



The Journal of Sustainable Development Law and Policy

Journal homepage: <https://www.ajol.info/index.php/jsdlp>

ISSN: 2467-8406
Online ISSN: 2467-8392
Volume: 16, Issue 2
Okoeguale, 2025

Constitutional Design in Nigeria: An Imperative for Eliminating Energy Poverty of Women

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Article Information:

Article Type:

Research Article

Manuscript Received:

8 February 2024

Final Revision Received:

26 September 2024

Accepted:

27 September 2024

Published Online

15 February 2025

Keywords:

Energy Transition, Gender Representation, Energy Poverty, Nigeria.

Traditional gender roles and cultural expectations in Nigeria push women to the front lines in the quest for energy but they remain sidelined at decision-making arenas concerning energy transition initiatives. A closer look at the composition of the policy-making and regulatory agencies of government in the energy sector reveals that 14% are women and 86% men. As a corollary energy transition laws and policies do not effectively reflect the energy needs of women in Nigeria. Consequently, women are not adequately enabled by the government to access clean-energy sources and are left with no option than to continue the indiscriminate use of biomass thereby risking their lives. Accordingly, the aim of realizing carbon-neutrality is increasingly difficult for Nigeria. An attempt to force a constitutional amendment which was aimed at creating reserved seats for women to increase representation of women in the National Assembly was stillborn. This paper seeks to proffer a solution to the problem of women's under-representation in the energy transition dialogue and, ultimately, the problem of poor access to clean-energy. Utilizing the doctrinal research methodology, this paper examines available literature including the Nigerian, Rwandan, and Zimbabwean Constitutions, and finds that a democratic constitutional design process that is well managed and given enough time to seep into the social, cultural and political life in Nigeria would lead to a more durable and democratic constitution which guarantees equitable representation and addresses the energy needs of women. The process adopted in Rwanda and Zimbabwe provides insight into constitutional drafting and affirmative action for women in governance.

Cite this article: Hilary Okeoguale (2025). Constitutional Design in Nigeria: An Imperative for Eliminating Energy Poverty of Women. The Journal of Sustainable Development, Law and Policy. Vol. 16:2.182-205. DOI: 10.4314/jsdlp.v16i2.9



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Publisher: Institute for Oil, Energy, Environment and Sustainable Development (OGES Institute), Afe Babalola University, Ado Ekiti, Nigeria.

1. INTRODUCTION

The deleterious effects of climate change impel rapid transitioning from traditional energy sources to efficient energy sources.¹ Thus, the international community is constantly developing plans for achieving targets that are geared towards reversing the effects of climate change.² For instance the Sustainable Development Goal 7 seeks to “ensure access to affordable, reliable, sustainable and modern energy for all.”³

Nigeria signed the United Nations Framework Convention on Climate Change in 1992, ratified in 1994⁴ and is therefore, bound by the commitment made therein.⁵ Accordingly, Nigeria is obliged to mobilize efforts in the direction of energy transition. Sequel to her international commitment, Nigeria enacted the Climate Change Act of 2021⁶ (the Act) and adopted the National Climate Change Policy

¹ Peter A. O’Connor, *Energy Transitions*, (vol. 10, Boston University 2010) 3, noting that “the challenges of climate change, limits on fossil fuel resources, and the prospects of development, it is reasonable to conclude that some other sort of energy transition must occur”; Anne L. Alstott, Anne C. Dailey & Douglas NeJaime, ‘Psychological Parenthood’ (2022) 106 *Minn L. Rev* 2363; World Economic Forum, ‘Energy Transition 101: Getting Back to the Basics for Transitioning to a Low-Carbon Economy,’ <www3.weforum.org/docs/WEF_Energy_Transition_101_2020.pdf> accessed 7 April 2024, stating that “the transition of the energy system towards low-carbon is driven by the need to address climate change”; United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 (UNFCCC), article 2 which states the objective of the convention to include “stabilization of greenhouse gas concentrations in the atmosphere...”

² UNFCCC, article 2, 3, 4; Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162 (Kyoto Protocol), article 2 (1) (a) (i) which requires state parties to “enhance energy efficiency in relevant sectors of the national economy.”

³ United Nations Department of Economic and Social Affairs, ‘Sustainable Development’ <<https://sdgs.un.org/2030agenda>> accessed 4 February 2024.

⁴ United Nations Climate Change, ‘Parties to the United Nations Framework Convention on Climate Change’ <<https://unfccc.int/process/parties-non-party-stake-holders/parties-convention-and-observer-states>> accessed 4 February 2024.

⁵ Vienna Convention on Law of Treaties, United Nations, Vienna Convention on the Law of Treaties, United Nations, Treaty Series, vol. 1155, p. 331, 23 May 1969, article 26, which states that “every treaty in force is binding and must be performed by parties in good faith.”

⁶ Climate Change Act, 2021, s. 1 which provides that Nigeria aims to achieve “low greenhouse gas emission by setting a target for the year 2050 - 2070 for the attainment of net-zero GHG emission, in line with Nigeria’s international climate change obligations...”

for Nigeria (2021 - 2030).⁷ By section 19 of the Act, the Ministry responsible for the environment is saddled with the responsibility of setting a carbon budget for Nigeria to keep the average increase in global temperature within 2°C and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels...⁸ The reality is that Nigeria is not meeting up with these statutory objectives.

Energy extracted from biomass for cooking is one of the major sources of Nigeria's greenhouse gas emissions which is 40 MtCO₂e⁹ and in achieving the objectives set in the Climate Change Act, the Energy Transition Plan in Nigeria is to mobilize users of biomass to move towards accessing their energy needs from cleaner sources.¹⁰ However, cooking gas is not affordable for most Nigerian women, leaving them energy poor.¹¹

In contributing to the discourse about energy transition, this paper argues that the under-representation of women in decision-making organs of government is contrary to Convention on the Elimination of Discrimination Against Women,¹² the spirit of the Constitution of the Federal Republic of Nigeria, 1999 and slows down the pace of transitioning to a clean energy economy in Nigeria.

It does so by reviewing the efforts and legal frameworks towards addressing gender injustice and promoting energy transition initiatives in Nigeria, which includes the National Gender Policy, Climate Change Act, Energy Transition Plan, relevant provisions in the Constitution of the Federal Republic of Nigeria, 1999 (CFRN),¹³ and failed attempts to amend the CFRN to include reserved seats for women. This paper argues that previous efforts made at ensuring gender parity have failed and that a carefully orchestrated constitutional design process is

⁷ National Climate Change Policy for Nigeria <https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISIED_2-JUNE-2021.pdf > accessed 4 February 2024.

⁸ Climate Change Act, 19 (1) (a).

⁹ Nigeria Energy Transition Plan, 'Nigeria's Pathway to Achieve Carbon Neutrality by 2060' <<https://energytransition.gov.ng/>> accessed 10 April 2024.

¹⁰ National Council on Climate Change, <<https://natccc.gov.ng/publications/TNCOCC-Handbook-Version-29-11-22.pdf>> accessed 10 April 2024.

¹¹ Agency Report, 'Residents Groan as the Price of Cooking Gas' Premium Times (Lagos, 8 February 2024) <<https://www.premiumtimesng.com/news/more-news/666667-residents-groan-as-cooking-gas-price-soars.html?tztc=1>> accessed 10 February 2024, noting "that many homes have shifted to other alternatives such as sawdust, firewood and charcoal as the price of cooking gas continues to rise..." See also Adama A. Abdullahi, 'An Analysis of the Role of Women in Curbing Energy Poverty in Nigeria' (2017) 10 JSDS 45, 46, noting that women experience energy poverty more than men.

¹² UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, vol. 1249, United Nations Treaty Series 13.

¹³ Constitution of the Federal Republic of Nigeria, 1999, s. 42.

imperative for increasing participation of women in governance, especially in the energy sector, which serves as a viable mechanism for addressing energy poverty of women.

Lessons are drawn from the Zimbabwean and Rwandan Constitutions to show examples of affirmative action in constitutions and the processes of constitutional design that aim at gender parity. The choice of Zimbabwe and Rwanda is informed by the fact that they are both African Countries and like Nigeria, are patriarchal¹⁴ where the burden of providing energy for the home is a woman's problem.¹⁵ The study explored the constitutional design processes that were adopted by both countries and teased out transferable lessons for Nigeria in the hope that if adopted, would increase participation of women in the energy sector and ameliorate energy poverty of women.

2. ENERGY TRANSITION IMPERATIVE

The global transition from dependence on fossil fuel to reliance on renewable energy source such as solar and hydro, has become obligatory given the deleterious effects of dependence on fossil fuel which includes deforestation,¹⁶ loss of biodiversity, aquatic life and farm lands, depletion of the ozone layer, rise in water level and increase in heat waves.¹⁷

Olawuyi and Pereira note that there is a global shift “from carbon intensive fossil fuels in order to address the problem of climate change, promote energy efficiency and foster the diversification of energy sources to include low carbon and renewable sources.”¹⁸ They note that the European Union is adopting strategies

¹⁴ Eghosa Osa Ekhatior, ‘Women and the Law in Nigeria: A Reappraisal,’ (2015) 16 *JIWS*, 285.

¹⁵ Abdullahi, op. Cit, 46.

¹⁶ Stephen Ndiboi and Dare Makinde, *Sustainable Fuelwood Project Management in Nigeria* (UNDP, 2020), 7, noting that Nigeria has the third highest rate of deforestation in the world and that deforestation is the highest source of GHG emission in Nigeria.

¹⁷ Talat S. Genc and Stephen Kosempel, ‘Energy Transition and the Economy: A Review Article’ <https://www.researchgate.net/publication/369516052_Energy_Transition_and_the_Economy_A_Review_Article> accessed 29 December 2023, noting that “[m]ost believe that global carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O) and fluorinated gasses (F-gasses)emissions need to be reduced to avoid more frequent and severe weather events, including heatwaves, devastating floods and droughts, risks to food and water security, population displacement, and loss of lives, jobs, and income.”

¹⁸ Damilola S. Olawuyi and Eduardo G. Pereira, ‘Introduction: Nature and Scope of the International Gas Market’ in Damilola S. Olawuyi and Eduardo G. Pereira (eds), *The*

for catalyzing a shift to sources of energy that emit less carbon.¹⁹ Genc and Kosempel also point out that the global transition to less-carbon emitting and renewable energy sources is real.²⁰ They note that the motivation is not only to decarbonize and reduce the debilitating effect of the energy industry on the climate, but to also “ensure energy security, reliability, access, affordability, and sustainability.”²¹

Thus, there are technological advancements, legal frameworks being adopted at both national and international levels,²² global targets being made and a host of other initiatives²³ that are geared towards accelerating a shift from reliance on carbon intensive energy sources to energy sources that are carbon free.²⁴ In Nigeria, however, the velocity of the movement is not impressive, in view of the fact that 70% of Nigerian women still rely on firewood for cooking²⁵ because they cannot afford cleaner energy sources (gas).²⁶

Women are mostly affected because the patriarchal nature of Nigerian society particularly in traditional settings puts them at the forefront of the quest for energy for domestic use.²⁷ HumAngle states that “[w]omen and girls are disproportionately affected by energy poverty, due to cultural dynamics and gender roles that contribute to inequality.”²⁸ Owing to the increasing cost of gas,

Palgrave Handbook of Natural Gas and Global Energy Transition (Springer Nature 2022) 5, noting that the European Union has set ultimatums for reducing greenhouse gas emissions in order to reverse the debilitating effect of climate change.

¹⁹ Ibid.

²⁰ Genc and Kosempel, “Energy Transition,” (n4) 1.

²¹ Ibid.

²² UNFCCC and Kyoto Protocol.

²³ UNFCCC, article 3 which encourages states to adopt precautionary measures to mitigate the effect of climate change.

²⁴ Ibid.

²⁵ Ndiboi and Makinde, Sustainable Fuelwood Project in Nigeria, (n3)12; Jyoti Parikh and Saudamini Sharma, ‘Mainstreaming Gender in Energy Policy, Integrated Research and Action for Development’ in Judith Gardam (eds) *A Role for International Law for Achieving Gender Aware Energy Policy Law as Change* (University of Adelaide Press 2002) 10

²⁶ Gas Outlook, ‘Rising Cooking Gas Prices Spur Rethink of Nigerian Household Fuel,’ April 10th 2024, <<https://gasoutlook.com/analysis/rising-cooking-gas-prices-spur-rethink-of-nigerian-household-fuels/>> stating that, “Cooking gas prices in Nigeria have surged, forcing low-income households to turn to less efficient and harmful alternatives like firewood.”

²⁷ Ekhatu, Op. Cit, 285.

²⁸ HumAngle, ‘Energy Poverty: Rural Women and the Curse of Firewood’ March, 2020,

an increasing number of women are reverting from the use of gas to biomass,²⁹ which is one of the major sources of carbon emission in Nigeria;³⁰ yet efforts to accelerate the realization of a carbon free economy do not have adequate representation of women even though they are vulnerable to health hazards and death for some.³¹ The former United Nations Secretary General, Ban Kimoon, acknowledged the dangers that arise from the use of biomass for cooking.³² It has also been reported that annually, up to 98, 000 women die globally due to the harmful effect of cooking with biomass.³³

Whereas women, typically play a major role in the energy-seeking enterprise, by harnessing energy that are carbon-intensive, they are, in Nigeria, sidelined in the energy transition conversation; their stake in generating energy for cooking (for subsistence and commercial enterprise) and heating in the homes have not attracted adequate policy directives and opportunities that would capture and mobilize women towards energy justice.

Abdullahi, in arguing that women are stakeholders in the energy industry, asserts that women are not only users but producers of energy and ought not to be ignored in the global movement towards clean energy.³⁴ Abdullahi argues that women, as the largest cohort of entrepreneurs, should be offered adequate opportunities to contribute to renewable energy projects.³⁵

<<https://humanglemedia.com/energy-poverty-rural-women-and-the-curse-of-fire-wood/>> accessed 3 February 2024.

²⁹ Ibid.

³⁰ Nigeria Energy Transition Plan < <https://energytransition.gov.ng/>> accessed 10 April 2024.

³¹ Sustainable Energy for All, A Vision Statement by Ban Kimoon Secretary-General of the United Nations (United Nations, 2011) 2, noting that fumes from biomass kill up to 2 million persons per year.

³² Ibid.

³³ Olanike Olugboji, 'Women in Nigeria should not have to Risk their Health to Feed others' <<https://time.com/4305412/nigeria-women-firewood-health-risks/>> accessed 3 February 2024.

³⁴ Abdullahi, Op. Cit, 46.

³⁵ Ibid.

Famewo and Uwala examined the pattern of energy generation and consumption of women in Nigeria and found that older women use biomass as their major source of energy for cooking even though it leads to the death of about 1.4 million persons every year (globally).³⁶ They also find that gas and electricity are cleaner sources of energy but not affordable, especially for older women in rural areas.³⁷

Eze, *et al*, observe that a significant amount of energy in Nigeria is consumed in households through cooking and since Nigeria is a highly patriarchal society where women are expected to take charge in the kitchen, women are major stakeholders in the energy production process.³⁸ According to them, 90% of rural dwellers use biomass for generating energy for cooking and the high level of illiteracy among women leads to a sustained increase in the use of biomass for cooking.³⁹ Famewo and Uwala's study confirms that literacy levels determine the choice of energy source among women.⁴⁰

Olarinde and Okoeguale have demonstrated that more women are energy poor and far behind the energy transition movement since they still depend on biomass for heating their homes, processing food and sustaining small enterprises such as restaurants, which exposes them to severe respiratory tract diseases.⁴¹ Cleaner sources of energy such as cooking gas is expensive and beyond the reach of women who remain energy poor.

Currently, there is little effort in place to make cooking gas available to women at affordable rates; for instance, gas that ought to be distributed is being flared in Nigeria on a daily basis.⁴² Whereas premium motor spirit has received trillions in

³⁶ Ayomide Famewo and Vincent Abimbola Uwala, 'Socio-Economic Impact of Rural Energy Poverty on Women and Students in Esa-Oke, Nigeria' (2022) (2) JSEM, 85.

³⁷ Ibid.

³⁸ Eze, C. N., Aduba, C. C., Arazu, V. A., and Ughamba, K. T., 'Sustainable Energy in Nigeria: An Integrated Women-Friendly Energy Supply Approach' (2021) 10 IJSEER 47 - 57.

³⁹ Ibid, 49.

⁴⁰ Famewo and Uwala, *op. Cit.*, 84 - 93.

⁴¹ Elisabeta Smaranda Olarinde and Hilary Okoeguale, 'Energy Transition and the Role of Women: Advancing Gender-Aware Transition in the Natural Gas Industry' in D. S. Olawuyi and E. G. Pereira (eds) *The Palgrave Book of Natural Gas and Global Energy Transition*, (Switzerland, Springer Nature 2022) 525 - 539; Eze, *et al*, *Op. Cit.*, 49, noting that the gap between demand and supply of energy and gender injustice all contribute to energy crises in Nigeria.

⁴² Omoniyi Alimi and John Gibson, 'The Impact of Gas Flaring on Child Health in Nigeria' <<https://blogs.worldbank.org/en/developmenttalk/impact-gas-flaring-child-health-nigeria#:~:text=Nigeria%20is%20one%20of%20the,been%20on%20the%20>

subsidy,⁴³ gas for cooking has not been subsidized nor adequate infrastructures put in place for storage and distribution⁴⁴ even though the government is aware that it is a huge factor in determining Nigeria's success at diminishing carbon emissions.⁴⁵ This one-sided policy direction might have been different if more women were participating in the decision-making process. Studies have shown that when women are adequately represented at decision-making arenas, the agenda change in favour of women.⁴⁶ If there was adequate representation of women in the energy sector in Nigeria, there is a likelihood that more attention would have been given to making cooking gas more affordable to women.

The Nigerian Upstream Petroleum Regulatory Commission⁴⁷ (NUPRC) is responsible for the technical and commercial regulation of the upstream petroleum sector.⁴⁸ The Commission is also charged with the responsibility of making rules for the proper maintenance of facilities used for the operation of natural gas treatment⁴⁹ and the prevention of gas flaring in Nigeria.⁵⁰ Of the eight members on its board, one is a woman.⁵¹

The National Petroleum Company Limited (NNPCL)⁵² formerly known as the Nigerian National Petroleum Corporation (NNPC) is a profit making company⁵³

economic%20impacts> accessed 10 April 2024, noting that Nigeria is one of the top seven gas-flaring countries in the world.

⁴³ Leon Usigbe, 'Nigeria Ends Oil Subsidy to Invest Savings in Infrastructure Development' <<https://www.un.org/africarenewal/magazine/august-2023/nigeria-ends-oil-subsidy-invest-savings-infrastructure-development>> accessed 10 April 2024.

⁴⁴ PWC, 'Assessing the Impact of Gas Flaring on the Nigerian Economy' <<https://www.pwc.com/ng/en/assets/pdf/gas-flaring-impact1.pdf>> accessed 10 April 2024.

⁴⁵ Nigeria, Energy Transition Plan, available at: <https://energytransition.gov.ng/>, last accessed on 10/4/2024.

⁴⁶ Sarah Childs, *New Labour's Women MPs: Women Representing Women* (London: Routledge, 2004)

⁴⁷ Petroleum Industry Act (PIA), 2021, s. 4 establishes the Nigerian Upstream Petroleum Regulatory Commission.

⁴⁸ PIA, s. 4 (3).

⁴⁹ PIA, s. 7 (e) (iii) and (iv).

⁵⁰ Ibid.

⁵¹ <https://www.nuprc.gov.ng/board/>

⁵² Petroleum Industry Act, 2021, s. 53, which establishes the Nigerian National Petroleum Company Limited; Obas Eseidesa, The Vanguard, "NNPCL Officially takes Over as FG Rests NNPC after 46 Years," available at: <https://www.vanguardngr.com/2023/02/nnpcl-officially-takes-over-as-fg-rests-nnpc-after-46-years/>

⁵³ PIA, s. 53 (7)

owned by the Federal Government of Nigeria.⁵⁴ It is responsible for promoting the domestic use of natural gas in Nigeria through the establishment of industries.⁵⁵ In November, 2023, eleven persons were appointed to the Management Board of the Nigerian NNPC and of the eleven appointed one is a woman.⁵⁶ In the senior management team, there are seven members of which one is a woman.⁵⁷

The executive arm of the national government inaugurated in May, 2023, has forty six ministers including eight women.⁵⁸ The 10th National Assembly that was inaugurated in 2023 has only 19 women,⁵⁹ but the 9th Assembly had 21 women which is indicative of retrogression in the area of women participation in governance.⁶⁰ As a corollary, government policies in the energy transition sector are not sufficiently beneficial to women⁶¹ and often lead to poor consideration of the energy needs of women.⁶²

⁵⁴ PIA, s. 53 (3)

⁵⁵ PIA, 2021, s. 64 (i), which charges the NNPC with the duty to “promote the domestic use of natural gas...”

⁵⁶ Premium Times, 27th November, 2023 “Tinubu Appoints NNPC Board Management,” <https://www.premiumtimesng.com/news/headlines/647001-tinubu-appoints-new-nnpc-board-management.html>, last accessed on 3/2/2024.

⁵⁷ NNPC Senior Management Team, available at: <https://nnpcgroup.com/who-we-are>, last accessed on 10/4/2024.

⁵⁸ Office of the Secretary to the Government of the Federation, ‘Ministries with tier Ministers - Cabinet Members’ <<https://www.osgf.gov.ng/new-media/gallery/>> accessed 10 April 2024.

⁵⁹ Adekunle Dada, ‘Full List of Female Law Makers in Nigeria’s 10th Assembly’ Legit (July 23 2023) <<https://www.legit.ng/politics/1545408-list-19-female-lawmakers-10th-national-assembly/#:~:text=Out%20of%20the%20over%20400%20federal%20lawmakers%20in,National%20Assembly%20in%20the%20Federal%20Capital%20Territory%20%28>> accessed on 3/2/2023.

⁶⁰ Policy and Legal Advocacy Centre, ‘Worrying Numbers for Women in 10th NASS (May 18 2023) <<https://placng.org/Legist/worrying-numbers-for-women-in-10th-nass/>> accessed 30 September 2024.

⁶¹ Olarinde and Okoeguale, op. Cit. 537.

⁶² Elizabeth Asiedu, et al, ‘The Effect of Women’s Representation in Parliament and the Passing of Gender Sensitive Policies’ American Economic Association, <https://www.aeaweb.org/conference/2018/preliminary/1875?q=eNqrVipOLS7OzM8LqSxIVbKqhnGvRjQMIXSUUstS80qAbCOIWh2lxOLi_GQgByhek1qUC2GJFZChTJzUyGssszUc pBRRQUFIGMMQECpthZcMAZOH1Y,> accessed 10 April 2024; Hassim, S., ‘The virtuous circle of Representation: Women in African parliaments’ in Bauer, G. and

Across the decision making organs of the principal agencies and arms of governments considered above, that is to say Federal Executive Council, National Assembly, NNPC, and the NUPRC women have an average of about 14% representation. This disparity reduces the chances that energy poverty of women would attract and effectively hold the attention of relevant government agencies, well enough to mobilize remedial action.

As noted above the NUPRC is charged with the responsibility of regulating and eliminating the flaring of gas, but it has not done enough to stop the flaring of gas⁶³ or channel such gas to women who need it the most. One would expect that the government would ensure and prioritize the installation of adequate infrastructures for the storage and distribution of gas to women who cannot afford clean energy at affordable rates.

Legal scholars have observed that disparities like this tend to shape institutional practices that eventually deepen and perpetuates social disorders and injustices.⁶⁴ Hassim argues along similar lines, noting that adequate participation of women could lead to fair social policies that favour and address the peculiar issues of women.⁶⁵ Presumably, if there were more women in government, the energy poverty of women would stand a stronger chance at being addressed and ultimately, realize the targets of rapid energy transition.

Olarinde and Okoeguale note that if women, who depend on energy to run their homes are ignored, achieving global targets for energy transition would be a mirage.⁶⁶ In order to achieve the global targets, they argue that it is imperative to align energy transition efforts with human rights standards which contemplates and advances the concerns of women in the energy transition enterprise. They argue that, “promoting and fulfilling the rights of women in the oil and gas industry could help re-direct the policies” in the industry to favour women. In other words, they encourage legal reforms that would propel women out of the

Britton, H. E. (eds), *Women in African Parliaments*, (Lynne Rienner Publishers, Inc 2006) 171.

⁶³ PWC, ‘Assessing the Impact of Gas Flaring on the Nigerian Economy’ <<https://www.pwc.com/ng/en/assets/pdf/gas-flaring-impact1.pdf>> accessed 10 April 2024.

⁶⁴ Susan H. Williams, ‘Introduction: Constitution and Difference: Ideology and Institutions’ in Susan H. Williams (ed) *Social Difference and Constitutionalism in Pan-Asia* (Cambridge, 2014) 1, acknowledging that identity difference is historically the engine for injustice and threatens social order. Also noting that decision-making power provided for in the constitution on the basis of gender representation, could give voice and increase the influence of the groups that were hitherto under-represented.

⁶⁵ Hassim Op. cit, 171.

⁶⁶ Ibid.

trap of energy poverty and reposition Nigeria towards attaining the Sustainable Development Goals.⁶⁷

Akanle also concurs with the foregoing line of reasoning. He argues that unless the nexus between gender and development is keenly observed and managed, achieving development would be difficult.⁶⁸ According to Akanle, “[r]ight from language use to affirmative actions, no gender should be kept hostage, and governance structures and legal regimes must have liberating effects if they are to lead to and sustain development.”⁶⁹

This paper responds to the need to mainstream human rights standards, particularly gender justice, into the energy transition enterprise and contemplates how the instrumentality of constitutional design could be harnessed to address the under-representation of women in the energy transition economy. It is based on the understanding that Constitutions could be utilized as a crucial instrument for affirmative action for women and increase the chances at achieving energy justice for all.

3. CONSTITUTIONAL SAFEGUARDS

Constitutions are the primary legal instruments for protecting human rights because they command national obedience⁷⁰ and are jealously guarded by the courts.⁷¹ For instance, section 1 of the Constitution of the Federal Republic of Nigeria (CFRN),⁷² provides that it is binding on all authorities and persons in the Federal Republic⁷³ and that the Constitution is supreme,⁷⁴ any law inconsistent

⁶⁷ Ibid, 537.

⁶⁸ Olayinka Akanle, ‘The Sociology of Gender Equality and Development in Democratizing Nigeria’ (2011) 9 (1) *The Nigerian Journal of Sociology and Anthropology* 21 - 35.

⁶⁹ Ibid, 23.

⁷⁰ Constitution of the Federal Republic of Nigeria, 1999 (hereinafter CFRN), s. 1.

⁷¹ Vijay Kuman Himanshu, ‘Supreme Court: Guardian of the Constitution,’ (2017) 6 (5) *International Journal of Innovative Research in Science, Engineering and Technology* 10094, noting that the Supreme Court is the guardian of the constitution, protector of individual rights and arbitrator in disputes between levels of government; Kim Lane Scheppele ‘Guardians of the Constitution: Constitutional Court President and the Struggle for the Rule of Law in Post-Soviet Europe’ (2006) 154 *University of Pennsylvania Law Review* 1758, referring to the Presidents of the apex courts in Russia and Hungary as “aggressive guardians” of the Constitution.

⁷² Constitution of the Federal Republic of Nigeria, 1999 (hereinafter CFRN), s. 1.

⁷³ CFRN, s. 1 (1).

with the provisions of the Constitution is invalid⁷⁵ to the extent of its inconsistency.⁷⁶ In *Kuti v. Attorney-General of the Federation*,⁷⁷ the Supreme Court held that human rights enshrined in the Constitution have equal force with the Constitution.⁷⁸

According to Suteu and Bell, the Constitution is a definitive legal instrument for interpreting the rights of citizens which women could anchor their rights on, in a bid to engender a culture that eschews discrimination against women.⁷⁹ They, therefore, propose that women may affix their rights in the Constitution in order to provide maximum protection for those rights.⁸⁰ In the same vein, section 46 of the CFRN provides that if a person anticipates that his/her rights have been, is being, or will be violated, s/he may approach a High Court in the State for legal redress.⁸¹

Apart from the enforceability of the bill of rights enshrined in the Constitution, the Court has declared that, in matters involving the rule of law, private citizens have the *locus standi* to institute an action which seeks to enforce provisions of the Constitution. In *Fawehinmi v. President of the Federal Republic of Nigeria*,⁸² the plaintiff complained that the President of the Federal Republic of Nigeria was paying some ministers in Dollars (which is not a legal tender in Nigeria), an amount more than what the law prescribes. The defence contended that the claimant, who was a private legal practitioner, lacked *locus standi*. The Court accepted the respondent's line of argument to the effect that individuals could enforce the provisions of the Constitution when it involved the rule of law. The Supreme Court took cognizance of the fact that Attorneys-General on whom the responsibility of commencing actions on behalf of the people ordinarily laid, usually owing to practical impediments, would not institute those actions that potentially offend their appointors. In other words, human rights actions against the State may never be instituted by the Attorneys-General, who are more conscious of satisfying the interest of their appointors over upholding the rule of law. The court concurred with the view that individuals may enforce provisions of the Constitution when it came to issues of rule of law and human rights. Furthermore, the Fundamental Rights Enforcement Procedure Rules, 2009

⁷⁴ Ibid.

⁷⁵ Ibid, s. 1 (3).

⁷⁶ Ibid.

⁷⁷ (1985) 2 NWLR (Pt. 6) 211.

⁷⁸ Ibid.

⁷⁹ Silvia Suteu and Christine Bell, Women Constitution-making and Peace Processes, (UN Women 2018) 1.

⁸⁰ Ibid.

⁸¹ CFRN, s. 46.

⁸² (2007) 14 NWLR (pt. 1054) 275.

(FREPR) provides that in enforcing human rights, objections pertaining to *locus standi* shall not be entertained in court.

The combined effect of the *Fawehinmi's* case and the FREPR is that the frontiers of justice has been broadened to accommodate individual petitioners, non-governmental agencies and public interest litigation which could produce a far reaching effect for promoting and protecting the rights of women. It can, therefore, be said that the Constitution is a viable mechanism for upholding the rights of women.

4. LIMITS OF THE CONSTITUTIONAL PROVISION

Constitutions may be used for institutionalizing a culture of increased political and democratic participation for women in the energy transition economy. However, the Nigerian Constitution was designed to prioritize the preservation of the Nigerian State as an indivisible and indissoluble country.⁸³ Several provisions of the CFRN confirm that the drafters were more concerned about keeping Nigeria united, especially because the country had endured a civil war which threatened to tear the country apart. The dominant concentration of power at the centre,⁸⁴ whereby the security architecture⁸⁵ and major source of revenue are firmly established at the federal level,⁸⁶ confirms that the framers of the CFRN were acutely mindful of the need to preserve the corporate entity of the country. Nwachukwu, for instance, observes that Nigeria adopted the Presidential system of government similar to the American model as solution to the perennial tension that tended to tear the country apart.⁸⁷

Preoccupied with the passion to keep Nigeria indivisible and indissoluble, the drafters appears to have paid less attention to socio-economic and cultural rights and necessities such as energy. Chapter IV of the CFRN which provides for the

⁸³ CFRN, s. 2.

⁸⁴ Okpevra, U.B. 'A Critique of Nigerian Federalism and Need for Restructuring Towards Achieving Vision 2030' (2021) 14 Fudan J. Hum. Soc. Sci. 265–284.

⁸⁵ CFRN, s. 214 which establishes a single police force for the entire country and s. 4 which provides that only the National Assembly has the exclusive authority to legislate with respect to the police.

⁸⁶ *Ibid.*, s. 44 (3) which provides that ownership of crude oil and other mineral resources which are the mainstay of the Nigerian economy belong to the Federal Government.

⁸⁷ Levi A. Nwachukwu, 'The United States and Nigeria - 1960 - 1987: Anatomy of a Pragmatic Relationship' (1998) 28 JAS 575-6, noting that Nigeria had some similarities with the United States one of which is that both countries experienced a civil war.

fundamental rights of citizens appears to be minimal and inadequate in the context of ramping up women's participation in the energy transition movement.

Section 42 of the CFRN condemns discrimination on account of sex and has been applied by courts to uphold the rights of women who have suffered from discriminatory practice. For instance in *Kwara State Judicial Service Commission & ors v. Miss Yetunde Zainab Tolani*,⁸⁸ a woman was dismissed from the civil service because her marital status was disputed and she could not provide adequate explanation in response to the petition challenging her status. She challenged her dismissal and hinged one of her claims on her right to freedom from discrimination. The trial and appellate courts upheld her right and ruled that she should be reinstated. Other cases that have upheld the rights of women, based on section 42 of the CFRN include: *Onwo v. Oko*,⁸⁹ and *Mojekwu v. Mojekwu*.⁹⁰

In *Onwo v. Oko*,⁹¹ the petitioner, a woman complained about the widowhood rites she was made to go through. She objected to the practices as inconsistent with her christian faith and a violation of her rights to privacy and freedom from discrimination. The court reasoned with her and granted judgement in her favour. Similarly, in *Mojekwu v. Mojekwu*,⁹² a female petitioner challenged customary practices that denied her the right to inherit her father's properties on the ground that it was discriminatory and a violation of her rights. The court not only agreed that the customary practice was against her rights, it held that the practice was repugnant to natural justice, equity and good conscience. These cases represent the attitude of Nigerian courts regarding discrimination against women.

Section 42 protects women from discrimination but does not mandate affirmative action to advance women's equal participation in governance. The constitutional provision for addressing gender discrimination is a negative right which emphasizes the duty of the government and individuals to refrain from and protect women against discriminatory practices. In other words, it requires minimal duty on the part of the government. Thus, the responsibility of government is engaged, in this regard, only when an aggrieved person approaches the court for redress. Accordingly, the obligation of state to carry out positive actions that would advance the interest of women, such as ensure adequate representation, given the provisions of the CFRN, is unclear, controversial and easily avoidable.

⁸⁸ (2019) LLJR-SC.

⁸⁹ (1996) 6 NWLR (pt. 456) 584.

⁹⁰ (1997) 7 NWLR (pt 512) 288.

⁹¹ (1996) 6 NWLR (pt. 456) 584

⁹² (1997) 7 NWLR (pt 512) 288.

Some sections of the CFRN allude to the duty of government to promote equality and social justice, which could be explored to support the argument for equal representation of women. For instance, section 16 (1) (b) provides that “[t]he state shall... control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.” Furthermore, section 17 (3) (a) of the CFRN provides that the “state shall direct its policy towards ensuring that all citizens, without discrimination against any group whatsoever, have the opportunity for securing adequate means of livelihood...”⁹³ However, section 6 (6) (c) of the CFRN provides that directive principles of state policy cannot be enforced in a court of law.⁹⁴ Accordingly, the only enforceable provision in the CFRN that protect the rights of women against discrimination, or better put, the only justiciable section of the CFRN for promoting adequate participation in the energy industry is section 42 of the CFRN,⁹⁵ which is inadequate in its tenor and effect. It can, therefore, be argued that CFRN does not mandate affirmative action on the part of the government and as such, inadequate for addressing energy poverty given the fact that women are not well represented in quarters that matter.

5. NEED FOR AFFIRMATIVE ACTION

As noted earlier, Akanle already pointed out the importance of affirmative action in Nigeria with respect to women.⁹⁶ He argues that women are culturally subjugated and often assigned the role of staying close to the home to provide warmth and food. This cultural demand places women at the forefront of the energy exploration venture with heavy burdens. According to Akanle, “[g]ender norms allocate specific tasks, roles and entitlement and responsibilities to male and female. For instance, women might be expected to take on caring or domestic duties and remain close to home...”⁹⁷

In order to mainstream gender justice in view of pervasive cultural sensibilities that trap women around the home, and away from decision making tables, the need has arisen to ramp up the quality of protection offered to women in the Nigerian Constitution. At this point, affirmative action is key and well envisaged by article 4 of the Convention on the Elimination of All Forms of Discrimination

⁹³ CFRN, s. 17 (3) (a).

⁹⁴ *Ibid*, s. 6 (6) (c).

⁹⁵ *Ibid*, s. 46 (1), stating that any person who anticipates that his/her rights is going to be violated, has been violated or being violated, may approach a High Court for redress.

⁹⁶ Akanle, *op. Cit.* 21-35.

⁹⁷ *Ibid*, 27

Against Women (CEDAW),⁹⁸ which in paragraph 2, requires state parties to take adequate legislative measures to protect the interest of women.⁹⁹ Legislative steps may include incorporating measures to advance the rights of women in the constitution. This imperative is so critical that the CEDAW pre-empts arguments of bias for women by stating in article 4 that, “[a]doption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention...”¹⁰⁰

In 2006, Nigeria adopted a National Gender Policy (NGP) which sought to mainstream gender equality into the sphere of governance across the country.¹⁰¹ The policy’s goal was to

entrench the practice of gender mainstreaming within the Nigerian policy space at both public and private sectors by promoting the understanding of its rationale through the promotion of a unified gender mainstreaming process at all levels of policy and programming.¹⁰²

The policy outlines the roles of various government ministries, departments and agencies in promoting women’s inclusion in governance. The NGP acknowledged the importance of national orientation about gender justice and requires training of public servants on the need to mainstream gender parity initiatives into the affairs of government. Community based committees were to be established to drive the campaign for gender justice. The objectives of the policy were to:

- A. Institutionalise the process and practice of gender mainstreaming from a Nigerian-specific perspective by 2008; and
- B. Promote accessibility of all organisations and groups to resources and capacity building processes for gender mainstreaming.¹⁰³

Despite the policy that has been adopted at all levels of government in Nigeria, the results are yet to be seen as gender injustice continues to be prevalent even in

⁹⁸ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, vol. 1249, United Nations Treaty Series 13.

⁹⁹ Ibid, article 2.

¹⁰⁰ Ibid, article 4.

¹⁰¹ Federal Ministry of Women Affairs and Social Development, ‘National Gender Policy’ (Federal Republic of Nigeria 2006) 55.

¹⁰² Ibid.

¹⁰³ Ibid.

the energy sector in the sense that the principal ministries involved in the energy sector in Nigeria have very low women representation and as such, initiatives championed by them have not recognized the energy needs of women.

In 2022, the National Assembly threw out a Bill that was meant to amend the Constitution to create special seats for women at the National Assembly and State Houses of Assembly.¹⁰⁴ The Bill sought to create one additional seat in the Senate for each State of the Federation and the Federal Capital Territory, to be occupied by a woman, thereby increasing the number of Senators from 109 to 146. Similarly, additional seats were sought to be created in the House of Representatives, such that each State would have two women elected to the House of Representatives bringing the total number from 360 to 434.¹⁰⁵ The Bill proposed that women were to be elected directly without having to belong to political parties. If the Bill had sailed through, 111 seats would have been created for women in the legislative chambers and strengthened the participation of women in governance.

When asked, one of the Senators stated that the “lobbying and strategic advocacy for all the gender bill were poorly done and at the last minute.”¹⁰⁶ They also argued that the rejection of the Bill were symptomatic of a social orientation. It was noted that, “it was not the senators and the representatives that did the job; it was the instruction from their various constituents.”¹⁰⁷ In the consideration and rejection of the Bill, there were unseen forces in action which might have included cultural and religious sentiments, political considerations and sheer bias against females.

Obviously, the cultural sensibilities that were noted in the NGP of 2006 remain entrenched in Nigerian society. Tackling the scale and depth of cultural stereotypes would require comprehensive and strategic advocacy over a period of time. A narrow focus on increasing the number of women in policy making organs of government could have a boomerang effect; other aspects of the Constitution would have to be adjusted to ameliorate bias and accommodate the scale of reform needed to increase participation of women. For instance,

¹⁰⁴ NAN ‘FEC Approves Revised National Gender Policy’ *The Guardian* (March 2, 2022) <<https://guardian.ng/news/fec-approves-revised-national-gender-policy/>> accessed 10 February 2024.

¹⁰⁵ Policy and Legal Advocacy Centre, ‘Review of Relevant Information on Nigeria’s Democracy’ (PLAC, 2021) <<https://placng.org/i/wp-content/uploads/2021/09/Special-Seats-for-Women-in-the-Nigerian-Legislature.pdf>> accessed 10 February 2024.

¹⁰⁶ John Akubo, Ijeoma Thomas-Odia, and Obinna Nwaoku, ‘Constitution Amendment: Why Gender Bill Failed’ *The Guardian* <<https://guardian.ng/news/constitution-amendment-why-gender-bills-failed/>> accessed 3 February 2024.

¹⁰⁷ *Ibid.*

prioritizing quality education would have a ripple effect that would create room for increased women's participation in governance. It is arguable that when literacy level among Nigerians increases, the proposition of ramping-up women participation in governance would meet minimal resistance because education plays a significant role in managing stereotypes that support patriarchy in traditional settings.

The impotence of all the measures that have been previously adopted and proved abortive further accentuates the need to focus on a properly managed constitutional design process. Achieving gender justice in the energy transition conversation would require a meticulously orchestrated constitutional design process which would establish clear roles for women in the governance structure of the energy transition enterprise. For instance, the Constitution could be more explicit in defining and affirming roles for women for closing the deficit in the energy governance structure.

In Zimbabwe women have quotas assigned to them in the legislature. Article 124 (1) (b) of the Constitution provides that the National Assembly shall consist of “an additional sixty women members, six from each of the provinces into which Zimbabwe is divided...” This provision was meant to safeguard and promote the interest of women in Zimbabwe.

Article 76 of the Constitution of the Republic of Rwanda provides that the Chamber of Deputies, shall be made up of eighty (80) members out of which twenty-four (24) shall be women

“that is : two from each Province and the City of Kigali. These shall be elected by a joint assembly composed of members of the respective District, Municipality, Town or Kigali City Councils and members of the Executive Committees of women's organizations at the Province, Kigali City, District, Municipalities, Towns and Sector levels.”¹⁰⁸

Furthermore the Senate in Rwanda has seats allotted to women only. Article 82 of the Rwanda Constitution stipulates that “[t]he Senate shall be composed of twenty six (26) members serving for a term of eight years (8) and at least thirty per cent (30 %) of whom are women.”¹⁰⁹ The Rwandan Constitution has seats reserved for women in both the Senate and the chamber of Deputies.

The affirmative provisions in the Zimbabwean and Rwandan Constitutions are very much in tandem with the provisions of the CEDAW which encourages states

¹⁰⁸ The Constitution of the Republic of Rwanda, 2003, Article. 76.

¹⁰⁹ Ibid, article 82.

to take out temporary special measures to address gender disparities in their jurisdictions. These constitutional thresholds have inadvertently increased the rankings of the countries concerned in the women participation index in the global lens. Rwanda is the first country in the world to have more female parliamentarians; 61.3% in the Chamber of Deputies and 37.4% in the Senate.¹¹⁰ In Zimbabwe, women occupy 28.85% of the seats in parliament.¹¹¹

It is arguable that literacy rate may have an effect on the acceptability of women at decision making institutions. Zimbabwe (ranking 8th) and Rwanda (ranking 28th) are ahead of Nigeria (ranking 34th) in the adult literacy index in Africa.¹¹² Adult literacy is arguably a factor in determining the acceptance/resistance levels of affirmative actions for women. This is because education is believed to refine and minimize bias in individuals. Thus, mainstreaming gender-aware initiatives into the Constitution would require a holistic approach to constitutional reforms.

6. CONSTITUTIONAL DESIGN

Constitutional design refers to the conscious and democratic process of drafting a constitution, with the aim of constructing and distributing power in an equitable way that reflects the values of the people. Constitutional design is done with a view to achieving peace, reconciliation, stability and democratic transition.¹¹³ Accordingly, one crucial part of constitutional design is “the framing of state structures.”¹¹⁴

It is fundamental to a constitutional design process to identify and operationalize “democratic structures that would generate high-quality governance in a democracy.”¹¹⁵ Those structures include institutions such as those within the arms of government, principles such as popular sovereignty and the rights of

¹¹⁰ Parliament, Women Representation, <<https://www.parliament.gov.rw/women-representation>> accessed 3 February 2024.

¹¹¹ IPU Parline, ‘Zimbabwe- National Assembly’ < https://data.ipu.org/node/193/data-on-women?chamber_id=13560> accessed 3 February 2024.

¹¹² <https://www.indexmundi.com/facts/indicators/SE.ADT.LITR.ZS/rankings/africa>, last accessed on 3/2/2024.

¹¹³ Markus Bockenforde, *A Practical Guide to Constitution Building: The Design of the Legislature* (International Institute for Democracy and Electoral Assistance 2011) 7, noting that, “Constitution builders are expected to design a draft model of a constitution that provides peace, stability, reconciliation and (often) a democratic transition as well as capable governments that are effective and do not abuse their powers.”

¹¹⁴ *Ibid*, 3.

¹¹⁵ Zim Nwokora, ‘Constitutional Design for Dynamic Democracies: A Framework for Analysis’ (2022) 20 Iss. 2 *International Journal of Constitutional Law*, 580–610.

individuals within the political unit under consideration. The process of constitutional design contemplates the establishment, mobilization and stabilization of democratic structures and conflict resolution mechanisms. It can be utilized to address the problem of under-representation of women in the energy industry in Nigeria. The process often confronts the challenge of drafting a constitution that would stand the test of time.¹¹⁶

Rwanda followed a constitutional design process that was democratic in coming up with the 2003 Constitution. It started with the establishment of a Constitutional Commission with a three-year mandate to drive the constitutional drafting process which had to be participatory and grounded in the aspirations of the Rwandan people.¹¹⁷ The Commission was charged to:

- a. Train, consult and sensitize the people on the process of constitution making; prepare and validate the draft bill;
- b. Organise a referendum on the text when approved by parliament, and,
- c. Harmonise all laws in the new constitution.

The Constitution, which is widely celebrated as one which truly reflects the desires and aspirations of Rwandans,¹¹⁸ was adopted in a Constitutional referendum in 2003.

One of the benefits of women participation in governance in Rwanda is that policies are being implemented that carry women along in shifting to clean energy sources. Rwanda's Green Growth and Climate Resilience Strategy is currently being implemented through multiple prongs. UNDP and HomeBiogas are working assiduously to help families move to cleaner sources of energy by using anaerobic digestion. "HomeBiogas turns organic waste into sustainable cooking gas and bio-fertilizer, which can be used for cooking, and powering small electrical generators."¹¹⁹ Furthermore, the Rwanda Energy Group (REG) is carrying out a country-wide campaign on the need for women to divert to cleaner

¹¹⁶ Ibid, 581-2.

¹¹⁷ IDEA, 'Constitution of Rwanda,' <<https://constitutionnet.org/country/rwanda>> accessed 4 February 2024.

¹¹⁸ Ibid.

¹¹⁹ UNDP, 'Fueling Change in Rwanda' <<https://www.undp.org/stories/fueling-change-rwanda>> accessed 4 February 2024.

sources of energy and they aim to cut down the use of biomass for cooking by 42% in 2024.¹²⁰

The process of making the Zimbabwean Constitution was also comprehensive, democratic and participatory. It involved five stages which included the preparatory, consultation, drafting, second all stakeholders conference and referendum stages.¹²¹ The process allowed people to participate and have inputs into how they wanted the government structured. The comprehensive approach to constitutional reforms also allowed Zimbabweans to stay abreast with the critical issues all through the constitution making process.

Women's participation in the energy transition process is enabled by policies, in addition to the constitutional law provisions. Recognizing the major role that women play in the energy sector, the Zimbabwean environmental policies which seeks to mobilize stakeholders for energy transition, creates specific roles for women.¹²² The policies charge women with the responsibility of protecting the environment.¹²³ Women play a central role in critical adaptation strategies adopted by government which evaluate vulnerability of the environment and find key adaption strategies for herders and small farmers.¹²⁴

The Nigerian Constitution on the other hand is heavily laden with features that make gender parity in governance difficult to achieve, one of which is the over-concentration of power in the Federal Government of Nigeria.¹²⁵ Over concentration of power and resources in the Federal Government, where the Exclusive Legislative List contains all the key institutions in the energy sector, makes it difficult to cultivate and disseminate the culture of gender parity because

¹²⁰ REG, 'Improved Cooking Technologies to Reduce the Use of Firewood in Households by 42%' <<https://www.reg.rw/media-center/news-details/news/improved-cooking-technologies-to-reduce-the-use-of-firewood-in-households-by-42/>> accessed on 4/2/2024.

¹²¹ Gwinyayi Dzinesa, *Zimbabwe's Constitutional Reform Process: Prospects and Challenges* (Institute for Justice and Reconciliation 2012) 6.

¹²² Stephen Khan, 'Zimbabwean Study Challenges the Idea that Women are Inherently Close to Nature' *The Conversation* <<https://theconversation.com/zimbabwean-study-challenges-the-idea-that-women-are-inherently-close-to-nature-186767>> accessed 4 February 2024.

¹²³ Ibid.

¹²⁴ Donald Chimanihire, *Women and Climate Change Adaptation in Zimbabwe* in *World Social Sciencw Report* (UNESCO 2013) 6.

¹²⁵ CFRN, s. 4.

of the lack of proximity between decision makers and beneficiaries of government policies.¹²⁶

For instance, poor access to clean energy is a problem that is more prevalent at the grassroots but the institutions¹²⁷ of government that are competent to address the problem are domiciled at the Federal Capital Territory and regulated by the Federal legislature exclusively.¹²⁸ Similarly, the bill of rights and judicial mechanisms for enforcing rights are contained in the CFRN of which only the National Assembly has the power to amend.¹²⁹ Accordingly, the need to modify the bill of rights in order to respond to the energy needs of women, especially those at the grassroots, does not easily acquire traction as quickly as it should; consequently, women endure the hardships arising from policy incoherence longer than necessary. Furthermore, the Nigerian Constitution does not have such provisions that could compel affirmative action for women and as such creates opportunities for under-representation of women in decision-making organs.

Having women at decision-making arenas is fair, in tandem with democratic principles of equality¹³⁰ and participation, and a suitable way to advance the interests of women in public fora.¹³¹ Women have a better perspective, than men, about peculiar problems that women face like providing energy for the home and are in a better position to determine what compromises are acceptable for women.¹³²

Philips argues that the presence of women in deliberative assemblies serves to protect their interests better not only in the immediate but as a continuous process.¹³³ Thus, the presence of women in the legislature as a way of fulfilling an

¹²⁶ Williams, *op. cit.* (n. 62), 18 - 20.

¹²⁷ NNPC and National Assembly are located and operate at the Federal Capital Territory, Abuja.

¹²⁸ CFRN, 1999, s. 4 (1-3).

¹²⁹ *Ibid.*

¹³⁰ Sarah Childs, 'In Their Own Words: New Labour Women MPs and the Substantive Representation of Women' (2001) 3 (2) *British Journal of Politics & International Relations* 174.

¹³¹ Williams, *op. cit.* (n. 36) 1, 18; Sarah Childs, 'Hitting the Target: Are Labour Women MPs "Acting For" Women?' (2002) 55 *Parliamentary Affairs* 143-53; Sarah Childs, *New Labour's Women MPs: Women Representing Women* (London: Routledge, 2004); Mercedes Mateo Diaz, *Representing Women? Female Legislators in West European Parliaments* (ECPR Press, Colchester 2005).

¹³² Anne Philips, *The Politics of Presence: The Political Representation of Gender, Ethnicity and Race* (Oxford University Press 1998) 4.

¹³³ *Ibid.*

aspect of representation is critical for adequate response to the peculiar plights of women¹³⁴ which in this context is energy poverty of women. McKay argues that the presence of women in the legislature often stimulate a change in priorities in such a way that the interests of women are captured and addressed.¹³⁵

Conversely, scholars have advanced the view that descriptive representation of women in parliament does not always produce substantive outcomes for women.¹³⁶ Studies have shown that the question whether proportional representation lead to substantive outcome is complex and far from linear¹³⁷ because, the translation of proportional representation to substantive outcomes depend on other factors including the nature of support women have in the executive branch and the robustness of the feminist movement within the country.¹³⁸ If the legislature enact laws, they often depend on the executive to implement those laws. Accordingly, if the executive is averse to certain policies, they possess the resources to scuttle those policies, especially in presidential systems that require the assent of the President to enact laws.

The potential for executive powers to truncate laws made by a women-majority legislature also responds to the argument that more representation for women does not translate to substantive results. Furthermore, it is arguable that descriptive representation of women in parliament is the starting point in making gender-aware policies in a society that has long been dominated and structured by men.¹³⁹

The presence of women may not automatically change the old order overnight. It will take some time to undo the structures that is inherently patriarchal. Furthermore, the legislature does not function in isolation; for increased participation of women in governance to have effect, other institutions of government would have to cooperate.

¹³⁴ H. Pitkin, *The Concept of Representation*, (Berkeley 1969) 233.

¹³⁵ Fiona McKay, 'The Zero Tolerance Campaign: Setting the Agenda' in Joni Lovenduski and Pippa Norris (eds) *Women in Politics* (Oxford University Press 1996) 208.

¹³⁶ Claire Devlin and Robert Elgie, 'The Effect of Increased Women's Representation in Parliament: The Case of Rwanda' (2008) 61 (2) *Parliamentary Affairs* 237.

¹³⁷ Celina Antonellis, 'Women In Government As A Predictor Of Human Development: An Analysis of Descriptive Representation And Substantive Outcomes' (2022) 43 *U Pa J Int'l L* 1037, 1040.

¹³⁸ S. Meintjes, 'The Politics of Engagement: Women Transforming the Policy process— Domestic Violence Legislation in South Africa' in A.M. Goetz and S. Hassim (eds), *No Shortcuts to Power: African Women in Politics and Policy Making*, (Zed Books, 2003) 140–159

¹³⁹ *Ibid*, stating that having women present in national legislatures does matter, but they must overcome numerous obstacles for their election to translate into outcomes.

7. CONCLUSION

Considering the role that women play in the energy sector, in heating millions of Nigerian homes and providing nourishment therein, it is counter-productive for energy transition dialogues to exclude women. Yet, the Nigerian energy transition initiatives are not sufficiently inclusive and the effect is that women are sinking deeper into energy poverty and not much progress is being made in the direction of achieving sustainable development. Unfortunately, the legal frameworks that have been put in place in Nigeria are inadequate to resolve the problem because they do not provide clear guarantees for promoting effective participation of women in key institutions. The effort to create special or reserved seats for women at the National Assembly was unsuccessful.

The way forward is to commence a constitutional design process that is well managed and democratic. For Nigeria to address the deep-seated problems of gender injustice, energy poverty and associated problems, it must consider not just constitutional amendments which had been attempted and failed, but a constitutional design process that is all-inclusive and contains special measures to diminish the deficit in women's participation in governance. Nigeria can draw lessons from Rwanda and Zimbabwe in drafting a new constitution that is gender-aware and an antidote to energy poverty of women. The process of drafting a new constitution should involve effective sensitization and mobilization of the populace, wide consultation at grass root levels, participation of key stakeholders and inclusion of experienced and skillful constitutional drafters.