



AN APPRAISAL OF THE RIGHT OF ELECTRICITY CONSUMERS UNDER THE ELECTRICITY ACT IN NIGERIA

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Abstract

Electricity is an important component of national development. The contribution of the electricity sector to national and economic development of Nigeria cannot be over-emphasized. However, spite of the relevance of the sector, the right to electricity is however not internationally nor domestically recognized. In Nigeria, the right to electricity is not constitutionally¹ nor statutorily enshrined in the Constitution nor the Electricity Act (EA),² thus, in spite series of reforms that led to liberalization of the industry, consumers of electricity in the country continued to suffer setback as regard adequate protection of their right to affordable, accessible efficient electricity supply as provided for in the Consumer Protection Regulation(CPR).³ The rampant complaint of over-billing, arbitrary disconnection, low energy supply and many more are still very much alive in the country. It is in view of this development that this paper is set to appraise the right of electricity consumers in the country with the view to determine consumer protection in the industry. The paper recommended that the Constitution of Nigeria be amended to provide for electricity right in Chapter IV as did other important rights. The work deployed the analytical research in achieving the objective of this research.

Keywords: Electricity, Consumer, Protection and Supply.

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¹ Constitution of the Federal Republic of Nigeria, 1999(As Amended).

² Electricity Act, 2023.

³ Consumer Protection Regulation(CPR), 2023.

INTRODUCTION

The growth and development of most national and progressive economies in the world is attributed to the significant role play by the energy industry.⁴The energy industry, otherwise known as the electricity sector is a strategically viable hub that is integral to the economic fortune of most progressive countries and often considered the nucleus or cornerstone of national development. The energy industry has direct link to all sectors of the economy which ranges from education, healthcare, telecommunications, transportation, commerce, security, household, aviation, shipping and many more. It will therefore be difficult for any progressive nation to attend economic and social development without a viable and functional energy industry.

The electricity industry in Nigeria has undergone series of reforms since its inception. These reforms had led to the successful liberalization of the industry from a wholly government-owned in terms of generation, transmission and distribution to a private driven ventures that witnessed the activities of Genco, Tranco and Disco with the view to guarantees access to affordable and reliable energy to Nigerians. The legal framework which has equally evolved over the years has established the National Electricity Regulatory Commission (NERC) and saddled the Commission with the power to superintend over the affairs of the industry and this extent to licensing and protection of consumers of electricity services in the country. In this respect, the Commission promulgated policies that clearly outline the rights and obligations of Discos, consumers of electricity services and consumer complaint resolution mechanisms.

Irrespective of the power of NERC to protect the right of electricity consumers in the country, it has been observed that the electricity consumers in Nigeria are the most short-changed. There have been incessant cases of over-billing, arbitrary disconnection without due process, low energy supply due to faulty equipment's and lack of awareness or public enlightenments on the rights of consumers of electricity services as outline in policy documents of the Commission. It was also discovered that the legal framework for electricity in the country did not expressly recognize the right to electricity which is consistent with many international

⁴ Obinna Ubani and Others, 'House hold Electricity Consumption Determinants in Major Nigeria Cities'[2024](8)(3) *Journal of Infrastructure Policy and Development*.

instruments, aside from the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵ which secured the enjoyment of this right to women.

The non-recognition of the right to electricity unlike other rights like the right to life, freedom of association, discrimination and many more as guaranteed in the Constitution has expose the consumers of electricity to constant abuse by electricity companies. In Nigeria for instance, it has been documented that prior to the liberalization of the electricity industry, there were incessant cases of arbitrary disconnection, over-billing, delay in addressing consumer complaint, low voltage and many more. These problems were by product of the myriad of challenges facing the electricity industry which ranges from insufficient power generation to unreliable transmission and distribution network, poor infrastructure and many more and these problems seem to remain unaddressed even with the enactment of the Electricity Act.

In spite of the industrious provisions of the Act and the powers of NERC as regard consumer protection, consumer exploitation remained high in the electricity industry. Rights of consumers are constantly being abused or violated. The Federal Competition and Consumer Protection Act (FCCPA)⁶ creates the Federal Consumer and Competition Protection Council and vested the Council with the overall consumer protection power in the country. The Council is however helpless in the face of glaring challenges facing electricity consumers in the country.

It is in view of this obvious challenges that this paper is based with the view to appraise the right of electricity consumer in the light of the powers of the NERC and FCCPC in other to proffer recommendations on how best consumer of this sector can be protected in line with global best practices in the electricity sector which is critical to national development.

LEGAL FRAMEWORK FOR THE PROTECTION OF ELECTRICITY CONSUMER

⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.

⁶In 2019, President Muhammadu Buhari signed into law the Federal Competition and Consumer Protection Act, thereby creating the agency. The agency's purpose is to develop and promote fair, efficient and competitive markets in the Nigerian economy and to also facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria.[[]The Federal Competition and Consumer Protection Commission (FCCPC) is the highest federal competition regulator in Nigeria. The FCCPC operates within the Federal Ministry of Trade and Investment and is responsible for protecting market competition and promoting consumer protection

Basically, there are two approaches to consumer protection; international dimension and the domestic perspective. We shall explore the two dimensions with the view to determine whether indeed there is right to electricity globally and in Nigeria.

International Dimension to Consumer Protection

It is important to note that there is international dimension to consumer protection. The work of International Consumer(IC)⁷in the global protection of consumers rights is instructive. The Organization champions the promotion of the rights and interest of consumers globally. The Organization was co-founded as the International Organization of Consumers Union (IOCU)⁸ and has more than 200 member organization in more than 100 countries.⁹ The Organization works with its members and partners on issues where it can achieve global impact for consumers.¹⁰

It also work on issues that affect consumers in multiple countries and across national borders, in this regard, the Organization drive changes in the global marketplace on a scale that cannot be achieved at a national level alone, to ensure consumers are treated safely, fairly and honestly Significantly, IC has been able to inspired collaborative wins and moments of impact; from getting guidelines on consumer protection adopted by the United Nations (UN) in 1985 and contributing to the 2015 abolition of export subsidies for agricultural products, to successfully campaigning for the G20 to develop international principles on financial consumer protection.¹¹ The efforts of the Organization led to the international recognition of the 8 basic rights of consumer which includes:

- a. Right to safety
- b. Right to choose

⁷Consumers International (CI) is an international consortium of consumer-advocacy groups that promotes the rights and interests of consumers¹². It was founded as the International Organisation of Consumers Unions (IOCU) in 1960 and by the early 21st century had grown to include more than 200 member organizations in more than 100 countries¹. Its aim is to defend, promote, develop and pursue consumer rights as the international basis of consumer protection

⁸ International Organization of Consumers Union, 1960.

⁹ Britannica,"Consumers International<Britannica.com>Accessed on the 12th day of June, 2024.

¹⁰ Consumer International,"Making a Difference for Consumers Globally"<What We Do - Consumers International>Accessed on the 12th day of June, 2024.

¹¹ Consumer International,"Consumer International 60yh Anniversary"<60 Years of Impact - Consumers International>Accessed on the 12th day of June, 2024.

- c. Right to be informed
- d. Right to be heard
- e. Right to redress
- f. Right to satisfaction of basic needs
- g. Right to consumer education; and
- h. Right to health environment¹²

As membership of the Organization continue to expand and its impact felt in many countries, the Organization continue to build a powerful international movement to help protect and empower consumers everywhere.]

It is therefore not in doubt that this Organization has played significant role in influencing consumer rights globally and Nigeria is not an exception. For instance, the eight rights of consumers identified by the Organization have been codified in many legislative and regulatory frameworks in many specific sectors legislations as well as the principal consumer protection law in the country, the FCCPA.¹³

Legal framework for Consumer Protection in Nigeria

At the Domestic scene, two legislations are pivotal to consumer protection of electricity consumers in the country; the Electricity Act alongside policies and regulations made pursuant to same and the Federal Competition and Consumer Protection Act. To adequately appreciate consumer protection of electricity consumers under these legislations, our emphasis will be on the Electricity Act and the Federal Competition and Consumer Protection Act which are basically the two legislations that addresses consumer protection of electricity consumers in the country.

Consumer Protection under the Electricity Act

¹²Amna Khan,” 8 Basic Consumer Rights Every Conscious Consumer Should Know(2022)<8 Basic Consumer Rights Every Conscious Consumer Should Know (goodguilt.com)>Accessed on the 12th day of June, 2024.

¹³ Federal Competition and Consumer Protection Act, 2018.

The Electricity Act¹⁴ is the principal legislation that regulates electricity services in Nigeria. The Act established the National Electricity Regulatory Commission by virtue of section 33(1) of the Act¹⁵ and vest in the Commission enormous powers. While the Commission is empowered to regulate the electricity sector in the country, its powers extend to consumer protection. The Commission is also empowered to make policies and regulations that will ensure smooth and efficient administration of the sector as well as give effect to the provisions of the Act. In this regard, the Commission is saddled with the onerous task of ensuring protection of consumers' rights in the sector. It is pursuant to this mandate that the Commission recognized the following rights as basic entitlements of electricity consumers in the country:

- a. Safe and Reliable Supply: The right to receive electricity in a safe and reliable manner.
- b. Properly Installed Meters: Entitlement to properly installed and functional meters.
- c. Information and Education: The right to be informed and educated about electricity services.
- d. Transparent Billing: The right to transparent and accurate electricity billing
- e. Fair Billing for Unmetered Customers: Unmetered customers have the right to be billed according to NERC's estimated billing methodology.
- f. Notification of Disconnection: Customers must receive written notice before any disconnection.
- g. Refund for Overbilling: The right to a refund in case of overbilling.
- h. Complaint Filing: The ability to file complaints and receive timely responses.
- i. Bill Contestation: The right to contest inaccurate electricity bills.

¹⁴ EA(n2).

¹⁵ Ibid. s 33(1).

- j. Infrastructure Responsibility: Customers are not responsible for purchasing, replacing, or repairing electrical infrastructure¹⁶

Aside from the rights of consumers identified above, the Commission also outlined the responsibilities of consumers of electricity in the country to the electricity services providers and these includes;

- i. Timely Bill Payment: Paying electricity bills within the stipulated time frame.
- ii. Compliance with Connection Requirements: Providing necessary requirements for connection.
- iii. Protecting Electrical Installations: Preventing damage and tampering of electrical installations.
- iv. Cordial Conduct: Maintaining a respectful attitude towards electricity workers.
- v. Bill Receipt: Ensuring the receipt of monthly electricity bills if not on prepaid meters.
- vi. Reporting Tampering: Notifying the respective Distribution Company (DisCo) of tampering or bypass of electrical installations.
- vii. Outstanding Bills Notification: Informing the DisCo of any outstanding bills before moving to new premises.

Having identified rights that are important to consumers as well as consumers corresponding obligation to service providers in the sector, it becomes pertinent for the Commission to put in place measures that will ensure the adequate protection of these rights in other to guard against the willful abuse of these rights from the distribution or generating companies. It is observed that most abuses in electricity sector often emanates from maintenance issues as well as billing.

¹⁶ National Electricity Regulatory Commission,” The Rights and Responsibilities of Electricity Customers”<The Rights and Responsibilities of Electricity Customers - EMRC (energymrc.ng)?>Accessed on the 15th day of June, 2024.

It is in view of this reality that the EA empower the Commission to make regulations that pertains to customer related matters such as complaint handling procedure, practice concerning customer care, over-billing, connection and disconnection procedure¹⁷ and consumer complaint address procedure.¹⁸ Furthermore, the transitional provision of the Act preserved all subsidiary legislations made pursuant to the repealed Act. It then surface that several guideline for electricity regulation made by the NERC during the tenure of the repealed legislation remained operational and valid under the existing legislation. Some of these regulations include:

- a. The Connection and Disconnection Procedures For Electricity Services Regulation,¹⁹ Customer Complaints Handling Standards and Procedures,²⁰
- b. Customers Service Standards of Performance for Distribution Companies,²¹ Licensing And Operating Fees Regulation ²²
- c. Meter Reading, Billing, Cash Collecting and Credit for Electricity Supplies Population,²³
- d. Application for License (Generation Transmission, System Operate, Distribution and Trading Regulates²⁴
- e. The Granting Of Permit For Culture Power Generation.²⁵

Worthy of note is the fact that in 2023, the NERC consolidated the above mentioned legislations into one existing framework with respect to the Consumer Protection Guidelines.

The Federal Competition and Consumer Protection Act

The Federal Competition and Consumer Protection Commission (FCCPC) is the highest federal competition regulator in Nigeria. The FCCPC operates within the Federal Ministry of Trade and Investment and is responsible for protecting market competition and

¹⁷ EA, (n2). (see 226(1)(j)).

¹⁸ (see 226(1)(h)).

¹⁹ The connection and disconnection procedures for electricity services regulation 2007,

²⁰ customer complaints handling standards and procedures 2006;

²¹ customers service standards of performance for Distribution companies, 2007

²² licensing and operating fees regulation, 2010.

²³ meter reading, billing, cash collecting and credit for electricity supplies population, 2007.

²⁴ , Application for license (generation transmission, system operate, distribution and trading regulates, 2010.

²⁵ regulatory for the granting of permit for culture power Generation, 2005.

promoting consumer protection. It is observed that prior to the enactment of FCCPA, Consumer Protection Act had a restrictive protection of consumers. The CPA was however repealed due to its gross ineffectiveness in addressing challenges faced by consumers of electricity in the country. The FCCPA therefore was carefully designed to avoid the mistake that marred the effectiveness of its predecessor. The Act thus, broadens the extent of the protection and even establishes the Federal Competition and Consumer Protection Commission as well as the Consumer Protection Tribunal to try violations of consumers recognized rights.

The major aim of the law is to promote economic efficiency, maintain a competitive market in the Nigerian economy, protect the Nigerian economy, protect the interest and welfare of consumers by providing consumers with wide variety of quality products at competitive prices as well as prohibit restrictive or unfair business practices in the Nigerian economy.²⁶ Its enactment had been imperative considering the emergence of multibillion naira companies in the shipping, telecommunication, aviation, oil and gas, electricity etcetera. Thus, it can safely be said that from the enactment of this law, consumers will, to a large extent, be granted respite from unfair and unjust practices by big businesses as the activities of these industries will constantly be monitored to ensure compliance to the provisions of the law.²⁷

Certainly, the enactment of the FCCPC is a welcome development to the consumers of goods and services in Nigeria; however, the effectiveness of the legislation in the protection of consumers of the electricity sector has been questioned. Usman²⁸ for instance posited that while the provisions of the Act are industrious in the protection of consumers in the country, the FCCPC lacks adequate manpower and coverage of the entire federation. It is further observed that the Commission only inherited structures and staff from the defunct Consumer Protection Council which are indeed insufficient to cover complaints emanating from all sundry across the country. He further contended that the presence of the Commission is mostly limited to Abuja and offices in six geopolitical zones which are situated in the capital of the states and as regards its presence in the 776 local government of the federation, the presence of the Commission is obviously

²⁶Chinedu S. Echem Esq., 'An Overview Of The Federal Competition And Consumer Protection Act 2019' (2019) <An Overview Of The Federal Competition And Consumer Protection Act 2019. By Chinedu S. Echem Esq. - TheNigeriaLawyer> Accessed on the 15th day of July, 2024.s

²⁷ Ibid.

²⁸ Dahiru Jafaru Usman, 'Consumer Protection in the Nigerian Electric Power Sector. in Compendium of Consumer Protection Law in Nigeria (n268.)

lacking which will no doubt impede its success in addressing complaint emanating from consumers of electricity sector in the country.

While it is true that the Commission is statutorily enabled to ensure the general protection of consumers in the country, it is an uphill task for the Commission to cover the 776 Local Government Councils in the country in view of shortage of man power and limited resources. Regardless of this constraint, it has been observed that the Commission has since its inception watch with kind interest development in the electricity sector in the country and have equally contributed significant to the protection of rights of electricity consumers in the country. The mere existence of the Commission as well as its impact in other sectors will no doubt reshape policies in all sector specific in the country inclusive of the electricity industry.

Right to Electricity in Nigeria

Electricity right as rightly observed somewhere in this work is not international recognized in any international instrument except CEDAW. This notwithstanding, many authors have argued in the affirmative in support of this right. Tully²⁹ for instance, argued that the right to electricity is a fundamental human right that is well-established within the framework of human rights as either implied attributes of pre-existing right(such as non-discrimination or sustainable development) or explicitly in the context of eliminating discrimination against women.³⁰ Hesselman in the same vein contended in consonance with this proposition and posited that the idea of a 'right to energy' is no longer an 'idea', but also an actual legal development, whose time has come.³¹ The author observed that the 'recognition of the right to energy as an independent human right should only be a matter of time, and not of principle', and that even if some definitional challenges and questions may still exist, e.g. as the right compares to the 'right to water', or correlates to other rights, e.g. health, housing, or life with dignity.³²

²⁹ Stephen Tully, 'The Human Right to Access Electricity'[2006](19)(3)Electricity Journal;30-39.

³⁰ Stephen Tully, 'The Human Right to Access Electricity[2006] Electricity Journal(19)(3);30-39.

³¹ Marlies Hesselman, 'Right to Energy'(2021)<The Right to Energy by Marlies Hesselman :: SSRN>Accessed on the 2nd day of August, 2024.

³² Ibid.

Wewerinke-Singh³³ in the same vein contended that access to modern energy services is a prerequisite to overcoming poverty and ending related human rights violations. The author argued that research has shown a strong positive correlation between countries' net energy consumption rate and their human development index (HDI) rank, confirming that HDI variables (such as life expectancy, education, income and social equality) and the enjoyment of related human rights (e.g., to life, health, food, water, education, an adequate standard of living and the right to development) are positively influenced by increased energy availability.³⁴ Furthermore, that lack and scarcity of or difficulty in accessing modern energy services by households has been termed 'energy poverty', referring in particular to access to electricity and to modern and clean cooking facilities. Thus, households that suffer from energy poverty are often trapped in a whirlpool of deprivation: the lack of energy, in addition to insufficient access to other key services and assets, affects productivity, time budgets, opportunities for income generation and, more generally, the ability to improve living conditions. On the relevance of energy, the author noted that energy is a means to ensure clean water, proper nourishment, modern public health facilities, clinical and laboratory equipment, communication and transportation. That it also enables labour-saving mechanization, freeing up time and increasing the number of productive hours in a day. More-so that Income-generating opportunities provided by access to energy reduce the need to migrate to urban areas for employment, while raising living standards in rural areas. Augustine posited that the right to electricity is a human right. The author outlined the relevance of electricity and posited that the energy sector is very significant and without it, poverty is inescapable considering how important it has been to human existence.³⁵ He further contended that electricity is necessary component of human existence, but however outlined the following factors as the missing factors in the enjoyment of this entitlement, affordability, lacks of infrastructure, geographical challenges, sustainability, lack of political will and education and awareness.

³³Margaretha Wewerinke-Singh, 'A human rights approach to energy: Realizing the rights of billions within ecological limits' (2021) <A human rights approach to energy: Realizing the rights of billions within ecological limits - Wewerinke-Singh - 2022 - Review of European, Comparative & International Environmental Law - Wiley Online Library> Accessed on the 3rd day of August, 2024.

³⁴ Ibid.

³⁵Akwu, Nneka Augustin, 'Access to Electricity is a Human Right: What missing?' (2023) <<https://ddp.org.za/blog/2023/03/16/access-to-electricity-is-a-human-right-what-missing/>> Accessed on the 4th day of August, 2024.

Irrespective of the above arguments for and against the right to electricity, it is an uncontested fact that access to energy especially from low-polluting and sustainable sources is recognized as a cornerstone for development, facilitating advances in poverty and hunger reduction, women's empowerment, and the safeguarding of health. Corroborating this assertion, the World Bank Data revealed that a large number of countries have reached 100% access to electricity since 2010 and some of these countries include China, Iran, Egypt, Thailand and Lebanon.³⁶ Notably also, many of these countries have also made the most progress in providing access to electricity since the year 2000 are in Africa.³⁷ For instance, Morocco is said to have seen the biggest increase – 28.9 percentage points, from 71.1% in 2000 to 100% in 2012 – while Congo, Senegal, South Africa and Ghana have all seen increases of around 20 percentage points³⁸.

It is also noted that some countries view electricity right as fundamental right that cannot be treated with levity. In South Africa for instance, the right to access to electricity is construed to have flowed directly from the constitutional and statutory obligations of Eskom, South Africa's power utility, to provide reliable electricity supply and to ensure just administrative action when taking actions that result in the deprivation of electricity.³⁹ Thus, from the Bill of Rights perspective in the country, the cases show that the right to electricity, albeit not expressed in the text of the Constitution, is a condition for the exercise of other rights, including the rights to human dignity and access to adequate housing, water and health care.⁴⁰ Some countries however while not recognizing right to electricity as fundamental, continued to strive toward achieving easy access to affordable and reliable electricity.

The question therefore is whether there is constitutional and statutory right to electricity in Nigeria. This paper can be conveniently address having regard to the provisions of the Constitution as well as the Electricity Act. It is our understanding that the Constitution of Nigeria recognizes two classes of rights, rights that are fundamentally guaranteed and protected as

³⁶ World Bank Economic Forum, 'Access to Electricity is Increasing Faster in these Countries' (2015) <[Access to electricity is increasing fastest in these countries | World Economic Forum](#)> Accessed on the 10th day of October, 2024.

³⁷ Ibid.

³⁸ Ibid

³⁹ Dube, F., and Moyo, C., 'The Right to Electricity in South Africa' [2020] (25) *Electronic Law Journal*; 1-21.

⁴⁰ Ibid.

enshrined in Chapter IV of the Constitution and rights termed as Directive Principles of State Policy and Objectives which are contained in Chapter II of the Constitution and not justiciable. It is our understanding after a painstaking perusal of the provisions of the Constitution as relates rights contained in Chapter II and IV respectively that no right to electricity is captured in any of the provisions. Therefore, from the constitutional point of view, there is no right to electricity in Nigeria as obtainable in South Africa.

On the other lane, the Electricity Act that came into effect in 2023 is also silent about the right to electricity in the country. Unlike other sector-specific legislations for instances, the National Health Act which expressly recognize right to health in the country, the EA did not expressly codify right to electricity in the country. The net effect of this silence is that, there is obviously no statutorily recognize right to electricity in the country. It is however noted that the EA established the NERC and saddled the Commission with enormous powers prominent amongst which is to make policies and regulation that will define the rights and obligations of electricity consumers in the country and it is pursuant to this mandate that the Consumer Protection Regulation (CPR)⁴¹ was promulgated to guide the operation of Disco in their day to day business relationship with consumers of electricity in the country. Notably, the Regulation consolidated the previous policies and regulations made by the Commission and addressed areas that pertains right to connection, contest inaccurate or overcharged bill, arbitrary disconnection, withhold payment of disputed bill, and pay only the last undisputed bill, pending the resolution of your bill, right to a payment arrangement with your DisCo for setting outstanding debt and refund of over payment, right to three working days prior notice of a planned power interruption, complaint filing and resolution procedure and many more. In this regard, the Regulation clearly set out the rights and obligations of electricity consumers and the corresponding obligations of electricity service providers to the electricity consumers as well as sanctions for violation of the rights of the consumers of this sector.

Before delving into the consideration of some of the rights outlined by the Commission in the regulation, it is important to underscore the fact that the FCCPA which is the principal consumer protection legislation in Nigeria outline rights that all consumers in the country are entitled to and these rights includes rights contained from sections 114 to 133 of the Act which

⁴¹ CPR(n3).

includes rights to information, disclosure of price of goods, and services, product labeling, disclosure of second hand goods, sales records, consumers rights to select supplies, consumers right to choose and examine goods, rights to return goods and many more.

Notably, the rights contained in sections 114 and 133 of the FCCPA are rights that specifically pertains to product which relates to goods and services and not electricity which is a special kind of services that deals with specialize kind of services outside the contemplation of the rights enshrined in the provisions of FCCPA. For instances, the FCCPA does not recognize right to connection, disconnection, metering and many more, but it is our understanding that certain class of rights enshrine in the provision of FCCPA can also avail consumer of electricity adequate protection. For instances, right to information, fair pricing and fair dealing, unfair and unreasonable contract terms. Notice require for certain activities, right to quality of service and safety and safety monitoring are rights that could directly benefit the consumer of electricity services. Though the Consumer Protection Regulation is silent about these class of rights, however the virtue that these rights are statutorily recognize and afforded adequate protection in the FCCPA is an added advantage to consumer of electricity services in the country, thus, could be invoke to secure their protection in cases of violation.

As right underscored above, the Consumer Protection Regulation recognized certain rights to consumers of electricity in Nigeria and these rights include:

Right to Timely Connection Electricity Supply

I have established the relevance of electricity supply to household and industries in Nigeria. Thus, electricity plays significant role in our day to day life and it relevance to the economic growth of Nigeria. No doubt, various aspects of modern life crucially rely on electricity because it enhances quality of living, ensures safety and security, facilitates transportation, and contributes to medical progress. To household, many people in the country use this source of energy for different purposes giving it relevance. It is in view of this this development that the NERC recognize this right as basic to electricity consumers in the country,

The regulation was carefully designed to protect the rights of electricity consumers in the country; thus, the regulation set conditions for the supply of electricity to prospective consumers

and connection can only be activated in line with the provisions of the regulation.⁴² In this regard, intended consumers must apply formally to be connected to electricity supply and must meet the terms and conditions as stipulated in the guidelines as relates to providing required materials for the connection⁴³ and where the consumer meet these requirement, the Disco must ensure that the consumer is connected within 48 hours⁴⁴ as well as provide the consumer with meter for purposes of accountability or billing of the energy supply.⁴⁵

It then suffice that, once a customer apply for electricity connection and fulfill all the requirements stipulated by the company, the electricity company must connect the consumer without delay failure upon which the consumer can lodge a complaint for redress. The regulation also barred the Disco from billing the consumer for inspection, survey and connection of electricity supply to premises of maximum demand customers.⁴⁶ Furthermore, Discos must submit for approval their manual that will guide or regulate their activities as it relates to connection of electricity to premises of consumers to the Commission.⁴⁷ It is upon the said approval that the manual will become operational and must not derogate from the principal legislation as regard the provisions of the CPR.

Interestingly, by complying with terms and conditions in writing as stipulated by the Regulation, contractual relationship is created between the consumer and Disco and one that can give rise to cause of action in terms of breach, as the regulation stipulates that, a consumer that fails to comply with the stipulated conditions as regard connection shall not be connected to enjoy entitlement to electricity.⁴⁸ Once the connection is activated upon the fulfillment of requirements stipulated in paragraph 16 of the Regulation, Disco must ensure that all subsequent bills are used in the name of the costumer and not otherwise.⁴⁹

It therefore suffice that, this regulation makes the right to electricity contractual and available to only persons that fulfill express requirements or conditions as stipulated in the

⁴²42 CPR(n3) para.12(1).

⁴³ Ibid. Para. 12(2).

⁴⁴ Ibid. Para. 13(1).

⁴⁵ Ibid. para. 13(2).

⁴⁶ Ibid. Para. 14(1).

⁴⁷ Ibid. Para 14.

⁴⁸ Ibid. Para. 16.

⁴⁹ Ibid. Para. 12.

Regulation. It then suffice that, entitlement to electricity in Nigeria as regard connection is not the entitlement of everybody but limited to persons that fulfill the terms and conditions stipulated in the requirements. Therefore unlike rights enshrined in Chapter IV of the Constitution which are inherent and available to all Nigerians irrespective of any giving circumstances, the right to electricity connection as envisaged in the Regulation is purely contractual and that is why many household in Nigeria are not connected to electricity on the basis of non-fulfillment of this requirements. More-so, once the conditions for connection are met by the consumer, its create a binding obligation of Disco to supply electricity otherwise, the customer can tale step to enforce the provisions of the Regulation.

Safeguard from wrongful/illegal disconnection

It is also important to note that cases of illegal or wrongful disconnection are rampant in the electricity sector. We have seen cases where uninformed agents of Discos will disconnect electricity from consumers without valid reason or basis and this is often done brazenly without due regard to the regulation guiding their actions or inaction in this regard. Rampant cases of illegal disconnection are attributed to the lack of proper awareness by the agents of the Discos as a result of poor orientation by some companies. It also occurred to customers who are not aware of the existence of this right, thus, ignorantly consented to same.

CPR therefore guide against arbitrary disconnection of electricity supply to valid customers and set precondition for disconnection. In effect, agent of Disco cannot arbitrarily disconnect electricity supply to any existing consumer unless on the following conditions:

- a. Where the customer refuse to pay bill;
- b. The payment date is at least 10 workings days from the date of the delivery of the bill.
- c. Payment date has not been superseded by a subsequent date issue to the same consumer for the same supply.
- d. Period between the payment date and disconnection is less than 3 months.
- e. The distribution company has indeed verify that the bill has not been paid; and

- f. The company has giving the consumer written warning in that regard and the consumer failed to adhere to it.⁵⁰

The consumer must note that Disco can disconnect electricity supply to consumer notwithstanding the stipulation of the regulation where it appears that the connection was illegally done, where it is discovered that the connection is dangerous to health and or integrity of the network or the quality of supply to other customers, where due to the fault of the consumer, meter located in his or her premises is inaccessible to be read for a period of three consecutive bills.⁵¹ Before this right can be accentuated with respect to inaccessibility of the bill, the consumer must be informed and giving the opportunity to remedy the wrong.⁵² This position was validated by the Court in the case of *Jos Electricity Distribution PLC V John*⁵³ where the court held that it is unethical for the distribution company to disconnect electricity from a consumer without adhering to the provisions of the regulation made pursuant to the Act.

The Regulation also empowers Disco to decline the supply of electricity or connection to any consumer who fails to supply sufficient particulars as stipulated in the Regulation to enable him or her to be connected to the electricity grid.⁵⁴ Significantly, a consumer who feels does not need electricity supply can also request for disconnection in his or her premises and upon proper review of the situation, this request can be granted upon confirmation that it will not affect the right of other consumers in the premises.⁵⁵

The Regulation also mandate Disco to upon the disconnection of electricity to the premises of any consumer to leave a notice containing the following:

- a. Date and time of disconnection
- b. Reason for disconnection
- c. The action to be taken for reconnection
- d. Correct address and contact details of the team leader for purposes of reconnection.⁵⁶

⁵⁰ Ibid. para20(1)a-f.s

⁵¹ Ibid. para. 21.

⁵² Ibid. para6(a-c).

⁵³ [2018] LPELR-46395(CA)

⁵⁴ Ibid. Para. 22

⁵⁵ Ibid. para23 and 24.

⁵⁶ Ibid. para. 24.

Significantly, the Regulation barred Disco from disconnecting electricity supply to a customer who paid his bill or has entered into an agreement or arrangement for liquidation of the outstanding bill or has lodged a complaint regarding the unpaid bill in line with the regulation.⁵⁷ Added to this, Disco is also not allow to disconnect electricity supply to any premises where life support machine is operational but to enter into arrangement on how the customers indebtedness can be offset.⁵⁸

Interestingly, the Regulation entitled a consumer that was wrongly disconnected to compensation in terms of credit unit that is equivalent to the average daily consumption computed on the basis of his or her consumption of the bill for the last three months for each day of the wrongful disconnection or as long as it last.⁵⁹

It is therefore glaring that the era of wrongful disconnection without remedy is long gone and consumers rights in this regard is not only adequately protected but persons that wrongly disconnect energy supply to a legitimate consumer will incurred serious penalty to the company. It then behooves on Disco to educate their agents on the requirements for disconnection and procedure of same, otherwise, the company will be liable to any infraction of their agents.

It is important to underscore the fact that is not the responsibility of electricity customer or community to buy, replace, or repair electricity transformers, poles or related equipment used in the supply of electricity. The responsibility of repair and purchase of electrical equipment's lies with the Discos in charge of the supply area and not with the residents or community. All electric equipment's integrated into the grid are automatically the property of the Disco. The customer or community is not a partner with the Disco in its business and cannot therefore be compelled to pay for such equipment. We have seen cases where electricity consumers are disconnected on account of stolen equipment's in the transformer and unless community contribution in done with the view to purchase transformer, they will remain disconnected from electricity supply. This practice to our mind is illegal and should not be validated. Discos are companies that operate independent, and electricity consumers often paid for services rendered. It is the duty of the Discos to protect electricity equipment's and installation and not the consumers. Therefore,

⁵⁷ Ibid. para.25(1).

⁵⁸ Ibid. para.25(2).

⁵⁹ Ibid. Par. 26(1).

consumers must not be made to paid for the failure on the part of Discos to protect their equipment's from vandalization. NERC must take this issue vary seriously to protect electricity consumers in the country.

Right to Accurate Billing

Over the years, Nigerians have suffered from arbitrary billing. Most customers do not have access to the meter that is often mounted beyond their reach. Customers without meter are the most short-changed in this regard. The regulation enjoins Discos to issue to consumers accurate billing as reflected in the meter and barred the Discos from inflated electricity cost. In this regard, the agents of Disco are expected to carry out a routine reading of the meter once in every month and not later than one in every three months to determine accurate billing.⁶⁰ A customer is also invested with the right to call for the reading of his meter to determine correct or incorrect billing⁶¹ and where it is discovered that the bill is incorrect; it can be amended or corrected.⁶² Furthermore, where a consumer was overcharged or over-billed, the consumer can be compensated with credit unit for the said amount and cases of undercharged, the consumer shall be entitled to settled the company or enter into arrangement to offset the said liability.⁶³

Furthermore, Discos are prohibited from issuing more than one routine bill to any customer during the same billing period in other to ensure sanity of the billing process. Moreso, Disco are precluded from inflating electricity bill to the disadvantage of the consumer.⁶⁴ This is important to ensure that consumers are adequately protected from over-billing which could be detrimental to their economic fortune.

As seen from the preceding paragraph, the right of the consumer to accurate billing is a serious one that NERC enjoins Discos to take very seriously. This protection is not limited to metered consumers but also available to unmetered consumers. For instances, recently, the NERC demonstrated this protection when the Commission sanctioned 11 Discos of the sum of N10.5 billion naira fine for arbitrary billing of unmetered customers and non-compliance with

⁶⁰ Ibid. para. 28(1)

⁶¹ Ibid. para. 30.

⁶² Ibid. para. 34(6).

⁶³ Ibid. para. 34(8).

⁶⁴ Ibid. para. 34(10).

the capping of estimated bills.⁶⁵ This penalty was applauded by FCCPC where Abdullahi speaking on behalf of the Commission suggested increasing financial penalties, stricter enforcement mechanisms, and even the revocation of operating licenses for persistent offenders in this regard, which if done will indeed go along way to deter further violations in this regard.

It is not in doubt that consumers that are often exploited in the electricity industries are unmetered consumers. These persons are often deliberately denied access to electricity supply and even at that forced to pay for energy not supplied or consumed. We have seen cases where bill are also issued to locations where electricity is hardly supplied as a result of faulty installations or faulty equipment's. These people are often threatened to pay the estimated bills or suffer prolong disconnection and often than not out of fear, complied. Sadly, many people are still not aware of this regulation and there is no much effort by Discos to educate consumers in this regard.

The Right Electricity Service and Supply in a Safe and Reliable Manner

This presupposes that electricity supply and service must be provided in such a way that will not be injurious or a threat to life and property of consumers. Therefore, actions such as the installation of electricity equipment's within and around premises must be conducted bearing in mind the safety of the consumer. Safety is an important aspect of the electricity regulation as electricity equipment's are dangerous where not properly installed. It is on this basis that the Regulation that pertains to disconnection empowers Discos to disconnect without notice where it has been established that the electricity supply was done illegally or dangerous to the safety of the public. This is in view of the danger that illegal connection of electricity equipment's may portend.

The Right to be Properly Informed and Educated on Electricity Service

The electricity consumer should not be left ignorant of actions relating to his electricity service. Section 114 of FCCPA recognized this right. Consumers have the right to be informed of new guidelines, changes, supply interruptions, service rendered by the Disco etc, which may directly affect his supply of electricity. The reverse is however the case in Nigeria as most

⁶⁵ Busola Aro, 'FCCPC Backs NERC's N10. 5bn fine on Discos, Seeks Stricker Measures to Curb Regulatory Infractions. February, 2024.

consumers of electricity services are unaware of this regulations. Many consumers for instances are not aware of the complaint mechanism and their right to approach NERC in the event of failure by Discos to address their complaints. Many consumers resort to litigation which may be time consuming and expensive.

It is thus advisable that NERC being the regulatory body to impose an obligation on Discos or the Commission to regularly engage consumers through media campaigns and programmes on the basic rights and entitlements of consumers as this will go a long way in educating consumers on their rights and obligations as it pertains to electricity supply in the country.

The Right to Contest any Electricity Bill

Electricity bills are not set in stone. Where an electricity consumer believes that his bills do not accurately reflect his consumption, he has the right to contest such bill by requesting for a bill review to be carried out on his supply address. This is important as it will address the issue of arbitrary billing which has over the years affected the rights of consumers electricity in the country. Unfortunately, many Nigerians are unaware of this right, particularly people living in rural areas; thus, subjected to pay any amount as reflected on the bill issued. The Commission must therefore bear the responsibility of educating people on the existence of this right which is integral to their protection from unscrupulous Discos agents.

The right not to pay a disputed bill but only the last undisputed bill while the disputed bill goes through the resolution process

I have seen cases where electricity connection is been disconnected while complaint is pending. This indeed is not right and rightly prohibited by the regulation. Thus, while a consumer contests his bill, he is not obligated to pay the amount on the contested bill but to pay, instead, the amount on the last undisputed bill as the current bill until the billing dispute is resolved. This is integral to avoid cases of over-billing or under billing which is rampant in the sector. As noted earlier, many Nigerians or electricity consumers are not aware of this right, as a result of which continued to suffer exploitation in the hands of insincere Discos agents who will disconnect electricity while complaint is been processed.

The right to prompt investigation of complaints arising from customer's electricity service

By law, customer's complaints should be handled within 15 working days from the day the complaint was made, except in circumstances where more time is required to resolve the issue. The consumer must also note that complaint can be filed either in writing or verbally, through text message or email or any other electronic devices. As noted, the regulation provides timeframe within which complaints should be resolved and where same is not done, the consumer has the leverage to approach the Consumer forum for redress. Customer complaints unit (CCU).⁶⁶ The Chief executive officer of the unit must ensure that that complaint is resolved satisfactorily. Disco must also in this regard ensure that it put in place complaint procedure must be approved by the Commission.⁶⁷ The complaint must be resolved within 15 days of filling of same and in exceptional situation, the timeframe for the resolution of the complaint may be extended to another 15 days and the resolution must be done expeditiously.⁶⁸

Where however the complaint is not resolved within the stipulated timeframe, the CCU must notify the consumer in writing with sufficient reasons and request for not more than 15 days to resolve the matter.⁶⁹ a customer dissatisfied with the procedure or resolution of CCU is at liberty to approach the Consumer forum after 30 days.⁷⁰ Interestingly, either of the party to the proceeding before the CCU can lodge appeal to the Consumer forum. The jurisdiction of the Forum is wide and accommodates complaints within the entire area of operation of the distribution company.⁷¹

It is also provided that all complaint before the forum must be filed in writing and address to the chairman of the forum.⁷² Complaint can also be file by writing, text message, email or any other electronic means. Upon filing of the complaint, the forum can dismiss same on the basis of the complaint being frivolous, vexatious or unmeritorious.⁷³ Where the complaint is rejected, the complainant shall be informed with the reason for same within 5 days of the decision as well as

⁶⁶ Ibid. para. 43(1).

⁶⁷ Ibid. para. 43(3).

⁶⁸ Ibid. para. 43(7).

⁶⁹ Ibid. para. 43(8).

⁷⁰ Ibid. parta. 43(9).

⁷¹ Ibid. Para. 46((1).

⁷² Ibid. para. 48(1).

⁷³ Ibid. para. 49(5).

reason for same and his or her right to further amend and bring it before the forum or appeal the decision before the Commission.⁷⁴

The forum shall determine all complaints within two months from the period same was filed⁷⁵ and shall be heard from day to day while adjournment can only be granted on sufficient basis. Upon the decision of the forum, a party dissatisfied with same shall appeal the decision before the Commission.⁷⁶

As clearly seen above, the right to electricity supply is an integral right that is accorded constitutional and statutory protection in some countries and Nigeria is not an exception. It is thus incumbent on NERC to continue to put in place sound and robust legal and regulatory framework necessary for the protection of these identified rights with the view to guarantee adequate enjoyment of electricity services in the country as obtainable in countries like South Africa, UK, Spain and many more.

Criticism on the laws governing consumer protection

Consumer protection laws in Nigeria face significant challenges that undermine their effectiveness. Enforcement mechanisms are weak due to under-resourced regulatory bodies like the FCCPC, leading to a disconnect between legislation and actual protection. Additionally, public awareness of consumer rights is limited, and the judicial system is slow and inefficient, making it difficult for consumers to seek timely redress. Corruption within regulatory bodies and the judiciary exacerbates these issues, allowing businesses to evade accountability.⁷⁷

Furthermore, the existing legal framework is fragmented and does not adequately cover all sectors, particularly emerging industries like digital and e-commerce. The influence of powerful business groups often leads to regulations that favor businesses over consumers, resulting in insufficient protection. Effective redress mechanisms are limited, and the processes for consumer complaints are cumbersome and unsatisfactory. Comprehensive reforms, including strengthening regulatory bodies, enhancing public awareness, improving judicial efficiency, and updating laws to cover all sectors, are needed to improve consumer protection in Nigeria.

⁷⁴⁷⁴ Ibid. para. 49(7).

⁷⁵ Ibid. para. 50(2)

⁷⁶ Ibid. para. 50(2).

⁷⁷ Aderonke Adegbite and others' 'A critical review of the Nigerian Consumer Protection Framework' (2023); <papers.ssrn.com> Accessed on the 4th day of July, 2024.

CONCLUSION

While consumer protection laws in Nigeria are in place, their effectiveness is significantly hampered by weak enforcement, limited public awareness, judicial inefficiencies, and pervasive corruption. The fragmented legal framework and inadequate coverage of emerging sectors further expose consumers to exploitation. To address these issues, comprehensive reforms are essential. Strengthening regulatory bodies, enhancing public education, improving judicial processes, and updating laws to encompass all sectors will be crucial steps in ensuring robust consumer protection. These measures will not only safeguard consumer rights but also foster a more transparent and accountable market environment in Nigeria.

Clearly, the new Electricity Act was carefully designed to address some of the obvious challenges that marred the effectiveness of the industry under the previous repealed legislation and indeed, the industrious provisions of the Act has been instrumental to the success of the electricity sector in the country. The problem however is with regard to protection of consumers of the industry as challenges of over-billing, exploitation of unmetered consumers, arbitrary disconnection and many more still remains largely unresolved and until the Commission takes consumer protection of electricity consumers very seriously, these challenges will continue to hamper the right of consumers of the sector from adequate enjoyment of electricity which may in effect affect the economic fortune of the country.

RECOMMENDATIONS

1. It is recommended that the right to electricity be codified in the Constitution as other human rights in Chapter IV to guarantee the enjoyment of this right particularly due to the significant of this right to economic development of the country.
2. It is also recommended that NERC impose an obligation on Discos to put in place aggressive and comprehensive consumer protection education programmes to be aired regularly in the media with the view to make Discos create awareness in this regard to consumers of the sector.
3. It is recommended that FCCPC establish its branches in all the 774 local government of the country or at least an office in each of the 36 states of the federation that will speedily address complaints emanating from the electricity sector.

4. It is also recommended that stiff sanctions be incorporated in the regulation for violations of the consumer's rights.
5. It is also recommended that the Electricity Act be amended to incorporate expressly the rights of consumers to electricity enjoyment as obtainable in other progressive democracies.

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