⁹Ibid section 80 (1)

50(n25)

³¹S. 167

³²NERC Feed-in Tarrif (FIT) Regulation 2015.

³³NERC Feed-in Tariff Regulation 2015

³⁴Petadis Enterprises V. HFP Properties Ltd (Order No. NERC/H/061) where NERC tribunal held that tariff rates must be and line approved by NERC. See also Funke Adekoya SAN V. VGC Management and Maintenance Co. Ltd V. Eko Hotel Electricity Distribution Co. Case No. NERC 10/0011/08 where NERC held a similar ruling as in Petadis case.

Nigerian investors as well. It also has the power to set up arbitration, mediation or conciliation as alternative dispute resolution (ADR) frameworks in the event of dispute between parties.

5.2.2 Dispute Resolution

Notwithstanding that the Nigerian Electricity Regulatory Commission conducts certain adjudication to settle dispute that may arise from a party's petition, it is far from being an alternative to resolution of disputes by the court. Federal as well as state courts have the jurisdiction to grant injunction or stay of proceeding in order for the parties to explore the ADR and safeguard unwarranted disruption into the progress of renewable energy projects. The encouragement for a report to prevent unwarranted disruption in the progress of renewable energy projects and the ADR is also on the premise that it is fast compared to court's adjudication which normally lasts longer.³⁵ But against this backdrop of the benefit of ADR's faster adjudication, comes the issue of arbitral award which often propels the losing party to appeal the award in the conventional court.

There are other international investment agreement and arbitration conventions³⁶ such as the New York Convention on the Recognition and Enforcement of Foreign Awards 1958 to which Nigeria is a party. This provides a framework for resolving disputes some of which also allow foreign investors to initiate arbitration proceedings against the host government as in the case of *Sunrise Power Transmission Company (nig) Ltd v. Federal Republic of Nigeria*.³⁷ In this case, the plaintiff/investor company's claim borders on the failure of the defendant to fulfill its obligation under a power purchase agreement for the \$95.86 million Mambilla hydroelectric power project. The case has been taken to the International Court of Arbitration administered by the International Chamber of Commerce.

5.2.3 Rural Electrification Agency

The Electricity Act 2023 established the Rural Electrification Agency³⁸ and assigned certain responsibilities to it one of which is the deployment of bio-energy technology for rural electrification³⁹ and to promote productive use of renewable energy that could improve access to electricity through renewable energy technology sources.⁴⁰ The Agency also has the power to expand the electricity grid and develop mini-grid. In recognition of the fact that there may be need for financial obligation under the agency, provision of rural electrification fund was made to provide support to the Agency.⁴¹

5.2.4 Nigerian Electricity Management Services Agency.

This Agency is the brain child of the Nigerian Electricity Act⁴² created after repealing the previously existing Nigerian Electricity Management Services Act⁴³. The agency was created to enforce standard of materials imported into the country pertaining to electricity. It is used to execute the enforcement in collaboration with the Standard Organization of Nigeria (SON) based on the fact that the functions of both establishments are substantially related.⁴⁴ Without compromising standard of imported

³⁵ 1958, (Nigeria ratified the convention in 1970)

³⁶ Nigeria ratified this Convention in 1965

³⁷ This case which came before the International Chambers of Commerce is about a breach of obligation undertaken under a power purchase agreement.

³⁸ Electricity Act 2023, Section 127

³⁹ Ibid Section 128 (vi)

⁴⁰ Ibid Section 128 (ii) (iv)

⁴¹ Section 147 (a) (i)

⁴² Electricity Act 2023, Section 172 (1)

⁴³ Enacted in 2015

⁴⁴ Electricity Act 2023, Section 176 (c)

electrical materials coupled with the aim of ensuring importation of energy efficient appliances, certain incentives are offered such as exemption from excise duty and sales tax, free custom duty for a period of up to two years on the importation of equipment and materials used in renewable energy and energy efficiency projects in accordance with the policy. Nigerian Renewable Energy and Energy Efficiency Policy is a policy document serving as the blueprint for the sustainable development, supply and utilization of renewable energy secured within the economy for both on-grid and off-grid energy solutions. Its further objective is to address the issue of Nigeria's challenge of inclusive access to modern and clean energy resources, improved energy security and climate objectives.

5.3 Energy Commission of Nigeria Act.

The Act established the Energy Commission of Nigeria charged with the responsibility to undertake research on the use of alternative energy.⁴⁵ Pursuant to this responsibility⁴⁶, the Commission developed the National Energy Policy as well as the Renewable Energy Master Plan (REMP) both of which have the objective to develop renewable energy resources with the further objective that REMP would push up generation of renewable energy resources by ten percent of Nigeria's electricity supply by the year 2025. There are other objectives assigned to it such as to prepare a periodic master plan, make power on the exploitation of new energy resources easier.

5.4 Nigerian Climate Change Act (NCCA)

The enactment of this Act was actualized in the year 2021 when the then president of the Federal Republic of Nigeria, Muhamadu Buhari signed the bill into law. The primary objective of the Act is to help propel Nigeria into reaching net-zero greenhouse gas emission target between 2025 and 2027. That this Act became as a reality was as a result of the President's declaration at COP26 in Glasgow, about Nigeria's commitment to energy transition plan to invest in renewable energy in line with the global shift towards a more sustainable and low-carbon future. In reality, the Nigerian Climate Change Act (NCCA) has become the framework for climate change actions and carbon budgeting in Nigeria. The Act also established the National Council of Climate Change. NCCA established the Nigerian Climate Change Commission (NCCC) to carry out the responsibility of ensuring an increase of renewable energy and to formulate a 5-year National Climate Change Action Plan, the purpose of which is to prescribe measures and mechanisms to enhance energy conservation, energy efficiency and renewable resource usage in industrial, commercial, transport, domestic and other areas. It also expresses concern of the necessity of the role played by green hydrogen as an emerging renewable energy source and qualifies it for adoption into Nigeria's energy transition plan.

5.5 Environmental Impact Assessment (EIA) Act⁴⁷

The Act provides the framework for ensuring that environmental impact assessments on projects likely to impact the environment are not carried out prior to potential impact investigation⁴⁸. Such projects included in the list that must undergo an EIA before being carried out mentioned renewable energy projects as one of them.⁴⁹ This is for the main purpose of making sure that renewable energy projects are subjected to environmental impact assessment and social impacts. The standard expected of the assessment is such that must ensure strict adherence of renewable energies being subjected to environmental sustainability which means that section 2(1) of the Act is a mandatory provision which must be met before a renewable energy project is allowed to commence.⁵⁰ All these measures are taken because of the likelihood of objections on grounds of a

⁴⁵Energy Commission of Nigeria Act, section 5

⁴⁶Federal Ministry of Power, *Renewable Electricity Policy Guideline*, Federal Republic of Nigeria 2015)22

⁴⁷Military Decree No. 8 of 1992

⁴⁸EIA, Section 13 (schedule to the Act.

⁴⁹Para 12 of the Mandatory Study Activities on the schedule to the Act.

⁵⁰Decree No. 8 of 1992.

possible release of greenhouse gas into the atmosphere from the project's activities. The EIA was enacted in 1992 by a Military Decree⁵¹ with the intention for the Act to serve as a safeguard for Nigerian environment in line with the objectives of the National Policy on Environment.⁵²

5.6 Tax Incentive

A levy imposed on person(s) including artificial personalities, executors, partnerships on their incomes, goods, services and properties is known as tax. Payment of tax is compulsory except if one is exempt from paying it.⁵³ There are conditions for exemption which are provided under the Act and only those who meet the conditions can take the benefit of the exemption provisions. As a result, a number of companies enjoy the exemption provisions by way of tax incentive granted them.⁵⁴

5.6.1 Value Added Tax Act

Value added tax is best explained as an indirect tax that is paid on taxable supplies of goods or services by a taxable person in the ordinary course of business.⁵⁵ In Nigeria, every person or company carrying on any business undertaking is expected to pay the tax except such a person or company is exempted. Certain goods and services including renewable energy equipment is exempted from VAT.⁵⁶ By necessary implication, power plants imported into the country should benefit from VAT at the port of entry.

5.6.2 Industrial Development (Income Tax Relief) Act.

Industrial Development (Income Tax Relief) Act⁵⁷ is one of the investment incentives available in Nigeria. It grants tax holidays to companies in the industries that meet the conditions of being designated pioneer industry. For it to be a pioneer industry, it must satisfy the federal executive council that no industry is carrying on in Nigeria on a scale suitable to the economic requirements of Nigeria, or at all or that there are favourable prospects to further development in Nigeria of that industry. Secondly, that it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria by declaring the industry to be a pioneer industry and any product of the industry a pioneer product⁵⁸

6. The Way forward

Nigerian policies, programmes and the legal incentives in place to drive renewable resources in Nigeria are not unexpected considering the enormous presence of these resources in the country and the role they can play to transform the economy as a green economy. However, it is important to learn from experience by scrutinizing the provisions of the existing legal framework in Nigeria with regard to incentivising renewable resources in order to stem the shortcomings in the law.

Taking the Nigeria feed-in tariff for example, the provision is not hidden that the feed-in tariff regulation is a creature of a mere regulation made by the Nigerian Electricity Regulatory Commission (NERC). Regulations have less force and potency than law. Investors are not easily attracted by such

⁵¹N. Echefu and E. Ekpofure, EIA in Nigeria: Regulatory Background and Procedural Framework: UNEP EIA Training Resources Manual, Case Study 7 Page 63.

⁵²L. Olatunji and 2 others [2001] Principles of Taxation in Nigeria 2nd Edition Osogbo, Mighty Baba Production.

⁵³J. Adebisi (2000) Companies Taxation in Nigeria, Lagos: JAA Nig. Ltd 2001 Personal Income Tax in Nigeria 4th edition Lagos: JAA Nig Ltd

⁵⁴G.D Maris, and 2 others, "Taxation in Finance Director's Handbook (5th edn.) Cited by C.B Nwankwo "Value Added Tax in Nigeria: An Overview of Notable Reforms and Implementations of the Finance Act 2019-2020" (2020 (13) (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)*, 149.

⁵⁵First Schedule of the Value Added Tax (Modification Order 2020).

⁵⁶Cap V-1 Laws of Federation of Nigeria 1996 as amended.

⁵⁷Cap C 21 Laws of the Federation of Nigeria 1996 as amended

⁵⁸O. Aigbovo and E Ogboka, "Electricity Power Sector Reform Act and the Development of Renewable Energy in Nigeria" [2016] (7) *Renewable Energy Law and Policy Review* 2026.

regulations because they usually do not have confidence in a regulation that is not part of the law. The source of creation of such regulation casts a shadow of uncertainty on it. The implication of such uncertainty is that it stands as a barrier to investors' confidence since it is not part of the law. If it is part of the law, it will not be possible to change the regulation whenever there is a change in the leadership of NERC. A feed-in tariff that has passed through detailed legislation is likely to provide greater investor confidence because the law may be more difficult to change than a policy that is a mere outcome of an executive branch or regulatory Agency formulation.

A target to green economy by any country is usually backed by a legal framework which can drive policies in that regard. The extant laws in Nigeria made just mere references to incentivizing renewable resources and which can only be traced through disparate enactments that have little or nothing to offer as far as incentivising renewable energy is concerned. The absence of an affirmative law dedicated to renewable resources is an indication that the several policies documented for the development of renewable resources are not driven by law. Law acts as a policy enabler when it aligns with the objective. The importance of law to drive policies has been highlighted by Freidman that legal systems are part of political, social and economic development, just as are educational systems and other areas of the culture. No major change occurs or is put into effect in a society which is not reflected in some kind of change in its laws.

Like the energy policies documented such as the Renewable Energy Master Plan (REMP) and other similar ones established by the Energy Commission of Nigeria Act, a lacuna has been created by the Act which shifted such responsibility to NERC instead of making the provision part of the Act. The ECN provided for alternative, new and renewable resources and made reference relating to research on the exploitation of new and alternative energy resources but this has been considered as insufficient for any significant change to the development of renewable resources in Nigeria. It is obvious from the foregoing that there is inadequate provision in the extant laws of Nigeria for renewable resource development as envisaged by the Act. This is linked to the powers of the Commission to develop renewable resources. Also of note is the fact of the failure to make any provision regarding guidelines on the use of renewable resources for power. This is no less important shortcoming of the Commission which had added to the need for a comprehensive legal framework dedicated to the exploitation and use of renewable resources in Nigeria.

7. Conclusion

Bearing in mind the various natural resources available in Nigeria, and the role which law can play in their development, one would expect that any law in that direction should be resource-specific. The practice would be a useful tool to ensure even development and utilization of all resources without relegating any to the background at the expense of carrying all of one's eggs in the same basket. The current practice of focusing too much attention on making laws that favour non-renewable resources more than renewable resources is not helpful to Nigeria's hope to achieve green economy. The discussion so far reveals that this concentration of the country's effort on running the economy majorly with non-renewable ones has not only stunted the development of renewable resources but also damaged the green economic policy of the country. Even with the beautiful policies documented regarding the ways and means for incentivising renewable resources, it still cannot bring green economy to Nigeria without a law to implement the policies. The remedy that can help to save this situation is to articulate a legal framework solely dedicated to incentivising renewable resources rather than allowing the law to be domiciled in disparate enactments that do not offer much in that regard.