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**AN EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS  
FOR CONSUMER PROTECTION IN NIGERIA: A CASE STUDY OF THE  
DEREGULATED ELECTRICITY SECTOR**

**JAFARU, DAHIRU USMAN**



**DOCTOR OF PHILOSOPHY  
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**JAFARU, DAHIRU USMAN (94490)**



**A Thesis submitted to the Ghazali Shafie Graduate School of Government  
in fulfilment of the requirement for the degree of Doctor of Philosophy.  
Universiti Utara Malaysia**

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## ABSTRAK

Baru-baru ini, utiliti elektrik Nigeria telah kehilangan ciri-ciri perkhidmatan awam berikutan pembatalan kawal selianya. Pembatalan kawal selia elektrik telah dilaksanakan meskipun berdasarkan pengalaman buruk pengguna dalam pembatalan kawal selia sebelum ini ke atas sektor kualiti perkhidmatan, pengendalian aduan dan lain-lain. Tesis ini mengkaji secara kritikal rangka kerja perundangan dan institusi bagi perlindungan pengguna dalam sektor pembatalan kawal selia elektrik Nigeria dengan mengguna pakai kaedah penyelidikan sosio-undang-undang. Tesis ini didorong oleh keadaan undang-undang yang masih wujud dan penyusunan institusi bagi perlindungan pengguna; kegagalan peraturan yang berlarutan dan peningkatan eksploitasi pengguna dalam sektor elektrik Nigeria. Objektif tesis adalah untuk mengkaji rangka kerja; mekanisme tebus rugi pengguna; dan cabaran yang menghalang perlindungan pengguna dan tebus rugi elektrik di Nigeria. Data telah dikumpul melalui pendekatan kepustakaan dan dua puluh temu bual separa berstruktur dengan pihak berkepentingan daripada agensi perlindungan pengguna seperti Majlis Perlindungan Pengguna, Suruhanjaya Kawal Selia Elektrik Nigeria, Majlis Bantuan Guaman Nigeria; peguam yang terlibat dengan bidang akademik; dan ketua-ketua organisasi perlindungan pengguna. Tesis ini menggunakan kaedah interpretif doktrin dan analisis tematik dalam menganalisis data undang-undang dan data temubual. Pendekatan perbandingan secara analitikal juga telah digunakan kerana kepentingannya dalam kajian undang-undang. Berpandukan piawaian antarabangsa dan amalan terbaik global, tesis ini mendapati bahawa rangka kerja ini mempunyai kekurangan dan terhad dalam banyak aspek. Ianya kurang peruntukan mengenai hak-hak pengguna dan remedii; fokus produknya tidak menekankan kepada perkhidmatan; dan tidak mempunyai undang-undang persaingan yang kritikal bagi perlindungan pengguna dalam persekitaran pembatalan kawal selia. Tesis ini juga mendapati bahawa di samping mahkamah biasa yang mahal dan memakan masa, rangka kerja ini pula tidak mempunyai penyusunan institusi yang ideal seperti mahkamah tuntutan kecil dan ombudsman pengguna. Tesis ini juga mendapati bahawa perlindungan pengguna di Nigeria menghadapi beberapa cabaran di mana kurangnya kesedaran pengguna dan kurangnya pembiayaan ke atas agensi adalah merupakan cabaran utama. Demi kepentingan pengguna dan industri, tesis ini mencadangkan satu rangka kerja komprehensif yang mengintegrasikan persaingan, hak pengguna, dan peruntukan remedii. Tesis ini selanjutnya mengesyorkan penambahbaikan kepada skim bantuan guaman, penubuhan forum tebus rugi pengguna yang ideal, agensi pengawalseliaan yang efisyen bagi perlindungan pengguna yang lebih berkesan.

**Kata Kunci:** Keadilan Pengguna, Perlindungan Pengguna, Tebus Rugi Pengguna, Pembatalan Kawal Selia, Nigeria.

## ABSTRACT

Recently, the Nigerian electric utility lost its public service character following its deregulation. The electricity sector deregulation was executed despite bad consumers' experience in the earlier deregulated sectors on service quality, complaints handling and others. Adopting a socio-legal research method, this thesis critically examines the legal and institutional frameworks for consumers' protection in the Nigerian deregulated electricity sector. The thesis was motivated by the state of the extant laws and the institutional arrangements for consumer protection; the lingering regulatory failure and rising consumer exploitations in the Nigerian electricity sector. The thesis's objectives are to examine the frameworks; the consumer redress mechanisms; and the challenges hindering electricity consumers' protection and redress in Nigeria. The data was collected through the library-based approach and twenty semi-structured interviews with stakeholders from consumer protection agencies such as the Consumer Protection Council, the Nigerian Electricity Regulatory Commission, the Legal Aid Council of Nigeria; lawyers in the academia; and the heads of consumer organisations. The thesis employed the interpretive doctrinal technique and the thematic analysis in analysing the legal materials and the interview data. The comparative analytical approach was also employed because comparison is useful in legal research. Guided by international standards and global best practices, the thesis found that the frameworks are deficient and limited in many aspects. It lacks provisions on consumer rights and remedies; its product-focused with less emphasis on services; and lacks competition law that are critical for consumer protection in deregulated environments. The thesis found that while regular courts are expensive and time consuming, the frameworks lack ideal institutional arrangements such as small claims court and consumer ombudsman. The thesis also found that consumer protection in Nigeria faces several challenges with lack of consumer awareness and underfunding of agencies being the prominent challenges. For the benefit of the consumers and industry, the thesis recommends comprehensive frameworks that integrate competition, consumer rights and remedies provisions. The thesis further recommends improvement to the legal aid scheme, the establishment of ideal consumer redress forums and efficient regulatory agencies for more effective consumer protection.

**Keywords:** Consumer Justice, Consumer Protection, Consumer Redress, Deregulation, Nigeria.

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UK, Consumer Credit Act, 1974.

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## LIST OF ABBREVIATIONS

ABARE	Australian Bureau of Agricultural Resource Economics
ADB	African Development Bank
AGF	Attorney General of the Federation
AMLCP	African Model Law on Consumer Protection
BPE	Bureau of Public Enterprises
CFRN	Constitution Federal Republic of Nigeria
Com	Consumer Ombudsman
CPC	Consumer Protection Council
CT	Consumer Tribunal
CUP	Cambridge University Press
Discos	Distribution Companies
DoJ	Department of Justice
ETRAPCOPP	Ethiopian Trade Practices and Consumer Protection Proclamation
EPSRA	Electric Power Sector Reform, Act
FMF	Federal Ministry of Finance
FOs	Forum Offices
FTC	Federal Trade Commission
Gencos	Generating Companies
ISRJ	Indian Streams Research Journal
LACON	Legal Aid Council of Nigeria
LFN	Laws of the Federation of Nigeria
MANCAP	Mandatory Conformity Assessment Programme
MCPA	Malaysian Consumer Protection Act
MLJ	Malayan Law Journal
MW	Megawatt
NECAN	National Electricity Consumer Association Network
NERC	Nigerian Electricity Regulatory Commission
NIALS	Nigerian Institute of Advanced Legal Studies
NIS	National Industrial Standards
NWLR	Nigerian Weekly Law Report
NWZO	North-West Zonal Office
OECD	Organisation for Economic Co-operation and Development
OUP	Oxford University Press
PC	Product Certificate
PCC Act	Public Complaints Commission, Act
PCC	Public Complaints Commission
SI	Structured Interview
SACPA	South African Consumer Protection Act

SON	Standards Organization of Nigeria
SONCAP	Standards Organisation of Nigeria Conformity Assessment Programme
SSI	Semi- Structured interview
SUNY	State University of New York
Transco	Transmission company
UI	Unstructured Interview
UNGCP	United Nations Guidelines on Consumer Protection
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic Social and Cultural Rights



# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

Until late 90s, states across the world especially in Africa owned, provided and regulated utility services.<sup>1</sup> Government was a major and active player in the economy,<sup>2</sup> and utility services provision such as electricity, telecommunications, water etc. were then considered as part of the social policy of governments. Economists, businesses, investment and utility management experts, were, however, not comfortable with the states' regulation and involvement in the market.<sup>3</sup> They promoted free market enterprises through deregulation and for decades now there has been a shift from public ownership and control of several sectors of economies to deregulated, privatized and commercialized ones. This is more prominent in the utility sectors such as

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<sup>1</sup>J.H. Williams and R Ghanadan, "Electricity Reform in Developing and Transition Countries: A Reappraisal," *Energy Policy* 31 (2006):817; Daniel Czamanski, Privatization and Restructuring of Electricity Provision, (London: Praeger, 1999), 11; Navroz K.Dubash, "The Public Benefits Agenda in Power Sector Reform," *Energy for Sustainable Development* 5, no. 2 (2001):5; David M. Newbery, "Problems of Liberalising the Electricity Industry," *European Economic Review* 46, no. 4–5 (2002): 919; A.T. Ottow, "Mastering the Market? Exploring New Forms of Market Supervision," Inaugural Lecture, September 18, 2008, University Utrecht, (The Hague: Boom Juridische Uitgevers 2009), 2.

<sup>2</sup>Sanja Filipovic and Gordon Tanic, "The Policy of Consumer Protection in the Electricity Market," *Economic Annals* 53, no. 178-179 (2008):158; Trebing, Harry M., "A Critical Assessment of Electricity and Natural Gas Deregulation," *Journal of Economic Issues* 42, no. 2 (2008) 469; H.-J. Chang, "The Economics and Politics of Regulation," *Cambridge Journal of Economics* 21 (1997): 712; UNDP Policy Research Brief (January 2007) "Privatising Basic Utilities in Sub-Saharan Africa: The MDG Impact", <http://www.ipc-undp.org/pub/IPCPolicyResearchBrief3.pdf>. (accessed April 8, 2013); Ralf M.Dyllick-Brenzinger and Finger Matthias, "Review of Electricity Sector Reform in Five Large, Oil- and Gas-Exporting Mena Countries: Current Status and Outlook," *Energy Strategy Reviews* 2, no. 1 (2013): 31; Giuseppe Tesauro, "Market Power in Electricity Markets: Regulation, Deregulation and Competition Lessons From the Italian Experience and Other European and U.S. Case Studies," *Fordham International Law Journal* 25, no. 4 (2001):946; Sivalingam, G., *Competition in the ASEAN Countries*, (Singapore: Thomson Learning, 2005), 163. See also Newbery, David M. "Regulating Unbundled Network Utilities," *Economic and Social Review* 33, no. 1 (2002):24; Rigo, Fredrick S., "Why do Countries Adopt Competition Laws? The Tanzanian Case," in *Evolution of Competition Laws and their Enforcement*, ed. Mehta Pradeep S. (London, Routledge, Taylor & Francis Group, 2012), 180.

<sup>3</sup>Gregory L. Schneider, "Benjamin C. Waterhouse, Lobbying America: The Politics of Business From Nixon to NAFTA," *The American Historical Review* 119, no. 5 (2014): 1738.

telecommunications, and electricity.<sup>4</sup> Government withdrew and in some cases reduced its involvement or control in business and over specific industries.<sup>5</sup> Electricity sector deregulation in particular is a very risky venture,<sup>6</sup> and as a reform measure is supported, and in the case of developing countries such as Nigeria imposed by international and regional financial institutions such as the World Bank; International Monetary Fund, and Asian Development Bank.<sup>7</sup>

Nigeria has a population of over 174 million people<sup>8</sup> but only generates electricity that fluctuates between 3,500 to 5000 megawatts.<sup>9</sup> This is 2.5% of what the Republic of South

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<sup>4</sup>Murthy et al, “Forecasting Electricity Prices in Deregulated Wholesale Spot Electricity Market: A Review,” *International Journal of Energy Economics and Policy* 4, No. 1 (2014):32; Tamer Çetin, “Structural and Regulatory Reform in Turkey: Lessons Form Public Utilities,” *Utilities Policy* 31 (2014): 94; R. W. Bacon and J. Besant-Jones, “Global Electric Power Reform, Privatization, and Liberalization of the Electric Power Industry in Developing Countries,” *Annual Review of Energy and the Environment* 26, (2001):331; Littlechild Stephen, “Foreword: Market Versus Regulation,” in *Electricity Market Reform: An International Perspective*, eds. Sioshansi, F. and Pfaffenberger, W. (Oxford: Elsevier Ltd., 2006), xvii.

<sup>5</sup>Abdulla A. R. Ali, “Privatization and Financial Performance in Developing Countries: Reality and Myth,” *International Journal of Business and Management* 9, no. 4 (2014): 115; Posner, R.A., “The Effects of Deregulation on Competition: The Experience of the United States,” *Fordham International Law Journal* 23, no. 6, (1999):8; Stiglitz J.E., *Economics of the Public Sector* 2<sup>nd</sup> ed. (London: W.W. Norton Company, 1988), 31.to

<sup>6</sup>Chi-Keung Woo, “What Went Wrong in California’s Electricity Market?” *Energy* 26, no. 8 (2001):757

<sup>7</sup>Olumide V. Ekanade, “The Dynamics of Forced Neoliberalism in Nigeria Since the 1980s,” *Journal of Retracting Africa* 1, no.1 (2014):6; Odeh A. Mercy, “Privatisation of Public Enterprise and Productivity: Nigeria’s Dilemma,” *Journal of Emerging Trends in Economic and Management Sciences (JETEMS)* 2, no.6, (2011):491; Yi-Chong, X., “The Myth of the Single Solution: Electricity Reforms and the World Bank,” *Energy* 31, (2006): 805; Bayliss Kate, “The World Bank and Privatisation: A Flawed Development Tool,” 2000; Paliwala A, “Privitisation in Developing Countries: The Governance Issue,” *Law, Social Justice & Global Development Journal (LGD)*1(2000); R. W. Bacon and J. Besant-Jones, (2001), 334;World Bank, The World Bank’s Role in the Electric Power Sector: Policies for Effective Institutional, Regulatory and Financial Reform (Washington DC: World Bank, 1993)34;Yin-Fang Z., David Parker, and Collin K., “Electricity Sector Reform in Developing Countries: An Assessment of the Effects of Privatisation, Competition and Regulation,” *Journal of Regulatory Economics* 33, no. 2 (2008):163; David Hall, “Electrifying Africa: Power Through the Public Sector,” *PSIRU Reports* (2007):4; H. Motoyama and Widago N., “Power Restructuring in Indonesia: A Preliminary Study for Advocacy Purposes (Washington DC :World Bank, 1999); ADB, “Energy 2000: Review of the Energy Policy of the Asia Development Bank,” 2000; Olawale Ajai and Bolaji Owosanoye, “Regulation or Deregulation: Which Way Nigeria: An Examination of Trends in the 1980S and 1990s,” in *Deregulation, Law Economics and Politics*, ed. Ephiphany Azinge and Bolaji Owasanoye, (Lagos: NIALS, 2012),1.

<sup>8</sup>Central Intelligence Agency, The World Fact Book, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (accessed November 5, 2013). Data as at July 2013

Africa with far lesser population generates.<sup>10</sup> As a member of the commonwealth and the comity of nations, Nigeria is influenced by global trends in politics, economics, law and other spheres. Influenced by the global wave of economic reforms, Nigeria as far back as the 1999 deregulated its public enterprises such as cement, manufacturing firms, telecommunications, banks, hotels and vehicle assembly plants among others.<sup>11</sup> The most recent being the electricity industry, the deregulation of which reached its climax on November 1, 2013 when the government physically handed over the electricity business to the private firms.<sup>12</sup>

Towards deregulating the Nigerian electricity sector, Nigeria produced the National Electric Power Reform Policy in 2001.<sup>13</sup> The policy culminated in the enactment of the Electric Power Sector Reform Act, (EPSRA) 2005; and establishment of the Power Holding Company of Nigeria (PHCN) that took over the electricity business from the state corporation - the National Electricity Power Authority (NEPA).<sup>14</sup> From 2005, the

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<sup>9</sup>Emeka E. Okafor, "Reforms in the Power Sector and Implications for Industrial Development in Nigeria; The case Difference Between Six and Half a Dozen?" *Ibadan Journal of the Social Sciences* 12, no.1 (2014):1; Marilyn Chikaodili Amobi, "Deregulating the Electricity Industry in Nigeria: Lessons from the British Reform," *Socio-Economic Planning Sciences* 41, no. 4 (2007): 296; Segun Jacob and Daniel Olatunji, "It's a Shame Nigeria Still Struggles to Generate 3000 MW of Electricity – Tambuwal," *Nigerian Tribune*, (Abuja), December 18, 2013; Isaac, N., "Nigeria can Generate Over 3,500mw From Hydropower – Jimeta," *Leadership*, (Abuja), September 24, 2013; "Expectations Heightens as Private Investors Move to Take over Power Assets" *Thisday*, (Lagos), September 3, 2013.

<sup>10</sup>Abimbola O. Windapo and Cattell Keith, "The South African Construction Industry: Perceptions of Key Challenges Facing Its Performance, Development and Growth," *Journal of Construction in Developing Countries* 18, no. 2 (2013): 69; Nnodim, O., "November 1 Power Firms' Handover date Uncertain – BPE," *The Punch*, October 18, 2013.

<sup>11</sup>Oluwade V. Ekanade, (2014):15, Bureau of Economic Energy and Business Affairs, "2009 Investment Climate Statement – Nigeria," (2009). <http://www.state.gov/e/eeb/rls/othr/ics/2009/117246>. (accessed April 11, 2009).

<sup>12</sup>Emeka E. Okafor (2014): 9.

<sup>13</sup> Engr. Clement Adeyinka Oke, "The Nigerian Power Sector Reform: Progress, Status, Issues and Outlook," 2015 Academy Technology Dinner Lecture Lagos, June 10, 2015.

<sup>14</sup>Kola Subair and David M. Oke, "Privatization and Trends of Aggregate Consumption of Electricity in Nigeria: An Empirical Analysis," *African Journal of Accounting, Economics, Finance & Banking Research* 3, no. 3 (2008): 9; Makwe J. N., Akinwale Y.O. and Atoyebe M. K., "An Economic Assessment of the

EPSRA was the statute that regulates the Nigerian electricity industry. This is because the EPSRA repealed the National Electric Power Authority Act that was the legislation that regulated the Nigerian electricity industry until 2005.<sup>15</sup> The unbundling of PHCN and the carving out of eighteen successor companies from the PHCN comprising six Generation companies (Gencos), one transmission company (transco) and eleven Distribution companies (Discos),<sup>16</sup> were based on the provisions of the EPSRA. These companies took over the business of generation, transmission and distribution of electricity to consumers in the country. By November 1, 2013, the federal government of Nigeria handed over all the Gencos and eight out of the eleven Discos to the private buyers.<sup>17</sup> Sapele Power Disco was however, handed over on February 24, 2014.<sup>18</sup> It is worthy to note as usual, generation and distribution aspects of the value chain were the deregulated aspects. The government retained ownership and control of the transmission segment of the electric power sector.<sup>19</sup> According to the Minister of power;

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Reform of Nigerian Electricity Market," *Energy and Power* 2, no.3 (2012): 26; Oluwole Adegbeno, "Electric Power Delivery and Management Strategies," in *The Jonathan Presidency: The First Year*, John A. Ayoade, Adeoye A. Akinsanya, Olatunde J. B. Ojo eds. (Maryland: University Press of America, 2013), 292; Koledoye Olugbenga *et al.*, "The Current and Future Challenges of Electricity Market in Nigeria in the Face of Deregulation Process," *African Journal of Engineering Research* 1, no. 2 (2013):34.

<sup>15</sup> Section 99, Electric Power Sector Reform Act, 2005.

<sup>16</sup> A.U. Adoghe, I. A. Odigwe and S. O. Igbinovia, "Power Sector Reforms –Effects on Electric Power Supply Reliability and Stability in Nigeria," *International Journal of Electric and Power Engineering* 3, no.1 (2009):39; Ayodele Oni, *The Nigerian Electric Power Sector: Policy, Law, Negotiation Strategy, Business*, (Bloomington: AuthorHouse, 2013), 80.

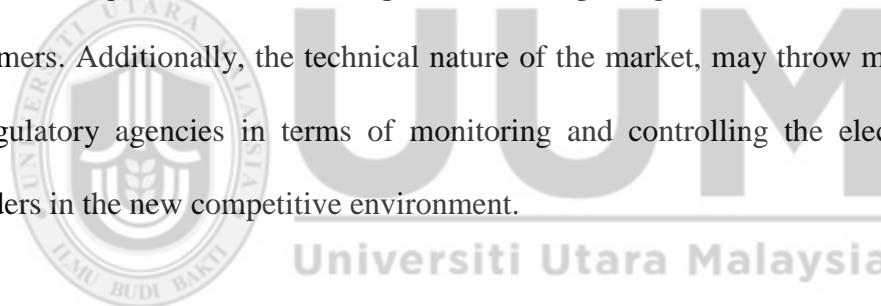
<sup>17</sup> Juliet Alohan, Patrick Ochoga, Chika Izuora and Achor Abimaje, "Nigeria: FG Limits Role, As Private Owners Take Over Power Sector, The Leadership, November 2, 2013.

<sup>18</sup> Everest Amaefule, "At Last, Core Investor Acquires Sapele Power, The Punch, (Lagos), February 24, 2014.<http://www.punchng.com/business/business-economy/at-last-core-investor-acquires-sapele-power/>; Everest Amaefule, "Power Firms: FG Signs Agreement with 14 bid Winners," The Punch Newspaper (Lagos) February 22, 2013; Thisday, "Expectations Heightens as Private Investors Move to Take Over Power Assets" Thisday (Lagos), September 3, 2013; Enoghase S and Odueme-Omona, "FG Hands Over PHCN to new Investors: As Workers Protest Over Benefits," Daily Independent, (Lagos) October 01, 2013; Flagbemi A. and Anuforo E., "Labour Protests, Govt Transfer Electricity Utilities," The Guardian, October 01, 2013; Daily Independent, "Electricity: FG hands over TCN to Manitoba, set 10,000mw Target," Daily Independent (Lagos) March 13, 2013.

<sup>19</sup> Babatunde Fashola, "Electricity: The price Nigerians must pay," Vanguard, April 24, 2016. <http://www.vanguardngr.com/2016/04/price-nigerians-must-pay-fashola/>

“(The) reform was concluded in November 2013. That was the privatization that the last administration did and it ended in the sale of 17 companies comprising six generation companies called the GenCos and 11 distribution companies called the DisCos sold to private organizations with government retaining certain levels of equity and ownership. But majority interest has been sold to private owners. The only one government kept was the transmission line.”<sup>20</sup>

The deregulation of the Nigeria’s electricity changed the status of the Nigerian electricity industry from a state-owned and regulated enterprise to a liberalised one. Electricity in the country is no longer a public service, but a business product offered for sale by private firms. The new market could expose consumers to issues of high pricing, service quality, billing frauds, and new products and packages that could overwhelm the consumers. Additionally, the technical nature of the market, may throw more challenges on regulatory agencies in terms of monitoring and controlling the electricity service providers in the new competitive environment.



As in many jurisdictions<sup>21</sup> Nigerians were very skeptical about electricity deregulation. They were lobbied to accept electricity industry deregulation.<sup>22</sup> Nigerians' skepticism over electricity deregulation may be borne out of their experience in deregulated sectors such as telecommunications and banking, and the inability of the relevant government

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<sup>20</sup> Ibid.

<sup>21</sup> Hulya Dagdeviren and A. Robertson, “A Critical Assessment of Incomplete Contracts Theory for Private Participation in Public Services: The case of the Water Sector in Ghana,” *Cambridge Journal of Economics* 37, (2013):1072; Fuest V. and Haffner, S.A., “PPP – Policies, Practices and Problems in Ghana’s Urban Water Supply,” *Water Policy* 9, (2007):169; The World Bank, Power’s Promise: Electricity Reforms in Eastern Europe and Central Asia, Julian Lampietti, (2004), 27; Hall David, Lobina Emanuele & Motte Robin de la, “Public Resistance to Privatisation in Water and Energy,” *Development in Practice* 15, no. 3-4 (2005):287.

<sup>22</sup> The Nigerian Voice, “Nigerians Should Accept Deregulation Of Power Sector – Sambo,” The Nigerian Voice, September 29, 2011.

agencies to protect the consumers' interest.<sup>23</sup> Failure to address consumer exploitation negatively affects consumer interest and places the consumer at the losing end.<sup>24</sup> That is why the jurisprudence on consumer protection is built around the weakness and vulnerability of the consumer and the need to minimize consumer exploitation and extortion in the marketplace.<sup>25</sup> Regrettably, the above is the general picture of the regulatory environment of consumer protection in Nigeria especially in the deregulated sectors.

What worries consumers and interest groups about utility deregulation is that, contrary to the touted consumer benefits, electricity deregulation usually results in dramatic price spikes and a host of other consumer protection concerns that affect the consumer and the poor.<sup>26</sup> A fact admitted by financial institutions such as the World Bank (WB) and other organisations that support deregulation and privatisation.<sup>27</sup> In fact, several scholars and

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<sup>23</sup> Daily Independent, "Another Increase in Electricity Tariffs?" Daily Independent, October 09, 2013.

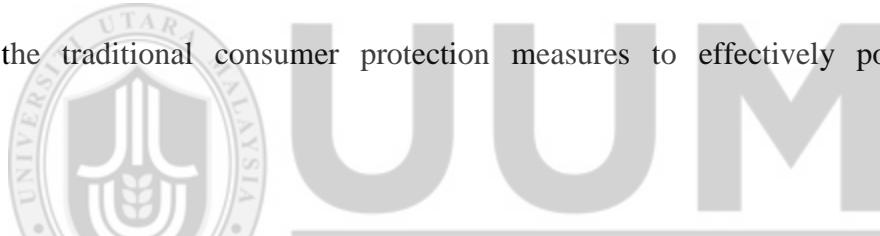
<sup>24</sup> McGregor Sue L. T., "Complexity Economics, Wicked Problems and Consumer Education," *International Journal of Consumer Studies* 36, no. 1 (2012): 66.

<sup>25</sup> Bill Haemmel, "Consumer Protection—Challenge and Opportunity to the Business Law Professor," *American Business Law Journal*, 10, no1 (1972): 47.

<sup>26</sup> Roger H. Coupal and David Holland, "Economic Impact of Electric Power Industry Deregulation on the State of Washington: A General Equilibrium Analysis," *Journal of Agricultural and Resource Economics* 27, no. 1 (2002):244; Ferdinand E. Banks, "Economic Theory and Some Obliging Aspects of Electricity Trading and Deregulation," *Energy Studies Review* 12, no.1 (2003):84, Njeri Wamukonya, "Power Sector Reform in Developing Countries: Mismatched Agendas," *Energy Policy* 31, no. 12 (2003): 1273; Paul L. Joskow, "The Difficult Transition to Competitive Markets in the U.S. Cambridge Working Papers in Economics/CMI Working Paper, CWPE 0328/CMI," 2003; David L. Newbery, "Issues and Options for Restructuring Electricity Supply Industries," University of Cambridge (Mass) and Cambridge-MIT Institute, DAE-CMI Working Paper 0210, 2002; Office of Gas and Electricity Markets (OFGEM), "OFGEM Faces Difficult Challenges Ahead." <http://www.ofgem.gov.uk> (accessed May 6, 2013); John Byrne and Yu-Mi Mun, "Rethinking Reform in the Electricity Sector: Power Liberalisation or Energy transformation," *Electricity reform: Social and environmental challenges* (2003): 49.

<sup>27</sup> Hall David, Lobina Emanuele, & Motte R., (2005):297; Michael Klein, "The World Bank as Privatization Agnostic," *Wall Street Journal*, July 21, 2003; Christopher Short and Anthony Swan, "Competition in the Australian National Electricity Market," *Australian Bureau Agricultural and Resource Economics (ABARE) Current Issues*, January 2002; Lynne Chester, "The Failure of Market Fundamentalism How Electricity Sector Restructuring is Threatening the Economic and Social Fabric," *Review of Radical Political Economics* 45, no. 3 (2013): 320.

the WB have carried out surveys and assessments across countries in the world and concluded that in terms of efficiency, the private firms did not fare better than the public especially in the utilities which includes electricity.<sup>28</sup> In addition, a huge literature across jurisdictions proved that electricity deregulation did not benefit the consumer nor resulted in electricity price reduction.<sup>29</sup> Instead, electricity prices skyrocketed, many consumers disconnected and companies colluded and exploited consumers.<sup>30</sup> A 2014 UK energy market joint assesment report of competition issued by three regulatory agencies found energy firms committing anti-competitive conducts against the interests of consumer and small businesses.<sup>31</sup> This calls for caution for Nigeria that recently deregulated its electricity sector. Deregulated electricity markets require regulatory measures different from the traditional consumer protection measures to effectively police the new



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<sup>28</sup> Antonio Estache, Perelmann S. and Trujillo L., "Infrastructure Performance and Reform in Developing and Transition Economies: Evidence From a Survey of Productivity Measures," *World Bank Policy Research Working Paper* 3514, February 2005; M. Pollitt, *Ownership and Performance in Electric Utilities: the International Evidence on Privatisation and Efficiency*, (Oxford: Oxford University Press, Oxford, (1995).

<sup>29</sup> Santiago Arango, Dyner Isaac, and Larsen Erik R., "Lessons from Deregulation: Understanding Electricity Markets in South America," *Utilities Policy* 14, no. 3 (2006): 206; Pierre-Olivier Pineau, "Transparency in the Dark – An Assessment of the Cameroonian Electricity Sector Reform," (2004):1; Pierre-Olivier Pineau, "Electricity Sector Reform in Cameroon: Is Privatization the Solution?" *Energy Policy* 30, no. 11–12 (2002): 999; Paul J. Scalise, "Who Controls Whom? Constraints, Challenges and Rival Policy Images in Japan's Post-war Energy Restructuring," in *Critical Issues in Contemporary Japan*, ed. Jeff Kingston (Oxon: Taylor & Francis, 2014), 102; Sally Hunt, *Making Competition Work in Electricity*, (New York: John Wiley & Sons, 2002):2; Lev S. Belyaev, *Electricity Market Reforms: The Economics and Policy Challenges*, (London: Springer, 2011), 2.

<sup>30</sup> Janson Eva, "Deregulation and the Stakeholder Model," *Corporate Governance* 10, no. 2 (2010):131; Grilli Luca, "Deregulated Electricity Market and Auctions: The Italian Case," *iBusiness* 2 (2010), 239; Tishler Asher and Woo Ch-Keung, "Is electricity Deregulation Beneficial to Israel?" *International Journal of Energy Sector Management* 1, no.4, (2007):324; Yi-Chong, X., "The Myth of the Single Solution: Electricity Reforms and the World Bank," *Energy* 31, (2006): 809; Ferdinand E. Banks, "A Simple Economic Analysis of Electricity Deregulation Failure," *Organisation of Petroleum Exporting Countries (OPEC) Review* 26, no. 2 (2002): 172; Lev S. Belyaev (2011).

<sup>31</sup>Competition and Market Authority Case: Joint Review of Competition in the Energy Market <https://www.gov.uk/cma-cases/joint-review-of-competition-in-the-energy-market> (accessed November 29, 2014). The assesment was conducted by the Office of Fair Trade (OFT), Office of Telecommunications (OFT) and Office of Gas and electricity Market (Ofgem) and Comptition Market Authority (CMA).

competitive electricity market, and to protect electricity consumers.<sup>32</sup> These include measures to regulate competition and antitrust activities between the service providers and to check market manipulations; to ensure access by all to adequate and quality services provision at affordable prices; and to protect consumers' rights and improve consumer access to justice.<sup>33</sup> Do these measures exist in Nigeria? The present research on Nigeria, a new entrant in electricity deregulation is timely. This study examined the legal and institutional frameworks for consumer protection and recommended the establishment of a strong consumer protection regime and regulatory checks to avoid consumer injustice in the Nigerian deregulated electricity industry.<sup>34</sup>

## 1.2 Problem Statement

Consumer abuses and exploitations admitted by captains of deregulated industries and regulatory failure are lingering problems in Nigeria.<sup>35</sup> This is more evident in the deregulated sectors such as telecommunications,<sup>36</sup> banking<sup>37</sup> and electricity. The case of

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<sup>32</sup>Yvonne van Rooy, "Consumer Law: The First Fifty Years," *Journal of European Consumer and Market Law* 1, no. 4 (2012): 210; A.U Adoghe, I. A. Odigwe and S.O. Igbinovia, (2009):41.

<sup>33</sup>Filipovic and Tanic, (2008):157;

<sup>34</sup>Stiglitz, Gabriel A., "Consumer Law in Argentina and the MERCOSUR," *Journal of Consumer Policy* 17, no. 4 (1994):462. See also H.-J. Chang, (1997):717; Sunstein, Cass R., *Free Markets and Social Justice*, (New York: Oxford University Press, 1997),3; David M. Newbery, "Problems of Liberalising the Electricity Industry," *European Economic Review* 46, no. 4–5 (2002):921.

<sup>35</sup>Dupe Atoki, "CPC Decries High Rate of Consumer Rights Abuse in key Sectors: ...Opts for Criminal Prosecution of Recalcitrant Businesses," The Sun News, March24, 2015; Anna Okon, "CPC to Prosecute Companies for Consumer Rights Abuse," The Punch, March 24, 2015. <http://www.punchng.com/business/business-economy/cpc-to-prosecute-companies-for-consumer-rights-abuse/>; I. A. Ogu, "Predatory Banking Practices in Nigeria," *Daily Trust* (Abuja: Nigeria), September 6, 2010.

<sup>36</sup>Akpoyomare Oghojafor, B.E., LadipoK. A., Salome O. Ighomereho, and Victor A. Odunewu, "Determinants of Customer Satisfaction and Loyalty in the Nigerian Telecommunications Industry," *British Journal of Marketing Studies* 2, no. 5 (2014): 67; Emmanuel Okwuke, "Quality of Service in 2014, Acid Test for NCC," *Daily Independent* (Lagos), January 8, 2014; Akinpelu Dada, "FG May Prosecute Telecoms Firms for Poor Services, The Punch, (Lagos)," December 17, 2011; Chidebere N., "Taming the Menace of Network Congestion," *Daily Independent* (Abuja: Nigeria) October 7, 2013; B. Nwankwo, "Telecommunications: No Respite Yet for Subscribers," *Leadership*, (Abuja:Nigeria), September 15, 2015; Nweke, R., "Nigeria: Communications Commission Says No to New License LTE.,"

the electricity industry recently deregulated is peculiar because of the serious issues of consumer exploitations in the industry. Although the Electric Power Sector Act (EPSRA) 2005 as the electricity industry regulatory statute and other statutory enactments made pursuant to the EPSRA exist, a lot of black and brown out, “crazy” and arbitrary billings, most worrying having to do with billing; cumbersome consumer redress and related issues plague the Nigerian electricity industry.<sup>38</sup> This remained the picture of the industry despite the existence of the Nigerian Electricity Regulatory Commission is established under the EPSRA to superintend over the industry and electricity service providers, The Nigerian Court of Appeal recently condemned the assumptive billing system in the

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*Daily Champion*, October 12, 2010; Ligali, B., “Declining Power Situation may Wipeout Telecommunications Gains,” *Daily Sun*, (Lagos: Nigeria), July 31, 2008; Amechi Ogbonna and Walter Ukaegbu, “CPC Battles Telcos, Manufacturers Over Poor Products, Services,” *The Sun*, March 10, 2014, <http://sunnewsonline.com/new/?p=55605> (accessed March 10, 2014).

<sup>37</sup> The Punch, “CBN, Stop Illegal, Excessive Bank Charges,” *The Punch* (Lagos: Nigeria), April 1, 2013, Obinna Chima, Thisday, “CBN Goes Tough on Customers’ Protection,” *ThisDay Live*, September 30, 2013.

<sup>38</sup> The Nigerian Political Economy, “SON Cries over Influx of Substandard Products,” *The Nigerian Political Economy*, October 13, 2013, <http://www.politicaleconomistng.com/son-cries-over-influx-of-substandard-products/>. (Accessed October 13, 2013); Nigerian Consumer, “Growing Menace of Fake Bulbs and Other Lamps in Nigeria” <http://nigeriacconsumers.com/blog/dealing-with-the-growing-menace-of-fake-bulbs-and-other-lamps-in-nigeria/> (accessed October 1, 2013); Olushola Belllo, “Son Destroys Substandard Goods Worth N500m,” *The Daily Trust*, April 1, 2015. The former president spoke on October 1, 2013 in his 53<sup>rd</sup> Independence Speech. According to the President “to the Nigerian people who have demonstrated such great patience and confidence, putting up often with darkness, noisy power-generating sets, the related pollution and daily disruptions in their lives, I say better days are coming.” See Enoghase, S and Odueme-Omona, “FG Hands over PHCN to new Investors: As Workers Protest over Benefits,” *Daily Independent*, (Lagos) October 01, 2013; R. Buhari, “Minister: Solar Energy Key to Nigeria’s Power Problem,” *Thisday*, September, 3, 2013; Emodi Nnaemeka Vincent, and Samson D Yusuf, “Integrating Renewable Energy and Smart Grid Technology into the Nigerian Electricity Grid System,” *Smart Grid and Renewable Energy* 5, no. 09 (2014): 220; Simon E. Sunday, “Challenges, Hopes as Power-Africa Berth with 10,000 mw,” *Daily Trusts*, August 6, 2014; Emeka E. Okafor, (2014):10; Ayodele (2013),18; Ekeh, J. C., “Issues and Challenges of Power Sector Reforms in a Depressed Economy,” in *Electricity Market, 2008, EEM 2008. 5th International Conference on European*, 1-7, 2008; O. I. Okoro and E. Chikuni, “Power Sector Reforms in Nigeria: Opportunities and Challenges,” *Journal of Energy in Southern Africa* 18, no. 3 (2007)56; Rayo Adeola, “PHCN Rips Consumers off to the Tune of N240b Annually – ECAN,” *Daily Times*, October 31, 2011; Recently, the Chairman of Nigerian Electricity Regulatory Commission (NERC) admitted that price for electricity services are inefficient. “NERC Prepared to Regulate Power Sector Post Privatisation – Amadi,” Leadership, Abuja, August 29, 2013; *Thisday*, “Expectations Heightens as Private Investors Move to Take Over Power Assets” *Thisday*, (Lagos) September 3, 2013.

industry as extortion.<sup>39</sup> Consumers pay for transformers and meters before any is installed in their premises even though the transformers and meters remain the properties of the electricity companies.

Although a strong legal regime for consumer protection is required to match a free market economy,<sup>40</sup> and the protection of consumers' right,<sup>41</sup> the regime for consumer protection in Nigeria suffers from problems such as outdated and inadequate legal and

<sup>39</sup> Evangelist Alfred Ambe Bassey Vs. Power Holding Company of Nigeria (PHCN) & Another (2012) ALL FWLR (Part 613) Page 2019 @ Pp. 2026@ E-F; Pp2028 -2029 G-C. See also Oketola Dayo, "PHCN Customers Angry Over Crazy Bills," *The Punch*, (Lagos) May 9, 2013; Eyo Charles, "Protest in Calabar as FG Commissions Power Installation," *Daily Trust* (Abuja), June 23, 2014; PM, "PHCN's Fraudulent Billing System," PM Newspaper (Lagos), January 23, 2013; Leadership, "Extortion Scandal Rocks Delta PHCN", Leadership (Abuja), July 14, 2011; Sebast Obasi, and Kunle Kalejaye, "Power Privatisation: Nigerians Lament Deteriorating Power Supply," *Vanguard*, (Lagos:Nigeria) December 3, 2013. <http://www.vanguardngr.com/2013/12/power-privatisation-nigerians-lament-deteriorating-power-supply/>

<sup>40</sup> Sam Amadi, "Post-Privatization: NERC's Strategic Action Plan For NESI, 2014," *Power Watch* 1, no. 4 (April- June, 2014):18; Cseres Kanti J., "What Has Competition Done for Consumers in Liberalised Markets?" *Competition Law Review* 4, no. 2 (2008): 119; Ira Horowitz, "A Law Enforcement Perspective of Electricity Deregulation," *Energy* 31, no. 6-7 (2006): 907; A.U Adoghe, I.A. Odigwe and S.O. Igbinovia, (2009):41; Stiglitz, Gabriel A., "Consumer law in Argentina and the MERCOSUR," *Journal of Consumer Policy* 17, no. 4 (1994):462; Kjersti Graver, "A Study of the Consumer Ombudsman Institution in Norway with Some References to the Other Nordic Countries II: Present Practices and Current Considerations" *Journal of Consumer Policy* 9, no. 2 (1986): 119; Gasparikova Sonia, "The Czech Republic's Experience with Competition Law," Mehta Pradeep S. ed. (2012), 35; Chakravarthy S., "Evolution of Competition in India" Mehta Pradeep S. ed., (2012), 73; Paul Joskow, "Introduction to Electricity Sector Liberalization: Lessons Learned from Cross-Country Studies," in ed. Sioshansi, F. and Pfaffenberger, W., *Electricity Market Reform: An International Perspective* (2006),18; Geraint Howell and Stephen Weatherill, *Consumer Protection Law*, 2<sup>nd</sup> ed., (Aldershot: Ashgate, 2005), 637; Tooraj Jamasb et al, Electricity Sector Reform in Developing Countries: A Survey of Empirical Evidence on Determinants and Performance, Cambridge Working Papers, (2004):2 <http://www.econ.cam.ac.uk/electricity/publications/wp/ep47.pdf> (accessed April 10, 2013); Blumsack Seth B.; Apt, Jay; and Lave, Lester B., "Lessons from the Failure of U.S. Electricity Restructuring," *Tepper School of Business, Paper* 239, (2006), 9. <http://repository.cmu.edu/tepper/239>. (accessed December 28, 2013); Yi-Chong, X., "The Myth of the Single Solution: Electricity Reforms and the World Bank," *Energy* 31, (2006): 812; Angela Albu, and Alexandru Nedea, "The Protection of the Consumer as a Beneficiary of Services," *The AMFITEATRU ECONOMIC Journal* 8, no. 20 (2006): 131; Ian Bartle, *Globalisation and Eu Policy-Making: The Neo-Liberal Transformation of Telecommunications and Electricity* (Manchester: Manchester University Press, 2005),62; Günter Knieps, "The Positive Theory of Regulation," in *Network Economics* (Switzerland: Springer International Publishing, 2015), 158; Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* ( New York: Oxford University Press, 1992),7; Norbert Reich, "Consumer Protection in Countries of Emerging Markets: The Example of Russia," *Journal of Consumer Policy* 19, no. 1 (1996): 5.

<sup>41</sup> Gaikwad Navnath Sopanrao, "The Need for Consumer Protection and Protection Measures," *Indian Streams Research Journal (ISRJ)* 4, no.5 (2014):3; Sakina Shaik Ahmad Yusoff, Suzanna Mohamed Isa and Azimon Abdul Aziz, "Legal Approaches to Unfair Consumer Terms in Malaysia, Indonesia and Thailand," *Journal of Social Sciences & Humanities*, (2012): 43.

institutional structures for policing its deregulated markets. It lacks a comprehensive law on consumer rights and remedies and has a cumbersome judicial system inappropriate for consumer grievance handling. The consumer protection system is plagued by a lot of challenges legally and institutionally.

### **1.2.1 Outdated and Deficient Consumer Protection Laws and Structures**

The Nigerian consumer protection regime is outdated and lacks key consumer protection laws and structures in tandem with the realities of deregulated electricity markets.<sup>42</sup> Apart from being punitive and not compensatory, extant consumer laws concentrated on the supply of goods, and were enacted when utility services were provided as public services as opposed to their present status of being business products. The twenty-four years old principal consumer protection law, the Consumer Protection Council Act, 1992 (CPC Act) is yet to see any amendment. Furthermore, the Consumer Protection Council (CPC) the agency established under the CPC Act, lacks a strategic plan and is grossly underfunded and understaffed.<sup>43</sup> How can an agency with less than 200 staff and only seven offices<sup>44</sup> serve the over 174 million Nigerians? Equally, Nigeria lacks competition law and competition regulatory authority essential for policing deregulated markets despite the fact that utility provisions such as electricity are now in private hands.

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<sup>42</sup> Dahiru Jafaru Usman, Nurli Yaacob, and Aspalella A. Rahman, “Electricity Sector Deregulation and Consumer Protection: Assessing the Imperatives of Competition Law and Competition Regulatory Authority in Nigeria.” Paper presented at the UUM International Conference on Governance, 2014. Held at the Flamingo Hotel, Jalan Tanjung Bungha, Penang, Malaysia, 29-30 November, 2014 organised by the UUM Institute of Governance.

<sup>43</sup> Wale Igbitade, “About 100m Nigerians Don’t’ Have Access to Justice –Adelodun,” National Mirror, September 30, 2013.

<sup>44</sup> Alli, Franklin and Kumolu, Charles, “Nigerian Consumers Will be Better off During my Tenure – Atoki,” *Vanguard* , October 31, 2013.

### **1.2.2 Lack of Consumer Rights and Remedies Legislation**

Legislation plays a vital role in rights protection.<sup>45</sup> While countries such as Kenya not only codified consumer rights but also made them fundamental constitutional guarantees equal to civil and political rights.<sup>46</sup> However, the legal regime for consumer protection in Nigeria did not clearly codify consumer rights nor talk of making them constitutional guarantees. The same fate applies to consumer remedies. While, in some countries such as Malaysia,<sup>47</sup> and United Kingdom<sup>48</sup> consumer remedies for consumer rights violation are explicitly provided in legislative instruments, consumer remedies are not accorded such legislative treatment in Nigeria.

### **1.2.3 Cumbersome Consumer Redress Mechanisms**

Consumer grievances by their nature require expeditious handling in the most informal and cost effective ways. While less formal, prompt and fair dispute settlement mechanism and procedures such as Consumer Tribunals/Small Claims Courts, Alternative Dispute Resolution (ADR), Consumer Ombudsman (COM) and other administrative structures for improved consumer access to justice exist across the globe, this is not the case in Nigeria. With all the country's patronage of deregulation and consumer rights abuses in the country, the poor and illiterate Nigerian consumer has the only option of congested and delays-prone regular courts to ventilate his grievance.<sup>49</sup> The scope of legal aid scheme in

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<sup>45</sup> M. Odekan, *Booms and Busts: An Encyclopedia of Economic History from the First Stock Market Crash of 1792 to the Current Global Economic Crisis* (Taylor & Francis, 2015), 165; Vernadaki, Zabia, "Consumer Protection and the Reform of the European Consumer Acquis," *International Company and Commercial Law Review* 21, no.9 (2010): 318.

<sup>46</sup> Section 46, The Constitution of the Republic of Kenya, 2010.

<sup>47</sup> Sections, 17, 29, 37, 41, 42, 43, 45, 46, 50, 61 63 and 64, Malaysian Consumer Protection Act , 1999

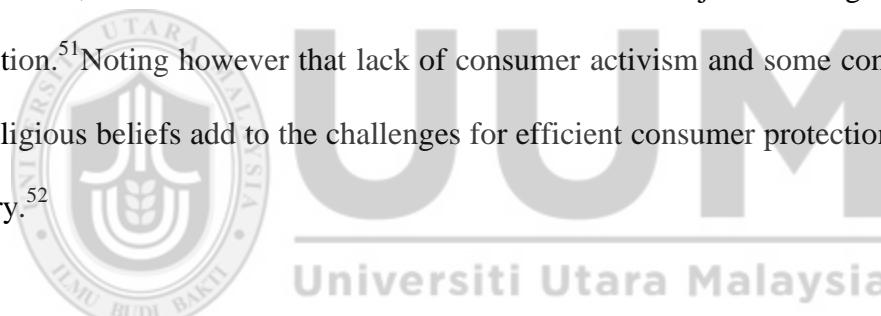
<sup>48</sup> Sections 19-24; 42-45, Consumer Rights Act, 2015

<sup>49</sup> News Agency of Nigeria (NAN), "Nigerian Judiciary Needs Complete Overhaul – CJN," Leadership, December 18, 2015. <http://www.leadership.ng/news/484357/nigerian-judiciary-needs-complete-overhaul>

the country is again very limited, and the Legal Aid Council of Nigeria (LACON) remains understaffed and underfunded. In fact, over 100 million Nigerians lack access to justice.<sup>50</sup>

#### **1.2.4 Legally and Institutionally Challenged Consumer Protection System**

The Nigerian consumer protection system faces a lot of challenges that in a way render the system inefficient. These challenges are from both the government and the consumer angles. While state agencies are for instance not adequately spread across the country, they are among other problems underfunded and understaffed. From the consumer perspectives, the lack of consumer awareness is the major challenge for consumer protection.<sup>51</sup> Noting however that lack of consumer activism and some consumer cultural and religious beliefs add to the challenges for efficient consumer protection system in the country.<sup>52</sup>



Deregulated electricity markets have been found to be prone to fraudulent behaviours, failures and various abuses. Despite the existence of legal and institutional measures necessary for policing deregulated electricity markets, electricity markets were

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cjn (accessed December 18, 2015); NAN, “Fashola Decries Slow Wheels of Justice in Nigeria,” The Leadership, (Abuja), September 23, 2014, <http://leadership.ng/news/384932/fashola-decries-slow-wheels-justice-nigeria> (accessed September 23, 2014); Jedrzej George Frynas, “Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners,” *Social & Legal Studies* 10, no. 3 (2001):410; S. Sothi Rachagan, “Protection against Unfair Trade Practices in Malaysia — Law, Enforcement, and Redress in a Developing Country,” *Journal of Consumer Policy* 15, no. 3 (1992): 266. See the cases of *Ariori V. Elemu* (1983) 1 Supreme Court Cases (SC), 13; *Wakino V. Ade John* (1999) 9 NWLR (Part 619), 403; *Dabo V. Abdullahi* (2005) ALL FWLR (Part 255)1039; *Dairo V. UBN PLC & Anor* (2007) LPELR-913(SC). These cases took decades to be finally decided.

<sup>50</sup> Wale Igbintade, “About 100m Nigerians Don’t’ Have Access to Justice –Adelodun,” National Mirror, September 30, 2013.

<sup>51</sup> Dahiru Jafaru Usman, Nurli Yaacob, and Aspalella A. Rahman, “Lack of Consumer Awareness: A Major Challenge for Electricity Consumer Protection in Nigeria,” *Asian Social Science* 11, no. 24 (2015): 240.

<sup>52</sup> Ibid.

manipulated, and consumers paid more in California, Texas, England and Wales, Alberta, Norway, San Diego, Brazil, Spain, Philippines, India, Australia, Turkey, China and in several European countries etc.<sup>53</sup> In fact, prices only fell where regulators intervened.<sup>54</sup>

### 1.3 Research Questions

Flowing from the above, the research intends to address the following major questions;

1. What is the current state of the legal and institutional frameworks for electricity consumer protection in Nigeria?
2. Can the legal and institutional frameworks for consumer protection in Nigeria guarantee the protection of electricity consumers in the Nigerian deregulated electricity sector?
3. Is justice accessible to the electricity consumer in the deregulated electricity sector in Nigeria, and how can consumer redress mechanism be improved in the deregulated Nigerian electricity sector?

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<sup>53</sup>Matthew Evans, “Regulating Electricity-Market Manipulation: A Proposal for a New Regulatory Regime to Proscribe All Forms of Manipulation,” *Michigan Law Review* 113, (2015): 585; Janson Eva, (2010); Luca Grilli (2010); Woo C. K. & Zarnikau Jay, “Will Electricity Market Reform Likely Reduce Retail Rates?” *The Electricity Journal* 22, no. 2 (2009):40-45; Harry M. Trebing, (2008):469;Asher Tishler and Ch-Keung Woo (2007); Woo C. K. *et al.*, ”Costs of Electricity Deregulation,” *Energy* 31, no. 6–7 (2006):747-768;Chi-Keung Woo, Lloyd, Debra, & Asher Tishler, “Electricity Market Reform Failures: UK, Norway, Alberta and California,” *Energy Policy* 31, no. 11 (2003):1103; Hulya Dagdeviren, “Limits to Competition and Regulation in Privatized Electricity Markets,” *Annals of Public & Cooperative Economics* 80, no. 4 (2009): 645; Apt Jay, “Competition has not Lowered U.S. Industrial Electricity Prices,” *The Electricity Journal*, (2005):8; Das Rasmi Ranjan, “Introducing Competition in the Power Sector in India: Adoption of the US Model,” *Journal of Indian Business Research* 2, no. 2( 2010):83; Philip Andrews-Speed, *et al.*, “Do the Power Sector Reforms in China Reflect the Interests of Consumers?” *The China Quarterly*, No. 158 (1999):446.

<sup>54</sup>Lave, B. Lester; Apt, Jay and Blumsack, Seth; “Deregulation/Restructuring Part I: Reregulation Will not fix the Problems,” *The Electricity Journal* 20, no.8, (2007):15;Blumsack, Seth, Apt Jay, and Lave, Lester B., “A Cautionary Tale: Us Electricity Sector Reform,” *Economic and Political Weekly* 40, no. 50 (2005): 5283.

4. What are the challenges for consumer protection in the Nigerian deregulated electricity sector?

#### **1.4 Research Objectives**

The general objective of this research is to examine the state of the legal and institutional frameworks on consumer protection in Nigeria and how it can guarantee the protection of electricity consumers in the deregulated electricity sector. Equally, the study also has the following specific objectives:

1. To examine the legal and institutional frameworks for consumer protection in Nigeria;
2. To analyse the legal and institutional frameworks for consumer protection in the Nigerian deregulated electricity sector;
3. To examine how consumer access to justice is organised and how the consumer redress process in the Nigerian deregulated electricity can be improved;
4. To examine the challenges for consumer protection in the Nigerian deregulated electricity sector;
5. To recommend necessary improvements to the legal regime statutorily and institutionally for better consumer protection in Nigeria.

#### **1.5 Significance of the Study**

Electricity deregulation poses challenges on several stakeholders especially consumers. A study on electricity deregulation, consumer rights and redress in Nigeria would, therefore, interest several stakeholders in the electricity industry. These are the government and the

regulatory agencies, the consumer, electricity services providers, as well as non-governmental organisations with bias on consumer protection.

The main significance of this research is that it would assist policy makers in establishing legal and institutional structures for consumer protection, and in the rejuvenation of the existing ones in tune with the realities of a liberalised market. Consumers especially of electricity services and other stakeholders such as the electricity service providers will be better off should this research leads to a review of the existing regulatory frameworks of consumer protection in Nigeria.

From the academic point of view, the research would also improve the existing literature in Nigeria, in the area of consumer protection in deregulated environment. This is because, to the best of the knowledge of this research; no literature exists on consumer protection in any deregulated sector in Nigeria (the electricity sector in particular). In fact, there is a paucity of literature and expertise on general consumer protection in the country. The study would, therefore, serve as a reference material to practitioners, consumer organisations, other researchers, students and persons who may be called upon to give advice on consumer problems whether legal or paralegal practitioners. This according to Richard *et al.* is one sure way of improving consumer protection.<sup>55</sup>

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<sup>55</sup> Richard Widdows, Gong-Soog Hong, Jing J Xiao, Misako Higa, Hilary Tso, and Lakshmi Malroutu, "Consumer Issues and Consumer Protection in Asia," *Advancing the Consumer Interest* (1995): 17.

## 1.6 Research Methodology

### 1.6.1 Research Design

Although this research is a legal research it adopted the socio-legal research method. It combined the doctrinal and qualitative approaches to the research. The doctrinal methodology combines “legal analysis, synthesis, and practical policy arguments.”<sup>56</sup> The methodology is rigorous; lays more emphasis on analysis of theoretical concepts, “legal rules, principles and doctrines.”<sup>57</sup> Additionally, the doctrinal methodology basically aims at examination and analysis “in a systematic way” how laws and legal institutions work.<sup>58</sup> Given the features of the doctrinal methodology and the fact that this thesis aims at examining and analysing the state of the legal and institutional frameworks for consumer protection in deregulated electricity sector in Nigeria, the doctrinal method, therefore, best suits the thesis. Additionally, the doctrinal methodology being rigorous, evaluative and critical, is capable of answering the research questions as well as achieving the research objectives.<sup>59</sup> Hence, it justifies its adoption in this thesis. The fact that the doctrinal methodology focuses more on “practical scholarship and pedagogy,”<sup>60</sup> and its being core and predominant amongst legal academics in the Commonwealth, Europe and Australia, further justifies its adoption in this research.<sup>61</sup>

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<sup>56</sup>Phillip C. Kissam, “The Evaluation of Legal Scholarship,” *Washington Law Review* 63, (1988):221

<sup>57</sup>Khurshul V. and Filipos A., *Legal Research Methods: Teaching Material*, (Chilot, 2009), 44.

<sup>58</sup>Yaqin A., *Legal Research and Writing*, (Malaysia: Lexis Nexis, 2007), 10.

<sup>59</sup>Mahda Zahraa, *Research Methods for Law Postgraduate Overseas Students*, (Kuala Lumpur, Stiglow, 1998), 18 -19; Emerson H. Tiller and Frank B. Cross, “What is Legal Doctrine,” *Northwestern University Law Review (NULR)* 100, no.1 (2006):518.

<sup>60</sup>H.T. Edwards, “The Growing Disjunction Between Legal Education and the Legal Profession,” *Michigan Law Review* 91, (1992):36

<sup>61</sup>Hutchinson Terry C. and Duncan Nigel, “Defining and Describing What we do : Doctrinal Legal Research,” *Deakin Law Review* 17, no. 1(2012): 102; Gregory C. Sisk, “Qualitative Moment and the Qualitatative Opportunity: Legal Studies of Judicial Making,” *Cornell Law Review* 93, (2008): 890; Emerson H. Tiller and Frank B. Cross, (2006):518; Bogdany AV, “The Past and Present of Doctrinal Constructivism: A Strategy for Responding to the Challenges Facing Constitutional Scholarship in

As indicated above this thesis included the qualitative method. Specifically, the interviews were used for the qualitative data collection. The utility of combining different methods is to make the findings of the research more plausible.<sup>62</sup> While the doctrinal method enabled the researcher to view law from the inside, the qualitative aspect helped the researcher to view the law “from the outside.”<sup>63</sup> The combination of both approaches enhanced the originality of the thesis findings.

Emphatically, the desire to make this research different from the approach adopted by most legal academics in Nigeria necessitated making the research design socio-legal. Most Nigerian legal academics avoid researches that involve field work or require the application of the quantitative/qualitative social science approaches to research.<sup>64</sup> The decision to make this research different was further guided by the suggestions of scholars such as Wortley. For decades, Wortley advocated the extension of the frontiers of legal research beyond the library or the statutes books and textual materials to the field to

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Europe,” *International Journal of Constitutional Law* (2009):376, Earnest M. Jones, “Some Current Trends in Legal Scholarship,” *Legal Research and Methodology Journal of the India Law Institute* 24, no.s 2, 3, and 4 (April – December 1982): 204-205; Mohd Hashim Darbi, “Bridging the Doctrinal and Non-Doctrinal Divide in Legal Research and Scholarship,” *Universiti Teknologi Mara (UiTM) Law Review* 3(2007-2008):175; Vick Douglas W, “Interdisciplinarity and the Discipline of Law,” *Journal of Law and Society* 31, no. 2 (June 2004): 177; Schuck Peter H., “Why Don’t Law Professors Do More Empirical Research?” *Journal of Legal Education* 39 (1989):329; Gestel Van and Hans – W. Micklits, “Revitalizing Doctrinal Legal Research in Europe: What About Methodology?” *European University Institute, Florence, Working Papers*, 2011, 2; Jan M. Smits, *The Mind and Method of the Legal Academic*, (Cheltenham, UK: Edward Elgar, 2012),11; Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edingburg: Edinburgh University Press, 2007),18; Jaakko Husa, “Comparative Law, Legal Linguistics and Methodology of Legal Doctrine,” in *Methodologies of Legal Research* ed., Mark van Hoecke (Portland: Hart, 2011), 207.

<sup>62</sup>Alexander Volokh, “Choosing Interpretive Methods: A Positive Theory of Judges and Everyone Else,” *New York University Law Review (N.Y.U. L. REV.)* 83 (2008):774

<sup>63</sup>Cotterrell Roger, “The Sociological Concept of Law,” *Journal of Law and Society* 10, no. 2 (Winter, 1983):242.

<sup>64</sup> I.A. Ayua, “Legal Research and Development,” in *Law and Research Methodology*, ed., I.A. Ayua and D.A. Guobadia, (Lagos: NIALS, 2001), 1.

interact with the public, experts and government officials<sup>65</sup> in order to gather facts and statistics on the workings of the law.

### **1.6.2 Research Scope**

The scope of this research is to analyse the current legal and institutional frameworks for consumer protection in Nigeria in the light of the Nigeria's recent deregulation of its electricity sector. The research is not on general consumer protection in the goods and services industries. For the purpose of this research, the Electric Power Reform Act, 2005; Consumer Protection Council Act, 1992; Standard Organisation Act, 1971 and the Legal Aid Council Act, 1976 (amended in 2011) were selected. Relevant statutory enactments made pursuant to the above statutes, and other relevant policy documents (where necessary) were doctrinally analysed. Equally, relevant case law on electricity consumer rights protection, consumer access to justice and redress were analysed. The overall analysis of the selected laws was done in the light of the United Nations Guidelines for Consumer Protection, the African Model Law for Consumer Protection and the relevant best practices across jurisdictions. The best practices across jurisdictions were referred to for comparative purposes and they include but are not limited to US, UK, Malaysia, Australia, South Africa and Kenya.

### **1.6.3 Types of Data**

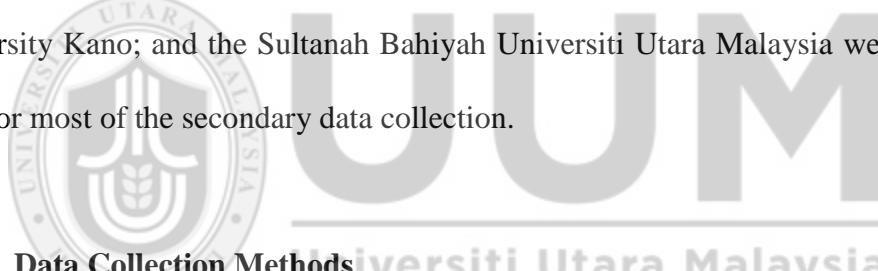
The primary data for the purpose of this research was sourced from the text of the Electric Power Sector Reform Act, 2005; Consumer Protection Council Act, 1992, the

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<sup>65</sup> B.A. Worlsey, "Some Reflections on Legal Research after Thirty Years," *Journal of the Society of Public Teachers of Law* 8 (1964): 254.

Standard Organisation Act, 1971, the Legal Aid Council Act, 1976, and the relevant case law on electricity consumer protection and consumer access to justice and redress. These constitute primary data in legal research such as the current research.<sup>66</sup> The primary data generated from the interview was also used to validate the information found from the statutes and case law.<sup>67</sup>

Secondary data from academic journals, textbooks, dictionaries, newspaper articles, legal encyclopedias, government publications, bulletins, Internet sources, and guidelines relevant to the area of the research were equally consulted to supplement the primary data.<sup>68</sup> The Nigerian National Assembly library; Faculty of Law library, Bayero University Kano; and the Sultanah Bahiyah Universiti Utara Malaysia were the libraries used for most of the secondary data collection.



#### **1.6.4 Data Collection Methods**

The primary data for this research was collected through a library or doctrinal approach from the body of laws, policy documents and relevant case law in the area of consumer protection, electricity (de) regulation and consumer access to justice. The interview component was used in sourcing information to support the primary data. Though it may be possible to obtain this information from other sources, such as surveys or participant observation, interview was chosen because it is the most appropriate qualitative research

<sup>66</sup> Khurshul V. and Filipos A. (2009):74; Marci Hoffman, and Mary Rumsey, *International and Foreign Legal Research: A Course Book*, Vol. 8: (Leiden: Nijhoff Publishers, 2007), 8.

<sup>67</sup> Stephen Elias, *Legal Research: How to Find and Understand the Law*, 15<sup>th</sup> ed. (U.S.A: NOLO, 2009), 23; Martin O.U. Gasiokwu, *Legal Research and Methodology*, (Enugu: Nigeria, Chengo Ltd, 2006),13

<sup>68</sup> Carol M. Best and Margie Hawkins, *Foundation of Legal Research and Writing*, 4<sup>th</sup> ed. (New York: Delmar, 2010), 14; Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edingburg: Edinburgh University Press, 2007), 23; Williams H. Putman and Jennifer R. Albright, *Legal Research, Analysis, and Writing*, 3rd ed. (New York: Cengage Learning, 2014), 140.

method for collecting the data to answer some of the research questions. The dominance of interview amongst the qualitative data collection methods equally shaped its choice in this thesis.<sup>69</sup> In fact, interview is the “mainstay technique in qualitative research.”<sup>70</sup> Furthermore, interview being a conversation with the participants, enabled the researcher to get more insight that the researcher may not have gotten from the doctrinal research or other quantitative methodologies.<sup>71</sup>

Although qualitative interview is broadly divided into three, i.e. structured interview (SI), unstructured interview (UI) and semi- structured interview (SSI), the SSI was adopted. The choice is predicated on the fact that of the three qualitative interviews; SSI and UI are the most relied upon in qualitative research.<sup>72</sup> The uniqueness of the SSI among interview methods;<sup>73</sup> its being “a key technique in real world research;”<sup>74</sup> and its

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<sup>69</sup> Ulrike Schultze and Michel Avital, “Designing Interviews to Generate Rich Data for Information Systems Research,” *Information and Organization* 21, (2011):16; James A. Holstein and Jaber F. Gubrium, “Animating Interview Narratives,” in *Qualitative Research* 3<sup>rd</sup> ed., David Silverman (London: SAGE Publications, 2011),151;Donald E. Polkinghorne, “Language and Meaning: Data Collection in Qualitative Research,” *Journal of Counseling Psychology* 52, no. 2(2005):142;Turner Daniel W. III., “Qualitative Interview Design: A Practical Guide for Novice Investigators, *The Qualitative Report* 15, 3 (2010):757, Chenail, R. J., “Interviewing the Investigator: Strategies for Addressing Instrumentation and Researcher Bias Concerns in Qualitative Research,” *The Weekly Qualitative Report* 2, no. 3 (2009):14-21; Mira Crouch, and Heather McKenzie, “The Logic of Small Samples in Interview-Based Qualitative Research,” *Social Science Information* 45, no. 4 (2006): 484; Nicky Britten, “Qualitative Research: Qualitative Interviews in Medical Research,” *British Medical Journal (BMJ)* 311, no. 6999 (1995): 251.

<sup>70</sup>Donald R. Cooper and Pamela S. Schindler, *Business Research Methods*, 12<sup>th</sup> ed. (New York: McGraw-Hill, 2014), 148.

<sup>71</sup>Rowley Jennifer,“Conducting Research Interviews,”*Management Research Review* 35, no. 3/4 (2012):261; Ulrike Schultze and Michel Avital, (2011):1; Donald E. Polkinghorne, (2005):138; Irving S., *Interviewing as a Qualitative Research: A Guide for Researchers in Education and the Social Sciences*, 3<sup>rd</sup> ed. (NewYork: Teachers College Printers, 2006), 14; Philly Desia, *Methods Beyond Interviewing in Qualitative Market Research* (London: Sage, 2002),1; Kvale, S., *Interviews: An introduction to Qualitative Research Interviewing* (California: Sage, 1996), 17.

<sup>72</sup>Donald R. Cooper and Pamela S. Schindler, *Business Research Methods*, 12<sup>th</sup> ed. (New York: McGraw-Hill, 2014), 153.

<sup>73</sup>Bartholomew, K., Henderson, A., J. Z., & Marcia, J. E., “Coding Semi-Structured Interviews in Social Psychological Research,” in *Handbook of Research Methods in Social and Personality Psychology*, ed. Harry Reis, and Charles M. Judd, (Cambridge, UK: Cambridge University Press,2000), 286.

<sup>74</sup> Bill Gillham, *The Research Interview*, (London: Continuum, 2000), 20.

combination of the elements of both the SI and UI are the other justifications for its adoption in this thesis.<sup>75</sup> Other justifications for adopting SSI are it “is the most effective and convenient means of gathering (qualitative) data. It is equally flexible, accessible and intelligible with the capability of disclosing hidden facts of human and organisational behaviour.”<sup>76</sup> The interview in this thesis involved officials from consumer protection agencies who have the relevant information and are “potential sources of rich data.”<sup>77</sup> Through the interview, the researcher gathered detailed information from the participants and got their views, perspectives, and experiences. The information gathered assisted in answering some of the research questions and meeting some of the research objectives.

The interview enabled the researcher to understand the views and experience of the officials on the challenges in enforcing the legal framework; the prevalence and the impact of consumer rights violation and how consumer redress is handled. The research found the obstacles and challenges and identified the gaps and weaknesses in the existing mechanisms and practices for consumer protection. This process guided the researcher on what recommendations to make and how the suggested improvements if effectively implemented could be of a help in overcoming the problems.

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<sup>75</sup> Moira Cachia and Lynne Millward, “The Telephone Medium and Semi-Structured Interviews: A Complementary fit,” *Qualitative Research in Organizations and Management: An International Journal* 6, no. 3 (2011):268-269.

<sup>76</sup> Sandy Q. Qu and John D., “The Qualitative Research Interview,” *Qualitative Research in Accounting and Management* 8, no. 3 (2011): 245. See also Lisa M. G., *Encyclopedia of Qualitative Research Methods*, Vol. 1& 2, (California: Sage, 2008), 810; Joseph Hair F. et al, *Research Methods for Business*, (Chichester: Willey, 2007), 197

<sup>77</sup> Hilary Drew, “Overcoming Barriers: Qualitative Interviews with German Elites, *The Electronic Journal of Business Research Methods* 12, no.2 (2014):77.

A purposive sampling method was adopted in the selection of the respondents for this research. This sampling technique was used because it is the commonest technique in qualitative sampling.<sup>78</sup> The utility of the purposive sampling method enabled the researcher to select participants with requisite information and expertise, and more directly involved in the area of the research.<sup>79</sup> The participants' selection criteria adopted in this research are department or unit, the job title and level of expertise in consumer protection. This is because expert sampling involves assembling persons with known or demonstrable experience and expertise in the area of research. Relevance or appropriateness as opposed to representativeness guides qualitative research sampling.<sup>80</sup> The participants were, therefore, chosen amongst experts in consumer law enforcement, agencies in charge of consumer protection and consumer advocacy groups. Officials from agencies with a mandate for consumer protection in the deregulated electricity sector such as Consumer Protection Council, the Standard Organisation of Nigeria, the Nigerian Electricity Regulatory Commission and the Legal Aid Council were identified. The other

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<sup>78</sup>Martin N Marshall, "Sampling for Qualitative Research," *Family practice* 13, no. 6 (1996): 523; Ma Hongxia *et al.*, "Value of Qualitative Research in Polycystic Ovary Syndrome," *Chinese medical journal* 127, no. 18 (2014): 3310.

<sup>79</sup>Uma Sekaran and Roger Bougie, *Research Methods for Business: A skill Building Approach*, 6<sup>th</sup> ed (Chichester: Wiley, 2013), 252; Margarete Sandelowski, "Focus on Qualitative Methods: Sample Size in Qualitative Research," *Research in Nursing & Health* 18 (1995): 180; Imelda T. Coyne, "Sampling in Qualitative Research. Purposeful and Theoretical Sampling; Merging or Clear Boundaries?" *Journal of advanced nursing* 26, no. 3 (1997): 624; John W. Creswell, *Educational Research: Planning, Conducting and Evaluating Quantitative and Qualitative Research*, 4<sup>th</sup> ed. (Boston: Pearson, 2012), 205; Silverman, D., *Doing Qualitative Research: A Practical Handbook*, 3rd ed. (London: Sage, 2010) cited in Rowley Jennifer, (2012):264. See also Donald E. Polkinghorne, (2005):137; Michael Q. Patton, *Qualitative Evaluation and Research Methods*, 2<sup>nd</sup> ed. (Newbury Park, CA: Sage, 1990),169;Sharan S. Merriam, ed., *Qualitative Research in Practice: Examples for Discussion and Analysis* (San Francisco: Jossey-Bass, 2002),12; Michael Quinn Patton, "Qualitative Research," in *Encyclopedia of Statistics in Behavioral Science*, eds. Brian S. Everitt and David C. Howell (John Wiley & Sons, Ltd, 2005), 1634.

<sup>80</sup>W. Lawrence Neuman and Larry W. Kreuger, *Social Research Methods*, (Boston: Pearson, 2003), 209; Flick Uwe, *An Introduction to Qualitative Research*, (CA: Sage, 1998).; Imelda T. Coyne, "Sampling in Qualitative Research. Purposeful and Theoretical Sampling; Merging or Clear Boundaries?" *Journal of advanced nursing* 26, no. 3 (1997): 623.

respondents were identified and selected from officials of electricity consumers associations and private legal practitioners involved in consumer protection.

In qualitative research quality rather than quantity is the catch word and number of the participants does not so much matter. In fact, any number of participants that would enable the researcher to satisfy his knowledge and understanding of the phenomenon suffices. According to scholars such as Jennifer, there is no serious need specifying the number of participants in qualitative research.<sup>81</sup> However, other researchers argued on the need to specify participants even in the qualitative research. Researchers such as Adler and Adler; and Ragin have pegged the number of respondents for commissioned qualitative research interviews between the range of 12 to 60.<sup>82</sup> As for Jane *et al.*, a small number for postgraduate studies such as the current research suffices.<sup>83</sup> Jane *et al.*'s position is further explained by Margarete who believes a 50 person sample is considered large a sample for research.<sup>84</sup>

Notwithstanding the above academic debate, twenty participants were involved in this research. Seventeen staff from the relevant operations, consumer protection, consumer education and legal departments of the four agencies referred above; and legal practitioners/executives of electricity consumer association complete the remaining three participants for the purpose of this research. The twenty participants choice is acceptable

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<sup>81</sup>Jennifer Mason, *Qualitative Researching*, (London: Sage, 2002),135.

<sup>82</sup> Jane Ritchie, Jane Lewis, P.S.P.J. Lewis, C.M.N. Nicholls, and R. Ormston, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: SAGE Publications, 2013), 118.

<sup>83</sup>Jane *et al.*, 119.

<sup>84</sup> Margarete Sandelowski, "Sample Size in Qualitative Research," *Research in Nursing & Health* 18, no. 2 (1995): 180.

because according to Berteux fifteen is the smallest sample for all qualitative research but that less than 20 suffices.<sup>85</sup> The choice of limited respondents is justified because qualitative sampling techniques do not require “large number of participants” as it is the case for quantitative researches.<sup>86</sup> In the words of Nick, qualitative research does not require “statistical representativeness.”<sup>87</sup>

The semi-structured interview was guided by a protocol comprising questions that cover the areas of the research. The protocol was divided into four parts which are the demographic data of the respondents, the legal and institutional frameworks; consumer rights; and access to justice and redress. Following the guides provided by scholars such as Steinar and Svend,<sup>88</sup> the interview protocol for this study was arrived at after a thorough and comprehensive examination of the relevant literature as well as the legal and institutional frameworks for consumer protection in Nigeria. The research questions and research objectives equally guided the formulation of the interview protocol.

It needs to be stated that this research focuses more on the demand side of the electricity industry. The greater concern of the research is the consumer who remains the victim of the exploitations in the Nigerian electricity industry. The research, therefore, limited the

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<sup>85</sup> Bertaux, Daniel, “From the Life-history Approach to the Transformation of Sociological Practice,” in *Biography and society: The Life History Approach in the Social Sciences*, Daniel Bertaux (Ed.), (. London: Sage, 1981), 29 cited in Mark Mason, “Sample Size and Saturation in Phd Studies Using Qualitative Interviews,” *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research* 11 (2010); Crouch, Mira, and Heather McKenzie, “The Logic of Small Samples in Interview-Based Qualitative Research,” *Social Science Information* 45, no. 4 (2006): 483.

<sup>86</sup> John W. Creswell, Research Design: *Qualitative, Quantitative and Mixed Methods Approaches*, 3<sup>rd</sup> ed. (London: SAGE, 2009), 178.

<sup>87</sup> Nicky Britten, “Qualitative Research: Qualitative Interviews in Medical Research,” *British Medical Journal* 311, no. 6999 (1995):253.

<sup>88</sup>Steinar Kvale and Svend Brinkmann, *Interviews: Learning the Craft of Qualitative Research Interviewing* (London: Sage, 2009); Alan Bryman, *Social Research Methods* (Oxford: Oxford University Press, 2012).

selection of the research participants to consumers, consumers' organisations; consumer protection and standard setting agencies as well as the legal aid agency. No participant was included from the supply side of the industry because they are the strongest parties in the electricity supply transaction and the beneficiaries of the consumer exploitation. This is evident from the huge profits they declare while the consumers continue to groan under darkness and arbitrary charges.

### **1.6.5 Data Analysis**

The interpretive doctrinal technique, content/thematic analysis and comparative approaches were adopted in the analysis of the data in this research. Textual interpretation and analysis are the core of the doctrinal research methodology.<sup>89</sup> Since the current research is on the legal and institutional frameworks for consumer protection in Nigeria, the doctrinal methodology being more of analysis than data collection, therefore, fits in the current research.<sup>90</sup> The doctrinal methodology assisted in a systematized analysis of the existing body of international and national consumer laws in the country. Emerging case law, statutory enactments and legislative developments in the area of consumer protection in the deregulated electricity sector were examined and analysed. The inadequacies, inconsistencies and lacuna in the referred Nigerian laws from the perspective of international law and the practice in other jurisdictions were exposed.

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<sup>89</sup> Mark van Hoecke, "Which Kind of Method for What Kind of Discipline?" In *Methodologies of Legal Research* (Portland: Or.Hart, 2011), 4.

<sup>90</sup>Paul Chynoweth, "Legal research," in *Advance Research Methods in the Built Environment*. [http://www.sociology.ed.ac.uk/\\_\\_data/assets/pdf\\_file/0005/66542/Legal\\_Research\\_Chynoweth\\_-\\_Salford\\_Uni..pdf](http://www.sociology.ed.ac.uk/__data/assets/pdf_file/0005/66542/Legal_Research_Chynoweth_-_Salford_Uni..pdf), (accessed May 1, 2013).

Reforms for improvement were recommended.<sup>91</sup> This is the primary role of a legal scholar. According to Lord Goff:

“The prime task of the jurist is to take the cases and statutes which provide the raw material of the law on any particular topic; and by a critical re-appraisal of that raw material, to build up a systematic statement of the law on the relevant topic in a coherent form, often combined with proposals of how the law can be beneficially developed in the future.”<sup>92</sup>

Legal scholars “devote themselves to text.”<sup>93</sup> The content analysis approach was equally adopted in this thesis as the thesis largely dealt with documentary materials from statutes, cases, interviews, scholarly articles, etc.<sup>94</sup> It is rigorous and very useful in standard textual information analysis and the cross-pollination of the researcher’s understanding of the workings of laws and institutions.<sup>95</sup> Although the content analysis approach originated from social and behavioural sciences, but its been applied in legal researches.<sup>96</sup>

To the extent of learning from the experience of other jurisdictions, the research adopted a comparative analysis. Comparison is fundamental to legal research, and has been

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<sup>91</sup>Susan Bartie, “The Lingering Core of Legal Scholarship,” *Legal Studies* 30, no. 3 (2010):350; Fleur Johns, “On Writing Dangerously,” *Sydney Law Review* 26, no. 4 (2004), 477; Michael Salter and Julie Mason, 59; Julie Becket, “Legal Research Methods,” in *Handbook of Research Methods in Public Administration*, Eds., Kaifeng Yang and Gerald J. Miller (London: Taylor and Francis, 2008),190

<sup>92</sup> Lord Goff of Chieveley, “Judge, Jurist and Legislature,” *Denning Law J* (1987): 92

<sup>93</sup>Jan BM Vranken, “Methodology of Legal Doctrinal Research: A Comment on Westerman,” in Mark van Hoecke Ed. *Methodologies of Legal Research* (Portland: Hart, 2011), 111.

<sup>94</sup>Rahmah Ismail, Sakina Shaik Ahmad Yusoff, Shamsuddin Suhor, Azimon Azimon Aziz, Muhammad Rizal Razman and Kartini Aboo Talib, “Consumer Right to Safe Product: The Application of Strict Criminal Liability in Product Safety Legislations in Malaysia,” *Journal of Social Sciences & Humanities*, (2012): 60; Harold H. Kassarjian, “Content Analysis in Consumer Research,” *Journal of Consumer Research* 4, no. 1 (Jun., 1977):18

<sup>95</sup>Mark A. Hall, “Systematic Content Analysis of Judicial Decisions,” *California Law Review* 96, no. 1 (2008): 99; Gregory C. Sisk, (2008):885-886; W. Lawrence Neuman, *Social Research Methods: Qualitative and Quantitative Approaches*, 7th ed., (Boston: Pearson, 2011), 361; Robert P. Weber, *Basic Content Analysis*, 2<sup>nd</sup> ed., (Newberry Park, Calif: Sage, 2002)

<sup>96</sup>Mark A. Hall, (2008):73; Nevendorf Kimberly A., *The Content Analysis Guidebook*, (London: Sage, 2002), iv.

employed by legal scholars.<sup>97</sup> It proved very useful to countries in developing their consumer protection laws and enacting new ones.<sup>98</sup> In this thesis, reference to jurisdictions such as US, UK, Malaysia, Australia, South Africa and Kenya among other countries (where appropriate) was made for comparative purposes. The above countries were chosen because they are all British colonial territories whose legislations have been influenced by the British law based on the colonial heritage. Furthermore, the mix of developed and developing Commonwealth nations is to learn from the experience of both on the issue of consumer protection.

The value of the comparative approach has been scored by scholars such as Pierre who argued that the approach is “one of the necessary elements in the training of all those who are to shape the law for societies.”<sup>99</sup> Specifically; the primary data sourced from the Electric Power Reform Act, 2005; Consumer Protection Council Act, 1992, the Standard Organisation Act, 1971, the Legal Aid Council (Amendment) Act, 2011 were doctrinally analysed in the light of international instruments and best practices in the area of

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<sup>97</sup> Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: an Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore: Lexis Nexis, 2010), 172.

<sup>98</sup> Sakina Shaik Ahmad Yusoff, Suzanna Mohamed Isa and Azimon Abdul Aziz, “Legal Approaches to Unfair Consumer Terms in Malaysia, Indonesia and Thailand,” *Journal of Social Sciences & Humanities*, (2012): 44; Vernon Valentine Palmer, “From Lerotholi to Lando: Some Examples of Comparative Law Methodology,” *The American Journal of Comparative Law* (2005): 262; Cooper, James C. and Kovacic William E., “U.S. Convergence with International Competition Norms: Antitrust Law and Public Restraints on Competition,” *Boston University Law Review* 90, (2010): 1556; Jose Anibal Insifran, “Privatisation in Paraguay: Some Lessons,” *The Quarterly Review of Economics and Finance* 41, no. 5 (2001): 737; Nick Brotchie, “The Scottish Law Commission: Promoting Law Reform in Scotland,” *Legal Information Management* 9, no. 1 (2009): 33; A. Wilson, “Comparative Legal Scholarship,” in McDevitt M and Chui W H. (Eds), *Research Methods for Law* (Edinburgh University Press, 2007), 87; Kenji Suzuki, *Competition Law Reform in Britain and Japan: Comparative Analysis of Policy Network* (London: Routledge, 2003), 1; Leslie Scarman, “Law Reform-Lessons From English Experience,” *Manitoba Law Journal* 3 (1968): 47; Bruce Wardhaugh, “A Normative Approach to the Criminalisation of Cartel Activity,” *Legal Studies* 32, no. 3 (2012): 395.

<sup>99</sup> Pierre Lepaule, “The Function of Comparative Law with a Critique of Sociological Jurisprudence,” *Harvard Law Review* (1922): 858. D. M. Walker equally stated the value of the comparative approach in enabling legal researchers to see “how other societies at a similar stage of civilization face up to the same and corresponding problems.” D. M. Walker, *The Scottish Legal System: An Introduction to the Study of Scots Law*, 8<sup>th</sup> ed. (Edinburgh: Green, 2001), 21.

consumer protection. For this purpose, the United Nations Guidelines on Consumer Protection (UNGCP), 1985 (reviewed in 2003) and the African Model Law on Consumer Protection 1996 and the relevant ideas and innovations across jurisdictions that deregulated their electricity sector earlier formed the basis of the analysis. This comparative approach enabled the research to ascertain the level of compliance of the Nigerian legal and institutional frameworks on consumer protection with international standards. It assisted in finding the consumer protection safeguards contained in the legal regime as well as highlighting the missing legal and institutional structures for effective policing of the Nigerian deregulated electricity market.

Specifically, and in the context of the qualitative data collected through the interviews, the data was manually managed and its analysis thematically conducted. Manual, as opposed to computer aided software analysis, was used for the data analysis of the interview data.<sup>100</sup> The justification for the choice of the manual analysis is that the generated interview data is less than five hundred pages. It is just three hundred, seven pages. The desire “to be closed to the data and have a hands-on feel for it without the intrusion of a machine,” is another justification for the choice of the manual analysis for the interview data.<sup>101</sup> The limitations of the computer to only data sorting and not the analysis of the data also justifies the manual analysis. The computer does not offer any assistance in interpretation and assigning meaning to the data. Meaning can only be made

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<sup>100</sup> Uwe Flick, *An Introduction to Qualitative Research*, 4<sup>th</sup> ed. (Londond: Sage, 2009), 359.

<sup>101</sup> John W. Creswell, *Educational Research: Planning, Conducting, and Evaluating Quantitative Research*, 4th ed. (Boston: Pearson, 2012),240.

from the data through what Amos called the application of the “intelligence, creativity of the human mind.”<sup>102</sup>

The adoption of the thematic data analysis (TDA) approach was based on its value and theoretical flexibility.<sup>103</sup> TDA involves searching important themes from the data to explain the research phenomenon.<sup>104</sup> According to Virginia and Victoria, TDA “provides a flexible and useful tool, which can potentially provide a rich and detailed, yet complex account of data.”<sup>105</sup> In fact, TDA is considered as the foundation of all qualitative data analysis methods.<sup>106</sup> Through the TDA, this study identified and reported the perception, understandings and experience of the participants in the form of themes and sub-themes. The reading of the interview transcripts was recursive. The study employed an inductive approach as such the transcripts were carefully and repeatedly read to gain deeper an overall appreciation of the phenomenon. This was followed by jotting down of the themes emerging from the participants’ responses.<sup>107</sup> This process enabled the researcher to gain deeper understanding of the research participants’ world. In other words, the data was coded and categorised, and themes and sub-themes developed. In dealing with the

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<sup>102</sup> J Amos Hatch, *Doing Qualitative Research in Education Settings* (New York: SUNY Press, 2002),29

<sup>103</sup> Virginia Braun and Victoria Clarke, “Using Thematic Analysis in Psychology,” *Qualitative Research in Psychology* 3, no. 2 (2006): 77–101; Victoria Clarke and Virginia Braun, “Teaching Thematic Analysis: Overcoming Challenges and Developing Strategies for Effective Learning,” *The Psychologist* 26, no. 2 (2013): 120–123.

<sup>104</sup> Jeanne Daly, Allan Kellehear, and Michael Gliksman, *The Public Health Researcher: A Methodological Approach* (Melbourne, Australia: Oxford University Press, 1997); Jennifer Fereday and Eimear Muir-Cochrane, “Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development,” *International Journal of Qualitative Methods* 5, no. 1 (2008): 80–92.

<sup>105</sup> Virginia Braun and Victoria Clarke, (2006),78

<sup>106</sup> Ibid

<sup>107</sup> Pranee Liamputpong Rice and Douglas Ezzy; Jennifer Fereday and Eimear Muir-Cochrane, “Demonstrating Rigor Using Thematic Analysis: A Hybrid Approach of Inductive and Deductive Coding and Theme Development,” *International Journal of Qualitative Methods* 5, no. 1 (2008): 80–92.

produced transcript, the content analysis was equally used in the evaluation of the interview data.

In between the analysis, the interview data was transcribed into Microsoft word document format in order to generate the textual data from the same. This is because the data in this research is from recorded interview as such not in readily analyzable format.<sup>108</sup> Transcription is the first stage of the data preparation for analysis.<sup>109</sup> It is integral to the interview aspect of qualitative researches. According to Martyn "... the process of transcribing needs to be recognized as a substantial part of the method of interviewing and not to be treated as some trivial chore to be tagged on once the real business of interviewing has been completed."<sup>110</sup>

Technically, transcription is the procedure employed to convert interview from the orally recorded or video taped versions of the interviews to a textual version for analysis.<sup>111</sup> This conversion is necessary because it is more convenient to analyse the textual version compared to the audio version of the interviews.<sup>112</sup> The transcription stage has been described as "a critical stage in the production of scientific knowledge."<sup>113</sup> This stage is

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<sup>108</sup>David Boulton and Marty Hammersley, "Analysis of Unstructured Data," in *Data Collection and Analysis*, 2<sup>nd</sup> ed., ed. Roger Sapsford and Victor Jupp (London: Sage, 2006), 246.

<sup>109</sup> John W. Creswell, *Educational Research: Planning, Conducting, and Evaluating Quantitative Research*, 4<sup>th</sup> ed. (Boston: Pearson, 2012),237

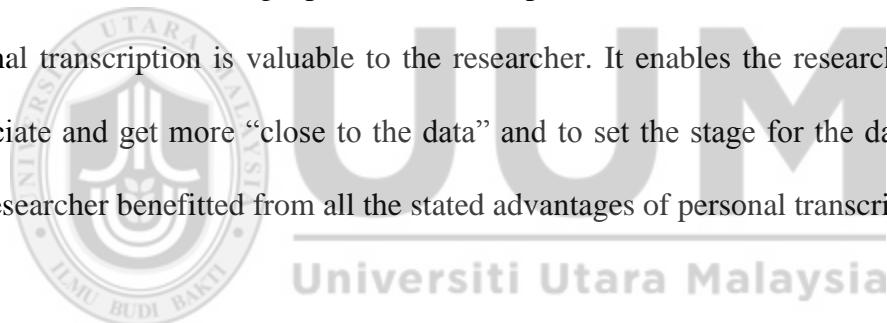
<sup>110</sup>Martyn Denscombe, *The Good Research Guide: For Small-Scale Social Research Projects: For Small-Scale Social Research Projects* (Berkshire: McGraw-Hill International, 2010), 275

<sup>111</sup>Michael Bloor and Fiona Wood, *Keywords in Qualitative Methods: A Vocabulary of Research Concepts* (California:Sage, 2006),167; Steinar Kvale, *Interviews: An Introduction to Qualitative Research Interviewing*, (California: SAGE, 1996),165.

<sup>112</sup>Martyn Denscombe, (2010), 275.

<sup>113</sup> Michael and Fiona (2006), 166.

characterized with “series of methodological and theoretical problems.”<sup>114</sup> In fact, it has been and is the most tedious, time and resource consuming, and laborious aspect of qualitative researches dealing with interview materials.<sup>115</sup> This tediousness often compels qualitative researchers to contract out this aspect of the qualitative researches involving oral data to typist and other secretarial staff.<sup>116</sup> In the case of this research, the transcription of the interview data was personally done with the aid of a “Sound Organizer” which flexibly allowed the researcher to control the speed and volume and to rewind and forward the recorded conversations. The decision to personally transcribe the interview data in this research was because of the critical nature of this stage of the research and the advantage personal transcription affords to researchers. Principally, personal transcription is valuable to the researcher. It enables the researcher to engage, appreciate and get more “close to the data” and to set the stage for the data analysis.<sup>117</sup> The researcher benefitted from all the stated advantages of personal transcription.



Although the twenty SSIs were transcribed verbatim; the audio-taped versions were kept in their original form for reconfirmation throughout the analysis and the conduct of this research. For more credibility to the research findings, excerpts from the responses of the interviewees were appropriately included in the analysis and presentation of the results.<sup>118</sup>

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<sup>114</sup> Steinar (1996), 163.

<sup>115</sup> Nicky Britten, “Qualitative Research: Qualitative Interviews in Medical Research,” *British Medical Journal* 311, no. 6999 (1995):253;Melissa A. Hardy and Alan Bryman, *Handbook of Data Analysis: Paper Back Edition* Melissa A. Hardy and Alan Bryman eds. (London: Sage, 2009), 533; Martyn Denscombe, (2010), 275; Jenifer Mason, *Qualitative Researching*, (London: Sage, 2002), 78, 275; David Boulton (2010), 247; John Creswell (2012), 239.

<sup>116</sup> Michael and Fiona, (2006),167.

<sup>117</sup> Martyn Denscombe (2010) 275; Michael and Fiona, (2006),167.

<sup>118</sup>Christina C Wieczorek, Hermann Schmied, Thomas E Dorner and Wolfgang Dür, “The Bumpy Road to Implementing the Baby-Friendly Hospital Initiative in Austria: A Qualitative Study,” *International Breastfeeding Journal* 10, no. 1 (2015): 4.

## 1.7 Limitations of the Study

The research was limited in terms of resources, cost, time, and the cooperation of respondents or interviewees. In the first place, scanty literature exists on electricity consumer protection in the deregulated electricity sector in Nigeria. The recent change of status of the industry from state ownership and control to a deregulated one accounted for this. Private firms only took over the business of generation and distribution of electricity in Nigeria on November 1, 2013. Resource and time constraints were also obvious limitations of the study. Specifically, the researcher was granted only three year's study leave by his employers.

From the sample of participants, there was cooperation problems as the majority of the chosen respondents were government officials who ordinarily refuse to divulge information they felt was against the state. Research on Nigeria reveals Nigerians' low response rate to research instruments such as questionnaires and interviews.<sup>119</sup> This could also constrain the research.

To overcome the limitations, the research worked assiduously towards completing the research within time. On the funding aspect, the researcher made adequate arrangements for family support in the event of short fall in the budget. On the access to the respondents and low response rate, the researcher sought the assistance of senior faculty members, colleagues and alumni members working in the sectors related to the research.

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<sup>119</sup>Esharenana E. Adomi, Blessing T. Ayo and E.D. Nakpodia, "A Better Response Rate for Questionnaires: Attitudes of Librarians in Nigerian University Libraries," *Library Philosophy and Practice* (2007):154.

Tactical approach in questioning the respondents was also adopted towards obtaining the desired information.

## **1.8 Literature Review**

Existing literature review was done using thematic approach. The themes of the review are definition/operational terminologies, electricity sector deregulation/reform; consumer rights and remedies, consumer access to justice.

### **1.8.1 Definition of Operational Terminologies**

Deregulation:- According to Macmillan English Dictionary, “deregulation” is the process of removing the rules that control an industry.<sup>120</sup> The Oxford Advanced Learners Dictionary of Current English, however, defines “deregulation” as freeing a trade or business activity from rules and control.<sup>121</sup> For the purpose of this thesis, however, deregulation is the removal of state control over electricity generation, distribution and pricing.

Regulation:- According to Francis, “regulation” is defined as the state’s intervention in private affairs.<sup>122</sup> For the purpose of this thesis, regulation is viewed as the exercise of state control over the business of electricity generation, transmission, distribution and pricing.

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<sup>120</sup>Martin Shovel, *Macmillan English Dictionary for Advance Learners*, 2<sup>nd</sup> ed., (Oxford: Macmillan Publishers, 2007), 397.

<sup>121</sup>A.S. Hornby, *Oxford Advanced Learner’s Dictionary: International Students Edition*, (Oxford: Oxford University Press, 2010),394.

<sup>122</sup> Francis J., *The Politics of Regulation*, (Oxford/Cambridge: Blackwell, 1995).

Consumer:- According to the EPSRA, 2005, a “consumer” is broadly defined to include both natural and artificial persons.<sup>123</sup> The Consumer Protection Council Act however, limited the meaning of consumer to individual.<sup>124</sup> In the Oxford Advanced Leaner’s Dictionary defined a “consumer” as “any person who buys goods or uses services.”<sup>125</sup> The West Encyclopedia of American Law equally defines a consumer in similar fashion. The encyclopedia, however, emphasized more on a purchase for personal usage as opposed to commercial or manufacturing usage.<sup>126</sup> For the purpose of this thesis, a consumer, is any person who buys, subscribes or uses any electrical appliance or an electricity service.

Right:- The Oxford Dictionary of Law, defines “right” “as a title, interest ... or privilege recognised and protected by law.”<sup>127</sup> However, in this thesis, right is defined as the recognised and protected interest of electricity consumers in electricity and related products.

Remedy:- According to Oxford Dictionary of Law, a “remedy” is defined as “the methods available at law for the enforcement, protection, or recovery of rights or for obtaining redress for their infringement.”<sup>128</sup> In this thesis, however, remedy is defined

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<sup>123</sup> Section 100, Electric Power Sector Reform Act (EPSRA) 2005.

<sup>124</sup> Section 32, Consumer Protection Council Act, 1992

<sup>125</sup> A.S.Hornby, (2010), 312.

<sup>126</sup> Jeffrey Lehman and Shirelle Phelps, *West's Encyclopedia of American Law: Milestones in the Law*, Vol. 11 (Gale, 2005) cited in TingTing Zhao and Barbara B. Flynn, “Introduction: Consumer Protection in Developing Countries,” in *Global Supply Chain Quality Management: Product Recalls and Their Impact*, eds. Barbara B. Flynn and X. Zhao (Boca Raton: Taylor & Francis, 2014),32

<sup>127</sup> Elizabeth A. and Martin, M.A. *Oxford Dictionary of Law, 6th edition* (Oxford: Oxford University Press, 2006), 469.

<sup>128</sup>Ibid. 455.

from the context of the consumer redress mechanism for the enforcement and recovery of electricity consumer's right infringement.

Access:- "Access" is defined according to Oxford Dictionary of Law as an opportunity to visit or contact.<sup>129</sup> In the Oxford Advanced Learner's Dictionary, however, access is defined "as a way of entering or reaching a place."<sup>130</sup> For the purpose of this thesis, access means the opportunity for electricity consumers to have electricity service and in the event of a problem, get their complaints resolved and their rights protected.

Justice:- "Justice" has been defined by Oxford Dictionary of Law as "the moral ideal that the law seeks to uphold in the protection of rights and punishment of wrongs."<sup>131</sup> In the Oxford Advanced Learner's Dictionary, justice is defined as the "fair treatment of people." For the purpose of this thesis, justice means the fair treatment of electricity consumers and the protection of their rights and grant of compensation for service failure and other consumer injuries.

Electricity:- Macmillan English Dictionary for Advanced Learners defined "electricity" "as a form of energy that produces light, heat, power" for use. In the Oxford Advanced Learner's Dictionary, electricity is defined "as a form of energy, usually, supplied as electric current through cables, wires, etc. For lighting, heating, driving machines, etc."<sup>132</sup>

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<sup>129</sup>Ibid., 6.

<sup>130</sup>A.S.Hornby, (2010),7.

<sup>131</sup>Elizabeth A. and Martin M.A., (2006), 301.

<sup>132</sup>A.S. Hornby, (2010),472

Competition:- “Competition” according to the Macmillan English Dictionary arises in a situation where companies strive to be more successful than others.<sup>133</sup> For the purpose of this thesis, competition is a struggle between electricity generation or distribution companies to be successful than others in terms of profit and customers.

It should be noted that in this thesis the words deregulation, privatization and liberalization though in theory are different but it is found that it is difficult to differentiate the three.<sup>134</sup> They have been used in this thesis interchangably.

### 1.8.2 Electricity Sector Deregulation

The status of electricity industries pre and post 1980s across the globe has featured in several literatures. According to Sanja and Gordon; Trebing; UNDP and Chang, utility services were initially owned, provided and regulated by the state.<sup>135</sup> Government according to Yergin and Stanislaw was in control of the “commanding heights of the economy.”<sup>136</sup> Sanja and Gordon in particular maintained that utility services provision was considered part of the social policy responsibility of governments to the citizens.<sup>137</sup>

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<sup>133</sup> Martin Shovel, (2007), 297.

<sup>134</sup> Ian Bartle, Globalisation and Eu Policy-Making: *The Neo-Liberal Transformation of Telecommunications and Electricity* (Manchester: Manchester University Press, 2005),63.

<sup>135</sup> Sanja Filipovic and Gordon Tanic, “The Policy of Consumer Protection in the Electricity Market,” *Economic Annals* 53, no. 178-179 (2008):158; Trebing Harry M., “A Critical Assessment of Electricity and Natural Gas Deregulation,” *Journal of Economic Issues* 42, no. 2 (2008): 469; H.-J. Chang, “The Economics and Politics of Regulation,” *Cambridge Journal of Economics* 21 (1997): 712; UNDP, “Privatizing Basic Utilities in Sub-Saharan Africa: The MDG Impact”, *Policy Research Brief* (2007). <http://www.ipc-undp.org/pub/IPCPolicyResearchBrief3.pdf> (accessed April 8, 2013).

<sup>136</sup> Daniel Yergin and Joseph Stanislaw, *Commanding Heights: The Battle for the World Economy*, (New York: Simons & Schuster, 2008), xii.

<sup>137</sup> Sanja Filipovic and Gordon Tanic, “The policy of consumer Protection in the Electricity Market,” *Economic Annals* 53, no. 178-179 (2008):158

Fereidoon, Newbery, Valdivieso Del Real and Kanti documented the global shift from state ownership of public utilities to deregulation and privatisation of the electricity industry.<sup>138</sup> Fereidoon, Hiroaki, Kanti and Valdeveso, posited that Chile and UK were in the lead and other countries followed. Bacon and Besant-Jones posited that the deregulation of electricity became a global trend for developed and developing nations.<sup>139</sup> In the case of developing countries, however, Tooraj argued that many developing countries rushed into electricity sector deregulation without establishing the required expertise and regulatory framework for such deregulation.<sup>140</sup> This was the case despite the warning of Chi-Keung on the high risk and irreversibility of electricity market reform.<sup>141</sup> Tooraj maintains that between 1990 to 1999 alone; evidence of private participation in the electricity industry occurred in over 75 developing countries.<sup>142</sup> Chalvatzis and Kulac discussed the implications of the electricity sector reform on the status of the electricity industry. The duo rightly maintained that the status of the industry has changed from monopolistic to a privatised one.<sup>143</sup> Although electricity deregulation started in Chile over three decades today, it spilled to countries such as UK. Nigeria's

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<sup>138</sup>Fereidoon P. Sioshansi, "Electricity Market Reform: What has the Experience Taught us Thus Far?" *Utilities Policy* 14, no. 2 (2006): 67; David M. Newbery, "Regulating Unbundled Network Utilities," *Economic and Social Review* 33, no. 1 (2002):24, Valdivielso Del Real R, "Takeovers and the Transformation of Electricity Sectors in Britain and Spain: The Importance of Institutions and Varieties of National Regulatory Authorities," *Oil, Gas & Energy Law Intelligence* 9, no. 2 (2011); Hiroaki Nagayama, "Effects of Regulatory Reforms in the Electricity Supply Industry on Electricity Prices in Developing Countries," *Energy Policy* 35, no. 6 (2007): 3440; Fereidoon (2006).

<sup>139</sup>R. W. Bacon and J. Besant-Jones, "Global Electric Power Reform, Privatization, and Liberalization of the Electric Power Industry in Developing Countries," *Annual Review of Energy and the Environment* 26, (2001):331.

<sup>140</sup>Tooraj Jamasb, "Between the State and Market: Electricity Sector Reform in Developing Countries," *Utilities Policy* 14, no. 1 (2006): 15.

<sup>141</sup>Chi-Keung Woo, "What Went Wrong in California's Electricity Market?" *Energy* 26, no. 8 (2001):757

<sup>142</sup>Tooraj Jamasb, (2006):15.

<sup>143</sup> K. J. Chalvatzis and Kulac, B., "Electricity Reform: The Case of Turkey," *Oil, Gas & Energy Law Intelligence* 9, no.6 (2011).

electricity deregulation experiment is one of the recent developments in the country. The implication of the shift raises consumer protection concerns that require serious attention.

Literature shows that the global shift from state ownership and control of the electricity industry to a private ownership and control was received with mix feelings among consumers and interest groups.<sup>144</sup> Scholars such as Lucia and Micklitz; Fuest and Haffner; Hall *et al.*; Hulya and Simon; and Beder documented scores of resentment towards electricity liberalisation in many countries. Beder, for instance, gave accounts of such resentments in Argentina, China, Dominican Republic, Ghana, Ecuador, India, Indonesia, Papua New Guinea, Paraguay, Peru and South Africa. Beder maintains that the bitter protests and crisis over electricity deregulation led to several deaths and injuries.<sup>145</sup> Recently, Hulya and Simon; Lucia and Hanz- W., also documented the strong opposition of civil society and other bodies towards deregulation of public utility services for profits.<sup>146</sup>

Electricity sector deregulation like in many utilities was the brain child of international financial institutions that includes the World Bank and IMF. Anu and Xu argue that these

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<sup>144</sup> Daniele Checchi, Massimo Florio, and Jorge Carrera, “Privatisation Discontent and Utility Reform in Latin America,” *Journal of Development Studies* 45, no. 3 (2009): 333.

<sup>145</sup> Lucia A Reisch and Hans- W. Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29, no. 4 (2006): 400; Beder Sharon, “The Global Impacts of Power Reforms,” *Public Services Yearbook*, 2005/2006. <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1040&context=artspapers>. (accessed October 20, 2013).

<sup>146</sup> Hulya Dagdeviren and Simon A. Robertson, “A critical Assessment of Incomplete Contracts Theory for Private Participation in Public Services: The Case of the Water Sector in Ghana,” *Cambridge Journal of Economics* 37, (2013):1060; Lucia A. Reisch and Hans-W. Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29 (2006):405. See also Hall, D. et al, “Public Resistance to Privatisation in Water and Energy,” *Development in Practice* 15, no. 3 & 4, (2005):286; V. Fuest and Haffner, S.A., “PPP- Policies, Practices and Problems in Ghana’s Urban Water Supply,” *Water Policy* 9, (2007):169.

institutions supported and in most cases imposed deregulation on developing countries as conditions for loans.<sup>147</sup> Anu argued that most of the imposed economic reform policies turned out disastrous on the developing economies.<sup>148</sup> However, the financial institutions and scholars of economics advanced reasons justifying the shift from state regulation to deregulation of public utilities. The World Bank, for example, argued that the “growing consensus that government performs less well than the private sector in a host of activities” justifies deregulation.<sup>149</sup> According to Stevenson, neo-liberal economists and utility management experts opposed state’s involvement in utility regulation.<sup>150</sup> Stevenson posited that this group of scholars who are extremely confident in market forces advocated deregulation that entails involving private hands as the cure to failure of regulation. The group was not comfortable with market regulation. According to the group, regulation made utilities inefficient.<sup>151</sup> The faith of the group of scholars in support of free market theory is their belief that the market has self regulatory mechanism. This self regulatory capability of the markets underlies the idea behind the free market theory.<sup>152</sup> But according to Polanyi, the free market ideology is a utopian ideology,<sup>153</sup> and that “a self regulating market has never and will never exist.”<sup>154</sup> Gregory

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<sup>147</sup>Xu Yi-Chong, “The Myth of the Single Solution: Electricity Reforms and the World Bank,” *Energy* 31, (2006):802; Anu Muhammad, “Natural Resources and Energy Security: Challenging the Resource Curse Model in Bangladesh,” *Economic and Political Weekly* 49, no.4 (2014): 59.

<sup>148</sup>Anu (2014):59.

<sup>149</sup>World Bank, “Bureaucrats in Business: The Economics and Politics of Government Ownership,” (1995), 3; A. Paliwala, “Privitisation in Developing Countries: The Governance Issue,” *Law, Social Justice & Global Development Journal (LGD)* 1 (2000). See also Jan B.D. Simonis, “Institutions and the Imperfect Market,” *International Journal of Social Economics* 28, no. 3 (2001):295.

<sup>150</sup>Rodney Stevenson, “Institutional Objectives, Structural Barriers, and Deregulation in the Electric Utility Industry,” *Jei Journal of Economic Issues* 17, no. 2 (June 1983).

<sup>151</sup>Ibid.

<sup>152</sup>Fred Block and Margaret R. Somers, *The Power of Market Fundamentalism: Karl Polanyi's Critique*, (Harvard: Harvard University Press, 2014), 99.

<sup>153</sup>Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, (New York: Farar and Rinehart, 1944), 211; Fred and Margaret, (2014), 9.

<sup>154</sup>Fred and Margaret, (2014), 99.

equally shares the view that a free market does not exist.<sup>155</sup> In fact, deregulation and its processes have been found to be fraught to many limitations acknowledged by the founders of the free market ideology such as Adam Smith. In his treatise, Adam Smith accepted that businesses rarely act in the public interest. He maintains that businesses mostly deceives and oppresses the public and given the slightest opportunity they collude to increase prices.<sup>156</sup> Recently, Oxfam reports show that for several decades the rich skewed economic policies such as deregulation in a manner that favoured them at the expense of the poor and the middle income.<sup>157</sup> Additionally, Cass argued that even free markets can create the worst form of economic inefficiency and consumer injustice.<sup>158</sup> Cass further cautioned that it would be a big mistake for any regulatory policy to rely solely on market forces in regulating markets.<sup>159</sup> In fact, Suppon and John are more comfortable leaving consumers to inefficient government regulation than leaving them at the mercy of the marketplace.<sup>160</sup> According to Polanyi; Fred and Margaret, leaving critical commodities that are a precondition for a meaningful life to the dictates of the market forces is a threat to social life and breeds crisis.<sup>161</sup> No wonder Williams (onetime minister under Margaret Thatcher) warned against the mistake of falling in love with free market enterprise. Williams argued that those who believe “private companies are always

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<sup>155</sup> Gregory Palast, “A High Price to pay for the Power and the Glory,” *The Observer*, (London), February 4, 2001.

<sup>156</sup> Adam Smith, *An Inquiry Into the Nature and Causes of the Wealth of Nations*, (New York: Modern Library, 1776), 349.

<sup>157</sup> Graeme Wearden, “Oxfam: 85 Richest People as Wealthy as Poorest Half of the World,” *The Guardian* (UK), January 20, 2014. <http://www.theguardian.com/business/2014/jan/20/oxfam-85-richest-people-half-of-the-world> (accessed 22 January, 2014)

<sup>158</sup> Cass R. Sunstein, *Free Markets and Social Justice*, (New York: Oxford University Press 1999), 4.

<sup>159</sup> *Ibid.*

<sup>160</sup> Suppon Steven, “Codex Standards and Consumer Rights,” *Consumer Policy Review* 16, no.1 (2006):11; John M. Antle, “Choice, Efficiency and Food Safety Policy,” in *Agricultural Policy Reform in the United States*, ed. Daniel Summer (Washington DC: American Enterprise Institute Press, 1995), 186; John M. Antle, “Choice and Efficiency in Food Safety Policy,” *AEI studies in agricultural policy (USA)* (1995).

<sup>161</sup> Fred and Margaret, (2014), 8; Karl Polanyi, (1944), 76.

more efficient than the public service have never worked in real private enterprise.”<sup>162</sup>

According to John, “it is supremely naive to assume that free market forces can give all the protection that consumers need.”<sup>163</sup> In the same vein, Lev believes that improvement in state regulation that is less riskier is a “real alternative” to deregulating the electricity industry.<sup>164</sup> In fact, Olumide; and David *et al.* found that private firms in Nigeria have not performed better than the public companies they replaced following economic reforms.<sup>165</sup> Despite this finding, the Nigerian government recently deregulated the Nigerian electricity sector.

In a recent publication, Ignacio quoting Professor Kahn rightly argued that no activity in the electricity industry should be fully left to market forces without sound supervision and regulatory checks.<sup>166</sup> Blumsack *et al.* equally maintain that the success of deregulation in the electricity sector depends on close monitoring and frequent intervention in order to detect and punish market abuses inherent in such deregulated sectors.<sup>167</sup> But is the electricity sector in Nigeria not left to private control since the country has no competition law and competition regulatory authority? Who will and how then can competition be effectively regulated?

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<sup>162</sup> Quoted by Wainwright Hillary in his Speech to a Social Movement in Greece titled “Participatory Alternatives to Privitisation,” February, 2013. [http://www.tni.org/sites/www.tni.org/files/download/participatory\\_alternatives\\_to\\_privatisation.pdf](http://www.tni.org/sites/www.tni.org/files/download/participatory_alternatives_to_privatisation.pdf). (accessed February 2013)

<sup>163</sup> John Goldring, “Public Law, Private Law, and Consumers' Remedies” *The Australian Quarterly* 50, no. 4 (Dec., 1978):65.

<sup>164</sup> Lev S. Belyaev, *Electricity Market Reforms: The Economics and Policy Challenges*, (London: Springer, 2011), 2.

<sup>165</sup> Olumide V. Ekanade, (2015):21; David Adeye, Adeleke Salami, Lanre Adeyemi, “An Appraisal of Economic Reforms in Nigeria,” *Contemporary Management Research* 4, no. 2 (June 2008): 129.

<sup>166</sup> Pérez-Arriaga Ignacio J, “Challenges in Power Sector Regulation,” in *Regulation of the Power Sector*, eds. Ignacio J. Pérez-Arriaga (London: Springer, 2013), 647.

<sup>167</sup> Seth B. Blumsack, Jay Apt, and Lester B. Lave, “Lessons From the Failure of U.S. Electricity Restructuring, Tepper School of Business. Paper 239, (2006),9. <http://repository.cmu.edu/tepper/239>. (accessed December 28, 2013)

Writings of proponents of deregulation such as Hunt, Newberry, Okoro and Chikuni;<sup>168</sup> Anderson and Bergman maintain that deregulation engenders efficiency and competition and results in price cut and consumer benefit.<sup>169</sup> This is not, however, the case with the electricity sector as Erik *et al.*, maintain that deregulated electricity markets are far from being efficient but rather susceptible to manipulations.<sup>170</sup> In fact, Kati posited that even where deregulated markets are open to competition, consumer benefits are not automatic.<sup>171</sup> Youngho and Tuan, equally argued that the claimed efficiency gains of deregulation are very unlikely in the electricity sector.<sup>172</sup> In support of Youngho and Tuan, Severin and Bushnell assert that the hope that electricity sector deregulation would bring so much efficiency gains especially price cut to the consumers was largely illusory.<sup>173</sup> Ferdinand, for instance, found that electricity price skyrocketed and only stabilised at twice the original price in Sweden and state of Montana in the US after electricity deregulation.<sup>174</sup> Ferdinand further maintained that to the best of his knowledge, no country in the world has been successful in creating a competitive electricity market

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<sup>168</sup>Hunt S., *Making Competition Work in Electricity*, (New York: Wiley, 2002)4; David Newbery, Privatisation, Restructuring, and Regulation of Network Utilities, (Cambridge, MA: The MIT Press, 1999), 5; O.I. Okoro and E. Chikuni, "Power Sector Reforms in Nigeria: Opportunities and Challenges," *Journal of Energy in Southern Africa* 18, no. 3 (2007):56.

<sup>169</sup>Anderson Bo & Bergman Lars, "Market structure and the price of electricity: An ex ante analysis of the deregulated Swedish," *Energy Journal* 16, no.2 (1995):97; Green R. J. and David M. Newbery, "Competition in the British Electricity Spot Market," *Journal of Political Economy* 100, no.5 (1992):929.

<sup>170</sup>Erik R. Larsena *et al.*, "Lessons From Deregulation in Colombia: Successes, Failures and the way Ahead," *Energy Policy* 32 (2004):1778.

<sup>171</sup>Kati J. Cseres, "The Impact of Consumer Protection on Competition and Competition Law: The Case of Deregulated Markets," *Amsterdam Center for Law & Economics Working Paper* No. 2006-05 (2006).

<sup>172</sup>Youngho Chang, and Tuan Hin Tay, "Efficiency and Deregulation of the Electricity Market in Singapore," *Energy Policy* 34, no. 16 (2006): 2500.

<sup>173</sup>Severin Borenstein and Bushnell James, "The US Electricity Industry after 20 Years of Restructuring," Energy Institute at Haas (EI @ Haas) Working Paper Series, (2014), 3.

<sup>174</sup>Ferdinand E.Banks, "Economic Theory and Some Disobliging Aspects of Electricity Trading and Deregulation," *Energy Studies Review* 12, no. 1 (2003): 84.

through deregulation.<sup>175</sup> In fact, Marc-Joel believes that deregulation is generally problematic and makes the electricity unstable and in some occasions could cause breakdown of the industry.<sup>176</sup> Marc – Joel hinged this failure on the potentials of the private companies to exploit the absence of state control and monitoring of the electricity industry under the free market arrangement. Other scholars equally lent their voices on this issue. Trebing *supra* posited that an extraordinary increase in electricity price was reported in states that deregulated electricity in comparison with states under regulation. His research revealed that while electricity price went up by 19.4% in regulated states in the U.S., an increase in deregulated states was 39.7%. to 72%.<sup>177</sup> Johnson; Lawrence and Lawrence equally found price spikes in states that deregulated electricity sector compared to regulated states.<sup>178</sup> Tyson found that electricity prices in deregulated Montana State quadrupled and doubled in Northeast and New England States.<sup>179</sup> Still on the rising prices following deregulation, Paul reported that, between 2000- 2011, there was 30%, 48%, 72% and 134% rise in residential electricity prices in Japan, Denmark, Spain and Germany respectively.<sup>180</sup> In Australia the rise in prices exceeded 80%.<sup>181</sup> In Uganda electricity prices rose up to 158% within the first month of the electricity sector

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<sup>175</sup>Ferdinand, (2003):87.

<sup>176</sup>Marc-Joel Fortenly, *Corruption in the Energy Sector: The Dangers of BCEF* (Bribery, Crime, Exploitation, Fraud, (Hamburg: Anchor Academic Publishing, 2013), 3.

<sup>177</sup>Trebing, (2008):471.

<sup>178</sup> Johnston David Cay, “A New Push to Regulate Power Costs,” *New York Times*, September 4, 2007; Lawrence D. Brown and Lawrence R Jacobs, *The Private Abuse of Public Interest: Market Myth and Policy Muddles*, (Chicago: UCP, 2008), 2.

<sup>179</sup>Tyson Slocum, “Electric Utility Deregulation and the Myths of the Energy Crisis,” *Bulletin of Science, Technology, and Society* 21 (December 2001):473.

<sup>180</sup>Paul J. Scalise, “Who Controls Whom? Constraints, Challenges and Rival Policy Images in Japan’s Post-war Energy Restructuring,” in Jeff Kingston ed., *Critical Issues in Contemporary Japan*, (Oxon: Taylor & Francis, 2014), 102.

<sup>181</sup> L. Chester and A. Morris, “A New Form of Energy Poverty is the Hallmark of Liberalised Energy Sectors,” *Australian Journal of Social Issues* 46, no.4 (2011): 435.

deregulation.<sup>182</sup> The case of Ghana is also startling. Prices in one occasion rose up to 300%.<sup>183</sup> The case of San Diego in the US is also scary. According to Gregory, at a time prices rose by 379%.<sup>184</sup> In the case of Brazil Dipak and Victoria reported that electricity prices rose up to 108% between 1995-2001.<sup>185</sup> According to Fereidoon, consumers and consumer activists at a point cried for reregulation that according to them is more “predictable and tolerable” than deregulation.<sup>186</sup> Eric recently found extreme increase in electricity price in most states that restructured their electricity industry in the US.<sup>187</sup>

Although the advocates of electricity sector deregulation, always tout consumers as beneficiaries, scholars such as Santiago et al; Hatice and Mehmet; Silvestre *et al.*; Kim and Kim; Ferdinand; and Beder, found that governments, building societies, consultants, investors, banks and commercial companies, electricity companies, as opposed to the consumer were the real beneficiaries of deregulation.<sup>188</sup> The consumer only bore the burden of high electricity prices. In fact, Ferdinand in a different research argued that

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<sup>182</sup> East African Standard, “Ugandans Oppose New Electricity Tariffs,” East African Standard (Nairobi), June 11–17, 2001.

<sup>183</sup> Njeri Wamukonya, “Power Sector Reform in Developing Countries: Mismatched Agendas,” *Energy Policy* 31, no. 12 (2003): 1282.

<sup>184</sup> Gregory Palast, “A High Price to pay for the Power and the Glory,” *The Observer* (London), February 4, 2001.

<sup>185</sup> Dipak Basu and Victoria Miroshnik, “Privatization of Electricity,” in *International Business and Political Economy*, (Palgrave Macmillan UK, 2015), 168.

<sup>186</sup> Fereidoon P. Sioshansi, “Competitive Electricity Markets: Questions Remain About Design, Implementation, Performance,” *The Electricity Journal* 21, no. 2 (2008): 78.

<sup>187</sup> Eric L. Prentis, “Evidence on Us Electricity Prices: Regulated Utility Vs. Restructured States,” *International Journal of Energy Economics and Policy* 5, no. 1 (2014): 260.

<sup>188</sup> Hatice Karahan and Mehmet Toptas, “The Effect of Power Distribution Privatization on Electricity Prices in Turkey: Has Liberalization Served the Purpose?” *Energy Policy* 63, (2013):620; Matos S. Silvestre B., and Figueira L.A., “Privatisation of Electricity Distribution in the Northeast of Brazil: The Good, the Bad, the Ugly or the Nave? *Energy Policy* 38, no. 11 (2010): 7001; Santiago Arango, Dyner Isaac, and Larsen Erik R., “Lessons from Deregulation: Understanding Electricity Markets in South America,” *Utilities Policy* 14, no. 3 (2006): 206; Kim J and Kim K, “The Electricity Industry Reform in Korea: Lessons for Further Liberalisation, Mimeo, Soul National University, South Korea; Banks, Ferdinand E., (2008): 87; Sharon Beder, (2005/2006):57.

electricity deregulation succeeded in substituting “government/regulators with corporate elite and financial market.”<sup>189</sup>

Other scholars such as Tamer, Jansson, Grilli, Woo and Zarnikau, Jay, Tishler, Chow, also found cheap electricity and the other consumer benefits touted as fruits of the electricity industry deregulation as a farce.<sup>190</sup> According to Andrew and Russell, the benefits of deregulation have been exaggerated.<sup>191</sup> According to the duo “there was growing awareness that deregulation had been oversold to consumers.”<sup>192</sup> Tamer and Jansson, further argued that although deregulation worked and benefitted consumers in terms of price reduction and varieties in other industries, the reverse is the case in network industries such as electricity.<sup>193</sup> Jansson maintains that instead of electricity deregulation resulting in creating a competitive industries and reduction in prices, firms colluded and exploited electricity, consumers.<sup>194</sup> In a recent study, Bommel found that electricity prices rose at least three times across EU member states.<sup>195</sup>

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<sup>189</sup> Ferdinand E. Banks, “Economics of Electricity Deregulation and Privatization: An Introductory Survey,” *Energy* 21, no. 4 (1996): 261.

<sup>190</sup> Tamer Çetin, “Structural and Regulatory Reform in Turkey: Lessons Form Public Utilities,” *Utilities Policy* 31 (2014): 104; Jansson Eva, “Deregulation and the Stakeholder Model,” *Corporate Governance* 10, no. 2 (2010):131; Grilli Luca, “Deregulated Electricity Market and Auctions: The Italian Case,” *iBusiness* 2 (2010):239; Hatice and Mehmet Toptas (2013):614; Woo C. K. & Zarnikau Jay, “Will Electricity Market Reform Likely Reduce Retail Rates?” *The Electricity Journal* 22, no. 2(2009):40-45; Tishler Asher and Woo Ch-Keung, “Is Electricity Deregulation Beneficial to Israel?” *International Journal of Energy Sector Management* 1, no.4, (2007):324; Woo C. K., King, M., Tishler, A., and Chow, L. C. H., ”Costs of Electricity Deregulation,” *Energy* 31, no. 6–7 (2006):747;

<sup>191</sup> Andrew Caffrey and Russell Gold, “Deregulation Loses Steam in Many States,” *Wall Street Journal*, January 25, 2001, A3.

<sup>192</sup> Ibid.

<sup>193</sup> Tamer (2014); Jansson, (2010):136. See also Tishler Asher and Woo Ch-Keung, “Is electricity Deregulation Beneficial to Israel?” *International Journal of Energy Sector Management* 1, no. 4, (2007):324

<sup>194</sup> Jansson, (2010):131.

<sup>195</sup> Simone Pront-van Bommel, “A Reasonable Price for Electricity,” *Journal of Consumer Policy* (2016): 1-18.

Woo, *et al.*'s research found market power abuse by dominant firms as the cause of electric sector reform failure in UK, Norway, Alberta and California. They also posited that the reform did not result in price reduction or stable and reliable electricity service for the consumer.<sup>196</sup> In fact, Blumsack *et al.* found that prices in most deregulated electricity market only reduced when the regulators intervened.<sup>197</sup> Is there a guarantee that electricity service providers in the new deregulated electricity sector in Nigeria would keep electricity price low without the necessary regulatory checks?

Researchers in places such as New Zealand, Chile, Australia, UK, equally, found that electricity deregulation resulted in a rise in electricity prices as opposed to the claimed lower prices. Kimberly, Phillipa and Geoff found that electricity deregulation resulted in real rise in electricity price in New Zealand more than 200% between 2000 to 2010.<sup>198</sup> With respect to UK; Hills reported a 44% price increase in electricity price between the year 2000 to 2010.<sup>199</sup> Lynne found that countries such as Chile, Czech Republic, Hungary and New Zealand recorded the largest increase in residential electricity prices between

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<sup>196</sup>Chi-Keung Woo, Lloyd, Debra, & Asher Tishler, "Electricity Market Reform Failures: UK, Norway, Alberta and California," *Energy Policy* 31, no.11 (2003):1103;

<sup>197</sup> B. Lester Lave; Jay Apt, and Seth Blumsack, "Deregulation/Restructuring Part I: Reregulation Will not fix the Problems," *The Electricity Journal* 20, no.8 (2007):15; Seth Blumsack, Apt Jay, and Lester B. Lave, "A Cautionary Tale: Us Electricity Sector Reform," *Economic and Political Weekly* 40, no. 50 (2005): 5283.

<sup>198</sup> Kimberley C. O'Sullivan, Philippa L. Howden-Chapman, and Geoff Fougere, "Making the Connection: The Relationship Between Fuel Poverty, Electricity Disconnection, and Prepayment Metering," *Energy Policy* 39, no. 2 (2011): 733-741.

<sup>199</sup>Hills John, "Fuel Poverty: The Problem and its Measurement," *Case Report* 69 (London: Department for Energy and Climate Change, 2011),104.

the 2000-2010 period.<sup>200</sup> Lucia and Hanz-W posited that electricity deregulation in Germany was a failure. There were electricity price spikes, and prices continue to rise.<sup>201</sup>

Scholars also documented other fraudulent behaviours and manipulations of the deregulated electricity market at consumer expense. Ira maintained that deregulated electricity markets are susceptible to manipulations and other market power abuses.<sup>202</sup>

Trebing *supra*, reported that many electricity industry executives were prosecuted and imprisoned for fraudulent behaviours in the US.<sup>203</sup> This is a country with strong legal system. If fraudulent activities can happen in deregulated electricity sector in developed countries such as U.S., can Nigeria without the necessary regulatory structures be an exception?

Institutional and organisational reports equally support and acknowledge that deregulation does not result in price reduction. Hall David *et al.*, documented the admission of World Bank that deregulation has not brought the needed consumer benefit.<sup>204</sup> Australian Bureau of Agricultural Resource Economics (ABARE) an organisation that also favours privatisation of the electricity industry equally admitted in their research that electricity deregulation did not result in the claimed consumer

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<sup>200</sup> Lynne Chester, “Energy Impoverishment: Addressing Capitalisms’ new Driver of Inequality,” Conference Paper presented at AFEE Conference, Loews Philadelphia Hotel, Philadelphia PA, January 3, 2014.

<sup>201</sup> Lucia A. Reisch and Hans-W. Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29 (2006):411.

<sup>202</sup> Ira Horowitz, “A Law Enforcement Perspective of Electricity Deregulation,” *Energy* 31, no. 6–7 (2006): 907.

<sup>203</sup> Trebing, (2008): 470-471

<sup>204</sup> Hall David, Lobina Emanuele, & Motte Robin de la, (2005): 297; Michael Klein, “The World Bank as Privatization Agnostic,” *Wall Street Journal*, July 21, 2003; Christopher Short and Anthony Swan, “Competition in the Australian National Electricity Market,” *Australian Bureau of Agricultural and Resource Economics (ABARE) Current Issues*, January 2002.

benefit.<sup>205</sup> In US, Electricity Consumers Resource Council (ECRC) which hitherto supported deregulation lamented that deregulated electricity markets are anti-consumers.<sup>206</sup>

Reports of United Nation's institutions and others also provided literature on deregulation and privatisation. UNDP reports that privatisation in utilities such as water and electricity in Sub-Saharan Africa "has been a widespread failure" and "privatisation has failed on several counts."<sup>207</sup> With all these facts and evidence, Nigeria, has gone ahead to deregulate its electricity industry.

Scholars have written on wide spread failures of electricity sector deregulation across jurisdictions. But the Californian crisis remains the *locus classicus*.<sup>208</sup> In the words of Steve in terms of consumer sufferrings "California was a horor story."<sup>209</sup> According to Joskow and Kahn abuse of market power, precipitated the failure of electricity deregulation in California.<sup>210</sup> Quoting the EU Commission Newberry asserted that inadequate legal framework was among the reasons that precipitated the Californian debacle.<sup>211</sup> This was also the findings of Fereidoon and Mathew.<sup>212</sup> Holborn and Spiller

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<sup>205</sup> ABARE. "Competition in the Australian National Electricity Market." ABARE Current Issues, January 2002.

<sup>206</sup> Electricity Consumers Resource Council (ELCON), Press Statement, December 4, 2006, cited in Fereidoon (2008):78.

<sup>207</sup> UNDP Policy Research Brief, "Privatising Basic Utilities in Sub-Saharan Africa: The MDG Impact (January 2007)." <http://www.ipc-undp.org/pub/IPCPolicyResearchBrief3.pdf> (accessed April 8, 2013).

<sup>208</sup> Lawrence D. Brown and Lawrence R. Jacobs, *The Private Abuse of the Public Interest: Market Myths and Policy Modules* (Chicago: UCP,2008),7.

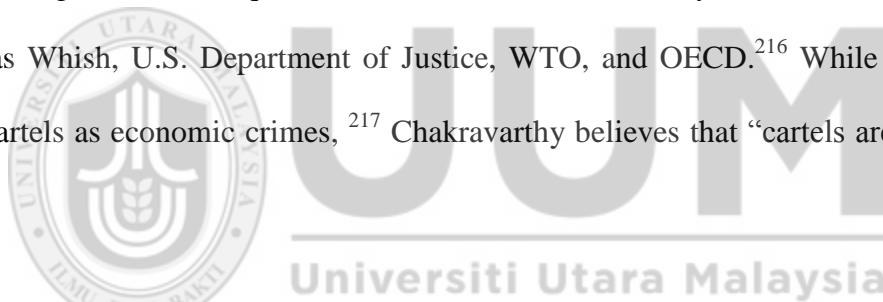
<sup>209</sup> Steve Isser, *Electricity Restructuring in the United States: Markets and Policy From 1978 Energy Act to the Present* (New York: Cambridge University Press, 2015), 306.

<sup>210</sup> Paul L. Joskow and Edward Kahn, "A Quantitative Analysis of Pricing Behavior in California's Wholesale Electricity Market During Summer, 2000," *Energy Journal* (2002):1?

<sup>211</sup> David M. Newberry, "Problems of Liberalising the Electricity Industry," *European Economic Review* 46, no. 4-5 (2002):920; Fereidoon (2006): 70.

suggested some tips for successful deregulation. In their studies, the duo stated that “for policy-makers, our analysis suggests that the key to successful reforms is first to establish a credible regulatory environment, and only then to ponder on refinements of the chosen organizational structure for the industry.”<sup>213</sup>

Alison and Rebecca; Andreas; Crane; Chakravarthy, Mario and UNCTAD documented the persistence and difficulty of cartel detection and control, especially in deregulated environment.<sup>214</sup> Mario considers cartels as the “cancer on the public market economy,”<sup>215</sup> that destroys competition and harms the consumer and the economy. Cartel activity and price fixing have been equated with the offence of theft by scholars and organisations such as Whish, U.S. Department of Justice, WTO, and OECD.<sup>216</sup> While Ann- Christin sees cartels as economic crimes,<sup>217</sup> Chakravarthy believes that “cartels are a hard nut to



<sup>212</sup>Fereidoon (2008):74; Matthew Evans, “Regulating Electricity-Market Manipulation: A Proposal for a New Regulatory Regime to Proscribe All Forms of Manipulation,” *Michigan Law Review* 113, (2015): 592.

<sup>213</sup>Holburn, G., Spiller, P.T., Institutional or Structural: Lessons From International Electricity Sector Reforms. In: Brousseau, E., Glachant, J. (Eds.), *The Economics of Contracts: Theories and Applications* (Cambridge: Cambridge University Press, 2002), 464.

<sup>214</sup>Alison Jones and Rebecca Williams, “The UK Response to the Global Effort Against Cartels: Is Criminalisation Really the Solution,” *Journal of Antitrust Enforcement* (2014):1; Andreas Stephan, “Four Key Challenges to the Successful Criminalization of Cartel Laws,” *Journal of Antitrust Enforcement* (2014):2; UNCTAD, “The Impact of Cartels on the Poor,” (24 July 2013) TD/B/CO/CLP/24/Rev 1. [http://unctad.org/meetings/en/SessionalDocuments/cicld24rev1\\_en.pdf](http://unctad.org/meetings/en/SessionalDocuments/cicld24rev1_en.pdf) (accessed May 5, 2014); Crane A. Daniel, “Has the Obama Justice Department Reinvigorated Antitrust Enforcement?” *Stanford Law Review Online* 65 (2012):14.

<sup>215</sup>Mario Monti, “Fighting Cartels Why and How?” 3rd Nordic Competition Policy Conference Stockholm, 11-12 September, 2000.

<sup>216</sup>RP Whish, “Recent Developments in Community Competition Law 1998/99,” *European Law Review* (2000):220; Antitrust Division, US Department of Justice “An Antitrust Primer for Federal Law Enforcement Personnel,” (2005), 1; <http://www.justice.gov/atr/public/guidelines/209114.htm> (accessed February 13,2013); OECD, *Hard Core Cartels: Recent Progress and Challenges Ahead* (Paris: OECD, 2003) ,8; World Trade Organisation, Working Group on the Interaction Between Trade and Competition Policy “Provisions on Hard Core Cartels: Background Note by the Secretariat,” 20 June 2002 WT/WGTCP/W/191, (2002), 3; Bruce Wardhaugh, “A Normative Approach to the Criminalisation of Cartel Activity,” *Legal Studies* 32, no. 3 (2012): 369.

<sup>217</sup>Ann- Christin (2000).

crack.”<sup>218</sup> In fact, DanKoVic opines that the detection and prevention of restrictive agreements is a very complex task.<sup>219</sup> UNCTAD, however, argues that strong competition authority is a precondition for effective cartel detection and enforcement. On the other abusive market behaviours in deregulated electricity sector, Ratliff found that companies in Europe engaged in practices that favoured their affiliate companies at the expense of consumers.<sup>220</sup> Ratliff added that, in Australia, several other companies violated competition rules. Between October 2005 to October 2006 alone, the European Commission imposed a fine of 1,680.76 million Euros against 12 companies.<sup>221</sup> Again, between 2013 to 2014 alone over EUR 3 billion was collected in the EU as fines for cartel-related offences.<sup>222</sup> This is the case in countries where antitrust laws and related agencies exist. What happens in the Nigerian circumstances where there are no competition law and competition regulatory agency? Is there a guarantee that the electricity service providers would not reap excessive profit by milking the consumer? Again, if difficult to trace anti-competitive practices are being committed in the developed world, are companies in Nigeria so different that they would not want to manipulate the market to reap excessive profits? Will Nigeria not require anti-monopoly laws and agencies for the proper functioning of the new competitive electricity market in the country?

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<sup>218</sup>Chakravarthy S., (2012),102.

<sup>219</sup> Sanja DaNKoviĆ StepaNoviĆ, “Effective Competition in the Field of Energetics,” *The Macedonian Foreign Policy Journal* 4, no. 1 (2014):85.

<sup>220</sup>Ratliff John, “Major Events and Policy Issues in EC Competition Law,” *International Company and Commercial Review* 18, no.3 (2007): 90.

<sup>221</sup>Ratliff (2007): 74.

<sup>222</sup> Flavio Laina and Aleko Bogdanov, “The EU Cartel Settlement Procedure: Latest Developments,” *Journal of European Competition Law & Practice* (2014). doi: 10.1093/jeclap/lpu097

The consumer abuses, and price manipulations in deregulated electricity markets necessitate establishing strong regulatory structures and checks for the protection of consumer interest. If not for anything but deterrence. Cento; Wils; Fiammetta and David; and Christine believe that the existence of consumer protection laws such as competition laws and antitrust in deregulated markets, deters and controls giant firms from exploiting the consumer.<sup>223</sup>

The electricity deregulation experiment in Nigeria received the attention of experts. Marilyn argued that the Nigerian electricity deregulation experiment suffer from the lack of expertise and weak institutional structures inherent in the Nigerian electricity sector.<sup>224</sup> Emeka's conclusion is to the effect that electricity sector reforms in Nigeria have succeeded in substituting public monopoly with a private one.<sup>225</sup> The consumer exploitation and extortion in the Nigerian deregulated sectors also generated and still generate concerns. Several pages have been written on different consumer concerns especially in the electricity sector. Oluwole, for example, argues that the fate of consumers in terms of service quality and safety are among the challenges of the electricity sector reform in Nigeria.<sup>226</sup> Alohan Juliet, Oketola Dayo, Rayo Adebola, Enoghase S, Odueme-Omona, Buhari R and others have written on the billing frauds and

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<sup>223</sup> Cento Veljanovski, "A Statistical Analysis of U.K. Antitrust Enforcement," *Journal of Competition Law and Economics* (2014):3;Wils Wouter P. J., "Antitrust Compliance Programmes and Optimal Antitrust Enforcement," *Journal of Antitrust Enforcement* 1, no. 1 (2013):1; Fiammetta Gordon and David Squires, "The Deterrent Effect of UK Competition Enforcement," *De Economist* (0013-063X) 156, no.4 (2008):432;ChristineParker, "The War on Cartels and the Social Meaning of Deterrence Parker," *Journal of Regulation & Governance* (2012):1.

<sup>224</sup> Marilyn C.A., "Deregulating the Electricity Industry in Nigeria: Lessons From the British Reform," *Socio-Economic Planning Sciences* 41, no. 4 (2007): 304.

<sup>225</sup> Emeka E. Okafor, (2014):1

<sup>226</sup>Oluwole Adegbienro, "Electric Power Delivery and Management Strategies," in *The Jonathan Presidency: The First Year*, John A. Ayoade, Adeoye A. Akinsanya, Olatunde J. B. Ojo eds. (Maryland: University Press of America, 2013), 29.

consumer exploitation in the Nigerian electricity industry. The picture from this literature is that the electricity consumers are billed for undelivered services and in some cases made to pay for meters and transformers. The literature documented that the billing system is “crazy,” inflated and calculated on assumptions.<sup>227</sup> None of the available literature, however, focused on the legal and institutional safeguards for addressing such consumer injustices in the deregulated electricity sector. This research, therefore, contributes in that regard.

### **1.8.3 Consumer Redress and Access to Justice**

According to Stefan, access to justice though a concept difficult to explain but like happiness and satisfaction is something most people look for especially the less privileged.<sup>228</sup> Stefan in legal sense linked it to legal aids and other avenues that facilitate the less privileged in accessing the judicial system for redress. The difficulty and enormity of access to justice problem across jurisdictions equally received the attention of scholars.<sup>229</sup> Deborah; Knapp; Diller and Emily and Houseman focused on US and

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<sup>227</sup>The Leadership, “Extortion Scandal Rocks Delta PHCN,” *Leadership* (Abuja), July 14, 2011; PM Newspaper, “PHCN’s Fraudulent Billing System,” PM Newspaper (Lagos), January 23, 2013; Rayo Adeola, “PHCN Rips Consumers off to the Tune of N240b Annually – ECAN,” *Daily Times*, October 31, 2011; Alohan Juliet, “Electricity Consumers Begin Payment for Meters,” *Leadership* online, May 14, 2013; Nigerian Tribune “Electricity Meter to Cost More – NERC,” Nigerian Tribune, May 20, 2013; Daily Independent, “Another Increase in Electricity Tariffs?” *Daily Independent*, October 9, 2013; Daily Independent, “FG Hands over PHCN to new Investors: As Workers Protest over Benefits,” Daily Independent, (Lagos) October 01, 2013; Oketola Dayo, “PHCN Customers Angry Over Crazy Bills,” *The Punch* (Lagos) May 9, 2013.

<sup>228</sup> Stefan Wrbka, *Preface: European Consumer Access to Justice Revisited* (Cambridge: Cambridge University Press, 2014),xiii.

<sup>229</sup> S. Knapp, “Current Developments 2012 – 2013: Can Legalzoom be the Answer to the Justice Gap,” *Geo. J. Legal Ethics* (Fall 2013):821; Kent Roach, & Lorne Sossin, “Law, Economics and Public Policy: Essays in Honour of Michael Trebilcock: V Social and Public Policy: Access to Justice and Beyond,” *University of Toronto Law Journal* 60 (2010):373; Houseman, Alan W., “The Future of Civil Legal Aid: Initial Thoughts,” *University of Pennsylvania Journal of Law and Social Change* 13(2009 – 2010) :265; Diller Rebekah and Savner Emily, “Restoring Legal Aid for the Poor: A Call to end Draconian and Wasteful Restrictions,” *Fordham Urban Law Journal* 36 (2009): 687.

Iris's work focused on Europe.<sup>230</sup> Kent & Lorne, on the other hand, documented the crisis in Canada. Marta and Catanzariti focused on Australia.<sup>231</sup> Catanzariti argues that it is difficult and impossible for many Australians to access justice. According to Lippman, the US is in crisis of access to justice.<sup>232</sup> Diller and Emily posit that many studies have shown that 80% of the civil legal needs of the low-income Americans are not met annually.<sup>233</sup> Equally, Houseman maintains that although equal justice is the foundation upon which the US and its Constitution are built, access to justice remains a myth in the US as several million Americans cannot afford it.<sup>234</sup> The US Department of Justice and Deborah further confirmed this position.<sup>235</sup> Speaking on the precarious situation in the US's justice system, the Cheif Judge of New York recently stated that "it is no secret that our nation faces a crisis in access to justice."<sup>236</sup> In Canada; the Canadian Bar found that justice is only accessible to the haves resulting in a decline in public confidence in the country's judicial system.<sup>237</sup> According to the Attorney General of Australia, lack of access to justice speaks volume on the functionality of any democracy.<sup>238</sup> This revelation shows that access to justice is not a problem for only the developing nations. This could

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<sup>230</sup> Iris Benohr, "Consumer Dispute Resolution after The Lisbon Treaty; Collective Actions and Alternative Procedures," *Journal of Consumer Policy* 36, no.1 (2013): 36; Iris Benohr, *EU Consumer Law and Human Rights* (Oxford: Oxford University Press, 2013),5.

<sup>231</sup> Catanzariti Joseph, "Ensuring Access to Justice for all Australians," *Australasian Law Management Journal* 1, no. 2 (2013); Vezzosi Marta, "The Human Right to Access Civil Justice: Recognition and Limitations," *Law Society of South Australia* 35, no. 8 (2013): 24

<sup>232</sup> Jonathan Lippman, "Brennan Lecture: The Judiciary as the Leader of the Access-to-Justice Revolution," *New York University Law Review* 89 (2014): 1569.

<sup>233</sup> Diller Rebekah and Savner Emily, "Restoring Legal Aid for the Poor: A Call to end Draconian and Wasteful Restrictions," *Fordham Urban Law Journal* 36 (2009): 687

<sup>234</sup> Houseman, Alan W., "The Future of Civil Legal Aid: Initial Thoughts," *University of Pennsylvania Journal of Law and Social Change* 13(2009 – 2010) :265.

<sup>235</sup> Department of Justice, US, "Access to Justice on Campus," <http://www.justice.gov/atj/atj-campus.html>. (accesssed February, 6, 2014); Deborah L. Rhode, "Access to Justice," *Fordham Law Review* 69 (2000-2001): 1785.

<sup>236</sup> Jonathan (2014):1569

<sup>237</sup> Canadian Bar Association, "Reaching Equal Justice: An Invitation to Envision and act," CAB Access to Justice Committee Report Summary, (August 2013), 6.

<sup>238</sup> Robert McClelland, "Attorney-General's Department, *Strategic Framework for Access to Justice in the Federal Civil Justice System*," (2009): ix.

have been the reason Oxfam included access to justice as part of their strategic Plan for 2013 to 2019.<sup>239</sup>

According to Naomi, consumer dispute resolution, is one of the under explored areas in consumer protection literature.<sup>240</sup> In fact Ashish *et al.* argue that there has been little on the impacts of deregulation in the electricity in the area of consumer redress.<sup>241</sup> Access to justice and consumer redress are very vital to any consumer protection drive. According to Muntaz, Hussain and Khaqan access to justice is one of the main objectives of states' existence, and the provision of adequate redress mechanisms remains one of the main essence of consumer protection regimes.<sup>242</sup> Whilst the Law Society of England and Welsh see access to justice for all as a fundamental duty on the state, Ann added that the states are obligated to ensure the avenues for accessing justice are "swift and inexpensive."<sup>243</sup> Justin, however, maintains that the provision of cheap and simple access to justice institution remains a challenge to states.<sup>244</sup> In a survey, Adrian found a serious problem of access to justice in the three common law jurisdictions (US, England and

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<sup>239</sup> Oxfam, "Oxfam Strategic Plan 2013 – 2019: The Power of People Against Poverty," Oxfam Report 2012 – 2013, (2013), 15.

<sup>240</sup> Naomi Creutzfeldt, "How Important Is Procedural Justice for Consumer Dispute Resolution? A Case Study of an Ombudsman Model for European Consumers," *Journal of Consumer Policy* 37, no. 4 (2014): 527.

<sup>241</sup> Ashish Khanna, Daljit Singh, Ashwini K. Swain, and Mudit Narain, "Transforming electricity governance in India: Has India's Power Sector Regulation Enabled Consumers' Power?" *Policy Research Working Paper* 7275 (2015): 2.

<sup>242</sup> Muhammad Mumtaz, Sajjad Hussain, Khaqanal – Zaghal, "Analytical Study of Consumer Protection Laws in Pakistan," *International Journal of Global Business* 6, no. 2 (2013): 105.

<sup>243</sup> The Law Society, "Access to Justice Review, Final Report," (The Law Society, 2010), 11; Ann Brady, "ADR Development Within European Union," in *ADR, Arbitration, And Mediation: A Collection of Essays* ed. Cesar Betancourt and Jason A. Crook (Bloomington: Author House, 2014),232.

<sup>244</sup> Justin Malbon, "Access to Justice for Small Amount Claims in the Consumer Market Place: Lessons From Australia," in Michael Trebilcock *et al.*, ed., *Middle Income Access to Justice*, (Canada: University of Toronto Press, 2012),330.

Australia) and ten other civil law jurisdictions surveyed.<sup>245</sup> Adrian argues that access to justice remains aspirations and not a reality in many of the surveyed countries and that litigation in common law countries (to which Nigeria belongs) is more expensive compared to the civil law countries. Little wonder, the Consumers International (CI), while arguing that consumer redress mechanism is the heart of consumer protection system,<sup>246</sup> recently maintains that the problem of access to justice remains among the biggest challenges for the consumer in the coming years.<sup>247</sup>

Organisations and legal luminaries did consider the issue of access to justice as an issue of fundamental rights. The Chief Justice of Canadian Supreme Court maintains that access to justice “is a fundamental right, not an accessory.”<sup>248</sup> According to Justice Lewis (a U.S. Supreme Court Judge), making justice accessible to all regardless of economic status, remains a fundamental issue.<sup>249</sup> Additionally, the UNDP considers access to justice as a “basic human right” and a means of poverty alleviation amongst the poor and conflict prevention and resolution.<sup>250</sup> Marjorie *et al.* equally considers access to justice as

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<sup>245</sup>Adrian A.S. Zuckerman, “Reforming Civil Justice Systems: Trends in Industrial Countries, *Public Sector* 46, (2000):1. The ten civil law countries surveyed are “Brazil, France, Germany, Greece, Italy, Japan, the Netherlands, Portugal, Spain, and Switzerland.”

<sup>246</sup>Consumer International, *A Guide to Developing Consumer Protection Law* (Consumer International, 2011), 23.

<sup>247</sup>Consumer International, “Survey on State of Consumer Protection Around the World,” (conducted between November 2012 to January 2013 and published on the 7th of March, 2013 <http://consint.info/cpsurveydata> (accessed March 10, 2013).

<sup>248</sup>Beverley McLachlin, Keynote address at the Faculty of Law’s Access to Civil Justice for Middle Income Canadians Colloquium, February, 2011.

<sup>249</sup>Lewis Powell, Jr., Address to the ABA Legal Services Program, ABA Annual Meeting (August 10, 1976) quoted in National Legal Aid and Defender Association (1995), 1.

<sup>250</sup>UNDP, “Access to Justice: Practice Notes,” (2004), 3.

a valued right.<sup>251</sup> Does Nigeria attach any value to the issue of consumer access to justice when over 100 million Nigerians lack access to justice?

From another perspective, research abounds on the cost and stress associated with litigation coupled with the rising poverty especially in developing countries such as Nigeria.<sup>252</sup> According to Naemah and Elistina, redress wise, the “expensive, complex and worrisome” ordinary court system failed to provide the consumers the needed redress.<sup>253</sup> Ankur opines that the cost of litigation today is “explosively high” necessitating the resort to ADR mechanisms.<sup>254</sup> According to Deborah, 4/5 Americans surveyed characterised litigation in the US to be too slow and too expensive.<sup>255</sup> Peter Lovenheim equally argues that litigation is associated with high legal fees and frustration.<sup>256</sup> Charles argues that justice is expensive, and litigants pay heavily to obtain it.<sup>257</sup> Equally, the European Union Agency for Fundamental Rights in its survey equally found high cost of litigation among the leading barriers for effective access to justice across member

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<sup>251</sup> Marjorie Mayo, Gerald Koessi, Mathew Scott, Imogen Slater, *Access to Justice for the Disadvantaged Communities*, (Bristol: Policy Press,2014), 2.

<sup>252</sup> Seth D. Kaplan, *Betrayed: Politics, Power and Prosperity* (New York: Palgrave Macmillan, 2013) xi; Maria Dakolias, “Court Performance Around the World: A Comparative Perspective,” *Yale Human Rights and Development Journal* 2, no.1 (1999):91; Stefan Wrbka, *European Consumer Access to Justice Revisited* (Cambridge: Cambridge University Press, 2014), 20; Ineke Van De Meene, *Access to Justice and Legal Empowerment* Vol. 1 (Amsterdam: Amsterdam University Press, 2008), 11; Brian W. Harvey and Deborah L. Parry, *The Law of Consumer Protection and Fair Trading*, 6<sup>th</sup> ed. (London: Butterworths, 2000), 14.

<sup>253</sup> Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: an Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore: Lexis Nexis, 2010),172.

<sup>254</sup> Ankur Shah, “Increase Access to the Appellate Courts: A Critical Look at Modernizing the Final Judgment Rule,” *Seton Hall Circuit Review* 11, no. 1 (2014): 44.

<sup>255</sup> Deborah L. Rhode, *Access to Justice*, (New York: OUP, 2004), 32.

<sup>256</sup> Peter Lovenheim, *Mediate, Don’t Litigate: How Quick to Resolve Disputes, Quickly, Privately and Inexpensively Without Going to Court*, (New York: McGraw-Hill, 1989),4.

<sup>257</sup> Charles Silver, “Does Civil Justice Cost Too Much?” *University of Texas Law, Public Law Research Paper No. 37*, 43; James S. Kakalik *et al.*, *Just, Speedy, and Inexpensive? An Evaluation of the Judicial Case Management Under the Civil Justice Reform Act*, (Washington: RAND, 1996), 1.

states.<sup>258</sup> The Canadian Bar Association made the same findings in Canada.<sup>259</sup> A similar survey of the civil justice in England and Wales found consumer problems relating to access to justice only second to neighbour related issues amongst the prevalent civil justice problems in England and Wales.<sup>260</sup> The Law and Justice Foundation of New South Wales, Australia made a similar finding.<sup>261</sup> According to Marjorie *et al.*, market- based reforms have turned availability of justice in Britain only to those who can afford it.<sup>262</sup> Similarly, Kuo- Chang *et al.* found that in Taiwan the rich have more access to legal services than the poor. Kuo *et al.*, argued that when cost inhibits the poor and people with limited means from asserting their legal rights, the idea of equal justice and the judicial system is threatened.<sup>263</sup> In the Nigerian context, Igbintade quoting a board member of the Legal Aid Council of Nigeria (LACON) reported that over 57% of the Nigerian populace lack access to justice.<sup>264</sup> In fact, Emmanuel reported that the LACON has only 280 staff.<sup>265</sup> Furthermore, the World Justice Project recently ranked the Nigerian civil justice system 53rd out of 97 countries surveyed in terms of effectiveness, accessibility and

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<sup>258</sup> FRA: European Union Agency for Fundamental Rights, *Access to Justice in Europe: An Overview of Challenges and Opportunities*, (2010), 72.

<sup>259</sup> Canadian Bar Association, "Reaching Equal Justice: An Invitation to Envision and act," CAB Access to Justice Committee Report Summary, (August 2013), 8.

<sup>260</sup> Pleasance Poscoe *et al.*, *Civil Justice in England and Wales: Report of Wave 1 of the English and Welsh Civil and Social Justice Panel Survey*, (London: Legal Services Commission, 2011), 8.

<sup>261</sup> Law and Justice Foundation of New South Wales, "Justice Made to Measure: North South Wales Legal Needs Survey in Disadvantaged Areas," (2006):xx.

<sup>262</sup> Marjorie, *et al* (2014).

<sup>263</sup> Kuo-Chang Huang, Lin Chang-Ching and Chen Kong-Pin, "Do Rich and Poor Behave Similarly in Seeking Legal Advice? Lessons From Taiwan in Comparative Perspective," *Law & Society Review* 48, no. 1 (2014): 193.

<sup>264</sup> Igbintade, Wale, "About 100m Nigerians Don't' Have Access to Justice –Adelodun," National Mirror, September 30, 2013.

<sup>265</sup> Emanuel Onani, "Legal Aid Council Seeks 1,000 Lawyers From SURE-P," The National Mirror, February 28, 2013, <http://nationalmirroronline.net/new/legal-aid-council-seeks-1000-lawyers-from-sure-p/> (accessed February 28, 2013).

affordability among other indicators.<sup>266</sup> Complexity, the cost of litigation, and the delay and congested regular courts in Nigeria adds to the access to justice problem. Jedrzej found financial burdens, delays and ignorance as main barriers to accessing the Nigerian Courts.<sup>267</sup> These according to Justice Nkabinde of the Rules Board and Constitutional Court of the Republic of South Africa are the characteristics of adversarial judicial systems which Nigeria operates.<sup>268</sup> The enormity of the problem of access to justice in Nigeria raises a lot of concerns for discerning minds. In fact, recently, the immediate past Chairman of the Nigerian Bar Association called for urgent judicial reform in Nigeria as a precondition for effective and efficient justice delivery.<sup>269</sup>

Scholars and institutions have long held the view that legal aid is integral to any justice system. In 2011, the United Nations Office on Drugs and Crimes (UNDOC) did recognise legal aid as a pillar for effective access to justice.<sup>270</sup> According to Pallavi, legal aid exists purposively to make justice accessible to all especially the poor and people

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<sup>266</sup>Mark David Agrast, Juan Carlos Botero, Alejandro Ponce, Joel Martinez, and Christine S. Pratt, *WJP Rule of Law Index 2012 – 2013*, (Washington: The World Justice Project, 2013), 52.

<sup>267</sup> Jedrzej George Frynas, “Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners,” *Social & Legal Studies* 10, no. 3 (2001): 397. Noting however that delays in the civil justice are futures of most legal systems such as the United States. According to Peter Loveinham and Robert Coulson cases could take up to five years before they are set down for hearing. In fact, Robert described the civil courts in the US as “parking lots for civil litigation.”See Peter Lovenheim, (1989), 25; and Robert Coulson, “Remarks to the Fifteenth Anniversary Luncheon of the Center for Dispute Settlement, Rochester, New York,” September 27, 1988.

<sup>268</sup> Bess Nkabinde, “Legal Costs of Access to Justice Indaba, at the Cost Indaba Conference,” Held at Protea Premier Hotel, Kempton Park, South Africa, February 22, 2014.

<sup>269</sup> Okey Wali, “Problems Facing Judiciary, Justice Delivery, are Multi-dimensional,” Paper Presented at the Nigerian Bar Association’ Conference, Section on Legal Practice, Held at Makurdi, Benue State, Nigeria, November 25, 2013, <http://www.mydailynewswatchng.com/problems-facing-judiciary-justice-delivery-multi-dimensional-okey-wali/>. (accessed January 5, 2015)

<sup>270</sup> UNDOC, Chapter IV, “Access to Justice,” in *Resource Guide on Strengthening Judicial Integrity and Capacity*, (New York, 2011), 59.

with limited means.<sup>271</sup> The Law Society of England argues that legal aid is one of the means through which citizens access justice. According to the Law Society, a society where people cannot afford justice because they lack the means to do so is uncivilised and undemocratic.<sup>272</sup> According to Kuo- Chang *et al.*, the existence of legal aid schemes facilitates access to justice.<sup>273</sup> As for Melina, legal aid is part of the justice system, and once it fails, the justice system also fails.<sup>274</sup> Stephen argued that it is only legal aid that empowers the poor to seek justice, and to enforce their rights through access to court houses and judicial forums. He argued that while governments and development partners have expended huge amount of money in Africa and beyond, in law reform and training of judicial staff and prosecutors, the issue of legal aid did not receive such funding and attention in Africa in particular.<sup>275</sup> According to Goldring and the Poverty Commission of Australia, if consumer rights are to be enforceable, then legal aid and publicly funded legal assistance are necessities.<sup>276</sup> With the rising poverty in Nigeria which the Vice President of the country lamented has reached intolerable level;<sup>277</sup> and a grossly understaffed and underfunded legal aid scheme in Nigeria are the Nigerian consumers granted access to justice?

Research on the value of efficient consumer redress mechanism especially in a deregulated environment abounds. Hammael, for example, maintained that the modern

<sup>271</sup> Pallavi Bahar, “Judicial Activism and Legal Aid: An Indian Experience,” in *Legal Aid: A Catalyst for Social Change*, ed., Raman Mittal and K.V. Sreemithin (Delhi: Satish Upadhyay, 2012), 210.

<sup>272</sup> The Law Society, “Access to Justice Review, Final Report,” (The Law Society, 2010), 3& 23.

<sup>273</sup> Kuo-Chang *et al.* (2014):194.

<sup>274</sup> Melina Buckley, “The Legal Aid Crisis: Time for Action,” A Background Paper for Canadian Bar Association, June 2000, 5

<sup>275</sup> Stephen Golub, “Preface: The Importance of Legal Aid in Legal Reform,” in *Access to Justice in Africa and Beyond: Making the Rule of Law a Reality*, (Illinois: Penal Reform International, 2007),xv

<sup>276</sup> Goldring, (1978): 61.

<sup>277</sup> Emma Una, “Poverty Level in Nigeria Intolerable — Osinbajo,” The Vanguard, June 26, 2015.

consumer protection is built around two fundamentals i.e. “education and complaints processing.”<sup>278</sup> Dispute settlement mechanisms required for consumer grievance handling should be less formal, less expensive and expeditious. The ordinary courts are out of reach. In fact, the late Chief Justice of England and Wales Lord Bingham recently considered the provision of cheap and accessible redress mechanism for settling dispute as one of the core principles of the rule of law.<sup>279</sup> In the same vein, the Attorney General of Australia argued that fairness, simplicity, affordability and accessibility are the “critical test” a judicial system must pass otherwise it loses its relevance in the courts of public it is intended to serve.<sup>280</sup> Additionally, John; the Consumer Watch; and Goldring argued that Small Claims Court (SCC) or Consumer Tribunals (CT) are less burdensome and have proved very useful in delivering quick and fair justice to consumer.<sup>281</sup> Ursic believed that less formality makes SCC or CT the best mechanism for consumer redress.<sup>282</sup> They remain the best dispute settlement mechanism in terms of improved consumer access to justice. According to Ross, the cost and cumbersome procedures associated with ordinary courts made the SCC very popular in the US and many other

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<sup>278</sup> Haemmel, (1972):53.

<sup>279</sup> Tom Bingham , The Rule of Law , (London: Penguin Books, 2011) cited by Andy Unger, “The Rule of Law in Zambia: Enhancing Access to Justice,” *The Round Table: The Commonwealth Journal of International Affairs* 101, no. 4 (2012) 353 – 354.

<sup>280</sup> Robert McClelland, Australian Attorney General, “Foreword: Attorney-General’s Department, *Strategic Framework for Access to Justice in the Federal Civil Justice System*, 2009,”

<sup>281</sup> Consumer Watch, “Small Claims and Dispute Resolution can they Yield big Wins,” (2012); John Baldwin, “Access to Justice: The English Experience with Small Claims Court,” *Public Sector*, no. 40, 2000; John Goldring, “Public Law, Private Law, and Consumers’ Remedies,” *The Australian Quarterly* 50, no. 4 (Dec., 1978):60; Kent Roach and Lorne Sossin, “Access to Justice and Beyond,” *The University of Toronto Law Journal* 60, no. 2, *Law, Economics and Public Policy: Essays in Honour of Michael Trebilcock* (2010):374.

<sup>282</sup> Australian Attorney-General’s Department, “*Strategic Framework for Access to Justice in the Federal Civil Justice System*,” (2009): 32; Ursic Michael, “Small Claims Court as Consumer Remedy: Some Research Needs,” *Journal of Consumer Affairs* 15, no. 2 (1981):392. See also Holland Peter A., “The One Hundred Billion Dollar Problem in Small Claims Court: Robo - Signing and Lack of Proof in Debt Buyer Cases,” *Journal of Business and Technology Law* 6, no. 2 (2011):285.

countries.<sup>283</sup> In fact, countries such as UK, Canada, Australia, Malaysia, Peru, South Africa, Pakistan already have this SCC. With all the widespread consumer abuses in the electricity industry and the Nigerian markets, Nigeria has no SCC. This remains the country's position despite its delay prone and congested regular court where cases could remain undecided for decades before trial courts.<sup>284</sup>

Although on a larger scale these SCCs or consumer courts where they exist, have eased consumer access to justice, literature identified some of their problems. Naemah and Elistina found jurisdictional limitation and judgement enforcement difficulties among the weaknesses of the Malaysian Tribunal for Consumer Claims.<sup>285</sup> Similarly, Naemah, the American Bar Association; Thomas and Joan; and Baldwin identified inconvenient sitting time, number and location of the courts and the problems of judgment enforceability of the SCC as other set backs associated with the SCC.<sup>286</sup> Additionally, and notwithstanding the informality of the proceedings of the SCC, John maintains that they remain legal proceedings and lay litigants lack the rudimentary knowledge of legal issues, and the adequate and needed preliminary legal services at low cost in respect of their issues

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<sup>283</sup> Ross Cranston, "Access to Justice for Consumers: A Perspective From Common Law Countries," *Journal of Consumer Policy* 3, no. 3-4 (1979): 291.

<sup>284</sup> Jedrzej, (2001):410. See also Ariori V. Elemu (1983) 1 Supreme Court Cases (SC), 13; Wakino V. Ade John (1999) P9 Nigeria Weekly Law Reports (NWLR) Part 619, 403; Dabo V. Abdullahi (2005) ALL Federation Weekly Law Reports (FWLR) Part 255, P.1039; Michael Olanrewaju, "Nigeria: CJN Bemoans Current Judicial Structure," Daily Champion, March 22, 2012; Johson Amadi, "Enhancing Access to Justice in Nigeria with Judicial Case Management: An Evolving Norm in Common Law Countries," 2009, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1366943](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1366943). (accessed February 27, 2013).

<sup>285</sup> Naemah Amin and Elistina Abu Bakar, "ADR for Consumers: An Appraisal of the Tribunal for Consumer Claims in Malaysia," in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore: Lexis Nexis, 2010), 173.

<sup>286</sup> Naemah Amin, "Consumer Redress Mechanisms in Malaysia: Prospects and challenges," *IIUM Law Journal* 15, no. 2 (2012): 231; John Baldwin, *Small Claims in the County in England and Wales: The Bargain Basement of Civil Justice*, (Oxford University Press, 1997), 134; "Small Claims Court Designed for the People who use it," *American Bar Association Journal* 64 (1978): 623; Thomas L Eovaldi and Joan E Gestrin, "Justice for Consumers: The Mechanisms of Redress," *Northwestern University Law Review* 66 (1971): 284.

before the SCC.<sup>287</sup> John further argued that the enforcement of the judgment of the SCC remains a problem and that the role of lawyers before the SCC remains undefined. Ross on her part fears that businesses could turn the SCC as debt collection avenues.<sup>288</sup>

#### **1.8.4 Advancing Consumer Rights and Remedies Protection**

Research on the value and the development of the consumer rights jurisprudence, though, not in the liberalised environment exist. Kathleen; Yvonne; Iris and Hans; and Larsen and Lawson<sup>289</sup> maintained that the jurisprudence on consumer rights traces its root from the message of President J.F. Kennedy to the US Congress of 1962. According to Larsen and Lawson, this was the first concrete step in consumer rights protection law, followed by the European efforts of 1975.<sup>290</sup> It would be recalled that, President J.F. Kennedy declared in his message that the consumer should be accorded the right to safety, to choose freely, to be informed and to be heard. The duo maintained that the European efforts were contained in the EU consumer programme of 1975. According to the programme, a consumer has the right to the protection of economic interests, to redress, to information and the right to representation (the right to be heard).<sup>291</sup>

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<sup>287</sup>John Baldwin, “Access to Justice: The English Experience with Small Claims Court,” *Public Sector*, no. 40 (2000).

<sup>288</sup>Ross, (1979):291.

<sup>289</sup> Kathleen Gutman, “The Development of Consumer Law in the US: Comparisons with the EU Experience,” *Journal of European Consumer and Market Law* 1, no. 4 (2012): 212; Yvonne van Rooy, “Consumer Law: The First Fifty Years,” *Journal of European Consumer and Market Law* 1, no. 4 (2012): 209; Iris Benohr and Hans –W Micklits, “Consumer Protection and Human Rights,” in *Research Handbook on International Consumer Law*, ed., Geraint G Howells, Ian Ramsay and Thomas Willhelmsen (Edward Elgar Publishing, Incorporated, 2010), 19; Larsen, G. and Lawson R., “Consumer Rights: An Assessment of Justice,” *J Bus Ethics* (2013):515.

<sup>290</sup>Larsen, G. and Lawson R., 2013):515.

<sup>291</sup>Yvonne, (2012):210.

Hondius recently captured the later efforts of consumer organisations and the United Nations in advancing the issue of consumer rights protection.<sup>292</sup> According to the author, CI advocated the expansion of the rights declared by President Kennedy and it successfully added four consumer rights. The General Assembly of the UN in its “United Nations Guidelines for Consumer Protection” (UNGCP), 1985, resolved and declared the eight rights suggested by President Kennedy and CI as consumer bill of rights. Lucy and UNCTAD’s report on the implementation of UNGCP across the world documented that the UNGCP influenced the development of the jurisprudence on consumer rights across the globe. Today, not only that legislation incorporating consumer rights abound, the status of the consumer rights has been elevated to constitutional relevance in over 30 countries such as Brazil, Costa Rica, Columbia, Dominican Republic, European Union, Egypt, Mexico, Peru, Poland, Switzerland El Salvador, Spain, Panama and Portugal etc.<sup>293</sup> In fact, the Republic of Kenya equated consumer rights with civil and political rights.<sup>294</sup> With the wide spread consumer exploitation, poverty and illiteracy in Nigeria, the country lacks a consumer code that specifically incorporates in clear legislative terms consumer rights and remedies. The legal regime is more punitive than compensatory.

The importance of consumer rights made scholars such as Deutch to advocate making them human rights. The group maintains that the consumer rights fit in the economic,

<sup>292</sup> Hondius Ewoud., “The Innovative Nature of Consumer Law,” *J Consum Policy* 35 (2012):166.

<sup>293</sup> Lucy, (2013):65; UNCTAD, Implementation Report of United Nations Guidelines on Consumer Protection. [http://unctad.org/Sections/ditc\\_ccpb/docs/UNGCP\\_Implementation\\_Report\\_v1.pdf](http://unctad.org/Sections/ditc_ccpb/docs/UNGCP_Implementation_Report_v1.pdf). (accessed April 29, 2013). See also Constitución Política de Colombia, Article 78;Constitución Política, Article 46;Constitución Política de la República Dominicana, Article 53; Treaty Forming European Union (TFEU), Article 12;Constitución de la República de El Salvador, Article 101; Egypt Constitution, Article 14; Constitución Política de los Estados Mexicanos, Article 28;Constitución Política del Perú, Article 65;Constitution of the Republic of Poland, Article 76 and Federal Constitution of the Swiss Confederation, Articles 2, 23, 97.

<sup>294</sup> Section 46, The Constitution of the Republic of Kenya, 2010.

social and cultural rights.<sup>295</sup> They cited provisions of the Universal Declaration of Human Rights (UDHR) and the provisions of the International Covenant on Economic Social and cultural rights (ICESCR) to which Nigeria is a signatory. But scholars such as Wiedenbaum rejected the idea of making consumer rights as human rights. He opined that to make consumer rights as a human right is an attempt to give government more role in regulating the market instead of allowing a free market enterprise.<sup>296</sup>

Zabia, however, rightly maintains that legislation is vital for rights protection<sup>297</sup> and further argued that a consumer protection fails if the consumer is not provided concrete rights.<sup>298</sup> This point is strengthened by the maxim *ubi jus ubi remedium* which makes consumer rights and remedies for the rights violation integral to consumer access to justice. Sadly, consumer rights and remedies are not codified in Nigeria.

Writing on consumer remedies, Sutiap argued that part of the contributory factors for consumer suffering today from unfair trading practices is linked to lack of remedies. This deficiency in remedies has deprived the consumer of the needed economic welfare he deserves.<sup>299</sup> According to Alan, consumers in the UK supplied with faulty goods, have rights to remedies under the UK enactments, the common law and the EU Sale and Supply of Goods to Consumers Regulation 2000 which include rejection, refund, repair,

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<sup>295</sup> Deutch Sinai, "Are Consumer Rights Human Rights?" *Osgoode Hall Law Journal* 32, no. 3 (1995):551.

<sup>296</sup> Harland D., "The United Nations Guidelines for Consumer Protection: Reply to the Comment by Wiedenbaum in JCP, 10, 1987/4," *Journal of Consumer Policy* 11 (1988):111.

<sup>297</sup> ZabiaVernadaki, "Consumer Protection and the Reform of the European Consumer Acquis," *International Company and Commercial Law Review* 21, no. 9 (2010):318.

<sup>298</sup> Zabia, (2010):320.

<sup>299</sup> Sutatip Yuthayotin, "Towards a Multidimensional Approach to Access to Justice: Setting a Framework for Consumer Protection in B2c E-Commerce," in *Access to Justice in Transnational B2C E-Commerce*, (Springer International Publishing, 2015), 66.

replacement, reduction in price and recession.<sup>300</sup> Jean also documented the existence of these remedies for French consumers as far back as 1985.<sup>301</sup> Jean further posited that the French consumers could also demand from the sellers or service providers goods or services that conform to their legitimate expectation or price reduction.<sup>302</sup> These bundle of remedies have not been given legislative attention in Nigeria as obtainable in jurisdictions such as Europe. According to Dorothy, these remedies are introduced to eliminate perceived consumer abuses though the emergence of these remedies in most jurisdictions like the U.S. is on *ad hoc* basis.<sup>303</sup> According to Goldring, consumer protection laws are categorised into laws that prohibit supply and service provision below prescribed standards and their enforcements and others that provide for compensation to the injured consumer.<sup>304</sup>

In Australia, states such as New South Wales and others have for a very long period conferred the consumer the right to seek refund and or rectification of a defective good or service rendered at the seller's expense.<sup>305</sup> Goldring argued that these remedies are really what the consumer wants, hence the need for a legislative provision sanctioning them and that the courts or tribunals should in deserving cases be willing to award the same.<sup>306</sup>

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<sup>300</sup> Alan Wilson, "Remedies for Faulty Goods: Less Would Be More," *Consumer Policy Review* 17, no. 2 (2007): 52

<sup>301</sup> Jean Calais-Auloy, "Towards New Laws for Consumer Protection: Proposals of the French Reform Commission," *Journal of Consumer Policy* 8, no. 1 (1985):58.

<sup>302</sup> Jean, (1985)

<sup>303</sup> Dorothy Cohen, "Remedies for Consumer Protection: Prevention, Restitution, or Punishment," *The Journal of Marketing* 39, no. 4 (Oct. 1975): 24.

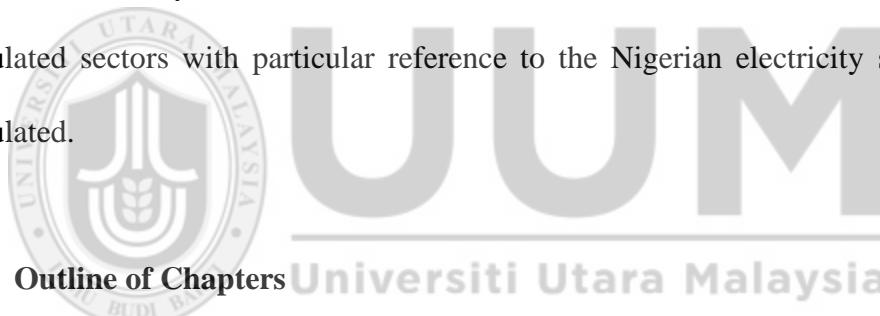
<sup>304</sup> Goldring (1978):59

<sup>305</sup> Ibid. 62.

<sup>306</sup> Ibid. .

### **1.8.5 Research Gap**

The reviewed literature above, emphasised the value of strong legal and institutional structures such as competition law and competition regulatory agencies; improved consumer access to justice through consumer rights and remedies protection laws; small claims/consumer court and other less formal dispute redress mechanisms in deregulated environment. However, the bulk of the literature comes from developed jurisdictions with little or scanty study on Nigerian deregulated sectors, the location of this study. In fact, to the best of the knowledge of this research no literature exist on the state of legal and institutional frameworks for consumer protection relating to deregulated sectors in Nigeria. This study therefore, enriches the discussion on consumer protection in deregulated sectors with particular reference to the Nigerian electricity sector recently deregulated.

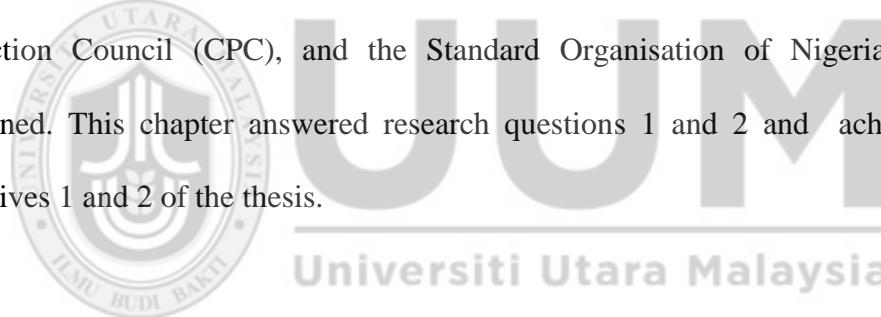


### **1.9 Outline of Chapters** Universiti Utara Malaysia

Chapter one sets the background of the study. It dealt with the problem statement, the research questions; aims; objectives; justification; significance and the scope and limitation of the research. It also contains the methodology adopted for the research as well as the literature review.

Chapter two looked at the historical background and philosophy of consumer protection as well as the historical background of power sector reform. Because of the themes of the research, the chapter examined the state regulation of market, the emergence of deregulation and the philosophy of state intervention in deregulated environment.

Chapter three dealt with the legal and institutional frameworks for consumer protection in Nigeria. For this purpose, the research analysed international instruments on consumer protection before the relevant local legislation in that regards. The United Nation Guidelines for Consumer Protection (UNGCP) 1985 Reviewed in 2003, The African Model Law on Consumer Protection, (AMLCP) 1996 were the selected international and regional instruments for the research. With respect to the local legislation, the Consumer Protection Council Act, 1992 and the Standard Organisation of Nigeria Act, 1971 were the relevant laws selected for the research. Equally, the chapter highlighted the institutional arrangements made under the said laws. For this purpose Consumer Protection Council (CPC), and the Standard Organisation of Nigeria (SON) were examined. This chapter answered research questions 1 and 2 and achieved research objectives 1 and 2 of the thesis.

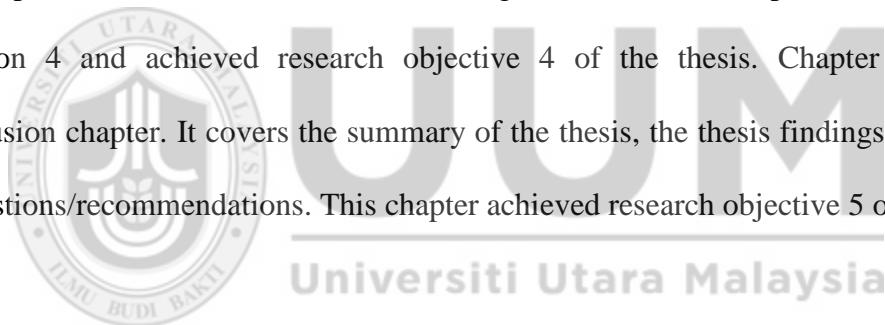


Chapter four examined the legal and institutional frameworks for electricity deregulation in Nigeria. For this purpose, the Nigerian Electricity Sector Reform Act, 2005 and the relevant institutional arrangements were examined. For this purpose, the role of the Nigerian Electricity Regulatory Commission was specifically examined. This chapter answered research question 2 and achieved research objective 2 of the thesis.

Chapter Five is designed for the examination of consumer access to justice in Nigeria. The chapter, therefore, examined the Constitution Federal Republic of Nigeria, (CFRN) 1999 and the Legal Aid Council of Nigeria (Amendment) Act, 2011, the consumer

dispute settlement mechanisms under the Nigerian legal system as well as consumer remedies under the relevant consumer protection laws. For this purpose issues relating to damages, restitution, refund, repair, replacement, the court system, Alternative Dispute Resolution mechanisms, Consumer Ombudsman, Collective/Class Action and other administrative measures for complaints handling and redress were examined. This chapter answered research question 3 and achieved research objective 3 of the thesis.

Chapter six specifically examined the legal and institutional challenges of consumer protection in the deregulated electricity sector. This chapter is borne out of the interview transcripts as well as a review of the existing literature. This chapter answered research question 4 and achieved research objective 4 of the thesis. Chapter seven is the conclusion chapter. It covers the summary of the thesis, the thesis findings and the thesis suggestions/recommendations. This chapter achieved research objective 5 of the thesis.



## CHAPTER TWO

### HISTORICAL AND CONCEPTUAL BACKGROUND OF THE STUDY

#### 2.1 Introduction

This chapter lays the foundation on the basic concepts of this research. These include consumer protection, electricity and electricity sector regulation and deregulation. The chapter addresses the historical background and the philosophy of consumer protection. The chapter equally examined the history of power sector reform. Because of the themes of the thesis, the chapter examined the philosophy of states' regulation of the markets and the emergence of deregulation of utilities in particular. The necessity for consumer protection by the state was equally analysed.

#### 2.2 Historical Background of Electricity Industry and Electricity Sector Reform

##### 2.2.1 Historical Background of the Electricity Industry before the 2003 reforms.

Electricity as a service unlike other goods or commodities is intangible, incapable of being stored, and difficult to be traded.<sup>1</sup> Globally, the electricity industry evolved as a

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<sup>1</sup>Matthew Evans, “Regulating Electricity-Market Manipulation: A Proposal for a New Regulatory Regime to Proscribe All Forms of Manipulation,” *Michigan Law Review* 113, (2015): 588; Patricia Ochoa, “Policy Changes in the Swiss Electricity Market: Analysis of Likely Market Responses,” *Socio-Economic Planning Sciences* 41, (2007):338; Marilyn, (2007):302; René Aid, “Price Models,” in Electricity Derivatives, (Springer International Publishing, 2015), 27; Sally Hunt, *Making Competition Work in Electricity*, (New York: John Wiley & Sons, 2002):2; Yanrui Wu, “Deregulation, Competition, and Market Integration in China’s Electricity Sector”, in Han, P. and F. Kimura ed., *Energy Market Integrationin East Asia: Energy Trade, Cross Border Electricity, and Price Mechanism*, ERIA Research Project Report FY2013, (2014), 249; Kritika Mathur and Pankaj Sinha, “Dynamics of Day-Ahead Trading of Electricity in India,” (2014); David M. Newbery, “Problems of Liberalising the Electricity Industry,” *European Economic Review* 46, no. 4 (2002): 923.

vertically integrated monopoly owned in most cases by the state.<sup>2</sup> The government doubled as the generator, distributor and retailer, on the one hand, and the regulator of the industry on the other. This is the case across the developed and developing countries. In the UK, for example, the Central Electricity Generating Board (until the UK's electricity sector deregulation) was the government body in charge of all the activities in the electricity value chain.<sup>3</sup> This arrangement holds through in most Asian countries with Malaysia and Thailand as good examples in that regard.<sup>4</sup> The Nigerian electricity industry was not different. The industry was vertically integrated and state-owned from its inception until around 2000.<sup>5</sup> The Nigerian Electricity Authority (NEPA) was the state agency in charge of the entire electricity business. As a state institution, NEPA generated, transmitted and traded electricity as well as regulated the electricity industry in Nigeria.

As in most development issues, electricity plants existed earlier in the developed world. While UK had its first power plant in 1879,<sup>6</sup> in the case of US, the development of the electric power industry commenced with the establishment of Thomas Edison's Peal

<sup>2</sup>Tamer Çetin, “Structural and Regulatory Reform in Turkey: Lessons Form Public Utilities,” *Utilities Policy* 31 (2014): 100; Paul L. Joskow, “Introduction to Electricity Sector Liberalization: Lessons Learned From Cross-Country Studies”, in *Electricity Market Reform: An International Perspective*, ed., Sioshansi, F. and Pfaffenberger, W. (2006), 2; Navroz K. Dubash, “The Public Benefits Agenda in Power Sector Reform,” *Energy for Sustainable Development* 5, no. 2 (2001): 5; Ian Bartle, *Globalisation and EU Policy-Making: The Neo-Liberal Transformation of Telecommunications and Electricity* (Manchester: Manchester University Press, 2005),43; Peter Van Doren, and Jerry Taylor, *Rethinking Electricity Restructuring: Policy Analysis* 530, (Cato Institute, 2004):2; Lev S. Belyaev, *Electricity Market Reforms* ( Springer, 2011),178; David M Newbery, “Problems of Liberalising the Electricity Industry,” *European Economic Review* 46, no. 4 (2002): 919; Byoung-Hoon Lee and Hyeon-Hyo Ahn, “Electricity Industry Restructuring Revisited: the Case of Korea,” *Energy Policy* 34, no.10 (2006): 1115.

<sup>3</sup> Marilyn Chikaodili Amobi, “Deregulating the Electricity Industry in Nigeria: Lessons from the British Reform,” *Socio-Economic Planning Sciences* 41, no. 4 (2007): 294; Lucia A Reisch and Hans-W Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29, no. 4 (2006):407.

<sup>4</sup> Thomas B. Smith, “Privatising Electric Power in Malaysia and Thailand: Politics and Infrastructure Development Policy,” *Public Administration and Development* 23, no. 3 (2003): 273.

<sup>5</sup> Ayodele (2013):76.

<sup>6</sup> C.A. Dahl, *International Energy Markets. Understanding Pricing, Policies, and Profits*, (Tulsa, Oklahoma: Penn Well Corporation, 2004)

generation plant in New York in 1882.<sup>7</sup> In less than two decades from the British plant and a year from the first delivery of electricity to the Californian city of Sacramento,<sup>8</sup> Nigeria got its first power plant. That was in 1896 and Lagos was the site of this pioneer plant.<sup>9</sup> This pioneer plant had 20 megawatts installed capacity and was constructed for the power needs of the then colonial government. The pioneer plant was small and under the management and control of the then Public Works Department. Another 14 megawatts plant came on board between 1921-1923. By 1929, the Nigeria Electric Supply Company (NESCO) came on board and was situated in Jos, the Plateau state of Nigeria. The electric power industry did not witness any development until the 1950s following several consultancy surveys on the major rivers of Niger and Benue. The recommendations from the surveys led to the establishment of Kainji Hydroelectric station in 1958.<sup>10</sup> But prior to the establishment of the Kainji power plant, the government through an Ordinance had established the Electricity Corporation of Nigeria (ECN) in 1951.<sup>11</sup> In fact, Ijora B. Hydroelectric plant constructed in 1956, added 20 megawatt to the grid.<sup>12</sup>

After Nigeria's independence in 1960 coupled with the rise in the demand of electricity, the electric power industry received a major boast with the establishment of the Niger Dams Authority (NDA). NDA was mandated to develop and manage the hydroelectric

<sup>7</sup> Seth, Jay and Lester, (2005):5279.

<sup>8</sup>Edward Smeloff and Peter Asmus, *Reinventing Electric Utilities: Competition, Citizens Action, and Clean Power*, (Washington: Island Press, 1997), 10.

<sup>9</sup>Abubakar Sadiq Aliyu, Ahmad Termizi Ramli, and Muneer Aziz Saleh, "Nigeria Electricity Crisis: Power Generation Capacity Expansion and Environmental Ramifications," *Energy* 61 (2013): 354; Sabiu Saad Gidari Wudil, "Steps Towards Better Electricity Distribution Business in Nigeria (1)," *Power Watch 1*, no. 4 (April – June, 2014):11.

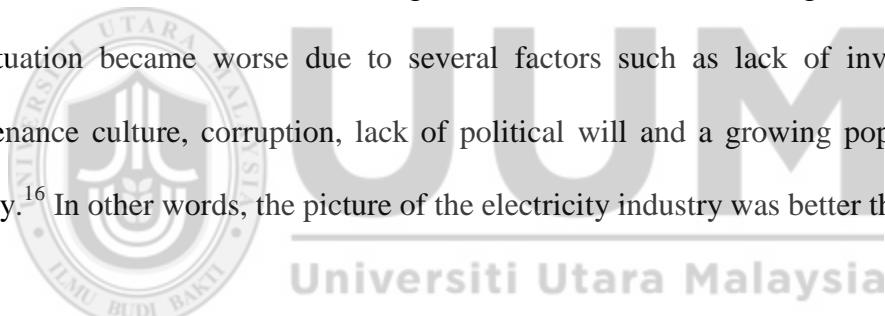
<sup>10</sup>Ayodele, (2013):20,

<sup>11</sup> Ordinance No. 15 of 1950.

<sup>12</sup> Ayodele, (2013).

stations in the country. It is worth to note that the electricity generation increased in the Lagos axis with the addition of 30 megawatts in 1961 and 1962 respectively.<sup>13</sup> A further addition of 36.5 megawatts came in 1966.<sup>14</sup>

By 1972, the government felt the need to harmonize the regulation of the generation and distribution of electricity. This resulted in the merger of the ECN and NDA through the promulgation of Decree No. 24 of 1972. The agency that emerged was the NEPA.<sup>15</sup> NEPA thereafter assumed the role of electricity generation; transmission and distribution hitherto shared between the ECN and NDA. During the early days of NEPA, it was assessed to have done well in meeting the customers' demand. Progressively, however, the situation became worse due to several factors such as lack of investment, poor maintenance culture, corruption, lack of political will and a growing population in the country.<sup>16</sup> In other words, the picture of the electricity industry was better than it is today.



At take -off, NEPA had three thermal stations i.e. Afam, Delta and Ijora with Kainji being the only hydroelectric station at that time. The three thermal and the only hydroelectric stations then had the installed capacity of 532 megawatts of electricity to cater for more than two million customers.<sup>17</sup> By late 1990s, the power stations under the control of NEPA had increased to eight comprising three hydroelectric and five thermal

<sup>13</sup> Ayodele, (2013).

<sup>14</sup> Yusuf Abdulmumini, "The Nigerian Electricity Industry: Its Growth and Associated Challenges," Paper presented at the Inaugural Ceremony of the Nigerian Institute of Electrical Electronics Engineers (NIEEE), Kaduna Branch, (20080, 5 & 6.

<sup>15</sup> N. Edomah and S. Nwaubani, "Energy Security Challenges in Developing African Mega Cities: The Lagos Experience," *Built Environment* (2014): 1; Marilyn, (2007):291.

<sup>16</sup> Titus Koledoye Olugbenga, Abdul-Ganiyu A Jumah, and D.A. Phillips, "The Current and Future Challenges of Electricity Market in Nigeria in the Face of Deregulation Process," *African Journal of Engineering Research* 1, no. 2 (2013): 37; Marilyn, (2007):292.

<sup>17</sup> Ayodele (2013):31.

stations. Kainji, Shiroro, and Jebba were the hydro whilst Afam, Egbin, Ijora, Sapele and Ughelli were the thermal stations. Between 2001- 2009, the number of plants received another boast with the construction of Geregu, Omotosho and Olorunshogbo thermal stations.<sup>18</sup> All these additions did not significantly increase electricity generation in the country. This is because the electricity generation capacity remains abysmally low compared to the Nigeria's growing population and industrial needs. The capacity goes from bad to worse when the population issue and industrial needs are factored into it. At the commencement of the 4<sup>th</sup> republic in 1999, (when Nigeria returned to democratic rule from the long military junta), the country's generation was around 1,700 megawatts.<sup>19</sup> At the moment, however, the electricity generation fluctuates between 1,400 megawatts to 4,500 megawatts with critical moments having a thousand plus megawatts for a country of over 170 million people.<sup>20</sup> The newly sworn in Nigerian President lamenting on the power crisis in the country in his inaugural speech stated that:

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“No single cause can be identified to explain Nigerian’s poor economic performance over the years than the power situation. It is a national shame that an economy of 180 million generates only 4,000MW, and distributes even less. Continuous tinkering with the structures of power supply and distribution and close on \$20b expanded since 1999 have only brought darkness, frustration, misery, and resignation among Nigerians. We will not allow this to go on. Careful studies are under way during this transition to identify the quickest, safest and most cost-effective way to bring light and relief to Nigerians.”<sup>21</sup>

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<sup>18</sup> Ibid..

<sup>19</sup> Aliyu Idris, *et al.*, “An Assessment of the Power Sector Reform in Nigeria,” *International Journal of Advancements in Research & Technology* 2, no.2 ( February-2013):1.

<sup>20</sup> Marilyn, (2007):296; Julius Elusakin, “Privatization and Electricity Problem in Nigeria,” *National Mirror*, January 6, 2013; S. K. C. Ogbonnia, “Nigeria’s Electricity Crisis is Leadership Failure,” *The Vanguard*, May 26, 2015. <http://www.vanguardngr.com/2015/05/nigerias-electricity-crisis-is-a-failure-in-leadership/>. (accessed May 26, 2015).

<sup>21</sup> Muhammadu Buhari, President Federal Republic of Nigeria, inaugural speech, May 29, 2015. See *The Vanguard*, “I belong to everybody and I belong to nobody,” *The Punch*, May 30, 2015.

This remains the case despite the huge investments in the industry, and the country's installed generating capacity standing at 8,644 megawatts.<sup>22</sup> In fact, the nation's need is over four times the current available capacity.<sup>23</sup> This prompted the Transition Committee on Privatization (TCP) to move for the amendment of the NEPA establishment Decree. This culminated into the enactment of NEPA Act and the subsidiary legislation that regulated the electricity industry until the enactment of the Electric Power Sector Reform Act, 2005 (hereinafter referred to as the EPSRA, 2005).

## **2. 2.2 The reform of the Nigerian electricity industry**

As highlighted above, the Nigerian electricity was to the exclusion of very few privately owned power companies fully owned and operated by the government. Until 2005, the electricity sector in the country was a monopoly because all the activities in the electricity value chain were regulated by the state owned NEPA under the NEPA Act. Government generated and supplied electricity. It equally provided the policy guidance in the running of the industry. The electricity service comprising generation and distribution was under the defunct National Electric Power Authority (NEPA).

Under the NEPA's regime electricity supply and regulation remained problematic. The electricity problem could not be solved by NEPA Act the existing enactment regulation

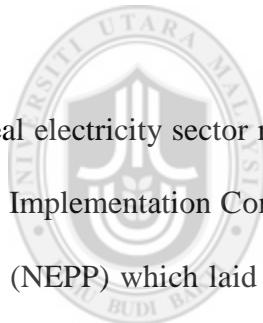
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<http://www.vanguardngr.com/2015/05/i-belong-to-everybody-and-i-belong-to-nobody/> (accessed May 30, 2015).

<sup>22</sup> Emeka E. Okafor, "Reforms in the Power Sector and Implications for Industrial Development in Nigeria: The Case of Difference between Six and Half a Dozen?" *Ibadan Journal of the Social Sciences* 12, no. 1 (2014).

<sup>23</sup> Femi Asu, "Nigeria's IPP Scene Picking up on Back of Power Sector Reforms," *Business Day online*, July 15, 2014. <http://businessdayonline.com/2014/07/nigerias-ipp-scene-picking-up-on-back-of-power-sector-reforms/#.VGOZoPmUdNM>. (accessed July 15, 2014)

the industry. The dwindling status of the electricity industry resulted in the need for real reforms. As usual, the legal regime regulating the industry needed to be reviewed to accommodate the reforms. As such Decrees 28 and 29 were amended in 1998. The Electricity Act, 1990<sup>24</sup> and NEPA Act 1998<sup>25</sup> were equally amended. By 2005, the NEPA Act was repealed by the enactment of the Electric Power Sector Reform Act. With the initiation of the liberalization of the electricity industry and the repeal of the National Electric Power Authority Act by the Electric Power Sector Reform Act, 2005, NEPA ceased to exist and in its place the Power Holding Company of Nigeria (PHCN) was established. This was the real beginning of the deregulation of the Nigerian electricity industry.



The real electricity sector reform in Nigeria commenced with the creation of the Electric Power Implementation Committee (ELPIC) that produced the National Electricity Power Policy (NEPP) which laid the foundation for the reforms.<sup>26</sup> The NEPP gave birth to the EPSRA 2005. The EPSRA 2005 repealed the NEPA Act and the Electricity Act.<sup>27</sup> In furthering the reform project, successive government took bold steps towards the realisation of the reform. In 2007, the then democratically elected president late Umar Musa Yar'adua created the Power Sector Reform Committee to reshape the reform project.<sup>28</sup> Although the reform suffered some setbacks with the death of President Umar Musa Yar'adua, the government of the former, President Goodluck Ebele Jonathan that

<sup>24</sup> Electricity Act, (Amendment Decree 1998) CAP 256 L.F.N., 1990

<sup>25</sup> Ibid.

<sup>26</sup> Irene N. Chigbue, "Electric Power Sector Reform: Privatisation, Regulation and Other Challenges," Presentation at the National Workshop on Electric Power Sector Liberalisation, March 30, 2006.

<sup>27</sup> Section 99, Electric Power Sector Reform Act, 2005.

<sup>28</sup> U. P. Onochie, H. O. Egware, and T. O. Eyakwanor, "The Nigeria Electric Power Sector (Opportunities and Challenges)," *Journal of Multidisciplinary Engineering Science and Technology (JMEST)* 2. no. 4, (April – 2015):495.

succeeded Yaradua, equally took some giant steps towards the full realisation of the electricity reform. The government drew a new Power Sector Reform Road Map in 2010.<sup>29</sup> The Presidential Action Committee on Power and a Presidential Task Force on Power were equally created in that regards.

The above initiatives yielded result especially in the actual unbundling, sale and handing over of the electricity generation and distribution to private firms. The unbundling gave birth to 18 successor companies. While a single transmission company emerged, six Generating companies (Gencos) were carved from the PHCN. The Distribution Companies (Discos) were more in number as eleven Discos emerged and spread along regional distribution in the country.



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<sup>29</sup> Balkisu Saidu, "Roadmap for Power Sector Reform in Nigeria 2010: Out of the Dark into the Dark Ages," *The Journal of Structured Finance* 17, no. 3 (2011): 96; Bart Nnaji, "Power Sector Outlook in Nigeria: Governments Renewed Priorities," Presidential Task Force on Power, 2011

Table 2.1

*Discos /New owners/ Location*

<b>S/N</b>	<b>Generation Company</b>	<b>New owners</b>	<b>Location/Region</b>
1	Abuja Distribution Company	KANN Consortium Utility	Abuja, Federal Capital Territory
2	Kano Distribution Company	Sahelian Power SPV Limited	Kano, North West Nigeria
3	Kaduna Distribution Company		Kaduna North West Nigeria
4	Yola Distribution Company	Integrated Energy Distribution & Marketing Limited	Yola, North East Nigeria
5	Jos Dtribution Company	Aura Energy Limited	Jos, North Central, Nigeria
6	Ibadan Distribution Company	Integrated Energy Distribution & Marketing Limited	Ibadan, South West, Nigeria
7	Eko Distribution Company	West Power & Gas	Lagos, South West, Nigeria
8	Ikeja Distribution Company	(NEDC/KEPCO Consortium)	Lagos, South West, Nigeria
9	Benin Distribution Company	Vigeo Power Consortium	Benin, South- South, Nigeria
10	Port Harcourt Distribution Company	4 Power Consortium	South
11	Enugu Distribution Company	Interstate Electrics Ltd	Enugu, South East, Nigeria

As part of the deregulation of the Nigerian electricity sector and the need to boost the electricity service, there were National Independent Power Projects initiated across the country. Since the current research is about electrcity service supply, it does not intend to go into detail disussions on the nature and operation of the NIPPs in Nigeria.

Table 2.2

*Gencos and installed capacities*

S/N	Generation Company	New Owners	Capacity (MW)	Plant type
1	Afam Power Plc (1-V)	Taleveras Group	987.2	Thermal
2	Egbin Power Plc	Sahara Power Group and KEPCO	1,320	Thermal
3	Kainji/ Jebba Hydro Electric Plc	Mainstream Energy Solutions Ltd	1,330	Hydro
4	Sapele Power Plc	CMEC/Eurafric Energy Limited	1,020	Thermal
5	Shiroro Hydro Electric Plc	North-South Power Company	600	Hydro
6	Ughelli Power Plc	Transcorp/ Woodrock Consortium.	942	Thermal

It should be emphasised that althoughh the new Gencos and Discos have made investments but no new Genco or Disco was established by the private firms. They continued business with the existing structures at the time of purchase. Again, it should be made clear that even the NIPPs are jointly funded by the three-tier level governments in the country, namely the federal, state and local governments of the federation.

Table 2.3  
*The National Integrated Power Projects (NIPPs)*

S/N	NIPPs	Capacity (MW)	Location
1	Alaoji Generation Company Nigeria Ltd	1,131	Alaoji, South East, Nigeria
2	Benin Generation Company Limited	508	Benin, South-South, Nigeria
3	Calabar Generation Company Limited	634	Calabar, South-South , Nigeria
4	Egbema Generation Company Limited	381	Egbema, South South, Nigeria
5	Gbarain Generation Company Limited	254	Gbarain, Bayelsa South-South Nigeria
6	Geregu Generation Company Limited	506	Geregu, North Central, Nigeria
7	Ogorode Generation Company Limited	508	Ogorode, South-South Nigeria
8	Olorunsogo Generation Company Limited	754	Olorunshogbo, South West, Nigeria
9	Omoku Generation Company Limited	265	Omoku, South –South Nigeria
10	Omotosho Generation Company Limited	513	Omotosho, South West Nigeria

Source: Niger Delta Power Holding Company Limited, Transaction Review Conference, Completion Status of NDPHC Generation Companies.

The reform reached its climax on November 1, 2013 with the handing over of the 18 successor companies created from the defunct Power Holding Company of Nigeria (PHCN).<sup>30</sup> Private firms took over the Discos and Gencos from the November 1, 2013. The government, however, retained the ownership and control of the Transmission

<sup>30</sup> Moses Pila, “Post-Privatisation Efficiency: The Urgent Need for Corporate Governance in NESI,” *Power Watch 1*, no. 4 (April – June, 2014):6; Everest Amaefule, “At Last, Core Investor Acquires Sapele Power, The Punch, (Lagos), February 24, 2014.<http://www.punchng.com/business/business-economy/at-last-core-investor-acquires-sapele-power/>; Everest Amaefule, “Power Firms: FG Signs Agreement with 14 bid Winners,” The Punch Newspaper (Lagos) February 22, 2013; Thisday, “Expectations Heightens as Private Investors Move to Take Over Power Assets” Thisday (Lagos), September 3, 2013; Enoghase S and Odueme-Omona, “FG Hands Over PHCN to new Investors: As Workers Protest Over Benefits,” Daily Independent, (Lagos) October 01, 2013; Flagbemi A. and Anuforo E., “Labour Protests, Govt Transfer Electricity Utilities,” The Guardian, October 01, 2013; Daily Independent, “Electricity: FG hands over TCN to Manitoba, set 10,000mw Target,” Daily Independent (Lagos) March 13, 2013.

company (Transco). The Manitoba Hydro of Canada was contracted by the federal government to manage the Transco. Equally, the NERC granted 38 generation license to Independent Power Producers (IPP) to raise the electricity generation capacity for improved electricity supply in the country.<sup>31</sup> Ten out of the existing IPP's owned by the three tiers of Nigerian government are billed for privatization, several issues such gas supply issue are forestalling their sale.<sup>32</sup> The diagramtic representation of the electricity services industry is represented in Figure 2.1.

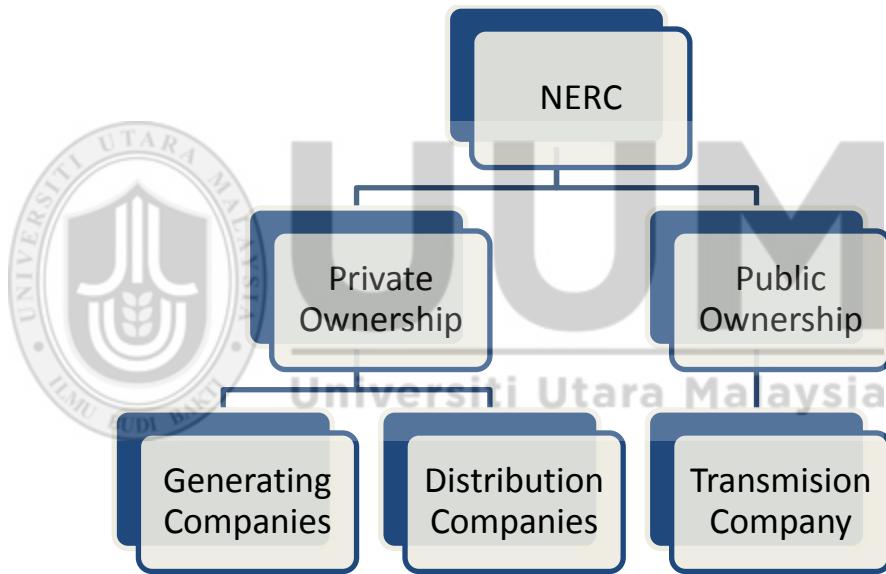


Figure 2.1  
*The Nigerian electricity services industry*

Table 2.1 and Table 2.2 indicate spread of the Discos and Gencos across the country. The distribution is across the states and across the five geo-political zones of the country. The regional spread is equally seen with respect to the NIPPs in Table 2.3. With all the

<sup>31</sup>Sam Amadi, “The Expectations of Nigerian Consumers of Electricity Under a Post Privatization Era: Issues & Perspectives,” Paper Presentation at the Consumer Rights Project (NGO) Marking the 2014 World Consumer Rights Day, held at Sheraton Hotel Lagos, 14th March 2014

<sup>32</sup> Everest Amaefule, “Gas Supply Problems Stall Power Plants’ Sale – BPE,”The Punch, November 12, 2014, <http://www.punchng.com/business/business-economy/gas-supply-problems-stall-power-plants-sale-bpe/> (accessed November 12, 2014).

initiatives one would expect a steady increase in the generation and distribution of electricity to the Nigerian consumers. Unfortunately, the generation capacity fluctuates between zero megawatt to 5,000 megawatt. March 31, 2016, April 9, April 23 and April 25, 2016 were tragic as there was total electric system collapse and zero megawatt generated.<sup>33</sup> These fluctuations often compel the Discos to resort to rationing electricity supply to consumers across the country.<sup>34</sup>

### 2.2.3 Electricity Sector Deregulation

The debate as to the best institution to handle utilities between the state and marketplace has been in the academic circle for centuries.<sup>35</sup> Until deregulation, electricity service provision was considered part of social policy of governments across countries. Government owned and regulated this essential service from generation, transmission to distribution.<sup>36</sup> The government doubled as the supplier and regulator of electricity and the electricity industry. This monopolistic posture is based on two rationale the “natural monopoly and public good rationale.” The former rationale supports the argument that electricity industry is a natural monopoly because of its peculiarities as such all the activities in its value chain are better, more cheaply provided, and handled by a single

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<sup>33</sup> Chris Ochayi, “Zero Megawatt: 10,000mw target achievable by 2019 —Fashola,” The Vanguard, April 1, 2016. <http://www.vanguardngr.com/2016/04/zero-megawatt-10000mw-target-achievable-by-2019-fashola/>

<sup>34</sup> Sulaimon Salau, “Power Firms Ration Supply as Generation Drops to 3,494MW,” April 26, 2016. <http://guardian.ng/business-services/power-firms-ration-supply-as-generation-drops-to-3494mw/>. (accessed April 26, 2016); Okechukwu Nnodi, “90 Power Turbines not working, says Fashola,” Punch April 27, 2016. <http://www.punchng.com/90-power-turbines-not-working-says-fashola/> (accessed April 27, 2016); Sulaimon Salau , Power sector records four system collapses in four weeks,” Vanguard, May 4, 2016. <http://guardian.ng/business-services/business/power-sector-records-four-system-collapses-in-four-weeks/>. (accessed May4, 2016).

<sup>35</sup> Daniel Yergin and Joseph Stanislaw, *The Commanding Heights: The Battle Between Government and the Marketplace* (Simon and Schuster, 2008), xi.

<sup>36</sup>Filipovic Sanja and Tanic Gordon, “The Policy of Consumer Protection in the Electricity Market”, *Economic Annals* 53, no. 178-179 (2008):158. doi:10.2298/EKA0879157F, Barbara S. Haskew and Reuben Kyle, “Electricity Deregulation: What, Why and How,” nd.

body as opposed to multiple bodies.<sup>37</sup> In fact, scholars such as Peter argued that the vertical structure is the best organizational structure for the electricity industry.<sup>38</sup> Considering the economies of scale and the other monopolistic elements of the electricity industry in the area of transmission and distribution, other scholars argued that the electricity industry is a candidate for state regulation rather than be allowed to free market forces.<sup>39</sup> The susceptibility to and the inability of the electricity industry to handle market failures as well as the manipulations and the imperfections associated with the electricity industry, are the other reasons advanced against demonopolization of the electricity industry.<sup>40</sup> On the public good rationale theory, it is argued that electricity being an essential utility for human existence and economic development should remain a public good to be accessible to all.<sup>41</sup>

However, the running of the electricity industry as a vertical monopoly owned and regulated by the state does not go down well with other scholars on the other side of the divide. These include the neo-liberal economists and utility management experts. According to this group, the inefficient state of the electricity industry under the state

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<sup>37</sup> Mark Jaccard, "Oscillating Currents: The Changing Rationale for Government Intervention in the Electricity Industry," *Energy Policy* 23, no. 7 (1995): 580.

<sup>38</sup> Peter and Jerry (2008): 9.

<sup>39</sup> Lev S. Belyaev, *Electricity Market Reforms: The Economics and Policy Challenges*, (London: Springer, 2011), 2; Bikash Mittra, Nigel Lucas, and Ian Fells, "European Energy: Balancing Markets and Policy," *Energy Policy* 23, no. 8 (1995): 689; David Hall, "Electrifying Africa: Power through the Public Sector," *PSIRU Reports* (2007):3

<sup>40</sup> John Vickers and George Yarrow, "Reform of the Electricity Supply Industry in Britain: An Assessment of the Development of Public Policy," *European Economic Review* 35, no. 2 (1991): 486; Lucia A Reisch and Hans-W Micklitz, "Consumers and Deregulation of the Electricity Market in Germany," *Journal of Consumer Policy* 29, no. 4 (2006): 405.

<sup>41</sup> Bakish et al, 690; Malcolm Abbott, "Is the Security of Electricity Supply a Public Good?" *The Electricity Journal* 14, no. 7 (2001): 32-33.

monopoly regime was a result of states' involvement in running the electricity industry.<sup>42</sup>

The group, therefore, argued that the state ought to give way to private hands because the state does not appear to be a performer in business. This group believed that substituting government control with market is one of the effective ways of promoting the public good.<sup>43</sup> They argued that “regulatory agencies disserved the public interest instead of serving it.”<sup>44</sup> The agencies were held to have been captured by powerful businesses. The regulators according to this group danced to the tune of businesses instead of the public they are meant to protect. This was the basis of the development of the theory of regulatory capture by Stiglitz.<sup>45</sup> The deregulation proponents advocated the need for government cutting cost from unnecessary spending on public utility provisions as a basis for deregulating utilities such as the electricity.<sup>46</sup> Scholars in this group, therefore, argued that electricity market deregulation is desirable in the consumers' interest.<sup>47</sup> Is electricity sector deregulation really in the consumers' interests? If the facts and figures are anything to go by, the answer is no. Measured from the consumers' experience especially in the area of price, quality and reliability of the electric service, the desirability of electricity sector deregulation can be questioned. Electricity price post-deregulation skyrocketed, and there were rolling blackouts across several jurisdictions.<sup>48</sup> Whilst

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<sup>42</sup>Njeri Wamukonya, (2003):1275; Rudnick, H., Zolezzi, J., 2001. Electric Sector Deregulation and Restructuring in Latin America: Lessons to be Learnt and Possible Ways Forward,” IEE Proceedings: Generation, Transmission and Distribution 148 (2), (2001):20; World Bank, *African Development Indicators*, (Washington DC.: World Bank, 2001); Zekeyo, J.-P., “Rural electrification reform and programme in Cameroon,” in: *Proceedings of the African High Level Regional Meeting on Energy and Sustainable Development for CSD9* ed. NjeriWamukonya, (2001); Lev S. (2011):2.

<sup>43</sup>Daniel and Joseph, (2008):xiii

<sup>44</sup>Derthicon & Quirk (1985):9.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid. 35.

<sup>47</sup>John, “The Influence of Economic, Financial and Political Indicators in South East Asian Electricity Markets,” in *Perspectives on Energy Risk*, eds. André Dorsman, Timur Gök and Mehmet Baha Karan, (Berlin Heidelberg: Springer, 2014),90

<sup>48</sup>Lev S. Belyaev, *Electricity Market Reforms* ( Springer, 2011),2.

reduction of high electricity price was among the causes of electricity sector deregulation, Lev asserts that in the developed countries “... the experience of the past years [2–12] shows that electricity deregulation (or liberalization) often leads to the opposite results, i.e., to a price rise, lack of investments, power shortage, and decrease in electricity supply reliability (including blackouts).”<sup>49</sup>

Beginning with Chile, UK, US and Europe, the liberalization of the electricity industry became a global phenomenon.<sup>50</sup> In most jurisdictions, regulatory intervention in the industry became reduced, competition was guaranteed, and entry barriers were removed.<sup>51</sup> The hitherto state corporations that handled the business of electricity were unbundled leaving only transmission and distribution remaining under state control due to its economies of scale. Nigeria is a new entrant into the league of electricity deregulating countries. The Nigerian electricity sector deregulation reached its climax on November 1, 2013.<sup>52</sup> On this date all the Gencos and nine out of the 11 Discos as the successor companies created from the unbundled PHCN (the state holding company) were handed over to private investors. While some countries deregulated as a matter of

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<sup>49</sup> Ibid.

<sup>50</sup> Njeri Wamukonya, “Power Sector Reform in Developing Countries: Mismatched Agendas,” *Energy Policy* 31, no. 12 (2003): 1274; Daniel and Joseph, (2008), xi; Holburn, G., Spiller, P.T., Institutional or Structural: Lessons From International Electricity Sector Reforms, in ed. E. Brousseau, J. Glachant. *The Economics of Contracts: Theories and Applications* (Cambridge: Cambridge University Press, 2002) 463; Valdivielso Del Real R., “Takeovers and the Transformation of Electricity Sectors in Britain and Spain: The Importance of Institutions and Varieties of National Regulatory Authorities,” *Oil, Gas & Energy Law Intelligence* 9, no. 2 (March, 2011); K. J. Chalvatzis and Kulac B., “Electricity Reform: The case of Turkey,” *Oil, Gas & Energy Law Intelligence* 9, no. 6 (2011).

<sup>51</sup> Claudia Kemfert, “The European Electricity Market: the Dual Challenge of Liberalisation and Climate Protection,” *Economic Bulletin* 41, no.9 (2004):303. doi: 10.1007/s10160-004-0292-8

<sup>52</sup> Moses Pila, “Post-Privatisation Efficiency: The Urgent Need for Corporate Governance in NESI,” *Power Watch 1*, no. 4 (April – June, 2014):6

choice, developing countries such as Nigeria, India, Ghana and Tanzania deregulated out of compulsion from international financial institutions.<sup>53</sup>

Available literature claims security of supply and reduced electricity prices as the basis for the liberalization of the industry.<sup>54</sup> But the reality is that the deregulation worsens consumer welfare. Many of the deregulation goals in the electricity were not met, and the profound effect of this is seen more in the developing countries as the developing countries were left worse than the pre- reform days economically and socially.<sup>55</sup> Evidence across deregulation implementing countries shows that electricity price skyrocketed and the consumers were the worst of it. It is argued that the government, banks and consultants as opposed to the consumers were the beneficiaries of the electricity sector deregulation.<sup>56</sup> That is why resentment towards electricity liberalization was demonstrated in Argentina, China, Dominican Republic, Ghana, Ecuador, India, Indonesia, Papua New Guinea, Paraguay, and Peru among others.<sup>57</sup> In the Nigerian context, the warning signals for imminent price hike came immediately after signing the

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<sup>53</sup>G. Palast, “A High Price to pay for the Power and the Glory,” *Observer* (London), February 4, 2001, Njeri Wamukonya, (2003):1274-75; Marilyn (2007):291; Fredrick S. Ringo , Why do Countries Adopt Competition Laws? The Tanzanian Case,” in *Evolution of Competition Laws and their Enforcement* ed. Mehta Pradeep S. (London: Routledge, Taylor & Francis Group, 2012), 186;

<sup>54</sup>Claudia, (2004):303; IEA [International Energy Agency], *Electricity Market Reform: An IEA Handbook*, (Paris: IEA, 1999a); IEA, *Electricity Reform: Power Generation Costs and Investment*, (Paris: IEA, 1999b).

<sup>55</sup> James Haselip and Gavin Hilson, “Winners and Losers From Industry Reforms in the Developing World: Experiences From the Electricity and Mining Sectors,” *Resources Policy* 30, no. 2 (2005): 87; Njeri Wamukonya, (2003):1273.

<sup>56</sup> Ferdinand E. Banks, “A Simple Economic Analysis of Electricity Deregulation Failure,” *Organisation of Exporting Countries ( OPEC) Review* 26, no. 2 (2002): 172; Lev S. (2011), 183.

<sup>57</sup>Lucia A Reisch and Hans-W Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29, no. 4 (2006):405; A. Estache, A. Gomez-Lobo, Leipziger D.M., “Utility Privatisation and the Needs of the Poor in Latin America: Have we Learned Enough to get it Right? Paper Presented at Workshop: Infrastructure for Development: Private Solutions and the Poor, London, 31 May–2 June 2000; Sharon Beder, “The Global Impacts of Power Reforms,” *Public Services Yearbook*, 2005/2006. <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1040&context=artspapers>. (accessed October 20, 2013); East African Standard, “Consumers to sue Over Power Tariffs,” *East African Standard* (Nairobi), February 23, 2002.

Sale Purchase Agreement that completed the deregulation of the Nigerian electricity industry.<sup>58</sup> In fact, the Nigerian electricity consumers' post privatization experience is nothing to write home about. It is a corroboration of the experience in the above countries. Whilst the regulator has set the Multi Year Tariff Order (MYTO) in Nigeria to regulate electricity pricing and billing in the industry, the consumers are going through hard moments and the regulator appears helpless. Recently (October 2014) there were hues and cries from consumers for the arbitrary jacking up of the consumers bills for over 100% without basis and improved electricity supply in the month of October compared to the previous month.<sup>59</sup> This is extortion of the highest order and the regulatory agency only laments and cannot take any action to redress this consumer exploitation. The October incident is not the only one. Progressive but arbitrary hiking of the monthly bills of electricity consumers in the country is a common thing in the industry.<sup>60</sup> Did the Nigerian government take these issues into consideration before its decision to deregulate the electricity sector? In the case of Nigeria, the government appears not to have considered the peculiar needs of consumers.

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<sup>58</sup>Akinoye, Derin, "FG Tells Nigerians To Brace Up For Higher Electricity Bills As It Hands Over Electricity Companies To Investors," *The Herald*, February 22, 2013. <http://www.theheraldng.com/fg-tells-nigerians-to-brace-up-for-higher-electricity-bills-as-it-hands-over-electricity-companies-to-investors/>, (accessed March 22, 2013).

<sup>59</sup>Okechukwu Nnodim, "NERC Accuses Electricity Firms of Inflating Bills," *The Punch*, November 13, 2014. <http://www.punchng.com/business/business-economy/nerc-accuses-electricity-firms-of-inflating-bills/> (accessed November 13, 2014); Onyedika Agbedo, "Power Supply: Nigerians Still Await Stability One Year After Full Privatisation," *The Guardian*, Friday, 31 October 2014,<http://www.nguardiannews.com/business/185066-power-supply-nigerians-still-await-stability-one-year-after-full-privatisation> (accessed October 31, 2014); Vincent Obia "CDHR Faults PHCN on Power, Threatens Action," *The Punch*, October 19, 2014. <http://www.punchng.com/news/cdhr-faults-phcn-on-power-threatens-action/> (accessed October 19, 2014); Stanley Opara and 'Femi Asu, "Electricity Consumers Condemn Rising Estimated Bills," *The Punch*, September 29, 2014 <http://www.punchng.com/news/electricity-consumers-condemn-rising-estimated-bills/> (accessed September 29, 2014)

<sup>60</sup> Interview with a legal officer of the consumer protection agency, Participant No. 15 (at the headquarters Abuja, July 9, 2014 .

## **2.3 Nature and Historical Background of Consumer Protection**

This part of the thesis examined the nature and philosophical roots of consumer protection. The approach was from both the religious scriptures and under the ancient African Societies. The historical root of the concept of consumer protection from the modern perspectives was equally examined in this part of chapter two.

### **2.3.1 Nature of Consumer Protection**

Consumer protection law especially from the public policy and criminal law perspectives is a branch of public law.<sup>61</sup> It deals with the relationship between businesses and their customers.<sup>62</sup> Consumer protection concerns the quality of life of the public in economic and health terms. In the economic sense it protects the consumer from exploitation whilst from health perspectives, the law ensures that the consumer is protected from injury associated with hazardous and defectively “manufactured, designed or packaged” products. Consumer protection is a global issue, and the story of one country or society differs from others. Writers have ascribed different dates for the history of consumer protection in countries and civilizations. The historical trace would be done from the traditional to religious perspectives and the development in modern times.

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<sup>61</sup> Patricia Clayton, *Consumer Law for the small Business*, (London: Kogan Page Ltd, 1983), 12; Geraint Howells and Stephen Weatherill, *Consumer Protection Law*, 2<sup>nd</sup> ed, (Aldershot: Ashgate, 2005), 5

<sup>62</sup> Daniel V. Davidson, Brenda E. Knowles, Lynn M. Forsythe and Robert R. Jespersen, *Comprehensive Business Law Principles and Cases* (Boston:Kent Publishing Company, 1987),1062

### 2.3.2 Consumer Protection under the Ancient African Societies and Religious Scriptures

While some scholars trace the history of consumer protection to the religious scriptures such as the Holy Bible,<sup>63</sup> others traced its roots to traditional agrarian society.<sup>64</sup> In the African context, traces of good business practices and consumer protection have been found in the ancient kingdoms and even the chief-less societies.<sup>65</sup> The biblical proponents cite the provision of the old testaments of the Holy Bible dealing with the injunctions requiring architects and builders to exercise great care in designing and constructing their products to guard against injury to the public.<sup>66</sup> The Muslim scriptures the glorious Qur'an for over 1436 years, equally, abhors cheating in business relationships. The Glorious Qur'an prohibits devouring of property amongst Muslims. The Quran provides, "O ye who believe! Eat not up your property among yourselves in vanities: except that it be trading by mutual consent: nor kill (or destroy) yourselves: for verily God hath been to you most Merciful."<sup>67</sup>

In fact the Shari'ah not only protects the consumers in economic relationships but also the sellers. That is why from the formative days of Islam the practice of stopping villagers at the outskirt of cities or market to under purchase their goods was prohibited

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<sup>63</sup> Benedict B. Kanyip, *Consumer Protection in Nigeria: Law, Theory and Policy*, (Abuja: Rekon Books Limited, 2004),81

<sup>64</sup> K. I. Igweike, *Consumer Protection in a Depressed Economy, The Nigerian Experience* nd.

<sup>65</sup> Kanyip Bakwai Benedict,

<sup>66</sup> Badaiki A D., "Towards an International Legal Regime of Consumer Protection for Developing Countries: Nigeria as a Case Study," *Jus* 6, no.4 (1993),43, cited in Kanyip, B.B. Op cit

<sup>67</sup> Qur'an Chapter 4, Verse 29.

to protect them from exploitation of the wicked tradesmen.<sup>68</sup> The Prophet in this regards is reported saying, “the Townsman should not sell for a man from the desert; leave the people alone; Allah will give them provision from one another.”<sup>69</sup> On proper weight and measure the glorious Qur'an provides; “Give full measure when ye measure, and weigh with a balance that is the most fitting and the most advantageous in the final determination.”<sup>70</sup> Similarly, the Qur'an further provides that:

“To the Madyan people (We sent) Shu'ayb, one of their own brethren: he said: `O my people worship Allah: Ye have no other god but Him. And give not short measure or weight: I see you in prosperity, but I fear for you the Penalty of a Day that will compass (you) all rounds.”<sup>71</sup>

The Qur'an tells us the calamity that befell the people of Madyan, who were destroyed by Allah for the singular act of the usage of improper weights and measures. The glorious Qur'an states further that, “woe to those that deal in fraud. Those who, when they have to receive by measure from men, exact full measure. However, when they have to give by measure or weight to men, give less than due.”<sup>72</sup>

Is the free market philosophy allowed under the Shari'ah? Affirmatively, the Shari'ah allows the free market ideas wherein demand and supply determine the price of commodities even though prohibitive conducts such “Ihtikar” (the hoarding of goods or

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<sup>68</sup> Kishwar Khan and Sarwat Aftab, “Consumer Protection in Islam: The Case of Pakistan,” *Australian Economic Papers* 39, no. 4 (2000): 489.

<sup>69</sup> Jabir ibn `Abd Allah, Sahih Muslim, Hadith No. 3630

<sup>70</sup> Yusuf Ali Abdullahi, *Translation of the Glorious Qur'an*, Qur'an Chapter 17 Verse 35

<sup>71</sup> Ibid., Qur'an Chapter 11, Verse 84. See also Qur'an Chapter 26 Verse 181, 182; and Qur'an Chapter 55, Verse 9.

<sup>72</sup> Ibid., Quran Chapter 83 Verse 1-3

services to create artificial scarcity and to jack up price), “Alghush” adulteration of goods, usage of defective weight and measures among others are prohibited.<sup>73</sup> Hoarding in Islam is a sin according to the words of the Holy prophet of Islam.<sup>74</sup> On adulterations, the Prophet is reported saying “whoever adulterates is not one of us.”<sup>75</sup> The support of Sharia’ah of the free market ideology with necessary checks is found in the writing of Muslim scholars. One of them is Ibn Taymiyya. According to the learned jurist:

“The rise and fall in prices is not always due to an injustice (*zulm*) by certain individual. Sometimes the reason for it is deficiency in production or decline in import of the goods in demand. Thus, if desire for the goods increase, its price rises. On the other hand, if availability of the goods increase and the desire for it decrease, the price comes down. This scarcity or abundance may not be caused by the action of any individual, it may be due to a cause not involving any injustice, or sometimes, it may have a cause that does not involve injustice. It is Almighty God who creates desires in the hearts of people...”<sup>76</sup>

Provisions commanding fair dealings equally abound under the Shari’ah. The Qur’an for instance, commands the believers to stand firmly as witnesses to fair dealing.<sup>77</sup> Similar proscription of unethical market conducts such as adulteration of products is clearly prohibited in the Sunnah of the prophet of Islam Muhammad (SAW) the second source of the Shari’ah.

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<sup>73</sup> Ichtiar Baru, *Ensiklopedia Hukum Islam*, (Jakarta: Penerbit PT Van Hoeve, 1996), cited in Safinaz Mohd Hussein, *et al.*, “Is Fair Market Competition Regulated Under Syariah Law?” *Mediterranean Journal of Social Sciences* 5, no. 23 (2014): 155.

<sup>74</sup> Ma’mar ibn `Abd Allah Al `Adawi, *Sahih Muslim*, Hadith No. 3910.

<sup>75</sup> Abu Hurayrah, *Sahih Muslim*, Hadith No 0183

<sup>76</sup> Ibn Taymiyya, *Majmu Fatawa Shaikh al-Islam* Vol. 8, (Riyad: Matabi al-Riyad, 1963), cited in Safinaz Mohd Hussein, *et al.*, “Is Fair Market Competition Regulated under Syariah Law?” *Mediterranean Journal of Social Sciences* 5, no. 23 (2014): 155

<sup>77</sup> Yusuf Ali Abdullahi, *Translation of the Glorious Qur'an*, Chapter 4 Verse 135

### 2.3.3 Consumer Protection in Modern Times

In modern times and conventionally speaking, legislative development in the field of consumer protection as in most legal issues, started much earlier in the developed world with most developing countries lagging behind in both formulation and enforcement of consumer protection laws.<sup>78</sup> The *Lex Julia de Annona statute* existed in Rome around 50 BC and is believed to be the earliest law in the field of consumer protection.<sup>79</sup> This statute regulated commercial operations and protected the Roman consumers from exploitation and anti-competitive practices in the market. The discussions below would, accordingly, be narrowed to the development of the consumer protection laws in the UK and US. The choice of these jurisdictions is premised on Nigeria's colonial heritage with UK and the country's borrowing from the legal developments from the US.

In the United States of America (US) for instance there is abundant evidence of earlier efforts aimed at the protection of the citizens from the powerful and the privileged and such efforts are recurring themes in the history of American democracy and capitalism. The 1648 Laws and Liberties of Massachusetts provide a classical example. This law regulated the price of bread and butter, set standards for barrels and staves, and provided for inspections of commercial enterprises to ensure compliance.<sup>80</sup> From the institutional perspectives, the US had in place the Federal Trade Commission as its apex

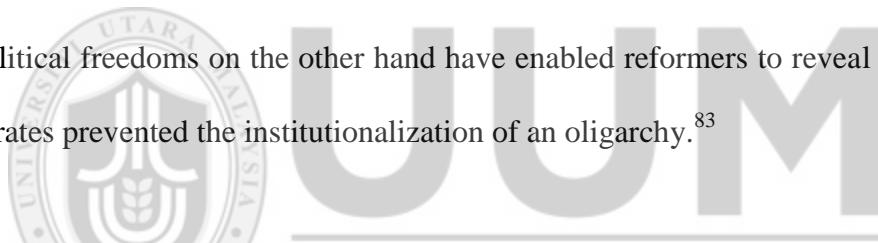
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<sup>78</sup> TingTing Zhao and Barbara B. Flynn, Introduction: Consumer Protection in Developing Countries," in *Global Supply Chain Quality Management: Product Recalls and Their Impact*, Barbara B. Flynn and Xiande Zhao eds (Taylor & Francis, 2014),32

<sup>79</sup> Ibid.

<sup>80</sup> Consumer Protection, available at <http://www.answers.com/topic/consumer -protection> (accessed November 8, 2009).

consumer protection agency in 1914.<sup>81</sup> Principally the FTC is charged with the responsibility of keeping the “the U.S Economy free and fair.”<sup>82</sup> Again California in 1876 and 1970 had the Medical Practice Act (MPA) and the Consumer Affairs Act (CAA) respectively enacted. The MPA regulated medical practitioners who until its passage operated in the state unchecked. The Consumer Affairs Act, however, established the California Department of Consumer Affairs known as the DCA that regulated several fields of consumer supply of goods and services. The U.S. governments at federal and state levels have, therefore, from the earliest days enacted and enforced laws that protected consumers. Laws setting uniform weights, and measures existed. Thus, while economic freedoms in the US enabled businesses to invest and to maximize their profit, the political freedoms on the other hand have enabled reformers to reveal abuses and the electorates prevented the institutionalization of an oligarchy.<sup>83</sup>



Industrialization and the completion of the national network of railroads changed the nature of US markets from their local content thereby creating opportunity for new markets in the 19<sup>th</sup> century US. Businesses began advertisement and sell of their products nationwide. Food companies and meat packers began to centralize their operations and use refrigerated railroad cars to distribute their products. Abuses were rampant. The medical profession, the press, and various private groups, therefore, became increasingly

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<sup>81</sup>Janice R Franke and Deborah A Ballam, "New Applications of Consumer Protection Law: Judicial Activism or Legislative Directive," *Santa Clara L. Rev.* 32 (1992): 352.

<sup>82</sup> Jane P. Mallor, A. James Barnes, Thomas Bowers, Arlen W. Langvardt, *Business Law: The Ethical, Global, and E-Commerce*, 14<sup>th</sup> ed., (Boston: McGraw-Hill, 2010), 1226.

<sup>83</sup>Phillip Kurata, “Consumer Protection has Deep Root in U.S. History,” <http://iipdigital.usembassy.gov/st/english/article/2007/10/20071009171007liameruoy0.6069757.html#axzz3EVXSiOGQ> (accessed September 20, 2014).

concerned about the unsanitary conditions under which food was processed and about the dangers of preservatives and dyes used in these processed foods. Attempts by social crusaders and consumer rights activists to secure a federal pure food and drug law failed several times.

A peculiar feature of consumer protection in the US is that consumer protection was shaped and influenced by writings of social activists such as Upton Sinclair<sup>84</sup> Lincoln Steffens,<sup>85</sup> Ida Tarbell,<sup>86</sup> Rachel Carson and Ralph Nader.<sup>87</sup> Therefore, one can safely say that government's effort toward consumer protection in the US was a result of push from private organisations that started the work towards solving consumers' problems and represented their interests at different fora across the US. For example, Sinclair's description of how sausages were made in the Chicago meat –packing industry in 1906 provides an insight. Sinclair posited that,

“There would be meat that had tumbled out on the floor, in the dirt and sawdust, where the workers had tramped and spit uncounted billions of consumption germs. There would be meat stored in great piles in rooms, and the water from leaky roofs would drip over it, and thousands of rats would race about on it. It was too dark in these storage places to see well, but a man could run his hand over these piles of meat and sweep off handfuls of the dried dung of rats. These rats were nuisances, and the packers would put poisoned bread out for them; they would die, and then rats, bread, and meat would go into the hoppers together.”<sup>88</sup>

<sup>84</sup> His publication of 1906 titled “*The Jungle*” exposed the gruesome conditions in the Chicago meat-packing industry.

<sup>85</sup> His publication titled “*Shame of the Cities*” provided details on municipal corruption

<sup>86</sup> His publication dissected the malfeasance of the Standard Oil Company, leading to the breakup of that company and other monopolies in U.S.

<sup>87</sup> His publication of 1965 about the automobile industry titled “*Unsafe at any Speed: The Designed-in Dangers of the American Automobile* (New York, 1965)” earned him the leadership of a wide range of reform efforts in the U.S. Many young people volunteered to work in his organization. Under his leadership, they engaged in research, writing, and lobbying to improve consumer protection drive.

<sup>88</sup> Supra note 84

The above disturbing revelation prompted the then President of the US, Theodore Roosevelt to set up a committee that investigated the truth of Sinclair's assertion. The Committee's report confirmed worse situation than what Sinclair described about the meat market.<sup>89</sup> Eventually, the committee's report led to the passage of the Pure Food and Drug (PFD) Act and the Meat Inspection Act, (MIA) 1906. These were the first tangible federal legislative actions toward guaranteeing consumers safe and healthy food, and standard medicines in the US.<sup>90</sup> Despite the imperfection of these laws, they till today regulate food and drugs consumed in the US.<sup>91</sup> Among the imperfections of these laws were that they favoured strategies that only ameliorated the worst effects of competition and did not offer the most comprehensive or effective protection to consumers.<sup>92</sup>

The legal regime on consumer protection in the US experienced a number of activities and legislative efforts in the 21<sup>st</sup> century as much consumer protection legislation (including the electricity consumer protection legislation) were passed while others submitted for deliberations to the Congress. These include the Public Utility Regulatory Policy Act (PURPA), 1978 (which regulates utility like the EPSRA) and the Energy Policy Act, 1992; Telephone Consumer Protection Act 1991; Cable Television Consumer Protection and Competition Act 1992; Telemarketing and Consumer Fraud and Abuse Prevention Act, 1994; and Consumer Protection Act 1999. Other legislation include

<sup>89</sup> History of Consumer Protection, <http://www.consumerdaddy.com/a-12-history-of-consumer-protection.htm>, last visited 23/1/09

<sup>90</sup> Gheorghiu Gabriela, "National Approaches to Consumer Problems—the Protection Model," *Ovidius University Annals, Economic Sciences Series* 14, no. 1 (2014): 313.

<sup>91</sup>Ibid

<sup>92</sup>Consumer Protection, available at <http://www.answers.com/topic/consumer -protection>. (accessed August 11, 2009).

Consumer Data Security Notification Act 2005. This Act deals with privacy of consumer data and the Consumer Privacy Protection Act, 2005. There was the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank) enacted in 2010,<sup>93</sup> to protect financial consumers as well as investors following the 2008 economic crisis.<sup>94</sup>

The above U.S. statutes are implemented by agencies charged with consumer protection mandates. These include the Federal Trade Commission (FTC);<sup>95</sup> the Consumer Affairs Council; the Consumer Products Safety Commission;<sup>96</sup> the United States office of Consumer Affairs and the Consumer Protection Branch of the Civil Division, Department of Justice (DoJ) among others.<sup>97</sup> These agencies also make regulations on consumer protection ranging from issues of enforcement of product safety, recalling of hazardous products from the market, publication of quarterly consumer information catalogue, coordination of consumer program and consumers' representation during policy- making process and the issue of research on consumer issues among other things.

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<sup>93</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, (2010) (amended 2012).

<sup>94</sup> John C. Coffee Jr, “Systemic Risk after Dodd-Frank: Contingent Capital and the Need for Regulatory Strategies Beyond Oversight,” *Columbia Law Review* (2011): 795; Arthur E. Wilmarth Jr, “Dodd-Frank Act: A Flawed and Inadequate Response to the Too-Big-to-Fail Problem,” *Oregon Law Review* 89 (2010): 951; Alan Schwartz, “Regulating for Rationality,” *Stanford Law Review, Forthcoming* (2014).

<sup>95</sup>This is the largest federal agency that handles consumer complaints and regulates unfair or deceptive trade practices in the U.S. Local trade practices deemed unfair or deceptive may fall within the jurisdiction of the FTC laws and regulation when they have adverse effect on interstate commerce.

<sup>96</sup>It is the job of this Commission to protect consumers from faulty or dangerous products by enacting mandatory safety standards for those products. It has the authority to ban products from the market place or to recall products. When a product is recalled by the Commission, it is removed from the shelves or sales lots, and consumers may be able to return it to the manufacturer or place of purchase for repair, replacement or a refund.

<sup>97</sup>Civil Division, Department of Justice, <http://www.justice.gov/civil>. At states' level in the U.S. there exist Department of Consumer Affairs devoted to regulating certain industries and protecting consumers who use goods and services from such industries. A good example is the California Department of Consumer Affairs which regulates about 2.3 Million professionals in over 230 different professions, through its forty regulatory entities.

In the UK too consumerism has old roots.<sup>98</sup> The government at earliest times did enact and enforced laws that protected consumers in terms of setting uniform weights and measures and pricing standard among other issues. Evidence of these laws can, for example, be traced as far back as 1266<sup>99</sup> with the passage of Assize of Bread and Ale under which the Justices of Peace and the Court Leet<sup>100</sup> exercised jurisdiction in ensuring fair trading in terms of compliance with pricing and measurement standards.

While, in 1624, The Statute of Monopolies existed prohibiting restrictive trade practices, in 1664<sup>101</sup> a statute was enacted to regulate the pricing, weighing and marking of coal.<sup>102</sup> And by 1709, there was in existence a statute which regulated the price and weight of bread.<sup>103</sup> By that statute, the Justices of Peace or the Mayors of Boroughs were empowered to fix the weight and price of bread and bakers were made to mark their loaves in line with a standard size and quality. In fact prices were fixed by reference to current market prices of grain, meal or flour.<sup>104</sup> The enforcement of consumer protection laws at that time was an issue pursued by the state through the Justices of Peace, the Mayors, the Aleconner, Constables, Market- lookers, the Searchers and Sealers of Leather, Town Scavengers, among other government officials employed by the state. On the judicial structure, the Court Leet played a significant role and assisted in trying

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<sup>98</sup> Felicia Monye, *Law of Consumer Protection*, (Ibadan: Spectrum Books, 2000), 4.

<sup>99</sup> *Halsbury's Statutes of England* (Third Edition), 263

<sup>100</sup> The Court Leet is a manorial criminal court established by an actual or presumed grant. It was presided over by a Steward who was normally a lawyer and could punish by fine (called 'amercement'). The Steward could impose an imprisonment term in event of the convict failing to pay the fines imposed by the court.

<sup>101</sup> Anestis S. Papadopoulos, *The International Dimension of EU Competition Law and Policy* (New York: Cambridge University Press, 2010), 7.

<sup>102</sup> Harvey W.B., *The law of Consumer Protection and Fair Trading*, (London: Butterworth, 1978),3

<sup>103</sup> Ibid.

<sup>104</sup> Ibid. 2

consumer related offences. The role played by the Sale of Goods Act, 1893 in protecting consumers in the area of buying and selling of goods is appreciated in England till the amendment of the law in 1979.

The current legal regime on consumer protection in England comprises legislation and other statutory instruments made to regulate consumer protection in the utility industry such as the electricity industry and other sectors of the economy. The statutes include the Monopolies and Mergers Act, 1965; Misrepresentation Act, 1967; the Restrictive Trade Practices Act, 1968; the Unsolicited Goods and Services Act, 1971; the Trade Description Act, 1972; the Fair Trading Act, 1973; the Consumer Credit Act; 1974; the Unfair Contract Terms Act, 1977; the Consumer Safety Act, 1978; the Sale of Goods 1979; the Supply of Goods and Services Act, 1982; the Food Act, 1984; the Weights and Measures Act' 1985; the Consumer Protection Act, 1987;<sup>105</sup> the Consumer Arbitration Agreements Act, 1988; Sale and Supply of Goods Act, 1994; the Office of Communications (Ofcom) Act, 2002 and Consumer Insurance (Disclosure and Representation) Act, 2012. The regulations on the other hand include the Price Marking (Bargain Offers) Order (S.I. No. 364), 1979; Supply of Service (Exclusion of Implied Terms) Order (S.I. No. 1771), 1982; the Credit Card (Price Discrimination) Order (S.I. No. 2159) 1990; the Unfair Terms in Consumer Contracts Regulation (S.I. 3074) 1993; the General Product Safety Regulation (S.I. NO. 2328) 1994; Electronic Commerce Regulation, 2002; the General Product Safety Regulation 2005.

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<sup>105</sup>The provision of this Act was introduced to bring the UK in line with EU legislation. It deals with three main aspects of consumer protection namely product liability, consumer safety and misleading pricing.

Statutory enactments or instruments in the area of consumer protection equally abound in the UK. These include the Consumer Transactions (Restrictions on Statements) Order, 1976; Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations, 1987; the Consumer Credit (Exempt Agreements) Order, 1989; the Unfair Terms in Contracts Regulations, 1999; the Consumer Protection Distance Selling) Regulations, 2000; the Sale and Supply of Goods to Consumers Regulations; 2002; the Consumer Credit (Disclosure in Information) Regulation 2004 and Financial Services (Distance Marketing) Regulations, 2004.

It is equally important to note that since England is part of the United Kingdom (UK) and since the UK is a member state of the European Union (EU), it is bound by the Consumer Protection Directives of the EU. In other words, the UK being an EU member, The Treaty on the Functioning of the European Union and Directives as may be issued from time to time constitute sources of consumer laws and regulations binding on the UK. The EC Directive on Consumer Rights,<sup>106</sup> EC Directive on Sale of Consumer Goods and EU Directives on Unfair Commercial Practices are good examples. For decades now, the EU Directives resulted in intense legislative activity across the EU member states as member states strive to adopt these Directives in their own local legislation.<sup>107</sup> The EC Directive on Consumer Rights for example was published November 22, 2011 and member states were required to reflect the provisions of the Directive by December 13, 2013, in their

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<sup>106</sup>Directive 2011/83/EU on Consumer Rights; Leone Niglia, *Perspectives for European Consumer Law. Towards a Directive on Consumer Rights and Beyond*, ed., Hans Schulte-Nölke and Lubos Tichý, (München : Sellier, 2009), 300; Eur," European Law Journal 18, no. 6 (2012): 891.

<sup>107</sup> Anita Petrović, "Transposition of the Directive 2011/83/EU on Consumer Rights- A Challenge to National Legislators," *Časopis-Društveni ogledi* 2, no. 1 (2015):1

local legislations and to apply the same from 13 June 2014.<sup>108</sup> Little wonder that Hans and Lubos asserted that the European consumer law greatly influenced the contract laws of the EU member countries.<sup>109</sup>

Just like in the U.S., the above English statutes are complemented by other government agencies that carry out specific functions. These include the Office of Gas and electricity market (ofgem), Federal Communications Commission, the Department of Trade and Industry, the Home Office; the Office of Fair Trading; the National Consumer Council; the British Standards Institute and the County Council and London Boroughs.<sup>110</sup> All these agencies make regulation on consumer protection ranging from issues of fair trading, standards setting to issues of inspection among other things. Furthermore and apart from legislative efforts, the efforts of voluntary or Non- governmental Organisations in advancing the course of consumers in England is also very instructive.<sup>111</sup> These include Consumer Association (which is the largest), the National Federation of Consumer Groups (NFCG)<sup>112</sup> and Consumer Congress (CC). The National Consumer Federation (NCF) was established in 2001 with the amalgamation of NFCG and the CC. The NCF encourages and coordinates the activities of voluntary consumer organisations, individual consumers and people with interest in consumer affairs.

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<sup>108</sup>Department of Jobs Enterprises and Innovation, “Transposition of Consumer Rights Directive Regulatory Impact Analysis,” 2014. <http://www.djei.ie/publications/ria/>

<sup>109</sup>Hans Schulte-Nölke and L. Tichy, (2010),1. See also the recent New Legal Standards for Consumer Dispute Resolution Processes: Directive 2013/11/EU on Alternative Dispute Resolution for Consumers.

<sup>110</sup>There are also established Consumer Advice Centers in many parts of England. Notable examples are the Consumer Advice Centres established under the Local Government Act, 1972

<sup>111</sup> Felicia, (2000),4.

<sup>112</sup>This is more or less a coordinating body of local Consumer Groups. It is actively involved in the protection of consumer rights

In Nigeria too, traces of consumer protection are as old as Kingdoms and empires that existed in the country prior to the coming of colonial masters and even after. In fact, even during the barter period when the mode of business was based on exchange of goods and services, the practice was not done with defective goods and services but with goods as well as services of the highest standards.<sup>113</sup> The trading system was very viable and less fraudulent. There are equally earlier legislative efforts in the area of consumer protection in the country. The earliest of these laws include the Sale of Drugs Act 1891 (Lagos);<sup>114</sup> the Food Adulteration Act, 1903 and the Drugs and Poisons Act, 1915.

The current legal regime on consumer protection is sustained by a number of legislation and regulations made thereunder. These legislations include the Adulteration of Products Act, 1958; the Food and Drugs Act, 1974;<sup>115</sup> the Standard Organization of Nigeria Act 1971;<sup>116</sup> the Weight and Measures Act 1974;<sup>117</sup> the Price Control Act, 1977;<sup>118</sup> the Consumer Protection Council Act;<sup>119</sup> the Pharmacists Council Act, 1992;<sup>120</sup> the National Agency for Food Drugs Administration and Control Act, 1993;<sup>121</sup> the Food Drug and Related Products (Registration, etc.) Act, 1993;<sup>122</sup> the Nigeria Communications Commissions Decree;<sup>123</sup> the Counterfeit and Fake Drug and Unwholesome Processed

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<sup>113</sup> Benedict .B. Kanyip, “Consumer Protection Laws in Nigeria,” PhD Thesis Submitted to School of Postgraduate Studies, Ahmadu Bello University, Zaria, Nigeria, (1997), 11

<sup>114</sup> The law was later extended to the whole country in 1970 by the Drugs and Poisons Extension Act.

<sup>115</sup> This law repealed the Sale of Food Law 1917 of the three regions of Nigeria namely the North, the East and the West which existed during the regional arrangements in the country.

<sup>116</sup> Now Cap. S 9, L.F.N. 2004.

<sup>117</sup> Now Cap. W 3, L.F.N. 2004.

<sup>118</sup> Now Cap. P28, L.F.N. 2004.

<sup>119</sup> Now Cap. C 25, L.F.N. 2004.

<sup>120</sup> Now Cap. P17 L.F.N. 2004.

<sup>121</sup> Now Cap. N1, L.F.N. 2004.

<sup>122</sup> Now Cap. F 33 L.F.N. 2004.

<sup>123</sup> Now an Act of National Assembly contained in Cap. N9, L.F.N. 2004 as the Nigeria Communications Commission Act.

Foods (Miscellaneous Provisions) Act, 1999;<sup>124</sup> the Trade Malpractices (Miscellaneous Offences) Act;<sup>125</sup> the NEPA Act;<sup>126</sup> the Sale of Goods Edicts/Laws of some states;<sup>127</sup> the Criminal Code Act;<sup>128</sup> the Nigerian Electricity Sector Reform Act, 2005; the Penal Code Act Federal Provisions Act and the Consumer Code of Practice Regulations.<sup>129</sup>

Of all the above listed legislation, the Consumer Protection Council Act (CPC Act) is the principal and general consumer protection statute that regulates the entire sectors of the economy. Others are more or less complementary or sector specific legislation. For the electricity industry, the Nigerian Electricity Regulatory Commission is the regulatory agency responsible for consumer protection in the industry. Most (if not all) are penal in nature. The regime does not incorporate compensation schemes for the infringement of consumers's right. Only recently a move was made in the Nigerian telecommunications industry for such compensation schemes following the influx of consumer complaints to the regulator on service quality. On the average forty thousand of such complaints are received daily in that regards.<sup>130</sup> In this thesis, therefore, three legislations were chosen for analysis. These are the CPC Act, the Standards Organization of Nigeria Act (SONA),

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<sup>124</sup>Now Cap. C 34, L.F.N. 2004.

<sup>125</sup>.Now Cap. T12 L.F.N. 2004.

<sup>126</sup> Now cap. N 33 L.F.N. 2004.

<sup>127</sup> It should be noted that the Sale of Goods Act 1893 is still applicable in some states that did not reenact the law as a state legislation.

<sup>128</sup>Cap. C38, L.F.N. 2004.

<sup>129</sup>S.I. 32 2007

<sup>130</sup> Emmanuel Okwuke, NCC Receives 40,000 Consumer Complaints Daily, *The Daily Independent*, November 26, 2014, <http://dailyindependenl.com/2014/11/ncc-receives-40000-consumer-complaints-daily/> (accessed December 7, 2014); Everest Amaefule, "Compensation Plan: NCC Issues January Ultimatum to Operators," *The Punch*, November 26, 2014 , <http://www.punchng.com/news/compensation-plan-ncc-issues-january-ultimatum-to-operators/> (accessed November 26, 2014); Emmanuel Okwuke, "Subscribers Demand N750b Compensation From Telecom Firms," *The Daily Independent*, December 7, 2014, <http://dailyindependenl.com/2014/12/subscribers-demand-n750b-compensation-telecom-firms/>(accessed November 26, 2014).

and the Electric Power Sector Reform Act (EPSRA).<sup>131</sup> The reason for the choice is the fact that they are the laws that have bearing on the protection of consumers in the electricity industry. This thesis studied and made an overview of the statutes critically to unravel the roles of the legislation and the agencies established thereunder for the protection of electricity consumers in Nigeria. This was done through the examination of the regulatory and supervisory functions of the agencies. The analysis was done in the light of the international standards on consumer protection stated in the United Nations Guidelines for Consumer Protection (UNGCP) and the practice in other jurisdictions. These have been discussed in detail in the next chapter.

## 2.4 The Philosophy of Consumer Protection

Every person regardless of status or standing in the society is a consumer.<sup>132</sup> In the market equation the consumer occupies an important and strategic position. The consumer is the whole essence of the existence of businesses because he/she controls the demand sides of the equation without which the supply sides comprising of businesses would not exist.<sup>133</sup> Logically, there can be no production if there is no consumption. Accordingly, Sakina *et al.* see the consumer as a “significant contributor to economic growth.”<sup>134</sup> In this regards, consumer protection is, therefore, a public good in the interest

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<sup>131</sup>Nigeria Communications Act, No. 19, 2003

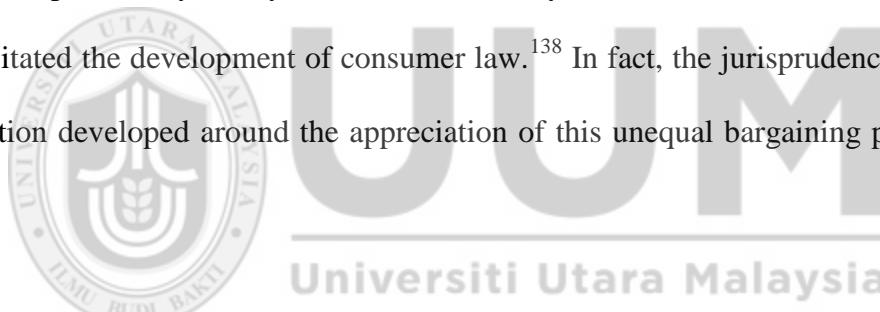
<sup>132</sup>Tan Sri Megat Junid bin Megat Ayob, quoted by *Pretam Singh s/o Darshan Singh*, “Providing Consumers an Efficacious, Simple, Inexpensive and Speedy Remedy -- The Malaysian Perspective,” *Malaysian Law Journal* 3 (2011):2.

<sup>133</sup>MARE Codruța, *et al.*, “Institutional, Sociological and Spatial Factors Influencing Consumer Protection Perceptions in the European Union,” *Transylvanian Review of Administrative Sciences* (2014): 187.

<sup>134</sup> Sakina Shaik Ahmad Yusoff, Rahmah Ismail, Ruzian Markom, and Zeti Zuryani Mohd Zakuan, “Consumer protection and the Malaysian Sale of Goods Act 1957,” *International Business Management* 9, no. 4 (2015): 452.

of all. Unfortunately, the consumer is the most vulnerable in the marketing relationship.<sup>135</sup>

Vulnerability and imbalance in the relationship between consumers on the one hand and sellers and service providers on the other, is something recognized by scholars, policy analyst as well as the drafters of international instruments in the field of consumer protection.<sup>136</sup> Vital reports issued by committees on consumer protection such as Molony Report, the Crowther Report in the UK (which have been found to be very influential in several consumer protection laws across the globe) acknowledged the disparity or weak consumer personality theory.<sup>137</sup> This vulnerability and imbalance in business relationship necessitated the development of consumer law.<sup>138</sup> In fact, the jurisprudence on consumer protection developed around the appreciation of this unequal bargaining power between



<sup>135</sup> Jeannie Marie Paterson and Gerard Brody, “‘Safety Net’ Consumer Protection: Using Prohibitions on Unfair and Unconscionable Conduct to Respond to Predatory Business Models,” *Journal of Consumer Policy* (2014): 2.

<sup>136</sup> Sutatip Yuthayotin, “Towards a Multidimensional Approach to Access to Justice: Setting a Framework for Consumer Protection in B2C E-Commerce,” in *Access to Justice in Transnational B2C E-Commerce*, (Springer International Publishing, 2015), 65; Fahirah Syaliza Mokhtar and Rahmah Ismail, “Medical Product Liability under the Consumer Protection Act 1999: Aims Unmet,” *The Social Sciences* 8, no. 6 (2013): 565; Ziegel Jacob S. “The Future of Canadian Consumerism” *Canadian Bar Review* 51 (1973): 191; Article 1, United Nations Guide Lines on Consumer Protection, 1985; Sakina Shaik Ahmad Yusoff, Fahimeh Abedi, Rahmah Ismail, Azimon Abdul Aziz, and Suzanna Mohamed Isa, “Resolving Consumer Trade Disputes Through Online Dispute Resolution: Issues to be Considered,” *Proceedings of the 2nd Applied International Business Conference (AIBC2013)* 7 – 8 December 2013, Labuan School of International Business and Finance, Universiti Malaysia Sabah, Labuan International Campus , (2013), 349

<sup>137</sup> Iain Ramsay, *Consumer Law and policy: Text and Materials on Regulating Consumer Markets* (Bloomsbury Publishing, 2012). Both Molony and Crowther Report are well known reports in consumer circles especially when dealing with the UK consumer protection laws and processes. The Crowther Report was on Consumer Credit in the UK. It influenced the passage of the Consumer Credit Act, 1974.

<sup>138</sup> E. Scott, (1979); TingTing Zhao and Barbara B. Flynn, Introduction: Consumer Protection in Developing Countries,” in *Global Supply Chain Quality Management: Product Recalls and Their Impact*, ed., Barbara B. Flynn and X. Zhao (Boca Raton: Taylor & Francis, 2014), 32; L. Shigang and Z. Guangyan, “The Problems of China’s Consumer Protection Law in Legal Practice,” *International Journal of Business and Social Science* 3, no. 14 (2012):65; Iain (2012).

consumers on the one hand and producers of goods and services providers on the other.<sup>139</sup>

The consumer compared to service providers, is the weakest party and more vulnerable to exploitation in the marketing relationships.<sup>140</sup> He/she is a potential victim, and logically not a perfect match to businesses who are more powerful and sophisticated and have what it takes to hire the best brains in marketing and legal services.<sup>141</sup> Gheorghiu and Sutatip respectively consider consumers as the “most disfavoured group”; and “disadvantaged group” in their market relationship compared to dominant business owners,<sup>142</sup> and unlike the service providers, the disfavoured group lack the means, the experience, the requisite knowledge and technical information; and lack consumer rights awareness.<sup>143</sup> Even the educated and careful consumer left alone, cannot protect his/her interest.<sup>144</sup> Inequality is a common feature in marketing relationship between consumers and business entities

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<sup>139</sup>Hans-W. Micklitz, “The Expulsion of the Concept of Protection from the Consumer Law and the Return of Social Elements in the Civil Law: A Bittersweet Polemic,” *Journal of Consum Policy* 35, (2012):283. DOI 10.1007/s10603-012-9199-4; Iain, (2006); Jones, M. G., “The Consumer Interest: The Role of Public Policy,” *California Management Review* 16, no.1(1973):22; Stiglitz, Gabriel A, “Consumer law in Argentina and the MERCOSUR,” *Journal of Consumer Policy* 17, no.4 (1994):460; Gaikwad Navnath Sopanrao, “The Need for Consumer Protection and Protection Measures,” *Indian Streams Research Journal* 4, no. 5 (2014):3; Gheorghiu Gabriela, “Institutionalization of Consumer Protection by Government Involvement and Responsabilization of Business Organizations,” *Ovidius University Annals, Economic Sciences Series* 12, no. 1 (2012): 499; Gheorghiu Gabriela, “Consumer Self-Protection,” *Ovidius University Annals, Economic Sciences Series* 12, no. 1 (2012): 504; Richard Damanai and David Round, “The Economics of Consumer Protection: Introduction,” *Australian Economic Papers* 39, no. 4 (2000): 403; John Goldring, L. Maher, J. McKeough, and G. Pearson, *Consumer Protection Law* (North South Wales: Federation Press, 1998), 1. Patricia Clayton, *Consumer Law for the Small Business*, (London; Kogan Page Ltd, 1983),7.

<sup>140</sup> Elistina Abu Bakar and Naemah Amin, “Consumer Protection Under Islamic Law in the Service Industry,” *International Journal of Social Policy and Society* 8 (2011): 37.

<sup>141</sup> Sutatip Yuthayotin, “Access to Justice: A Goal for Consumer Protection,” in *Access to Justice in Transnational B2C E-Commerce*, (Springer International Publishing, 2015), 37; Sorell T., “The Customer Is Not Always Right,” *Journal of Business Ethics* 13, no.11(1994)913; Thomas L. Eovaldi and Joan E Gestrin, “Justice for Consumers: The Mechanisms of Redress,” *Northwestern University Law Review* 66 (1971): 285; Judith Tillson, *Law Express: Consumer and Commercial Law* (Essex: Pearson Education Limited, 2011),3.

<sup>142</sup> Gheorghiu Gabriela, “National Approaches to Consumer Problems—the Protection Model,” *Ovidius University Annals, Economic Sciences Series* 14, no. 1 (2014): 312.

<sup>143</sup> TingTing Zhao and Barbara (2014), 32; Sutatip Yuthayotin, (2015),37.

<sup>144</sup> P.S. Atiyah, “Consumer Protection — Time to Take Stock,” *The Liverpool Law Review* 1, no. 1 (1979): 20.

globally.<sup>145</sup> This inequality is “endemic to modern society” and “hard to remove.”<sup>146</sup> It needs to be balanced. Although consumer protection law provides such a balance, striking such a balance has been very difficult to legislators and consumer protection systems.<sup>147</sup> In other words, the domination and inequality in marketing relationship necessitate consumer protection measures.

Freedom of contracting parties is something the law of contract considers sacred. That is why inequality of bargaining power is viewed as a threat to this underlying principle of contract.<sup>148</sup> While the law of contract sanction the freedom of parties to contract but vigilance is required in determining which party is weak and whether his/her weakness has been exploited. This difficulty is however not an issue in the area of consumer and seller relationship where according to Hugh the consumer weakness is “sufficiently obvious and well understood.”<sup>149</sup> The inequality of bargaining power theory is something that institutions and scholars have acknowledged. In fact, it is the underlying

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<sup>145</sup> Pablo Cortés, “A New Regulatory Framework for Extra-Judicial Consumer Redress: Where We Are and How to Move Forward,” *Legal Studies* 35, no. 1 (2015): 114; Sakina Shaik Ahmad Yusoff, Rahmah Ismail, Ruzian Markom, and Zeti Zuryani Mohd Zakuan, “Consumer protection and the Malaysian Sale of Goods Act 1957,” *International Business Management* 9, no. 4 (2015): 452.

<sup>146</sup> Sakina Shaik Ahmad Yusoff, Suzanna Mohamed Isa and Azimon Abdul Aziz, “Legal Approaches to Unfair Consumer Terms in Malaysia, Indonesia and Thailand,” *Journal of Social Sciences & Humanities*, (2012): 43; Omri Ben-Shahar, “Consumer Protection without Law,” *Regulation* 33, no. 2 (2010): 26-30; Howells Geraint and Stephen Weatherill, *Consumer Protection Law*, 2<sup>nd</sup> ed. (England: Ashgate Publishing Company Limited, 2005), 6.

<sup>147</sup> Sakina, Suzanna and Azimon, (2012); Patricia (1983), 7.

<sup>148</sup> Spencer Thal Nathan, “Inequality of Bargaining Power Doctrine: The Problem of Defining Contractual Unfairness,” *Oxford Journal of Legal Studies* 8, (1988):17.

<sup>149</sup> Hugh Beale, “Inequality of Bargaining Power and the Weaker Party by A.C. Neal, S. Anderman and A. Victorin,” *Oxford Journal of Legal Studies* 6, no.1 (Spring 1986):124; Christopher Carr, “Inequality of Bargaining Power,” *The Modern Law Review* 38, no. 4 (Jul., 1975): 463.

consideration for the passage of several European Union Directives on consumer protection. One of such is the Directive 93/13 on Unfair Terms in Consumer Contracts.<sup>150</sup>

The weak personality of the consumer theory appears to be more relevant in the context of developing countries such as Nigeria than elsewhere. This is because consumers in Nigeria apart from being poor are left to the whims and caprices of rapacious suppliers of goods and service providers.<sup>151</sup> The poverty and illiteracy index of the country are on the high side compared to other developing countries. The recent admission of the Vice President of Nigeria of the intolerable level of poverty in Nigeria corroborates the point.<sup>152</sup> The Nigerian standing in terms of poverty has been bad for years. In 2013, Nigeria ranked 153<sup>rd</sup> out of 186 countries in terms of Human Development Index (HDI).<sup>153</sup> The Nigerian Bureau of Statistics puts the figure of poor Nigerians at hundred million. In fact, over 70% of the country's population lives below the poverty line.<sup>154</sup> The World Bank country report on Nigeria for 2013 shows that 64% of Nigerians live below \$1 per day.<sup>155</sup> The poverty and illiteracy index in the country speak volumes about the daily survival in the country. It tells more about the gap and the difficulty the consumer faces in confronting businesses for shoddy and shabby goods and services supply and provision. With this financial standing of many Nigerians, one imagines how imbalanced is consumers' relationship with businesses that declare huge profits running into billions.

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<sup>150</sup> Michael Schillig, "Inequality of Bargaining Power Versus Market for Lemons: Legal Paradigm Change and the Court of Justice's Jurisprudence on Directive 93/13 on Unfair Contract Terms," *European Law Review* 33, (2008): 336.

<sup>151</sup> Ogu, I.A., Predatory Banking Practices in Nigeria, *Daily Trust Newspaper*, (Abuja: Nigeria) Monday 6<sup>th</sup>, September, 2010.

<sup>152</sup> Emma Una, "Poverty Level in Nigeria Intolerable — Osinbajo," The Vanguard, June 26, 2015

<sup>153</sup> World Bank, "Economic Report Nigeria, No. 1 May, (2013), 8

<sup>154</sup> Mamman Lawan, "Under Development, Corruption and Legal Disorder in Nigeria: Exploring a Nexus," *Journal of Law and Public Policy*, (2012):74

<sup>155</sup> World Bank, (2013).

While this inequality subsists, the earlier rules of contract such as *caveat emptor* flourished and were made sacrosanct. The *caveat emptor* is a common law rule and according to Odekan was “an accepted business norm,”<sup>156</sup> that shifts the responsibility to the buyer to be vigilant in his purchases. For several years, the *caveat emptor* rule has been relied upon to argue that the buyer of goods and services should exercise prudence in entering transactions. Instead of protecting the consumer, the *caveat emptor* rule has created more problems to the consumer.<sup>157</sup> In fact, over four decades ago, a former Attorney General of Australia held the *caveat emptor rule* inappropriate for today’s modern markets. The Attorney General believed that the idea was meant for village markets and small urban areas not today’s sophisticated and globalised markets.<sup>158</sup> Sakina et al. opined that although the *caveat emptor* applies in sale of goods contracts but found its application “in the realm of consumer sales questionable.”<sup>159</sup> It is argued in some quarters that the contract law as it is cannot adequately protect the consumer.<sup>160</sup> Added to the above is the issue of market globalisation, technological advancement especially in e-commerce and the attendant consumer difficulties in terms of lack of an international legal frameworks and a court system for e-consumer redress. This and other reasons necessitated calls for the change of thoughts about the *caveat emptor* and related

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<sup>156</sup> M. Odekan, *Booms and Busts: An Encyclopedia of Economic History from the First Stock Market Crash of 1792 to the Current Global Economic Crisis* (Taylor & Francis, 2015), 164.

<sup>157</sup> William C. Whitford, “Law and the Consumer Transaction: A Case Study of the Automobile Warranty,” *Wisconsin Law Review* (1968): 1006; Elizabeth Shearer, “Consumer Protection Laws : Access to Justice for Vulnerable Consumers,” being a paper delivered at LawAsia Conference, New Delhi, India, (November, 2010).

<sup>158</sup> Senator the Hon. L.K. Murphy QC CPD Senate vol. 57, (1973):1013-1014, quoted in John Goldring, L. Maher, J. McKeough, and G. Pearson, *Consumer Protection Law* (North South Wales: Federation Press, 1998).

<sup>159</sup> Sakina, Rahmah, Ruzian, and Zeti, (2015): 454.

<sup>160</sup> Naemah Amin, “Protecting Consumers against Unfair Contract Terms in Malaysia: The Consumer Protection (Amendment) Act 2010,” *Malaysian Law Journal* 1, no. lxxxix (2013):1

principles.<sup>161</sup> This necessitated the evolution of consumer protection specific legislation. Equally, the resentments over the problems of the *caveat emptor* rule and the rise in consumerism pushed for more advocacies for the change of the rule from *caveat emptor* to *caveat venditor* meaning seller beware. This shifts the burden of responsibility to the seller.<sup>162</sup>

The need to ensure healthy competition at the manufacturing, distribution and retail level to prevent consumer exploitation adds to the rationale for consumer protection.<sup>163</sup> The imperfection, susceptibility to the systematic failure and fraudulent activities, and manipulations evident in the deregulated electricity markets across the globe makes consumer protection a linchpin.<sup>164</sup> Even the seasoned economists admit that competition the backbone of deregulated market cannot alone protect consumers from price manipulation and poor services.<sup>165</sup> In fact, Dagdeviren argued that deregulated electricity markets are “very far from being competitive.”<sup>166</sup> That is why the Public Interest Theory of regulation was developed as a justification for consumer protection in deregulated

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<sup>161</sup> Lucille M. Ponte, “Boosting Consumer Confidence in E-Business: Recommendations for Establishing Fair and Effective Dispute Resolution Programs for B2c Online Transactions,” *Albany Law Journal of Science & Technology* 12 (2001): 442; Sutatip Yuthayotin, “Towards a Multidimensional Approach to Access to Justice: Setting a Framework for Consumer Protection in B2c E-Commerce,” in *Access to Justice in Transnational B2c E-Commerce* (Springer International Publishing, 2015)..

<sup>162</sup> M. Odekon (2015):164.

<sup>163</sup> E. Scott Maynes, “Consumer Protection: The Issues,” *Journal of Consumer Policy* 3, no.2 (1979)100.

<sup>164</sup> OECD, “Consumer Policy Toolkit.” (2010), 33.

<sup>165</sup> Lucia A. Reisch and Hans-W. Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29 (2006):399; Maltbie, M.R, “Application of Long Acre Company,” *Electric World* 52, no. 1 (1908):8-9, cited in Seth Blumsack, Jay Apt, and Lester B. Lave, “A Cautionary Tale: Us Electricity Sector Reform,” *Economic and Political Weekly* 40, no. 50 (2005): 5280; Newbery David M, (2002), 38.

<sup>166</sup> Hulya Dagdeviren, “Limits to Competition and Regulation in Privatized Electricity Markets,” *Annals of Public & Cooperative Economics* 80, no. 4 (2009): 643- 644.

market.<sup>167</sup> The public interest theory emphasizes the protection and conferment of public benefit on the general public.<sup>168</sup> This is achievable through market regulation by the government. This is basically to correct inefficiency and inequity in the marketplace.<sup>169</sup> The public interest theory, therefore, tallies with the idea of consumer protection that aims at protecting the interests of the consuming public. This is contrary to the idea of the neo-classical economists who believe in the free market ideology. In other words, while the neo-classical economists advocate for the free market theory, the protection of public interest underpins the rationale for most consumer protection laws.

It has been argued that the Public Interest Theory developed because of the understanding that market can fail and the need for “economic regulation to maximize social welfare.”<sup>170</sup> The development of this theory stems from the appreciation of scholars of the usefulness of state’s intervention in the economy through legislation and other administrative controls as the market is not insulated from failure.<sup>171</sup> Consumer protection serves as the needed governmental response to such failure.<sup>172</sup> In fact,

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<sup>167</sup>Richard A. Posner, “Theories of Economic Regulation,” *The Bell Journal of Economics and Management Science* 5, no. 2 (Autumn, 1974):335; Hankte-Domas Michael, “Public Interest Theory of Regulation: Non Existence or Misinterpretation” *European Journal of Law & Economics* 15 (2003):165.

<sup>168</sup>Hankte-Domas, (2003):165

<sup>169</sup>Emilios Avgouleas, *The Mechanic and Regulation of Market Abuse: A Legal and Economic Analysis*, (Oxford: Oxford University, Press, 2007), 160.

<sup>170</sup>Hankte-Domas, (2003); Den Hertog John, “Review of Economic Theories of Regulation” Discussion Paper Series, Tjalling C. Koopmans Research Institute, Utrecht School of Economics, Utrecht University, Netherlands, (2010), <http://www.uu.nl/rebo/economie/discussionpapers> (accessed April 19, 2013), 2.

<sup>171</sup>Kati Cseres, “Competition and Consumer Policies: Starting Points for Better Convergence,” Amsterdam Center for Law & Economics *Working Paper No. 2009-06*, (2009.<http://dx.doi.org/10.2139/ssrn.1379322> (accessed March 19, 2013); Kati Cseres, “The Impact of Consumer Protection on Competition and Competition Law: The Case of Deregulated Markets,” Amsterdam Center for Law & Economics *Working Paper No. 2006-05* (2006). <http://dx.doi.org/10.2139/ssrn.903284> (accessed March 19, 2013)

<sup>172</sup> Robert G. Vaughn, “Consumer Protection Laws in South America,” *Hastings International & Competition Law Review* 17 (1993): 275.

according to Richard Posner, the application of regulation apart from addressing market failure is costless to the state.<sup>173</sup>

Regulatory interventions are very necessary if deregulated electricity markets are to function well and for the consumers to benefit from deregulation.<sup>174</sup> This is because the private investors in the deregulated electricity sector are profit driven and would strive to maximize their profit at all cost. The electricity consumer, therefore, needs protection by the state.<sup>175</sup> This remains so as public law remedies have been found efficient in protecting the consumer better than private law remedies.<sup>176</sup> Again, regulations are necessary because private firms have the tendencies to collude and exploit consumer; a fact acknowledged three centuries ago by Adam Smith, the father of free enterprise. According to Adam Smith, “people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”<sup>177</sup>

The Chicago school scholars and other neo-liberal economists do not see any reason for the state’s involvement in economic affairs. These group of scholars contended that engaging in business is an activity best suited for private entities and not the

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<sup>173</sup>Richard A. Posner, (1974), 335.

<sup>174</sup>Hosseni Hamid, “Unfettered Capitalism: Why it is Neither Efficient nor Just,” *Hummanomic* 26, no.2 (2010).

<sup>175</sup>Marilyn, (2007):297.

<sup>176</sup>John Goldring, “Public Law, Private Law, and Consumers’ Remedies” *The Australian Quarterly* 50, no. 4 (Dec., 1978):64

<sup>177</sup> Quoted by Stiglitz Joseph, Government Failure Vs. Market Failure: Principles of Regulation,” in *Governments and Markets: Towards a New Theory of Regulation*, ed., Edward Balleisen and David Moss, (New York: Cambridge University Press, 2009) 19.

government.<sup>178</sup> They believe that the markets be left “free” because free markets have the ability to organize itself and allocate resources efficiently.<sup>179</sup> Towards supporting the non-interventionist theory of market regulation, they propounded the rational theory. According to this theory, consumers being human beings are rational and can always in given circumstance maximize their utility. In a nutshell, they advocated for limited government involvement in economic affairs and regulation of the market. These have been faulted by behavioural economics and psychologist who opined that not in all cases are people able to make rational choices. According to Thomas and Lucia, both free market and the rationality theory have been exposed as bankrupt ideas.<sup>180</sup> According to the duo, the two theories being neo-liberal capitalist ideas are exploitative as such they advocated for alternatives.<sup>181</sup> Others fault the consumer rationality theory because consumers often commit “systematic error” in making decision and at times the consumers do make inferior decisions because of the information asymmetry and vulnerability of markets failure.<sup>182</sup>

In the market place as the saying goes, there is no morality in business. In capitalist world, the motive is profit at all cost. The virtues of “honesty, integrity, self-sacrifice and

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<sup>178</sup> Mathew A. Izibili, M and Fidelis Aiya, “Deregulation and Corruption in Nigeria: An Ethical Response,” *Kamal-Raj. Journal of Sciences* 14, no. 3 (2007): 229.

<sup>179</sup> Sally McKeenie, and Folarin Akinbami, “Financial Services and Consumer Protection after the Crisis,” *International Journal of Bank Marketing* 29, no. 2 (2011): 134.

<sup>180</sup> Thomas Marois and Lucia Pradella, “Polarising Development—Introducing Alternatives to Neoliberalism and the Crisis,” (2015): 1

<sup>181</sup> Thomas and Lucia, (2015):2.

<sup>182</sup> Sally McKeenie, and Folarin Akinbami, “Financial Services and Consumer Protection after the Crisis,” *International Journal of Bank Marketing* 29, no. 2 (2011): 135; Christine Jolls, Cass R Sunstein, and Richard Thaler, “A Behavioral Approach to Law and Economics,” *Stanford Law Review* (1998): 1471; Tversky, Amos, and Daniel Kahneman, “Judgment under Uncertainty: Heuristics and Biases,” *science* 185, no. 4157 (1974): 1124; Peter J. Paul and Jerry C Olson, *Consumer Behavior and Marketing Strategy*, (USA: McGraw-hill, 2008).

the charitable instinct,” are highly discouraged. This is another basis for regulation in consumer interest.<sup>183</sup> This becomes more relevant in the Nigerian context where the free market concept is operational and has been abused. The Director General (DG) of the apex consumer protection authority the Consumer Protection Council (CPC) admitted the abuse of the free market now in operation by businesses in the country. According to the DG; “in Nigeria, market failures manifest in different ways with varying degrees of negative impact on consumers. While the free market is currently operational in Nigeria, all forms of consumer abuse still pervade virtually every sector of the economy, denying consumers their rights.”<sup>184</sup>

The lack of morality in business has in consumer protection terms given rise to a new social movement that seeks to ensure that the consumers are protected from the cruelty of the market.<sup>185</sup> Failure to address consumer problems especially in deregulated environment has serious consequences. The consumer in most cases bears the brunt.<sup>186</sup> The consumer could lose confidence in the entire market which has telling effects. Consumer protection is non-negotiable because it includes everybody.

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<sup>183</sup>Sally McKeenie, and Folarin Akinbami, “Financial Services and Consumer Protection after the Crisis,” *International Journal of Bank Marketing* 29, no. 2 (2011): 138; Norman Barry, *The Morality of Business Enterprise*, (David Hume Institute, 1991); Brian R. Cheffins, *Company Law: Theory, Structure and Operation*, (OUP Catalogue, 1997).

<sup>184</sup>Dupe Atoki, “The State of Consumer Rights Protection in Nigeria,” Public Lecture delivered at Faculty of Law, University of Lagos, organised by the Centre for Human Rights, Faculty of Law, University of Lagos, March 23, 2015; Anna Okon, “CPC to Prosecute Companies for Consumer Rights Abuse,” The Punch, March 24, 2015. <http://www.punchng.com/business/business-economy/cpc-to-prosecute-companies-for-consumer-rights-abuse/> (access March 24, 2015).

<sup>185</sup>Prishani Naidoo and Ahmed Veriava, “From Local to Global (and Back Again?): Anti-Commodification Struggles of the Soweto Electricity Crisis Committee,” in *Electricity Capitalism: Recolonizing Africa on the Power Grid*, ed., David A. McDonald, (Cape Town: HSRC Press, 2009), 322

<sup>186</sup> McGregor Sue L. T., “Complexity Economics, Wicked Problems and Consumer Education,” *International Journal of Consumer Studies* 36, no. 1 (2012):66.

## 2.5 The State Regulation of Utility Markets

Utilities such as electricity are “the commanding heights” of every economy. It behoves that these commanding heights should be controlled and regulated by the state.<sup>187</sup> Government regulation of the marketplace is necessary for the regulation of the behaviour of businesses and for striking a balance between the strong business enterprises and weak consumer.<sup>188</sup> According to Lawrence and Lawrence, government presence is necessary in the establishment and maintenance of well functioning market.<sup>189</sup> In fact Samuel Insull one of champions of the states’ regulation theory of the electricity industry argued that “competition (is) not in the best interest of the electricity business.”<sup>190</sup> The essentiality of public utilities such as electricity and telecommunications made it unwise to allow it to market forces.<sup>191</sup> Adequate utility regulation is required to prevent monopoly pricing and the guarantee of adequate supply.<sup>192</sup> Regulation also becomes necessary to prevent disasters such as the one that happened in places like US during the economic crisis of 2008. Millions of Americans lost their homes and life-saving because of the failure of the government to adequately regulate the market.<sup>193</sup> The general philosophy behind the regulation of the market is, therefore, to ensure that the consumer

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<sup>187</sup> Lucia A Reisch and Hans-W Micklitz, “Consumers and Deregulation of the Electricity Market in Germany,” *Journal of Consumer Policy* 29, no. 4 (2006):405.

<sup>188</sup> JingJian Xiao, “Government and Consumer Economic Wellbeing,” in *Consumer Economic Wellbeing, International Series on Consumer Science* (New York: Springer, 2015), 63.

<sup>189</sup> Lawrence D. Brown and Lawrence R. Jacobs, *The Private Abuse of Public Interest: Market Myth and Public Muddles* (Chicago: University of Chicago Press, 2008), 5.

<sup>190</sup> Edward Smeloff and Peter Asmus, (1997),10.

<sup>191</sup> Ann Brenan, Rueben Bryne, Anne Marrie et al in Anne –Marie Mooney Cootter ed., *Regulatory Law, Professional Practice Guides*, (Cavendish Publishing Australia Pty Ltd, 2004), 223; Horton Bob, “Consumer Protection in the Australian Telecommunications Industry,” <http://www.ictregulationtoolkit.org/Documents/Document/Document/1337>

<sup>192</sup> Derthick Martha and Quirk Paul J., *The Politics of Deregulation*, (Washington: Brokings, 1985),8.

<sup>193</sup> Stiglitz Joseph, Government Failure V.s Market Failure: Principles of Regulation, in *Governments and Markets: Towards a New Theory of Regulation*, ed., Edward Balleisen and David Moss, (New York: Cambridge University Press, 2009) 17.

gets value for his/her expenditure has been accepted by scholars.<sup>194</sup> Also, successful deregulation is difficult to achieve.<sup>195</sup>

## **2.6 The Philosophy of State Intervention in Deregulated Electricity Markets**

A careful reading of the writings in support of deregulation shows the emphasis of the deregulation and competition proponents on the goods sides and positivity of the two concepts without the attendant consequences. But is a competitive market possible? Lawrence and Lawrence argued that creating and maintaining a competitive electricity market is a difficult endeavor.<sup>196</sup> In fact, the evidence from the literature proved that the deregulation in most cases resulted in electricity price increase with telling consequences on the consumers' purse. This underscores the need for strong legal and institutional structures for consumer protection.<sup>197</sup> According to David, state regulation of price in network industries such as electricity is unavoidable.<sup>198</sup> This is to ensure that deregulated electricity markets are made competitive and consumers protected from billing frauds.

The amenability to, and the potentiality of markets (especially electricity markets) to systematic failure and the attendant consumer sufferings are the economic rationale for

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<sup>194</sup> Robert B. Reich, "Toward a New Consumer Protection," *University of Pennsylvania Law Review* 128, no. 1 (1979): 4.

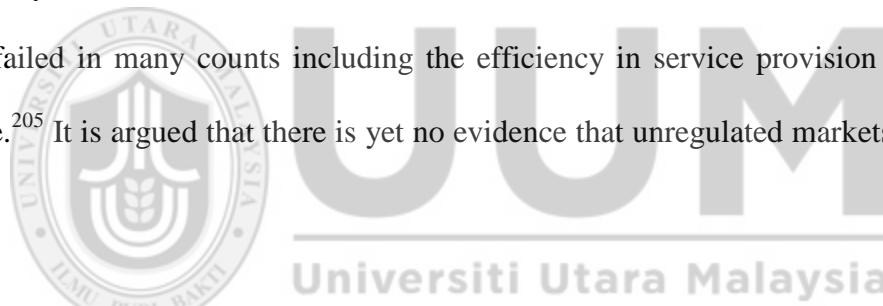
<sup>195</sup> Paul Joskow, "Introduction to Electricity Sector Liberalization: Lessons Learned from Cross-Country Studies," in *Electricity Market Reform: An International Perspective*, ed., F. Sioshansi and W., Pfaffenberger (2006), 8.

<sup>196</sup> Lawrence D. Brown and Lawrence R. Jacobs, *The Private Abuse of Public Interest: Market Myth and Public Muddles* (Chicago: University of Chicago Press, 2008), 3.

<sup>197</sup> Filipovic and Gordon, (2008):160; Jens Lundgren, "Consumer Welfare in the Deregulated Swedish Electricity Market – Frontiers" *Finance and Economics* 6, no. 2 (2009):101.

<sup>198</sup> David M. Newbery, "Regulating Unbundled Network Utilities," *Economic and Social Review* 33, no. 1 (2002):24

regulation and the protection of consumers especially in deregulated environment.<sup>199</sup> In fact, scholars believe that electricity sector deregulation was a serious failure across jurisdictions such as California, UK and Australia.<sup>200</sup> Byoung-Hoon and Hyeon-Hyo believed that the benefit of electricity deregulation apart from only being theoretical was also uncertain, risky and substantially costly.<sup>201</sup> In this connection, scholars such as Daniel argued that effective regulation is needed to sanitize economic exchanges between the consumer and service providers.<sup>202</sup> Regulation equally has the effect of boosting investment, increasing consumption and market confidence.<sup>203</sup> Regulation is *sine qua non* if the consumer is to be protected from excessive pricing and other market ills, and if electricity markets are to be efficient.<sup>204</sup> Bradshaw and Clark found that the free markets have failed in many counts including the efficiency in service provision and consumer choice.<sup>205</sup> It is argued that there is yet no evidence that unregulated markets have resulted



<sup>199</sup> E. Scott Maynes, "Consumer Protection: The Issues," *Zeitschrift für Verbraucherpolitik* 3, no. 2 (1979): 98; Günter Knieps, "The Positive Theory of Regulation," in *Network Economics* (Switzerland: Springer International Publishing, 2015), 157; Daniel and Joseph, (2008),xi; Lev, (2008),2; Iain Ramsay, "Framework for Regulation of the Consumer Marketplace," *Journal of Consumer Policy* 8, no. 4 (1985): 353; Lucia and Hans- W. (2006):400.

<sup>200</sup> Severin Borenstein and James Bushness, "An Empirical Analysis of the Potential for Market Power in California's Electricity Industry," *Journal of Industrial Economics* 47 (1999):285; Severin Borenstein and James Bushness, "Electricity Restructuring: Deregulation or Re-regulation?" *Power Working Paper PWP-074* (2000), University of California Energy Institute; Severin Borenstein James Bushness and Wolak, F., "Measuring Market Inefficiencies in California's Restructured Wholesale Electricity Market," *American Economic Review* 92 (2002): 1376; Catherine Wolfram, "Measuring Duopoly Power in the British Electricity Spot Market," *American Economic Review* 89 (1999):805–826; Donna Brennan and Jane Melanie, "Market Power in the Australian Power Market, *Energy Economics* 20 (1998.):121

<sup>201</sup> Byoung-Hoon Lee and Hyeon-Hyo Ahn, "Electricity Industry Restructuring Revisited: The Case of Korea," *Energy Policy* 34 (2006): 1115–1126.

<sup>202</sup> Daniel and Joseph (2008).

<sup>203</sup> Ballesien, 3.

<sup>204</sup> J. Ikeme and Obas John Ebohon, "Nigeria's Electric Power Sector Reform: What Should Form the key Objectives? *Energy Policy* 33 (2005):1218; R. W. Bacon and J. Besant-Jones, (2001):335.

<sup>205</sup> Bradshaw, T.K., Clark II, W.W., "The California Experience: from Deregulation Disaster to Flexible Power," Paper Presented at the Brainstorming Meeting Power Sector Reform and Sustainable Development by UNEP/IEA, Paris, France, 21–22 May 2002.

to public good.<sup>206</sup> That may be the basis Geoffrey and Tomas argued that “achieving economic efficiency in natural monopoly industries requires regulation.”<sup>207</sup>

The belief in the self-correcting nature of the free markets is a fallacy. Even the leading supporters of *laissez faire* economics such as Alan Greenspan confessed their mistake in believing the safe regulatory capabilities of markets.<sup>208</sup> In fact, Stiglitz believed that the failure to regulate the Californian deregulated electricity market gave Enron Company the opportunity to manipulate the markets occasioning one of the worst electricity sector deregulation in terms of consumer sufferings.<sup>209</sup> It was regulation that returned sanity to the industry. According to Esther, the “history of consumer economics proves that without effective governmental regulation, the worst practices of the worst competitors often set the norms in the marketplace.”<sup>210</sup>

Though the economists dislike the interventionist character of consumer laws, the need for such state intervention in the market even though a deregulated one is vital because of the essentiality of the electricity service. The industry should not, therefore, be left to the control of market forces. Recently, Ignacio quoting Professor Kahn rightly argued that no activity in the electricity industry should be fully left to market forces without sound supervision and regulatory checks.<sup>211</sup> On the whole, public regulation is necessary to

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<sup>206</sup> Stiglitz (2009),19.

<sup>207</sup> Geoffrey Rothwell and Tomas Gomez, *Electricity Economics: Regulation and Deregulation*, ed., Mohamed E. El-Hawary (New Jersey: John Wiley & Sons Inc, 2003),4

<sup>208</sup> Stiglitz (2009),17.

<sup>209</sup> Stiglitz (2009), 18.

<sup>210</sup> Esther Peterson, “The case against ‘the case against the UN Guidelines for Consumer Protection’,” *Journal of Consumer Policy* 10, no. 4 (1987): 434.

<sup>211</sup> Ignacio J. Pérez-Arriaga, “Challenges in Power Sector Regulation,” in *Regulation of the Power Sector*, ed., Ignacio J. Pérez-Arriaga (London: Springer, 2013),647.

balance stakeholders' interest in a competitive electricity market, to control price and guarantee quality service provision.<sup>212</sup> This would obviate the problem of substituting public monopolies with private ones.

The “rationality theory” upon which economic analysis is built posits that human beings are profit maximers.<sup>213</sup> People naturally tend to promote their own ends. Business owners in the electricity industry being human would strive to maximize profit at all cost. What is troubling is the notion in business world that morality and virtuous conducts such as honesty and integrity are not so important.<sup>214</sup> So, how a business makes its profit has nothing to do with morality or integrity.<sup>215</sup> This therefore calls for legal intervention for the protection of the consumers especially in the deregulated environments. Government's intervention is necessary for optimal consumer protection especially in the deregulated electricity industry. Speaking on the necessity of government intervention in form of consumer protection, Sylvia stated that “consumer protection is a public good . . . like many other public goods (disease control) is not provided in socially optimum quantities in the absence of government intervention.”<sup>216</sup>

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<sup>212</sup> John E. Besant Jones, *Reforming Power Markets in Developing Countries: What Have We Learned? An Energy And Mining Sector Board Discussion Paper, Paper No.19 September 2006* [http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/BesantJones\\_Reforming\\_Power\\_Markets.pdf](http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/BesantJones_Reforming_Power_Markets.pdf). (accessed April 9, 2013)

<sup>213</sup> Cass R. Sunstein, *Free Markets and Social Justice*, (New York: Oxford University Press 1997), 4.

<sup>214</sup> Sally McKechnie and Folarin Akinbami, “Financial Services and Consumer Protection after the Crisis,” *International Journal of Bank Marketing* 29, no. 2 (2011): 134-147; Norman Barry, *The Morality of Business Enterprise* (David Hume Institute, 1991); Brian R. Cheffins, *Company Law: Theory, Structure and Operation*, (OUP Catalogue, 1997).

<sup>215</sup> Karl Pöhl, *La Gran Transformación. Crítica Del Liberalismo Económico*, ( La Piqueta, Madrid, 1997).

<sup>216</sup> Sylvia Lane, “The Rationale for Government Intervention in Seller-Consumer Relationships,” *Review of Policy Research* 2, no. 3 (1983): 419.

This thesis is, however, not unmindful of the fact that anti-competitive behavior cannot be ruled out in the marketplace even where these consumer laws exist. The plight of consumers in a deregulated environment should however be taken into consideration.<sup>217</sup> This is because consumer benefit is believed to be the basis for measuring electricity sector reform.<sup>218</sup> Measures to ensure the protection of electricity consumer, therefore, becomes necessary. But like in many developing countries, it appears that the major reasons for deregulation especially in Nigeria is for government to cut cost. This is a fundamental flaw. The deregulation process must have consumer at the heart. The process must ensure that regulatory agencies discharge their responsibilities to ensure that competition between electricity services providers is well-regulated to guarantee qualitative electricity supply and at reasonable price. In this regards, the position of Anne speaking of the UK deregulation is instructive. Anne posits that “when gas, water and electricity providers were privatized, for example, the government remained heavily involved because it created regulations to ensure markets were competitive and consumers are not overcharged.”<sup>219</sup>

## 2.7 Conclusion

The development of the legal regime for consumer protection across the globe could be said to have gone through refinement upon refinement for centuries. For the electricity industry, the industry evolved largely as a vertically controlled and managed industry,

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<sup>217</sup> Trinidad and Tobago, “Consumer Protection in the 21st Century: The Way Forward,” *Draft Policy Paper*, (October 12, 2007):5.

<sup>218</sup> Asian Development Bank Project Data Sheet on “Consumer Protection in a competitive Electricity Market with open Access” in Philippines. <http://www.adb.org/projects/44091-012/main> (accessed March 20, 2013).

<sup>219</sup> Anne C.L. Davies, “Public Law and Privatisation,” in *The Cambridge Companion to Public Law*, ed. M. Elliott & D. Feldman (Cambridge: Cambridge University Press 2015), 173.

and the formative days of the industry have been influenced by politics.<sup>220</sup> Businesses lobbied to be allowed the provision of this critical commodity. It is not gainsaying that these businesses once granted the license to operate, prioritizes profit maximization than public welfare maximization which the government strives to achieve.<sup>221</sup> In this direction, public regulation becomes necessary to balance the interests of the stakeholders in the competitive electricity market. The regulation of the industry would guarantee fair pricing and quality electricity service provision.<sup>222</sup> This would obviate the problem of substituting public monopolies with private ones.

Although Nigeria as a new entrant in the electricity deregulation has consumer protection legislation and other sector-specific laws with consumer protection dimension, what legal and institutional arrangements exist in the extant laws on consumer protection in the deregulated environment? Are there structures for speedy resolution of consumer dispute? Are there substantive laws, soft law and self-regulation mechanisms for protecting the consumer?<sup>223</sup> If the answer is in affirmative to what extent are the industry players observing and complying with the laws and standards? How responsive are the regulatory authorities in the area of enforcement? Is the global problem of lack of consumer protection enforcement visible in Nigeria?<sup>224</sup> The next and subsequent chapters would be devoted to the examination and analyses of the relevant laws and views of the

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<sup>220</sup> Smeloff and Peter, (1997), 10..

<sup>221</sup> Dieter, 2.

<sup>222</sup> John E. Besant Jones, Reforming Power Markets in Developing Countries: What Have We Learned? An Energy And Mining Sector Board Discussion Paper, Paper No.19 September 2006 [http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/BesantJones\\_Reforming\\_Power\\_Markets.pdf](http://regulationbodyofknowledge.org/wp-content/uploads/2013/03/BesantJones_Reforming_Power_Markets.pdf).(accessed April 9, 2013)

<sup>223</sup> McGregor, (2012).

<sup>224</sup> CI, 2013 report.

key informants in the electricity industry and consumer protection in general as contained in the collected interview data.



## CHAPTER THREE

### LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CONSUMER PROTECTION IN NIGERIA

#### 3.1 Introduction

As seen in the preceding chapters, deregulated electricity markets are vulnerable to manipulation and susceptible to failure. To function optimally and to maximize public benefits, therefore, the deregulated electricity industry needs regulation. The capabilities of regulation in correcting the deficiencies and inadequacies of the deregulated markets are uncontested.<sup>1</sup> Regulation protects the consumer by making electricity accessible and preventing anti-competitive abuses in the industry. With the utility in private hands, regulations are equally needed for the attainment of industrial competitiveness and economic productivity growth in the country.

The vulnerability of consumer in the scheme of things and the disparity in the power relationship between the consumer; and producers and providers of goods and services, necessitate the establishment of legal and institutional regimes for consumer protection. This is important for the promotion and protection of consumers especially of electricity services provided by private hands. The existence of legal and institutional frameworks

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<sup>1</sup> Paul Merenski and William F Lewis, "Legislation, Product Liability and Advertising: Dangerous Omens in the Global Environment," in *Proceedings of the 1993 Academy of Marketing Science (Ams) Annual Conference*, eds. Michael Levy and Dhruv Grewal (Springer International Publishing, 2015), 567.

further assist in promoting public confidence and participation in the market especially the electricity market. Overall, these laws are to protect the consumers' interests in the purchase of goods and services, the electricity service inclusive. This is a global practice.

Combining the doctrinal and phenomenological qualitative approach, this chapter provided an overview of the state of consumer protection in Nigeria. While the doctrinal approach assisted the researcher in the textual analysis of the statutes and other documents relevant to the research, the phenomenological qualitative approach enabled the researcher to understand the perspective of the stakeholders involved in the electricity consumer protection. The chapter analysed the legal regimes (international and national)<sup>2</sup> and the efforts of bodies in standard setting and consumer protection. Specifically, the United Nations Guidelines for Consumer Protection, (UNGCP) 1985 and the African Model Law on Consumer Protection (AMLCP), 1996 were selected as the international body of rules and regulation for the analysis. The UNGCP and the AMLCP were analysed in the light of the consumer protection and products quality standard setting legislation in the country. The Consumer Protection Council (CPC) Act being the overall consumer protection law and the Standards Organization of Nigeria (SON) Act concerned with standards setting are the local legislation selected. The CPC Act and the SON Act were critically analysed. Overall, the analysis focused on finding the extent of protection provided for the electricity services consumers in these legal regimes and the challenges against efficient consumer protection. This chapter answered research questions 1 and 2 and equally achieved research objectives 1 and 2.

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<sup>2</sup> For the purpose of this thesis, international includes regional while local and national legislation would be used interchangeably.

### **3.2 International Regimes for Consumer Protection**

Nigeria is a member of the UN and belongs to the comity of African nations. United Nations's conventions and the UN General Assembly resolutions could be sources of law and regulation to the country on issues such as consumer protection. The same position applies to treaties and other obligations that may be issued or arise from the African Union or other regional organisations. With this background in mind, this thesis selected the United Nations Guidelines for Consumer Protection and the African Model Law for Consumer Protection for the purposes of analysis.

#### **3.2.1 The United Nations Guidelines for Consumer Protection 1985**

The United Nations Guidelines for Consumer Protection (UNGCP) was a product of the unanimous decision of the UN General Assembly in its resolution 39/248 of 9<sup>th</sup> April 1985.<sup>3</sup> The UNGCP is considered an internationally acceptable regulatory standard on consumer protection from which national laws and policy frameworks could be based or improved. The unanimous decision of the UN in drafting the UNGCP, was in consideration and recognition of certain ideals that shape and protect the interest and needs of consumers especially consumers in the developing countries.<sup>4</sup> These include the endemic inequality in economic and other terms between the consumer and businesses;

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<sup>3</sup> Esther Peterson, "The case against 'the case against the UN Guidelines for Consumer Protection,'" *Journal of Consumer Policy* 10, no. 4 (1987): 43.

<sup>4</sup>Part I, Article 1, United Nations Department of Economic and Social Affairs, United Nations Guidelines for consumer protection (as expanded in 1999), a United Nations Document New York, 2003.

the need to protect and guarantee consumer safety; and the promotion of “just, equitable and sustainable economic and social development.”<sup>5</sup>

The UNGCP is to guide member states (Nigeria inclusive) towards establishing strong legal and institutional frameworks for consumer protection or the improvement of the existing one to guarantee adequate protection of citizens who are all consumers. Because of its global importance in the field of consumer protection, the UNGCP was recently termed by Karsten Ronit as “the centerpiece in global consumer policy and other documents outlining the rights of consumers.”<sup>6</sup> The objectives of the UNGCP include ensuring that consumer needs and desires determines the production and distribution patterns of goods and services. The UNGCP equally seeks to ensure strict adherence to high ethical conducts by those engaged in the production, distribution and/or provision of goods and services.<sup>7</sup> It also seeks to assist countries in preventing abusive practices that adversely affect consumers locally or internationally.<sup>8</sup>

In addition, the UNGCP as formulated, has a set of principles that underly it as well as reasonable standards it seeks to ensure for the betterment of the consumer interest. The principles are in the area of protection and promotion of the physical safety and the overall economic interest of the consumer. The standards the UNGCP seeks to promote are in the areas of safe and quality goods, and service, the distribution channels,

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<sup>5</sup>Part I, Article 1, (a) – (c) United Nations Department of Economic and Social Affairs, United Nations Guidelines for consumer protection (as expanded in 1999), a United Nations Document New York, 2003. [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf) (accessed May 24, 2008)

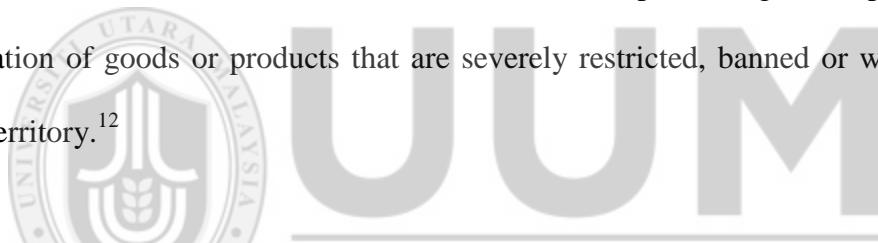
<sup>6</sup>Karsten Ronit, *Global Consumer Organizations* (New York: Routledge, 2015), 105.

<sup>7</sup> Part I, Article 1, (b), United Nations Department of Economic and Social Affairs, United Nations Guidelines for consumer protection (as expanded in 1999), a United Nations Document New York, 2003. [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf) (accessed May 24, 2008)

<sup>8</sup> Ibid. Part I, Article 1 (d).

consumer grievance handling, consumer education, and information.<sup>9</sup> The UNGCP also seeks to ensure the promotion of international cooperation in these areas.<sup>10</sup>

International and regional cooperation is required to further the consumers' interest in today's globalised world. In this connection, the UNGCP encourages member states to cooperate in developing, reviewing, maintaining as well as strengthening effective means of information sharing on consumer policies and measures.<sup>11</sup> Exchange programmes in education and training are also to be factored in the international and regional cooperation expected among the member states. The UNGCP requires countries to network and share information that would aid them in preventing the importation or the circulation of goods or products that are severely restricted, banned or withdrawn from their territory.<sup>12</sup>



Consumer groups are viewed as the third pillar of consumer protection drive. Part of the objectives that the UNGCP seeks to achieve is in the area of facilitation and the development of consumer organizations, and furthering international cooperation in that regards. Additionally, the UNGCP seeks to encourage the provision and development of enabling market conditions that will ensure consumers are provided greater choice of

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<sup>9</sup> Ibid. Part I, Article 1, (b), and Part II, Article 3 (c), (d) & (e).

<sup>10</sup> Ibid. Part I, Article 1, (f).

<sup>11</sup> Ibid., Part IV, Article 63, (a),

<sup>12</sup> Ibid. Art. 63.

goods and services at lower prices.<sup>13</sup> The promotion of sustainable consumption is also an object behind the UNGCP.<sup>14</sup>

The UNGCP requires member states to draw and sustain strong consumer protection policy in line with its provisions, other treaties and international standards in the area of consumer protection, market regulation, and fair trading.<sup>15</sup> The UNGCP expects every member states to have priorities in the area of consumer protection bearing in mind its economic, social and environmental circumstances; the needs of its population and the costs and benefits of any proposed consumer protection measures.<sup>16</sup>

Apart from the objective and general principles, the UNGCP has legitimate needs it intends to meet for the protection of the economic interest of the consumer.<sup>17</sup> In so doing, the UNGCP declared eight consumer rights. These include the protection and promotion of consumers' right to health and safety; right to access to adequate information, the right to consumer education, the right of the consumer to association (to voice out the consumer interests), the right to available and effective redress, and the right to safe environment. This is what gave birth to consumer bill of rights. The declaration of this bill of consumer rights is one of the important milestones achieved by the UNGCP. What the UNGCP did was to declare the eight consumer rights as declared by President J.F.

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<sup>13</sup> Part I, Article 1, (g), United Nations Department of Economic and Social Affairs, United Nations Guidelines for consumer protection (as expanded in 1999), a United Nations Document New York, 2003. [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf) (accessed May 24, 2008

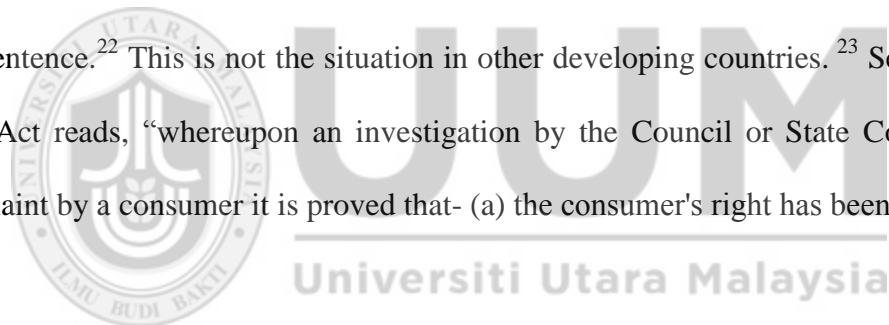
<sup>14</sup>Ibid. Article 1 (d) – (h)

<sup>15</sup> Ibid. Article 2

<sup>16</sup> Ibid. Article 3

<sup>17</sup>Ibid. Part II.

Kennedy of the US and the CI.<sup>18</sup> According to Widdows *et al.*, the enforcement of these consumer rights provides a “safety net” for the consumers.<sup>19</sup> Today, the UNGCP has influenced over 30 countries in incorporating consumer rights as part of their constitutions.<sup>20</sup> In fact, the case of the Republic of Kenya appears more interesting. In 2010, the Constitution of the Republic of Kenya declared and equated consumer rights with the civil and political rights.<sup>21</sup> Regrettably, in Nigeria the supposed giant of Africa, consumer rights do not deserve such treatment. In the entire *corpus* of laws in the country nowhere are consumer rights declared. Even in the CPC Act (the general consumer protection legislation) the consumer rights are not declared. The word “consumer rights” was used once and even then, it was not in the sense of the declaration but was just used in a sentence.<sup>22</sup> This is not the situation in other developing countries.<sup>23</sup> Section 8 of the CPC Act reads, “whereupon an investigation by the Council or State Committee of a complaint by a consumer it is proved that- (a) the consumer's right has been violated.”



The focus of the UNGCP goes beyond the cities. It requires member states to accord special care to all consumers particularly the consumers in the rural areas who are more vulnerable to exploitation because of their illiteracy and poverty. The UNGCP requires

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<sup>18</sup>Ibid., Arts. 2 and 3.

<sup>19</sup> Richard Widdows, Gong-Soog Hong, Jing J Xiao, Misako Higa, Hilary Tso, and Lakshmi Malroutu, “Consumer Issues and Consumer Protection in Asia,” *Advancing the Consumer Interest* (1995): 12.

<sup>20</sup> Lucy Delgadillo, “An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica,” *Journal of Consumer Policy* 36, no.1 (2013): 65. See also Argentine Constitution, Article 42; Constitución Política de Colombia, Article 78;Constitución Política, Article 46;Constitución Política de la República Dominicana, Article 53; Treaty Functioning European Union (TFEU), Article 12;Constitución de la República de El Salvador, Article 101; Egypt Constitution, Article 14; Constitución Polftica de los Estados Mexicanos, Article 28;Constitución Política del Perú, Article 65;Constitution of the Republic of Poland, Article 76 and Federal Constitution of the Swiss Confederation, Articles 2, 23, 97.

<sup>21</sup> Section 46, The Constitution of the Republic of Kenya, 2010.

<sup>22</sup> Section 8, Consumer Protection Council, Cap C, LFN, 2004.

<sup>23</sup>Csilla Margit Csiszár, “Factors Affecting the Public Judgement of Consumer Protection Authorities,” *Theory Methodology Practice (TMP)* 8, no. 02 (2012): 5; Lucy, (2013):80.

that consumer protection structures be established by governments of member states which should cover policies and institutional structures for implementation.<sup>24</sup> The reality in Nigeria shows a neglect of the rural and semi-urban consumers. The principal consumer protection agency, the Consumer Protection Council (CPC) that should be everywhere including the rural areas is only located in eight places. It has the head office in Abuja the Federal Capital, six zonal offices, and Lagos.<sup>25</sup> The 36 states and the 774 local governments are not covered not to talk of the major cities or the rural areas.

Again, the UNGCP applies to locally manufactured products, services provision, as well as the imported products. The need to adopt the ideals of the UNGCP is much more compelling in Nigeria than many other countries. This is because Nigeria's economy is more sustained on imports rather than export.<sup>26</sup> Huge money is, for instance, spent on the importation of electrical appliances and electronics into the country. The imports of electricity generating sets alone accounts for a close to a quarter of the national budget.<sup>27</sup>

For the advancement of consumer interests, the UNGCP further requires governments to formulate policies that will enable consumers to have value for their expenditure. State parties are, for this reason, mandated under the UNGCP to draw up policies in the area of standards setting in the production and distribution processes, fair business practices, and

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<sup>24</sup> Part II, Article 6, United Nations Guidelines for Consumer Protection.

<sup>25</sup> Interview with Participant No. 18, a CPC staff at the CPC Head Office Abuja, Nigeria, (July 9, 2015).

<sup>26</sup> Emma Ujah, "It's Shameful to Import Toothpick, Fish, Eggs, Sugar, Wheat —CBN," The Vanguard, June 25, 2015.

<sup>27</sup>Clara Nwachukwu, "Nigeria Maintains Lead in Generator Imports in Africa," The Vanguard, Januray 10, 2011.<http://www.vanguardngr.com/2011/01/nigeria-maintains-lead-in-generator-imports-in-africa-%E2%80%A6/> (accessed January 10, 2013).

honest and truthful advertisement.<sup>28</sup> None of these safeguards is provided for the electricity consumers in Nigeria. There are no fair business practices. The consumers are not protected from practices adverse to their interests by the agencies established in that regards. The electricity service is epileptic, and consumers billed arbitrarily.<sup>29</sup> The consumers do not derive optimum benefit from their expenses in view of the quality of service delivery from the electricity service providers.

Further on the promotion and protection of consumers' economic interests, the UNGCP requires government to establish or strengthen existing measures relating to the control of restrictive and other abusive business practices, and the enforcement mechanisms thereof.<sup>30</sup> In this connection, governments should be guided by their commitment to the UN set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.<sup>31</sup> From what is on the ground in the electricity industry, the enforcement strategy of the regulatory agency of the electricity market does not seem to be adequate. It has on several occasions lamented on the consumer rights abuses in the area of billing and service quality in the electricity industry, but no serious measures were taken against them.<sup>32</sup> This is against the spirit of the guidelines.

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<sup>28</sup> Part B, Article 15, United Nations Guidelines for Consumer Protection.

<sup>29</sup> NAN, "Nigerians Protest Electricity Billing System, Exorbitant Bills," The Vanguard, February 07, 2014; Adibe Emenyonu, "Electricity Consumers Protest Against Poor Service Delivery in Edo," The Thisdaylive, 17 Dec 2014.

<sup>30</sup> Part B, Article 17, United Nations Department of Economic and Social Affairs, United Nations Guidelines for consumer protection (as expanded in 1999), a United Nations Document New York, 2003. [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf) (accessed May 24, 2008

<sup>31</sup> Ibid. Articles 16 and 17.

<sup>32</sup> Olatunde Dodondawa, "Power Sector Controversy Trails Issuance of Prepaid, Smart Metres," Tribuneonline, June 24, 2015. <http://tribuneonlineng.com/content/power-sector-controversy-trails-issuance-prepaid-smart-metres> (accessed June 24, 2015).

Realizing the value of competition regulation, the UNGCP requires governments to ensure fair and healthy competition among businesses to enable the consumers to choose among competing products and services and at the lowest cost.<sup>33</sup> Nigeria fails in this regard. With utility services such as electricity in the private hands, the legal regime for consumer protection is deficient in competition law. In fact, a thorough perusal of the principal consumer protection legislation in the country (the CPC Act) reveals total absence of the word competition. Similarly, the electric sector specific law (EPSRA, 2005) though it made reference to the word competition, but what it provides cannot adequately regulate the complex issues associated with competition. In fact, competition was not even defined in its entire one hundred-one sections.<sup>34</sup> With Nigeria neck-deep in deregulation of its utility such as electricity, the establishment of a competent regime to holistically regulate competition in Nigeria is not an alternative but rather necessary. This is because the current state of things and scattered sectoral approach is inadequate and cannot effectively regulate competition in the country.

The UNGCP is three decades old. Its impacts have been seen and today several amendments have been suggested to it and serious efforts are made in that regards. It is the value, importance and connection of UNGCP to the empowerment of the poor and vulnerable consumers across the globe that necessitated aggressive campaigns by the Consumer International (CI) for the inclusion of the implementation of the UNGCP by all

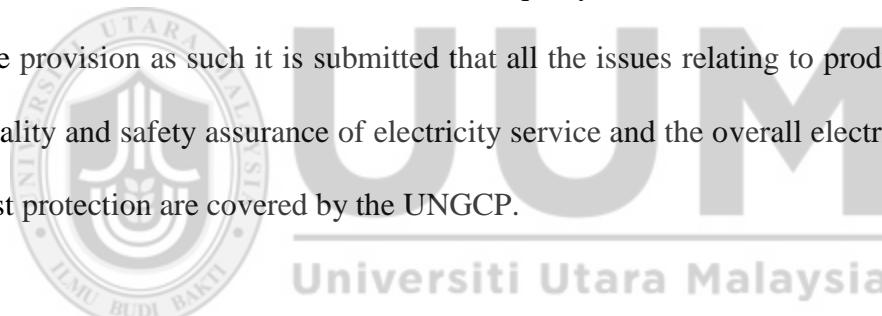
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<sup>33</sup> Article 19, United Nations Guidelines for Consumer Protection.

<sup>34</sup> Dahiru Jafaru Usman, Nurli Yaacob and Aspalella A. Rahman, "Electricity Sector Deregulation and Consumer Protection: Assessing the Imperatives of Competition Law and Competition Regulatory Authority in Nigeria." Paper presented at the UUM International Conference on Governance, 2014. Held at the Flamingo Hotel, Jalan Tanjung Bungha, Penang, Malaysia, 29-30 November, 2014 organised by the UUM Institute of Governance.

countries by year 2030. The CI is advocating that the implementation of the UNGCP should be made part of the set targets for the Sustainable Development Goals (SDGS) of the UN which is prepared to replace the MDGs soon.<sup>35</sup> This the CI believes is highly necessary because the successful realisation of the goals and targets of the SDGs has a connection with consumer protection.<sup>36</sup>

Overall, it could be stated that the UNGCP covers every sphere of consumer relationship. It touches on goods and services such as the electricity services. In the sixteen places where the issues of consumer choice, sustainable consumption, design, quality and safety of products were mentioned, services were equally mentioned.<sup>37</sup> Electricity supply is a service provision as such it is submitted that all the issues relating to products especially the quality and safety assurance of electricity service and the overall electricity consumer interest protection are covered by the UNGCP.



### **3.2.2 The Model Law for Consumer Protection in Africa (AMLCP) 1996**

The philosophy behind the enactment of the UNGCP and the practice across the developed jurisdictions advocated the establishment of firmer and stronger frameworks for effective consumer protection. This advocacy guided and motivated the idea for a Model Law for the African region. The development of the African Model Law on Consumer Protection (AMLCP) was at the regional conference for consumer protection

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<sup>35</sup> Justin Macmullan, "Will Consumer Rights be at the Heart of Global Sustainable Development Policy?" July 2014. <http://consumersinternational.blogspot.co.uk/2014/07/will-consumer-rights-be-at-heart-of.html>. (accessed July 15, 2014).

<sup>36</sup>*Ibid.*

<sup>37</sup> Guidelines 1(c), 9, 16, 18, 19, 24, 28, 31 (a), 35, 42, 43, 45, 46, 50 and 54, UNGCP.

held in Harare, Zimbabwe in 1996.<sup>38</sup> From the preamble of the AMLCP, several factors, policies and developments in economic, social and political spheres necessitated the need for a Model Law for the African continent. Principal amongst these factors is the imposed structural adjustment programmes, as well as deregulation and private sector involvement in the management of the African economies that resulted in the creation of adverse consequence on the consumer welfare.<sup>39</sup> The fact that the implementation of the free market policies in Africa resulted in prices manipulation, abuse in quality and supply of goods, and the failure to disclose the harmful effects of products and services were equally noted by the drafters of the AMLCP. The case of Ethiopia is instructive.<sup>40</sup> The preamble further acknowledged the vulnerability of the African consumers to exploitation and linked this to poverty, lack of organisations among the consumers and low level of education in the continent.



The perpetration of anti-competitive conducts and abusive market practices such as market sharing, cartel formation, fraudulent mergers at the regional level were highlighted among the basis for the enactment of the AMLCP. With this background in mind and particularly acknowledging the fact that the African consumers are labouring under “insufficient and inadequate protection,” the AMLCP was given birth. The AMLCP envisages the need to establish sufficient and adequate protection through strong measures and the establishment of strong structures in that regards. Hence, the necessity for enacting the AMLCP. The AMLCP made provisions for legal structures for better and

<sup>38</sup> The Conference was organised by the UN Department of Policy Coordination and Sustainable Development and the African Regional Bureau of Consumers International.

<sup>39</sup> The Preamble to the Model Law for Consumer Protection in Africa, 1996.

<sup>40</sup> E. Brems, C. Van der Beken and S.A., Yimer, *Human Rights and Development: Legal Perspectives From and for Ethiopia: International Studies in Human Rights* (Leiden: Brill, 2015), 195-197.

efficient consumer protection. The AMLCP for instance clearly made a case for the establishment of Small Claims Court (SCC) and other consumer dispute settlement mechanisms to prevent consumer abuses and restrictive trade practices.<sup>41</sup> The law requires specifically the establishment of SCC across all the nooks and crannies of each country for small cases (such as consumer claims) that are economically unwise to be litigated before the regular courts. The AMLCP specifically defined the characteristics of the court to be accessible, cheap, less technical and expeditious.<sup>42</sup> As done in other jurisdictions, the AMLCP made a case for low or affordable fees and that the scheduled sittings of the SCC to include evenings and Saturdays. Legal representations is excluded and the SCC not to be bound by the strict rules of evidence and procedural technicalities.<sup>43</sup> The AMLCP made provisions for assisting successful litigants in the execution of judgments by the court staff at affordable cost.<sup>44</sup> To avoid unnecessary appeals, the decision of the SCC are to be final subject however to review by the High Court where judgments are found to be obtained by fraud, violation of the principles of natural justice, bias or lack of jurisdiction on the side of the judge and the SCC.<sup>45</sup> This is

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<sup>41</sup> Section 32, 34 and 36 of the African Model Law for Consumer Protection, 1996.

<sup>42</sup> Ibid., Section 32.

<sup>43</sup> Ibid., Section 32 (iii) (b).

<sup>44</sup> Ibid., Section 32.

<sup>45</sup> Ibid., Section 32 (viii). For better appreciation Article 32 provides that;

- (i) Small Claims Courts are hereby established. They shall have the jurisdiction and characteristics which shall include those named herein. They shall:-
  - (a) be available and accessible to all consumers in order to provide simple, speedy, inexpensive and understandable justice;
  - (b) be complementary to the regular court system;
  - (c) have the power to order the alteration, modification, reform, rescission or reformulation of consumer contracts and transactions;
  - (d) operate under monetary ceilings which shall be stipulated under this Law and which shall in any event be high enough so that most cases which cannot be economically brought to the regular or ordinary courts may be taken to the Small Claims Courts; and
  - (e) have evening and Saturday sessions to facilitate access as well as to ensure expeditious determination of matters;

practiced in England, Malta, New Zealand and most European jurisdictions.<sup>46</sup>

Apart from the SCC, the AMLCP equally sanctioned the establishment of another redress mechanism for consumers' right violation as well as the enforcement of the consumer legislation. This is the Restrictive Trade Practices Tribunal (RTPT).<sup>47</sup> It has jurisdiction to handle consumer complaints about goods and services. It is to liaise with stakeholders in the formulation of policies and consumer legislation. The RTPT has the mandate to inform and ease representation of consumers before any judicial or administrative body.

The AMLCP equally requires states within the African region to enact laws for the prohibition, prevention and penalization of unfair and restrictive trade and business practices which are harmful to the consumers' interest.<sup>48</sup> The law in categorical terms declared that consumers shall always have rights and remedies in all consumer transactions against businesses. These rights and remedies include the right to rescind, cancel or retract from a transaction. Where the consumer chooses to rescind or cancel etc, he/she shall be entitled to refund, damages or even interest as the case may be.<sup>49</sup> The consumer according to the AMLCP is equally entitled to the right to replacement of

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(ii) (a) There shall be such consumer claims courts or Small Claims Courts at the divisional, local, district, prefectural, provincial or national level as may be prescribed under an Act of Parliament. Such courts shall be as widely distributed as possible.

(b) The geographical, monetary and other jurisdiction of the courts, including any review or appeal proceedings shall be stipulated by or under an Act of Parliament.

(c) The conferment of jurisdiction shall be guided by the need to expedite the redress of small consumer claims in the most efficient, most convenient and in the least expensive manner.

<sup>46</sup> Peter Spiller and Kate Tokeley, "Individual Consumer Redress," in *Handbook of Research on International Consumer Law* (Massachusetts: Edward Elgar, 2010),509.

<sup>47</sup> Section 34, The African Model Law for Consumer Protection, 1996

<sup>48</sup> *Ibid.*, Section 8 (i), (ii).

<sup>49</sup> *Ibid.*, Section 9 (i) and (ii); 25 (iii), and 35.

faulty purchased item, technology or services supplied.<sup>50</sup> The consumer rights sanctioned in the AMLCP include the right to redress,<sup>51</sup> information,<sup>52</sup> safety,<sup>53</sup> and association.<sup>54</sup> While African countries such as South Africa and Ethiopia have declared in detail all the consumer rights as contained in international instruments such as the UNGCP and AMLCP, the case of Nigeria is different. In fact, some countries went further to declare many other consumer rights. In South Africa, for example, the Consumer Protection Act (SACPA), 2008 declared and detailed consumer rights to safety,<sup>55</sup> the right to choose,<sup>56</sup> the right to privacy,<sup>57</sup> right to equality in consumer market,<sup>58</sup> the right to information,<sup>59</sup> the right to redress,<sup>60</sup> and the right to cancellation<sup>61</sup> etc. The SACPA also clothed the consumer with remedies of repairs and maintenance,<sup>62</sup> rescission,<sup>63</sup> rejection<sup>64</sup> and return<sup>65</sup> among other remedies. This is novel when compared to the Nigerian CPC where a single reference was only made to the word “consumer right.”

Similar legislative efforts in declaring consumer rights are seen in the recent Trade Practice and Consumer Protection Proclamation of the Federal Democratic Republic of Ethiopia, 2010. This law declared consumer rights to information safety, choice redress,

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<sup>50</sup> Ibid., Section 23 (v).

<sup>51</sup> Ibid., Section 30 (vii).

<sup>52</sup> Ibid., Section 11, 12, and 15.

<sup>53</sup> Ibid., Section 23.

<sup>54</sup> Ibid., Section 27 (i).

<sup>55</sup> Ibid., Sections 55 and 60.

<sup>56</sup> Section 13 and 18, The South African Consumer Protection Act, 2008.

<sup>57</sup> Ibid., Section 11.

<sup>58</sup> Ibid., Section 8.

<sup>59</sup> Ibid., Section 22.

<sup>60</sup> Ibid., Section 68 and 69.

<sup>61</sup> Ibid., Section 14 (ii), and 19 6 (c).

<sup>62</sup> Ibid., Section 15.

<sup>63</sup> Ibid., Section 16.

<sup>64</sup> Ibid., Section 19 (7) (a).

<sup>65</sup> Ibid., Section 20.

compensation and the right to be issued a receipt for all purchases and to keep the receipt pads for a period of ten years for any issue that could arise.<sup>66</sup>

The AMLCP was not product biased in wordings. It adequately provided a framework for the protection of both consumers of products as well as services consumers such as the electricity consumers. Throughout the AMLCP reference to products or goods was accompanied with services. This is evident in the fifty seven places where products, goods and technology were mentioned in the AMLCP.<sup>67</sup> Is this the approach in drafting the principal consumer protection legislation adopted in Nigeria? This issue has been examined in the later part of this chapter.

### **3.2.2.1 Critical Analysis of the Legal Regime for Consumer Protection in Nigeria in the Light of the AMLCP**

The drafters of AMLCP made sure that AMLCP satisfies the minimum international standards for consumer protection. The AMLCP has provisions prohibiting and penalizing business practices inimical to consumer interest. In addition, the AMLCP ensured the institutionalization of cheap and expedient consumer redress mechanisms as required under the AMLCP. While some African countries have taken concrete steps in upgrading their consumer protection legal and institutional infrastructure in line with the basic provisions of the AMLCP, more needs to be done in the Nigerian context. Nigeria

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<sup>66</sup>Sections 22, 23, 24, 25, Trade Practice and Consumer Protection Proclamation of the Federal Democratic Republic of Ethiopia, 2010.

<sup>67</sup> Articles 2 (h) (i) and (ii); 4 (i); 11 (a); 13 (ii) and (iv); 14 (i) (a) and (b); 15 (i) (a), (ii) (a)(b)(c), (iii) (a)(b); (iv); 16 (ii), (iii) (d) (h) (i), (v) (a)(b)(c), (vi) and (viii) (b); 17 (i) and (iv); 18 (i) and (iii); 19 (ii) (a)(b)(e) and (e); 20(ii) (ii); 23 (i) (a)(b)(c), (ii), (vi), (vi), (vii) (a)and (b), x; 24 (ii), (iii), (iv) (v); 25 (ii), (iii), (iv) and (v); 26 (i), (ii); 27 (iii) (d); 34 (ii) (b); 35 (iii) and (v), African Model Law of Consumer Protection, 1996.

does not have a Small Claims Court (SCC) and other efficient consumer disputes settlement mechanisms as provided in the AMLCP.<sup>68</sup> This is a flaw as consumer grievance handling is the heart of consumer protection system.<sup>69</sup> The country does not equally have in place a competition law and competition regulatory institution that seeks to prohibit anti-competitive and restrictive trade and business practice such as market sharing, cartel formation, fraudulent mergers and price fixing. This is the work of competition law and competition authority that are integral to all consumer protection systems. Again the country does not have in line with the demands of the AMLCP consumer remedies such as the right to retract from any transactions and the right to refund, replacement, etc.

### **3.3 Legal and Institutional Frameworks for Consumer Protection in Nigeria**

For better analysis, this part of the thesis concurrently examined the legal and institutional arrangements contained in the selected consumer protection laws that have bearing on the Nigerian electricity consumers' protection.

#### **3.3.1 The Consumer Protection Council Act<sup>70</sup> (CPC Act), 1992**

The CPC Act is the principal and/or general consumer protection legislation in the Country. The CPC Act applies to all sectors of the economy. It covers products and services provision. It established the Consumer Protection Council (hereinafter referred

<sup>68</sup>Dahiru Jafaru Usman, Nurli Yaacob and Aspalella A. Rahman, "Towards Improving Consumer Access to Justice in Nigeria: Assessing the Role of Small Claims Court and the Legal Aid Scheme,"Paper presented at the International Conference of Law, Policy and Social Justice, 2014, Held at the ParkRoyal Penang Resort, Batuh Ferringghi, Penang, Malaysia, 10-11 September, 2014 organised by the Faculty of Law, Uitm, Shah Alam and Department of Law Uitm Kedah.

<sup>69</sup> Consumer International, *A Guide to Developing Consumer Protection Law*, (Consumer International, 2011), 23.

<sup>70</sup>Consumer Protection Council Act, Cap. C25 L.F.N. 2004.

to as CPC). Like the previous agencies, the CPC was an initial establishment of a Decree.<sup>71</sup> Although the CPC was established in 1992 but was not operational until 1999 when the institutional structures were put in place.<sup>72</sup> By the enabling Act, the CPC has elaborate, and general functions and powers spelt out relating to the protection of the consumer interests. These include speedy redress to consumer complaints through Alternative Disputes Resolution (ADR) mechanisms such as mediation, negotiations, and conciliation;<sup>73</sup> removing or eliminating from the markets hazardous products and causing offenders to replace such goods with safer and more appropriate alternatives;<sup>74</sup> publication from time to time list of products whose consumption and sale have been banned, withdrawn, severally restricted or not approved within or outside Nigeria.<sup>75</sup> The CPC equally has the power to cause an offending company to pay the aggrieved (consumers whether individuals or community) compensation or other reliefs.<sup>76</sup> It needs to be stressed that reference to compensation under the CPC Act, is so restrictive. Section 2 (d) dealing with the functions of the CPC, for instance, is restrictive. In the subsection, although as part of the function of the CPC it is empowered to mandate offending companies/traders etc. to pay injured communities as consumers, the injury subject to the compensation is tied to technologies with adverse effect. Section 2 (d) provides that the CPC shall:

cause an offending company, firm, trade, association or individual to protect, compensate, and provide relief and

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<sup>71</sup> Decree No. 66 of 1992. A decree under the Nigerian legal system refers to a law enacted by the federal military government. Any reference to the word in this thesis means a law enacted under the federal military government of Nigeria of the time of passage of the law in question.

<sup>72</sup> Vanessa Ferguson and Marius Schneider, “Enforcement of Intellectual Property Rights in Africa,” *Journal of Intellectual Property Law & Practice* 10, no. 4 (2015): 274.

<sup>73</sup> Section 2 (a) , Consumer Protection Council Act, Cap. C25 L.F.N. 2004.

<sup>74</sup> Ibid., Section 2 (b).

<sup>75</sup> Ibid., Section 2 (c).

<sup>76</sup> Ibid., Section 2 (d).

safeguards to injured consumers or communities *from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous;*”(italics supplied for emphasis.)

In terms of composition, the CPC comprises of a Chairman; representatives of all the states of the federation; five persons to represent the Federal Ministries of Commerce, Industry, Science and Technology, Health and Petroleum Resources.<sup>77</sup> Although it has the corporate headquarters in Abuja, the CPC does not have offices in all the states of the federation. It operates through zonal offices spread in the six geopolitical zones and one additional office in Lagos.<sup>78</sup> The CPC is, however, to be assisted by state committees.<sup>79</sup> Regrettably, most states do not have the Consumer Protection Committee. Since the CPC is not in all the states of the federation, one expects that the State Committees would bridge this gap. It is saddening that only four out of the thirty-six states of the Nigerian Federation have established these state committees.<sup>80</sup> In the entire North-West Zone, for instance, only Kano state has a functional committee. According to Participant 3, “only Kano State in the North West Zone has a state committee.”<sup>81</sup> Even Katsina State, the site of the North West Zonal office of the CPC does not have a State Committee for consumer protection.<sup>82</sup> This is the picture all over the federation. This is not in line with the obligations of Nigeria under the UNGCP that requires special protection of the rural

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<sup>77</sup>Ibid., Section 1.

<sup>78</sup> Interview with Participant 18, a Director of the CPC (at the headquarters Abuja, July 9, 2014 . See also Part II, S. 4 (1), Consumer Protection Council Act, Cap C25, LFN, 2004.

<sup>79</sup> Part II, S. 4 (1), Consumer Protection Council Act, Cap C25, LFN, 2004. The CPC is not present in rural and local government areas where the consumer awareness and protection is most desirable.

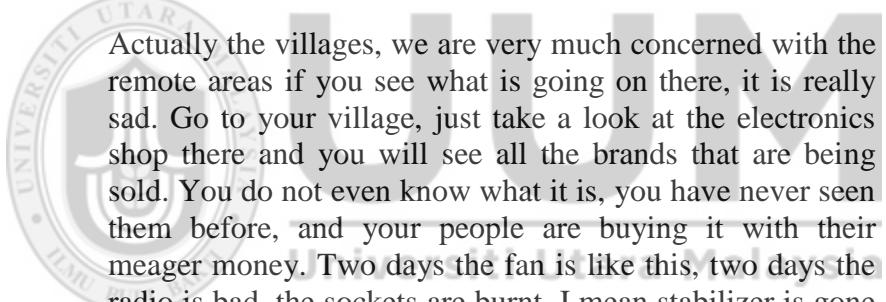
<sup>80</sup> Felicia Monye, Boniface Umoh and Chinyere Chuwunta, “Research Report on the State of Consumer Protection in Nigeria: A Review of Consumer Protection in the Telecommunications Sector in Nigeria” (January 2014):149.

<sup>81</sup>Interview with Participant 3, a staff of the CPC, (at the North West Zonal office, Katsina State, Nigeria, August 8, 2014.

<sup>82</sup> Interview with Participants 3 and 11, CPC staff (at the North West Zonal office, Katsina State, Nigeria, August 8, 2014.

consumers.<sup>83</sup> The CPC should at least be in the 36 states and the 774 local government councils in Nigeria.<sup>84</sup> In fact, their presence in the rural areas is compelling because it is in villages that the highest violation of consumer interest takes place against the already poor striking villagers. Participant 18 vividly captures this position. According to Participant 18, “we have not been able to reach every area, or every region or state as our law indicated in the nation. We are supposed to be in every state but unfortunately we are just in the regions now six.”<sup>85</sup>

On the high rate of consumer exploitation in the villages compared to the cities, Participant 18 says that:



Actually the villages, we are very much concerned with the remote areas if you see what is going on there, it is really sad. Go to your village, just take a look at the electronics shop there and you will see all the brands that are being sold. You do not even know what it is, you have never seen them before, and your people are buying it with their meager money. Two days the fan is like this, two days the radio is bad, the sockets are burnt, I mean stabilizer is gone and the television the same thing. You see ‘Sanyo’, you see ‘Sannyo’ and they are buying. You cannot find those in the cities, but the remote areas the villages there is a lot to be done, a lot to be done.<sup>86</sup>

Does the size of the CPC and the non-existing State Committees assist the cause of consumers across the country in view of the fact that abusive consumer issues especially in the electricity industry are recurring and require immediate solutions? The answer is no. The large size of the CPC and it's absence in more states of the federation makes it

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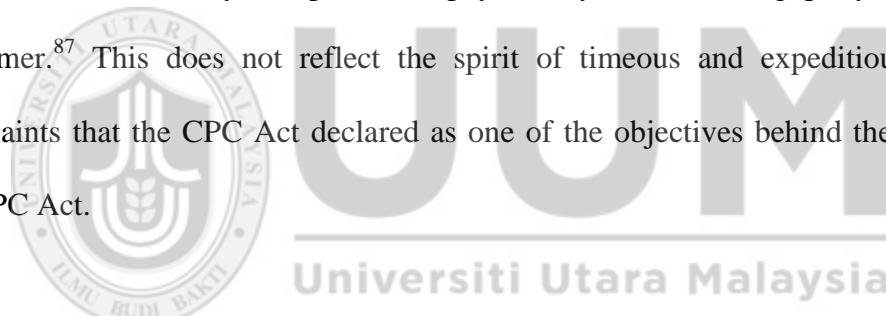
<sup>83</sup> Articles 6 and 40 United Nations Guidelines on Consumer Protection, 1985.

<sup>84</sup> Section 3, Constitution Federal Republic of Nigeria, 1999, Cap C, LFN. 2004.

<sup>85</sup> Interview with a Director of the Consumer Protection Council, Participant 18, at the headquarters of the Council (July 9<sup>th</sup>, 2014).

<sup>86</sup> Ibid.

difficult or impossible for the CPC to meet to address consumer issues. The CPC should be available and functional at all times for speedy and timeous resolution of the likely consumer complaints that may be filed before it. This is in line with the functions it is designed to carry under Section 2 of the CPC Act. Again even, the State Committees (where established and functional) are bereft of powers to completely settle all consumer complaints filed before them. They are only to receive and mediate between complainants and the defendants. Where settlement is reached that ends the matter. Where, however, the parties cannot settle, the committee cannot decide on the complaints. They are under the CPC Act required to recommend (where appropriate) to the CPC, the necessary compensation payable by the offending party to the injured consumer.<sup>87</sup> This does not reflect the spirit of timeous and expeditious disposal of complaints that the CPC Act declared as one of the objectives behind the enactment of the CPC Act.



On a further critical examination of the provisions of the CPC Act, it focuses more on supply and manufacture of regulated products with very little but vague reference to service provisions.<sup>88</sup> The bulk of the reference in the Act is on products. This is seen by a careful reading of sections on the functions and powers of the CPC. Section 2 (c) and (j) mandates as part of the functions of the CPC to:

- c) publish, from time to time, the list of products the consumption and sale of which have been banned, withdrawn, severally restricted or not approved by the Federal Government or foreign governments;

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<sup>87</sup> Ibid., Part II, Section 5 (a), (b) & (c).

<sup>88</sup> See supra note 35, Sections 2 (c) & (j), 3 (a), (b), (c) & (d) and 9 (1) where the reference is on products while service provision appeared only in sections 3(e) and 8 (b).

(j) encourage the adoption of appropriate measures to ensure that products are safe for either intended or normally safe use.

The same reference to products without service provisions is seen in Section 3 dealing with the additional powers of the CPC. Section 3 dealing with the powers of the Council is entirely products focused. By the section, the CPC shall have among other the powers to:

- (a) apply to court to prevent the circulation of any *product* which constitutes an imminent public hazard;
- (b) compel a manufacturer to certify that all safety standards are met in their *products*;
- (c) cause, as it deems necessary, quality tests to be conducted on a *consumer product*;
- (d) demand production of labels showing date and place of manufacture of a *commodity* as well as certification of compliance;
- (e) compel manufacturers, dealers and service companies, where appropriate, to give public notice of any health hazards inherent in their *products*;
- (f) ban the sale, distribution, advertisement of *products* which do not comply with safety or health regulations.

(Italics supplied)

It is observed that both sections in detailing the functions as well as the powers of the CPC, referred to products without mentioning services such as electricity. Service provision appeared only in Section 3(e) supra and Section 8 (b). Section 8 (b) provides

“Whereupon an investigation by the Council or State Committee of a complaint by a consumer it is proved that-

- (b) that a wrong has been committed by way of trade, *provision of services*, supply of information or advertisement, thereby causing injury or loss to the consumer, the consumer shall, in addition to the redress which the State Committee, subject to the approval of the Council, may impose, have a right of civil action for

compensation restitution in any competent court. (Italics supplied)

According to Naemah, consumption is not only limited to goods but also covers services.<sup>89</sup> In fact, Kennedy's vivid opinion is that "consumerism is just as concerned with the supply of services as with goods."<sup>90</sup> Neglecting service provision in the CPC Act is a flaw because the CPC Act is the principal legislation on consumer protection in the entire Nigerian economy. From the passage of the CPC Act, it ought not to lay so much emphasis on products with little emphasis on service provision. This is because consumers of services are also consumers within the meaning of consumer as defined by the CPC Act.<sup>91</sup> This is not the approach adopted in the UNGCP and the AMLCP. In both instruments, as highlighted above, reference to products is always accompanied with reference to services provision. This is also the approach under the Malaysian Consumer Protection Act, (MCPA), 1999.<sup>92</sup> Throughout the MCPA, 1999 (save in sections that are service provision specific) reference to goods is followed with service.<sup>93</sup> It can be argued that the MCPA, 1999 can be said to be a model law as it adopted a holistic approach by considering the goods supply side by side with services provision. In fact, a part was dedicated for guarantees in respect of service provisions.<sup>94</sup> For example, the MCPA, 1999 made provisions for implied guarantees as to reasonable care and skill required of the

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<sup>89</sup>Naemah Amin and Elistina Abu Bakar, "The Adequacy of Remedies in Consumer Transactions: Special Study in the Motor Vehicle Repair and Service Industry in Malaysia," *Malaysian Journal of Consumer and Family Economics*15, no. 2 (2012): 39.

<sup>90</sup> Quoted in Peter Cartwright, *Consumer Protection and the Criminal Law: Law, Theory, and Policy in the UK* (Cambridge University Press, 2004),4.

<sup>91</sup> Section 32, Consumer Protection Council Act, 2004.

<sup>92</sup> Naemah Amin, "The Consumer Protection Act 1999: 10 Years After," in *15th MACFEA National Seminar, 19-20 July 2011*, UiTM Hotel, Shah Alam. (Unpublished).

<sup>93</sup> Sections 2,3,8,9,10,12,13,14,16,18,19,20,22,23,24,30,140 (1), 150, Malaysia Consumer Protection Act, 1999.

<sup>94</sup> Ibid., Part VIII, "Guarantees in Respect of Supply of Services."

service providers in their business of service provision;<sup>95</sup> implied guarantees that services offered are reasonably fit for the purpose for which they are paid;<sup>96</sup> as well as the reasonableness of the price for which the services are rendered. Where any of these guarantees is breached by the service provider, the MCPA, 1999 made specific provisions for redress. In fact, a part of the MCPA, 1999 was dedicated for consumer redress in service contracts.<sup>97</sup>

Again, from the passage of the CPC Act to date, technology has advanced and has changed the way, and manner products and services are produced and how the entire business is done. There is nothing in the CPC Act to cater for technological products or services supply in, for example, the electricity industry. The Act does not outline the right of consumers, the remedies available in the event of the violation of the rights. Also, it does not state the responsibility of the service provider to the consumer. There are no details of punishment for service providers. The offending electricity service provider with its financial strength can go to court and very easily get away with the consumer violations.

Who qualifies to be a consumer to enjoy the protection of consumer statutes is a common feature of most if not all the consumer protection statutes across the globe. Consumer protection statutes attempt to provide an adequate definition of who is a consumer. However, the definition of the word consumer under the Consumer Protection Council Act (CPC Act) appears inadequate. It defined the consumer to mean “an individual who

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<sup>95</sup> Ibid. Section 53.

<sup>96</sup> Ibid. Section 54.

<sup>97</sup> Ibid. Part IX, “Guarantees in Respect of Supply of Services.”

purchases, uses, maintains or disposes of products or services.” For the purpose of the CPC Act, the word consumer is limited to individuals who buy a good or paid for a service. It does not extend to organisations. The CPC Act does not state whether the purchases subject to the protection of the Act must be for household/personal consumption and whether purchases for business are exempted from the protection of the CPC Act. This is not the approach in statute books across the globe. The Malaysian Consumer Protection Act 199 is instructive.<sup>98</sup>

Apart from the fact that the definition of consumer under the CPC Act appears restrictive, unlike consumer statutes in some jurisdictions the CPC Act did not define what is a “good,” “product,” or “service.” Consumer codes in jurisdictions such as Malaysia clearly defined what amounts to goods or products. In Malaysia for instance, “good” is defined to include utility such as the electricity.<sup>99</sup> Additionally, the word “service” was equally defined under the MCPA 1999. In the case of the CPC Act, a careful examination reveals that although the CPC Act repeatedly used the word “product” in several sections,<sup>100</sup> and some references to services,<sup>101</sup> no definition of what qualifies as “product” and what is not. The CPC Act unlike the Malaysian Consumer Protection Act, 1999 does not offer guidance as to whether a product includes a utility such as electricity. The CPC Act does not equally provide any definition for the word “service. It is observed that of all the legislation on consumer protection known to the researcher section 32 of the CPC Act – the interpretation section is the shortest. Only five words were defined. “Chairman,”

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<sup>98</sup> Section 3, Malaysian Consumer Protection Act, 1999.

<sup>99</sup> Ibid.

<sup>100</sup> Sections 2 (b), (c) & (j); 3 (a), (b), (c), (d) & (f); 6 (1); 9 (1); 15 (2)(b), and 32, Consumer Protection Council Act, 1992.

<sup>101</sup> Ibid. Sections 8 (b) and 32.

“Consumer,” “Council,” “Member,” and “Minister.” In all, section 32 only has seven lines as such very short compared to section 3 of the MCPA 1999 that runs into 5 pages. In South Africa a single chapter of more than 15 pages is dedicated for definitions and interpretation.<sup>102</sup> The Australian consumer protection statutes equally provide another interesting example. The interpretation section also runs into several pages.<sup>103</sup>

In addition, it is submitted that the CPC Act, which is the legislative enactment that empowers the CPC, is not comprehensive. The CPC Act does not take adequate care of emerging development like the liberalization, globalization, privatizations or information age that has given birth to a very competitive electricity market and adverse consequences on the consumers.<sup>104</sup> Furthermore, the CPC Act only succeeded in establishing a regulatory agency called the CPC. The Act on a further examination does not also provide for the legal rules that determine the basis of liability where a consumer as a plaintiff seeks to prosecute his claim against an offending supplier, producer of goods or services. The redress under the Act is, consequently the imposition of criminal penalties in few instances such as where unforeseen hazards emerge and the product manufacturer or its distributor fails to inform the general public of such hazards and/or fails to withdraw the said products.<sup>105</sup> Even though, parties are not precluded from taking civil action to recover whatever right they may have under the circumstances of the breach.<sup>106</sup>

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<sup>102</sup> Sections 1 and 2, South African Consumer Protection Act, No. 68, 2008.

<sup>103</sup> Section 4 of the Australian Consumer Protection and Competition Act, 2010

<sup>104</sup> Preamble to the African Model Law Of Consumer Protection, 1996.

<sup>105</sup> Section 9 (2), Consumer Protection Council Act, Cap C25, LFN 2004.

<sup>106</sup> Section 8 (b), Consumer Protection Council Act, Cap C25, LFN 2004; Ali, L, *Corporate Criminal Liability in Nigeria*, (Lagos: Malthouse 2008): 170

Additionally, and although the Act made reference to other consumer protection laws and made their contravention a punishable offence, the Act did not in the first place list them, what the Act did was just to give a hint of what these enactments are all about, namely, laws relating to transactions of sales or offers for sale of unsafe or hazardous goods or the provision of services or proffering of information or advertisement which cause injury or loss to a consumer.

There is also a lack of executive will power. The government does not seem to really care. It makes the consumers of goods and services vulnerable. Even the people enlightened on the structure for consumer protection, have not shown that much use for it. The citizens depend on the government regulation, enlightenment, awareness and enforcement for protection. This appears to be lacking in Nigeria. Again the CPC is not empowered to work. Its staff strength is not adequate to police the Nigerian markets. This is the case across the CPC at both the head office and regional levels. Speaking on the general staffing of the CPC, Participant 18 stated that:

For now we are really understaffed. Secondly, we have not been able to reach every area, or every region or state as our law indicated in the nation. We are supposed to be in every state but unfortunately we are just in the regions now 6, plus one Lagos that is 7. We are in 7 important areas in the country now we call them zonal offices.<sup>107</sup>

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<sup>107</sup> Interview with Participant 18, a CPC staff, at the CPC headquarters, Abuja July 9, 2014.

The staff strength of the North West Zonal Office (NWZO) comprising of seven states, for instance, is less than ten.<sup>108</sup> One of the responses on this issue is from Participant 11.

Speaking on the staff strength of the NWZO Participant 11 said:

Right now as I am talking to you I am the only one in the Surveillance and Enforcement, then consumer education we have 2 officers, one just travelled to Kano, she lost her cousin then the other officer, that just came in she, is the head of consumer education. Then legal we have only one lawyer, admin only one person, quality development we have two officers.<sup>109</sup>

Participant 3 rated the CPC low in terms of staffing. Talking about the NWZO the respondent said “staffing? Zero, because in the zonal office we are just about 13, 14 and you are talking of a zonal office of 7 states you know it is not commensurate at all. It is not.”<sup>110</sup> It follows therefore, that the staffing of the CPC nationwide is also on the low side. According to Participant 15, “nationwide I think we are about 300 and something.”<sup>111</sup> Taking the NWZO alone, comprising 176 local government areas (LGAs),<sup>112</sup> one imagines how possible a zonal office with less than 15 staff could mount surveillance and protect the consumers within the zone it covers.

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<sup>108</sup> Interview with Participant 11, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014. Interview with Participant 3, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014. Interview with Participant R16, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014.

<sup>109</sup> Interview with Participant R11, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014.

<sup>110</sup> Interview with Participant 3, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014.

<sup>111</sup> Interview with Participant 15, a CPC staff at the CPC Head office, Abuja July 9, 2014.

<sup>112</sup> The First Schedule to the Constitution Federal Republic of Nigeria, 1999 (as amended). The North-West Zonal of the Consumer Protection Council comprises of Kano State with 44 LGAs, Katsina state with 34 LGAs, Jigawa State with 27 LGAs, Sokoto State with 23 LGAs.

The principal consumer protection agency (CPC) also suffers from funding related issue.<sup>113</sup> It is not financially empowered to work. Funding has been held to be a major challenge to the CPC's operation. According to Participant 11, "the challenges of consumer protection, I have told you. One basic challenge is funds paucity. You do not give; you do not provide funds, how do we carry out sensitization? Sensitization is very important."<sup>114</sup>

Participant 3 equally reported the funding challenge. According to her:

Our challenge is... I would come first from the issue of funding. Funding, of course, would help the Council to be able to educate consumers on their rights, responsibilities even to the villages. Because we are covering seven states, how long would it take one person or two people to go to Birnin Kebbi? We don't have an office in Birnin Kebbi so to say.<sup>115</sup>

Although the CPC is the overall consumer protection body in the country, it lacks prosecutorial power. The number of lawyers with the CPC is grossly inadequate. Notwithstanding the enormity of consumer rights violation, the CPC cannot prosecute offenders. The highest it can do is to refer such violations to the Office of the Federal Attorney General (AGF) for prosecution.<sup>116</sup> This is bureaucratic and against the speedy redress of consumer issues provided under the CPC Act.<sup>117</sup> Speaking on the prosecutorial limitations of the CPC, Participant 3 reported that:

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<sup>113</sup> Interview with CPC staff, Participant 3, Participant 11 and Participant 16, at the Katsina Zonal office of the CPC, August 8, 2014; interview with a CPC staff, Participant 18, at the head office in Abuja July 9, 2014.

<sup>114</sup> Interview with CPC staff Participant 11, at the Katsina Zonal office of the CPC, August 8, 2014.

<sup>115</sup> Interview with CPC staff Participant 3, at the Katsina Zonal office of the CPC, August 8, 2014.

<sup>116</sup> Sections 10 and 16 Consumer Protection Council Act, Cap C LFN, 2004.

<sup>117</sup> Ibid. Section 2 (a).

Let me start by saying that the work of the Council needs a lot of prosecution but unfortunately, we do not prosecute. What happens is that there are lawyers in the Council but our cases are handled by lawyers from the Attorney General of the Federation's office. So directly we do not prosecute.<sup>118</sup>

Again, although the CPC under Section 13 of the CPC Act is granted the powers to issue desist orders against recalcitrant companies, it cannot file a civil suit against a company for non-compliance. The CPC would have to fall back on the AGF's office. This is seen in the recent CPC Vs. Coca-Cola face up.<sup>119</sup> This is quite different from the case of similar agencies in other jurisdictions. In the US, the FTC has the full powers to order for payment of civil penalties in event of violation of any cease and desist orders. In fact, such orders are equated with the the orders of a High Court appealable to the Federal Court of Appeal up to the US Supreme Court.<sup>120</sup>

Additionally, if one carefully analyzes the provisions of Section 13 of the CPC Act dealing with compensation order, one sees that the order is tied to the conviction of the violators of consumer rights. With the current arrangement whereby the CPC cannot prosecute in-house, one imagines when a conviction would be obtained and then the issuance of a compensation order in favour of the affected consumers for injury or damage occasioned from the conduct of the offender. Even the AGF's office upon which the CPC Act vests the powers of prosecuting consumer right violators, is not adequately

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<sup>118</sup> Interview Participant 3, a staff of the CPC at the Zonal office of the CPC, August 8, 2014.

<sup>119</sup> Okechukwu Nnodim, "FG Sues NBC, Coca-Cola Over Product Quality," The Punch, October 28, 2014. <http://www.punchng.com/business/business-economy/fg-sues-nbc-coca-cola-over-product-quality/>. (accessed October, 2014)

<sup>120</sup> Spencer Weber Waller, Jillian G. Brady, R. J. Acosta, and Jennifer Fair, "Consumer Protection in the United States: an Overview," *European Journal of Consumer Law* (2011).

staffed with legal practitioners. They have their pile of cases to attend to. This is counterproductive. One imagines how the AGF's office can manage the consumer cases that would be referred to it from the CPC compiled from all the states of the federation? But even if the CPC is to be allowed to prosecute, the available legal practitioners in its legal department cannot handle the cases. One finds that across the zonal offices of the CPC and even the head office the number of lawyers is not encouraging. NWZO for instance, has one lawyer. How practicable would it be for one lawyer to handle cases emanating from seven states of the federation under the said zone?<sup>121</sup>

The CPC has over the years expressed concerns for protecting consumers' right but very much unlike a general consumer protection legislation, the CPC Act being the principal legislation does not clearly contain any of the consumer rights as declared and entrenched in the United Nations Guidelines on Consumer Protection (UNGCP) 1985. The Act made a single reference or use of the word "consumer rights" in its entire 33 sections.<sup>122</sup> This is the state of the CPC Act on consumer rights even though the CPC Act was enacted about seven years after the formulation of the UNGCP. What is only used in the Act is the term "consumer interest."<sup>123</sup> This is in contradistinction from the practice in other countries. In Russia, South Africa, and Thailand, for instance, consumer rights are declared in their consumer protection laws.<sup>124</sup>

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<sup>121</sup> Interview with Participant 3, a CPC staff, at the Katsina Zonal office of the CPC, August 8, 2014

<sup>122</sup> Section 8 (a) Consumer Protection Act, Cap C25, LFN, 2004.

<sup>123</sup> Ibid. Section 2 (f) & (i) and Section 10 (1).

<sup>124</sup> Section 4, Thai Consumer Protection Act, 1979; Sections 39, 46, 50, 57, 58 Laws of Malaysia, Consumer Protection Act, 1999; The Preamble to the Russian Consumer Protection Act, 1992. See also Norbert Reich, "Consumer Protection in Countries of Emerging Markets: The Example of Russia," *Journal of Consumer Policy* 19, no. 1 (1996):5.

Independence of consumer protection agency is vital. To function effectively, they should be independent of control or interference from any political body or person. They should have financial independence on issues such as budget and budget implementation. Unfortunately, most regulatory agencies in Nigeria including the CPC lack independence in all respect. Every decision be it financial or otherwise is subject to the overall decision of the Minister of the supervising Ministry. This is especially the case on the issue of finance and budgetary provisions.<sup>125</sup>

Competition law and regulation protect the consumer and promote economic efficiency in the marketplace and the economy. Tan Sri Dato Seri Siti Norma Yaakob, believes that competition law is “a vehicle to promote economic efficiency and to maximize consumer welfare.”<sup>126</sup> It is worrying that Nigeria neither has comprehensive competition provisions in any of its consumer protection law nor does it have stand-alone competition law. One expects that the CPC Act being the overall consumer protection law would have competition regulatory provisions integrated in it because competition law is integral to consumer protection.<sup>127</sup> Surprisingly, this is not the case in Nigeria. From the title to the content of the CPC Act, the issue of competition and competition regulation is totally absent. This is unlike the practice in other jurisdictions such as Australia, Malaysia and New Zealand where the approach is either to have a stand-alone competition law or to

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<sup>125</sup>Sections 1 (6); 4 (2) (b), (3) & (4); 24; 25 (3) 30 and 31 Consumer Protection Council Act, Cap LFN.; Article 5 of the Schedule to the Consumer Protection Council Act, Cap LFN; Budget Office of Nigeria, 2013 Budget Amendment: 17. Summary Trade and Investment; [http://www.budgetoffice.gov.ng/pdfs/2013%20budget%20amendment/17.%20Summary\\_Trade%20&%20Investment.pdf](http://www.budgetoffice.gov.ng/pdfs/2013%20budget%20amendment/17.%20Summary_Trade%20&%20Investment.pdf) (accessed August 20, 2013); Budget Office of Nigeria, 2014 Appropriation Act: 17. Summary Trade and Investment. [http://www.budgetoffice.gov.ng/pdfs/2014\\_appriation%20act/17.%20Summary\\_Trade%20&%20Investment.pdf](http://www.budgetoffice.gov.ng/pdfs/2014_appriation%20act/17.%20Summary_Trade%20&%20Investment.pdf)(accessed March 5, 2014)

<sup>126</sup>Siti Norma Yaakob, “Foreword: Competition Act 2010: A Guide for Business,” (September, 2013),1.

<sup>127</sup>Dahiru, Nurli and Aspalella, ICG 2014.

merge it in the principal consumer protection legislation. What is obtained in places such as Australia and New Zealand appears to be the best approach. In these jurisdictions, their consumer protection legislation is entitled “Consumer Protection and Competition Law,” thereby including competition in it.<sup>128</sup> This is more compelling in Nigeria since Nigeria lacks a stand-alone competition law.

Like any consumer protection legislation, the CPC Act created offences and provided punishments. It is an offence to issue wrong, deceptive and misleading advertisement as well as selling or offering for sale, or refusing to notify the public about a manufacturer’s products that are hazardous to the life and property of consumers.<sup>129</sup> Good as these conducts are made criminal, the punishments provided are meagre. For all the offences lined up, the recalcitrant offender is to be charged a fine of ₦50,000 (Fifty Thousand Naira) which is less than RM1,000 (One Thousand Malaysian Ringgit) at ₦58 per Malaysian Ringgit. In fact, offences such as disobedience to court summons, issuing false statement or information in reports and violation of any other consumer law may attract a fine not more than ₦10, 000 (Ten Thousand Naira) equivalent to RM185 (One Hundred Eighty Five Malaysian Ringgit).

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<sup>128</sup>Productivity Commission, “Australian and New Zealand Competition and Consumer Protection Regimes,” *Productivity Commission, Government of Australia Research Reports* (2005); Mary Catherine Lucey, “The New Irish Competition and Consumer Protection Commission: Is This ‘Powerful Watchdog with Real Teeth’ Powerful Enough under EU Law?” *Journal of European Competition Law & Practice* (2014).

<sup>129</sup> Section 9 and Section 12, Consumer Protection Council Act, Cap. C25, LFN, 2004.

### 3.3.2 The Standards Organisation of Nigeria Act<sup>130</sup>

The Standards Organisation of Nigeria (SON) Act established the SON<sup>131</sup> and the Standards Council<sup>132</sup> for the standardisation of methods and products in the Nigerian industries and matters connected thereto. Principally, the SON is charged with the responsibility to among other things advising the government generally on the national policy on standards, standards specifications, quality control, and metrology.<sup>133</sup>

The SON Act vests the Director General (DG) the powers to order the withdrawal of any product that poses hazards to lives and properties. This the DG can do by seeking an injunction from any Magistrate court within the jurisdiction.<sup>134</sup> The Magistrate can where necessary issue an order for the destruction of the hazardous products. The manufacturer may be mandated to rectify the deficiency and/or the premises can be sealed up.<sup>135</sup> From the consumer perspective, the section did not factor in the issue of compensation to likely injured consumers of such hazardous products or those who have purchased those hazardous products but not injured within the orders the DG can seek from the Magistrate Court.

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<sup>130</sup>Standard Organisation of Nigeria Act, Cap S9 L.F.N. 2004.

<sup>131</sup>The SON was initially established by Decree No. 56 of 1971.

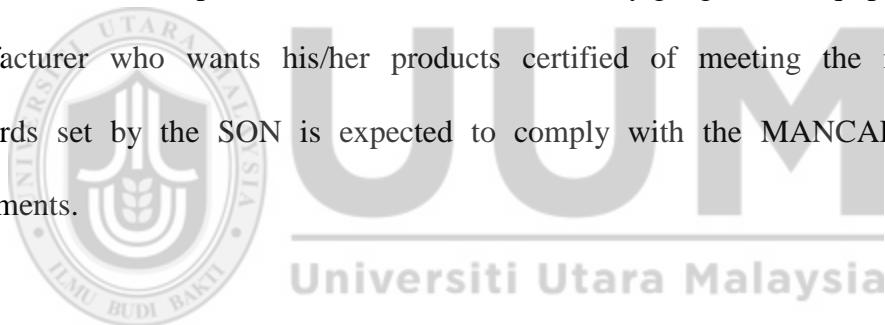
<sup>132</sup> Section 1 and 3. The Standard Organisation of Nigeria, Act, Cap S9 LFN, 2004.

<sup>133</sup>The SON equally has other functions as stated in section 5 of the Standards Organisations Act, Cap S9 LFN, 2004. These include the designation, establishment and approval of standards in respect meteorology, commodities, structures and processes for the certification of products in commerce and industry; provision of necessary measures for quality control of raw materials and products in conformity with the standards specification; organization of test to ensure compliance with the approved standards; undertaken of investigations as necessary into the quality of facilities, materials and products in Nigeria and the establishment of quality assurance system including certification of factories, products and laboratories; the registration and regulations of standards marks and specifications and any other activity likely to assist in the performance of the functions imposed on the organization by the Act.

<sup>134</sup> Section 17 (1), Standards Organization of Nigeria, Act, Cap S, LFN, 2004.

<sup>135</sup> Ibid., Section 17 (10 (a) (b) (c ) and (2).

In terms of structures, the SON appears to cover the country more than any consumer protection agency. It has offices in all the states of the federation, and its staffing is better compared to the CPC, the overall consumer protection agency. The SON sets standards for several products. In the electricity industry, the SON has standards for electric cables, porcelain for carrying high tension wires, and standards on electronic products such as bulbs, electric iron, fans, etc. The SON equally has several certifications and standardisations schemes. These are the “Mandatory Conformity Assessment Programme” (MANCAP) and “Standards Organisation of Nigeria Conformity Assessment Programme” (SONCAP). MANCAP is a standard certification process for all locally manufactured products which includes electricity gadgets and equipments. A local manufacturer who wants his/her products certified of meeting the manufacturing standards set by the SON is expected to comply with the MANCAP certification requirements.

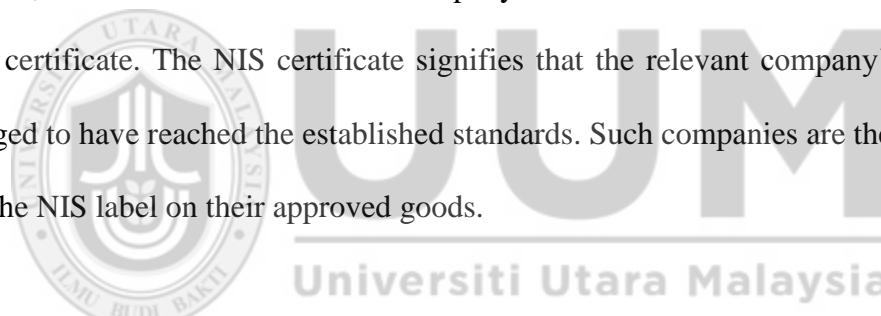


As for products to be imported, the SONCAP is the relevant standard to comply with. The SONCAP operates in such a way that any importer wishing to import must meet certain requirements. This applies to all products including electricity gadgets and equipments. The SONCAP is administered in such a way that before an importer is allowed to import any electricity gadget or equipment he/she needs to obtain “Form M” from any bank. No bank issues such form to an importer unless he/she is issued with Product Certificate (PC) endorsed by the SON. This PC is issued after an intending importer has presented to the SON’s office in the country of the manufacture of the electricity gadgets or equipments, and same is tested and certified to meet the Nigerian

standards. Once a product is issued the PC, it qualifies for “Form M.” Next, such product requires the SONCAP certification to be allowed into the country through the port or the borders.<sup>136</sup> According to Participant 5:

SONCAP is a permit that would allow you to clear your product from the border or from the Port. By that way we know we are protecting the consumers. And then within Nigeria also we have MANCAP. If you are manufacturing cables in Nigeria, you must meet the MANCAP requirements. If you don't meet the MANCAP requirement we would not allow you to sell. And all these programmes are established to protect consumers.<sup>137</sup>

Where a company satisfies the above certification and standards processes established by the SON, the SON then issues to the company what is called National Industrial Standard (NIS) certificate. The NIS certificate signifies that the relevant company's products are adjudged to have reached the established standards. Such companies are then permitted to affix the NIS label on their approved goods.



According to Naemah, the protection of consumer “against sub-standard and unsafe products is one of the most important components in consumer protection law.”<sup>138</sup> With all the above processes of standardisation, there is influx of fake and substandard electricity gadgets and appliances in Nigeria. The circulation and sale of these fake and substandard electricity gadgets and equipments are among the issues the relevant

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<sup>136</sup> Interview with Participant No. 5, a State Head, Kano Office of the Standards Organization of Nigeria, August 19, 2014.

<sup>137</sup> Ibid.

<sup>138</sup> Naemah Amin, “The Consumer Expectation Test Under the Consumer Protection Act 1999: A Viable Test for Determining the Quality and Safety of Products?” *The Law Review* 3 (2008): 367.

consumer protection agencies are quite aware of.<sup>139</sup> Participant 18 (a Director of the Surveillance and Enforcement Unit of the CPC) responding to the influx of fake and substandard electricity materials stated that:

The Council is very much aware of the substandard products in the market that is part of our principal function. It is under our purview to make sure that substandard products are not found in the market. That is why I mentioned to you we protect consumers from every abuses in both products supply and services provisions.<sup>140</sup>

Narrating his experience on the enormity of the problem of the influx of substandard electrical products, Participant 18 stated that over twenty thousand pieces of fake electric extension wires were seized in a single market raid carried-out by the CPC in Abuja the Federal Capital Territory.<sup>141</sup> This is alarming. What happens in semi-urban and rural areas can only be imagined. Fake and substandard products are freely sold to the unsuspecting villagers who lack the know-how to differentiate between the quality and fake products.

The circulation and consumption of these fake products have multiple adverse effects on the consumer. Apart from the economic loss occasioned by the purchase of fake and substandard electricity gadgets and equipments, consumption of such electrical products is life endangering. This is because electricity gadgets, and equipments are life

<sup>139</sup> Adetola Bademosi, "UN Considering Intervention for Embedded Power Generation —Nebo," The Vanguard (-Abuja), February 11, 2015, <http://www.tribune.com.ng/news/news-headlines/item/29174-un-considering-intervention-for-embedded-power-generation-nebo>; The Nigerian Political Economy, "SON Cries Over Influx of Substandard Products," The Nigerian Political Economy, October 13, 2013, <http://www.politicaleconomistng.com/son-cries-over-influx-of-substandard-products/>. (Accessed October 13, 2013); Nigerian Consumer, "Growing Menace of Fake Bulbs and Other Lamps in Nigeria" <http://nigeriacconsumers.com/blog/dealing-with-the-growing-menace-of-fake-bulbs-and-other-lamps-in-nigeria/> (accessed October 1, 2013).

<sup>140</sup> Interview with Participant 18, a CPC staff, at the CPC headquarters, Abuja July 9, 2014

<sup>141</sup> Field Note, taking in the course of interview at the head office of the CPC, July 9, 2014.

endangering products that can result in death and serious human suffering. In fact, Participant 18 stated an incident of a fake electric extension wire that nearly caused a fire outbreak that nearly burnt down the CPC's head office.<sup>142</sup>

Although the functions and powers of the SON are more of regulated products, one will beg to ask the question has the SON in the exercise of its regulatory role alleviated the sufferings of electricity consumers of electricity gadgets and equipments in view of the influx of substandard electricity gadgets and equipments manufactured, imported and in circulation within the country?<sup>143</sup> The answer is in the negative. The SON has lamented over the influx of these substandard electricity gadgets and equipments, but the circulation is unabated. One, therefore, wonders what standards the SON enforces?

Factors for the influx of substandard electricity gadgets and equipments have been identified by the Participants interviewed in the course of this research. Some of the respondents identified the porosity of the international borders, poverty, political interference and corruption as the contributory factors. On the porosity of our borders Participant 20 had this to say:

But we do have certain problems at times these products do not come directly through the port and borders. At times mostly the fake and substandard one use the porous borders. Like here we have border here in Katsina (Northern part of Nigeria). So we do have this kind of problem of importation.<sup>144</sup>

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<sup>142</sup> Field Note, taking in the course of interview at the head office of the CPC, July 9, 2014.

<sup>143</sup> The Nigerian Political Economy, (2013); Nigerian Consumer, (2013).

<sup>144</sup> Interview with Participant 20, a staff of SON, at his residence, August, 19, 2014.

Although in terms of staffing and coverage of Nigeria the SON is fairly better compared to the CPC and the NERC, the SON equally faces staffing challenges. More personnel are needed especially in policing these porous borders through which most of the imported fake products come into the country. On this point Participant 20 stated thus:

We need enough staff strength. When you look at Nigeria we are bordering a lot of countries which borders are somehow opened, so the staff strength we have honestly cannot meet the task we have. Though we are doing our best but honestly we do not have enough staff that would handle all these places. Maiduguri, Borno State alone is bordered to three different countries, Chad, Cameroun and Niger. So we have a lot of porous borders there of which under normal circumstances, if we have enough staff strength, all these places are supposed to be covered, but due to the staff strength we have, we cannot cover all but we are doing our best with the little and with few of us that are available in the organisation.<sup>145</sup>

On poverty as a promoting reason for the exposure of the consumer to dangers highlighted above, Participant 20 stated:

You know, here in Nigeria most of our people like buying cheap products. So honestly, when you buy a cheap product, you don't mind the quality of that product. You just look for something cheap and buy. You end up having problems because it would not last long.<sup>146</sup>

Participant 10 equally added his voice on the poverty situation in the country as a contributory issue to consumer problem in the purchase of fake and substandard products:

The economic reason might be responsible for it. Because most at times you see a product that is of good quality but because of the price they would refuse to buy it. Or they

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<sup>145</sup> Interview with Participant 20, a staff of SON, at his residence, August, 19, 2014.

<sup>146</sup> Ibid.

will see a product with our logo clearly displayed on it but they will go for a substandard one.

Notwithstanding the above, the SON must ensure it discharges its mandate in enforcing electricity products quality control, standardisation and certification policies. This will immeasurably assist the consumers of electrical gadgets and equipments in getting best value for their expenses and will in the long run improve consumers' welfare.

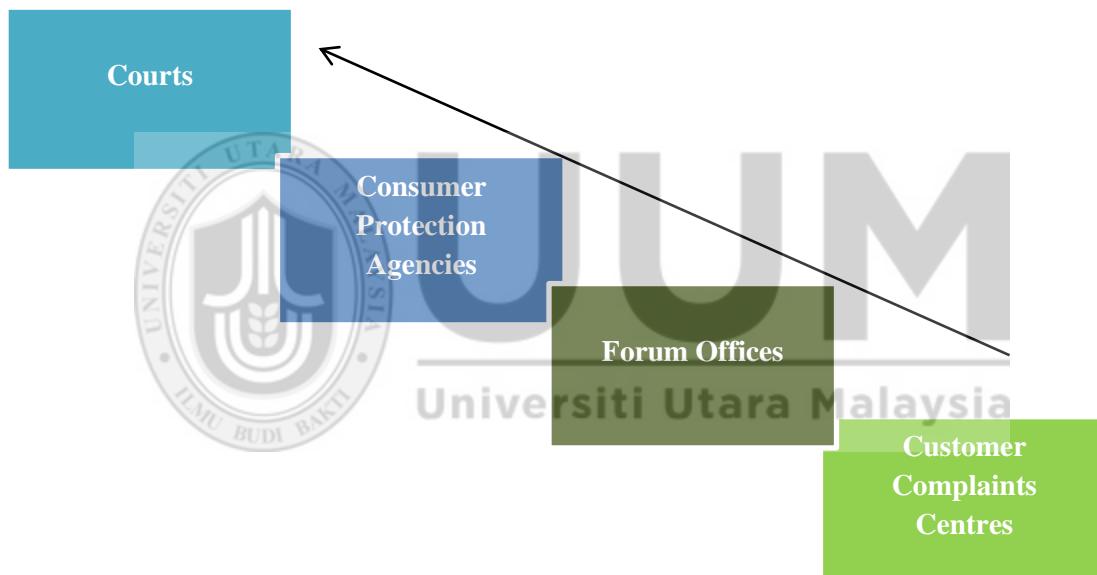


Figure 3.1  
*Institutional Framework for Consumer Protection in Nigeria*

### 3.4 The State of Consumer Protection and Standards Setting Laws: The Stakeholders Perspectives

In the course of this research, the views of the stakeholders who enforce and operationalize the above consumer protection and standards setting legislation were collected through in-depth semi-structured interviews. Some of the field officers especially in the Legal, Education, and Surveillance and Enforcement Units of the CPC

and the SON talked on the need to review the CPC Act and the SON Act to upgrade them to international standards to empower them so as to efficiently protect the consumers of electricity services, gadgets and equipments.

Participant 1 believes that “even though there are laws, the laws are not adequate to protect the consumer. He (the consumer) is only at the mercy of the supplier, and that is all.”<sup>147</sup> Additionally, Participant 15 noted that the CPC Act is not “all encompassing.” Participant 3 therefore called on the law makers to amend the CPC Act to make it all encompassing. The participant stated that the CPC Act needs amendment if they are “to be empowered.”<sup>148</sup> In other words, the CPC Act needs amendment. Participant 11 responding to the state of the CPC Act aptly described the state of the CPC Act. The Participant stated that “I must be very sincere with you; the current Act of the Council is very porous. It is not effective and I think there is the need to revisit that at the National Assembly. Make it more portent so we can act.”<sup>149</sup>

Commenting further, the same Participant 11 said “the Act (CPC Act) is very porous, you cannot work, it is just like a dog that can bark but cannot bite. You need to study the Act.”<sup>150</sup> Lending his voice on the state of the CPC Act, Participant 18 said that “our law actually has been very much; I would not say it is enough but it is quite good in getting protection for the consumers.” Giving his view on the state of the CPC Act, Participant 1 sums up the point in the following words; “what I will say is that Consumer Protection

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<sup>147</sup> Interview with Participant No. 15, a CPC staff at the CPC headquarters Abuja, Nigeria, July 9, 2014.

<sup>148</sup> Interview with Participant No. 11, at a Zonal office of the CPC, August 8, 2014.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

Council Act should be looked at holistically and give it an international approach and standardize it as an international law.”<sup>151</sup>

Although the SON Act makes certain conducts punishable under the Act, the penalties assigned for violations are in some cases not exceeding ₦200 (less than RM4).<sup>152</sup> In fact, manufacturing and delivering for sale substandard products below the Mandatory Industrial Standards attract a fine not exceeding ₦1, 000 (less than RM20) and not exceeding a year imprisonment (or both the ₦1,000 and the one year jail term) against the manufacturer.<sup>153</sup> This is highly ridiculous. Manufacturing fake and substandard products is a lucrative business. Even the highest penalty for violating Mandatory Industrial Standards (MIS) against the recalcitrant manufacturers and sellers is put between ₦50,000- ₦100,000 (not less than RM 930 but not exceeding RM1850) and ₦5,000- ₦10,000 ( not less than RM 93 but not exceeding RM186) respectively.<sup>154</sup> These paltry penalties encourage unscrupulous business to violate the law after a cost-benefit analysis of their gains and the penalties if caught. A higher penalty is recommended as Maria *et al.* believe that “a high fine is the main determinant of deterrence.”<sup>155</sup> It is based on this that Participant 5 a State Office Head of the SON noted the need to review the Standards Organisation Act especially on the paltry penalties. According to Participant 5:

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<sup>151</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACN, August 4, 2014).

<sup>152</sup> Section 19, Standards Organization of Nigeria, Act, Cap S, LFN, 2004.

<sup>153</sup>Ibid., Section 18 (5), provides that “If any item of manufacture does not comply with a mandatory industrial standard, and that item is sold or delivered to any person with a view to its being sold to the public, the manufacturer of that item shall be guilty of an offence under this Act and shall be liable on conviction to a fine not exceeding ₦1 ,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

<sup>154</sup>Ibid., Section 16 (4) and (5). Noting that the exchange rate was at February 5, 2015 which was put at N54 Nigerian Naira to a Malaysian Ringgit.

<sup>155</sup> Maria Bigoni, Sven-Olof Fridolfsson, Chloé Le Coq and Giancarlo Spagnolo, “Trust, Leniency, and Deterrence,” *Journal of Law, Economics, and Organization* (2015):1.

I have said earlier that everything needs review, and some of the laws that we had before where penalties for any offences were as low as some of them even paying 10 kobo for some offences or ₦30 for some offence. Today it is not like that. If you are doing that you discover that a lot of people would commit the offence how much would I pay. So because of that we have taken that complain to the National Assembly.<sup>156</sup>

Participant 5 equally recommended the overhaul of the regulatory regime in the area of consumer protection. According to Participant 5, “there is a need for a general overhaul of our legal system to take care of regulatory perspectives in relation to electricity supply to the consumers.”<sup>157</sup>

### **3.5 A Critical Analysis of the Legal Regime in the Light of Consumer Issues in the Nigerian Electricity Industry**

Policing Nigerian markets including the electricity markets and ensuring the protection of consumers is the responsibility of the CPC. The CPC is given the powers to stop and to request any person carrying on business including electricity service companies to furnish it with a satisfactory written assurance that it will refrain from a persistent conduct which is detrimental to consumers. Section 10 of the CPC Act provides:

(1)“Where it appears to the Council or the State Committee that a person carrying on a business has in the course of that business persisted in a course of conduct detrimental to the interest of consumers the Council or the State Committee shall use its best endeavour to obtain from him satisfactory written assurance that he will refrain from a continuation of that course of conduct.

(2) If in the circumstances specified in subsections (1) of this Act-

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<sup>156</sup> Interview with Participant No. 5 , a state head of SON at a state office of the SON, (August 19, 2014).

<sup>157</sup> Ibid.

(a) the Council or the State Committee is unable to obtain from the person in question such an assurance as is mentioned in subsection (1) of this section; or  
(b) that person has given such assurance and it appears to the Council the State Committee that he has failed to observe it, the Council or the State Committee shall notify the Attorney-General of the Federation who shall cause proceedings to be commenced against the offending person for violation of the provisions of this Act.

(3) Where in any proceedings before a court, the court finds that the person against whom proceedings are brought has in the course of his business carried on or persisted in such course of conduct as is mentioned in subsection (1) of this section, and that unless an order is made against the person he is likely to continue that course of conduct, the court may make an order against him to restrain him from continuing that course of conduct.”<sup>158</sup>

In the event a manufacturer or service provider refuses to give the above assurance or where he/she fails to desist from such conduct, the CPC or the State Committee of the CPC can notify the Attorney General of the Federation (AGF) with a view to commencing a proceeding before a court of law to obtain an order to stop such a person from such conduct.<sup>159</sup> It is argued that the section is bureaucratic and does not, as it should, empower the CPC to respond to conduct detrimental to the consumers. From the way the section is couched, the CPC Act did not say the CPC to stop the detrimental conduct. What it says the CPC should do is to obtain “satisfactory written assurance” that he will refrain from the detrimental conduct. Ordinarily, and as the first measure is to provide that the CPC in such circumstances shall mandate the person to stop such detrimental conduct and then the written assurance should follow. Again, the section did not empower the CPC as is the case with consumer protection agencies in the US to

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<sup>158</sup>Section 10 (1), Consumer Protection Council Act, Cap. C25, LFN 2004

<sup>159</sup>Ibid., Section 10 (2) & (3)

impose administrative penalties for the previous conducts neither is provision made to compensate the consumers who might have suffered from such persons' conduct. Same powers of awarding compensatory damages are not conferred on the court that the AGF might file a suit before under subsection (3).

Applying the extant provisions of section 10 of the CPC Act in the context of this research, and in view of the persistent exploitation of the electricity consumers through "crazy" billings and poor quality of electricity services in Nigeria, the CPC ought to have compelled the electricity companies for such a satisfactory written assurance that they will refrain from such conduct and/or to improve the quality of electricity services provided. In the event, they did not improve, the CPC should have written to the Attorney General of the Federation for proceedings to obtain an order against the electricity company. Unfortunately, the CPC has never written to the electricity companies nor ever requested the Attorney General for a proceeding to stop the companies from such a persistent poor service provision to the electricity consumer which is highly detrimental to their interest. In fact, in over two decades of the existence of the CPC only recently is the CPC seen to utilise its powers in using the office of Attorney General to stop consumer exploitation by businesses. This was in the recent Coca-Cola case of production of half full tins of Sprite.<sup>160</sup>

With electricity in private hands in Nigeria, serious measures are required for the protection of the electricity consumers. The global practice has shown that energy service

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<sup>160</sup> Okechukwu Nnodim, "FG Sues NBC, Coca-Cola Over Product Quality," The Punch, October 28, 2014. <http://www.punchng.com/business/business-economy/fg-sues-nbc-coca-cola-over-product-quality/>. (accessed October, 2014).

providers without checks rips off consumers through “crazy” and arbitrary billings. Evidence abound in the UK where in 2014 consumer complaints in the area of inaccurate billings and consumer complaint handling took 82% out of 132% of the complaints received.<sup>161</sup> In fact, the anti-competitive practices in the UK energy industry prompted assessment and investigations leading to opening of cases against energy companies for anti-competitive conducts that are found harmful to the energy consumers.<sup>162</sup> The UK’s situation is a warning to countries such as Nigeria. It calls for surveillance and legal and institutional structures for policing the deregulated electricity sector.

Adequate staffing, funding, and functional independence are key in ensuring the effective functioning of regulatory institution such as the CPC and the SON.<sup>163</sup> Regulatory institutions should have a degree of independence in budget allocation and implementation. They should be free from the control or interference of any public or private body, political or otherwise. These are clear requirements under the electricity Directive in the EU countries.<sup>164</sup> But the findings from the review of the extant laws and responses of the participants from the in-depth interviews show the reverse in respect of the CPC, the principal consumer protection agency in the country. The CPC is not autonomous. It is a parastatal under the Federal Ministry of Commerce and subject to

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<sup>161</sup> Ombudsman Services, Ombudsman Services: Good for Consumer, Good for Business, 2013/2014 Annual Report, [http://www.ombudsman-services.org/downloads/OS\\_annualreport\\_core\\_1314.pdf](http://www.ombudsman-services.org/downloads/OS_annualreport_core_1314.pdf) (accessed October 29, 2014).

<sup>162</sup> Competition Market Authority, Energy Market Investigations: Statement of Issues,” [https://assets.digital.cabinet-office.gov.uk/media/53fcf72640f0b60b9f000003/Energy\\_Issues\\_Statement.pdf](https://assets.digital.cabinet-office.gov.uk/media/53fcf72640f0b60b9f000003/Energy_Issues_Statement.pdf) (accessed October 29, 2014).

<sup>163</sup> David Wright and Paul De Hert, eds. *Enforcing Privacy: Regulatory, Legal and Technological Approaches*, Vol. 25 (Springer, 2016), 4.

<sup>164</sup> Article 35, Electricity Directive 2009/72 EC of the European Parliament and Council, 2009.

directives from the Minister.<sup>165</sup> It acts through the Minister<sup>166</sup> and in fact, its budget is not separate from that of the Ministry's budget as well as the said budget implementation.<sup>167</sup> Again, the CPC members' entitlements are subject to the approval of the Minister.<sup>168</sup> In fact, although the Act allowed the CPC to issue regulations, such are not effective until approved by the Minister.<sup>169</sup> The SON is also not as independent as it should be. It is also a parastatal under the Federal Ministry of Industries.<sup>170</sup> Although the SON has powers to make rules, no rules so made can be valid without the approval of the relevant Minister.<sup>171</sup>

### 3.6 Conclusion

The fact that Nigeria has a good deal of consumer protection structures is not in doubt. Apart from the above analysed international instruments, local legislation abounds on the protection and promotion of consumer interests. However, the consumer protection and standard setting laws suffer from many weaknesses. Apart from being inadequate, they are penal as opposed to compensatory in approach, and even the fines imposed are ridiculously meagre. Additionally, no single consumer protection legislation makes comprehensive provisions on vital issues integral to consumer protection. The consumer

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<sup>165</sup> Section 30, Consumer Protection Council Act, Cap. C25, LFN, 2004.

<sup>166</sup> Ibid., Sections 1 (6), 4 (2) (b), (3) & (4); and 24.

<sup>167</sup> Ibid., Section 25 (3).

<sup>168</sup> Ibid., Article 5 of the Schedule to the Consumer Protection Council Act, Cap LFN. See also Budget Office of Nigeria, 2013 Budget Amendment: 17. Summary Trade and Investment; [http://www.budgetoffice.gov.ng/pdfs/2013%20budget%20amendment/17.%20Summary\\_Trade%20&%20Investment.pdf](http://www.budgetoffice.gov.ng/pdfs/2013%20budget%20amendment/17.%20Summary_Trade%20&%20Investment.pdf) (accessed August 20, 2013); Budget Office of Nigeria, 2014 Appropriation Act: 17. Summary Trade and Investment; [http://www.budgetoffice.gov.ng/pdfs/2014\\_appriation%20act/17.%20Summary\\_Trade%20&%20Investment.pdf](http://www.budgetoffice.gov.ng/pdfs/2014_appriation%20act/17.%20Summary_Trade%20&%20Investment.pdf) (accessed March 5, 2014).

<sup>169</sup> Sections 25 (3), & 31 Consumer Protection Council Act, Cap. C25 LFN, 2004.

<sup>170</sup> Section 24, Standards Organization Act, Cap S.9, LFN, 2004

<sup>171</sup> Ibid., Section 23.

protection provisions are scattered in different laws, with “disappointing impacts on consumer protection.”<sup>172</sup> No consumer rights and remedies are declared and defined, no consumer dispute settlement avenues established and no competition regulatory framework exist. This is not good for the overall interest of the consumer. The UNGCP is now thirty-one years old. It has been very influential in the development of consumer rights and welfare across the globe. Today, flowing from the UNGCP, several countries have taken consumer rights protection beyond ordinary Acts of parliament by making them part of their constitutional provisions. That influence is yet to be felt in Nigeria in view of the gap between the ideals of the UNGCP and the reality in the Nigerian statute books and institutional arrangements in the area of consumer protection. The same applies to the AMLCP. Most of the legal and institutional structures for better and efficient consumer protection as provided in the UNGCP and AMLCP are not included in any consumer protection legislation in the country. The consumer rights and remedies declared therein, the Small Claims Court and Restrictive Trade Practices Tribunal are not established. This is as opposed to the progress made in other African countries such as the Republic of South Africa, Kenya and Ethiopia in the implementation of most of these international instruments for consumer protection. This thesis argued that the state of the legal and institutional frameworks for consumer protection is full of gaps and missing structures. Protection of the electricity consumers cannot be guaranteed unless something concrete is done to improve on the frameworks legally and institutionally. This chapter achieved research objectives 1 and 2, and accordingly answered research questions 1 and

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<sup>172</sup> Benedict Bakwaph Kanyip, *Historical Analysis of Consumer Protection Laws in Nigeria*, (Lagos: National Institute of Advanced Legal Studies (NIALS), 1997), 26.

2. In view of the themes of this thesis, the next chapter examined the legal and institutional frameworks for the regulation of the deregulated electricity sector.



## **CHAPTER FOUR**

### **THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ELECTRICITY**

### **SECTOR DEREGULATION IN NIGERIA**

#### **4.1 Introduction**

As earlier indicated, Nigeria was also caught in the electricity sector reform. Towards the electricity reform, the country took several steps. The first step was the formulation of the Power Sector Reform Policy. The policy gave birth to the Electric Power Sector Reform Act, (EPSRA) 2005. The EPSRA 2005 laid the foundation upon which all the reform structures stood. It established the regulatory agency that is the Nigerian Electricity Regulatory Commission (NERC) which is to superintend the electricity industry. Equally, the EPSRA provided the details relating to the unbundling of the industry from the state power agency, National Electric Power Authority (NEPA) to a privatized one. The privatization was carried out by the National Council on Privatization (NCP) through the Bureau of Public Enterprises (BPE). Both the NCP and the BPE are, however, the creation of the Privatization and Commercialization Act, 1999.

Adopting the doctrinal and qualitative research approach, specifically the usage of interviews for data collection, this chapter analysed the process of the Nigerian electricity sector deregulation with emphasis on the consumer safeguards in the enabling laws and regulations. The institutional arrangements in the electricity industry for the protection of

the electricity consumer has been highlighted. In particular, the chapter highlighted the picture of the Nigerian electricity industry under the state monopoly regime and the current deregulated regime. Comparisons were also made on the state of consumer experience based on pre and post-privatization to see whether the consumer is better-protected post-privatization or not? This chapter answered research question 2 and achieved research objective 2.

## **4.2 The Legal Framework for Electricity Regulation and Deregulation in Nigeria**

The electricity industry in Nigeria is not left without policy direction and laws to regulate the industry. The legal structures for the electricity industry regulation existed even before the country's independence. The laws are the Electricity Corporation Parliamentary Ordinance (ECPO) No. 15, 1950; the Electricity Act, Cap E7 Laws of the Federation of Nigeria (LFN), 2004; the National Electric Power Authority, Cap N33, LFN, 2004; Electric Sector Reform Act, 2005 and the statutory enactments made thereunder. These statutes are analysed accordingly in the subsequent part of this thesis.

### **4.2.1 The Electricity Corporation Parliamentary Ordinance (ECPO) No. 15, 1950**

As in chapter two supra, the ECPO was among the earliest legislative enactment in the area of electricity regulation in Nigeria. The ECPO No. 15 of 1950 was enacted to give Electricity Corporation of Nigeria (ECN) a legislative endorsement and protection. The Ordinance established the ECN that took over the regulation and management of the electricity infrastructure that existed in the 1950s.

The ECPO established the ECN and listed its functions and duties. These include the establishment and management of the existing electricity undertakings and those that may be established in future in the public interest; guaranteeing electricity supply at a reasonable price and offering advise and guidance to the government on the issues of generation, transmission and distribution of electricity and related matters.<sup>1</sup> This shows that the supply of electricity service at a fair price was, from the earliest statutory enactment one of the objectives behind the establishment of regulatory agencies to superintend the electricity industry. But has this objective been achieved today 65 years after the passage of ECPO in view of the arbitrary billing in the industry?

#### **4.2.2 The Electricity Act, Cap. E7, Laws of the Federation of Nigeria, 2004**

The Electricity Act (EA) was enacted in 1929 and re-enacted as Decree in 1998.<sup>2</sup> The Electricity Act is made up of four sections only, and was passed to regulate and control all electrical installations whether public or privately owned in the country.<sup>3</sup> Specifically, the Act was enacted to regulate and control electricity generation, supply and usage in the country.

Except otherwise permitted under the Electricity Act, no person or authority is allowed to operate any electrical undertaking for supply or usage without a license.<sup>4</sup> The Minister in charge of the ministry of power is empowered by the Electricity Act to issue regulations stipulating the terms and conditions upon which a license may be issued and how it can

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<sup>1</sup> Section 14, Parliamentary Ordinance No 15, 1950.

<sup>2</sup> Electricity Amendment Decree No. 28, 1998.

<sup>3</sup> Long title to the Electricity Act, Cap E7, LFN 2004. See also section 2 thereof.

<sup>4</sup> Section 3, Electricity Act, Cap E7, LFN 2004.

be sustained or terminated.<sup>5</sup> From a consumer point of view, consumer safeguard against anti-competitive conducts is inserted as a term of the license.

In the first place safety of the electricity to be supplied to the consumers is one of the terms and conditions of the license issued.<sup>6</sup> Again, any license issued pursuant to the provision of the Electricity Act, shall not confer on the licensee the monopoly right over the supply of electricity in the area covered by his/her license.<sup>7</sup> Although anti-monopolistic practices are prohibited under the Electricity Act, no provision or guidance is however, provided in the Electricity Act as to what constitute a monopoly or a restrictive trade practice against the tenor of the license to be issued. More so, no such provision is made under National Electric Power Authority (NEPA) Act which established the NEPA (as discussed below), the authority to enforce the Electricity Act. This is a flaw; it is submitted. In fact, it is argued below that even the NEPA Act itself is so empty as far as consumer protection is concerned as the NEPA Act made no provision for protecting the consumers from the abuses that could be occasioned on the consumer. It is therefore, contended that the provisions prohibiting monopoly practices and consumer abuses are just there as decoration in the Electricity Act.

Further on the emptiness of the Electricity Act on consumer protection, no provision is made on, or even mention of the word “consumer rights” or “consumer interest” in the Electricity Act and all the subsidiary legislations and regulations issued under it.

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<sup>5</sup> Section 4, Electricity Act, Cap E7, LFN 2004.

<sup>6</sup> Section 4 (b), Electricity Act, Cap E7, LFN 2004.

<sup>7</sup> Section 3(4) Electricity Act, Cap E7, LFN 2004.

Consumer protection is so vital to be omitted in an Act meant to regulate a sector such as the electricity that virtually all citizens are interested in.

#### **4.2.3 The National Electric Power Authority (NEPA) Act, Cap N33 LFN, 2004**

The National Electric Power Authority (NEPA) Act is made of 5 parts and 45 Sections. The NEPA Act established the NEPA as the regulatory body to superintend the electricity industry. Drawn from the mandates of NEPA under the NEPA Act, NEPA is to maintain “efficient, coordinated and economical system of electricity supply” in the whole country and related matters.<sup>8</sup> Under the NEPA regime, the government through NEPA was the generator, distributor and retailer of electricity. The government equally provided the policy direction. The industry then was a monopoly. As such consumer protection was complicated. The regulator to whom the consumers can complain to is the provider of the electricity service. Would NEPA sit on complaints made against it and do justice to the consumers? Participant 7 lamenting on the monopoly arrangement under the NEPA Act stated that “. . . before we had a single monopoly that generates, transmits and distributes. So there was no recourse to, for there was no redress as it were.”<sup>9</sup>

Little wonder that in the sphere of consumer protection, the NEPA Act made scanty provisions. In other words, no much consumer protection safeguards are made under the NEPA Act. The only provision that positively protects the consumer (even though, in theory) is section 7 (3). This section made provision for electricity supply at a reasonable price as one of the duties of the NEPA. The sub-section (3) provides that it is part of the

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<sup>8</sup> Section 1, National Electric Power Authority Act, Cap. N33 LFN 2004.

<sup>9</sup> Interview with Participant No. 7, a Nigerian Electricity Regulatory Commission (NERC) staff, at the NERC Headquarters in Abuja.

general functions of NEPA “supplying electricity and promoting economic and efficient generation, distribution and supply at a reasonable prices.”

Although the NEPA Act envisages electricity service provision at a reasonable price, the picture of the electricity industry under the NEPA Act’s regime was nothing to write home about. The industry was characterized by epileptic electric power supply as load shedding as well as power rationing, brown and black out and shabby treatment of consumers by NEPA staff were very common.<sup>10</sup> This should be the picture in view of the available energy generated under the NEPA Act’s regime.<sup>11</sup>

The NEPA Act appears to be one of the worst legislation in protecting consumers’ interest. This is because the NEPA Act categorically immune NEPA from liability from payment of damages or compensation to consumers in the case of any injury or inconvenience occasioned by service interruptions.<sup>12</sup> Section 12 (2) of the NEPA Act provides that NEPA:

“The Authority shall in no case be under any obligation to pay damages or compensation for loss, damage or inconvenience caused to any consumer through any suspension, failure, discontinuance or whole or partial interruption of the supply of electricity howsoever caused.”

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<sup>10</sup> Emeka Onyegbule, “A SWOT Analysis of Nigerian Electricity Supply Industry,” *Power Watch 1*, no. 4 (April- June, 2014):22; Ayodeji Olukoko, “Never Expect Power Always”: Electricity Consumers’ Response to Monopoly, Corruption and Inefficient Services in Nigeria,” *African Affairs* 103, no. 410 (2004): 57.

<sup>11</sup> Grace Eyoma, “The Powers of NERC to Regulate Electricity Consumers’ Right as Contained in the EPSR Act, 2005,” (nd).

<sup>12</sup>Chuks Nwani and Reuben Okoye, “In search of Consumer Protection in the Nigerian Electricity Market,” July 26, 2012. <http://businessdayonline.com/NG/index.php/law/cover/41730-in-search-of-consumer-protection-in-the-nigerian-electricity-market> (accessed February 24, 2013).

Participant 17<sup>13</sup> believes that the above was a barrier for consumer redress under the NEPA's regime. According to the Participant, "there was a barrier where you couldn't take NEPA to Court. It was a very difficult thing and we had a matter like that we took NEPA to court and we were not successful."<sup>14</sup> Unhappy with the above ouster clause against suing NEPA for any grievance arising from service failure or injury, Participant 6 stated that:

What we have before under the old NEPA Act, was that you cannot sue, the courts' jurisdictions were ousted for any individual to take NEPA to court to seek for any damages or redress for any damage or injury caused to him as a result of power failure.<sup>15</sup>

Interpreting the section, the Nigerian Court of Appeal stated that "Section 12 (2) is a complete blockade or embargo as far as the payment of damages or compensation is concerned. There is, however, one subtle point, and it is that the immunity relates only to the authority."<sup>16</sup> In fact, the court called for the deletion of the said section as it is anti-consumer and inimical to rule of law. In the words of the court:

The immunity clause should be expunged. That is not the work of the courts. It is for the legislature. Let the National Assembly take up the assignment. That will be good for all consumers. As it is, NEPA looks like a sacred cow. Nobody can touch it. And that is bad not only for the consumers but to the general public.

... it is a most obnoxious and oppressive provision which is inimical to the advancement of the rule of law. No democracy worth its name should feel happy with such a provision. I am not happy, the Judge that I am in the

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<sup>13</sup> Interview with Participant No. 17, an NERC staff at the NERC Headquarters, Abuja, Nigeria, July 9, 2014.

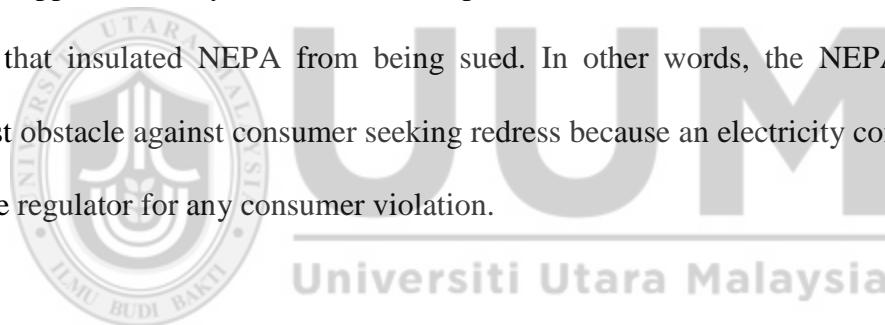
<sup>14</sup> Ibid. The old regime under NEPA Act was replaced with the Electric Power Sector Reform Act, 2005.

<sup>15</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office.

<sup>16</sup> Mr. S. A. Aamdi V. Engineer Effiong A. Essien (1993) LPELR - 14644

enforcement of the rule of law in our cherished democracy. As I indicated above, I do hope the National Assembly will expunge the subsection from the Act. That will be good for persons who may feel aggrieved by the acts of the National Electric Power Authority: and therefore to the entire society.<sup>17</sup>

Happily, as it will be seen under the discussion of the EPSRA, 2005 (4.2.4 below) not only was section 12 (2) of the NEPA Act expunged, the whole NEPA Act was repealed by the EPSRA 2005.<sup>18</sup> The other anti-consumer provisions are the section that says NEPA is not responsible for the consumer's wires and installations.<sup>19</sup> This is a blanket provision. Does it mean that NEPA is not responsible even when NEPA is negligent? The answer appears to be yes in view of the provisions of section 12 (2) of the NEPA Act supra that insulated NEPA from being sued. In other words, the NEPA Act created biggest obstacle against consumer seeking redress because an electricity consumer cannot sue the regulator for any consumer violation.



The activities of the NEPA staff equally compounded the worries of electricity consumers in the industry. In terms of complaints handling, the NEPA staff were not helpful. Complaints and distress calls on electricity interruptions are hardly responded to.<sup>20</sup> Responses are often based on the readiness of the consumers to offer graft to the NEPA staff.<sup>21</sup>

<sup>17</sup> Mr. S. A. Aamdi V. Engineer Effiong A. Essien (1993) LPELR - 14644

<sup>18</sup> Section 99, EPSRA, 2005.

<sup>19</sup> Section 26, National Electric Power Authority Act.

<sup>20</sup> Ayodeji Olukoju, “‘Never Expect Power Always’: Electricity Consumers’ Response to Monopoly, Corruption and Inefficient Services in Nigeria,” *African Affairs* 103, no. 410 (2004): 57.

<sup>21</sup>Ibid.

Although improvement in electricity supply across the federation was one of the key objectives of enacting the NEPA Act, but that objective was not met as there was electricity supply crisis under the NEPA jurisdiction.<sup>22</sup> The electricity generation, supply and distribution were then abysmally low compared to the country's population and demands.<sup>23</sup> This was among the reasons that necessitated the agitations for a shift from the state ownership and regulation of the Nigerian electricity industry to a deregulated one. The National Power Policy, which gave birth to the Electric Power Sector Reform Act, 2005, was passed to cater for such shift.

#### **4.2.4 The Electric Power Sector Reform Act, (EPSRA) 2005**

The Electric Power Sector Reform (EPSRA), 2005 the extant law that regulates the electricity industry is made up of 13 parts and 101 Sections. The EPSRA 2005 was enacted to facilitate the formation of a holding company as well as successor companies to take over the business, assets, liabilities, electricity service provision as well as the functions of the hitherto state agency in charge of the electricity industry - the NEPA. The EPSRA repealed the Electricity Act and the NEPA Act. By repealing the NEPA Act, NEPA the then electricity sector regulator, electricity generator and distributor ceased to exist. With these repeals, there was the need for a body to takeover the assets and liabilities of NEPA. The EPSRA 2005 therefore, mandated the formation of a company at takeoff. The responsibility of forming the company was vested in the National Council on Privatization. The EPSRA 2005 equally made provisions that the shares of the company

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<sup>22</sup> Ibid.

<sup>23</sup>Titus Koledoye Olugbenga, Abdul-Ganiyu A Jumah and D. A. Phillips, "The Current and Future Challenges of Electricity Market in Nigeria in the Face of Deregulation Process," *African Journal of Engineering Research* 1, no. 2 (2013): 36.

so formed shall be held by the Federal Ministry of Finance (FMF) and the Bureau of Public Enterprises (BPE) on behalf of the Federal Government of Nigeria.<sup>24</sup> The law gave birth to the Power Holding Company of Nigeria (PHCN) that replaced NEPA and took over the business of electricity hitherto executed by NEPA. PHCN being a transition company was later unbundled in line with the provision of the EPSRA 2005 and successor companies in generation, distribution and transmission were later formed. The successor companies were later sold to private firms that took over the business of electricity generation and distribution with transmission remaining a monopoly handled by the state through the Transmission Company of Nigeria (TCN).

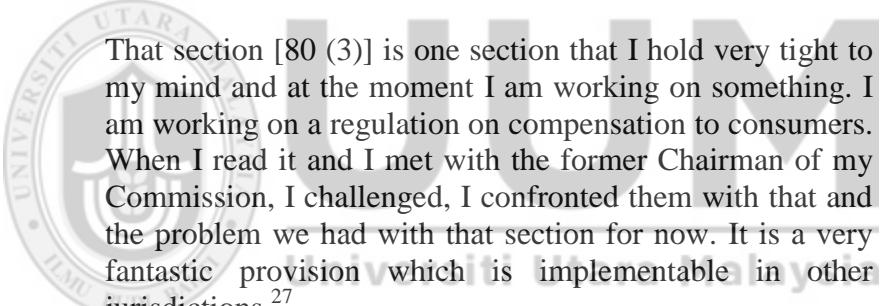
The EPSRA 2005 not only made provisions for the transition of the electricity industry from a monopoly to a deregulated or a privatized one, but equally made provisions for consumer protection. One of the consumer-related provisions is Section 80 (3) which requires that a compensation regime should be designed for failure in service delivery. The sub-section provides that the “Commission shall establish standards for compensation to consumers who do not enjoy regular power supply.” Although it is settled that electricity supply is epileptic, no regulation for such compensation to the electricity consumers for the erratic electricity supply is put in place by the NERC as the industry regulator. The researcher and all the Participants interviewed in this study were not aware of a single kilowatt compensation granted to electricity consumer despite the disappointing and unreliable power supply in the country. In fact, many were not aware of the said provision. For instance, Participant 1 when asked about the section and the

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<sup>24</sup> Section 1, Electric Power Sector Reform Act, No.6, 2005.

compensation standards responded that he “never heard of such.”<sup>25</sup> The same response came from Participant 4 when asked about the provisions of section 80 (3) on the compensation for irregular electricity services. Participant 4 responded that he was just hearing about it for the first time. The Participant stated that “I have not heard of this law till now. And the reason why, I have not heard of it is because they are not doing anything.”<sup>26</sup>

In fact, Participant 17, a staff of the NERC when confronted with the section and when asked what the NERC is doing about the section and issue of compensation standards in the electricity industry provided in the section responded thus:



That section [80 (3)] is one section that I hold very tight to my mind and at the moment I am working on something. I am working on a regulation on compensation to consumers. When I read it and I met with the former Chairman of my Commission, I challenged, I confronted them with that and the problem we had with that section for now. It is a very fantastic provision which is implementable in other jurisdictions.<sup>27</sup>

In all deregulation processes across jurisdictions the establishment of independent regulatory agency to superintend on the new electricity industry as well as competition regulatory authorities are cardinal.<sup>28</sup> Therefore, having repealed the law establishing NEPA and with the provision on a holding company being for a transitional period, there was a need for a regulatory body to oversee the electricity services provision at all the

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<sup>25</sup> Interview with Participant No. 1, a state head of Legal Aid Council of Nigeria, at his office.

<sup>26</sup> Interview with Participant No. 4, an academic lawyer involved in consumer protection at his residence.

<sup>27</sup> Interview with Participant No. 17, a staff of the NERC at the headquarters of the NERC Abuja, July 9, 2014.

<sup>28</sup>TianYi Qu, “The Study of Power System Reform with the Goal of Sustainable Development,” in *2015 International Conference on Mechatronics, Electronic, Industrial and Control Engineering (MEIC-15)*. (Atlantis Press, 2015),1096.

levels of the electricity value chain. The EPSRA 2005, therefore, established the Nigerian Electricity Regulatory Commission (NERC). Detail analysis of the functions of the NERC has been provided in the later part of this chapter.

#### **4.3 The Electricity Regulations/Procedures<sup>29</sup>**

Pursuant to the powers conferred on the Nigerian Electricity Regulatory Commission (NERC), under Section 96 (2) (a) (c) (d) (h) of the EPSRA 2005, NERC issued several guidelines for electricity sector regulation. These include Connection and Disconnection Procedures for Electricity Services Regulation, 2007; Customer Complaints Handling: Standards and Procedures 2006; Customer Service Standards of Performance for Distribution Companies, 2007; License and Operating Fess Regulation, 2010; Meter Reading, Billing, Cash Collections and Credit Management for Electricity Supplies Regulations, 2007; Application for License (Generation, Transmission, System Operations, Distribution and Trading, 2010; and Regulations for the Granting of the Permits for Captive Power Generation, 2005.

For the purpose of this research, only the regulations with direct bearing on consumer protection have been examined. These included the Electricity Supply Regulations; the Customer Complaints Handling: Standards and Procedures; the Customers Service Standards for performance for Distribution Companies, the Meter Reading, Billing, Cash Collection and Credit Management for Electricity Supplies and the Connection and Disconnection Procedures.

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<sup>29</sup> The EPSRA is the enabling law for the electricity industry. It has however, conferred powers on the regulatory agency to issue industry guides and procedures through regulations for regulating the entire activities in the industry.

#### **4.3.1 The Nigerian Electricity Regulatory Commission Electricity Supply Regulations (NERCESR) [S.I. 6 of 1996]**

From the name, the NERCESR deals with the issues of electricity supply to consumers.

By regulation 163 of the NERCESR, licensees are mandated except in deserving circumstances to maintain a continuous and efficient electricity supply to consumers. The deserving circumstances are repairs for plant break down; damage and damage prevention, new connections or improve supply. In fact, by another regulation, a customer's supply shall not be interrupted even in those deserving circumstances unless he is notified a minimum of 3 days to the repairs or equipment maintenance.<sup>30</sup>

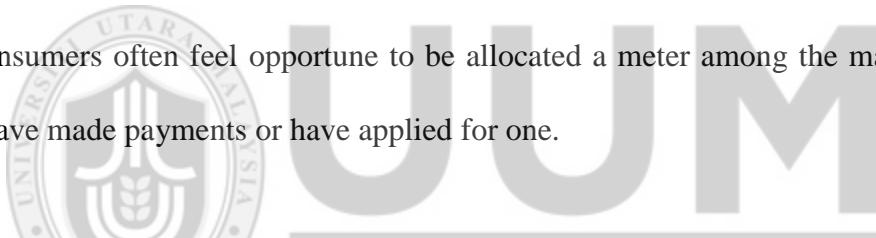
For the purpose of consumer protection, the NERCESR requires among other things that the electricity to be supplied to premises should have a measurement instrument. The meter is the measuring instrument contemplated by the regulation. In fact, metering consumers is part of the terms and conditions of licenses for electricity provision. According to Participant 17, “conditions of license are very many. Consumer services you render to consumers must be adequate and safe, and consumers are supposed to be metered.” But a close and thorough perusal of the NERCESR indicates that consumers are required to pay for electricity meters before one is installed in their premises.<sup>31</sup> This is exploitative and hardly the practice in other jurisdictions. The meters intended to be used by a licensee in ascertaining the consumption and charges payable by an electricity consumer for electricity supplied to the consumer shall prior to installation be tested to

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<sup>30</sup>Regulation 4, Nigerian Electricity Commission Customer Service Performance Standards Performance for Distribution Companies, 2007.

<sup>31</sup> Regulation of 159 NERCESR, 1996.

determine its accuracy and compliance with the extant regulations.<sup>32</sup> In fact, where the electricity meter fails to meet the standards of accuracy, the law is that it cannot be installed until the necessary repairs and adjustment and following its retesting.<sup>33</sup> In furtherance of the need to ensure the proper testing of meters, the Regulation requires that licensees establish meter testing stations. This is required for the determination of the accuracy of meters in the event of new installations, consumer complaints or the periodic meter testing as required under Regulation 153.<sup>34</sup> Regulation 153 requires every meter to be removed for meter testing to see if it is accurately functioning. Today the meters are hardly available. In fact a larger percentage of the consumers are unmetered and are billed based on estimation.<sup>35</sup> Even when meters are available, no such testing is made as the consumers often feel opportune to be allocated a meter among the many consumers who have made payments or have applied for one.



Again, this regulation is also in breach than observance. Although faulty meters are to be removed, tested and repaired, getting staff of the Disco<sup>36</sup> to rectify such meter problems is consumers' night-mare. Even when the staff of the Disco are forth coming, the consumer is made to pay for such repairs despite the ownership of the meters residing in the Disco. Narrating his experience, Participant 4 stated that "currently my meter has a problem and they are not maintaining it, if I get an engineer from their office, I must pay him."

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<sup>32</sup>Ibid., Regulation 149.

<sup>33</sup>Ibid. Regulation 149 (2).

<sup>34</sup>Ibid., Regulation 150 & 153

<sup>35</sup> Segun Adebawale, "Install Meters or Disconnect us From National Grid, Consumers Tell Ikeja Electric," The Eagle Online, Feburuary 3, 2015; Alohan Juliet, "Electricity Consumers Begin Payment For Meters," Leadership News Paper online, (Abuja), May 14, 2013

<sup>36</sup> Electricity Distribution Companies (Discos) are the companies at the distribution level that supply electricity to the consumers' premises.

It is submitted that considering the state of metering in the industry, more needs to be done in increasing the metering of the consumers and for a more practical observance of this regulation. In fact, it is contended that in respect of the existing metered consumers the regulation is more in breach than observance as the researcher and most interviewees were not aware of any meter testing station of any of the Discos or the real testing of meters before installation on consumer premises.

#### **4.3.2 The Nigerian Electricity Regulatory Commission's Customer Service Standards of Performance for Distribution Companies (NERCCSSPDC) (S.I. 40 of 2007)**

In the normal cause of events, customer connections to the grid may be interfered with or face problems. Where a consumer reports to a Disco that his/her light went off, such a Disco shall ensure that its authorised officer visits the premises of the consumer within 24 hours of the consumer's complaint. The official's visit is with a view to determining the cause of the problem. Where the problem is related to the Disco's equipment, such must be repaired, and electricity restored within 24 hours from the customer's complaints.<sup>37</sup>

In the case of a request for new connection, the Disco shall ensure the connection of the consumer within ten days of the customer's request. This is upon the Disco's inspection of the new premises, agreement between the consumer and the Disco and subject to

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<sup>37</sup> Regulation 1, Nigerian Electricity Commission Customer Service Standards Performance for Distribution Companies, (NERCCSSPDC), 2007.

payment of charges by the consumer.<sup>38</sup> Where a customer lodges a complaint of low or high voltage or that electrical appliances are burnt, a Disco shall ensure its authorised staff visits the consumer's premises within 24 hours of the problem being reported.<sup>39</sup> In cases of meter disputes, however, where a customer reports to a Disco that the meter used in calculating his/her usage incorrectly recorded the consumer usage, or that his/her bills are too high or too low compared to the consumers normal monthly bills or that of the premises, authorise official of the Disco shall within three working days visit the customer's premises and cause a test of the said meter in appropriate circumstances.<sup>40</sup> The longest time provided that the official must visit the premises is not more than ten days from the date of the report.<sup>41</sup> This regulation is also in breach than observance. Faulty meters are hardly repaired within the stipulated days and the consumers bear the cost of repairs. The response of Participant 4 ( under 4.2.1.) above is instructive.

#### **4.3.3 The Nigerian Electricity Commission Customer Complaints Handling: Standards and Procedures (NERCCCHSP), 2006.**

The NERCCCHSP deals with consumer complaints on electricity service provision in the industry. It was made pursuant to Section 96 (2) (c) and (d) of the EPSRA 2005. Under the NERCCCHSP, complaints are made in writing on any issue that relates to deficient electricity service provision, unfair and restrictive trade practices, excessive pricing beyond the price fixed by the NERC, unsafe electricity service provision, or any contractual exploitation of the electricity consumer.<sup>42</sup>

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<sup>38</sup> Ibid. Regulation 2.

<sup>39</sup> Ibid. Regulation 5.

<sup>40</sup> Ibid., Regulation 6.

<sup>41</sup> Ibid.

<sup>42</sup> Regulation 2 (6), NERCCCHSP, 2006.

Under the NERCCCHSP, epileptic, and poor quality electricity service provision is a deficiency within the ambit of issues a consumer can lay his/her complaints. Metering and billing issues, disconnection as well as reconnection issues and failing to provide the requisite three days' notice before service interruption are deficiencies consumers can complain on within the meaning of the regulation.<sup>43</sup>

For redressing consumer complaints, every Disco is required by the Regulation to establish a unit to be called the Customer Complaint Unit (CCU).<sup>44</sup> The CCU is to be headed by a senior officer of the Disco.<sup>45</sup> It is observed that the CCU are located at the head offices of the Discos which are located in the urban areas. What happens to the rural and other consumers especially the electricity consumers who are in the rural areas? Distance from the CCU could deter electricity consumers with genuine cases from ventilating them. The CCUs must be established and spread across the country and must be within the reach of all for consumer justice.

The NERCCCSHP provides the processes or stages for resolving consumer disputes arising from the operations of the Disco. Extra-judicially, complaints start at the CCU of the Disco.<sup>46</sup> Where the CCU is unable to resolve the dispute, and then a consumer is allowed to file his/her case at the Consumer Forums.<sup>47</sup> Should the Consumer Forums fail

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<sup>43</sup> Ibid., Regulation 2 (11).

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., Regulation 3(3).

<sup>46</sup> Ibid., Regulation 3 (5) , (6) and (7).

<sup>47</sup> Ibid., Regulation 3 (9) and (10).

to resolve the dispute, a consumer can appeal his/her matter to the NERC.<sup>48</sup> The NERC should be able to resolve the dispute. In the unlikely event the NERC could not resolve the dispute, parties are not stopped from resorting to the courts to resolve their disputes.<sup>49</sup> This procedure is long and is contrary to the expeditious disposal requirement of consumer dispute. Detail examination of the dispute resolution process in the Nigerian electricity industry has been made in the next chapter.

#### **4.3.4 The Nigerian Electricity Regulatory Commission Connection and Disconnection Procedures for Electricity Services, (NERCCDPES) 2007**

The NERCCDPES was also enacted pursuant to section 96 of the EPSRA 2005. The Regulation deals with the process and terms for the supply of electricity by a Disco to a consumer. By the regulation, an intending electricity consumer requires to submit an application in writing to a Disco for the supply of electricity.<sup>50</sup> Where the Disco is satisfied upon the consumer's payment of the necessary fees and fulfilling all other terms such as provision of a means of identification and information, the Disco shall connect the consumer to the grid within 48 hours. This procedure applies to existing electricity consumers as well as new supply addresses.<sup>51</sup> Disconnections are only allowed where the consumer fails in his/her duty of paying for the electricity supplied and consumed after he/she is presented a bill evidencing such consumption.<sup>52</sup>

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<sup>48</sup> Regulation 12.

<sup>49</sup> Ibid.

<sup>50</sup> Regulation 1 NERCCDPES, 2007.

<sup>51</sup> Ibid. Regulation 3 and 4.

<sup>52</sup> Ibid., Regulation 5.

Signing the necessary papers brings the Disco and the consumer into a binding contractual relationship. As for the consumers, once he/she is connected, he/she has obligations as well as a right to electricity supply. A Disco is however prohibited from disconnecting a non-paying customer where such a customer has settled his/her bill; has proposed modality for restructured payment; the customer has unresolved complaints on previous bills; or he/she has a pending application for assistance under the Power Customer Assistance Fund or any other consumer welfare scheme, or that the only debt hanging is not for consumptions such as meter maintenance charge.<sup>53</sup>

Penalties abound where a Disco wrongfully disconnected a consumer. The penalties ranged between ₦1,000 to ₦2,000 (RM 17.2 to RM 34.5 at ₦58/RM1) and are payable to the wrongly disconnected consumer depending on the nature of the consumer. For the residential consumers he/she is entitled to ₦1,000; commercial consumers ₦1,500; industrial consumers ₦2,000 while special customers are entitled to ₦2,000 as well.<sup>54</sup> The customer shall be reconnected within the period acceptable under the laws and regulation.<sup>55</sup> The researcher is not aware of any payment made to any customer despite known cases of wrongful disconnections.

#### **4.3.5 The Nigerian Electricity Regulatory Commission Meter Reading, Billing, Cash Collection and Credit Management for Electricity Supplies Regulation, (NERCMRBC&CM), 2007**

Metering and billing as well as credit management for electricity services are vital issues for the consumer. The NERC made a regulation in that regards. The NERCMRBC&CM

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<sup>53</sup> Ibid., Regulation 10.

<sup>54</sup> Ibid., Regulation 11.

<sup>55</sup> Ibid., Regulation 12.

was enacted pursuant to section 96 of the EPSRA 2005. By this regulation Discos are mandated to obtain actual meter reading from all consumer premises either monthly or once in three months period.<sup>56</sup> Although Discos have the right to issue bills, such bills are to be in clear terms and understandable.<sup>57</sup> How understandable are bills issued to consumers when they are in English language not amenable to all? It is safe to conclude that the greater percentage of the consumers especially the rural consumers who cannot read, write or speak English language do not know the content of their bills since it is written in a foreign language. The researcher is not aware of bills issued in the native languages of consumers.

Additionally, Discos are not allowed to issue two bills within the same period save in cases where the consumer himself/herself request for a supplementary bill.<sup>58</sup> In case the Disco could not obtain the actual reading, the Regulation requires that the Disco leaves at the consumer premises a written notice explaining to the consumers their inability to obtain the meter reading. In this case the customer is to provide the reading to the Disco. Where the consumer fails, the Disco is permitted to bill such customer by estimation for the period they were unable to obtain the reading.<sup>59</sup> Noting however, that the estimation is not to be arbitrary but based on the approval of the NERC. For the protection of the consumer, the Regulation repeatedly states that on no account should a Disco artificially inflate consumers' bills. Evidence is found in Regulations 1 (4), 2 (7) and 9 (10) (a). Regulation 2 (7) for instance provides that a Disco "shall not under any circumstance

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<sup>56</sup> Regulation 1, NERCMRB&CM, 2007.

<sup>57</sup> Ibid., Regulation 4 (3).

<sup>58</sup> Ibid., Regulation 4.

<sup>59</sup> Ibid., Regulation 1 (2) & (3).

artificially inflate the estimated usage of either old or new customer.” Unfortunately, the Discos are found of flouting the parts of this Regulation through arbitrary inflation of consumers bills especially the unmetered consumers. Recently, the Abuja Disco was found to have arbitrarily inflated the electricity consumers under its coverage by more than 100%.<sup>60</sup>

Where a consumer is changing or moving out of premises, it is his/her responsibility to notify the Disco to take actual reading of his/her consumption before he/she vacates the premises. Where he/she fails to do that, he/she may be liable to share in paying half the actual energy consumed together with the new occupant.<sup>61</sup> In circumstances where it is established that no other person occupies the premises since the vacation of the consumer, the meter reading shall be the final reading and the consumer would be liable to settle the same. The metering gap in the industry makes the applicability of this Regulation not to be appreciated. But at any rate the existing metered consumers are rarely treated in accordance with dictates of this regulation. For instance, the researcher as a consumer and from the notes taking in the course of the interviews the issue of Discos leaving notice of their inability to obtain meter reading thereby leaving the duty of doing the reading to the consumer in whose failure they estimate the consumer is never witnessed or experienced.

Furthermore, this Regulation give consumers the options for bill settlement. A consumer can pay cash or bank draft at any of the Discos’ office or through bank deposit at any of

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<sup>60</sup> Okechukwu Nnodim, “Tariff Hike: NERC to Sanction Abuja Disco,” The Punch,” April 17, 2015.

<sup>61</sup> Regulation 2, NERCMRB&CM, 2007.

the branches of Banks approved by the Disco or any other means acceptable to the Disco.<sup>62</sup> The Regulation equally allows a consumer to make deposits of any amount in advance of consumption.

#### **4.4 The Institutional Framework for Electricity Sector Regulation under the EPSRA 2005<sup>63</sup>**

As the dictates of deregulation demands, the EPSRA 2005 established the Nigerian Electricity Regulatory Commission (NERC) to superintend on the electricity industry and oversee the newly deregulated industry. Part of the mandates of the NERC is the protection of the electricity consumers' welfare. This is necessary in view of the change of ownership in the industry. With the private firms in charge, vigilance is required otherwise the private firms would exploit the consumers. NERC is established under Part III of the ESPRA 2005. Inaugurated October 2005, NERC is a body corporate with perpetual succession and capable of suing and being sued in its corporate name.<sup>64</sup>

The NERC has various objectives but the principal objectives include maximization of access to electricity to both rural and urban consumers;<sup>65</sup> adequate supply of electricity services to consumers;<sup>66</sup> ensuring fair electricity charges/pricing;<sup>67</sup> guaranteeing security,

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<sup>62</sup> Ibid., Regulation 10.

<sup>63</sup> It will be observed that in the electricity industry the institutional framework is limited to the EPSRA, 2005. The reason for limiting the discussion of the institutional framework for electricity regulation to the EPSRA, 2005 is because the EPSRA 2005 is the extant law that regulates the industry having repealed the the Electricity Act and the NEPA Act respectively.

<sup>64</sup> Annetje Ottow, *Market and Competition Authorities: Good Agency Principles*, (OUP Oxford, 2015),1; Sam Amadi, "The Expectations of Nigerian Consumers of Electricity Under a Post Privatization Era: Issues & Perspectives," Paper Presentation at Consumer Rights Project (NGO) Marking the 2014 World Consumer Rights Day Holding @ Sheraton Hotel Lagos, 14th March 2014; S. 31 (1), Electric Power Sector Reform Act, No. 6, 2005.

<sup>65</sup> S. 32 (b) EPSRA 2005.

<sup>66</sup> Ibid. S. 32 (c).

<sup>67</sup> Ibid., S. 32 (d).

reliability and quality service at the production and delivery levels;<sup>68</sup> and striking a balance between service providers, licensees, consumers and investors in the regulation of the industry.<sup>69</sup> Towards the realisation of the above objectives, the NERC is mandated to perform the following functions:

- i) To promote competition and private sector participation;
- ii) To establish or, as the case may be, approve appropriate operating codes and safety, security, reliability, and quality standards;
- iii) To establish appropriate consumer rights and obligations regarding the provision and use of electricity services;
- iv) To license and regulate persons engaged in the generation, transmission, system operation, distribution and trading of electricity;
- v) To approve amendments to the market rules;
- vi) To monitor the operation of the electricity market;<sup>70</sup> and
- vii) In the discharge of its functions, the Commission shall consult, from time to time, and to the extent the Commission considers appropriate, such persons or groups of persons who may or are likely to be affected by the decisions or orders of the Commission including, but not limited to licensee, consumers, potential investors, and other interested parties.

In view of the state of consumer abuses in the industry in terms of the quality, reliability and level of arbitrariness in billings can one say the NERC has discharged its mandate? Is the electricity consumer better protected by the NERC compared to the NEPA regime? These questions have been answered in the critical analysis of the legal regime (4.6 infra) in the later part of the chapter.

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<sup>68</sup> Ibid., S. 32 (e).

<sup>69</sup> Ibid., S. 32 (f).

<sup>70</sup> Ibid., S. 32 (2) (a-g).

Although as seen above, the NERC as regulator is to ensure a balance regulation of the industry for both the investors and consumers, but events in the industry have shown that the regulator tilts more in protecting the interest of the investor than the consumers. The regulatory authorities in the country are often captured by the business owners as such the agencies rarely care about consumers' sufferings.<sup>71</sup> Reasons abound. Since the handing over of the electricity business to the private firms on November 1, 2013, the electricity charges paid by the consumers were calculated with the addition of Aggregate Technical and Collection Losses (ATCLs) into the electricity tariff of consumers.<sup>72</sup> In fact, the Chairman of NERC- the sector regulator admitted that it is these ATCLs that astronomically shoot up the monthly consumer tariff between 80% to 103%.<sup>73</sup> The implication of the NERC's decision of allowing the Discos to include the ATCLs in the Discos' calculation of the consumers' bills meant that bills for the non-paying consumers are passed on to the paying consumers. In other words, the regulator is comfortable that the consumers are made to bear the brunt of the failure of the Discos in collecting electricity bills from the non-paying consumers. This is against international best practice.<sup>74</sup> Only recently was the technical and collection loss component of the electricity bills removed. The removal came barely ten days to Nigeria's general election. The removal was suspicious and was linked to the ambition of the federal government to woo Nigerians to elect the ruling government under whose watch the consumers have

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<sup>71</sup>Olumide K. Obayemi, "Competition in the Nigerian Telecommunications Industry," *Beijing Law Review* 5, no. 04 (2014): 294.

<sup>72</sup> Okechukwu Nnodim And Femi Aisu, "FG Slashes Electricity Tariff by 50%," The Punch, March 18, 2015.<http://www.punchng.com/news/fg-slashes-electricity-tariff-by-50-2/>. (accessed March 18, 2015)

<sup>73</sup>Ibid.

<sup>74</sup> Everest Amaefule and Ifeanyi Onuba, "Electricity Consumers'll pay Efficient Tariff – NERC," The Punch, June 29, 2015.

been and are still exploited.<sup>75</sup> The motive is glaring in view of the fact that the consumers have previously and severally complained to the regulator but nothing was done but that consumers are made to continue paying for darkness as the light seems not to be there.<sup>76</sup>

Asked to rate the performance of the NERC in protecting the electricity consumers, the participants involved in this research gave NERC a low rating. According to Participant 4, the NERC “they (sic) do not do anything to protect Nigerians.” Participant 4 further added that “today people are paying for services that are not rendered, and from the government itself, there is no indicator of welfare of government.”<sup>77</sup> In fact, Participant 12 said that although she is aware that the NERC as the regulator of the electricity industry exists but as far as she is concerned it is not functional as such does not exist in the real sense. According to Participant 12:

I am aware of it (NERC) but I don't know to what extent they have gone to help people. People have been complaining. Let them come out, let people know so that they would sit on one on one. Is not okay you only have a protection agency and then it is not doing anything. People cry every day. So as far as I am concerned it is not even in existence.<sup>78</sup>

In a similar fashion Participant 14 also said he doubts the existence of the NERC in view of the consumer sufferings in the area of billing and issues such as fixed charges. According to Participant 14:

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<sup>75</sup>Funmi Falobi, “The Suspicious Reduction in Electricity Tariff,” The Daily Independent, March 21, 2015. <http://dailyindependentnig.com/2015/03/suspicious-reduction-electricity-tariff/> (accessed March 21, 2015); The Guardian, “High Electricity Tariff as Threat to Manufacturing,” The Guardian, March 24, 2015. <http://www.nguardiannews.com/2015/03/high-electricity-tariff-as-threat-to-manufacturing/.>(accessed March 24, 2015)

<sup>76</sup>Okechukwu and Aisu, (2015).

<sup>77</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014.

<sup>78</sup> Interview with Participant No. 12, a Legal Aid Council of Nigeria (LACON), Officer at a state/regional LACON, Office, August 28, 2014.

We even doubt if they existed. We know they exist in the book. We have never seen them come because the existence of this flat rate is something if they exist they should fight because you are telling us to pay what we are not consuming.<sup>79</sup>

The essence of establishing regulatory agencies is to supervise and monitor the conducts of the players in their relevant industries to enable the consumers feel protected. Regrettably, the facts and the evidence in the Nigerian electricity industry is the reverse. If professionals such as lawyers and enlightened consumers are doubting the existence of the NERC, the electricity industry regulator, then one imagines the view of the unenlightened and rural consumers on the role of the regulatory agencies in protecting their interest against exploitation?

#### **4.5 Consumer Safeguards under EPSRA 2005: A Critical Examination**

Theoretically, it is undoubted that electricity consumers' interests are captured in the provisions of the EPSRA, 2005 and the several enabling regulations examined above. However, there appears to be a problem in the area of implementation. In other words, the practical implementation of the law and regulations vis-a-vis the prevailing consumer abuses in the industry leaves a lot to be desired. Evidence abound on the consumer safeguards in the EPSRA. From takeoff, consumer protection featured among the reasons for the enactment of the EPSRA. The long title of the EPSRA provided in clear terms that the consumer rights protection and related issues are among the reasons for enacting the EPSRA. The long title provides that the EPSRA is enacted:

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<sup>79</sup> Interview with Participant No. 14, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014.

“. . . to develop competitive electricity market, to establish the Nigeria Electricity Regulatory Commission, . . ., to enforce such matters as performance standards, consumer rights and obligations; to provide for the determination of tariffs, and to provide for related matters.”<sup>80</sup>

The above provision is a step ahead when compared to the previous electricity laws such as the NEPA Act and the Electricity Act in which no reference is made or the word “consumer rights” used. It is only the Electricity Act that used the word guarantees instead.<sup>81</sup> Additionally, consumer rights protection featured when the EPSRA was detailing the functions of the regulator of the industry the Nigerian Electricity Regulatory Commission (NERC).<sup>82</sup>

Every citizen is a consumer and consumer interest is a public interest. In recognition of the importance of public interest, the EPSRA, repeatedly mentioned it. In fact, public interest featured five times in the EPSRA compared to the NEPA Act. This is an improvement.<sup>83</sup> Additionally, the EPSRA dedicated a chapter for consumer protection and licensee performance standards. In designing the regulation of electricity, the EPSRA requires the NERC, the electricity sector regulator to consult only licensees in drawing up the following materials:

- a) Customer services standards;
- b) Customer complaints handling standards and procedures; and
- c) Codes of practice for the provision of assistance to special needs customers, such as the blind or disabled, the elderly or severe ill.

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<sup>80</sup> Long Title, Electric Power Sector Reform Act, No. 6, 2005.

<sup>81</sup> Section 146 (2), Electricity Act, Cap E7, LFN 2004.

<sup>82</sup> Section 32 (2) (c), Electric Power Sector Reform Act, No. 6, 2005.

<sup>83</sup> Sections 70 (4), 71 (3) &(10), 74 (40 AND 82, Electric Power Sector Reform Act, No. 6, 2005; Section 7 (2) The Nigerian Electric Power Act.

Like the provisions of the Ordinance<sup>84</sup> establishing the Electricity Corporation of Nigeria (ECN) and laws of countries such as US, the EPSRA mandate NERC to ensure that prices chargeable by the electricity services providers should be “fair to consumer.”<sup>85</sup> The US Federal Power Act has such provision and courts have interpreted it to mean a provision for ‘ensuring well-functioning markets and market pricing sufficiently competitive for normal service providers profiting against monopoly profits.<sup>86</sup> The “crazy” and arbitrary billings in the industry call to question the enforcement ability of the NERC. The Chairman of NERC, the regulator of the industry sounded helpless when confronted with the issue of arbitrary inflation of electricity bills by the Discos. The Chairman said:

“We talk about estimated billing which has now become a synonym for corruption among the Discos. The truth is that some distribution companies are still indiscriminately inflating the bills of consumers and that is part of what we are tackling.”<sup>87</sup>

Furthermore, in defining a consumer, the EPSRA used the words “end-user” and “person.”<sup>88</sup> In fact, the word person was used in defining the consumer from the perspective of the complainant. The EPSRA however, did not limit the definition of “person” to individual but included companies and partnerships and any association of

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<sup>84</sup> Section 14, Parliamentary Ordinance No. 15 of 1950

<sup>85</sup> Matthew Evans, “Regulating Electricity-Market Manipulation: A Proposal for a New Regulatory Regime to Proscribe All Forms of Manipulation.,” *Michigan Law Review* 113, (2015): 588.

<sup>86</sup> David M. Newbery, “Problems of Liberalising the Electricity Industry,” *European Economic Review* 46, no. 4 (2002): 924; Elizabeth Town Gas Co. Vs. F.E.R.C. 10, F 3d 866, 870-71 (D.C. Cir. 93); Tejas Power Corp V. F.E.R.C. 908, F 2d, 998, 104 9DC Cir 19900

<sup>87</sup> Okechukwu Nnodim, “NERC Gives Discos 45 Days to Provide Meters,” The Punch, November 19, 2014. <http://www.punchng.com/news/nerc-gives-discos-45-days-to-provide-meters/>

<sup>88</sup> S. 100 EPSRA

persons whether registered or not.<sup>89</sup> This provision is commendable in view of the fact that the industry serves both the individual as well as corporate and commercial consumers and all must be protected as consumers.

Although the EPSRA 2005 has a fine provision that talked about the issue of compensation, surprisingly it made more provisions on penalties with no corresponding provision for compensation. One worrying provision is Part VII, which deals with competition and market power. The EPSRA 2005 after making provisions with respect to the monitoring of the electricity industry to prevent and/or mitigate abuse of market power, made a provision of only limited imposable fines where the NERC finds an abuse of the market power. No provision is made for the compensation of the consumers.<sup>90</sup> In fact, unlike a greater percentage of the provisions of the EPSRA, Section 82 (7) in particular uses the word “may” (which is directory) as opposed to the word “shall” (which is mandatory) when it came to the issue of the decision on a company engaged in abusive market behaviour.<sup>91</sup> Section 82 (7) provides that “in the event that the Commission (NERC) determines that there is an abuse of market power, it *may*: (a) issue a cease orders as may be required; and (b) levy fines not exceeding fifty million Naira.” (Italics supplied).

Little wonder Participant 6 responded negatively when asked about the existence of a compensation regime in the Nigerian electricity industry. According to Participant 6:

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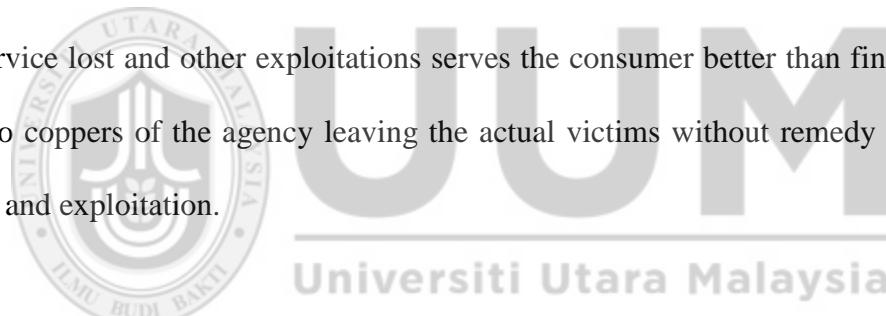
<sup>89</sup> Ibid.

<sup>90</sup> Ibid. S. 82 (7).

<sup>91</sup> Ibid.

In strict sense of it and what we have on ground as it is today, Nigerians are being tasked for being in darkness instead of being compensated for regular failures. I said it earlier that you always get a bill at the end of every month to pay for non-supply of electricity. That bill covers the whole month. But you get electricity for not more than 36 or 72 hours in that month and you pay for the whole month. So do not even think of compensation. You are rather being taxed to pay for services that have not been given, that are not rendered to you.<sup>92</sup>

Again, Part XI of the EPSRA dealing with General provisions, particularly the provision dealing with the regulatory capability of the NERC, reference is only made to fines and penalties that may be payable as levies for the violation of the EPSRA by both licensees and consumers.<sup>93</sup> This is a fundamental flaw. Because in consumer terms, compensation for service lost and other exploitations serves the consumer better than fines that usually go into coffers of the agency leaving the actual victims without remedy for the loss of utility and exploitation.



Similarly, a cursory look at the provisions of Section 75, where the NERC finds a licensee contravening or have contravened or likely to contravene any condition in its license, the EPSRA used the word “may” issue an order against such contravention. The order according to the section “may” only include payment of the penalty and no corresponding compensation for contraventions dealing with service provision to the consumer.<sup>94</sup> Additionally, while the EPSRA granted the Minister of the relevant Ministry in charge of electricity the power of recommending to the president of the country on issues such as market rules, only penalties imposable on market participants for violating

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<sup>92</sup> Interview with Participant No. 6, a CPC staff at a Zonal office of the CPC, (August 8, 2014).

<sup>93</sup> S. 96 (2) (p) EPSRA 2005.

<sup>94</sup> S. 75 EPSRA 2005.

the electricity industry codes were included. Compensations issues that are directly beneficial to the consumer are omitted.<sup>95</sup>

More so, the provisions of EPSRA 2005, tariff methodologies require notice to the general public and consideration of the views of the public. The only problem is that the views it shall consider are the views of persons or association the NERC considers necessary or desirable.<sup>96</sup> In fact, the public are only informed of the commencement of new tariff regimes. The consumer voice on the increment is not taken into account. This is evident in the recent consumer protests and threats issued by Manufacturing Association of Nigeria (MAN) to close shop over the hike in the electricity tariff.<sup>97</sup> If the tariff regimes are fixed with the inputs of consumers, there will not be the discontent and threats over the high electricity tariff in the industry.

Are provisions for the enforcement of service delivery standards and compensation for poor electricity services made? Section 80 (3) of the EPSRA provides that consumers be compensated for service failures. Section 80 is entitled “Consumer Protection Standards.” Sub-section (3) of the said section provides that “ the Commission (NERC) shall provide standards for compensation for consumers who do not enjoy regular power supply.” The researcher is not aware of any compensation in relation to the epileptic service delivery. The responses of the interviewees involved in this research equally show no evidence of

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<sup>95</sup> Ibid., S. 26 (3)(C) (i).

<sup>96</sup> Ibid., S. 76 (6) and (7).

<sup>97</sup> Okechukwu Nnodim, “Manufacturers Condemn new Electricity Tariff,” The Punch, March 4, 2015. <http://www.punchng.com/business/business-economy/manufacturers-condemn-new-electricity-tariff/>; Segun Adebowale, “Power: Commercial, Industrial Consumers Seek Suspension of new Electricity Tariff,” The Eagle Online, February 25, 2015. <http://theeagleonline.com.ng/power-commercial-industrial-consumers-seek-suspension-of-new-electricity-tariff/>

such compensation. In fact, that section appears not implementable. According to Participant 17:

That section is one section that I hold very tight to my mind and at the moment I am working on something. I am working on a regulation on compensation of consumers. When I read it {Section 80 (3)} and I met with the former Chairman of my Commission, I challenged, I confronted them with that and the problem we had with that section for now. It is a very fantastic provision which is implementable in other jurisdictions.<sup>98</sup>

It needs to be stressed that problem of implementation bedevils the electricity industry. The regulatory agencies, it is argued, hardly implement even the good provisions in the EPSRA 2005 on consumer protection. In the history of the NERC, the researcher is not aware of a fine imposed on any Disco despite the state of electric service in the industry. The interview responses of the industry experts support the arguments on the implementation problem of the consumer protection safeguards. According to Participant 2, the laws are there but “possibly are hardly, hardly implemented by the regulatory agencies.”<sup>99</sup> The same implementation problem was reported by Participant 4. According to the participant:

Even if the law is comprehensive, implementing the provisions of the law I think if I rate it, it may be 1% to 2%. 98% is not implemented because the first thing is that the consumers do not know their rights, and they do not know what to do if their rights are trampled upon.<sup>100</sup>

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<sup>98</sup> Interview with Participant 17, a staff of the NERC at the headquarters of the NERC Abuja, (July 9, 2014).

<sup>99</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, (August 7, 2014).

<sup>100</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014.

Enforcement is what gives effect to the statutory protection granted the consumers in the extant laws. When consumer safeguards in the EPSRA 2005 and the statutory enactments are not enforced by the NERC, they remain in paper with little meaning to, and impacts on the consumer protection.

#### **4.6 Critical Analysis of the Legal regime for Electricity Sector Regulation and Consumer Interest Protection (in the light of the consumer issues in the electricity Industry)**

Looking at the body of laws such as the CPC Act 1992, the SON Act, 1979, the EPSRA 2005 and the regulatory instruments issued by the NERC, the electricity industry regulator (pursuant to the EPSRA 2005 in particular), one would expect that consumers would be well catered for. However, regulatory failure is a lingering problem in Nigeria. Consumer abuses and exploitation admitted by captains of deregulated industries remained unaddressed by the relevant agencies. Consumers in Nigeria are abandoned to the whims and caprices of rapacious operators.<sup>101</sup> This is more evident in the deregulated sectors such as telecommunications,<sup>102</sup> banking,<sup>103</sup> and electricity. The case of the electricity industry recently deregulated is peculiar because of the serious issues of

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<sup>101</sup> I.A. Ogu, "Predatory Banking Practices in Nigeria," *Daily Trust*, (Abuja: Nigeria), September 6, 2010.

<sup>102</sup> Rotimi Akinwumi, "Sharp Practices: Reps Urge NCC to Sanction Service Providers" *Daily Independent*, (Abuja) August 13, 2015. <http://dailyindependentng.com/2015/08/sharp-practices-reps-urge-ncc-sanction-service-providers/> (accessed August 13, 2015); Akpoyomare Oghojafor, B.E., Ladipo K. A., Salome O. Ighomereho, and Victor A. Odunewu, "Determinants of Customer Satisfaction and Loyalty in the Nigerian Telecommunications Industry," *British Journal of Marketing Studies* 2, no. 5 (2014): 67; Emmanuel Okwuken, "Quality of Service in 2014, Acid Test for NCC," *Daily Independent* (Lagos), January 8, 2014; Akinpelu Dada, "FG May Prosecute Telecoms Firms for Poor Services, The Punch, (Lagos)," December 17, 2013 Chidebere N., "Taming the Menace of Network Congestion," *Daily Independent* (Abuja: Nigeria) October 7, 2013; Nwankwo, B., "Telecommunications: No Respite Yet for Subscribers," *Leadership Newspaper* (Abuja:Nigeria), September 15<sup>th</sup> September, 2009; Nweke, R., "Nigeria: Communications Commission Says No to New License LTE.," *Daily Champion Newspaper*, October 12, 2010; Ligali, B., "Declining Power Situation may Wipe out Telecommunications Gains," *Daily Sun*, (Lagos: Nigeria), July 31, 2008; Amechi Ogbonna and Walter Ukaegbu, CPC Battles Telcos, Manufacturers Over Poor Products, Services, *The Sun*, March 10, 2014, <http://sunnewsonline.com/new/?p=55605> (accessed March 10, 2014).

<sup>103</sup> The Punch, "CBN, Stop Illegal, Excessive Bank Charges," *The Punch* (Lagos: Nigeria), April 1, 2013, Obinna Chima, "CBN Goes Tough on Customers' Protection," *Thisday Live*, September 30, 2013,

consumer exploitations in the industry. In fact, the number of complaints on consumer violations from the electricity industry outnumber complaints received from the telecommunications, the aviation, the banking industry and other sectors.<sup>104</sup>

Apart from the fact that substandard electric appliances flood the Nigerian markets,<sup>105</sup> Nigerian electricity consumers see more of blackouts (a fact recently admitted by the former and current presidents of the country),<sup>106</sup> load shedding, and low voltage.<sup>107</sup> Additionally, over 60% of the known electricity consumers have no installed meters but are monthly made to pay “crazy” and inflated electricity bills calculated on assumptions.<sup>108</sup> The Nigerian Court of Appeal recently condemned such assumptive

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<sup>104</sup> Sylvester Ugwuanyi, “Complaints About Power Sector Highest in Nigeria – CPC,” *The Daily Post*, May 10, 2015. <http://dailypost.ng/2015/05/10/complaints-about-power-sector-highest-in-nigeria-cpc/>. (accessed May 10, 2015) ; Stanley Opara, “Power Sector Consumer Complaints Highest in Nigeria — CPC,” *The Punch*, May 10, 2015. <http://www.punchng.com/news/power-sector-consumer-complaints-highest-in-nigeria-cpc/>. (accessed May 10, 2015)

<sup>105</sup> Olushola Belllo, “SON Destroys Substandard Goods Worth N500m,” *The Daily Trust*, April 1, 2015 “SON Cries Over Influx of Substandard Products,” *The Nigerian Political Economy*, October 13, 2013, <http://www.politicaleconomistng.com/son-cries-over-influx-of-substandard-products/>. (Accessed October, 2013); Nigerian Consumer, “Growing Menace of Fake Bulbs and Other Lamps in Nigeria” <http://nigeriaconsumers.com/blog/dealing-with-the-growing-menace-of-fake-bulbs-and-other-lamps-in-nigeria/> (accessed October 1, 2013)

<sup>106</sup> The former president spoke on October 1, 2013 in his 53rd Independence Speech while the current President spoke on May 29, 2015 during his inaugural speech. According to the former President “To the Nigerian people who have demonstrated such great patience and confidence, putting up often with darkness, noisy power-generating sets, the related pollution and daily disruptions in their lives, I say better days are coming.” See Enoghase, S and Odueme-Omona, “FG Hands over PHCN to new Investors: As Workers Protest over Benefits,” *Daily Independent*, (Lagos) October 01, 2013.

<sup>107</sup> David Ogah and Temiloluwa Adeoye, “50 Per Cent Electricity Tariff Cut: Manufacturers Insist on Old Rate,” *The Guardian*, April 5, 2015. <http://www.nguardiannews.com/2015/04/50-per-cent-electricity-tariff-cut-manufacturers-insist-on-old-rate/> ; Buhari, R., Minister: Solar Energy Key to Nigeria’s Power Problem, *Thisday Newspaper*, September, 3, 2013; Emadi Nnaemeka Vincent and Samson D Yusuf, “Integrating Renewable Energy and Smart Grid Technology into the Nigerian Electricity Grid System,” *Smart Grid and Renewable Energy* 5, no. 9 (2014): 220.

<sup>108</sup> Simon E. Sunday, “Challenges, Hopes as Power-Africa Berth with 10,000 mw,” *Daily Trusts*, August 6, 2014; Emadi and Samson (2014), 223;Emeka E. Okafor, Reforms in the Power Sector and Implications for Industrial Development in Nigeria; The Case Difference Between Six and Half a Dozen? *Ibadan Journal of the Social Sciences* 12, no.1 (2014):10; Ayodele (2013):18; Ekeh, J. C., “Issues and Challenges of Power Sector Reforms in a Depressed Economy,” in *Electricity Market, 2008, EEM 2008. 5th International Conference on European*, 1-7, 2008; O.I. Okoro and E. Chikuni, “Power Sector Reforms in Nigeria: Opportunities and Challenges,” *Journal of Energy in Southern Africa* 18, no. 3 (2007)56.

billings as extortion.<sup>109</sup> At times, consumers are billed for periods they never received electricity service supply.<sup>110</sup> The post-privatization picture is not any better. The Discos have been found inflating and arbitrarily increasing the estimated bills more than 100% without basis and formal tariff increase. This much was admitted by the regulatory agency - the NERC.<sup>111</sup> Recently, the NERC issued an enforcement notice to Abuja Disco for finding the Disco inflating estimated bills of customers by 1,100%.<sup>112</sup> In some occasions, consumers are charged for unexecuted routine meter maintenance. In fact, even consumers without meters are billed such meter maintenance fees.<sup>113</sup> The introduction of prepaid meter scheme in the industry did not stop consumer exploitation. Consumers pay for transformers and meters before any is installed on their premises,



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<sup>109</sup>Evangelist Alfred Ambe Bassey Vs. Power Holding Company of Nigeria (PHCN) & Another (2012) ALL FWLR (Part 613) Page 2019 @ Pp. 2026@ E-F; Pp2028 -2029 G-C. See also Segun Adebowale, "Install meters or disconnect us from national grid, consumers tell Ikeja Electric," The Eagle Online, February 3, 2015. <http://theeagleonline.com.ng/install-meters-or-disconnect-us-from-national-grid-consumers-tell-ikeja-electric/>; Oketola Dayo, "PHCN Customers Angry Over Crazy Bills," The Punch Newspaper (Lagos) May 9, 2013; Marcel Mbamalu and Temiloluwa Adeoye, Prepaid Meters: NERC Fails To Address Consumer Concerns, The Guardian, December 6, 2014, <http://ngrguardiannews.com/business/189315-prepaid-meters-erc-fails-to-address-consumer-concerns> (accessed December 06, 2014).

<sup>110</sup>Abubakar Sadiq Isah, "Kuje Electricity Consumers Raise Alarm Over High Bills," Dailytrust, September, 11, 2015; Eyo Charles, "Protest in Calabar as FG Commissions Power Installation," Daily Trust (Abuja), June 23, 2014; PM Newspaper, "PHCN's Fraudulent Billing System," PM Newspaper (Lagos), January 23, 2013; "Extortion Scandal Rocks Delta PHCN," Leadership Newspaper (Abuja), July 14, 2011; Sebast Obasi and Kunle Kalejaye, "Power Privatisation: Nigerians Lament Deteriorating Power Supply," Vanguard (Lagos:Nigeria) December 3, 2013.<http://www.vanguardngr.com/2013/12/power-privatisation-nigerians-lament-deteriorating-power-supply/>

<sup>111</sup>Okechukwu Nnodim, "NERC Accuses Electricity Firms of Inflating Bills," The Punch, November 13, 2014. <http://www.punchng.com/business/business-economy/erc-accuses-electricity-firms-of-inflating-bills/>;

<sup>112</sup>Okechukwu Nnodim, "Tariff Hike: NERC to Sanction Abuja Disco," The Punch," April 17, 2015 : <http://www.punchng.com/business/business-economy/tariff-hike-erc-to-sanction-abuja-disco/>

<sup>113</sup>Rayo Adebola, "PHCN Rips Consumers off to the Tune of N240b Annually – ECAN," Daily Times Newspaper, October 31, 2011; Recently, the Chairman of Nigerian Electricity Regulatory Commission (NERC) admitted that price for electricity services are inefficient. "NERC Prepared to Regulate Power Sector Post Privatisation – Amadi" Leadership Newspaper, Abuja, August 29, 2013.

even though, the transformers and meters remain the properties of the electricity companies.<sup>114</sup>

One other worrying exploitation of the consumers is the issue of a fixed charge included in the monthly bills of electricity consumers.<sup>115</sup> Every month consumers are charged a fixed amount of money whether they received electricity or not. This exploitation continues even though the provisions of NERC only allowed an electricity service provider to recover cost when it efficiently supplies electricity.<sup>116</sup> The tradition globally is that fix charges are included where there is investment in the sector and constant electricity. None of these preconditions is met in Nigeria yet the Discos charge the fixed charge.<sup>117</sup> It has been estimated by the Vice President of the Nigerian Association of Chambers of Commerce, Industry Mines and Agriculture (NACCIMA) that if only a million out of the electricity consumer should pay the ₦750 fix charge in a month, the Discos get a whopping sum of ₦750 billion (RM12.9 billion at ₦58/RM1) for doing nothing.<sup>118</sup> This is exploitation of the highest order as the electricity consumers are made to pay for services not rendered. Again, it is contrary to the position taken by the NERC

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<sup>114</sup>Ignatius Okorocha, Isuma Mark, “Consumers Shouldn’t Pay For Transformers, Meters, Senate Tells NERC,” Daily Independent, (Abuja), August 12, 2015. <http://dailyindependentnig.com/2015/08/consumers-shouldnt-pay-transformers-meters-senate-tells-nerc/>; Stanley Opara, “Electricity Meters now Sell for ₦60,000,” The Punch, March 10, 2015. <http://www.punchng.com/news/electricity-meters-now-sell-for-n60000/>; Thisday, “Expectations Heightens as Private Investors Move to Take Over Power Assets” Thisday (Lagos) September 3, 2013.

<sup>115</sup>Chineme Okafor, “Electricity Charges: NERC, MAN Meet to Avert Production Shut-downs,” ThisDay, March 3, 2015. Ochiaka Ugwu, “Electricity ‘Fixed Charge’: Are Nigerians Paying for Darkness?” The Peoples Daily, January 21, 2015. <http://www.peopledailyng.com/electricity-fixed-charge-are-nigerians-paying-for-darkness/>

<sup>116</sup>Section 76 (2) (a), Electric Power Sector Reform Act, 2005.

<sup>117</sup>Chikwerem U. Obi, “Improving Quality of Service Regulation in an Emerging Electricity Market,” Power Watch 1, no. 4, (April-June, 2014):9; Simon Echewofun Sunday, “Electricity Consumers, Discos Bicker over ‘crazy’ Billing,” The Daily Trust, July 29, 2014.

<sup>118</sup> Simon Echewofun Sunday, “Electricity Consumers, Discos Bicker over ‘Crazy’ billing,” The Daily Trust, July 29, 2014

Chairman that much as the Discos are entitled to return on their investment; this should be based on performance. According to the Chairman, “Discos should note that recouping their investment as entrenched is dependent upon performance and anything short of that will mean cheating the electricity consumers.”<sup>119</sup> But the fixed charge still remains a component of the electricity consumers’ bills despite the epileptic electricity supply. This is hardly done anywhere and has created a lot of discontent, agitations and lamentation among consumers.<sup>120</sup> While residential customers pay between ₦650 to ₦750, the least the industrial consumers pay is ₦25, 000.<sup>121</sup> Following the rise in complaints and discontent among consumers, the NERC the regulator dished out an unhelpful “15 days Order” to the effect that electricity consumers that do not receive electricity supply for 15 days or cumulative hours equal to 15 days in month are not to pay the fixed charge.<sup>122</sup>

The Order reads;

“Effective from May 1, 2014, where any customer of a Distribution license has not received continuous or cumulative electricity supply for a period of 15 days in a month, such a customer shall not be required to pay the fixed charge; PROVIDED that the disruption is not due to nonpayment of electricity bills or customers action.”

Although the Order is a commendable step taken by the NERC as the regulator of the industry, the Order is vague and complicated. How and with what equipment would a

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<sup>119</sup>Simon Echewofun, “Electricity Consumers, Discos Bicker Over ‘Crazy’ Billing,” The Daily Trust, July 29, 2014. <http://dailytrust.com.ng/daily/business/30272-electricity-consumers-discos-bicker-over-crazy-billing>

<sup>120</sup>Alohan Juliet, “Electricity Consumers Begin Payment for Meters,” Leadership Newspaper online (Abuja: Nigeria), May 14, 2013; “Electricity Meter to Cost More – NERC,” Nigerian Tribune, May 20, 2013;Niyi Eke, “Customers Accuse Delta PHCN of Extortion,” Leadership Newspaper, July 07, 2011.

<sup>121</sup>Okechukwu and Aisu, (2015).

<sup>122</sup>Nigerian Electricity Commission, “Order Revising the Conditions for payment of Fixed Charges by Electricity Consumers,” Order No: NERC/FC133. The Order was issued in line with the responsibility of the NREC in ensuring fair electricity service pricing and the balancing of interest of stakeholders in the industry as provided under Section 32 (d) and (f) of the Electric Power Sector Reform Act 2005.

consumer calculate the 15 days when according to Fortunes Leynes (Managing Director of Ibadan Disco) no such equipment exists in Nigeria to arrive at such statistics?<sup>123</sup> Even the Discos themselves cannot ascertain the exact days and hours of outage.<sup>124</sup> Again, for a consumer to enjoy the fix charges waiver on the 15 days rule he/she must communicate every outage to the Customer Care Units (CCUs) of the Discos' despite the fact that the CCUs are only in the head office of the Disco. How much would a consumer spend to communicate the outage looking at the distance from his/her town or village compared to ₦750 charges when some villages or settlements are several hundreds of kilometers from the head office of the Discos? This is unfair. Despite its complications, the circular was rejected by the Discos.<sup>125</sup> Again, despite consumers' discontent, and instead of removal or reduction, recently the fix charges payable by industrial and commercial consumers was recently hiked. From the ₦25, 000 rates, the industrial consumers are now to be paying ₦250,000.<sup>126</sup> Through this exploitation, the electricity service providers extort billions of Naira from electricity consumer for poor and no-service delivered.

On the service quality in the electricity industry, the post-privatisation situation is not any better.<sup>127</sup> This has been acknowledged by even the diplomats in the country. Recently the US Ambassador to Nigeria Mr. James Entwistle was quoted saying:

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<sup>123</sup> Olawale Akinselure, "Fixed charge order: NERC, Discos still at loggerheads," The Tribune, July 30, 2014.

<sup>124</sup> Simon Echewofun, "Electricity Consumers, Discos Bicker Over 'Crazy' Billing," The Daily Trust, July 29, 2014

<sup>125</sup> Olawale, (2014).

<sup>126</sup> Okechukwu Nnodim, "Manufacturers Condemn new Electricity Tariff," The Punch, March 4, 2015. <http://www.punchng.com/business/business-economy/manufacturers-condemn-new-electricity-tariff/>

<sup>127</sup> Simon Echewofun Sunday, "Challenges, Hopes as Power-Africa Berths with 10,000mw," The Daily Trust, August 6, 2014, 26; Okechukwu Nnodim, "Buhari: Experts Differ on Power Sector Privatisation Review," The Punch, April 15, 2015. <http://www.punchng.com/business/business-economy/buhari-experts-differ-on-power-sector-privatisation-review/>

“One area of ongoing concern is Nigeria’s power utility system. We are all frustrated by the sporadic power outages that negatively affect both our personal and professional lives. These disruptions affect nearly all businesses, but are most detrimental to manufacturing companies. Many Nigerian businesses and households are not lucky .... relying instead on inefficient diesel generators. Those generators are now estimated to form the largest block of Nigeria’s carbon dioxide emissions.”<sup>128</sup>

The Participants’ responses equally attest to the post-privatization service quality issues.

Participant 17, from the electricity regulator, for instance, bared his mind. According to the participant, “recently we discovered that the services they are rendering are not good enough.” In fact, Participant 17 admitted that load shedding exist in the industry. The Participant reported that “the supply is not given to everybody at the same time. When you give power here, they shed it and give it to other places.” The response of Participant 19 vividly captures the quality of service delivery in the industry. The Participant stated that:

There is a lot of under investment in the entire electricity sector. It is sad that we presently are still talking about 4000 megawatt when we are a nation of 170 million, so it is sad. There is a lot of requirement for investment into the sector both at Generation, Transmission, Distribution, that one equally affect the quality of service because feeder pillar units, cables, transformers need to be reinforced. And so the quality of service presently cannot be put at best practice in terms of the customer but we are putting a lot of pressure.<sup>129</sup>

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<sup>128</sup> Bayo Akinloye, “US embassy saves N20m on electricity charges,” The Punch, April 23, 2015. <http://www.punchng.com/business/business-economy/us-embassy-saves-n20m-on-electricity-charges/>

<sup>129</sup> Interview with Participant No. 19, An NERC staff, at the NERC headquarters

Although from the above exposition quite a good number of legislation and regulations abound on the electricity sector regulation and consumer protection, gaps exist in the law and implementation. According to Participant 17:

There is no way you say that you would not have any lacuna. Comprehensively I think we have had so many documents in place to protect the consumers. But I know that as time goes on some issues may still come up that would require us to prepare more regulations.<sup>130</sup>

Why are these consumer abuses happening under the EPSRA 2005 when the regime is quite different from the regime under the NEPA Act when the government was the provider and regulator compared to the current situation which is the reverse? This should not be. It was understandable when abuses happened under the NEPA Act because then the consumer had nowhere to run to because the provider was the perpetrator of the consumer right violations as well as the regulator of the industry. It follows therefore, that the consumer deserves some respite under the EPSRA 2005 regime because the NERC is supposed to be an independent regulator of the industry and can superintend on complaints made against the private electricity companies. This, it is argued, should be the case even though the researcher acknowledges the dual role the NERC has in balancing the competing interest of consumers to protection and the interests of private companies to return on investment. But from the myriad of abuses in the industry it is argued that the consumers' interest/welfare is abandoned while the private electricity companies smile with fat accounts. There has not been any reported case that they are operating at a loss. Recent revelations from the National Bureau of Statistics show that the electricity companies raked in over ₦ 248, 000,000,000 (Two Hundred and Forty

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<sup>130</sup> Interview with Participant 17, a staff of the NERC at the headquarters of the NERC Abuja, (July 9, 2014).

Eight Billion Naira) between the year 2010 to 2015 as profits.<sup>131</sup> Another good example is the fact that these companies make billions of Naira from the collection of the exploitative monthly fix charges alone.<sup>132</sup> This may be a proof of the suspicion held in some quarters that the electricity service providers to whom the electricity service provision is sold to, have links with people in government and that some of the companies had no electric power experience.<sup>133</sup> In fact, it has been alleged and yet to be refuted that due process was not followed in selling some Discos. For instance it was alledged that Discos such as the Enugu Distribution Company were sold to companies that failed the preliminary requirement assessment for the purchase and takeover of the Disco.<sup>134</sup> The recent allocation of ₦213,000,000,000 (Two Hundred, Thirteen billion Naira) “bailout” to private electricity companies by the Federal Government of Nigeria (FGN) is yet another evidence supporting the suspicion. Why in a privatised industry should the FGN give such chunk of money to the private electricity companies that the Bureau of Public Enterprise (BPE) certified buoyant (at the point of sale of the industry to them) to carry on the business of electricity in Nigeria? It appears that the FGN is more interested in the electricity firms than the welfare of the Nigerian consumers. There were recent calls from stakeholders and the Conference of Nigerian Political Parties (CNPP)

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<sup>131</sup> Simon Echewofun Sunday and Francis Iloani, “Electricity Firms Gained N248bn in 5yrs – Report,” Daily Trust, February 2, 2016, P.21.

<sup>132</sup> Simon Echewofun Sunday, “Electricity Consumers, Discos Bicker over ‘crazy’ Billing,” The Daily Trust, July 29, 2014.

<sup>133</sup> Mathew A. Izibili, M and Fidelis Aiya, “Deregulation and Corruption in Nigeria: An Ethical Response,” *Kamal-Raj. Journal of Sciences* 14, no. 3 (2007): 232; Adaramola, Z., “Abdussalam, Namadi’s Ally set for Power Firms,” Daily Trust Newspaper, October 17, 2012; S. K. C. Ogbonnia “Nigeria’s Electricity Crisis is Leadership Failure,” The Vanguard, May 26, 2015. <http://www.vanguardngr.com/2015/05/nigerias-electricity-crisis-is-a-failure-in-leadership/>.

<sup>134</sup> Mike Oboh, ‘FG Urged to Revisit Disco Sale,’ The Daily Trust, September 23, 2013.

for the reversal of the electricity sector unbundling in view of what the CNPP regards as the lack of transparency and corruption that tainted the electricity sector deregulation.<sup>135</sup>

Additionally, the activities of the Gencos and Discos in the recent Nigerian electioneering campaigns wherein the private electricity companies openly contributed five billion US Dollars to the campaign funds of the former president raises suspicion as to why the private companies are contributing such billions to the then sitting president?<sup>136</sup> There is corruption going on in the sector. The consumers have been compromised. In fact, the NERC Chairman once lamented that “what we see going on inside the sector is that opportunistic, corrupt and self-serving people have taken over the whole place, and that is why the sector is where it is today.”<sup>137</sup>

The exposition above shows that although regulatory agencies exist for consumer protection but they are not effective in checking the widespread consumer abuses. This makes sense and is better explained by the Routine Activity Theory developed by Marcus and Lawrence.<sup>138</sup> The theory explains the causes of criminal conduct.<sup>139</sup> According to the

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<sup>135</sup> Emmanuel Uzodinma, “Cancel PHCN Privatization- CNPP Urges Buhari,” Daily Post, May 24, 2015; Mike Oboh (2013).

<sup>136</sup> Andy Nssien, “Tariff Reduction or Reversion?” The Daily Independent, March 22, 2015 <http://dailyindependentnig.com/2015/03/tariff-reduction-reversion/>; Adamu Abuh, “PDP, APC Trade Words Over N5Bn Donation By DISCOS To Jonathan Campaign,” The Guardian, March 21, 2015. <http://www.ngguardiannews.com/2015/03/pdp-apc-trade-words-over-n5-billion-donation-by-discos-to-jonathan-campaign/> ; Leadership Editors, “That 50% Electricity Tariff Slash,” The Leadership, March 21, 2015, <https://leadership.ng/opinions/419076/that-50-electricity-tariff-slash>

<sup>137</sup> Oscarline Onwuemenyi, “Corruption, bane of power sector – NERC boss,” The Vanguard, November 15, 2011. <http://www.vanguardngr.com/2011/11/corruption-bane-of-power-sector-nerc-boss/> (accessed 2<sup>nd</sup> February, 2013)

<sup>138</sup> Lawrence E Cohen and Marcus Felson. “Social Change and Crime Rate Trends: A Routine Activity Approach,” *American sociological review* (1979): 588; Fernando Miró, “Routine Activity Theory,” in *The Encyclopedia of Theoretical Criminology* (John Wiley & Sons, Ltd, 2014),

<sup>139</sup> Marcus Felson, “Routine Activities and Crime Prevention in the Developing Metropolis,” *Criminology* 25, no. 4 (1987): 911

theory, the rate of crimes increases where effective control of the criminal is either absent or weak. These provide the criminal with the opportunities to commit the crime. The theory posits that the existence of enforcement agents without effective control does not prevent the commission of a crime. The relevance of the theory to this thesis is from the perspective of effective enforcement of laws and control of businesses from abusing consumers' economic interest. It follows therefore, that this theory can be applied in the context of consumer protection especially in the situations where electricity consumer rights violation or exploitation goes on unabated without the establishment of the relevant regulatory agencies to checkmate the unscrupulous businesses, or in situations where the regulatory agencies exist but are weak in preventing the consumer exploitation. The theory explains the situation in deregulated utility sectors such as the Nigerian electricity industry. Although regulatory agencies such as CPC and the NERC exist for the protection of the Nigerian electricity consumers, consumer exploitations thrive in the Nigerian electricity market. Several anti-consumer practices such as fixed charges and high cost of electricity despite the epileptic power supply, and billing frauds continue unabated in the Nigerian electricity industry.

#### **4.7 Conclusion**

The above exposition reveals a good deal of statutory provisions for the protection of the electricity consumers in Nigeria. However, there is yawning gap between the theoretical provisions and the reality in the industry. While consumers are exploited through series of abuses in service quality, metering, billing, etc., it is found that the EPSRA 2005 does not provide for consumer rights. In the whole EPSRA 2005 there was only two vague

references to the word consumer rights. Equally, the EPSRA 2005 is fine and penalty focused with little or no emphasis on compensation. It is particularly worrying that issue of compensation is excluded among the orders that the NERC can make where it finds a Disco violating or have violated any terms or conditions of its licence under Section 75 or where the Disco is found to have abused its market power under Section 82 (7). Again, when it comes to the fines and penalties that the NERC could impose, the language of the EPSRA 2005 is in the directory “may” as opposed to mandatory “shall.” Sections 75, 82 (7) and 96 (2) (p) are instructive. Again, although competition is mentioned, the EPSRA 2005 did not define what competition means in its entire 101 sections. In the same vein, the EPSRA 2005 made mention of “abusive of market power” but did not define what amounts to the abuse of market power. In summary, the legal regime at the general and sectoral level is deficient in many respects as it lacks several consumer protection safeguards such as competition regulation, consumer rights protection among others. This chapter answered research question 2 and achieved research objective 2. In view of the consumer abuses in the industry, the next chapter evaluated the mechanism in place for redressing consumer disputes and rights violation.

## CHAPTER FIVE

### CONSUMER REDRESS AND ACCESS TO JUSTICE

#### 5.1 Introduction

Consumer rights and consumer redress are at the heart of consumer protection. The law needs to confer consumer rights the violation of which would ground an action in remedies. These remedies like the consumer rights need to be spelt out in clear legislative terms. The global practice is to legislate on these consumer rights and remedies. Today, consumer rights in places such as Kenya have been elevated to the class of first generation rights – the civil and political rights.<sup>1</sup> Consumer redress has equally been rated among the preconditions for consumer empowerment by institutions such as the European Commission.<sup>2</sup> Unfortunately, access to justice is a global problem particularly for the poor consumer.<sup>3</sup> Access to justice crisis is not peculiar to developing countries but an issue of great concern even to advanced countries such as the United States. Recently Chief Judge of New York, Honourable Justice Jonathan Lipman cried aloud on the access to justice crisis in the US. According to the learned justice:

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<sup>1</sup> Section 46, The Constitution of the Republic of Kenya, 2010.

<sup>2</sup> European Commission , “Consumer Empowerment in the EU,” *Commission Staff Working Document*, SEC (2011):2-3. See also Katalin Cseres and Annette Schrauwen, “Empowering Consumer-Citizens: Changing Rights or Merely Discourse?” in *The EU Economic and Social Model in the Global Crisis: Interdisciplinary Perspective*, ed. Dagmar Schiek (England: Ashgate, 2013),125,

<sup>3</sup> Deborah L. Rhode, “Access to Justice,” *Fordham Law Review* 69 (2000-2001): 1785.

“It is no secret that our nation faces a crisis in access to justice. The distressing lack of civil legal aid for the poor is one of the most daunting challenges facing the justice system today, but all of the players—the providers, the academy, the profession as a whole, and in particular the judiciary—are increasingly and dramatically confronting this crisis and taking action to balance the scales of justice, to guarantee the rights and liberties of all, and to preserve the rule of law.”<sup>4</sup>

In the context of consumer protection the challenge of consumer access to justice is not disconnected from the overall access to justice crisis. According to Stephen, access to justice is one of the greatest challenges of consumer protection systems.<sup>5</sup> Nigeria’s inclusive. In fact, Consumer International rated consumer redress a priority in coming years.<sup>6</sup>

As far back as 1215, the issue of access to justice has been a concern for human rights experts and policymakers. In that year, the 40<sup>th</sup> Paragraph of the Magna Carta declared in strong terms the value of expeditious justice delivery.<sup>7</sup> Today, no suits or disputes demand expeditious resolution like consumer disputes. In this chapter, the research examined the legal and institutional issues relating to consumer access to justice. Employing the interpretive doctrinal methodology as well as the qualitative interviews, the chapter provides an overview of the state of consumer rights and remedies under the Nigerian laws. The chapter examined the Nigerian judicial system because the courts

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<sup>4</sup> Jonathan Lippman, “Brennan Lecture: The Judiciary as the Leader of the Access-to-Justice Revolution,” *New York University Law Review* 89 (2014): 1569

<sup>5</sup> Stephen, W., *EU Consumer Law and Policy* (Edward Elgar Publishing, (2005).

<sup>6</sup>Consumer International, “Survey on State of Consumer Protection Around the World,” (conducted between November 2012 to January 2013 and published on the 7th of March, 2013 <http://consint.info/cpsurveydata> (accessed March 10, 2013).

<sup>7</sup> Ralph V. Turner, *Magna Carta: Through the ages* (Pearson Education, 2003).

have been considered the last hope of the common man and they remain the traditional dispute settlement avenues. The appropriateness of the traditional justice system (provided through the regular courts) for consumer redress was also considered. The Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended and the Legal Aid Council Act, 2011 were examined. Overall, the chapter made analysis of the consumer redress mechanisms and other legal issues connected thereto. This is because the notion of access to justice has been found to revolve around the issue of legal aid, access to appropriate legal remedies and the judicial process.<sup>8</sup> This chapter answered research question 3 and achieved research objective 3.

## **5.2 The Legal and Institutional Frameworks for Access to Justice in Nigeria**

A set of laws and institutional arrangements for access to justice (to which consumer access to justice is part) exist in Nigeria. The Constitution of Federal Republic of Nigeria (CFRN) 1999, the Consumer Protection Council Act (CPC Act) and the Legal Aid Council of Nigeria Act (LACON Act) and the Electric Power Sector Reform Act (EPSRA), 2005 were chosen for analysis. From the institutional perspectives therefore, the courts (represented and explained under the judicial system below), the CPC and LACON were the institutions chosen. Within the electricity industry, the three-tier institutional arrangements comprising the Customer Complaints Units at the Discos' levels, the Forum Offices and the NERC were the relevant institutions used in explaining

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<sup>8</sup>Sutatip Yuthayotin, "Access to Justice: A Goal for Consumer Protection," in *Access to Justice in Transnational B2c E-Commerce*, (Springer International Publishing, 2015), 38; Eva Storskrubb and Jacques Ziller, "Access to Justice in European Comparative Law," in *Access to Justice as a Human Right*, Francesco Francioni (ed.) ( Oxford: Oxford University Press, 2007),177, Collected Courses of the Academy of European Law, XVI/4.

electricity consumer access to justice in this thesis. While the courts<sup>9</sup> (which are the leading forums for consumer access to justice) are established by the CFRN 1999, the CPC and the LACON<sup>10</sup> are the government bodies that equally play roles in consumer redress. While the CPC and the LACON are established by the CPC Act and the LACON Act respectively, the three-tier<sup>11</sup> electricity industry consumer redress mechanism is however a product of the power of the NERC under the EPSRA 2005.

### **5.2.1 The Constitution of the Federal Republic of Nigeria (CFRN) 1999**

The CFRN 1999 is the supreme law of the land. It is the organic law through which all laws and actions in the Nigerian federation derive their legitimacy. Section 1 of the CFRN 1999 declares in strong terms the supremacy of the constitution. The judicial powers of the federation are, however, vested in the courts established by the CFRN 1999 and other courts created by the laws of states subordinate to them.<sup>12</sup> The courts include the Supreme Court (SC); the Court of Appeal; the Federal High Court; the High Courts of the 36 states and Federal Capital Territory, the Sharia Court of Appeal of States and the Federal Capital Territory; the Customary Court of Appeal of States and Federal Capital Territory;<sup>13</sup> and Tribunals.<sup>14</sup> All these are established by the CFRN 1999. There are inferior courts of records established by Acts and Laws of the National Assembly and the States Houses of Assemblies of the thirty-six States of the Federal Republic of Nigeria, respectively. These consist of Magistrate courts of States and Federal Capital Territory,

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<sup>9</sup> The courts and their roles are explained under 5.11 and 5.3

<sup>10</sup> The role LACON could play in facilitating consumer redress would be discussed under 5.1.3

<sup>11</sup> The three-tier electricity industry redress mechanism through the CCU, the Forum offices and the NERC would be explained under 5.6

<sup>12</sup> S. 6 (5), Constitution Federal Republic of Nigeria, (CFRN) 1999 (as amended).

<sup>13</sup> Ibid., Sections 265 and 280.

<sup>14</sup> Ibid., Section 285.

and Sharia/Area/Customary courts of States and Federal Capital Territory. All the inferior courts are either a creation of Acts or laws of the federal and State governments made pursuant to the powers conferred on them by CFRN 1999. The constitution in clear terms vests all the judicial powers of the federation and that of the respective states in the above enumerated courts.<sup>15</sup>

The courts established are the traditional courts with other specialized courts such as the National Industrial Court, the election petition tribunals and securities tribunal. So far the consumer is not considered in the creation of specialized courts. This remains so despite the delays-prone and congested judicial system in the country where cases spend decades before trial courts.<sup>16</sup>

On the protection of the economic interest of consumers and consumer access to justice, the CFRN 1999 made several provisions in that connection. The declaration in the constitution that the government of Nigeria is based on democracy and social justice,<sup>17</sup> relates to the provision of equal access to justice for all Nigerians. In fact, the constitution declares that Nigeria as a country is founded on the ideals of freedom, equality and justice. According to the CFRN 1999, the establishment of a court system that is accessible to all is a fundamental aspect of the social order that CFRN 1999 seeks to

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<sup>15</sup> Ibid., S. 6

<sup>16</sup> Emilia Onyema, "The Multi-Door Court House (Mdc) Scheme in Nigeria: A Case Study of the Lagos MDC," *Apogee Journal of Business, Property & Constitutional Law* 2, no. 7 (2013): 97

<sup>17</sup> Section 14 (1), Constitution Federal Republic of Nigeria, Cap. Laws of the Federation of Nigeria, 1999.

establish.<sup>18</sup> Is the court system in the country in line with what the constitution makers envisage? How appropriate is the judicial system for consumer redress? Is it accessible to Nigerians who are all consumers? How speedy, affordable, procedurally simple is the court system? These issues have been addressed in the later part of this chapter.

### **5.2.3 The Legal Aid Council Act, 1976 (Amended 2011)**

According to the Chief Judge of New York City, “civil legal services for the poor . . . (is) as much a priority for our state and society as housing, school, education, and the other essentials of life.”<sup>19</sup> Little wonder that legal aid was the first issue to be addressed among the reforms initiated by the global access to justice movement in the 1960s.<sup>20</sup> Although access to legal aid was often not available for the consumers even in the developed world,<sup>21</sup> legal aid schemes are pro-poor and represent a basic attribute of access to justice.<sup>22</sup> They are primarily established to provide legal representation to the weak and vulnerable class of the society.<sup>23</sup> These include the consumers. Availability of legal aid structures in a country is a determinant of the strength and accessibility of the country’s justice system. Legal aid scheme is the main means of providing consumers legal advice and representation in jurisdictions such as the UK.<sup>24</sup> Legal aid service is a duty which the

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<sup>18</sup> Section 17, (1) and Section (2) (e) Constitution Federal Republic of Nigeria, Cap. C, L.F.N. 2004. It should be stated that the Nigerian constitution instead of calling Chapter 2 as economic social and cultural rights termed it fundamental objectives and Directive Principles of state policy.

<sup>19</sup> Jonathan Lippman, (2014):1573.

<sup>20</sup> Bryant G. Garth, “Access to Justice,” *Judicial reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*, Vol. 280, ed. Malcom Rowat, (World Bank Publications, 1995),89.

<sup>21</sup> D. Caplovitz, *The Poor pay More* (1963), 159-160; Thomas L. Eovaldi, and Joan E. Gestrin, “Justice for Consumers: The Mechanisms of Redress,” *Northwestern University Law Review* 66 (1971): 287.

<sup>22</sup> Bryant, (1995):91.

<sup>23</sup> FRA: European Union Agency for Fundamental Rights, *Access to Justice in Europe: An Overview of Challenges and Opportunities*, (2010), 52.

<sup>24</sup> Geraint Howells and Stephen Weatherill, *Consumer Protection Law*, (England: Dartmouth, 1995).

states owe to citizens especially the poor. This duty was emphasized seven decades ago by E. J. Cohen. According to Cohen:

“Legal aid is a service which the modern state owes to its citizens as a matter of principle. . . . Just as the modern State tries to protect the poorer classes against the common dangers of life, such as unemployment, disease, old age, social oppression, etc., so it should protect them when legal difficulties arise. Indeed the case for such protection is stronger than the case for any other form of protection. The State is not responsible for the outbreak of epidemics, for old age or economic crises. But the State is responsible for the law.”<sup>25</sup>

In Europe, the Charter on Fundamental Rights clearly declares legal aid as a fundamental right.<sup>26</sup> This is not the case in Nigeria. The history of legal aid in Nigeria dates back to the colonial era. This was precisely in 1945. During this time, the Criminal Procedure Act (CPA), 1945 entitled (where practicable) an indigent accused charged with a capital offence such as murder to a counsel by the crown. Under the CPA, “where a person is accused of a capital offence; . . . if the accused is not defended by a legal practitioner, the court shall if practicable assign a legal practitioner for his defence.”<sup>27</sup>

From the above section, therefore, no matter the impecuniosity of the accused, if the offence he is standing trial for is not a capital offence, he is not entitled to a counsel by the court. This position remains throughout the colonial period. In 1976, however, the Court of Appeal Act, (COAA) had a beautiful provision that gave the Court of Appeal a discretion in “any appeal or proceedings preliminary or incidental to an appeal,” to assign a counsel to an appellant where in the opinion of the court it appears to the court

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<sup>25</sup> Quoted by Hale B. 8.

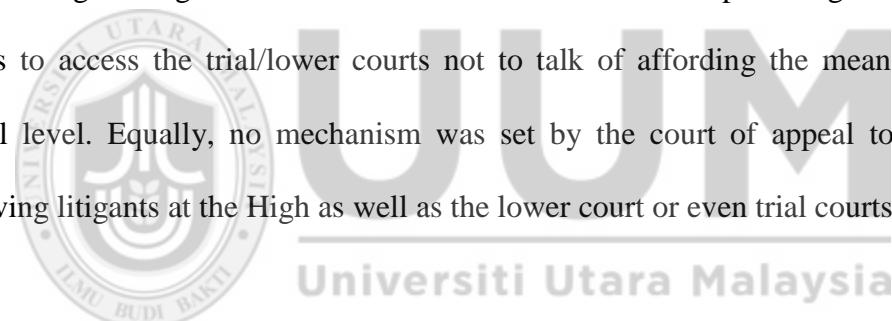
<sup>26</sup> Article 47, European Charter on Fundamental Rights.

<sup>27</sup> Section 352 of the Criminal Procedure Act, 1945.

desirable and in the interest of justice to assign a counsel to an appellant. Under the COAA 1976 it was provided that:

“... the Court of Appeal may at any time assign counsel to an appellant in any appeal or proceedings preliminary or incidental to an appeal in which in the opinion of the court, it appears desirable in the interest of justice that he appellant should have legal assistance and he has not sufficient means to enable him to obtain that assistance.”<sup>28</sup>

Unlike the CPA, 1945, the COAA, 1976 was wider in scope. It was not restricted to criminal matters. But one fact is obvious, the wider opening is misplaced. It ought to be available at the level of the trial/lower courts which are the gate-way and starting point for the indigent litigant. The law did not assist the cause of poor litigants who have no means to access the trial/lower courts not to talk of affording the means to reach the appeal level. Equally, no mechanism was set by the court of appeal to ascertain the deserving litigants at the High as well as the lower court or even trial courts.



In an attempt to remedy the criminal focus of the colonial legal aid scheme and the COAA, in 1976 the first indigenous legal scheme was established. This was with the enactment of the Legal Aid Council Act, (LACA), 1976. The LACA 1976 established the Legal Aid Council of Nigeria (LACON), the institution to implement the Act. The expectation was that LACA would remedy the lack of access to justice to impecunious litigants broadly, but in a similar fashion LACA 1976 followed the patterns of the CPA 1945. It laid emphasis on indigent accused persons charged with certain classes of offences which include capital offences, offences relating to grievous bodily harm and

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<sup>28</sup> Section 26, Court of Appeal Act, 1976.

cases involving gross violation of the fundamental right. But LACA 1976 appears to be a little departure from the colonial provisions under the CPA, 1945. The little departure was that civil cases involving other classes of criminal cases and fundamental rights issues as will be seen below were included within the scope of cases for which indigent litigants are entitled to legal aid.

The cost of legal services and court related filing fees in Nigeria are the consideration that necessitated the initiative of the legal aid scheme. Peter and Kate argued that legal aid is one of the important options in addressing cost as a barrier for consumer access to justice.<sup>29</sup> This position is supported by some of the participants interviewed in the course of this research. Accordingly, Participant 14 believed that the expensive nature of legal practice was what led to conceiving the idea of legal aid. According to Participant 14, “legal practice is expensive (and) the sole aim of conceiving the legal aid was to see that the indigent have access to justice.”<sup>30</sup>

Legal aid to an indigent litigant covers rendering of legal advice, legal representation and defence to the accused throughout his/her trial. Eligibility for the legal aid under the LACA 1976 is tied to income of the accused. The LACA 1976 puts litigants eligible to full legal aid to persons within the annual income bracket of not more than ₦1, 500:00 (less than RM30 at ₦58/RM1). Others could qualify for a partial aid with a duty of contributing towards the financing of the prosecution whilst the state makes the other

<sup>29</sup> Peter Spiller and Kate Tokeley, “Individual Consumer Redress,” in *Handbook of Research on International Consumer Law* (Massachusetts: Edward Elgar, 2010), 509.

<sup>30</sup> Interview with Participant No. 14, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014.

contributor. A person qualifies for partial legal aid where his/her annual income falls within the ₦500 to ₦10, 000. The litigants in this bracket could be asked to contribute between ₦100:00 to ₦1,000:00.

The performance of the LACON still remained very low because of varying degree of problems ranging from inadequate staffing, funding and limited scope of cases to be handled. In fact, it is believed in some quarters that these problems militated against the realisation of the lofty aims and objectives behind the LACA's enactment and the LACON's establishment.<sup>31</sup> This led to the amendment of the LACA 1976 in 2011. By the Second Schedule to the LACA, 2011, paragraph C thereof, the only civil claims qualified for legal aid are;

1. Civil claims in respect of accidents including employee's compensation claim {under the Employee's Compensation Act, (Act No. 13 of 2010)};
2. Civil claims to cover breach of fundamental rights guaranteed under chapter IV of the Constitution of the Federal Republic of Nigeria; and
3. Civil claims arising from criminal activities against persons who are qualified for Legal Aid under this Act.

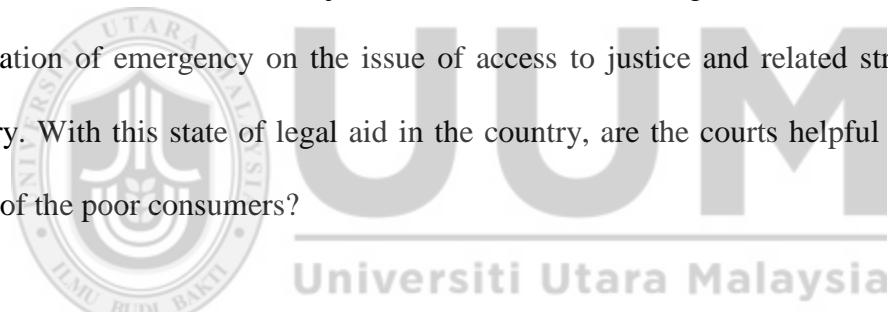
The duty for legal aid service provision is very much required in Nigeria a country with the majority of its population being poor and illiterates.<sup>32</sup> While in 2013, Nigeria was 153<sup>rd</sup> among 186 countries in the United Nations Human Development Index ranking, in 2014, the country was rated third amongst the top countries that housed the extreme poor

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<sup>31</sup> U. Usimiri, "Nigerian Legal Aid Scheme – The 21 Years Journey," *The Nigerian Law and Practice Journal* 2, no.1 (March 1998):6.

<sup>32</sup> World Bank, "Economic Report Nigeria, No. May 1, 2013," (2013), 8.

in the world.<sup>33</sup> Recently, the Vice President of the country stated that poverty in country has reached intolerable level.<sup>34</sup> Although as indicated above, the LACA 1976 was amended in 2011, the scope of cases for legal aid under Second Schedule to the LACA, 2011 as seen above, does not include all civil claims to which consumer claims belong. Even if the scope of the Act is to include consumer claims, the worrying facts are that the LACON has a serious challenge ranging from funding to staffing.<sup>35</sup> As at September, 2013 the staff strength of the council is 284 personnel.<sup>36</sup> One can imagine how grossly understaffed the council is, to serve over 174 million Nigerians. Little wonder a LACON board member of the LACON estimated as at September 2013 that over 100 million Nigerians have no access to justice.<sup>37</sup> This is a startling revelation that calls for a declaration of emergency on the issue of access to justice and related structures in the country. With this state of legal aid in the country, are the courts helpful in helping the cause of the poor consumers?



### **5.3 Consumer Rights and Remedies under the Nigerian Laws**

Consumer rights and remedies are the twin pillars upon which consumer redress process stands. The first step towards protecting the consumer, therefore, is by legislative

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<sup>33</sup> Omoh Gabriel, Nigeria, Third on World Poverty Index— World Bank, The Vanguard, April 11, 2014, <http://www.vanguardngr.com/2014/04/440695/>.

<sup>34</sup> Emma Una, “Poverty Level in Nigeria Intolerable — Osinbajo,” The Vanguard, June 26, 2015. <http://www.vanguardngr.com/2015/06/poverty-level-in-nigeria-intolerable-osinbajo/>. (accessed December 22, 2013).

<sup>35</sup> In the communiqué issued after the 19<sup>th</sup> September, 2013 conference organised by the Legal Aid Council of Nigeria with the theme “Access to Justice: Advancing the Frontiers of Pro bono,” government was urged to ensure adequate funding of the Legal Aid Council. <http://www.legalaidcouncil.gov.ng>. (accessed December 22, 2013).

<sup>36</sup> Wale Igbitade, “About 100m Nigerians Don’t’ Have Access to Justice –Adelodun,” National Mirror,” September 30, 2013. <http://nationalmirroronline.net/new/about-100m-nigerians-donthave-access-to-justice-adelodun/>.

<sup>37</sup> Wale (2013).

provision and protection of consumer rights and the remedies open to consumer in event of the violation of such rights. The absence of enforceable consumer rights and remedies promotes questionable business conducts. This part of the chapter examined the legal framework for consumer protection from the perspective of consumer rights and remedies provisions.

### **5.3.1 Consumer Rights**

Beginning from the message of President J.F. Kennedy and the efforts of consumer organisations such as the Consumer International (CI), to the involvement of international institutions such as the UN, certain rights have been granted to the consumers globally.<sup>38</sup>

It is accepted at least among consumer protection scholars that consumer have eight basic rights. These rights include the right to health and safety; right to access to adequate information, the right to consumer education, the right of the consumer to association (to voice out the consumer interests), the right to available and effective redress, and the right to safe environment.<sup>39</sup> Of great interest to consumer redress process are the rights to redress and the right to be heard. But for the purpose of this part of the research, only the consumer right to redress was examined in detail.

The right to redress is closely related to the right to be heard and the idea of access to justice. The right simply is the right of the wronged consumer to get redress for the loss, damage or injury he/she sustained flowing from any consumer transaction. The right to

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<sup>38</sup> Robert N. Mayer, “The US Consumer Movement: A New Era Amid Old Challenges,” *Journal of Consumer Affairs* 46, no. 2 (2012): 172; Gretchen Larsen and Rob Lawson, “Consumer Rights: A Co-optation of the Contemporary Consumer Movement.,” *Journal of Historical Research in Marketing* 5, no. 1 (2013): 104.

<sup>39</sup> See Chapter 3 for a detail account of the historical rights.

redress is vital as most of the consumer rights would be illusory without it. Like the other consumer rights, no legislation in Nigeria clearly incorporates the right as such,<sup>40</sup> though it can be situated within the provisions of the constitution dealing with the general powers of judiciary to hear any dispute on any right or liability etc. submitted to the courts.<sup>41</sup>

Under the right to redress, consumers victims of fraudulent market conducts should have their complaints fairly disposed and equally provided with a proper compensation regime. The right to redress is an equitable remedy a consumer can seek from the manufacturer or service provider. This is because if the consumer (who is always in a weak bargaining position) is at the mercy of the manufacturers against whom the complaint of the wrongs is done, he/she will always be at the loosing end. The effective protection of the consumers' right to redress presupposes the existence of Small Claims Court (SCC) or other administrative mediums for consumer complaints handling. Countries that valued the need to expeditiously settle consumer grievances such as US, China, Malaysia, Israel, Peru and a host of others have put in place the SCCs for that purpose.<sup>42</sup> Equally, the procedures for complaints handling established by the regulatory institutions and the business concerns in Nigeria are not prompt but time consuming. This includes even the procedures provided by consumer protection agencies such as the CPC and the NERC.<sup>43</sup> These aggravate the consumer sufferings on issues of consumer protection and redress.

<sup>40</sup> Dahiru Jafaru Usman and Nurli Yaacob, "Consumer Rights in a Deregulated Environment: A Critical Appraisal of the Legal Framework for Consumer Protection in Nigeria," The 7th International Legal Conference, Organized by School of Law, Universiti Utara Malaysia, 13<sup>th</sup> – 14<sup>th</sup> November, 2013. Held at Quality Hotel City Centre, Kuala Lumpur, Malaysia

<sup>41</sup> Section 6, Constitution Federal Republic of Nigeria, 1999, Cap. C25, Laws of the Federation of Nigeria, 2004.

<sup>42</sup> Detail examination of the Small Claims Court and other ideal mediums for consumer redress in Nigeria is contained in later part this chapter.

<sup>43</sup> The full picture of the redress process provided by the NERC the electricity sector regulator is provided in detail in the later part of this chapter.

As seen in chapter three, under the discussion on the CPC Act, for example, the State Committee on consumer protection that should be established across the thirty-six states of the federation (where it exists) can only mediate between disputing parties. Where settlement is not reached, the State Committees can only recommend to the CPC the appropriate remedies. In view of the large size of the CPC members, it appears impracticable for the CPC to regularly meet to endorse the recommended remedies by the state committee.

Consumer redress is a right under several consumer protection statutes across jurisdictions. In Malaysia the consumer right to redress arise in cases where the goods supplied fail to meet the implied guarantees as to description, repairs etc. or that the goods or services do not meet any of the express guarantees provided by the seller.<sup>44</sup> Naturally, however, the MCPA, 1999 made provisions for exceptions in respect of representation not made by the manufacturer of the goods or the service provider or any act of God out of the control of all the parties. Although one can argue that every person natural or artificial can sue and be sued under the Nigerian legal system, the case of consumer right to redress is not explicitly provided under any statute or in any constitutional provision as done in jurisdictions such as Malaysia and Kenya.<sup>45</sup> Even when consumer rights are provided, the consumer should be provided remedies for the violation of such rights. The next part of this study contains analysis on the remedies available for consumer rights violation.

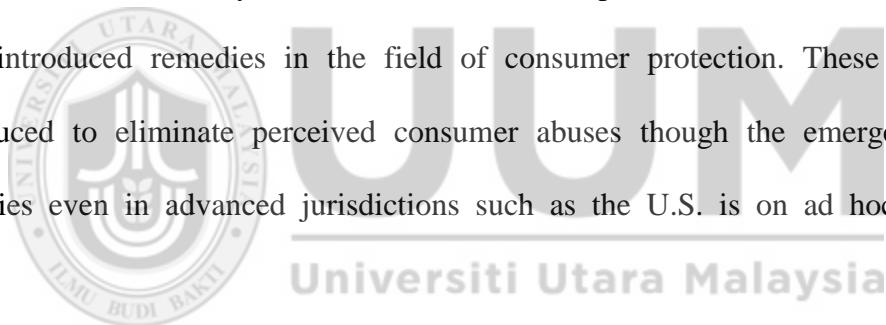
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<sup>44</sup> Sections 39, 50 and 57, Malaysia Consumer Protection Act, 1999.

<sup>45</sup> Dahiru Jafaru Usman and Nurli Yaacob, "Consumer Rights in a Deregulated Environment: A Critical Appraisal of the Legal Framework for Consumer Protection in Nigeria," The 7th International Legal Conference, Organized by School of Law, Universiti Utara Malaysia, 13<sup>th</sup> – 14<sup>th</sup> November, 2013. Held at Quality Hotel City Centre, Kuala Lumpur, Malaysia

### 5.3.2 Consumer Remedies

Initially, the consumer was at the mercy of merchants or the market forces.<sup>46</sup> The consumer had few options in the event of the violation of his rights through deceit and other unfair market conducts.<sup>47</sup> The consumer was left with inadequate remedies under the laws of contract and tort.<sup>48</sup> Often, consumers are left with common law damages that were hindered due to difficulties of proof and other technicalities and the limitations associated with concepts such as the *caveat emptor*.<sup>49</sup> Thus, scholars such as Kanyip concluded that leaving consumers to common law principles such as *caveat emptor* and the rules enunciated in *Donogue V. Stevenson* “was not entirely beneficial to the consumer.”<sup>50</sup> In recent years, however, consumer protection laws across jurisdictions have introduced remedies in the field of consumer protection. These remedies are introduced to eliminate perceived consumer abuses though the emergence of these remedies even in advanced jurisdictions such as the U.S. is on ad hoc basis.<sup>51</sup> The



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<sup>46</sup> Gordon Borrie, *The Developments of Consumer Law and Policy: Bold Spirits and Timorous Souls*, (Hamlyn Trust, London, 1984), 7; M.J. Leder, *Consumer Law*, (Plymouth, Macdonald & Evans Ltd, 1980),1

<sup>47</sup> *Ibid.*

<sup>48</sup>Naemah Amin, “Product Liability under the Consumer Protection Act 1999,” *International Islamic University Malaysia Law Journal* 7, no. 2 (1999): 176; Naemah Amin and Elistina Abu Bakar, “Remedies for Breach of Implied Guarantees in a Contract of Supply of Services Under the Malaysian Consumer Protection Act 1999,” *Journal of Applied Sciences Research* 7, no. 13 (2011): 2350.

<sup>49</sup> Janice R. Franke and Deborah A Ballam, “New Applications of Consumer Protection Law: Judicial Activism or Legislative Directive,” *Santa Clara Law Review* 32 (1992): 355; Consumer Dispute Resolution in Missouri: Missouri’s Need for a True Consumer Ombudsman, *Journal of Dispute Resolution* 1, no. 6 (1992):70.

<sup>50</sup> Benedict Bakwaph Kanyip, *Hitorical Analysis of Consumer Protection Laws in Nigeria*, (Lagos: NILS, 1997),23. See also Naemah Amin, “Revisiting *Donoghue v. Stevenson*: An Analysis From the Perspective of Consumer Protection,” in *One Day Seminar on Torts Law, 21 January 2009*, Library Auditorium, IIUM Library. (Unpublished).

<sup>51</sup> Dorothy Cohen, “Remedies for Consumer Protection: Prevention, Restitution, or Punishment,” *The Journal of Marketing* 39, no. 4 (Oct. 1975):24.

remedies can fall under administrative, contract or the criminal law.<sup>52</sup> The following are some of the remedies open to a consumer.

It should be emphasised that some of the remedies obtainable in contracts for the sale of goods or products, as discussed below, do not apply in contracts involving service provision such as electricity. This is because an electricity supply service once supplied, for instance is not capable of being rejected, repaired or replaced as is the case with a good or product. But an electricity consumer can ask for refund, can cancel the contract for electricity supply.

### **5.3.2.1 Prevention**

These are mostly administrative measures taken to eliminate consumer abuses prior to introduction or happening of fraud and deceits in the market place. Prevention is the most desirable public policy goal or measure although the history of consumer protection activities indicates that it is insufficient as a sole remedial action.<sup>53</sup> Much as these preventive remedies are desirable, they have been viewed in some quarters as restrictive of the consumers' rights and freedom of choice as well as the seller's right to determine what to and how to sell a product or offer a service.<sup>54</sup> It was, therefore, suggested that care must be taken so that preventive measures may not become too restrictive and impinge unfairly on seller's right.<sup>55</sup>

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<sup>52</sup> Rahmah Ismail, "Food and Consumer Protection: A Study on Food Legislation of Selected Countries," No. 017, *Asian Law Institute Working Paper*, (2011),2.

<sup>53</sup> Dorothy, (1975):30.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

A good example of preventive remedial measure is as contained in Sections 3 of the Consumer Protection Council Act (CPC Act).<sup>56</sup> By that section, the Consumer Protection Council (CPC) is mandated to among other things seek court injunction to prevent the circulation of any product which constitute an imminent public hazard or to ban the sale, distribution and advertisements of products which do not comply with safety or health regulations.

In the United States, agencies such as the Food and Drugs Administration (FDA) and the Federal Trade Commission (FTC) have employed these remedial measures in many ways. These preventive measures include the establishment of Codes of Conduct, Procedures for disclosure of information, and the requirement of substantiation of claims.<sup>57</sup> For example, the FTC in 1972 issued a preventive rule designed to prevent schools that offer training in computer programming, airline employment, and truck driving among others from promoting unrealistic future employment opportunities.<sup>58</sup>

### **5.3.2.2 Restitution**

This is a reparation made by giving an equivalent or compensation for loss, damage or injury caused.<sup>59</sup> Restitution from the consumer perspective is an equitable remedy that is invoked to restore the consumers to the position they ought to have been, if not for the

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<sup>56</sup>Sections 2 & 3Consumer Protection Council Act, Cap C25, LFN 2004.

<sup>57</sup>Dorothy, (1975):24.

<sup>58</sup> “Developing Protection for the consumer Future Services,”*Columbia Law Review* 72 (May 1972): 926

<sup>59</sup>*The Random House Dictionary of the English Language* (New York: Random House, 1967), 1222; Donna Batten, Gale Encyclopaedia of American Law, 3rd, Vol. 14 *Dictionary of Legal Terms*, (Gale: Cengage Learning: 2010),194.

improper action of the supplier of goods or services providers. Restitution is a standard remedy for breach of contract, and the return of specific property and monies paid.

Restitution as a remedial measure in the field of consumer protection is designed not only to prevent or halt deceptive or abusive practices but also provides consumers with compensation for the loss they have incurred through such reparation or the restoration to the former original state. Restitution supports the principle that the buyer has the right to be an equal party to a transaction. This is premised on the fact that historically, restitution is available to the seller who is aggrieved as such it is expected that such compensatory arrangements should be equally available to the buyer.

### **5.3.2.3 Cancellation**

A consumer in some jurisdictions such as Malaysia is statutorily empowered in situation where the supplier or service provider fails to substantially comply with the contract terms, conditions or description and other deserving circumstances to even cancel the contract. In Malaysia, this right appeared in several provisions of the MCPA 1999.<sup>60</sup> Like the other remedies, this remedy is absent in the Nigerian consumer protection statutes.

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<sup>60</sup> Sections 60, (1) (b) (i), 61, 62, 63, 64, and 65, Malaysia Consumer Protection Act, 1999; Naemah . Amin and Elistina Abu Bakar, “Remedies for Breach of Implied Guarantees in a Contract of Supply of Services Under the Malaysian Consumer Protection Act 1999,” *Journal of Applied Sciences Research* 7, no. 13 (2011): 2353.

#### **5.3.2.4 Punishment**

Punishment also has a place in the consumer protection process. Consumer fraud is believed to be “more harmful kind of social behaviour than the traditional crime.”<sup>61</sup> Although punishment is accepted, it is advised that it be used sparingly in preventing abusive practices or to deterring businesses that engage in deceptive practices in defiance to other imposed remedial measures. It is believed that although most remedial procedures of regulatory agencies in places such as the US contain punitive ingredients, they have avowed policy of being non-punitive.<sup>62</sup> Most Nigerian legislation on consumer protection are penal in nature even though the fines and imprisonment terms they provide are paltry and lower respectively than what is obtained in places such as Malaysia. The Nigerian legislation often do not provide for civil remedy.

#### **5.3.2.5 The 4Rs Remedies**

The consumer is equally entitled in other circumstances to other classes of remedies called the “4 Rs remedies.” These remedies are rejection, refund, replacement and repair. These bundles of remedies are clearly provided in consumer protection legislation across the globe. The Malaysian Consumer Protection 1999 is a good example.<sup>63</sup> In Malaysia for instance, Naemah argues that the MCPA 1999:

“not only provides a new set of guarantees which are implied in every contract of supply of goods to consumers but also introduces a different remedial scheme in cases of breach of the guarantees. In addition to repair or replacement of defective goods, consumers who are not

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<sup>61</sup> Dorothy (1975):30

<sup>62</sup> Ibid.

<sup>63</sup> Naemah Amin, “The Consumer Protection Act 1999 and Fair Trade Practices In Malaysia,” Paper Presented at the Seminar on “*When Life Gives You Lemon*,” October 14, 2014, Connection at Nexus, Bangsar, South, Kuala Lumpur, Malaysia

satisfied with the goods for certain valid reasons may exercise the right to reject the goods.”<sup>64</sup>

It needs to be emphasized that although some consumer protection agencies in Nigeria such as the SON have occasionally awarded some of the 4Rs remedies especially refund and replacement, none of these remedies is provided under the CPC Act, the EPSRA Act or the SON Act.

#### **5.3.2.5.1 Rejection**

Consumers of goods or services can reject goods supplied and request for their money back. In the United Kingdom and Malaysia, for instance, a buyer can reject faulty goods within a reasonable time.<sup>65</sup> Getting this remedy, the consumer is required to complain within reasonable time.<sup>66</sup> Valuable as this remedy in the area of consumer redress, it is not stated in any Nigerian statute including the CPC Act - the overall consumer protection statute.

The consumer is further required to inform the seller immediately. He/she is to send back or make such goods available for collection by the seller. The return of the goods is

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<sup>64</sup> Naemah Amin, “The Right of Consumers to Reject Goods Under the Consumer Protection Act 1999 – Real or Illusory”? In: *13th MACFEA National Seminar 2009*, 4-5 August 2009, Hotel Concorde, Shah Alam. (Unpublished).

<sup>65</sup> Section 35(6) Sale of Goods Act, (UK) 1979;Section 43, Malaysia Consumer Protection Act, 1999. The recent UK Consumer Rights Act, 2015 made detailed provisions on the issues of consumers’ right to reject goods or services in several places. Section 21 (1) (a) and (b) (2) (a) and (b), (3), (5), (7), (8), (9); Section 22 (1), (2), (3), (4), (5), Section 23 (6) and (7);Section 24 (5), (8), (10); Section 25 (1), (2), (4), (5); Section 26 (3) (a) and (b); Section 27 (1) (a); Section (28) (10) (a); and Section 58 (5).

<sup>66</sup> Mary Gardiner Jones and Barry B. Boyer, “Improving the Quality of Justice in the Marketplace: The Need for Better Consumer Remedies,” *George Washintong Law Review* 40 (1971): 35; Naemah Amin, “The Consumer Protection Act 1999 and Fair Trade Practices In Malaysia,” paper presented at the Seminar on “When Life Gives You Lemon,” October 14, 2014, Connection at Nexus, Bangsar, South, Kuala Lumpur, Malaysia; Section 22 Consumer Rights Act, 2015, (UK).

however seen as the best option. This is because it will assist the buyer in convincing the seller that his/her claim is legitimate and will again speed up the resolution of the complaints. In England where the claim for rejection is brought within six months of the sale, the burden is on the seller to prove that the goods conform to the contract.<sup>67</sup> Anything beyond six months shifts the burden to the consumer to prove that the lack of conformity existed at the time of sale.<sup>68</sup> This is what is called the “Reversed burden of proof.”<sup>69</sup> The time to reject goods has been abridged by the recent UCRA 2015 in the UK to 30 days.<sup>70</sup>

### **5.3.2.5.2 Refund**

In situation where goods supplied or services provided fail to meet the consumers' expectation or the fundamental guarantees in contracts, the consumer can seek refuge in seeking a refund of the cash paid by returning the goods in question. This remedy is amply provided under the recent UK Consumer Rights Act, (UCRA) 2015. Refund appeared thirty times in in the UCRA 2015.<sup>71</sup> Equally, Malaysian consumers under the MCPA, 1999, are granted the right to refund in consumer transactions.<sup>72</sup> A refund may be full or partial. This however depends on the length of time which the product supplied stayed with the consumer. A full refund can be given to the consumer if the goods are returned within a reasonable time. What is a reasonable time is a question of

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<sup>67</sup> DTI, Guide to supply of Goods and Services, A document of the United Kingdom Department of Trade and Industry (DTI), (2005), 15

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Section 22, Consumer Rights Act, 2015 (UK).

<sup>71</sup> Ibid., Section 20 (7), (9), (13), (14), (15), (16), (17), (18), (19), (21); Section 21 (7), (9), and (11); Section 24 (1), (3), (8); Section 42 (3); Section 44 (1), (4), (5); Section 45 (1), (2), (3), (4), (5); Section 56 (1), (4), (5), and (6).

<sup>72</sup> Section 42 (1) (d), (3) and Section 46, The Malaysia Consumer Protection Act, 1999

circumstances of given case. In England, Wales and Northern Ireland for instance, complaints can be brought to court up to six years after a sale and for five years in Scotland. Reasons being that the Limitation Act<sup>73</sup> bars cases from being brought after that time. The rule is not a durability requirement. Hence, it does not mean that goods have to last six or five years before one can exercise his/her rights.

A consumer may in some occasions be giving partial refund. The partial refund is, however, given in circumstances when it will be unreasonable to give a full refund. This is especially in situations when the consumer has derived some benefit from such goods or services before the fault was discovered. In other words, the decision to either grant a full or a partial refund is taken by considering the benefit provided by the goods to the consumer. This fact needs to be taken into account before the assessment of a reasonable partial refund. Regrettably, the remedy of refund of price in event of failure of contract is not provided in the relevant Nigerian consumer protection statutes. No reference to refund is made in the CPC Act or the EPSRA as well as the relevant statutory instrument. This is a flaw it is argued.

### **5.3.2.5.3 Repair/Replacement**

These remedies go hand in hand. Repair or Replacement are granted in situation where a consumer having bought goods or requested a service, later found it not to be in conformity with the description or terms of the contract and does not want to reject the same or ask for damages. These twin remedies are adequately provided under the UCRA

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<sup>73</sup>Limitation Act, 1980 (UK).

2015.<sup>74</sup> Here the consumer can ask for repair or replacement of the said good supplied. They are also sought for, where the seller has given a guarantee, and a minor fault occurs. Where the fault can be remedied, the seller can repair. But where the fault is substantial, the buyer may ask for a replacement. Often, these two remedies are sought in the alternative to cancellation or rejection of the good or refund of money from the seller. The MCPA, 1999 clearly spelt out the right of the consumers to either replacement or repair depending on the circumstances of a given case.<sup>75</sup>

Where a consumer chooses the repair remedy, it must be carried out within a reasonable time and without significant inconvenience for the consumer. So, from the onset, where this is not possible, the consumer should be wise in choosing another remedy. A way out is given to the seller by the concept of “disproportionate cost”. By this concept, he/she can decline the repair remedy if the cost of the repair would be disproportionately higher than the cost of replacement. It should, however, be noted that that the “4 Rs” remedies are also available to UK consumers in the following circumstances;<sup>76</sup>

1. where installations by a retailer or manufacturer or service provider is not satisfactory;
2. where installations instructions have serious shortcomings;
3. generally where goods or services do not match the public statements made about it by the retailer, manufacturer, provider, importer or producer; and

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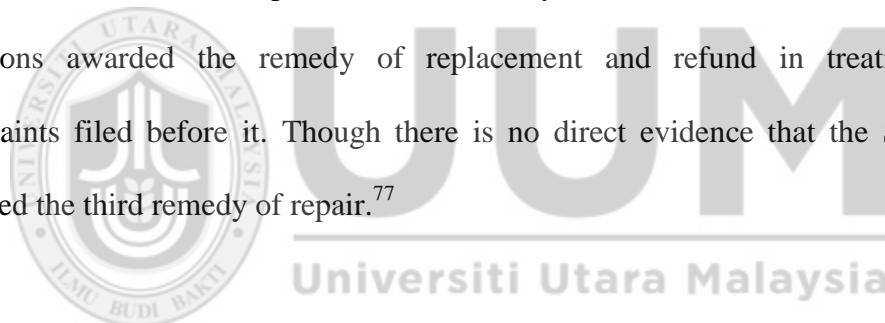
<sup>74</sup> Section 19 (3) (b), (4) (a); Section 22 (6) and (8); Section 23 (1), (3), (6) and (7); Section 24 (5) (a), (b) and (c), (6) and (7); Section 30 (2) (b); Section 42 (2); Section 43 (1), (2), (3), (6), (7); Section 44 (3) (a), (b); Section 46 (2) (a), (3) (a) and (b), Consumer Rights Act, 2015 (UK).

<sup>75</sup> Section 42 (1) (a) and 52 (2) (a); Section 46 (1) (b), (2), 52 (2) (b), Malaysia Consumer Protection Act, 1999; Naemah Amin, “The Consumer Protection Act 1999 and Fair Trade Practices In Malaysia,” paper presented at the Seminar on “When Life Gives You Lemon,” October 14, 2014, Connection at Nexus, Bangsar, South, Kuala Lumpur, Malaysia.

<sup>76</sup> Guide to supply of Goods and Services, A document of the United Kingdom Department of Trade and Industry (DTI), (2005), 5. <http://www.dti.gov.uk>, (accessed February 2, 2010).

4. where a specially commissioned product has relevant failings.

It should, however, be noted that much as a consumer is entitled to the above remedies, this does not extend to fault occasion as a result of reasonable wear and tear, misuse or accidental damage. The rationale behind this exception is premised on the fact that goods cannot be expected to work fault free. They can break down through normal use. Buyers cannot, therefore, hold the seller responsible for fair wear and tear or accidental damage. In the same vein, consumers cannot expect a legal remedy where the goods or services supplied or provided have faults known to consumers before the sale or that have been evident on reasonable inspection. It is worthy of note that the SON has on many occasions awarded the remedy of replacement and refund in treating consumer complaints filed before it. Though there is no direct evidence that the SON has ever awarded the third remedy of repair.<sup>77</sup>



#### **5.4 The Nigerian Judicial System**

Citizens as consumers must relate to one another in business and other spheres. In the course of these relationships, disputes are bound to arise.<sup>78</sup> In all organised societies courts which constitute the judiciary of states are established. The courts exist to settle competing rights and claims and to determine the duties and obligation of the citizens.<sup>79</sup>

In the context of this thesis, the courts are there as forums for the ventilation of the above

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<sup>77</sup>Kanyip, B.B., "Consumer Protection Laws in Nigeria," PhD Thesis Submitted to School of Postgraduate Studies, Ahmadu Bello University, Zaria, (1997), 480

<sup>78</sup>Jennifer A. Leitch, "Having a Say: Access to Justice as Democratic Participation," *UCLJLJ* 4 (2015): 76.

<sup>79</sup>C.A. Obiozor, "The Constitutional Vesting of Judicial Powers in the Judicature in Nigeria- The Problem with Section 6 (6) (d) of the Constitution of 1999," *National Institute of Advance Legal Studies Law and Development Journal* (2010): 223.

consumer rights violation and for obtaining the remedies analysed above. The Nigeria's judicial system is largely British.<sup>80</sup> This is because of Nigeria's colonial heritage.<sup>81</sup> The judiciary as obtainable within the common law system is hierarchical with the Supreme Court at the top, followed by the Court of Appeal and then other Federal and States' High Courts, Shari'ah Courts and Customary Courts of Appeal, National Industrial Courts and Securities Tribunals. The other courts at the bottom of the judicial ladder are inferior. These are the Magistrate Courts, the Shari'ah Courts and the Customary Courts.

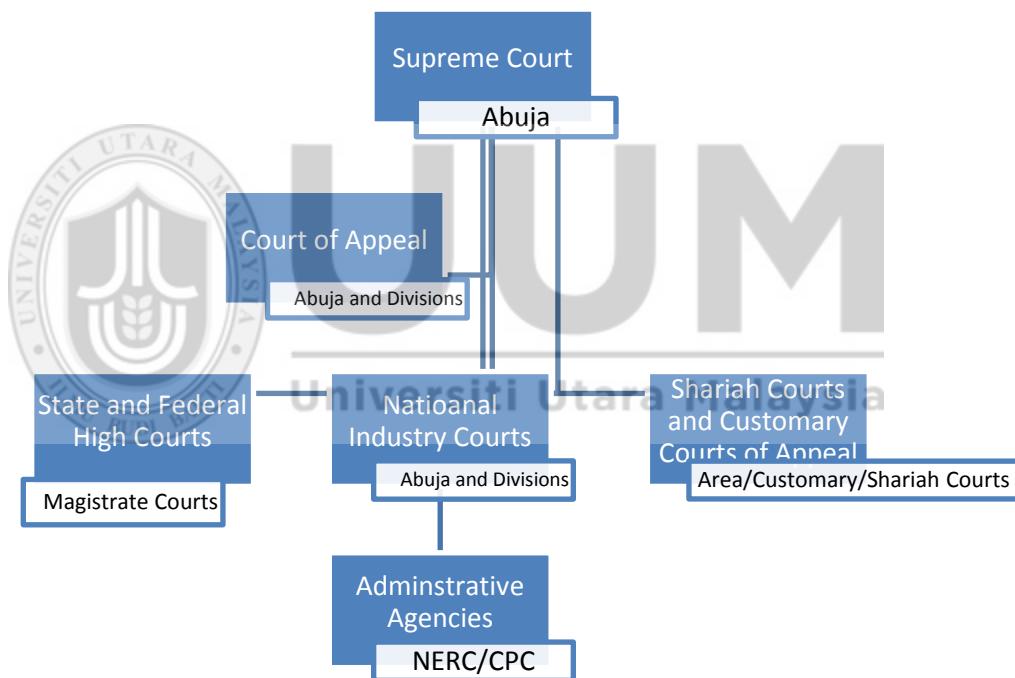


Figure 5.1  
*Institutional Framework for Consumer Redress in Nigeria*

<sup>80</sup>Okechukwu Oko, "Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria," *Brook. Journal International Law* 31 (2005): 29; John Ohireime Asen, *Introduction to Nigerian Legal System* , (1998), 92.

<sup>81</sup>Akinola T. Aguda, "Nigeria in Search for Social Justice Through the Law," *Occasional Paper No. 1, 1986* (Lagos: National Institute of Advance Legal Studies, 1986), 2.

Just and timely determination of cases is the main objective of establishing courts.<sup>82</sup>

Although court fees and related cost as well as court congestion are not peculiar to Nigeria,<sup>83</sup> the feature of justice dispensed by the above Nigerian courts appears to be delays-prone, costly and technical.<sup>84</sup> The vivid description of the delays in the Nigerian judicial system three decades ago by Justice Aguda still holds today. According to the learned justice:

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“The present incredibly slow process of judicial administration is frightening and oppressive . . . . A judicial system which can permit a simple case, for example, of wrongful termination of employment, to remain in the courts for over five years cannot be said to be running smoothly. Whatever happens at the end of such an aberration of court trial can hardly be said to be justice ....Our present system of judicial administration is a bankrupt system, and it is very sad indeed that no government from independence in 1960 to this moment has ever made any conscious effort to re-organise or modernise this bankrupt system. It is an inexplicable irony that whilst some of our other smaller sister-countries in the so-called Third World are taking giant steps in the technological age of the 21<sup>st</sup> century, we are satisfied to continue to wallow in the stinking stenches of the 19<sup>th</sup>.<sup>85</sup>

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<sup>82</sup> Aodover Kaka'an, “‘Case Management and Quick Dispensation of Justice,’ in Essays in Honour of Kanu Agaabi SAN,” *Frontiers of Nigerian Law Journal* 2, (2008):354.

<sup>83</sup> Bryant, (1995),91; Terry Calvani, “Dispute Resolution Mechanisms as an Alternative to FTC Litigation,” *Alternatives to the High Cost of Litigation* 3, no. 7 (1985): 8; Anita Stuhmcke, “The rise of the Australian telecommunications industry Ombudsman,” *Telecommunications Policy* 26, no. 1 (2002): 71.

<sup>84</sup> Okechukwu Oko, “Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria,” *Brooklyn Journal of International Law* 31 (2005): 9; Chris Nwachukwu Okeke, “The Second Scramble for Africa’s Oil and Mineral Resources: Blessing or Curse?” *The International Lawyer*, (2008): 203; Emilia, (2013):97; HURILAWS, *Legislative Agenda for Good Governance in Nigeria 1999- 2004*(1999), 9; Niki Tobi, “Delay in the Administration of Justice,” in *Justice in the Judicial Process: Essays in Honor of Justice Eugene Ubaezonu*, ed. C.C. Nweze (2002), 390; Human Rights Watch, The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities, (1999), 157.

<sup>85</sup> Akinola T. Aguda, *The Crisis of Justice* (Eresu Hills Publishers, 1986), 14-15.

Additionally, Honourable Justice Adolphus Enabeli of the High Court of Justice of Rivers State, Nigeria while admitting the delay in the Nigerian judicial system, about a decade ago, explained the causes of the delay. According to the learned justice:

Apart from law's delay in the administration of justice the critical causes of delay are legion: The inadequacy of courts and judicial personnel; the role of parties to a case. The negative attitude of the layman or litigants. Their poverty and absenteeism (of parties and witnesses) causes delay because of cost of litigation, professional fees; the tardiness of police investigation and prosecution; the role of legal practitioners (their unpreparedness and frequent and unjustifiable application for adjournment), the problem of the prison authorities, the roles of judicial and non-judicial staff and the method of recording proceedings. A conspiracy of these factors produces delay in the administration of justice.<sup>86</sup>

Further acknowledging these delays and cumbersome nature of the Nigerian judicial system, Honourable Justice Dahiru Musdapher (the then Chief Justice of Nigeria) stressed the vision of the apex court under his tenure of entrenching a judicial system that is simple, speedy and efficient. According to the learned justice:

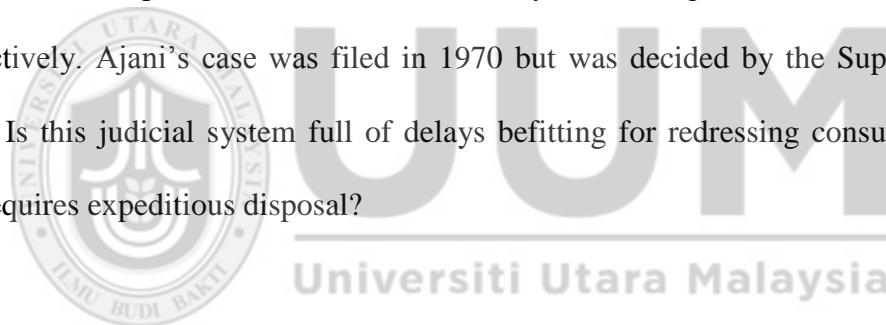
"We have a vision of a justice system that is simple, fast, and efficient. It must be responsive to the needs and yearnings of the citizenry. I strongly believe we can succeed by adhering to the Fundamental Objectives and Directive Principles of State Policy as contained in sections 13 to 24 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)."<sup>87</sup>

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<sup>86</sup>Adolphus Enebeli, "The Law' Delay; The Layman's Lethargy: The Lawyer's Burden, The Society Undoing," being a Paper Presented at Annual Bar Dinner of the Nigerian Bar Association, Port Harcourt Branch, Nigeria, at the Conference Hall of the Rivers State, Ministry of Justice, Rivers State, Nigeria, 14<sup>th</sup> December, 2006, 12.

<sup>87</sup>Dahiru Musdapher, "The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy," *Fellows' Lectures Series. Nigerian Institute of Advanced Legal Studies, Lagos* (2011).

Delays in the Nigerian judicial system can be seen through some of the cases submitted before the courts. It is a country where cases stay for many decades to be finally decided.<sup>88</sup> The case of Ariori Vs Elemo<sup>89</sup> presents one worrying example. This case took 22 years to get to the Supreme Court of Nigeria only for the apex court to order for retrial. In fact, cases had stayed 29 years before the Lagos State High Court undecided. Examples abound. For instance the cases of Sipeolu & Another Vs. AIICO Engineering Group Nigeria and S.A. Abudu Vs. Alhaja T. Ogunbambi & Another<sup>90</sup> respectively filed in 1974 were at 2003 pending for 29 years undecided before the High Court of Lagos. Other cases such as A. J. Lawal & Another Vs. A. Santos and Ajani Vs. Giwa<sup>91</sup> remained uncompleted for about 26 and 16 years having been filed 1977 and 1970 respectively. Ajani's case was filed in 1970 but was decided by the Supreme Court in 1986. Is this judicial system full of delays befitting for redressing consumer grievance that requires expeditious disposal?



These delays have negative effects. They frustrate litigants thereby making the system anti-consumer because consumer disputes need to be expeditiously disposed-off. These delays and frustration litigants face, were among the reasons that prompted the Lagos State government of Nigeria to introduce in 2007 a court connected ADR forum through the Multi-Door Court system to reduce the frustration and delays associated with the

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<sup>88</sup> Ariori V. Elemu (1983) 1 Supreme Court Cases (SC), 13; Wakino V. Ade John (1999) 9 Nigeria Weekly Law Reports (NWLR) Part 619, 403; Dabo V. Abdullahi (2005) ALL Federation Weekly Law Reports (FWLR) Part 255, P.1039.

<sup>89</sup> (1983) 1 SC, 13.

<sup>90</sup> Suit No LD/89/74; Suit No LD/89/74.

<sup>91</sup> Suit No LD/469/77 , Ajani v. Giwa (1986) 6 SC 234.

litigation before the Nigerian courts.<sup>92</sup> Today, the innovation has been copied by the Federal Capital Territory Abuja and many states in the country such as Kano and Katsina States of Nigeria.

While it is undisputed that most consumer disputes are mostly minor or small claims,<sup>93</sup> cost of legal services (court and lawyers related fees) is another major impediment to access to justice.<sup>94</sup> The cost of prosecuting a matter before the above courts is beyond the reach of the common consumer. For economic reasons is it wise to pursue these small claims before the above ordinary courts? The suitability of the Nigerian judicial system as it stands today for consumer access to justice is considered and examined below.

#### **5.4.1 Affordability of Legal Services (Court- related and Legal Practitioners' Fees)**

As in all organized societies judicial structures for redressing injustices abound in Nigeria. The formal justice system operates through the regular courts and remains largely the redress forum. Majority of cases presented before the regular courts are settled through litigation.<sup>95</sup> According to Novais and Carneiro litigation or the “the traditional judicial system” has proved inadequate in resolving disputes such as consumer claims.<sup>96</sup>

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<sup>92</sup> Emilia (2013):97

<sup>93</sup>Thomas L Eovaldi and Joan E Gestrin, “Justice for Consumers: The Mechanisms of Redress,” *Northwestern University Law Review* 66 (1971): 286; Richard Thomas, “Alternative Dispute Resolution-Consumer Disputes,” *Civil Justice Quarterly* 7, (1988): 206-209, cited Zakuan, Zeti Zuryani Mohd, Ida Rosnita Ismail, Sakina Shaik Ahmad Yusoff, and Rahmah Ismail,” Consumer Redress Mechanism in Malaysia,” in 3rd International Conference on Business and Economic Research ( 3rd ICBER 2012 ) Proceeding, Golden Flower Hotel, Bandung, Indonesia.

<sup>94</sup> Dahiru Jafaru Usman, Nurli Yaacob and Aspalella A. Rahman, “Affordability of Legal Services and the Appropriateness of the Regular Courts for Consumer Redress in Nigeria: A Qualitative Inquiry,” The International Conference on Law and Society (ICLAS 1V 2015), Organized by Universiti Zainal Abidin, Terengganu Malaysia, 10<sup>th</sup> – 11<sup>th</sup> May, 2015.

<sup>95</sup> Onyema 2013.

<sup>96</sup> Marco Carvalho Gonçalves, “Alternative Dispute Resolution in Civil and Commercial Matters in the EU,” in *Interdisciplinary Perspectives on Contemporary Conflict Resolution: Advances in Linguistics and*

Filing a suit requires payment of filing fees and other fees for the service of the processes on all parties affected. This is a precondition in Nigeria as obtainable under all the courts rules from the lowest court up to the highest in the judicial ladder.<sup>97</sup> Being lay people, most litigants need legal representation to appreciate the procedures and all the processes involved in the adjudication of their dispute. Hiring lawyers is something beyond the reach of the majority who are poor and under too many pressures. The cost and expense is a barrier to accessing justice. Some of the participants reported the cost and expense barriers. Participant 15 assertively stated that justice is “actually not affordable” to the poor Nigerians.<sup>98</sup> In similar fashion Participant 4 while believing the justice system to be open stated that it is “not very affordable.”<sup>99</sup> Participant 1, a state head of Legal Aid Council of Nigeria (LACON), vividly captures the affordability crisis in the following words:

Most of them (Nigerians) cannot afford. To afford the services of a lawyer is not easy. Because nowadays, the cost of filing, the payment and settlement of fees for lawyers is not every Nigerian that can afford it. Seventy percent (70%) of Nigerians cannot afford the services of a lawyer.<sup>100</sup>

Strengthening the position of Participant 1, Participant 6, a senior legal practitioner and an academic involved in consumer protection, equally reported that the cost of litigation comprising the court and lawyers’ fees is “something the Nigerian poor masses cannot

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*Communication Studies*, (IGI Global, 2016), eds. Paulo Novais and Davide Carneiro, <https://books.google.com.my/books?id=ozwBDAAAQBAJ>; (accessed April 2 6, 2016), 111.

<sup>97</sup> See for example The Federal High Court Civil Procedure Rules; the Lagos, Rivers, Katsina, Kano, Enugu States High Court Civil Procedure Rules and the High Court Civil Procedures Rules of all the other States of the Federation.

<sup>98</sup> Interview with Participant No. 15, a CPC staff at the CPC headquarters Abuja, Nigeria, July 9, 2014.

<sup>99</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014.

<sup>100</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACON, August 4, 2014).

afford.”<sup>101</sup> It is this huge problem of affordability that the legal aid scheme was initiated. Accordingly, Participant 14 believed that the expensive nature of legal practice was what led to conceiving the idea of legal aid. Participant 14, a Legal Officer with LACON stated that “legal practice is expensive (and) the sole aim of conceiving the legal aid was to see that the indigent have access to justice.”<sup>102</sup>

Additionally, Participant 12 a senior officer of the LACON reported the “crisis of means” facing poor Nigerians when it comes to access to justice. Participant 12 added that:

When you look at most of the cases we have around, it would actually tell you that honestly most Nigerians can’t afford the private legal practitioners’ demand. When they (the masses) come here, they would tell you we do not have money to get a lawyer in fact we met a lawyer, and the money is too much we cannot afford it. We live in the rural areas, and we do not have much. We cannot even afford to feed our family not to talk of getting a lawyer. So, I think looking at the private lawyers and the judicial system, honestly there are so many people out there who are in need of legal representation but can’t afford it. It’s really becoming worst every day. Most of the challenges have to do with money. Because for you to get a lawyer, in Nigeria, it means you have to be ‘boxed up.’ You have to have money. Because when you get to most of those chambers, it is just like in the hospitals. Before you see a lawyer, you pay for the opening of your file, you pay for consultation and every time the lawyer is going to court you must pay his appearance fees.<sup>103</sup>

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<sup>101</sup> Interview with Participant No. 6, a doctor of laws involved in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office.

<sup>102</sup> Interview with Participant No. 14, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014.

<sup>103</sup> Interview with Participant No. 12, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014

#### **5.4.2 The Suitability of the Traditional Adjudicatory System for Consumer Dispute Settlement in Nigeria**

The cumbersome, slow and bureaucratic nature of the Nigerian judicial system is unassailable. Although the slow feature is not only peculiar to Nigeria as confirmed by empirical evidence and findings in the literature from other jurisdictions, it is submitted that Nigeria's court system is inappropriate for consumer redress. Principal reason is that the consumer disputes need expeditious disposal. This philosophy for expeditious disposal of consumer dispute is well documented by the drafters of the principal consumer protection statute in the country - the CPC Act. The CPC Act made expeditious disposal of consumer complaints the first priority among the functions for which the CPC was established. Section 2 (a) provides that “(t)he Council shall- (a) provide speedy redress to consumers' complaints through negotiation, mediation, and conciliation.”

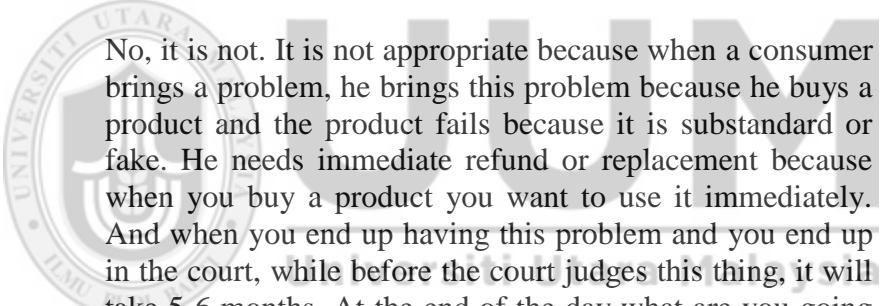
The leading justification for the inappropriateness of the ordinary courts for consumer redress is that consumer disputes are often small claims,<sup>104</sup> as such very unwise ventilating them before too formal and expensive avenues such as the delays-prone ordinary Nigerian courts. According to Thomas, these consumer claims being what they are do not require legal formality to be settled.<sup>105</sup> Unfortunately, no other avenue or arrangement is made within the Nigerian judicial system to cater specifically for such

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<sup>104</sup> Naemah Amin, “Consumer Redress Mechanisms in Malaysia: Prospects and Challenges, *International Islamic University Malaysia Law Journal* 15, no. 2 (2012); Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: an Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore: LexisNexis, 2010), 171; Cynthia Hawes, “Functioning and Reforms of Small Claims Tribunals in New Zealand,” *Journal of Consumer Policy* 12, no. 1 (1989): 71; Christopher Hodges, “Consumer Redress: Ideology and Empiricism,” in *Varieties of European Economic Law and Regulation*, ed., Kai Purnhagen and Peter Rott, 3, (Springer International Publishing, 2014), 793; Nicole L'Heureux, “Effective Consumer Access to Justice: Class Actions,” *Journal of Consumer Policy* 15, no. 4 (1992): 445.

<sup>105</sup> Thomas and Joan, (1971).

small consumer claims. What agitates the minds of the researcher in this thesis is what is the way out for the poor consumers? Would the consumers appreciate the meaning of access to redress if left with the regular courts? Alternatives or special arrangements for consumer disputes readily come to mind. Cheap, inexpensive and simple avenues such as SCCs and procedures it is argued are more befitting for the ventilation of consumer disputes. Avenues that accommodate waivers of filing fees for example and other forums that do not lend themselves to technicalities would be of much help to the consumer. From their responses, the research participants seem to agree on the inappropriateness of the regular courts for consumer redress. Participant 20 when asked on how appropriate he considers the court system for consumer redress responded:



No, it is not. It is not appropriate because when a consumer brings a problem, he brings this problem because he buys a product and the product fails because it is substandard or fake. He needs immediate refund or replacement because when you buy a product you want to use it immediately. And when you end up having this problem and you end up in the court, while before the court judges this thing, it will take 5-6 months. At the end of the day what are you going to do with that products?<sup>106</sup>

Additionally, the system before the regular courts accommodates lawyers, and they have been found to take huge aspect of the blame for the delays and other shortcomings of the judicial system. The lawyers are more of technicalities than substantial justice. A system that accommodates them is not appropriate for consumer disputes. The jurisprudence on small claims or consumer courts is built around substantial rather than procedural justice as such exclude lawyers who enjoy technicalities. This is because where lawyers are allowed they have defeated the purport for the establishment of the small claims court.

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<sup>106</sup> Interview with Participant 20, a staff of SON, at his residence, August, 19, 2014

According to Participant 15, the small claims court “would go a long way in settling most of the disputes we have. Because it is devoid of all the legal technicalities, not cumbersome and straight forward kind of a thing. I think there is a need to have a tribunal instead of going to the regular courts.”<sup>107</sup> Some of the Participants further opined that the establishment of separate avenues for consumer grievance handling outside the delays-prone and congested ordinary courts is a way to boast access to justice for the poor Nigerian consumers. According to Participant 3, a Senior Legal Officer with the CPC, “the establishment of consumer court would be the best.”<sup>108</sup>

In fact, Participants 4, 7 and 15 respectively see the establishment of small claims court as an “excellent; ”useful and relevant,” and a “fantastic” idea because all the instruments that can be deployed in protecting the consumer are not bad ideas.<sup>109</sup> Participant 4 however added the need for consumer enlightenment in that regards. On the issue, Participant 4 stated that “this is excellent. This is excellent. However, if you establish any court or any tribunal, there must be awareness, popular awareness. And this awareness should be done by a dedicated rights organization.”<sup>110</sup> Participant 6 in his response was, however, more specific on separate tribunals outside the regular courts for consumer redress. According to the Participant:

I would rather suggest a separate may be tribunals or separate rules guiding its proceedings to fast track any issue of consumer case. Just like we have the issue of election

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<sup>107</sup> Interview with Participant No. 15, a CPC staff at the CPC headquarters Abuja, Nigeria, (July 9, 2014).

<sup>108</sup> Interview Participant 3, a staff of the CPC at the Zonal office of the CPC, (August 8, 2014).

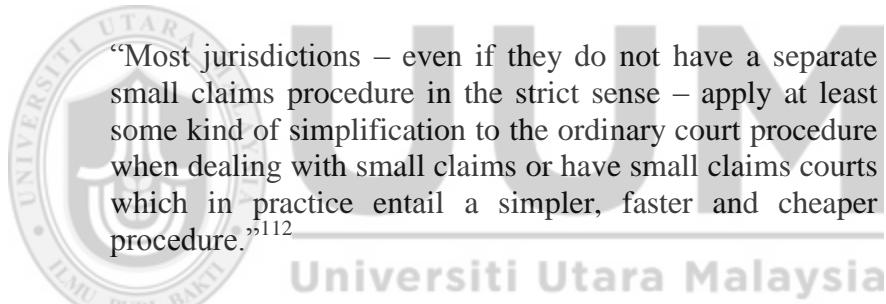
<sup>109</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014; Interview with Participant No. 7, a staff of the Nigerian Electricity Regulatory Commission (NERC), at the NERC Headquarters in Abuja and Interview with Participant No. 15, a CPC staff at the CPC headquarters Abuja, Nigeria, (July 9, 2014).

<sup>110</sup> Interview with Participant No. 4, a legal practitioner at his residence, (August 21, 2014).

tribunals, to make them time bound. So, any case would start from this time and end up with this time. And if we have to take a consumer protection case to our normal court then, we need to have practice direction that would ensure fast tracking such case to the end without any delays. So we have to detach it from our normal rules of court, normal procedure or civil proceedings or criminal proceedings rules. Then the issue of, also rigors of the proceedings, the processes that would not be easy for any Nigerian mass to be able to afford. So this is one of the problems.<sup>111</sup>

The suggestion of Participant 6 on special procedure for the disposal of consumer cases is in tandem with the practice in Europe. In these jurisdictions, Jules found that where Small Claim Courts do not exist, simplified and faster procedures were put in place. The findings of Jules testified to this. According to Jules:

“Most jurisdictions – even if they do not have a separate small claims procedure in the strict sense – apply at least some kind of simplification to the ordinary court procedure when dealing with small claims or have small claims courts which in practice entail a simpler, faster and cheaper procedure.”<sup>112</sup>



## 5.5 Ideal Institutions/Forums for Consumer Redress

With the picture of the Nigerian judicial system, alternative, fast, efficient and cost effective consumer redress institutions or forums should be explored. Below such forums as experimented in other jurisdictions have been examined and highlighted.

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<sup>111</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office.

<sup>112</sup> Jules Stuyck, Evelyn Terryn, Veerle Colaert, Tom Van Dyck, Neil Peretz, Nele Hoekx and Piotr Tereszkiewicz, “An Analysis and Evaluation of Alternative Means of Consumer Redress Other than Redress Through Ordinary Judicial Proceedings Final Report,” (Leuven: 2007),11.

### 5.5.1 The Idea of Small Claims Court and its Connection to Consumer Access to Justice

Speedy trial and fair hearing are the fundamental aspects of public justice that the state is obligated to guarantee.<sup>113</sup> The need for speedy dispensation of justice has for centuries been captured in the latin maxim *justitia nec differenda nec neganda est*<sup>114</sup> “justice is not to be denied or delayed.” This has given birth to the saying “justice delayed is justice denied.” A redress system appropriate for resolving consumer disputes is “one of the most important components in consumer protection law.”<sup>115</sup> The Small Claims Courts (SCCs) are economically feasible avenues for litigating small consumer claims. The idea behind the SCC is to enable the poor consumers to effectively protect and enforce their small but legitimate claims. This is what Prujiner regards as “democratisation de la justice,” meaning the democratization of justice process.<sup>116</sup> Delay according to the Nigerian Supreme Court often leads to miscarriage of justice.<sup>117</sup> Unfortunately, as seen above, the judicial system in Nigeria is the opposite. It is expensive and delays-prone,<sup>118</sup> and not affordable to the poor. But the SCCs are pro-poor<sup>119</sup> and serve a useful link between the poor and the civil justice. In fact, Peter and Arthur Bestf *et al.* call it a

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<sup>113</sup> *Ariori V. Elemo* (1983) 1 SCNLR, 1.

<sup>114</sup> Anandan Krishnan, *Words , Phrases & Maxims: Legally & Judicially Defined*, Vol 10, (Singapore, LexisNexis, 2008), 317

<sup>115</sup> Naemah Amin, “Consumer Redress Mechanisms in Malaysia: Prospects and Challenges,” *International Islamic University Malaysia Law Journal* 15, no. 2 (2012):232.

<sup>116</sup> Alain Prujiner, “Ambiguite des Small Claims Courts et ses Effets sur Leur Adaptation Quebecoise, La,” *C. de D.* 12 (1971): 175 cited in Christopher S. Axworthy, “Controlling the Abuse of Small Claims Courts,” *McGill Law Journal* 22 (1976): 481.

<sup>117</sup> Ifezua V. Mbaduga (1984) 1 SCNLR, 427.

<sup>118</sup> K. I. Adam, “An Appraisal of Litigation Issues in Trademark Protection in Nigeria,” *Nigerian Bar Journal* 3, no. 4 (October, 2005):1.

<sup>119</sup> Scott, “Small Causes and Poor Litigants,” *American Bar Association Journal* 9 (1923): 457; Carl R. Pagter, Robert McCloskey and Mitchell Reinis, “The California Small Claims Court,” *California Law Review* (1964): 877.

“people’s court.”<sup>120</sup> The existence of the SCCs especially in societies mostly dominated by the poor raises the efficiency of the administration of justice as many would be protected. This fact was acknowledged by Roscoe Pound more than a century ago. Roscoe Pound emphasized the need:

“... to make adequate provision for petty litigation, to provide for disposing quickly, inexpensively, and justly of litigation of the poor, for the collection of debts in a shifting population, and for the great volume of small controversies which a busy, crowded population, diversified in race and language, necessarily engenders. It is here that the administration of justice touches immediately the greatest number of people.”<sup>121</sup>

Lending his voice on the issue of a court system accessible and affordable to all, one time president of the Nigerian Bar Associations stated that “a court system needs to be independent, accountable, efficient, impartial, accessible, affordable and credible.”<sup>122</sup> A redress system with these characteristics is essential for the resolution of consumer disputes.<sup>123</sup>

In today’s globalised world, consumer rights and remedies need to be assured. The success of consumer rights and remedies protection, however, is premised on the existence of simple and cheap consumer redress mechanism. Less formal and inexpensive

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<sup>120</sup>Peter Lovenheim, *Mediate, Don’t Litigate: How Quick to Resolve Disputes, Quickly, Privately and Inexpensively Without Going to Court*, (New York: McGraw-Hill, 1989), 10; Arthur Bestf, Deborah Zalesne, Kathleen Bridges, Kathryn Chenoweth, Lisa Fine, Jonathan L. Miller, and Kimberly White, “Peace, Wealth, Happiness, And Small Claim Courts: A Case Study,” *Fordham Urban Law Journal* 21, (1993-1994): 345.

<sup>121</sup>Roscoe Pound, “The Administration of Justice in the Modern City,” *Harvard Law Review* 26 (1913):315.

<sup>122</sup> Olisa Agbakoba SAN, “How the Nigerian Bar Association Promotes and Defends the Rule of Law in Nigeria,” A publication of the Nigerian Bar Association, 2008.

<sup>123</sup> Naemah Amin, “Consumer Redress Mechanisms in Malaysia: Prospects and Challenges,” *International Islamic University Malaysia Law Journal* 15, no. 2 (2012):231.

redress mechanism enhances consumer access to justice.<sup>124</sup> Small claims or consumer courts fit in these characteristics. They have been found to be the effective means of consumer complaints resolutions.<sup>125</sup> In fact, Ramsay submitted that a reformed SCC might provide better consumer justice more than mediation would do.<sup>126</sup> The desire for a simple and friendly dispute resolution mechanism for consumer grievance in the Anglo-American judicial system is of great antiquity. It dates back to 1606 with the establishment of the Small Debt Court in England.<sup>127</sup> In the US, the first SCC was established in 1913 in Cleveland, Ohio; Topeka, Leavenworth; Kansas City in Kansas respectively.<sup>128</sup> The inadequacies of the judicial system of countries led to the emergence of SCC. The US's case is instructive.<sup>129</sup> In the African context, the importance of Small Claims Courts (SCCs) and Restrictive Trade Practices Tribunal (RTPT) for the protection of consumer rights, and improved access to justice were felt at the African regional level in 1996. This was at the African Regional Conference on Consumer Protection at Harare Zimbabwe. The conference gave birth to the African Model law on Consumer Protection (AMLCP). This model law was meant to guide African governments in enacting appropriate consumer legislation or amending existing ones. The consumer groups and international agencies in the region are also to benefit from the guidance offered by the

<sup>124</sup> Byron M. Sheldrick, "Access to Justice and Legal Empowerment as Vehicles of Poverty Alleviation: Governance Challenges to Linking Legal Structures to Social Change," (2012), 6, Paper Series on Legal Empowerment for Sustainable Development, a Publication of Center for Sustainable Development, Faculty of Law, McGill University, Montreal, Quebec, Canada.

<sup>125</sup> Julie Bradley, Barbara Sherman and W Keith Bryant, "Winning in Small Claims Court: An Empirical Analysis," *Journal of Consumer Affairs* (1982):112.

<sup>126</sup> Iain D. C. Ramsay, Consumer Redress Mechanisms for Poor-Quality and Defective Products," *The University of Toronto Law Journal* 31, no. 2 (Spring, 1981): 149.

<sup>127</sup> Jill I. Gross, "AT&T Mobility and the Future of Small Claims Arbitration," *Sw. L. Rev.* 42, no. 47 (2013):56, Barbara Ynguesson and Patricia Hennessy, "Small Claims, Complex Disputes: Review of the Small Claims Literature," *Law and Society Review* 9, no. 2 (1975): 223; Kathleen Browne Ittig, "Consumer Satisfaction and Local Redress Alternatives," *Journal of Consumer Studies & Home Economics* 4, no. 3 (1980): 194.

<sup>128</sup> Arthur Bestf *et al.* (1993-1994):346.

<sup>129</sup> Ibid.

AMLCP.<sup>130</sup> Articles 32 and 34 of the AMCLP sanctioned the establishment of SCC and RTPT respectively. The AMLCP equally provided detail rules to guide the SCCs.

Small Claims or Consumer Courts are consumers friendly. In comparison to regular courts, the SCCs are less expensive, less burdensome, less technical and do not accept delays. They are effective in solving consumer complaints.<sup>131</sup> Their less formality and affordability made them the best consumer dispute redress mechanisms. In fact, they have been described as a “useful adjudicative process.”<sup>132</sup> The SCCs focus on conciliation and at times compromise,<sup>133</sup> and have been found to have facilitated increase in access to justice especially in rural areas.<sup>134</sup>

Although the small claims or consumer courts are absent in many countries,<sup>135</sup> in comparison to the regular courts, they have been useful in addressing consumer complaints in places such as the UK, US, Canada, and Australia, India, Peru, South Africa compared to the regular courts.<sup>136</sup> As at 2006 South Africa had about 154 SCCs

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<sup>130</sup>R. Smith, *Justice and the Poor*, (1919), 43-54 cited in Thomas and Joan, (1971):294; Sihanya, Bernard, (Legal Consultant, Consumers International-ROAF), Key note address at the presentation of the Model Law for Consumer Protection, Harare, 1996.

<sup>131</sup>Consumer Watch, “Small Claims and Dispute Resolution can they Yield big Wins,” (2012); Holland Peter A., “The One Hundred Billion Dollar Problem in Small Claims Court: Robo - Signing and Lack of Proof in Debt Buyer Cases,” *Journal of Business and Technology Law* 6, no. 2 (2011):285; Ursic Michael, “Small Claims Court as Consumer Remedy, *Journal of Consumer Affairs* 15, no. 2 (Winter, 1981):392

<sup>132</sup> Daniel Coates, Charles Gantz and Bruce Heathcote, “Small Claims in Indiana,” *Indiana Legal Forum* (1969-70): 534.

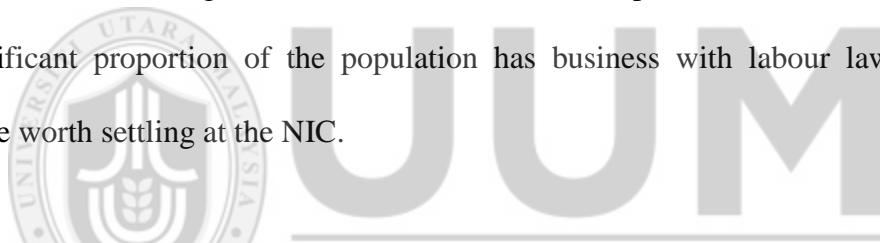
<sup>133</sup> Sanderson v. Neimann, 17 Cal. 2d 563, 110 P.2d 1025 (1941); Smith, *Justice and the Poor* (1940), 52-3; Scott, *Small Causes and Poor Litigants*, *American Bar Association Journal* 9 (1923): 457.

<sup>134</sup> Eugene Gunning, “Small Claims Court: Extending Justice for All,” *Finweek* (2006), 20.

<sup>135</sup> Susan L. Rutledge *et al.*, “Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool,” *The World Bank ECSPF- Working Papers 001*, 2010, 29.

<sup>136</sup>Lucy, (2013):61; UKDTI, “Comparative Report on Consumer Policy Regimes,”(2003) <http://www.dti.gov.uk>.(accessed February 22, 2013), 8.

with a plan to establish more.<sup>137</sup> Nigeria the African “giant” and the largest economy in the African continent, the most populous black nation on earth; with more rural population, with more consumers and widespread market abuses, does not have such an important consumer dispute settlement mechanism. The consumer does not have the prime treatment he/she deserves. Ironically, Nigeria has in place a National Industrial Court (NIC) but no consumer court. Prior to the creation of the NIC, it was not in the CFRN 1999 but the country made sure the constitution was amended to cater for the NIC. It is submitted that if a NIC can be established, there is no reason whatsoever that the country would not establish Small Claims Courts or Consumer Tribunals. This is because all the 174 million Nigerians have stakes in consumer protection structures, and only an insignificant proportion of the population has business with labour law or industrial dispute worth settling at the NIC.



The basis for advocating avenues for improving consumer access to justice is in line with the position of scholars such as Jones and Zabia. These scholars maintain that easy access to the court system and the establishment of “local grievance solving mechanism” such as SCC or consumer tribunals together with other ADR services facilitate the settlement of consumer grievances.<sup>138</sup> The SCC increases consumers’ participation in the judicial process and equally enable the consumers develop their capability to defend their

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<sup>137</sup> South African Government News Agency, “16 Small Claims Court Set Up Since April Last Year,” April 14, 2013. <http://www.sanews.gov.za/south-africa/16-small-claims-court-set-april-last-year> (accessed April 16, 2013).

<sup>138</sup> David J. Harland, “Consumer Protection in Australia,” *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law* 40, no. H. 3/4 (1976): 647.

economic interest.<sup>139</sup> The grievance settling mechanism provided by the SCC could in a way serve as counsel for low income consumers who have no resource to sue the suppliers of goods and services before the regular courts.<sup>140</sup> This is more appropriate for countries such as Nigeria because of the intolerable poverty level and the gaps between the service providers and the consumers.<sup>141</sup> As at April, 2014, the country is number three in the world poverty index next to China.<sup>142</sup> In fact, the Vice President of Nigeria recently lamented that poverty in Nigeria has reached intolerable level.<sup>143</sup> Unfortunately, cheap redress avenues for redressing the small consumer claims such as the SCC are not priorities in Nigeria despite the poverty level and the snail-like moving judicial system.<sup>144</sup>

A point should be emphasized. Establishing avenues such as the SCC is not an end in ensuring improved consumer access to justice; there is a need to follow it up with effective monitoring and reassessment to ensure that the intended results of improved consumer access to justice are achieved. Importantly, legal practitioners should be excluded from appearing before the SCC. The Indian experience is a lesson for countries such as Nigeria. In India, the audience granted to the lawyers in the SCCs resulted in the replication of technicalities and delay associated with the regular courts. The court in

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<sup>139</sup> M. G. Jones, (1973):22; Zabia, (2010):320; B. Moulton, “The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California,” *Stanford Law Review* 21 (1969) : 1668

<sup>140</sup> Haemmel, (1972).

<sup>141</sup> Mamman Lawan, “Under Development, Corruption and Legal Disorder in Nigeria: Exploring a Nexus,” *Journal of Law and Public Policy*, (2012):74

<sup>142</sup> Omoh Gabriel, “Nigeria, Third on World Poverty Index— World Bank,” The Vanguard, April 11, 2014, <http://www.vanguardngr.com/2014/04/440695/>

<sup>143</sup> Emma Una, “Poverty Level in Nigeria Intolerable — Osinbajo,” The Vanguard, June 26, 2015

<sup>144</sup> News Agency of Nigeria, “Fashola Decries Slow Wheels Of Justice In Nigeria,” The Leadership, September 23, 2014, <http://leadership.ng/news/384932/fashola-decries-slow-wheels-justice-nigeria>

Prudential Insurance Co. v. Small Claims Court,<sup>145</sup> explained the rationale for such exclusion. According to the court, the exclusion of lawyers is necessary if the small claims court were to fulfill their basic function.<sup>146</sup>

This research is not, however, oblivious of the delays identified with the small claims courts in some jurisdictions. Chief amongst them is the time consumers have to wait between the filing of the complaints and its resolution. Other problems identified in other jurisdictions include issues of the time of sittings of the Small Claims Courts (SCCs), location, number and enforcement of their judgments.<sup>147</sup> The courts have equally been criticized as debts collection avenues rather than the consumer grievance mediums<sup>148</sup> to the extent that reforms in some jurisdictions such as the UK, Quebec etc., barred corporations or businesses from being plaintiffs before the SCCs.<sup>149</sup> In fact, this is the practice in most jurisdictions.<sup>150</sup> This bar against companies as plaintiffs would make the small claims court “genuine peoples’ court” as opposed to a debt collection agency.<sup>151</sup> The above notwithstanding, the SCCs are better than the ordinary courts in terms of

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<sup>145</sup> Prudential Insurance Co. v. Small Claims Court, 76 Cal. App. 2d 379, 173, P.2d 38 (1946), cited in Thomas and Joan, (1971), 295.

<sup>146</sup> Ibid.

<sup>147</sup> Kathleen, (1980):200; American Bar Association, Small Claims Courts Designated for those Who Use it, Vol. 64, (1978):623; Arthur Best and Alan R. Andreasen, “Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress,” *Law & Society Review* 11, no. 4 (Spring, 1977):733.

<sup>148</sup> Thomas and Joan, (1971):297; Christopher S. Axworhty, “Controlling the abuse of Small Claims Courts,” *McGill Law Journal* 22 (1976): 480, 485; Mary and Barry (1971):359.

<sup>149</sup> Christopher S., (1976):483. Seana C. McGuire, and Roderick A. Macdonald, “Small Claims Court Cant,” *Osgoode Hall Law Journal* 34(1996):513.

<sup>150</sup> Carl R. Pagter, Robert McCloskey, and Mitchell Reinis, “The California Small Claims Court,” *California Law Review* (1964): 878; Mary and Barry, (1971):360.

<sup>151</sup> B. Moulton, “The Persecution and Intimidation of the Low-Income Litigant as Performed by the Small Claims Court in California,” *Stanford Law Review* 21 (1969) : 1662.

consumer access to justice.<sup>152</sup> There is high tendency that establishing the small claims court would improve access to justice to the Nigerian consumer that is under too many pressures ranging from illiteracy to poverty and sicknesses.

Additionally, and as observed in other jurisdictions, the judges to be appointed to chair the SCCs need orientation about the overall rationale of establishing the SCCs. The judges should appreciate that simple and substantial justice as opposed to technical justice is the main reason for establishing the SCCs. The traditional technicalities and legalities accustomed to the ordinary or regular courts need to be eliminated.<sup>153</sup> In case the SCCs come on board in Nigeria, issue of lawyers' appearance needs to be carefully considered. This is because Nigerian lawyers are known to be cherishers of technicality as opposed to substantial justice. This lawyers' attitude prompted the Court of Appeal and even the Supreme Court to have cause to warn lawyers on their love on technicalities. The case of *Interocean Oil Corp. Nig. Unlimited Vs. Fadeyi*<sup>154</sup> is one of the occasions where the courts made a case for substantial justice as opposed to technical justice. According to the court, "the attitude of Nigerian courts these days is to do substantial justice between parties and discard technicalities or technical justice."<sup>155</sup>

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<sup>152</sup> Attorney-General's Department, *Strategic Framework for Access to Justice in the Federal Civil Justice System, 2009*, (2009): 32-33; American Bar Association, (1978).

<sup>153</sup>The New York City Civil Court Act is a good example of a legislation barring lawyers from appearing before the small claims court. By section 1804, the "court shall conduct hearings upon small claims in such a manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions on rules of practice, procedure, pleading or evidence .... ."

<sup>154</sup> (2008) ALL FWLR (Pt. 403) 1381 @ 1393 Paragraph F.

<sup>155</sup> Ibid. @ 1393 Paragraph F

### 5.5.2 Alternative Dispute Resolution (ADR) in Consumer Disputes Settlement

Alternative Dispute Resolution (ADR) has been a veritable alternative in consumer redress compared to the predominant litigation before the regular courts. ADR is beneficial not only to the consumer but to the other stakeholders in the redress chain such as the service providers, regulators and the state.<sup>156</sup> This is connected to the delay and expense associated with litigation globally.<sup>157</sup> For centuries, legal luminaries have underscored the importance of ADR over litigation. According to Lord Chancellor, Lord Irvine, “there is no doubt that ADR can provide quicker, cheaper and more satisfactory outcomes than traditional litigation.”<sup>158</sup> In jurisdictions such as the EU specific EU Directive on ADR was enacted to ensure expeditious disposal of consumer claims.<sup>159</sup>

For effective consumer dispute settlement, there is a current advocacy for a shift of emphasis from judicial redress of consumer disputes to veritable alternatives institutionally.<sup>160</sup> ADR mechanisms include mediation, conciliation and arbitration. Like the SCC, ADR processes are participatory and consumer friendly. They are less expensive and expeditious in disposing cases. The benefits of ADR and its necessity in consumer redress have been accepted by the state authorities, the consumers, institutions

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<sup>156</sup> Thomas David, “ADR in Financial Services,” Paper Presented at World Bank - FinSAC International Conference on Financial Consumer Protection and Financial Literacy, June 11-14, 2014, Sofia, Bulgaria.

<sup>157</sup> Bijayananda Behera, “Development of Alternative Disputes Resolution Mechanism from Bottom of Approach,” *Asian Journal of Multidisciplinary Studies* 3, no. 5 (2015):133

<sup>158</sup> Cited in Mohd Akram Shair Mohamad, “Mediation as an Effective Tool for Resolving Sports Disputes,” The International Conference on Law and Society (ICLAS 1V 2015), Organized by Universiti Zainal Abidin, Terengganu Malaysia, (10<sup>th</sup> – 11<sup>th</sup> May, 2015), 887.

<sup>159</sup> Dimitar Koychev, “Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes,” Paper Presented at World Bank - FinSAC International Conference on Financial Consumer Protection and Financial Literacy, June 10, 2014, Sofia, Bulgaria

<sup>160</sup> Pablo Cortés, “A new Regulatory Framework for Extra-judicial Consumer Redress: Where we are and how to Move Forward,” *Legal Studies* 35, no.1 (2015): 114.

and even the business sectors.<sup>161</sup> Even national legislation such as the Nigerian CPC Act envisage the adoption of ADR windows especially mediation in resolving consumer disputes.<sup>162</sup> At the risk of repetition, Section 2 (a) of the CPC Act provides that “(the) Council shall- (a) provide speedy redress to consumers' complaints through negotiation, mediation, and conciliation.”

Mediation process is conciliatory and enables the parties to the dispute to negotiate and make some compromises with the assistance of a third party who is neutral.<sup>163</sup> According to Thomas, mediation has over the years become “the center piece” of all ADR programmes be they public or private.<sup>164</sup> Little wonder that even the “Consumer Due Process Protocol for Mediation and Arbitration of Consumer Disputes, 1998” (a brain child of the American Arbitration Association) in its Principle 10, singled out and encouraged mediation to be the consumer dispute settlement mechanism.<sup>165</sup> Arbitration processes are adjudicatory and “performs quasi-judicial function.”<sup>166</sup> The closeness of arbitration to the court centered litigation and its features of being quasi-judicial means of dispute settlement might be the reason for its deliberate omission in Section 2 of the CPC Act above. Even among the three types of ADR mentioned in the section above,

<sup>161</sup> European Commission, “Alternative Dispute Resolution in Passenger Rights Sector,” European Consumer Center- ECC- Network Joint Project, 2012 (2013), 1. [http://ec.europa.eu/consumers/ecc/docs/adr\\_report\\_06022013\\_en.pdf](http://ec.europa.eu/consumers/ecc/docs/adr_report_06022013_en.pdf) (accessed May 1, 2015); Brucia Lucas, “Alternative Dispute Resolution for Businesses in Developing Countries,” GSDRC Helpdesk Research Report no. 1148, University of Birmingham, (2014):2; World Bank Group, Alternative Dispute Resolution Guidelines (Washington: World Bank Group, 2011).[https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/alternative-dispute-resolution/upload/15322\\_ADRG\\_Web-2.pdf](https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/alternative-dispute-resolution/upload/15322_ADRG_Web-2.pdf) (accessed May 1, 2015).

<sup>162</sup> Section 2 (a), Consumer Protection Council Act, Cap C25, LFN, 2004

<sup>163</sup> Lon L. Fuller, “Mediation--its forms and functions,” *Southern California Law Review* 44 (1970): 305; Mary and Barry, (1971):369; Lord Woolf, “Final Report: Access to Justice,” (1996).

<sup>164</sup> Richard (1998).

<sup>165</sup> Ibid., 12.

<sup>166</sup> Terry Calvani, “Dispute Resolution Mechanisms as an Alternative to FTC Litigation,” *Alternatives to the High Cost of Litigation* 3, no. 7 (1985): 8.

mediation appears to be more favoured by the CPC. According to Participant 3, “the Council normally does mediation. So we do a lot of that.”<sup>167</sup> Law Commissions across the world, scholars and even big companies in jurisdictions such as the US favour mediation among the ADR mediums.<sup>168</sup> ADR is vital in dispute settlement at low cost and timely resolution of disputes. These are features lacking in litigation. Apart from speed and cost effectiveness, ADR processes are not adversarial but confidential and are less formal and participatory. In fact, Lawrence believes that ADR processes are more democratic than litigation.<sup>169</sup> They are faster, peaceful and more satisfactory means of consumer dispute resolution and their outcome is always a win-win for the parties.<sup>170</sup> Christopher further argues that ADR medium being extra-judicial are more relevant for settling small claims such as consumer grievances.<sup>171</sup> In Europe, several initiatives abound for non-judicial settlement of consumer disputes.<sup>172</sup> There are several ADR schemes across member countries as well as European Consumer Centers all spread across the EU.

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<sup>167</sup> Interview Participant 3, a staff of the CPC at the Zonal office of the CPC, (August 8, 2014).

<sup>168</sup> The CPR Institute of Dispute Resolution, “The State of Consumer ADR Negotiation Ethics, International ADR, and Reparations Claims Facilities,” *The January 2003 Proceedings*, (2003); Bryant G. Garth, “Access to Justice,” *Judicial reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*. Vol. 280, Malcom Rowat, ed. World Bank Publications, (1995): 91; Terry, (1985):9; Iain D. C. Ramsay, Consumer Redress Mechanisms for Poor-Quality and Defective Products” *The University of Toronto Law Journal* 31, no. 2 (Spring, 1981): 122.

<sup>169</sup> Lawrence Susskind, *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*, (New York: Simon and Schuster, 1996).

<sup>170</sup> Christopher Hodges, “Current Discussions on Consumer Redress: Collective Redress and ADR,” *ERA Forum* 13, no. 1 (2012): 20.

<sup>171</sup> Ibid. See also Richard C. Reuben, “Public Justice: Toward a State Action Theory of Alternative Dispute Resolution,” *California Law Review* (1997): 57; Robert D. Raven, “Alternative Dispute Resolution-Expanding Opportunities,” *Arbitration Journal* 43, no. 2 (1988): 44.

<sup>172</sup> European Commission, “Solving consumer Dispute/Non-Judicial Redress,” [http://ec.europa.eu/consumers/solving\\_consumer\\_disputes/non-judicial\\_redress/adr\\_in\\_your\\_country/index\\_en.htm](http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/adr_in_your_country/index_en.htm) ; European Commission Recommendation 98/257/EC on the Principles Applicable to the Bodies Responsible for Out-of-Court Settlement of Consumer Disputes,[1998]. OJL 155/31, online:<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:115:0031:0034:EN:PDF>.

ADR processes have been mentioned in the EPSRA 2005- the electric sector specific statute. Reference was made to only arbitration and mediation but none to negotiation and conciliation.<sup>173</sup> Although arbitration is ruled out in resolving consumer disputes because of adjudicatory nature, the mention of mediation in the EPSRA, 2005 is tied to disputes between the licensees. In other words, on a careful examination of the provisions on mediation, the mediation of consumer disputes was not envisaged. All the three references to mediation in the EPSRA 2005 are in respect of disputes between licensees. Section 50 of the EPSRA 2005 entitled “Rehearing of Appeals” is instructive. Again, Section 50 (1) for example provides that “subject to this section, any person who is aggrieved by: (g) the outcome of any arbitration or mediation by the Commission of a dispute between licensees.” Section 70 of the EPSRA 2005 entitled “Terms and Conditions of Licenses” is the second provision in which mediation was mentioned and was also tied to disputes between licensees. Section 70 (2) provides that “without derogation from subsection (1) of this section, the terms and conditions of a licence may require the licensee to – (c) refer disputes for arbitration, mediation, or determination to the Commission.” The other section in which mediation and arbitration was mentioned is Section 96 (2) (a) of the EPSRA 2005. Even in this section, the reference is to issues of licensees’ and not consumer disputes. Regrettably, nowhere is mediation between consumer and electricity service providers mentioned in the EPSRA 2005.

Additionally, there is total absence of the word “mediation” (the most preferred of the ADR processes) in the main electricity industry regulation for consumer grievance - the

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<sup>173</sup> Sections 50 (1) (g), 71(c) and 96 (a), Electric Power Sector Reform Act, 2005.

Customer Complaints Handling: Standard and Procedures Regulation, 2006. This is a flaw. Even with respect to the CPC Act, which incorporated mediation as one of ADR processes, the consumers have not been able to make the best use of it. This is because, although ADR processes are well captured under the CPC Act and mediation is most favoured, the consumers especially the electricity consumers are not aware of the existence of the CPC not to talk of the ADR windows. Even where the electricity consumers are aware of the existence of the CPC, the offices, locations and staff strengths of the CPC cannot cater for the teeming consumers in the country. These problems are examined in the next chapter and the analysis has been anchored on the responses of the staff of the CPC.

### 5.5.3 Consumer Ombudsman

Consumer Ombudsman (COm) is an institutional establishment that can either be state or privately owned.<sup>174</sup> The COm serves a great role in consumer protection. The COm provides free, effective, quick, efficient, cheap and informal means of consumer redress.<sup>175</sup> According to O'Brien the main function of the COm "is simply to resolve disputes as a relatively cheap, accessible and swift alternative to the civil courts."<sup>176</sup> The COm receives and processes complaints and brings cases against business for unfair marketing conducts such as the imposition of improper contract terms and other consumer exploitations. The word "ombudsman" is Swedish and stands for

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<sup>174</sup> Although the private COm are private companies that provide independent dispute resolutions, they are not for profit organizations. The UK example is one good example. They are experts in dispute resolution operating independently under the law and regulation of the state.

<sup>175</sup> Peter Spiller and Kate Tokeley, "Individual Consumer Redress," in *Handbook of Research on International Consumer Law*, (Massachusetts: Edward Elgar, 2010),509

<sup>176</sup> Nick O'Brien, "The Ombudsman as Democratic 'Alternative': Reading the EU Consumer ADR Directive in the Light of the PASC Reports," *Journal of Social Welfare and Family Law* ahead-of-print (2015): 1.

“representative or agent of the people or a group of people.”<sup>177</sup> Little wonder the first public COM was established in Sweden under the Market Court Act, 1970. The Swedish COM was a lawyer and had an established office comprising of other trained lawyers and experts in economics and marketing.<sup>178</sup> The COM serves as a prosecuting attorney for consumer issues before the Market Court which was a trial and a final court.<sup>179</sup> Apart from the referred function, the Swedish COM equally ensures the elimination of unfair and improper terms of contracts that confer advantage on sellers and leaves the consumers at a disadvantage. Another important function of the COM is that, it offers policy guidance on consumer protection to the Swedish Ministry of Justice and other interested Swedish government departments in developing consumer protection statutes.<sup>180</sup> The same applies to the COM obtainable in Australia.<sup>181</sup>

The private ombudsman services schemes obtainable in places such as UK have proved very useful in providing “quicker, better and more cost effective” resolution of consumer complaints in several industries such as energy sector across the UK.<sup>182</sup> The one in the UK is a private national charitable company limited by guarantee. The scheme provides independent dispute settlement mechanisms for the private sector.<sup>183</sup>

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<sup>177</sup> “Consumer Dispute Resolution in Missouri: Missouri's Need for a True Consumer Ombudsman,” *Journal of Dispute Resolution* 1, no. 6 (1992):68.

<sup>178</sup> Linda C. Reif, *The Ombudsman, Good Governance, and the International Human Rights System*, Vol. 79, (Martinus Nijhoff Publishers, 2004), 1; Donald B. King, “Consumer Ombudsman,” *Commercial Law Journal* 79 (1974): 355; M. Cappelletti and B. Garth, “Access to justice: The Newest Wave in the Worldwide Movement to Make Rights Effective,” *Buffalo Law Review* 27 (1978): 181.

<sup>179</sup> Ulf Bernitz, “Consumer Protection: Aims, Methods, and Trends in Swedish Consumer Law (Almqvist and Wiksell, 1976), 14.

<sup>180</sup> Donald (1974).

<sup>181</sup> Anita Stuhmcke, “The rise of the Australian Telecommunications Industry Ombudsman,” *Telecommunications Policy* 26, no. 1 (2002): 83.

<sup>182</sup> Ombudsman Services, “About Us,” <http://www.ombudsman-services.org/about-ombudsman-services-os.html>. (accessed October 29, 2014).

<sup>183</sup>Ibid.

Generally the ombudsman increases access to justice for the citizens.<sup>184</sup> The COM provides effective, quick, efficient and cheap means of consumer redress. The COM has been recommended to states with consumer protection crisis as a solution.<sup>185</sup> Regrettably, neither the public nor the private COM exists in Nigeria. This is the situation despite the high cost of legal services and the limited presence of consumer redress forums and even the NERC – the electricity sector regulatory agency in greater part of the country.

#### **5.5.4 Collective/Class Actions**

Although consumer claims are small, their individual redress is economically unwise. Cumulatively, however, they are huge and account for several millions of Naira for the exploiting company if left un-redressed. According to Amy, the class action philosophy assists the poor consumers who individually are unable to assert their right in voicing their grievance.<sup>186</sup> From the perspective of consumer protection scholars, the smallness of most consumer claims and the obstacles preventing consumers from accessing the legal machinery for redressing consumer grievances necessitate the development of the collective action philosophy.<sup>187</sup> In the words of Nader, the “primary objective of consumer protection must be to ‘re-conceptualize little injustices as collective harms.’

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<sup>184</sup> FRA, Access to Justice,” <http://fra.europa.eu/en/theme/access-justice> (accessed December 21, 2013).

<sup>185</sup> “Consumer Dispute Resolution in Missouri: Missouri's Need for a True Consumer Ombudsman,” *Journal of Dispute Resolution* 1, no. 6 (1992):68.

<sup>186</sup> Amy Schmitz, “Access to Consumer Remedies in the Squeaky Wheel System,” *Pepperdine Law Review* 39 (2012): 316.

<sup>187</sup> Spencer Weber Waller, Jillian G. Brady, R. J. Acosta and Jennifer Fair, “Consumer Protection in the United States: an Overview,” *European Journal of Consumer Law* (2011):21; Sutatip Yuthayotin, “Procedural Mechanisms for Achieving Access to Justice,” in *Access to Justice in Transnational B2C E-Commerce*, (Springer International Publishing, 2015) 177-212; Thomas and Joan, (1971):281.

Only if this objective is achieved will individual consumer redress mechanisms operate effectively.”<sup>188</sup>

The idea of collective action is that an action can be filed for and on behalf of a group of affected consumers for damages or compensation. According to Jules *et al.* “Collective actions for damages can be perceived as tools for increasing access to justice . . .”<sup>189</sup> Valuable as collective action in conserving judicial resources through the prevention of multiplicity of suits and bearing in mind the little but huge collective consumer claims,<sup>190</sup> no such opening is recognized in any Nigerian legislation. This is in contradistinction to places such as the South Africa where *locus standi* which is vital entry factor to the judicial system in assuring consumer redress is conferred on consumer groups and others in enforcing consumers’ right. Consumer groups can file action on behalf of consumers. This clearly confers a wide locus on different groups.<sup>191</sup>

### **5.5.5 The Public Complaints Commission**

The idea for a Public Complaints Commission in Nigeria stems from the country’s experience during the thirty months civil war that the country witnessed between 1967 and 1970. There was impunity in public service and arbitrary use of power by government officers and the total collapse of constituted authority. These and many other issues prompted the then military government to establish a Public Complaints

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<sup>188</sup> Nader, Disputing Without the Force of Law, *Yale Law Journal* 88 (1979) : 1021; Iain D. C. Ramsay, Consumer Redress Mechanisms for Poor-Quality and Defective Products” *The University of Toronto Law Journal* 31, no. 2 (Spring, 1981): 118.

<sup>189</sup> Jules Stuyck, Evelyn Terryn, Veerle Colaert, Tom Van Dyck, Neil Peretz, Nele Hoekx and Piotr Tereszkiewicz, “An Analysis and Evaluation of Alternative Means of Consumer Redress Other than Redress Through Ordinary Judicial Proceedings Final Report,” (Leuven: 2007),12.

<sup>190</sup> Mary and Barry, (1971):367.

<sup>191</sup> Section 10, of the South African Consumer Protection Act, 2008.

Commission to improve general public administration and to check the excesses of and even injustice meted on any Nigerian citizen or resident in the country by limited liability companies.<sup>192</sup> The Commission equally aimed at assisting public servants to ventilate their grievances against their superiors for abuse of power and open arbitrariness.<sup>193</sup>

The Public Complaints Commission was established by the Public Complaints Commission Act (PCC Act), 1957. The PCC Act spelt out the mandate of the PCC under the PCC Act. Under Section 5 of the PCC Act, any PCC Commissioner can investigate any complaints lodged with the commission or based on his initiative against any administrative action of any government authority from the federal government level to the local government. The complaints could be against an officer of any public or private venture registered and carrying on business in Nigeria.<sup>194</sup> Laudable as the establishment and the mandates of the PCC, a careful reading of the law establishing the PCC shows that it is limited in its operations to any administrative procedures established under any other law. It is, therefore, limited by the Nigerian electricity industry complaints processing procedures discussed in 5.6. The PCC Act provides that no Commissioner is permitted to investigate any complaints unless it is clear that all legal and administrative procedures are exhausted.<sup>195</sup> Section 6 entitled “Restrictions” states under subsection (1) that “A Commissioner shall not investigate any matter ..... - (e) in which the complainant has not, in the opinion of the Commissioner, exhausted all legal and administrative procedures.” It follows therefore that in the context of the Nigerian electricity industry a

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<sup>192</sup> Public Complaints Commission, “About Us” <https://pcc.org.ng/about/> (accessed April 20, 2016).

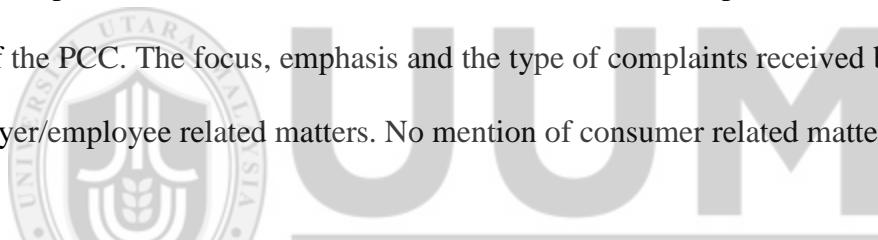
<sup>193</sup> Ibid.

<sup>194</sup> Section 5, Public Complaints Commission Act

<sup>195</sup> Ibid.

complainant is provided legal and administrative avenues for the resolution of consumer complaints. These procedures must be exhausted before a consumer can approach the PCC.

The utility of the PCC is mostly seen in the area of checking excesses and administrative injustices in the public service. Although by the provisions of the PCC Act the mandate of the PCC extends to the activities of limited liability companies such as the electricity service providers, the bulk of the complaints submitted to it are more related to the administrative agencies of government in the area of employer and employee relationship. This is evident if one for instance examines the private sector investigative unit of the PCC. The focus, emphasis and the type of complaints received by the PCC are employer/employee related matters. No mention of consumer related matters therein.<sup>196</sup>



## **5.6 Consumer Redress Mechanism in the Electricity Industry**

The redress mechanism in the Nigerian electricity industry is organized in stages. The complaints processing pyramid as shown in Figure 5.2 is built with the Customer Complaints Unit (CCU) of the Distribution companies at the bottom, next are the Forum Offices (FOs) followed by the Commission and the court as a last resort.

### **5.6.1 Complaints to the Customer Complaints Units (CCU)**

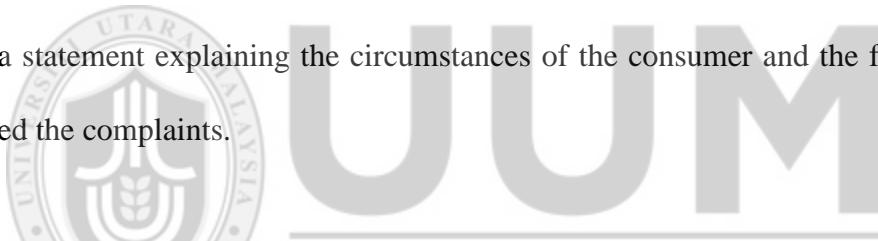
Under the Nigerian Electricity Commission Customer Complaints Handling Standards and Procedures Regulation, every Disco shall establish a CCU at its head office. The

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<sup>196</sup> Public Complaints Commission, “Private Sector,” <https://pcc.org.ng/sections-pcc/private-sector/> (accessed April 20, 2016)

CCU is responsible for receipt and resolution of consumer complaints.<sup>197</sup> Under the regulation, the CCU “may” be established at different locations within its operational coverage.

The first stage in the redress process is that dissatisfied consumers must submit written complaints to the Disco. The written form could either be through email or physical presentation of the complaints at the CCU. By the regulation, provisions are made for illiterate complainants. The regulation requires a Customer Complaints Officer (CCO) to handle such illiterates’ complainants. The CCO is required to record the consumer complaints as understood from the narration of the illiterate customer. The CCO must insert a statement explaining the circumstances of the consumer and the fact that he/she recorded the complaints.



The regulations require complaints taking to be resolved expeditiously and 15 days time frame is given from the date the consumer complaints are received. The consumer is required to be notified within the said period of the decision taken in respect of his/her complaints. Where the CCU could not resolve the consumer’s complaints within the stated 15 days period, the customer is required to be notified of the lack of resolution of his/her complaints. These 15 days period continues until the complaints are resolved. Should the CCU fails or neglects to resolve a consumer complaints or that the consumer is not satisfied with the way and manner his/her complaints are handled, he/she may proceed to the Forum level.

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<sup>197</sup> Regulation 2, Paragraph (6) CCHS

In the first place, the CCUs are established only at the head office of the Discos. How would a consumer file complaints when the CCUs are far away in the cities? How and what meaning would the resolution of the consumer dispute have when a consumer complain takes 15 days to resolve? What value would a simple over billing complaint, for instance, be to a consumer after 15 days?

### **5.6.2 Complaints at the Forum Offices**

The Forum Offices (FOs) are to be set up by the Nigerian Electricity Regulatory Commission (NERC) for hearing and resolutions of complaints in the operational areas of the Discos. The number of FOs to be established within a Disco's operational area depends on the volume of activity presented to the Forum. At the moment, there are only 8 FOs across the country.<sup>198</sup> One FO each is located in Abuja (the Federal Capital Territory), Enugu, Port-Harcourt, Kano, Kaduna and Ibadan with the other two located in Lagos respectively.<sup>199</sup>

The NERC is responsible in providing the secretary, administrative staffing and monitoring of the FOs. The FOs are to compose of five part-time members who shall be persons of repute and residing in the Disco's operational area.<sup>200</sup> To be included in the members of the FOs are representative from the industrial, commercial, household

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<sup>198</sup> Interview with Participant 19, a staff of the NERC at the headquarters of the NERC Abuja, (July 9, 2014). See also Nigerian Electricity Regulatory Commission, "Forum Offices," *Power Watch 1*, no. 4, (2014):44.

<sup>199</sup> Ibid.

<sup>200</sup> Regulation 4, Paragraph (3) CCHS.

customers and a representative of the NGO based within the operational area of the Disco. The Forum equally has a representative of the Disco as well.<sup>201</sup>

After appointment, the forum members are to hold office for a three-year period though they may be renewed for another term of three years only.<sup>202</sup> The selection of the head of FOs is the preserve of the FO members with no option for re-appointment for a second term.<sup>203</sup> For FOs' meetings, a quorum is achieved with 3 members present with the Forum's head presiding. In the absence of the head, the members present are at liberty to select among them one person to head the forum.

Appeals filed at the FOs shall be in writing in accordance with "Form 1" as stated in the Regulation, though the complaints could be filed electronically. The Complaints are to be addressed to the FOs' Chairpersons. The consumers could personally approach the FOs and NGOs are equally allowed to file appeals on consumers' behalf.<sup>204</sup> Membership of the NGO is not a precondition although the NGOs are, however, required to file along with the matter the appealing consumer's written authority consenting to the filing of the appeal on the customer's behalf. Upon receipt of any complaints, the secretary is required to endorse on it the date it is filed and shall communicate to the complainant the receipt of his complaints within three working days. Frivolous complaints or complaints lacking in merit could be rejected while genuine complaints are heard accordingly. The decision to reject or hear a complaint must be taken within ten working days from the receipt of

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<sup>201</sup> Ibid., Regulation 4, Paragraph (4) (i-v).

<sup>202</sup> Ibid., Regulation 4, Paragraph (6)

<sup>203</sup> Ibid., Regulation 4, Paragraph (5).

<sup>204</sup> Ibid., Regulation 9, Paragraph (3)

the complaints.<sup>205</sup> In cases of rejection, the FOs shall inform the complainant within a period of five working days from the date of the decision rejecting his/her complaints with reasons for such rejection.<sup>206</sup> The FOs may further give the complainant opportunity to explain or strengthen his/her case. Upon rejection, the complainant is to be equally informed of his/her right to appeal to NERC where he/she is not satisfied with the FOs' decision.

For complaints accepted for hearing, the procedure for hearing the complaints starts with notification of the Disco involved through its CCO of the customer's appeal. This notification must be done within a period of ten working days which could be extended further by a period of not more than five working days. After service of the complainant's appeal to the CCO at the affected Disco's office, the FO would slate the complaints/appeal for hearing and can proceed to hear and decide the complaints based on the submission of the CCO (on behalf of the Disco) and the submission of the customer. Where the customer fails to appear on the scheduled date for hearing, the FOs can either dismiss the complaints or may decide the case based on the evidence submitted by the customer. In cases where it is the Disco that fails to appear on the date slated by the FO for the hearing of the complaints, the FOs can equally proceed to hear the complaints based on the evidence (if any) presented by the Disco and submission of the customer. Where the Disco made no submission or representation, the FOs may decide the complaints on the evidence presented to it by the customer and his/her submission thereof. Hearing shall be expeditious with no adjournment save in pressing and deserving

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<sup>205</sup> Ibid., Regulation 9, Paragraph (5).

<sup>206</sup> Ibid., Regulation 9, Paragraph (8).

circumstance and the reason behind the adjournments must be documented. In any event, FOs are to resolve complaints filed before them within a two months period from the receipt of the appeals.<sup>207</sup> Where the complaints could not be resolved within the above stated period, the complainant must be informed of the reasons for such delay and must be advised of his/her right to appeal to the NERC.

In the course of hearing any complaints, the FOs can grant interim decision as the justice of the circumstances could dictate. Upon complete hearing of a complaint, where the complainant satisfactorily substantiates his complaints to the FOs, the FOs can award cost to the complainant. In cases of undue charges, the FOs can order a return of charges unduly collected to the complainant. As for service defects/deficiencies, the FOs can order rectification while in cases of unfair or restrictive trade practices; the FOs can order a stoppage and non-repeat order. For unsafe electrical services provided, an order of withdrawal can be awarded.

Where a complaint is unsubstantiated before any of the FOs, the FOs shall dismiss it. All the parties and the NERC shall be notified of the decision. All FO's decision must be in writing and signed by the Chairperson and all the members that sat in the hearing of the complaints. Once the FOs' decision is communicated to the Disco, the Disco shall comply with the decision within the stated period. The Disco shall also communicate to the FOs' its compliance with the FOs' directive. In case of delay, the Disco shall furnish the FOs' reasons for non-compliance within five working days of the implementation of

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<sup>207</sup> Ibid., Regulation 10, Paragraph (2).

the FOs' directives.<sup>208</sup> Any party aggrieved and/or dissatisfied with any FOs' decision can appeal to the NERC.<sup>209</sup>

### 5.6.3 Appeal to the Nigerian Electricity Regulatory Commission (NERC)

The appeal process for consumer complaints processing in the Nigerian electricity industry does not end at the FOs. Any of the parties (whether the complainant or the Disco) dissatisfied with the decision of any FO, is entitled to file an appeal with the NERC within a period of ten days from the FOs' decision.<sup>210</sup> Allowance is made for filing of appeals out of the stated ten days period.<sup>211</sup> No appeal would be entertained by the NERC where the appealing party has not complied with payment of any amount as ordered by the FOs.<sup>212</sup> After an appeal is disposed of by the NERC and a party is not satisfied, he/she can approach the regular courts for further redress.

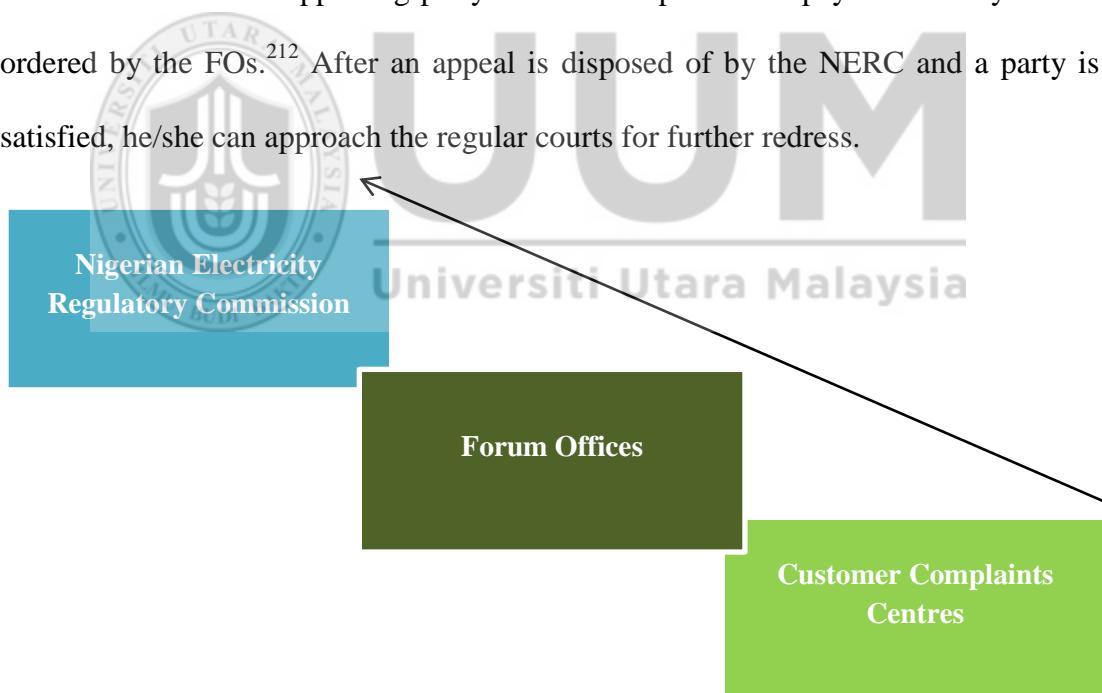


Figure 5.2  
*Institutional framework of consumer redress in the Nigerian electricity industry*

<sup>208</sup> Ibid., Regulation 11, Paragraph (6).

<sup>209</sup> Ibid., Regulation 12.

<sup>210</sup> Ibid., Regulation 12, Paragraph (1).

<sup>211</sup> Ibid. Paragraph (2)

<sup>212</sup> Ibid. Paragraph (3)

#### **5.6.4 Critical Analysis of the Three-tier Complaints Processing in the Nigerian Electricity Industry**

Critically looking at the consumer dispute redress within the electricity industry, one would not hesitate to state that it is a replication of the bureaucratic judicial system in the country. To start with, the CCUs of the Discos and the FOs are not in all cities as such access to them is a problem. Taking the FOs for instance, they are situated in far-away places beyond the reach of even consumers in cities not to talk of the rural areas. In the North-West Zone for instance, there are only two FOs located in Kano and Kaduna. How fair would it be to require a consumer residing in Kebbi State of Nigeria dissatisfied with the decision of a CCU to travel over a distance of seven hundred kilometers to Kano for the purpose of redressing a small claim? The same problem applies to the South-South region where the FO is located in Port-Harcourt, Rivers state. How realistic would it be for a consumer with a small claim residing in Calabar the Cross Rivers State (over two hundred- seven kilometers) to travel to Port-Harcourt? It is discouraging, highly unfair and counterproductive to the underlying philosophy of expeditious disposal of consumer claims.

Again, looking at the number of days and months within which a case initiated from the CCU to the NERC which is the last point in the complaints handling pyramid, it is safe to conclude that the process is unnecessary lengthy which is also against the spirit of expeditious disposal of the consumer dispute. Fifteen days at the CCU, two months at the FO's level and at least ten days at the NERC. Lamenting on the length of the procedures and the inadequacy of the Forum offices Participant 7 stated that “in my own personal

opinion do feel that the three-tier mechanism of dealing with customer complaints does take a long time before someone gets redress longer than I would want it to.”<sup>213</sup> In view of this, it is submitted that the dispute redress mechanism is organized in a discouraging manner. The consumer interest is not the underlying consideration.

## **5.7 Conclusion**

Redressing consumer wrongs is one of the best ways of guaranteeing consumer justice. However, apart from the Nigerian consumer protection lacking in a comprehensive consumer rights and remedies provisions, the Nigerian electricity consumer is left with the traditional formal justice system that is litigation based and expensive. With this situation in mind, the consumer is bound to face daunting challenges in redressing his grievance. The reality is that although electricity consumers are scattered in all the nook and crannies in Nigeria, and the fact that consumer abuses are mostly in the rural areas, consumer redress forums are all situated in the cities far from the reach of most consumers. One may be tempted to argue that unlike the electricity sector redress forums courts are everywhere from the cities to the villages. But the courts are not alternatives for consumer redress because of the attendant cost and delays. The best mechanisms for redressing consumer injustice are those that are less expensive, simple, expeditious and capable of delivering consumer justice. Delays-prone Nigerian judicial system does not fit into these criteria. Institutional structures such as the Small Claims Courts, Consumer Ombudsman and processes and procedures such as ADR and class action best suit consumer dispute settlement. Only the ADR mediums however, exist even though they

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<sup>213</sup>Interview with Participant No. 7, a Nigerian Electricity Regulatory Commission (NERC) staff, at the NERC Headquarters in Abuja.

are not well known to the consumers. The consumer is left with difficult choice of navigating the expensive path of redress or forgoing his legitimate claims. This chapter answered research question 3 and accordingly achieved research objective 3. The next chapter explored the barriers that hinder the consumer protection agencies from efficiently protecting the consumer and the barriers that hinder the consumer themselves from getting justice.



## CHAPTER SIX

### LEGAL AND INSTITUTIONAL CHALLENGES FOR ELECTRICITY CONSUMER PROTECTION AND CONSUMER REDRESS IN NIGERIA

#### 6.1 Introduction

In the preceding chapters the legal regime for the protection of electricity consumers was examined and evaluated. The legal and institutional structures for consumer protection were critically examined. This chapter is borne out of the analysis of the transcribed data collected from twenty participants. The qualitative analysis revealed several categories of themes representing the shared perspectives and experience of the participants (who are stakeholders involved in consumer protection and consumer access to justice) on the challenges affecting consumer protection and consumer redress in the Nigerian electricity industry. From the Thematic Analysis (TMA) of the transcribed interviews, several legal and institutional challenges for consumer protection and consumer redress in the Nigerian electricity industry were identified according to the relevant themes. The challenges are classified into four major categories. The classifications are according to challenges related to consumer, government, enforcement and the industry related challenges respectively. These challenges are discussed below according to the categorisation. It needs to be stated that for triangulation purposes, reference to scholarly works (where available and appropriate) in the analysis of the identified themes was made. This is because some of the identified problems were not peculiar to Nigeria but global problems. The first part of the chapter discussed the identified legal and institutional

challenges for consumer protection. The second part of the chapter dealt with a critical analysis of the issues and the last part concluded the chapter. This chapter answered research question 4 and achieved research objective 4.

## **6.2 Consumer related Challenges**

The consumer related challenges identified include lack of awareness, cultural and religious orientation, poverty, lack of organized consumer groups, lack of consumer activism and consumer failing in fulfilling their contractual obligation. These challenges are examined *seriatem*.

### **6.2.1.1 Lack of awareness**

Consumer awareness greatly enhances consumer protection from the marketplace exploitations. Lack of consumer awareness is, however, one of the major challenges against effective consumer protection in developing countries.<sup>1</sup> Information on consumer rights and the existing consumer protection and complaints processing avenues is valuable in consumer protection strategies.<sup>2</sup> In fact, better informed consumer improves the functioning of markets.<sup>3</sup> The problem of lack of consumer awareness in Nigeria was recently admitted by the Director General (DG) of the Nigerian Consumer Protection Council (CPC). The DG stated that:

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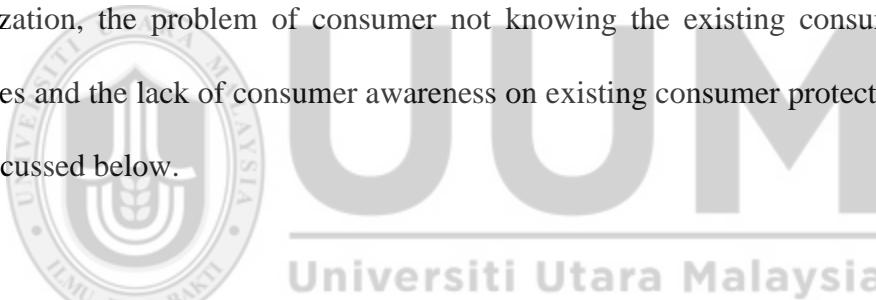
<sup>1</sup>Sakina Shaik Ahmad Yusoff, Suzanna Mohamed Isa and Azimon Abdul Aziz, "Legal Approaches to Unfair Consumer Terms in Malaysia, Indonesia and Thailand," *Journal of Social Sciences & Humanities*, (2012): 49; Z. Zakaria, "Regulation of Cosmetics: What Has Malaysia Learnt from the European System?" *Journal of Consumer Policy* 38, no. 1 (2015): 39.

<sup>2</sup>Fred S. McChesney, "Consumer Ignorance and Consumer Protection Law: Empirical Evidence from the FTC Funeral Rule," *Journal of Law & Politics* 7 (1990): 1; David A. Aaker and George S. Day, *Consumerism, 4th Ed.* (New York: Free Press, 1982), vii.

<sup>3</sup>Thierry Blayac, Patrice Bougette and Christian Montet, "How Consumer Information Curtails Market Power in the Funeral Industry," *European Journal of Law and Economics* 37, no. 3 (2014): 421-437.

“In view of the low awareness of consumer rights in the country, the Council is undertaking different measures to ensure increased knowledge of consumer rights and responsibilities, and improve the visibility of the Council. In order to enforce consumer rights and ensure compliance with its’ enabling law, the Council has adopted the strategy of criminal prosecution of recalcitrant businesses or litigation to achieve satisfactory redress. This has helped in achieving full compliance by businesses.”<sup>4</sup>

With respect to this thesis, all the participants emphasized the lack of awareness as a major challenge for efficient electricity consumer protection. However, the responses on lack of awareness revolve around emerging sub-themes from awareness. These include lack of consumer rights knowledge and awareness, consumer ignorance, lack of sensitization, the problem of consumer not knowing the existing consumer protection agencies and the lack of consumer awareness on existing consumer protection laws. They are discussed below.



#### **6.2.1.2 Lack of Consumer Rights Awareness**

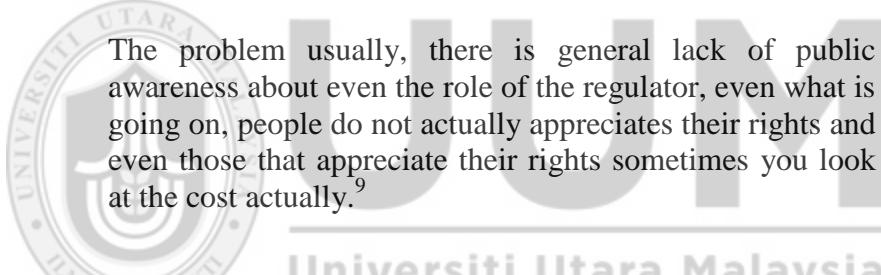
Lack of rights awareness is a problem for consumer protection. In this thesis, the participants reported lack of consumer rights awareness among the electricity consumers as a challenge for consumer protection. Many of the participants rated the consumers' knowledge as very low on the awareness of their rights. Participant 15 believed that “the whole issue of consumer protection in Nigeria has to do with awareness. The awareness is still very, very low.”<sup>5</sup>

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<sup>4</sup> Dupe Atoki, “The State of Consumer Rights Protection in Nigeria,” Public Lecture delivered at Faculty of Law, University of Lagos, organised by the Centre for Human Rights, Faculty of Law, University of Lagos, March 23, 2015.

<sup>5</sup> Interview with Participant No. 15, Consumer Protection Council staff, at the headquarters of the Nigerian consumer Protection Agency, Abuja, July 9<sup>th</sup>, 2014.

Thirteen participants reported that consumers in Nigeria are not aware of their rights. According to Participant 1, “most of the consumers are not aware of their rights and the limitations of the suppliers. So there is need for the consumer to know what he/she is consuming.”<sup>6</sup> The response of Participant 6 is equally instructive. According to the Participant, “most of the consumers are not aware that they even have a right to pursue in relation to electricity supply.”<sup>7</sup> Specifically, the participants reported that the issue of consumers not knowing their rights is not only among the uneducated Nigerians but also amongst even the educated. According to Participant 9, “the consumers in Nigeria do not even know their rights including those who go to the universities. This ignorance has been there.”<sup>8</sup> Participant 13 explained the point further when he stated that:



The problem usually, there is general lack of public awareness about even the role of the regulator, even what is going on, people do not actually appreciate their rights and even those that appreciate their rights sometimes you look at the cost actually.<sup>9</sup>

The above picture explains some of the reasons behind the challenges such as consumer activism as explained below. It is simple logic. It would not be surprising why there is low consumer activism in the Nigerian electricity industry. This is because not only the uneducated electricity consumers but even the educated electricity consumers are not aware of their rights as electricity consumers.

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<sup>6</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACON, August 4, 2014).

<sup>7</sup> Interview with Participant No. 6, a doctor of laws at his office, Faculty of Law, Bayero University Kano, Nigeria, July 13, 2014).

<sup>8</sup> Interview with Participant No. 9, a state head of the Legal Aid Council of Nigeria, at his residence, August 10, 2014.

<sup>9</sup> Interview with Participant No. 13, Nigerian Electricity Regulatory Commission staff, at the headquarters of the Nigerian Electricity Regulatory Commission, Abuja, July 8, 2014.

### 6.2.1.3 Consumer Ignorance

Consumer ignorance has been a problem militating against effective consumer protection especially in developing countries. This is the case in places such as India.<sup>10</sup> With the high level of illiteracy in Nigeria, several participants reported ignorance of the consumer as one of the challenges militating against effective consumer protection. In fact, some of the participants felt that the government is to be blamed for the consumer ignorance and information gap. According to Participant 7:

People do not know their rights across all types of services. There is a lot of ignorance. I understand some people are not educated, but you can still teach them their rights in their own languages. This is huge. My opinion is the Consumer Protection Council, and the government itself should hold themselves responsible for the gap in information with regards to consumer protection. It's a major problem.<sup>11</sup>

Part of the consumer ignorance that is a challenge to consumer protection is the fact that the consumers do not know how to read the meters and the bills presented by the electricity service providers. This is one of the problems reported by Participant 4. According to the Participant 4; “the consumers do not know how to read the meters, how to read the bills. You do not know what is written on a bill, you do not know how they calculate.”<sup>12</sup> The fact that the bills are written in English language and the technicality of the billing in the industry could explain the consumer difficulty in appreciating the contents of the electricity bills presented to the consumers.

<sup>10</sup> Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: An Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore: Lexis Nexis, 2010), 182; Ch Ravi Kumar and D Nageswara Rao, “Major Developments Towards Consumer Protection in India,” *International Journal of Research* 2, no. 1 (2015): 854.

<sup>11</sup> Interview with Participant No.7, Staff of the Nigerian Electricity Regulatory Commission, at the Headquarters of the Nigerian Electricity Regulatory Commission., Abuja, July 9, 2014.

<sup>12</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014.

#### **6.2.1.4 Lack of Sensitization**

The importance of sensitization has been stressed. As a sub-theme of lack of awareness, lack of sensitization was reported by several participants as a major challenge for consumer protection in the Nigerian electricity industry, in particular, and the country in general. According to Participant 1:

I have already said there is lack of sensitization. Most consumers are not aware of their own rights. Lack of sensitization involves a lot of things; a consumer thinks he has no rights. Most of the consumers are not aware of their own rights.<sup>13</sup>

Participant 11 equally stated that:

Sensitization is very important. Because if the people are not aware of their rights and responsibilities as consumers, of course problems would continue to arise day- in-day out. We have not been able to carry out an effective sensitization programme.<sup>14</sup>

#### **6.2.1.5 The Consumers not knowing the Consumer Protection Agencies**

The problem of consumers not knowing the existing consumer protection agencies exist in the African continent. It is the case in Ghana, Nigeria's neighbor.<sup>15</sup> This issue of consumers not knowing the consumer protection agencies or the existing avenues for complaints and redress is another variant of the lack of awareness sub-theme reported by five of the participants (2, 3, 10, 11 and 13) in this thesis. This lack of awareness is found even among the educated elites. According to Participant 3, "a lot of consumers even the

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<sup>13</sup> Interview with Participant No. 1, staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACON, August 4, 2014.

<sup>14</sup> Interview with Participant No. 11, a staff of Consumer Protection Council (CPC) at a Zonal office of the CPC, July 9<sup>th</sup>, 2014.

<sup>15</sup> Consumer International, "New Consumer Policy for Ghana." <http://www.consumersinternational.org/news-and-media/news/2013/09/ghana/> (accessed January 27, 2015)

educated ones are still not aware that there is an agency that can come in to help them.”<sup>16</sup>

This is a big challenge on the consumer protection drive. In a similar vein, Participant 11 reported that “there is this problem of consumers not being aware of the existence of certain agencies of government like the Legal Aid Council, or the Consumer Protection Council.”<sup>17</sup>

Participant 2 equally captured the point. According to him, “my difficulty is that I am not aware of a redress mechanism for electricity consumers at the moment, and that has to evolve fast as the industry is being re-organized and unbundled.”<sup>18</sup> Even where the consumers know the avenues, there are problems of not knowing the functions of the existing organisations or agencies. According to Participant 10, a staff of the Standards Organization of Nigeria, “awareness of consumers about our functions is very, very low. All efforts in the past to make our work known to the public have failed. The awareness seems to be very low.”<sup>19</sup>

Responding from the perspective of the NERC, the electricity regulator, Participant 13 equally lamented on the state of lack of awareness on even the role of NERC (as the electricity regulator) towards the protection of the electricity consumers. Participant 13 stated that “usually there is general lack of public awareness even about the role of the NERC. People do not actually appreciate their rights.” Participant 13 further stated that:

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<sup>16</sup> Interview Participant 3, a staff of the CPC at the Zonal office of the CPC, August 8, 2014.

<sup>17</sup> Interview with Participant No. 11, a staff of Consumer Protection Council (CPC) at a Zonal office of the CPC, July 9th, 2014.

<sup>18</sup> Interview with Participant No. 2, Professor of Law at his residence, Kano, Nigeria, August 7, 2014.

<sup>19</sup> Interview with Participant No. 10, a staff of Standard Organization of Nigeria (SON), at a state office, August 13, 2014).

There are a lot of people if they have problem with electricity you asked them who do they complain to? They do not even know actually the right person to complain to, whether to complain to the utility or whether to complain to the Commission? So there are a lot of things.”<sup>20</sup>

#### **6.2.1.6 Lack of Knowledge of the existing Consumer Protection Laws**

According to Peter and Kate, “consumer protection laws do not protect those who are unaware of their existence or meaning.”<sup>21</sup> In Nigeria, consumers equally lack knowledge of the existing consumer protection laws and other legal structures in the country.<sup>22</sup> The consumers do not seem to even know the laws that protect them and the institutions meant to enforce these laws. It is not enough to only enact laws and establish institutions for consumer protection. The consumers need to be informed and be made aware of the existence of these policies and structures.<sup>23</sup> Six of the participants (6, 11, 4, 5, 8 and 12) reported the problem of the consumer not knowing the law or where to go and who to approach as a challenge for consumer protection. According to Participant 6:

In fact, the regulations are not even known to the public. And if the public is ignorant of the existence of such, powers of such an agency, in what way can you approach such agency? If the public are ignorant of the existence of any law that sought to protect them in what way would they rise and ask for their rights to the appropriate agency? This is the problem, and there are a lot of lapses in this direction.<sup>24</sup>

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<sup>20</sup> Interview with Participant No. 13, Nigerian Electricity Regulatory Commission staff, at the headquarters of the Nigerian Electricity Regulatory Commission, Abuja, July 8, 2014.

<sup>21</sup> Peter Spiller and Kate Tokeley, “Individual Consumer Redress,” in *Handbook of Research on International Consumer Law*, (Massachusetts: Edward Elgar, 2010),483.

<sup>22</sup> Maryam Sani Sambo and Umar Usman, “Assessment of Indigenous Capacity in Telecommunications Technology in Nigeria,” Paper presented at the International Conference on Governance 2014, Organized by the Universiti Utara Malaysia Institute of Governance, (2014), 59.

<sup>23</sup> Marsha L. Richins and Bronislaw J. Verhage, “Seeking Redress for Consumer Dissatisfaction: The Role of Attitudes and Situational Factors,” *Journal of Consumer Policy* 8, no. 1 (1985): 29.

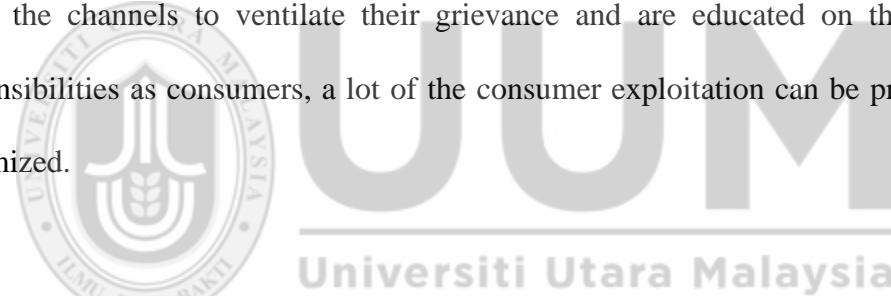
<sup>24</sup> Interview with Participant No. 6, a doctor of laws at his office, Faculty of Law, Bayero University Kano, Nigeria, July 13, 2014.

Participant 2 equally added and stated that:

My feeling is that consumers do not generally know the laws that protect them, so they are generally unaware of the existence of the law. You find some level of knowledge among elites, educated elites. Even within them you may find, you will find that although they know the law existed, but do not know what it provides. Electricity is just been deregulated and I want to believe that people do not know the legal regime now, what it is?<sup>25</sup>

Awareness about consumer protection safeguards is a vital tool for consumer protection.

Consumer education and awareness equally assist in developing responsible business behavior in the marketplace. Where the consumers know the consumer protection laws, know the channels to ventilate their grievance and are educated on their rights and responsibilities as consumers, a lot of the consumer exploitation can be prevented if not minimized.



#### **6.2.2 Cultural and Religious Orientation**

Literature confirms the status of Nigeria as a country where religion plays a great role in peoples' lives and attitude.<sup>26</sup> Consumer protection is also challenged by consumer attitudes and beliefs. Consumers' decision against exploitation in most occasions depends on the consumer's religious disposition. Some of the participants reported the culture of leaving everything and the unscrupulous businesses to God instead of the consumer asserting his/her right. According to Participant 3, the attitude of consumers when

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<sup>25</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014.

<sup>26</sup> Kaniyes S.A. Ebeku, "The Limited Applicability of Shari'ah Under the Constitution of Nigeria," in *Constitutionalism in Islamic countries: Between upheaval and continuity* ed. Grote, Rainer, and Tilman Roder (Oxford University Press, 2011), 89; Jeffrey Haynes, "Conflict, Conflict Resolution and Peace-Building: The Role of Religion in Mozambique, Nigeria and Cambodia," *Commonwealth & Comparative Politics* 47, no. 1 (2009): 52-75.

cheated by unscrupulous businesses is that “well that was how God wanted it and just let it go. I have spent my money but next time I will try.”<sup>27</sup> This has not helped the consumers. Participant 16 captured some of these religious orientations. According to Participant 16:

When something happen, some people just feel that ‘kaddara ne’ (destiny) we will leave everything to God. ‘Hakane Allah yace’ (that is what God says) Allah ya kawo wannan” (is God that made it happen), so we have to take it like that.<sup>28</sup>

Participant 16 similarly captured the picture on the issues of religious orientation of the consumer. When a violation of a consumers’ right occurs, the consumer often say “I leave it to God. “*Komi na Allah*” (everything belongs to God), “*Allah ya isa*” (God is sufficient). Things like that. I feel those are the barriers.”<sup>29</sup> This is a problem and in a way, it encourages the unscrupulous businesses that bank on the gullibility of some of the consumers and rips them off. Participant 18 sums it up when he said “many Nigerians do not still know, they just say they leave it to God.”<sup>30</sup>

### 6.2.3 Poverty

Poverty is a barrier to pursuing rights.<sup>31</sup> It was part of the reasons behind the enactment of the AMLCP in 1996.<sup>32</sup> The level of poverty according to the Vice President of Nigeria

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<sup>27</sup> Interview with Participant No. 9, a state head of the Legal Aid Council of Nigeria, at his residence, August 10, 2014.

<sup>28</sup> Interview with Participant No. 16, a CPC staff, at a zonal office of the CPC August 8, 2014.

<sup>29</sup> Interview with Participant No. 16, a CPC staff, at a zonal office of the CPC August 8, 2014.

<sup>30</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9<sup>th</sup>, 2014.

<sup>31</sup> Amy Schmitz, “Access to Consumer Remedies in the Squeaky Wheel System,” *Pepperdine Law Review* 39 (2012): 293.

<sup>32</sup> The Preamble to the African Model Law for Consumer Protection, 1996.

has reached intolerable level.<sup>33</sup> These poverty revelations make legal aid a relevant tool for the enforcement of the small consumer claims. It also calls on the courts and the legal practitioners to be pro-active and increase their pro-bono services respectively. The need for legal aid for improve access to justice in poor societies was underscored by scholars following the 2008 economic meltdown. On the urgent need in the US context Rebekah and Savner stated that:

“As the burgeoning economic crisis pushes growing numbers of Americans into poverty and homelessness, the need to revitalize the civil legal aid system is more urgent than ever. For low-income families, a civil legal aid lawyer can be a lifeline to preserve a home against foreclosure by a predatory lender, recover back wages from a cheating employer, or secure sufficient food for a sick child.”<sup>34</sup>

In fact, jurists such as the Chief Justice Lippmann of the New York Court of Appeal believed that improving access to justice is a constitutional responsibility of the courts.

According to the learned Chief Justice:

“Examples abound of judicial leadership in addressing the crisis in legal services for the poor. Access to the courts is a central ethical and constitutional responsibility of the judiciary. If not us, who? But the judiciary and the legal service providers that we support financially and otherwise (to those who) need the support of the broader legal community if we are ever to close the justice gap.”<sup>35</sup>

The participants involved in this research equally reported that poverty hinders consumers from accessing redress for consumer rights violations. According to Participant 12, “most of the challenges has (sic) to do with money. Because for you to get

<sup>33</sup> Emma Una, “Poverty Level in Nigeria Intolerable — Osinbajo,” *The Vanguard*, June 26, 2015. <http://www.vanguardngr.com/2015/06/poverty-level-in-nigeria-intolerable-osinbajo/>

<sup>34</sup> Rebekah Diller and Emily Savner, “Restoring Legal Aid for the Poor: A Call to End Draconian and Wasteful Restrictions,” *Fordham Urban Law Journal* 36 (2009): 687.

<sup>35</sup> Ibid. 1576.

a lawyer in Nigeria, it means you have to be ‘boxed up.’ You have to have money with you.”<sup>36</sup>

The other perspective of the problem of poverty is that, it compels the consumers in purchasing substandard products even when the standard ones exist in the market. This is very dangerous especially when it comes to life-endangering products such as electricity gadgets and equipments. This is a problem for the consumer and the standards setting agency. Responding on the question why the consumers patronize substandard electric gadgets, Participant 10 stated that:

The economic reason might be responsible for it. Because most at times you see a product that is of good quality but because of the price they would refuse to buy it. Or they will see a product with our logo (SON’s logo) clearly displayed on it but they will go for a substandard one.<sup>37</sup>

Participant 20 adding his voice on poverty and the patronage of cheap products stated:

You know, here in Nigeria most of our people like buying cheap products. So, honestly when you buy a cheap product, you do not mind the quality of that product. You just look for something cheap and buy. You end up having problems because it would not last long.<sup>38</sup>

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<sup>36</sup> Interview with Participant No. 12, a Legal officer with Legal Aid Council of Nigeria (LACON) at state/regional office of the LACON, August 28, 2014).

<sup>37</sup> Interview with Participant No. 10, a SON staff, at a state office of the SON August 13, 2014).

<sup>38</sup> Interview with Participant No. 20, a SON staff, at his residence in Kano North-West Nigeria August 19, 2014).

#### 6.2.4 Lack of Organized Consumer Groups in the Electricity Industry

Consumer organisations are recognized as the “third force” in consumer protection the first two being markets and governments.<sup>39</sup> The emergence of consumer organisation as the third force is based on the realisation that both markets and government may not adequately protect consumers. These interest groups are established to compensate for “regulatory failure” of both markets and government. The role of NGOs in changing status quo globally is vital.<sup>40</sup> They have shaped how businesses are conducted ethically. The growth of fair trade in the UK is one area where the role of NGO is highly underscored.<sup>41</sup> The Fair Trade Foundation’s publication “fair trade certified products,” impacted on the growth of the fair trade and consumer protection in the UK.<sup>42</sup>

While NGOs are organized groups and a force to reckon with in consumer protection systems, these organized groups are unfortunately lacking especially in deregulated utility sectors such as the electricity sector in Nigeria.<sup>43</sup> Speaking about the lack of credible consumer groups to fight the cause of electricity consumers in the Nigerian electricity industry, Emeka Anuforo stated that “indeed, one of the observable gaps in the

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<sup>39</sup> Spencer Weber Waller, Jillian G. Brady, R. J. Acosta, and Jennifer Fair, “Consumer protection in the United States: an overview,” *European Journal of Consumer Law* (2011):27; Ian Ramsay, *Consumer Protection: Text and Materials* (London : Weidenfeld and Nicolson, 1989) , 13 -14

<sup>40</sup> Michael Yaziji and Jonathan Doh, *NGOs and Corporations: Conflict and Collaboration*, (Cambridge University Press, 2009).

<sup>41</sup>Matthew Anderson, “NGOs and Fair Trade: The Social Movement Behind the Label,” in *NGOs in Contemporary Britain: Non-state Actors in Society and Politics Since 1945*, eds. Nick Crowson, Matthew Hilton and James McKay (Palgrave Macmillan: 2009),222.

<sup>42</sup> Ibid.

<sup>43</sup>Emeka Anuforo, “Empowering Electricity Consumers Through Advocacy Network,” The Guardian, May 6, 2015. <http://www.nguardiannews.com/2015/05/empowering-electricity-consumers-through-advocacy-network/>. (accessed May 6, 2015); Maryam Sani Sambo and Umar Usman, “Assessment of Indigenous Capacity in Telecommunications Technology in Nigeria,” Paper presented at the International Conference on Governance 2014, Organized by the UUM Institute of Governance, (2014),60.

current electricity market in Nigeria is the absence of knowledgeable, credible, and broad-based advocates or advocacy groups for electricity consumers.”<sup>44</sup>

The Nigerian electricity industry lacks organized consumer groups to challenge the continuous exploitation of the electricity consumers by the market operators. This is a problem for electricity consumers’ protection and some of the participants reported this challenge. According to Participant 2: “I think the consumers need to organize themselves. At the moment they have no forum, they have no mechanisms for complaints, when they are billed, they go to the electricity distribution companies and that they complain, the complaints are never solved.”<sup>45</sup>

Commenting further, Participant 4 bared his mind and stated that “I am not aware of any human right organization that talks about energy or right to energy. I am not aware of this or any such organization.”<sup>46</sup> Even among the existing organisations some have been accused of being established not for the protection of the consumers’ interest. They are established with other motives and readily compromise the consumer interest. According to Participant 6:

You find a situation whereby, may be a group or some people that call themselves association of electricity consumers in Nigeria filing a case just to have a tip from the government. And when the government approaches them or any other agency approaches them that is being fronting the government, and they allow it, they either

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<sup>44</sup>Emeka Anuforo, “Empowering Electricity Consumers Through Advocacy Network,” The Guardian, May 6, 2015.

<sup>45</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014.

<sup>46</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014.

allow the case to die silently or they go back through the back doors and get it withdrawn.<sup>47</sup>

The non-existence of consumer organisations is identified as more of a regional problem to the Northern Nigeria as opposed to the southern part of Nigeria. Participant 11 lamenting on the near absence of consumer organisations in the northern part of the country stated that “there is the need for people here in the North to form consumer association for instance, Electricity Consumer Association.”<sup>48</sup>

It was in view of the observable gaps that only recently (precisely April 2015) the NERC the industry regulator moved for an organized consumer group in the Nigerian electricity industry.<sup>49</sup> NERC has taken step to midwife a consumer advocacy network entitled the “National Electricity Consumer Association Network” (NECAN) to provide the consumers a platform that would enhance consumers’ bargaining advantages as stakeholders in the industry. The membership of NECAN is expected to cut across the different classes of consumers in the industry. Thus, the NECAN members include residential, commercial consumers and other stakeholders in the industry.<sup>50</sup>

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<sup>47</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office.

<sup>48</sup> Interview with Participant No. 11, a CPC staff, at a zonal office of the CPC August 8, 2014.

<sup>49</sup> Emeka Anuforo, “NERC Moves to Strengthen Electricity Consumers’ Rights,” The Guardian, April 29, 2015. <http://www.nguardiannews.com/2015/04/nerc-moves-to-strengthen-electricity-consumers-rights/>

<sup>50</sup> Emeka Anuforo (2015)

### 6.2.5 Lack of Consumer Activism

To obtain redress, consumers need to be persistent because as the saying goes “only the squeaky wheels get grease.”<sup>51</sup> Consumer activism is important in tackling consumer rights violation and unethical business conducts.<sup>52</sup> Research has shown that business tend to be concerned in satisfying the persistent and assertive consumers through a timely, satisfactory and responsive resolution of their complaints.<sup>53</sup> Lack of consumer activism is an issue that has caught the attention of scholars.<sup>54</sup> There are consumers who are assertive and others who are not. According to Lazabeth, those who assert their rights are termed “citizen consumers,” as opposed to the docile ones.<sup>55</sup> Activism is a fundamental ingredient for rights enforcement. It is very vital in ensuring the protection of consumer interest and is stimulated by democratic ideals, private sector participation and consumer affluence.<sup>56</sup> All these are present in Nigeria but the consumer is not assertive. The electricity consumer needs to be assertive and not docile in fighting impunity by businesses. Surprisingly, consumer activism in Nigeria is very low. This is a problem not only for the illiterate consumers but even the educated ones. Consumers are not aggressive in fighting exploitations by businesses. Hardly do consumers report businesses for unethical market conducts. This has been reported as a challenge for consumer protection by 17 out of the 20 participants (1,2,4,5,6,7,8,9,10,12,13,15,16,17,18,19,20).

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<sup>51</sup> Amy Schmitz, “Access to Consumer Remedies in the Squeaky Wheel System,” *Pepperdine Law Review* 39 (2012): 279.

<sup>52</sup> Parissa Haghrian, *Routledge Handbook of Japanese Business and Management*, (Taylor & Francis, 2016), <https://books.google.com.ng/books?id=WUp-CwAAQBAJ>.

<sup>53</sup> Amy Schmitz (2012):286.

<sup>54</sup> Nicole L'Heureux, “Effective Consumer Access to Justice: Class Actions,” *Journal of Consumer Policy* 15, no. 4 (1992): 445.

<sup>55</sup> Lizabeth. A Cohen, *Consumers' Republic: The Politics of Mass Consumption in Postwar America* (New York: Vintage, 2003).

<sup>56</sup>James Q. Whitman, Consumerism Versus Producerism: A Study in Comparative Law,” *The Yale Law Journal*, (2007): 343; Lizabeth A. Cohen, (2003).

On activism, the participants scored the consumers very low. According to Participant 17, “Nigerian consumers are not very active.”<sup>57</sup> This view tallies with that of Participant 6 who said that “there is no serious activism in the field of fighting for the right of consumers on the electricity issues in Nigeria. There is no serious activism in that respect.”<sup>58</sup> Participant 5 equally captured the problem. According to the Participant:

Many consumers do not complain. They do not even know, some of them are not aware that they have to bring their complaints to Standards Organization or go to consumer protection agency. But the people do not complain and that is the problem we are facing. If people would be complaining, we would have rectified some of those problems. But out of about 100 people only 5% would come to complain because of low awareness.<sup>59</sup>

Instead of the consumers to take up consumer violation to the relevant authorities they just grumbled in pains. According to Participant 10, consumers “are not active. They would just go behind and be complaining.”<sup>60</sup> The consumers do not complain, and this makes it very difficult for the consumer protection agencies to remedy the situation. According to Participant 20, “people do not come to complain about fake products.”<sup>61</sup> And that is a problem which according to Participant 19 makes it “more difficult to enforce some of these rights when they are not reported or when you find the customer not willing to talk about it.”<sup>62</sup> The point of Participant 2 about the lack of the reporting culture among the Nigerian consumers better captures the problem of under reporting of

<sup>57</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>58</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office

<sup>59</sup> Interview with Participant No. 5 , a state head of SON at a state office of the SON, (August 19, 2014.

<sup>60</sup> Interview with Participant No. 10 , a staff of Standard Organization of Nigeria (SON), at a state office, August 13, 2014).

<sup>61</sup> Interview with Participant No. 20, a SON staff , at his residence in Kano North-West Nigeria August 19, 2014).

<sup>62</sup>Interview with Participant 19, a staff of the NERC at the headquarters of the NERC Abuja, (July 9, 2014).

consumers' rights violation. According to the participant, consumer activism is "very, very low. We do not have the culture of complaining, perhaps because we do not have confidence in the complaint mechanisms."<sup>63</sup>

Some of the participants further identified economic situations, lack of confidence in the complaint handling processes, intimidation from the strong businesses and the "Nigerian factor" amongst the reasons for the low activism in Nigeria. Participant 13 re-echoed the problem even amongst the enlightened consumers. According to the participant "even those that appreciate their rights sometimes you look at the cost actually."<sup>64</sup>

On intimidation, Participant 12 stated that consumers are "not active because some are intimidated, may be the person that did the wrong is someone that is rich and then you feel intimidated."<sup>65</sup> Participant 18 seems to share the same view. According to the participant, "Nigerians need to be more educated to know their rights and to stand for it and to go for it. They should pursue it. They are afraid of our judicial system, our courts, the processes are long, it is too cumbersome."<sup>66</sup>

#### **6.2.6 The Consumers' Failure in Fulfilling their Obligations**

The electricity consumers in some occasions do not support the regulatory agencies. In the electricity industry for instance there are issues of failing to pay bills and serious

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<sup>63</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014

<sup>64</sup> Interview with Participant No. 13, Nigerian Electricity Regulatory Commission staff, at the headquarters of the Nigerian Electricity Regulatory Commission, Abuja, July 8, 2014.

<sup>65</sup> Interview with Participant No. 12, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014

<sup>66</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9, 2014.

electricity theft. Much as the electricity regulator the NERC is willing to assist the consumers, it has a double role in ensuring that the investors get return from their investments. The issue of non-payment of bills and electricity theft was reported by some of the respondents. According to Participant 17:

The consumers themselves, as much as the regulator tries to protect their interest, some also do not see the need to even encourage the regulator because some don't pay bills. There is electricity theft. Now if you go ahead to protect may be a body or group of persons and a group of persons are not encouraging you it becomes an issue.<sup>67</sup>

### **6.3 Government related Consumer Protection Challenges**

The government related challenges identified include funding, limited consumer protection offices, security problems for the staff of the enforcement agencies and the lack of political will. These challenges are examined *seriatem*.

#### **6.3.1 The state of Nigerian consumer protection laws**

Laws with adequate provisions that cater for the consumer welfare are important ingredients in the consumer protection systems. The importance of legislation in dealing with human interactions has been captured by the Beverly McLachlin in 2000. According to the law lord:

“Since the time of the Roman Empire, the law has been the instrument of choice to bring order from chaos and peace from strife, and thus achieve peace and prosperity . . . our challenge for the future is to ensure that wherever people interact in the world they have clear and predictable legal

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<sup>67</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

frameworks, fair and efficient ways to resolve disputes, and laws capable of dealing with the post-modern world.”<sup>68</sup>

From the interviews some of the participants (especially the participants from the consumer protection and standard setting agencies) raised the issue of the inadequacy of their enabling consumer protection legislation. The laws are out of tune with the realities of today’s market and marketing relationships. The consumer protection statutes as seen in the discussions in the previous chapters especially discussions on 3.4 are adopted under this head.

### **6.3.2 Funding Problems**

Regulatory agencies need funds to function effectively. This position was stressed by Justice Lippmann who stated that “public funding is and must be a fundamental pillar of any state’s efforts to promote access to justice. It has been a catalyst for us in New York.”<sup>69</sup> A cross section of the participants in this study especially the participants from the regulatory agencies reported serious funding problems. Participant 11 a staff of the Surveillance and Enforcement Department of the CPC reported that “the issue of funds has been the problem when it comes to tackling consumer related issues by the agency.”<sup>70</sup> In fact, Participant 11 linked some of the problems of sensitization to funds paucity. According to the Participant, “one basic challenge is funds paucity. You do not give, you

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<sup>68</sup> Beverly McLachlin, “Comments by Chief Justice of Canada at the 10<sup>th</sup> Meeting of the International Pacific Bar Association, April 2000. <http://www.hvc.co.nz/report/chapters/chapter10/justice01.htm#sei> (accessed August 2, 2014).

<sup>69</sup> Ibid., 1574.

<sup>70</sup> Interview with Participant No. 11, a staff of Consumer Protection Council (CPC) at a Zonal office of the CPC, July 9th, 2014.

do not provide funds, and how do we carry out sensitization? So the basic issue is paucity of funds.”<sup>71</sup>

A zonal office of the CPC is poorly funded. It received a paltry sum of ₦60, 000:00 (RM1000) between January 2014 to August 2014. This sum is to cover over- head cost, pay utilities and handle consumer complaints from 7 seven states in the zone under its watch. According to Participant 11:

Since January, we have received only ₦60, 000:00. My coordinator is on leave, I am acting, I raised a letter, I raised a memo to the Headquarters. You can see a copy of it. Telling them, analyzing the problems we are facing here. So it is that bad.<sup>72</sup>

Connected to the funding problem is the issue of staff welfare, empowerment and training. The lack of these facilities has been reported as problems for efficient consumer protection. Consumer protection agencies need to be well taken care of to avoid being compromised by ever ready and willing fraudulent businesses who feed fat on the consumers through the deficient service provisions, importation and distribution of fake products. Constant training on the changing technology on products production, and service provision, and delivery should be routinely provided. Participant 3 spoke about all these important activities that would improve on the productivity of the CPC’s staff beyond what it is today. According to the Participant:

Staff welfare is very, very important as they attend to consumers. Because where staff are not fully empowered, you have the manufacturers, you have people who bring in fake products, even in the market. So they would get to buy the staff and then these fake products or substandard

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

products go into the markets. So your staff. Once your staff are highly empowered, then of course, your work is easier. Then staff training is very important because you deal on electricity, you deal on goods and services, you need to have an idea about these products, how is it? How do I know it is standard? How do I know it is fake? You know like we the lawyers, we need training on ADR. It changes every day. You know, new things are coming up. So, even the lawyers need to be empowered in terms of training.<sup>73</sup>

The literature confirms that the problem of underfunding of consumer protection agencies is not only an African problem but global. In the Asian context, the Japanese case is instructive. However, although underfunding of consumer protection agencies is a problem across jurisdictions, the Nigerian circumstances are alarming. The fact that a zonal office of the CPC receives just ₦60, 000 (Sixty Thousand Naira) which is a little above RM1,000 for eight months, shows the highest level of underfunding. The need for funding agencies such as consumer protection agencies and legal aid the Chief Judge of New York stressed and argued that funding “is fundamental to providing civil legal services for the poor.”<sup>74</sup>

### **6.3.3 Limited Consumer Protection Offices**

Accessibility to the existing consumer protection agencies facilitates consumer protection. This is in terms of the ease the consumer finds in reporting any exploitation. Regrettably, consumer protection agencies in the electricity industry are in zones not even in all the state capitals. This remains the case despite the rural population being

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<sup>73</sup> Interview with Participant No. 11, a CPC staff, at a Zonal office of the Nigerian Consumer Protection Council, July 9, 2014.

<sup>74</sup> Jonathan Lippman, “Brennan Lecture: The Judiciary as the Leader of the Access-to-Justice Revolution,” *New York University Law Review* 89 (2014): 1572.

more than the population in the city.<sup>75</sup> These militate against consumer protection. Seven participants (7, 11, 13, 14, 15, 18 and 19) talked about the lack of coverage of the consumer protection agencies. The principal consumer protection agency is only in eight spots in the country. These include the headquarters, six zonal offices and Lagos office. They are not in all the 36 states of the federation not to talk of the 774 local government areas and numerous villages where the greatest consumer rights violations take place. According to participant 11:

The issue of location, offices, in fact the Consumer Protection Council is expected to be seen at local government and at the grassroots level because most people at the grass root are so vulnerable. They are exposed to all these rubbish. You go to the village and see what is happening. They are not informed. They don't even know, even if they are shortchanged they don't know where to take their complaints to.<sup>76</sup>

At times the consumer protection agencies are compelled to limit their activities to the metropolis. On this Participant 11 stated:

This issue of coverage, you have only one office covering 7 states and look at how many local governments? Kano 44 Local governments, Katsina 34 local governments, Kaduna 23 local governments, Jigawa, Sokoto, all these places we cannot cover. In fact, if there is any exercise we are carrying out, we only concentrate on the metropolis. Look at what I wrote 'at the moment the Zonal Office cannot operate beyond the metropolis due to funds paucity.' I would not tell you lies."<sup>77</sup>

Participant 18 adding his voice on the lack of CPC's coverage of the country captured the problem in the following words:

<sup>75</sup> Mamman Lawan, "The Paradox of Underdevelopment Amidst Oil in Nigeria: A socio-logical Explanation," A PhD Thesis submitted to the University of Warwick, School of Law (2008), 56.

<sup>76</sup> Interview with Participant No. 11, a CPC staff, at a zonal office of the CPC August 8, 2014.

<sup>77</sup> Ibid.

We have not been able to reach every area, or every region or state as our law indicated in the nation. We are supposed to be in every state but unfortunately we are just in the regions now 6. Plus one Lagos that is 7. We are in 7 important areas in the country now we call them zonal offices.<sup>78</sup>

The same limited coverage of the country obtains for the electricity regulatory agency. Until late 2014, the agency only operates from the headquarters in the Federal Capital Territory. Only recently zonal offices were established. In fact, interviews for the staff to man the zonal offices were conducted in July/August 2014.<sup>79</sup> The Consumer Forums Offices (FOs) recently established to handle consumer complaints are equally in only 8 places in the whole country. According to Participant 19, “we have about 8, Forum Offices presently established across the country.”<sup>80</sup> This number is grossly inadequate to handle the grievance of the teeming electricity consumers in the country. For instance, there is only one forum office for the entire Abuja distribution area which covers three states, namely Nassarawa, Kogi and Niger states plus the Federal Capital Territory Abuja. The same arrangement holds for other distribution areas such as Kano, Sokoto, etc. One imagines how impossible it is for consumers in these states to access the FOs bearing in mind the cost and distance.

Even the Standards Organization of Nigeria (SON), the standards setting agency that is relatively better in terms of coverage of the country is only in states’ capital. They are not

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<sup>78</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9, 2014.

<sup>79</sup> Observation notes during the conduct of interviews with the NERC staff at the NERC headquarters, July 8, 2014.

<sup>80</sup> Interview with Participant 19, a staff of the NERC at the headquarters of the NERC Abuja, (July 9, 2014).

in the local government areas not to talk of the villages that are most vulnerable and dumping grounds for fake and substandard products. According to participant 14, “when it has to do with consumer protection agency I would have to say there is so much that needs to be done because most of the people who are affected by substandard products are situated in rural areas.”<sup>81</sup>

#### **6.3.4 Security Problems for the Staff of Law Enforcement Agencies**

Staff, especially in the Surveillance and Enforcement Units of the consumer protection agencies are often at the risk of being attacked during operations. They are often threatened and harassed by cartels and unscrupulous businesses that are willing and able to use all the means at their disposal to prevent and at times eliminate consumer protection agencies’ staff who insist on the observance of standards and enforcement. In the course of operation, staff must often hide their identities otherwise they risk being lynched. Some of the respondents from the consumer protection agencies reported security problems as part of the challenges. According to Participant 20:

The only challenges we have is during enforcement. Due to security situation in Nigeria, at times during enforcement we have security problem because we need security personnel in order to escort us to the various markets and warehouses. Where business owners know they have substandard and fake products, they keep thugs, armed thugs around them not allowing government agencies to inspect their products.<sup>82</sup>

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<sup>81</sup> Interview with Participant No. 14, a staff of the Legal Aid Council of Nigeria (LACON), at a state/regional LACON, Office, August 28, 2014

<sup>82</sup> Interview with Participant No. 20, a SON staff, at his residence in Kano North-West Nigeria August 19, 2014.

Participant 18 equally reported a live experience of threats and harassment. According to the participant, there was a market raid they carried out in Abuja the capital city, even though they were accompanied by a team of anti-riot police men, but the traders who were found selling fake and substandard products mobilized thugs and were preparing to attack them. It was sheer luck said Participant 18 that enabled them to escape for their lives.<sup>83</sup>

### **6.3.5 Lack of Political Will and under Rating of Consumer Issues from the Side of Government**

Lack of political will to tackle issues such as the consumer right violations militates against consumer protection. The Nigerian government appears not to have the political will to address the consumer issues. This is evident from the organisation of Government Ministries and political appointments. Whereas in places such as Malaysia, India and New Zealand a government Ministry is dedicated for consumer affairs it is not the case in Nigeria. In Malaysia, New Zealand for instance a specific government Ministry for Consumer Affairs is established.<sup>84</sup> It is entitled in Malaysia as Ministry of Domestic Trade, Cooperatives and Consumerism. This not the case in Nigeria where consumer protection is an appendage of the Ministry Commerce and Trade.

Again, the issue of consumer protection is not a priority. It is the practice in Nigeria that the president and governors do appoint advisers on different issues (at times running into

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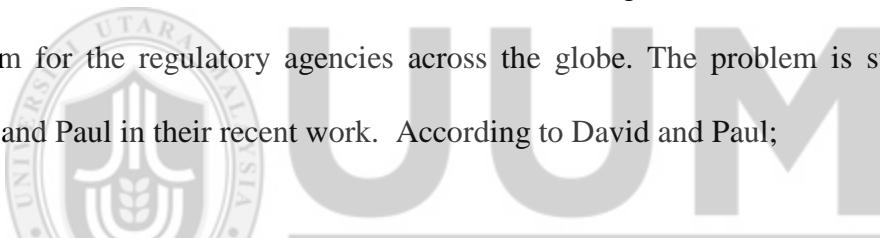
<sup>83</sup> Field notes jotted at the head office of the CPC during interview with Participant no. 18, Abuja, Nigeria, July 9, 2014.

<sup>84</sup> Craig Foss, "Progress Updating Consumer law for the 21st Century," April 17, 2013. <http://www.beehive.govt.nz/release/progress-updating-consumer-law-21st-century>. In India it is entitled The Department of Consumer Affairs under Ministry of Consumer Affairs, Food and Public Production. As for Ontario it is code named Ministry of Government and Consumer Services.

thousands).<sup>85</sup> But a careful examination of the array of advisers appointed across the country (at both the federal and state levels), reveals that neither the Presidents nor the State governors of the thirty-six states of the Nigerian federation ever included advisers on consumer affairs. This is a flaw because all Nigerians are consumers and their affairs should be prioritized in the appointment of advisers. The likely capture of the political class by strong business class who have been financiers of the political campaigns of the government might explain these state of things.

#### **6.4 Enforcement Related Consumer Protection Challenges**

Laws and standards without enforcement are meaningless. Enforcement is however, a problem for the regulatory agencies across the globe. The problem is summarised by David and Paul in their recent work. According to David and Paul;



“if the regulators do not enforce laws or regulations or codes or do not have resources, political support or wherewithal to enforce them, they effectively eviscerate and make meaningless such laws or regulations or codes, no matter how laudable or well intentioned. This is the challenge many regulators face.”<sup>86</sup>

The consumer protection enforcement related challenges identified in this research include implementation problems, staffing, bureaucratic bottlenecks, the issues of difficult burden of proof, corruption and political interference in the workings of the

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<sup>85</sup> Armstrong Bakam, “Yuguda Sacks Over 2,000 Aides,” The Punch, April 28, 2015. <http://www.punchng.com/news/yuguda-sacks-over-2000-aides/>

<sup>86</sup> David Wright and Paul De Hert, eds. *Enforcing Privacy: Regulatory, Legal and Technological Approaches*, Vol. 25 (Springer, 2016), 4.

consumer protection and standards setting agencies. These challenges are examined seriatem.

#### **6.4.1 Implementation Problems**

Consumer laws and regulation like any law “are not self-executing.”<sup>87</sup> Laws need to be enforced to serve their function.<sup>88</sup> Laws are meaningless unless they are enforced by the regulators. In the context of consumer protection, enforcement of laws is one of the surest ways of keeping businesses to their obligation to the consumers. Globally, however, enforcement of consumer protection laws especially in deregulated markets has been a problem.<sup>89</sup> Recently, the Consumer International (CI) in its survey of countries across the globe found poor implementation of the existing consumer protection laws as one of the leading problems of consumer protection across the globe.<sup>90</sup> Although Nigeria is not bereft of good policies and statutes, but implementation in most cases is the problem.<sup>91</sup> This issue did not escape the responses of the participants in this thesis. Eleven of the respondents (1, 2, 4, 6, 7, 8, 9, 11, 17, 18, 19) while acknowledging some beautiful consumer protection laws in the corpus of Nigerian laws, reported poor implementation of the extant laws as one of the challenges of consumer protection in Nigeria. According to

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<sup>87</sup> Naemah Amin,, Syarifah Zubaidah Syed Abdul Kader, and Salina Kassim, “Enforcement of Housing Law in Malaysia: Issues and Challenges,” *Full Paper Proceedings: Multidisciplinary Studies* 2 (2015), 230.

<sup>88</sup> Kartini Aboo Talib Khalid, Sakina Shaik Ahmad Yusoff, Rahmah Ismail, and Suzanna M. Isa, “Face Off: Acid Abuse and Consumer Rights,” *Asian Social Science* 11, no. 23 (2015): 169; David Wright and Paul De Hert, eds. *Enforcing Privacy: Regulatory, Legal and Technological Approaches*, Vol. 25 (Springer, 2016), 2.

<sup>89</sup> Kati Cseres, “What Has Competition Done for Consumers in Liberalised Markets?” *Competition Law Review* 4, no. 2 (2008): 77.

<sup>90</sup> Consumer International, The State of Consumer Protection Around the World, Revised April, 2013, [http://www.consumersinternational.org/media/1139641/english\\_full\\_report\\_april.pdf](http://www.consumersinternational.org/media/1139641/english_full_report_april.pdf) (accessed January 1, 2015).

<sup>91</sup> Mathew A. Izibili and Fidelis Aiya, “Deregulation and Corruption in Nigeria: An Ethical Response,” *Kamal-Raj. Journal of Sciences* 14, no. 3 (2007): 233.

Participant 2, the laws are there but “possibly are hardly, hardly implemented by the regulatory agencies.”<sup>92</sup> The same implementation problem is reported by Participant 4.

According to Participant 4:

Even if the law is comprehensive, implementing the provisions of the law I think if I rate it, it may be 1% to 2%. 98% is not implemented because the first thing is that the consumers do not know their rights, and they do not know what to do if their rights are trampled upon.<sup>93</sup>

Compliance with set standards and regulations by service providers have been reported as problems in the regulation of the Nigerian electricity industry. According to Participant 17:

First is this issue of compliance with our regulations. It is a challenge. As clear and vivid as the regulations are, people are always bound and ready to break the laws. Because one, we are just trying, the system is just changing and people are allergic to change. So, most of the things that they did and went away with, without been penalized.<sup>94</sup>

Speaking more on non-compliance by service providers with laws and regulations in the Nigerian electricity industry, Participant 7 stated that:

Even when we have estimated billing methodology on ground, the investor, the service providers are not directly complying with what we have provided. Even with this methodology they are not complying strictly with what the methodology provides. That is a very big challenge for us.<sup>95</sup>

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<sup>92</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014

<sup>93</sup> Interview with Participant No. 4, a private legal practitioner and a consumer activists at his residence, August 28, 2014.

<sup>94</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>95</sup> Interview with Participant No. 7, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

Little wonder NERC, the electricity industry regulator meant to enforce most of these laws has scored very low according to the participants. Speaking on the NERC, Participant 6 described the NERC as a toothless bull dog that can only bark but not bite.

According to the participant:

In order to check the excesses of Discos we now have in place NERC, such electricity regulatory agency is more or less a tooth less bulldog. It can only bark but cannot bite. So we have not seen its effect up to today because we have not seen anywhere, anytime and anyplace when it came and enforced certain regulations.<sup>96</sup>

Implementation is a critical issue after the establishment of the legal structures. A consumer law that is not implemented is as good as inexisting. For the consumer to be protected, the safeguards in the laws need to be enforced and implemented. This is the place of strong and active consumer protection agencies that can impose appropriate sanctions against recalcitrant electricity service providers. This can deter future abuse. This is because according to Deborah “holding employers of farm workers accountable for unsafe field conditions, making landlords liable for violations of housing codes, or imposing penalties for consumer fraud can provide an essential deterrent against future abuse.”<sup>97</sup> Enforcement is critical in the deregulated environment. Ira asserts that apart from establishing and funding regulatory agencies, it is “a critical aspect of the deregulation process” that these regulatory agencies should have “the power to enforce their findings. The ultimate end is that the oversight bodies must protect consumers who

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<sup>96</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office

<sup>97</sup> Deborah L. Rhode, *Access to Justice*, (New York: OUP, 2004), 11

are compensated for any losses that they may have suffered as the result of noncompetitive acts. It is a well-taken argument.”<sup>98</sup>

#### 6.4.2 Staffing Problems

Staffing is a problem for consumer protection agencies across the globe.<sup>99</sup> Adequate manpower is, however, a requirement for the functionality and independence of regulatory agencies. This has been underscored by the Council of European Union in its Electricity Directives.<sup>100</sup> Capturing the place of manpower among the tools for effective consumer protection William E. Kovacic stated that “enhancements in resources, personnel, procedures, and judicial oversight,”<sup>101</sup> advances the implementation of consumer protection systems. In the context of this thesis, the participants reported a scary picture in terms of staffing especially the staff strength of the principal consumer protection agency- the CPC. On the general staff strength of the CPC, Participant 18 stated that “for now we are really understaffed.”<sup>102</sup> This fact was corroborated when Participant 3, responding to the question dealing with staff strength of a CPC zonal office covering seven states made up of 176 local governments areas (with a population of 32,658,926<sup>103</sup> more than that of many countries), stated that “Staffing? Zero. Because in

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<sup>98</sup> Ira Horowitz, “A Law Enforcement Perspective of Electricity Deregulation,” *Energy* 31, no. 6–7 (2006): 907.

<sup>99</sup> Paul A Herbig and Frederick A Palumbo, “Japanese Consumer Protection,” *Journal of Consumer Marketing* 11, no. 1 (1994): 7.

<sup>100</sup> Article 35, Electricity Directive 2009/72 EC of the European Parliament and Council, 2009.

<sup>101</sup> William E. Kovacic, “China’s Competition Law Experience in Context,” *Journal of Antitrust Enforcement* (2015):16.

<sup>102</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9<sup>th</sup>, 2014.

<sup>103</sup> Nigerian Population Commission, Population and Housing Census 2006.

the zonal office we are just about 13, 14 and you are talking of a zonal office of seven states. You know it is not commensurate at all. It is not.”<sup>104</sup>

The Legal, Surveillance and Enforcement, Consumer Education and the Administrative units of the zonal offices are equally not better. They are highly understaffed. Speaking about a zonal office Participant 11 stated that:

Right now as I am talking to you I am the only one in the Surveillance and Enforcement, Consumer Education we have 2 officers, one just travelled she lost her cousin then the other officer that just came in, is the head of Consumer Education. Then legal we have only one lawyer, admin only one person, quality development we have 2 officers.<sup>105</sup>

One imagines how practicable it will be for the above number of CPC staff to effectively police the markets of the goods and services in for instance the North-West Zone of the CPC (a zone with a population more than that of Malaysia and many other countries)?

The staff of the electricity sector regulator is also not as commensurate as the task of the agency. According to Participant 7, the staff strength of the electricity sector regulator – NERC is not as required. The participant stated that “well for now we don’t have many people as it is.”<sup>106</sup> Further responding to the question dealing with staff strength and coverage of the electricity sector regulator, Participant 17 stated that the reality on ground shows that more staff are needed for the electricity sector regulator. According to the Participant it is:

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<sup>104</sup> Interview with Participant No. 3, a staff of Consumer Protection Council (CPC) at a Zonal office of the CPC, July 9th, 2014.

<sup>105</sup> Interview with Participant No. 11, a staff of Consumer Protection Council (CPC) at a Zonal office of the CPC, July 9th, 2014.

<sup>106</sup> Interview with Participant No. 7, a staff of the Nigerian Electricity Regulatory Commission (NERC) at the NERC head office, July 9, 2014.

obvious that we needed more staff. Like here if you go to various divisions you would see people are complaining that work is suffering because we lack staff. And besides that, this office is only the headquarters, so it is situated only in Abuja. But electricity is not only Abuja city, it is not only situated in Abuja. You go to the rural areas so you need a lot of staffing to cover those areas.<sup>107</sup>

The standard setting agency the Standard Organization of Nigeria (SON) equally suffers the problem of staffing. Even though the SON has offices in all the states of the federation, its' staff strength does not cover the porous borders through which substandard electrical gadgets and equipment are smuggled into the country. According to Participant 20, "I told you these products are brought in through the porous borders because our staff strength could not reach all the borders."<sup>108</sup>

Similarly, the staff strength of the Legal Aid Council of Nigeria (LACON) is also not better. It equally suffers from the manpower gap. Participant 9 captured the situation of the LACON. According to the participant, "we are always understaffed, we have been understaffed and up till now we are still understaffed."<sup>109</sup> It needs to be emphasized that although staffing is one of the big challenges for consumer protection agencies, this is the trend across jurisdictions. Staffing and funding problems is seen in the US in the area of legal aid services. Recently the Chief Judge of New York stated that:

"The Legal Aid Society in New York City has to turn away 3 out of 4 people who come to them seeking help relating to civil matters. They simply do not have enough money and staff to meet the need. While the pro bono efforts of the

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<sup>107</sup> Interview with Participant No. 17, an NERC staff, at the head office of the NERC, July 9, 2014.

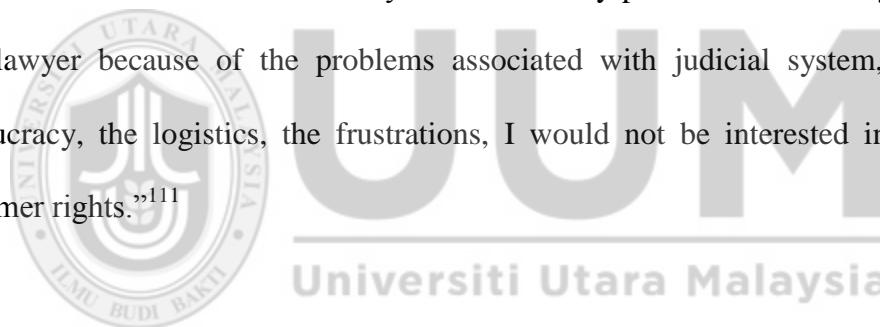
<sup>108</sup> Interview with Participant No. 7, a staff of the Standard Organization of Nigeria (SON), at the residence of the participant, August 19, 2014.

<sup>109</sup> Interview with Participant No. 9, a state head of the Legal Aid Council of Nigeria, at his residence, August 10, 2014.

Bar have been significant -- with estimates of 2 1/2 million hours of volunteer pro bono work -- we are at best meeting 20-25% of the need for legal services for poor people fighting for the necessities of life -- the roof over their heads, their physical safety, their livelihood and the wellbeing of their families.”<sup>110</sup>

#### 6.4.3 Bureaucratic Bottlenecks

The existing consumer redress mechanisms have been reported by some of the respondents as highly bureaucratic. This scares away the poor consumers from enforcing their rights. Some of the participants reported bureaucratic bottlenecks as challenges to consumer protection. Participant 2 responding to the judicial system in the country vis-a-vis consumer redress said that the system is “terribly poor. I mean terribly poor. Myself as a lawyer because of the problems associated with judicial system, the cost, the bureaucracy, the logistics, the frustrations, I would not be interested in pursuing my consumer rights.”<sup>111</sup>



Speaking on the same issue, Participant 18 said that the consumers “are afraid of our judicial system, our courts, the processes are long, it is too cumbersome.”<sup>112</sup> Similarly, Participant 1 speaking about the bureaucratic bottlenecks in our judicial system especially at the High Courts stated that:

There are so many bottlenecks especially at the State High Courts. The procedures are not known to ordinary citizens, or the citizens cannot access the services without use of

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<sup>110</sup> Jonathan Lippman, (2014):1572.

<sup>111</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014

<sup>112</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9, 2014.

lawyers which is also hindering the transparency and speedy dispensation of civil issues.<sup>113</sup>

The response of Participant 7 equally showed how cumbersome our judicial system is contrary to the spirit of expeditious disposal of cases which underly consumer dispute settlement. According to the participant:

The truth is, Nigeria's judicial system has huge bottlenecks, huge red tape, and it is sad, and it is an aberration. The whole reason it is in place is to protect people and to protect laws and to guide the society. It is sad that it is this bureaucratic and this cumbersome.<sup>114</sup>

Participant 7 further lamented on the time frame it takes for a complaint to be redressed through the electricity industry complaints processing mechanism. According to the participant, "I personally, in my own personal opinion do feel that the three tier mechanism of dealing with customer complaints does take a long time before someone gets redress longer than I would want it to."<sup>115</sup>

#### **6.4.4 The Issues of Burden of Proof**

Issue of burden of proof is a challenge for consumer redress. The difficulty of proving consumer claims has been reported across jurisdictions such as Europe.<sup>116</sup> While a consumer lacks expertise and resources, to succeed in suits against manufacturers and service providers, he/she needs to discharge the burden of proving the failure of the business owners to reach the required standard of production and standards of service

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<sup>113</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACON, August 4, 2014

<sup>114</sup> Interview with Participant No. 7, an NERC staff , at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>115</sup> Ibid.

<sup>116</sup> Fahirah Syaliza Mokhtar and Rahmah Ismail, "Medical Product Liability Under the Consumer Protection Act 1999: Aims Unmet," *The Social Sciences* 8, no. 6 (2013): 572.

provision.<sup>117</sup> Technical aspects of service provision such as the electricity service, and production processes as well as cases of service failure and/or substandard products often happen and some bold consumer do resort to litigation. However, the consumer being inexpert and not a perfect match to the service providers often loses out in court because of the burden of proving the technical aspect of the service provision which the consumer alleges failed or his/her claim of being sold a substandard product. The cases of National Electric Power Authority Vs. R. O. ALLI (Trading under the name and style of Ijeregun Kajola Sawmill Industry);<sup>118</sup> Boardman Vs. Guinness (Nig) Ltd.;<sup>119</sup> Okonkwo v. Guinness (Nig.) Ltd.<sup>120</sup> and Ebelamu v. Guinness (Nig.) Ltd.<sup>121</sup> offer good examples.

To relax the difficult burden of proving violations in civil claims arising from a criminal case where any business owner is convicted, the consumer in places such as Australia and Malaysia is allowed to simply present the certified true copy of the judgment convicting the violator in proof of their civil claims.<sup>122</sup> The consumers are deemed to have proved such violations upon the production of a sealed copy of the proceedings from the court where such conviction was entered. This is a good practice that countries such as Nigeria can learn from in order to improve access to justice to the Nigerian electricity consumers in particular and consumers in general.

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<sup>117</sup> Spencer Weber Waller, Jillian G. Brady, R. J. Acosta, and Jennifer Fair, “Consumer Protection in the United States: An Overview,” *European Journal of Consumer Law* (2011):21.

<sup>118</sup> (1992) Nigerian Weekly Law Report (NWLR), (Part 259), 279.

<sup>119</sup> (1980) NCLR 109 at 126;

<sup>120</sup> (1980) NCLR at 130.

<sup>121</sup> FCA/101/82.

<sup>122</sup> Trade Practices Act of Australia 1974 now Consumer and Competition Act, 2010 and Section 29 (4) MCPA 1999.

#### 6.4.5 Corruption

Corruption is a problem that has eaten into the fabrics of the African countries.<sup>123</sup> Not only is corruption a problem in the Nigerian public service, even the judiciary where the consumers could approach to redress consumer injustice is plagued with corruption.<sup>124</sup> Asongu asserts that there is a high level of corruption by officials in government.<sup>125</sup> Nigeria's standing in the corruption index is a cause for alarm. Corruption is identified as one of the problems of the electricity deregulation processes as well as the running of regulatory agencies such as NEPA in the country.<sup>126</sup> In fact, the overall head of the NERC – the electricity sector regulator was quoted admitting the rot corruption has caused in the Nigerian electricity industry. According to the NERC Chairman:

“More than 80 percent of the challenge within the power sector was due to corruption. What we see going on inside the sector is that opportunistic, corrupt and self-serving people have taken over the whole place, and that is why the sector is where it is today. And it cannot change if the regulator is not strengthened and given the free-reins to perform.”<sup>127</sup>

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<sup>123</sup> Simplice Asongu, “Globalization (Fighting), Corruption and Development: How are These Phenomena Linearly and Nonlinearly Related in Wealth Effects?” *Journal of Economic Studies* 41, no. 3 (2014): 347; Chris Nwachukwu Okeke, “The Second Scramble for Africa's Oil and Mineral Resources: Blessing or Curse?” *The International Lawyer*, (2008): 201.

<sup>124</sup> Okechukwu Oko, “Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria,” *Brooklyn Journal of International Law* 31 (2005): 15

<sup>125</sup> Simplice A. Asongu, “Fighting African Capital Flight: Empirics on Benchmarking Policy Harmonization,” *European Journal of Comparative Economics* 11, no. 1 (2014):96.

<sup>126</sup> O.A. Odiase-Alegimenlen, “Issues in the Deregulation of the Nigerian Electric Power Sector,” in *Deregulation, Law Economics and Politics*, Ephiphany Azinge and Bolaji Owasanoye eds. (Lagos: NIALS, 2012),81; Olukotun, Ayodeji, “Never Expect Power Always’: Electricity Consumers' Response to Monopoly, Corruption and Inefficient Services in Nigeria,” *African Affairs* 103, no. 410 (2004): 55; Oladeji Ifeoluwa Tmilolu and Chukwuemeka C. Nwabuzor,” in *Deregulation, Law, Economics and Politics*, Ephiphany Azinge and Bolaji Owasonoya eds. (Lagos: NIALS, 2012),207; Victor Ahiuma-Young, “NLC Vows to Resist Privatisation of PHCN, Deregulation in 2011,” *The Vanguard*, January 4, 2011. <http://www.vanguardngr.com/2011/01/nlc-vows-to-resist-privatisation-of-phcn-deregulation-in-2011/>.

<sup>127</sup> Oscarline Onwuemenyi, “Corruption, Bane of Power Sector – NERC Boss,” *The Vanguard*, November 15, 2011. <http://www.vanguardngr.com/2011/11/corruption-bane-of-power-sector-nerc-boss/> (accessed 2<sup>nd</sup> February, 2013). See also Julius Elusakin, “Privatisation and electricity problem in Nigeria” *The National Mirror*, January 6, 2013. <http://nationalmirroronline.net/new/privatisation-and-electricity-problem-in-nigeria/> (accessed January 30, 2013).

In the context of this thesis, eleven of the twenty participants (2, 6, 7, 8, 9, 10, 11, 14, 16, 18, and 20) reported corruption as one of the challenges for consumer protection. Participant 9 vividly captured the level of corruption in Nigeria. He stated that “corruption in Nigeria is so high from the presidency to the lowest of these people - the service providers. This is the problem.”<sup>128</sup> Participant 6 spoke specifically on the corruption within the regulatory agencies. According to the Participant:

There is the issue of corruption in this country. So, even the regulatory agencies cannot do anything to make things better because it is just a matter of what you have or what you can offer to have your way. So the regulatory agencies would forever be ready in so far they can be ‘tipped up’ to look the other side.”<sup>129</sup>

Participant 2 equally commented on the volume of corruption in the country. Responding to the issue of establishing consumer courts, Participant 2 said “what worries me a lot about our environment is the level of corruption. So even if you go about establishing this kind of things (Small Claims Court), I anticipate that the corruption would undermine its success.”<sup>130</sup>

#### **6.4.6 Political Interference**

Political interference in the work of regulatory agencies hampers their efficiency in guaranteeing consumer protection. It questions their independence as well. Political interference leads to compromise of standards with adverse effects on the consumer. In Nigeria, political interference comes in situation where goods imported by politicians and

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<sup>128</sup> Interview with Participant No. 9, a state head of the Legal Aid Council of Nigeria, at his residence, August 10, 2014.

<sup>129</sup> Interview with Participant No. 6, a doctor of laws involve in consumer protection at his Faculty of Law Bayero University, Kano-Nigeria office.

<sup>130</sup> Interview with Participant 2, a Professor of law at his residence, Kano, Nigeria, August 7, 2014

giant firms close to the powers that be, are exempted from the scrutiny and examination of the standards setting and other consumer protection agencies. Locally manufactured or imported products are cleared at the ports or borders without the requisite examination to ascertain their compliance with the standards and quality threshold. In the end the consumer bears the brunt. Participant 20 stated that “there are situations whereby politicians will import their products of which they would not like that product to be tested either to be fake or substandard because of their political power. At times we do face these kinds of problems.”<sup>131</sup>

## **6.5 Industry Consumer Protection Challenges**

Metering gap and arbitrary billing of electricity consumers are the industry challenges identified for consumer protection. They are the twin and lingering problems that remain a source of consumer exploitation in the Nigerian electricity industry. They have been examined below.

### **6.5.1 Metering Gap and Arbitrary Billing of Electricity Consumers**

At the moment, the bulk of the electricity consumers are not metered.<sup>132</sup> This metering gap has lingered and is a big problem admitted by the immediate past Minister in charge of the Nigeria Power Ministry (Mr. Nebo) and on which the electricity regulator and policy makers such as the National Assembly House of Representative Committee on

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<sup>131</sup> Interview with Participant No. 20, a SON staff , at his residence in Kano North-West Nigeria August 19, 2014.

<sup>132</sup>Stanley Opara and Femi Osu, “Electricity Consumers Condemn Rising Estimated Bills, The September 29, 2014 <http://www.punchng.com/news/electricity-consumers-condemn-rising-estimated-bills/> (accessed September 29, 2014)

Power are aware of.<sup>133</sup> According to Abiodun Ajifowobaje, the Managing Director of Ikeja Disco, Lagos, Nigeria, “the two greatest challenges that are facing the Distribution Companies today are power supply (inadequate power from the grid) and metering of customers.”<sup>134</sup> This metering gap has been and is being exploited by the Disco through billing frauds.<sup>135</sup> Discos have been found over billing consumers without commensurate increase in the electricity supply.<sup>136</sup> Consumers who need meters must pay for it at exorbitant price.<sup>137</sup> In fact, payment is not a guarantee that a consumer would get a meter. This is unfair. Consumers should not pay for meters.<sup>138</sup> This position has been suggested to policy makers in places such as Australia where Paul and Tim argued that “customers should not be forced to pay for a digital meter, and should be free to choose which tariff best suits their circumstances.”<sup>139</sup>



<sup>133</sup> Christiana Iliya, “NERC Launches Eko Forum Office,” Power Watch 1, no. 4 (April- June, 2014):19; Femi Osu, “Electricity Market to Become Competitive in February,” The Punch, January 8, 2015. <http://www.punchng.com/business/energy/electricity-market-to-become-competitive-in-february/> (accessed January 8, 2015). See also Chris Ochayi, “FG’s Threats Over Metering Bounce off DISCOs,” The Vanguard, January 14, 2015, <http://www.vanguardngr.com/2015/01/fgs-threats-metering-bounce-off-discos/> (accessed January 14, 2015); Tony Nwakaegho, “Estimated Billing: Consumers’ Pain, Discos’ Gain,” Daily Times, January 21, 2015. <http://www.dailytimes.com.ng/article/estimated-billing-consumers%2080%99-pain-discos%2080%99-gain> (accessed January 21, 2015)

<sup>134</sup> Femi Asu , Nigeria’s Power Generation Capacity Almost 10,000MW –Ajifowobaje,” The Punch, April 16, 2015. <http://www.punchng.com/business/energy/nigerias-power-generation-capacity-almost-10000mw-ajifowobaje/>

<sup>135</sup> NERC, “Keeping the Light On,” Power Watch 1, no. 4 (April- June, 2014):43.

<sup>136</sup> Ifeanyi Onuba, “NERC Sanctions Abuja Disco Over Excessive Bills,” The Punch, June 16, 2015 <http://www.punchng.com/news/nerc-sanctions-abuja-disco-over-excessive-bills/>; NAN, “NERC Sanctions Electricity Distributor Over Outrageous Bills,” The Leadership, June 17, 2015. <http://leadership.ng/business/441129/nerc-sanctions-electricity-distributor-over-outrageous-bills>

<sup>137</sup> Gbenro Adeoye and Kunle Falayi, “Vandalism: What 1,000MW of Electricity Loss Means to Nigerians, The Punch, October 25, 2014 . <http://www.punchng.com/feature/power-talkback/vandalism-what-1000mw-of-electricity-loss-means-to-nigerians/> (accessed October 25, 2014); Stanley Opara. “Electricity Meters Now Sell for N60,000,” The Punch, March 10, 2015; NERC, “Keeping the Light On,” Power Watch 1, no. 4 (April- June, 2014):43; The Sun Editorial, “Manufacturers and the new Electricity Tariff,” The Sun Newpaper, March 16, 2015.<http://sunnewsonline.com/new/?p=109351>

<sup>138</sup> Ignatius Okorocha and Isuma Mark. “Consumers Shouldn’t Pay For Transformers, Meters, Senate Tells NERC. ”Daily Independent, (Abuja), August 12, 2015.

<sup>139</sup> Paul Simshauser and Tim Nelson, “The Outlook for Residential Electricity Prices in Australia’s National Electricity Market in 2020.” *The Electricity Journal* 26, no. 4 (2013): 81.

In consequence of lack of metering, the greater percentage of electricity consumers are excessively and outrageously billed based on estimation under the watch of the consumer protection agencies. This has been an issue of serious concern to consumer and consumer groups. Six of the participants (1, 4, 7, 13, 17 and 18) equally reported this as one of the challenges of consumer protection. Participant 17, a staff of NERC stated that they “also found out that metering was a very big challenge and people were complaining.”<sup>140</sup> This according to Participant 1, gave the the Discos the opportunity to arbitrarily charge the consumers as they wish. The Participant stated that “most of the consumers are not aware of the charges. They are only billed as the supplier wishes.”<sup>141</sup>

Further, and as a result of this metering crisis, Participant 17 added that the crisis created a situation that:

The consumers may be paying over and above the actually approved tariff because of lack of meters. Because when you bring a bill that is, even when we have estimated billing methodology on ground, the investor, the service providers are not directly complying with what we have provided.<sup>142</sup>

According to Participant 3, the issue of crazy billings “is such an issue that we cannot tackle at the zonal office. It is an issue that the head office is also aware.”<sup>143</sup> Participant 18 equally reported that the CPC is equally aware of these exploitations:

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<sup>140</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>141</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACON, August 4, 2014.

<sup>142</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>143</sup> Interview with Participant No. 3, a staff of the CPC at a zonal office of the CPC August 8, 2014.

You have just heard estimated bill; we don't want to hear that in Consumer Protection Council at all. That a bill is estimated and they say just pay N10, 000:00 may be you just consumed N2, 000 you do not even know. So we do not like that term at all but it has been a common term that has been very much abused by the PHCN with consumers.<sup>144</sup>

Electricity consumers would have to live with estimated billing in the electricity industry.

It will take time before the consumer can get out of it because the Discos are benefitting heavily from it.<sup>145</sup> The Discos deliberately refuse to meter the consumer even when the consumers have paid for such meters. According to the President of the Consumer Rights Advancement Organisation (CRADO):

“It must be noted that, before privatization, crazy and high estimated bills have not been as repelling as after the due-diligent privatization of the Discos, where crazy and estimated billings are currently four times higher. This has encouraged the Discos to deliberately continue to stall the supply of meters to electricity consumers in Nigeria, a situation that has brought untold economic losses and hardship.”<sup>146</sup>

The issue of the Discos benefitting from the metering gap has been reported by Participant 17 a staff of the NERC. According to the Participant:

We also realized that even the former utilities that is the legacy utilities like Abuja Disco and other Discos they

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<sup>144</sup> Interview with Participant No. 18, a Deputy Director Surveillance and Enforcement, CPC, at the CPC Abuja, Nigeria, July 9, 2014.

<sup>145</sup> Tony Nwakaegho, “Estimated Billing: Consumers’ Pain, Discos’ Gain,” Daily Times, January 21, 2015. <http://www.dailymail.co.uk/article/estimated-billing-consumers%20%99-pain-discos%20%99-gain>; Segun Adebawale, “Install Meters or Disconnect us From National Grid, Consumers Tell Ikeja Electric,” The Eagle Online, February 3, 2015. <http://theeagleonline.com.ng/install-meters-or-disconnect-us-from-national-grid-consumers-tell-ikeja-electric/>

<sup>146</sup> Marcel Mbamalu and Temiloluwa Adeoye, “Electricity: Crazy Bills, Epileptic Supply put Question Mark on Power Roadmap,” The Guardian, November 23, 2014. <http://www.nguardiannews.com/sunday-magazine-sp-509870158/187573-electricity-crazy-bills-epileptic-supply-put-question-mark-on-power-roadmap>

found it very difficult to meter because they benefitted from estimated billing because of lack of supply. Where there is no supply of electricity and you are bringing a bill, if you have a meter there is no way you will pay for that bill. They rather feel happy placing consumers on estimated billing. But we are making effort to ensure that consumers are metered.<sup>147</sup>

Furthermore, Participant 13 (equally from the electricity regulator) stated that NERC is aware of these “crazy” and estimating billing issues in the electricity industry. According to the Participant:

Well this issue basically, the Commission even before the privatization has been concerned about the issue of crazy, estimated billings by the Discos. The Commission has been concerned about these things and the Commission has in the past developed a framework, regulatory framework for estimated billing regulations to scientifically at least determine how or benchmark how Discos can estimate their customers.<sup>148</sup>

The deliberate refusal of the Discos to meter has given the electricity service providers the opportunity to arbitrarily charge the consumers based on estimation. This estimation continues unabated under the sight of the regulatory agencies.<sup>149</sup> It is one of the biggest challenges for the electricity consumers in Nigeria. It has reached the extent that the Nigerian Court of Appeal declared such billing by estimation as extortive.<sup>150</sup> According to Justice Akaahs:

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<sup>147</sup> Interview with Participant No. 17, an NERC staff, at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>148</sup> Interview with Participant No. 13, Nigerian Electricity Regulatory Commission staff, at the headquarters of the Nigerian Electricity Regulatory Commission, Abuja, July 8, 2014.

<sup>149</sup> Okechukwu Nnodim, “Power: FG to buy one Million Meters, The Punch, January 16, 2015. <http://www.punchng.com/business/business-economy/power-fg-to-buy-one-million-meters/>.(accessed January 16, 2015).

<sup>150</sup> Evangelist Alfred Ambe Bassey Vs. Power Holding Company of Nigeria (PHCN) & Another (2012) ALL FWLR (Part 613) Page 2019 @ Pp. 2026@ E-F; Pp2028 -2029 G-C.

“As rightly pointed out by the learned trial Judge, there is no evidence from the defendants to show that they reconciled their estimated bills with actual consumption for any of the plaintiff’s meters’. The justification the PHCN can have to demand payment on the bills sent is when there is proper service delivery or actual reading of the electricity consumed. It will amount to extortion for PHCN to prepare bills based on estimated consumption and expect such bills to be settled by the consumers when they have not enjoyed their services by providing uninterrupted power supply. The time has come for the National Assembly to enact a law making it mandatory for PHCN to install prepaid meters so that consumers can pay for the actual units of the electricity they use instead of the present unsatisfactory arrangement of billing by estimate.”

The above judgment is three years today but the estimated billing has not stopped neither did the National Assembly heed to the court suggestion for a law mandating the PHCN, the NERC, the Discos or any body towards metering electricity consumers. In other words, the estimated billings continue unabated with telling consequence on consumers’ purse. Only in August 2015 the Senate of the Federal Republic of Nigeria directed the NERC to mandate the Discos for the stoppage of the several exploitations in the Nigerian electricity industry. This followed a motion entitled “Unfair Trade Practices of Electricity Distribution Companies in Nigeria.”<sup>151</sup> Contributing in debating the motion one of the sponsors of the motion Senator Sam Egwu from Enugu State (South-East Nigeria) stated that:

“Since the takeover of their operations (the Discos), have been ripping off consumers through (the) Fixed Charges and bulk metering across the country. Some areas in the country are still billed through the estimated billing system, which doesn’t make provisions for payment of only electricity that is consumed, even though bills are dished

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<sup>151</sup> The motion was sponsored by the two senators Senator Sam Egwu (Enugu State, South-East Nigeria) and Senator David Umaru (Niger State, North-Central Nigeria).

out without commensurate services being offered by the distribution companies.”<sup>152</sup>

The participants reported this estimated billing as a major challenge leading to serious consumer exploitation. According to Participant 7:

There are several problems consumers have off the top of my head I would say the main ones include billing problems people get billed crazily. There are no basis for the crazy bills people get, a lot of people do not have meters, they don't really know how much electricity they vend, how much they consume, how much they should save.<sup>153</sup>

According to Participant 1, “most of the consumers are not aware of the charges. They are only billed as the supplier wishes.”<sup>154</sup> This arbitrary billing remains a problem in the industry. Commenting on metering and billing issues in the industry, Participant 4 stated that “metering and billing, is purely arbitrary. The tariffs are made arbitrarily and at high rate. And it is periodically revised upwards. It never goes down once. Some charges are included in it you do not know for what?”<sup>155</sup> The billing fraud in the industry goes unabated with the regulatory agency only complaining without any concrete measure being taken. As for the consumer, this exploitation is happening to many consumers because of the issue of ignorance and lack of awareness. Participant 4 believed that most of the consumers “do not know that they have right to be charged fairly.”<sup>156</sup>

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<sup>152</sup> Ignatius Okorocha and Isoma Mark, “Consumers Shouldn’t Pay For Transformers, Meters, Senate Tells NERC,” Daily Independent, (Abuja), August 12, 2015.

<sup>153</sup> Interview with Participant No. 7, an NERC staff , at the NERC headquarters, Abuja, Nigeria July 10, 2014.

<sup>154</sup> Interview with Participant No. 1 , staff of Legal Aid Council of Nigeria (LACN) at a state office of the LACN, August 4, 2014

<sup>155</sup> Interview with Participant No. 4, a legal practitioner at his residence, August 21, 2014

<sup>156</sup>Ibid..

With all the consumer protection provisions in the Electric Power Sector Reform Act 2005 (EPSRA 2005), and the statutory enactments issued by Nigerian Electricity Regulatory Commission (NERC), this practice of estimated billing continues unabated in the industry. Instead of the federal government to mandate the Disco to meter, surprisingly, the Federal Government recently made public its intention to purchase and distribute one million electricity meters to consumers.<sup>157</sup> Although the decision to purchase the meters would reduce the burden of the exploitative estimated billings, the Federal Government should have compelled the Disco to purchase the meters being the instrument they use to carry on business. Besides, it would help them greatly in minimizing electricity theft which they claim leaks a lot of their revenue.

## **6.6 Analysis of the Legal and Institutional Challenges**

From the above discussion, this thesis explored the perception and experience of stakeholders in charge of enforcing consumer protection laws on what they consider to be the challenges of consumer protection in the deregulated electricity sector in Nigeria. From the in-depth semi-structured interviews with officers of the relevant consumer protection agencies, consumer activists and academics, as well as the in-depth analysis of the relevant literature in the area, consumer protection in the Nigerian electricity sector is faced with a lot of challenges. These challenges militate against consumer in getting the protection he/she deserves.

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<sup>157</sup> Okechukwu Nnodim, “Power: FG to buy one Million Meters,” The Punch, January 16, 2015. <http://www.punchng.com/business/business-economy/power-fg-to-buy-one-million-meters/> (accessed January 16, 2015).

Overall, this thesis found that effective consumer protection in the deregulated electricity industry requires a strong and strategic approach. This approach requires addressing the identified challenges militating against effective consumer protection in the deregulated electricity sector. This is because every Nigerian is a consumer; hence there is a need for overhaul if the 170 Million Nigerians are to be protected. Consumers need to be enlightened on their rights as well as the channels for enforcing the rights. The approach is from both the government and consumer perspectives. This is because a careful examination of the challenges, one finds it easy to appreciate the challenges for which the government is responsible and those on which the consumer is obligated to address if his/her interest is to be protected. From the government side, participants reported inadequate legal framework and implementation problem. There are also issues of funding which includes staff welfare and training; there is the issue manpower and lack of coverage of the entire country by consumer protection agencies meant to protect all Nigerians regardless of residence. The principal consumer protection agency and the sector specific regulator of the electricity industry are situated in zonal offices. The same thing goes to Forum Offices recently established for the redress of consumer grievance in the Nigerian electricity industry. They are only in the headquarters of the Discos. In Abuja for instance, electricity consumers from neighbouring states such as Nassarawa state would have to come to Abuja to lodge a complaint at the Forum Office established in Abuja. The same applies to Kogi and Niger state. The same arrangement exists in Kano Distribution Area. Only one Forum Office located in Kano is to serve electricity consumers in neighbouring states such as Katsina and Jigawa State. Not all the states of the federation feel the impacts or know about these agencies. This problem needs to be

addressed effectively. All the above highlighted problems are problems that require government attention and intervention.

The identified problems on the consumers' side include lack of consumer activism, cultural and religious beliefs of leaving consumer exploitations to God when the consumer has available remedies to utilize. This weakness has been exploited by the businesses. An ignorant and docile consumer society remains vulnerable to exploitation unless such society changes to an assertive or active consumer society in pursuing its rights. Unscrupulous business will continue to rake havoc on the consumer and the overall economy.

## **6.7 Conclusion**

From the in-depth semi-structured interviews and a review of the relevant literature, consumer protection in the Nigerian electricity sector faces a lot of challenges and is far from being effective. This is because these challenges militate against consumer getting the protection he/she deserves. Several legal and institutional challenges for instance exist preventing consumer from getting the protection he/she deserves. While lack of awareness and consumer education appear to be the major challenges from the consumer side, issues such as poverty, and cultural and religious beliefs are also contributory challenges from the consumer ends. From the government's angle, the quantum of resources dedicated in funding consumer protection agencies and programmes, the limited consumer protection agencies' offices and the political will on issues of consumer protection reveal how serious and important the Nigeria government takes consumer

protection. Manpower, corruption, bureaucratic bottlenecks, the difficult burden of proof, political interference and overall implementation problems, militate against the enforcement of consumer protection laws and consumer redress. All these challenges have contributory effects on the state of consumer protection in the country. These challenges need to be addressed for the consumer to get the desired protection. The electricity consumers in Nigeria equally need protection especially on twin and lingering electricity industry problems of metering and billing. The metering gap is and has been exploited by the electricity service providers at the expense of the consumers. Billing in the industry is arbitrary. There is the serious need for legal and institutional structures for electricity consumer protection in Nigeria. Leaving the consumers to the service providers is disastrous. Having critically examined the legal and institutional frameworks for consumer protection in the deregulated electricity sector; and having identified the challenges for effective consumer protection and consumer redress, this chapter answered research question 4 and accordingly achieved research objective 4. The next chapter provided a summary of the thesis and proffered recommendations toward improving the entire framework for consumer protection and consumer redress in Nigeria.

## CHAPTER SEVEN

### CONCLUSIONS AND RECOMMENDATIONS

#### 7.1 Introductions

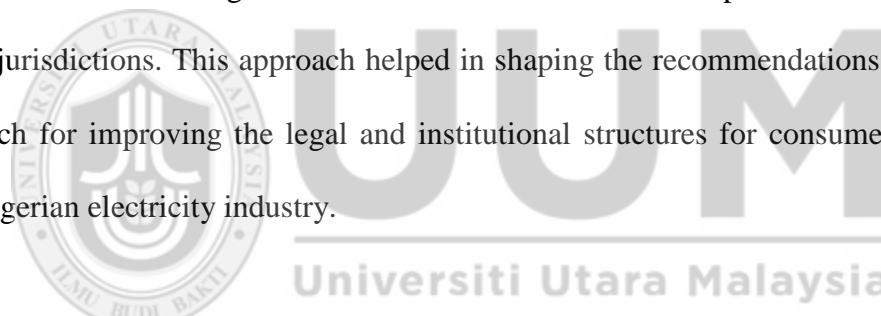
This chapter is the concluding chapter. The chapter provided a summary of the entire research. It equally provided a summary of the findings, conclusions and recommendations of the entire research. As it is in all theses, future research directions are suggested in this chapter.

#### 7.2 Summary

In the last three decades the free market ideology resulted in a significant change in the circumstances and policy stands of most governments across the globe. Utility such as electricity hitherto a public service is no longer having that character. It is now a commodity offered for sale by private firms. The role of the state is now reduced to only regulator as opposed to its former provider and regulator status. With these essentials for human existence in the private hands, there is the need for the state to be vigilant and to superintend on the marketplace to prevent abuse and manipulation. This need is obvious in view of the driving motive of businesses or private investor which is profit at all cost with little or no care for moral considerations. The rising dissatisfaction and outcry of the Nigerian consumers over the state of service delivery and other sundry abuses in the deregulated sectors (especially the electricity industry) raise questions on state of

consumer laws, the regulatory efficiency and capabilities in enforcing the extant consumer laws. This may be linked to the identified inadequacies and limitations of the extant consumer protection laws, and the deficiency of the legal regime in terms of basic institutions to cater for the changed market. A changed approach and a comprehensive legal regime are expected.

The foregoing motivated and prompted this research to assess the comprehensiveness of the legal and institutional frameworks for consumer protection in the Nigerian electricity industry in view of the recent deregulation of the industry. As a legal research, the assessment was in the light of international standards and best practices and experience of other jurisdictions. This approach helped in shaping the recommendations offered in this research for improving the legal and institutional structures for consumer protection in the Nigerian electricity industry.



The research is structured in seven chapters. Chapter one dealt with the background of the research. A discussion along historical roots of the shift from the state welfare theory to the free market theory was conducted. The Chilean electricity sector deregulation experiment and the global spread of the electricity sector deregulation were highlighted. The inadequacies of the legal and institutional frameworks such as the near absence of key consumer protection structures and the problem of consumer access to justice in Nigeria were examined. The thesis was conducted through a socio-legal research approach. It combined the doctrinal and the qualitative research approaches with interviews being the qualitative data collection method.

The discussions in chapter two were anchored on the philosophical and historical basis of consumer protection. Central to the discussion was the philosophical reasons guided by theories of inequality of bargaining power, the free market theory and the attendant imperfect market understanding. Because of these imperfections the necessity and philosophy for state intervention to protect the consumer interest was highlighted.

Chapter three dealt with the extant laws on consumer protection and standard settings. The focus of the research was on the international instruments and standards from the perspective of the United Nations Guidelines for Consumer Protection (UNGCP) and African Model Law of Consumer Protection (AMLCP). In line with Nigeria's international obligations as a member of the UN and the comity of African nations, the country is expected to establish comprehensive laws and efficient institutions for consumer protection as provided and agreed upon in the provisions of the UNGCP, the AMLCP and other international instruments. Although Nigeria has the CPC Act as the overall consumer protection statute, and other specific consumer protection legislation such as the SON Act and ESPRA 2005, (which could be rightly said to be steps towards meeting the country's commitment under the UNGCP and AMLCP), the laws in substance and in terms of the institutions on ground ought to reflect the basic tenets of consumer protection. It is essential that Nigeria incorporates consumer rights and other key structures for the regulation of the free market in its extant laws. This would boast the country's image as the giant of Africa and the largest economy. It should play a

leading role in establishing robust laws on consumer protection that should be models for other African countries and even beyond.

Guided by the themes of the research, chapter four was devoted to the analysis of the relevant Nigerian electricity industry statutory and regulatory enactments. The research contends that although detail provisions are made for the regulation of the new electricity industry, more needs to be done in the area of consumer protection. To guarantee consumer protection, the research calls for detail provisions for efficient market operations and prevention of anti-competitive conducts.

With the state of consumer abuses and access to justice crisis in Nigeria, chapter five dealt with access to justice structures in Nigeria in the light of consumer access to justice and redress. Generally, the discussions in the chapter focused on the nature of the adversary system which Nigeria operates and the attendant cost and delays associated with it. The chapter equally and critically examined the cumbersome and bureaucratic electricity industry three-tier consumer redress mechanism. The thesis argued that the cost, delays and cumbersome nature of the Nigerian access to justice framework in general and the specific electricity redress mechanism are essentially counter-productive to the philosophy of expeditious disposal of consumer dispute. The chapter contends that the Nigerian circumstances demands for special forums or arrangements for consumer redress. The Small Claims Court (SCC) and other ideal consumer friendly institutions as well as other mechanisms were recommended.

Chapter six provided a thorough analysis of the legal and institutional challenges for consumer protection in the Nigerian electricity industry. For triangulation purposes, the analysis in this chapter was based on the contents of the twenty interview transcripts as well as the review of the relevant literature. From both the perspective and experience of the research participants, and from the literature review, the research identified several challenges against effective consumer protection in the Nigerian electricity industry. These challenges are both legal and institutional and from both the state and the consumer ends.

## **7.2 Overall Findings**

The research findings are structured according to the major themes and issues in the research. These include findings on legal framework, findings on institutional framework, findings on consumer access to justice and redress, and lastly findings on the challenges of consumer protection. Overall, the research findings showed that consumer protection statutes as well as the institutional arrangements for consumer protection have a lot of inadequacies and limitations. Unless the identified defects are addressed, the research argued that legal and institutional frameworks cannot effectively guarantee the protection of the electricity consumers in Nigeria. The research findings may provide policy makers some insights and directions in the area of policy making relating to Nigerian electricity consumer protection in particular and consumer protection in general.

### **7.2.1 Findings on the State of Consumer Laws**

From the passage of the United Nations Guidelines for Consumer Protection (UNGCP) three decades ago, the UNGCP has influenced the inclusion of consumer rights in the consumer protection laws of many countries. In fact, the UNGCP's influence has gone beyond ordinary consumer protection laws of countries. Today, consumer rights are found incorporated in the constitutions of over thirty countries. Although Nigeria has the largest economy and prides itself as the “giant of Africa,” no concrete provisions for consumer rights are made in the Constitution of the Federal Republic of Nigeria (CFRN) 1999 or even the CPC Act- the principal consumer protection statute in the country. This is not the case in other countries even within the African continent. Countries such as South Africa, Ethiopia and Kenya for example, have in their statute books detailed consumer rights. But in the context of Nigeria, only a single mention of the word “consumer right” appeared in the CPC Act. This is in Section 8 of the CPC Act. It is only this provision that used the word consumer rights. Talking of redress the section provides that “whereupon an investigation by the Council or State Committee of a complaint by a consumer it is proved that- (a) the *consumer's right* has been violated.”(Italics supplied for emphasis). It is argued in this research that consumer rights in Nigeria have not been given the prime treatment accorded to them in other jurisdictions such as the UK and Kenya. In UK, a new legislation detailing consumer rights and remedies entitled “Consumer Rights Act, 2015,” was passed on March 26, 2015. In the case of Kenya, consumer rights are treated as civil and political rights under the Kenyan Constitution, 2010.

The same neglect of consumer rights is found in the electricity sector specific statutes. In the entire 101 sections of the EPSRA 2005, reference to the word consumer rights was made twice. This is in the long title to the EPSRA, 2005 and the provisions of Section 32 (2) (c). The long title to the EPSRA 2005 read thus:

“An Act to provide for the formation of companies to takeover the functions, assets, liabilities and staff of the National Electric Power Authority; to develop competitive electricity markets; to provide for the licensing and regulation of the generation, transmission, distribution and supply of electricity; to enforce such matters as performance standards; *consumer rights* and obligations; to provide for the determination of tariffs and to provide for related matters.” (Italics supplied)

With respect to Section 32, it deals with the objectives behind the establishment of NERC. Subsection (2) paragraph (c) thereof provides that NERC is created “to establish appropriate *consumer rights* and obligations regarding the provision and use of electricity service.” (Italics supplied). The above two references to consumer rights in the EPSRA, 2005 are obviously not detailed. One would therefore expects that the NERC in furtherance of the powers conferred on it by the EPSRA 2005 to make regulations would issue a regulation detailing electricity consumer rights. None is however issued. In other words, among all the regulations issued by the NERC as the electricity industry regulator, none is on consumer rights and remedies. Even the Customer Complaints Handling: Standards and Procedures Regulation did not provide what consumer rights are due to the electricity consumers or what remedies the consumers are entitled to in event of the breach of their rights. The neglect of consumer rights in the electricity sector statutes is not peculiar to the EPSRA 2005. A careful perusal of previous electricity sector statutes reveals that the same problem exists. In other words, it can be argued that the neglect of

consumer rights has been the trend since the earliest electricity statutes. For instance, no reference to “consumer rights” is made in the NEPA Act. The same thing with the Electricity Act, even though, the Electricity Act made a single mention of the word “consumer guarantees.”<sup>158</sup> Additionally, the same findings on consumer rights under the extant laws apply wholly to consumer remedies. No concrete provisions for consumer remedies are made under the extant consumer protection laws including the CPC Act. This is not the trend in jurisdictions such as the UK and Malaysia.

Specifically, the CPC Act – the overall Nigerian consumer protection legislation appears to focus more on products with little or no mention of service provisions such as the electricity service provision. This is not the approach in international instruments such as the UNGCP and AMLCP where in the entire documents; reference to goods or products is always accompanied with services. This is equally not the approach found in several consumer protection statutes across the globe such as in Ethiopia Malaysia and the UK.<sup>159</sup>

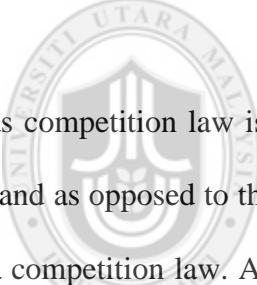
Furthermore, and despite the product focus of the CPC Act, it failed to define what a product is and whether a product or a good includes utility such as electricity as done in jurisdictions such as Malaysia under the MCPA 1999. Notwithstanding the defect in defining a product, the CPC Act did not also define what a service is for the purpose of

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<sup>158</sup> Section 146 (2) Electricity Act, Cap E7, LFN, 2004

<sup>159</sup> Naemah Amin and Elistina Abu Bakar, “Remedies for Breach of Implied Guarantees in a Contract of Supply of Services Under the Malaysian Consumer Protection Act 1999,” *Journal of Applied Sciences Research* 7, no. 13 (2011): 2350; Federal Democratic Republic of Ethiopia, Trade Practice and Consumers’ Protection Proclamation No. 685/2010; Malaysian Consumer Protection Act, (MCPA) 1999, The Consumer Rights Act, 2015, (UK).

consumer protection. Similarly, the research found the definition the CPC Act provided for a “consumer” who is the basis of enacting the CPC Act inadequate. The definition restricted the meaning of the consumer to an individual purchaser of good or service. The definition unlike in other jurisdictions, did not state the type of purchases that entitles the “individual” to the protection of the Act. In other jurisdictions in Europe, Asia, etc. purchases of goods or services covered by the consumer protection statute are limited to household or personal consumption.<sup>160</sup> Purchases for business or resale are clearly exempted from the protection of the consumer protection legislation. This type of legislative clarity or explanation is lacking in Section 33 of the CPC Act- the interpretation section.

 **UUM**  
Vital as competition law is to deregulated markets, the research found that Nigeria as a whole and as opposed to the tradition in other jurisdictions that deregulated their utilities, lacks a competition law. Again, with the lack of the competition specific law one would expect that the CPC Act being the overall consumer protection statute would take care of this serious gap by making provisions for the regulation of anti-competitive conducts. However and surprisingly, this research found that in the entire 33 sections of the CPC Act, no mention of “competition” is made. This is a flaw in the principal legislation because competition law is integral to consumer law and both aim at guaranteeing efficient functioning of markets. The case of the electricity sector specific law is not any better. Although the EPSRA 2005 mentioned and even dedicated a chapter on competition regulation,<sup>161</sup> the EPSRA 2005 did not contain provisions that clearly

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<sup>160</sup> Section 3, MCPA 1999; Section 4A, Australian Consumer Protection and Competition Act, 2010.

<sup>161</sup> Part VII of the EPSRA, 2005, is devoted to competition and market power

address anti-competitive conduct. In fact, the word “competition” is not even defined in section 100 - the interpretation section of the EPSRA 2005. In the same vein, although the “abuse of market power” was mentioned in the EPSRA 2005, no definition of what conducts, actions or in-actions in the electricity industry amount to the abuse of market power is provided.

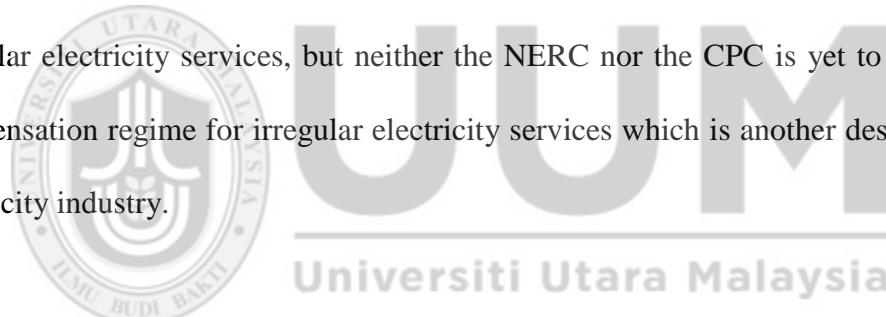
Poverty is found to be high in Nigeria. Recently the Vice President of Nigeria stated that the level of poverty in the country has reached intolerable limits.<sup>162</sup> With the identified cost of litigation in the country, the poor Nigerian consumers should find succour in state-aided legal schemes such as the legal aid. The research, however, found that Legal Aid Council Act (LACON Act) is limited in scope. The Act applies to civil cases bordering on fundamental right enforcement (to which consumer rights claims are not) and employee claims. This research equally found that even if the LACON Act were to be expansive to cover consumer rights' claims, the LACON is underfunded and understaffed.

The research equally found that the Nigerian consumer protection statutes are more of penalties than compensation. And these penalties go into government coffers. It is further found that even the fines and prison terms for infraction of consumer laws and consumer rights provided under the consumer protection laws and imposable on offenders are meager and paltry when compared to what is obtainable in jurisdictions such as Malaysia. Specifically, this research found that the electricity sector regulatory

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<sup>162</sup> Emma Una, “Poverty Level in Nigeria Intolerable — Osinbajo,” The Vanguard, June 26, 2015.

laws are more penal than compensatory. A careful examination of the EPSRA 2005 shows that the law made more provisions on fine and penalty with little mention of compensation which directly affects the consumer. In other words, the thesis found that the EPSRA 2005 focused more on fines and penalties with little or no emphasis on compensation. It is particularly worrying that the issue of compensation is excluded among the orders that the NERC can make under section 82 (7) where it finds a Disco has abused its market power. Again, when it comes to the fines and penalties that the NERC could impose, the language of the EPSRA 2005 is in the directory “may” as opposed to mandatory “shall.” Sections 75, 82 (7) and 96 (2) (p) are instructive. The research also found that although section 80 (3) requires consumer to be compensated for irregular electricity services, but neither the NERC nor the CPC is yet to put in place a compensation regime for irregular electricity services which is another description of the electricity industry.



This research equally found that the bar and bench assist immeasurably in improving the corpus of consumer law. The observation of the court in the case of Mr. S. Amadi V. Engineer A. Essien<sup>163</sup> highlighted in chapter four could be one of the reasons for the exclusion of Section 12 (2) of the old NEPA Act in the EPSRA 2005. Although the court acknowledged that repealing an unjust enactment is not within its constitutional competence, EPSRA, 2005 repealed the entire NEPA Act courtesy of the lamentations of the courts among others. The observation of the court in the case of Evangelist Alfred

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<sup>163</sup> (1993) LPELR – 14644.

Ambe Bassey Vs. Power Holding Company of Nigeria (PHCN) & Another,<sup>164</sup> on the extortionate estimated billings and the court's call on the National Assembly to enact a law to end the consumer exploitation in the Nigerian electricity industry is equally instructive.

### **7.2.2 Findings from the Institutional Perspective**

Although consumer rights abuses and infractions of consumer laws are widespread in Nigeria, the consumer protection agencies lack prosecutorial powers. In the first place the office of the Attorney General of the Federation (AGF) is the state department constitutionally in charge of prosecuting all crimes in the country. Again, the CPC Act further vests the powers of prosecuting consumer right violators on the AGF's office. This is the position despite the fact that the AGF's office is not adequately staffed with legal practitioners. At the moment there are only 15 legal practitioners from the AGF's office covering Kano, Katsina, Kaduna and Jigawa States of Nigeria. This is the case across other zones.<sup>165</sup> Additionally, the Consumer Protection Council (CPC) lacks the powers to file civil actions for non-compliance with its desist orders and to prosecute merchants and businesses involved in sharp practices. It can only do any of the above through the AGF's office. The same problem applies to the Standard Organization of Nigeria (SON). The SON only prosecutes through the AGF's office.

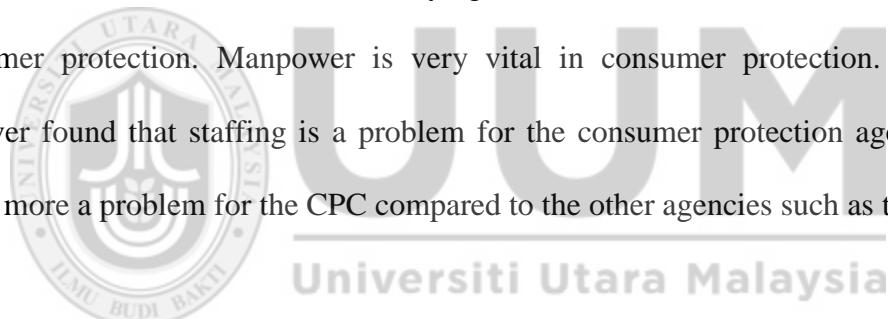
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<sup>164</sup> Evangelist Alfred Ambe Bassey Vs. Power Holding Company of Nigeria (PHCN) & Another (2012) ALL FWLR (Part 613), 2019 @ 2026;

<sup>165</sup> Phone call (August 18, 2015) and confirmation with a Federal State Counsel (colleague) who is among the 15 mentioned State Counsel covering the four listed states.

The consumer protection agencies especially the CPC lack the powers to impose civil fines and cannot also file civil suits against companies who fail to comply with its orders. The CPC relies on the AGF's office in that regards. This is not the case in places such as the US where the FTC has the powers to impose civil penalties and same must be complied with. Even within the African continent, fine provisions clearly vesting consumer protection authority with the powers to impose civil fines as well as compensation are found in Ethiopia.<sup>166</sup>

The researcher equally found that the consumer protection agencies are poorly funded and understaffed. This is more worrying in the context of the CPC, the principal consumer protection. Manpower is very vital in consumer protection. The research however found that staffing is a problem for the consumer protection agencies. Again, this is more a problem for the CPC compared to the other agencies such as the SON.



Independence and autonomy in the running of agencies are vital for efficiency. Consumer protection agencies should not be subject to control and interference. This research found that consumer protection institutions in Nigeria lack autonomy and independence financially and in their operations. The CPC, for instance, is a parastatal of the Federal Ministry of Commerce, and the SON is a parastatal of the Federal Ministry of Industries. All these consumer protection agencies do not have budgetary independence and are subject to the control of the Ministers of their relevant Ministries in all their decisions. In

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<sup>166</sup> Section 35, The Ehiopian Trade Practices and Consumer Protection Proclamation, 2010. The section reads "Authority, based on applications submitted to it on violations of this Proclamation, adjudicates, impose administrative and civil sanctions, and gets complainants compensated for damages they sustained."

fact, as reported from the interviews, the agencies are challenged in terms of their operation when at times politicians import products and are exempt from the scrutiny of the consumer protection and products standard setting agencies. This is likely one of the avenues for the circulation of fake and substandard products at the detriment of the consumers in the country.

The research equally found that Nigeria lacks vital consumer protection agencies such as a competition regulatory authority. This finding is connected to the lack of a stand-alone competition law that would establish the regulatory agency to implement the provisions of the competition law.

### **7.2.3 Finding Specific to the Consumer Access to Justice and Redress**

The research found that the Nigerian electricity consumer has two options for redressing consumer injustices. He/she can either redress his/her grievance through the traditional justice system before the regular courts or through the electricity industry- specific consumer redress mechanism. But apart from the regular courts being expensive and delays-prone, even the out of court redress process that is put in place in the electricity industry is not divorced from the malaise in the general justice administration. In other words, the research found that even the electricity industry specific redress process is not consumer friendly. The redress through the courts as well as the industry redress process that starts from the Disco and ends at the NERC is cumbersome, time consuming and discouraging. Electricity consumers dissatisfied with the conducts of Discos in resolving their grievance are mostly hundreds of kilometers away from the Forum Offices (FOs) and the zonal offices of both the CPC and NERC. The reality is that although electricity

consumers are scattered in all the nook and crannies in Nigeria, and the fact that consumer abuses are mostly in the rural areas, consumer redress forums are all situated in the cities far from the reach of most consumers.

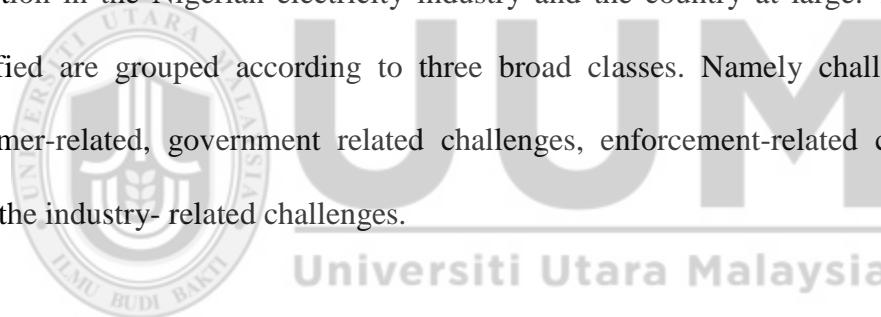
While the courts are congested and delays prone, the research found that Nigeria lacks the ideal consumer protection institutions that are appropriate for redressing consumer claims that are often small. Consumer protection institutions such as the Small Claims Court (SCC), the Consumer Ombudsman (CCom) that affords the consumer cheap, free, effective, quick, efficient, and informal means of consumer redress are nonexistent in the country. These institutions are, however, found in several countries such as China, Malaysia, Israel, South Africa, Sweden, and Peru.

ADR mediums are good alternatives to litigation dominant, congested and delays-prone regular courts. This research found that in some jurisdictions such as the US and the EU specific consumer ADR enactments exist. While the US has the “Consumer Due Process Protocol for Mediation and Arbitration of Consumer Disputes, 1998,” the EU has a specific Directive on Consumer ADR. The ADR mediums include mediation, conciliation and arbitration and across the globe, mediation is the most favoured. In Nigeria, only mediation and conciliation are mentioned in the CPC Act while mediation and arbitration are mentioned in the EPSRA 2005. But the findings in this research are that utility of the ADR mediums such as mediation and conciliation mentioned in the CPC Act appears to be low in view of the lack of awareness about even the existence of the CPC on the side of the consumers. As for the mention of mediation and arbitration in the EPSRA 2005, the reference is not in the consumer interest. The inclusion is not for

redressing any consumer complaints in the electricity industry. In other words, the inclusion of mediation and arbitration in the EPSRA 2005 is not for consumer dispute settlement but settlement of disputes between the licensees. In fact, no mention of any ADR medium is made in the Customer Complaints Handling: Standard and Procedures Regulation, 2006, the main electricity industry regulation for complaints handling.

#### **7.2.4 Findings on the Challenges of Consumer Protection in the Nigerian Electricity Industry**

From the data analysis especially the transcribed interviews and review of relevant literature, the research identified several challenges militating against efficient consumer protection in the Nigerian electricity industry and the country at large. The challenges identified are grouped according to three broad classes. Namely challenges that are consumer-related, government related challenges, enforcement-related challenges and lastly the industry- related challenges.



##### **7.2.4.1 Findings on consumer related challenges of consumer protection**

The consumer related challenges identified include lack of awareness, cultural and religious orientation, poverty, lack of organized consumer groups, lack of consumer activism and consumer failing in fulfilling their contractual obligation. The research for instance, found lack of awareness (with consumer ignorance and lack of sensitization among other as subthemes) as the major challenge for consumer protection. The consumer is equally found not to be active in pursuing his/her rights. This lack of activism, however, may be a consequence of lack of awareness, the cultural and religious beliefs of the consumer, lack of consumer organization as well as the intolerable poverty

in the country that have been identified as challenges militating against effective consumer protection.

#### **7.2.4.2 Findings on government related consumer protection challenges**

From the government perspectives, the research found funding, limited consumer protection offices, security problems for the staff of the enforcement agencies and the lack of political will and under rating of consumer protection issues as the challenges that militate against consumer protection. Specifically on funding problems, the research findings revealed that funds that keep the consumer protection machinery moving are a problem for consumer protection agencies. One imagines how a zonal office covering seven states of Nigeria will function effectively with a paltry sum of N60, 000 for a period of 8 months. No serious consumer protection activity would be expected from this zone. On the location of the electricity consumer protection agencies, the research found that the CPC is only present in seven places.<sup>167</sup> The same applies to the NERC – the electricity sector regulator.

The research also found a lack of government will towards the issue of consumer and consumer protection. The research found that in countries that value consumer protection, a government Ministry not a parastatal is established, named and dedicated for consumer affairs. Across the globe, good examples abound in Austria, Canada, India, Malaysia,

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<sup>167</sup> For CPC, Abuja (head office), 6 Zonal offices spread along the six geo-political divide in the country (North-West, North East, North Central, South-West, South-South and South-East) with Lagos office standing alone.

Mauritius and New Zealand.<sup>168</sup> This is not the case in Nigeria. The country lacks a dedicated Ministry for consumer protection as done in the above places. Even CPC the principal consumer protection agency is an appendage of a Federal Ministry. Additionally, consumer issues are not given the prominence they deserve as the executive arm of government at both the federal and state levels never included in their list of political appointees' advisers on consumer protection/affairs. This is not the practice in other jurisdictions such as the US.

#### **7.2.4.3 Findings on Enforcement related consumer protection challenges**

As for enforcement related challenges, implementation problems, staffing, bureaucratic bottlenecks, the issues of difficult burden of proof, corruption and political interference in the working of the consumer protection and standards setting agencies were the challenges the research found as obstacles for consumer protection in the Nigerian electricity industry. On staffing for instance, the research found that consumer protection agencies especially the CPC is understaffed. Corruption is in particular found to be a problem in the Nigerian electricity industry thereby militating against the protection of electricity consumers.

The research further found that consumers in search of redress for consumer wrongs before the courts face difficulties associated with the Nigerian judicial system. The

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<sup>168</sup> Richard Widdows, Gong-Soog Hong, Jing J Xiao, Misako Higa, Hilary Tso, and Lakshmi Malroutu, "Consumer Issues and Consumer Protection in Asia," *Advancing the Consumer Interest* (1995): 12. In Canada for instance, British Columbia has Ministry of Consumer and Corporate Affairs while in Ontario it is called Ministry of Consumer and Government Services. In Mauritius the Ministry is code named Ministry of Industry, Commerce and Consumer Protection; and in Austria, Federal Ministry of Labour, Social Affairs and Consumer Protection.

research found although consumer activism is low, even the few active and courageous consumers who opt to ventilate their grievances face difficulties in navigating the justice system in terms of burden of proving the violation of the consumer rights or the relevant consumer law.

#### **7.2.4.4 Industry related consumer protection Challenges**

The twin and lingering problems of metering and arbitrary billings were the identified industry-specific challenges for consumer protection challenges. The service providers refused to meter the electricity consumers and exploit the consumers through arbitrary billings. The Nigerian Electricity Regulatory directives and timelines for the metering of the consumers and the stoppage of arbitrary billings have been flouted by the electricity services providers. Arbitrary billings remain challenging issues to the electricity consumers.

Related to the billing issues is the fact that this research found that electricity bills issued to all consumers including the rural and non-literate consumers are prepared in English language. In other words, consumers not English literate pay for bills they do not understand.

### **7.3 Conclusion**

On the whole, this research recommends that in order to safeguard the interest of electricity consumers and to minimize (if not eradicate) the consumer abuses widespread

in the Nigerian electricity industry, the legal regime should have new legislations and new institutional arrangements. Alternatively, the extant laws can be amended or the existing institutions can be revamped. Additionally, there should be consumer safeguards in protecting consumers' rights in the electricity industry. The regime should make provision on service quality, proper information and actual consumption; complete information on applicable tariffs; simple, speedy and inexpensive complaints handling process; accurate billing and metering; and functional compensation schemes. These are necessary for electricity consumer protection. These safeguards should be spelt out in legislative terms. This is seen in places such as the EU. Annex I to the Electricity Directive 2009 detailed all these safeguards for electricity consumers in the EU and is instructive in that regards.<sup>169</sup>

## **7.4 Recommendations**

Flowing from the above findings, this research offers some recommendations which if implemented would likely address the identified problems and issues found to be associated with the legal and institutional framework for consumer protection in Nigeria. The recommendations would help the cause of electricity consumers overall protection and access to justice and redress.

### **7.4.1 Recommendations on the Legal Inadequacies**

New legislative enactments and/or amendment to the existing statutes are recommended. On consumer rights protection, this research recommends that Nigeria follows the step

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<sup>169</sup> Annex I, Electricity Directive 2009/72 EC of the European Parliament and Council, 2009

taken by the Republic of Kenya in making consumer rights part of the fundamental human rights in a chapter of the Kenyan Constitution. The Constitution of the Federal Republic of Nigeria (CFRN) 1999 can be amended to reflect consumer rights as part of justiciable rights.<sup>170</sup> Alternatively, this research recommends that a clear and detail incorporation of consumer rights by either amending the CPC Act at the general level or the amendment of the EPSRA 2005 at the electricity industry level. The same recommendations are adopted on the issue of lack of explicit codification of consumer remedies and the criteria for assessment and grant of the remedies to the consumer. In event of violation of fundamental terms and the right of consumer, it is recommended that amendment to the consumer protection statutes be made to incorporate in clear terms the consumer remedies available to the wronged consumers, and when the wronged consumers are entitled to the remedies as done in jurisdictions such as UK and Malaysia. Codifying these consumer remedies would not leave the remedies to chance and they would be easily appreciated by the consumer. The current arrangement whereby the consumer would have to rely on common law remedies is untenable and needs to be reconsidered. As seen in the previous chapters relying on common law remedies is full of uncertainties and difficulties. The issue of burden of proving the damages is one of such issues.

Still on the non-incorporation of consumer rights and remedies, this research further recommends that if amending the CPC Act and EPSRA 2005 are not practicable, a new

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<sup>170</sup> At the moment, only the civil and political rights under Chapter IV of the 1999 constitution of the Federal Republic of Nigeria are justiciable. The class of rights under Chapter II that are economic, social and cultural rights are not justiciable as provided under section 6 (6) (c) of the 1999 Constitution of the Federal Republic of Nigeria as amended

and separate “Nigerian Consumer Bill of Rights” as recently done in the UK<sup>171</sup> be enacted. The legislation could be named “Consumer Rights, Remedies and Obligations Act.” The legislation would make consumer rights and remedies more clear and concrete to the consumer when purchasing a good or paying for a service. The law would equally help in raising consumers’ rights awareness which this research found to be one of the major challenges for the electricity consumer protection.

On the CPC Act’s products focus with less emphasis on services (which includes electricity), it is recommended that the CPC Act being the overall consumer protection statute be amended to the effect that wherever product is mentioned it should be appropriately accompanied with services. This is the trend in international consumer protection instruments such as the UNGCP, the AMLCP as well as in consumer protection statutes across most jurisdictions. The UK “Consumer Protection Act (UCRA) 2015, the “Malaysian Consumer Protection Act, (MCPA) 1999,” and the Ethiopian Trade Practice and Consumers’ Protection Proclamation No. 685/2010 are instructive. Alternatively, sections or parts that are services specific as done under the UK and Malaysia under UCRA 2015 or MCPA 1999 should be inserted in the CPC Act.

On the restrictive definition of the word “consumer” and the lack of definition for words such as “product,” “good” and “service,” definitions should be provided. It is recommended that the CPC Act should be amended. The word “consumer” should be clearly and precisely defined. The CPC Act should clarify the type of goods and services

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<sup>171</sup> The UK recently enacted a stand-alone consumer rights statute entitled the “Consumer Rights Act, 2015 (UCRA 2015). The UCRA came into effect March 26, 2015 and made detail provisions on several consumer rights and remedies.

the purchase of which falls within the purview of the CPC Act. The meaning should be made clear as to purpose of the purchase as done in other jurisdictions. The trend in most jurisdictions is to restrict purchases for household and personal consumption. Purchases for commercial or business are excluded. The purchases for resale are equally out of the protection of consumer statutes across the globe. On a general note, this research recommends an expansive definition or interpretation section in the CPC Act. Clarity is very important in understanding and enforcement of laws. Products should be defined as well as services. The CPC Act should make it clear whether a product or good includes a utility as done in Malaysia.

On fines and penalties focus of the EPSRA 2005 with little emphasis on compensation, this research recommends amendment to the EPSRA 2005. Wherever the NERC is empowered to award fines and penalties against any firm for conducts or violations of the EPSRA 2005 or any of the Regulations (issued by the NERC pursuant to the powers conferred on the NERC), imposition of fines/penalties should be accompanied with the provision for compensation that directly affects consumers. It follows therefore, that provisions such as Section 82 (7) should be amended to reflect that where a Disco is found to have abused its market power, apart from ceased orders, fines and penalties imposable, provisions for the award of compensation should equally be made part of Section 82 (7). It is therefore recommended that the wordings of the said subsection (7) be amended by replacing the word “may” with “shall.” The subsection (7) should now be redrafted to read thus: “in the event that the Commission (NERC) determines that there is an abuse of market power, it *Shall*: (a) issue a cease orders; (b) levy fines not exceeding

fifty million Naira.” (Italics supplied). A third paragraph should equally be added and should read “(c) order the Disco to award appropriate compensation in kilowatt or any other means to the affected consumers.” See **APPENDIX I.**

On the paltry fines provided in most of the relevant consumer protection laws, it is recommended that the punishments provided in CPC Act and the SON Act need to be reviewed upward as per **APPENDIXES II and III**. According to the rational choice theory, human beings act based on rational decisions. This is because the penalties/fines looked from the perspective of the rational choice theory would seem to encourage the unscrupulous business to want to violate the law because the reward from the disobedience outweighs the punishment.<sup>172</sup> This is against the deterrence theory which serves as the philosophical basis of modern criminal law and which among other things emphasized the severity and proportionality of punishment.<sup>173</sup> The theory argues that the severity of punishment the lower the violations.<sup>174</sup> Fines for violating consumer codes are not meager in jurisdictions such as Malaysia, Thailand and Indonesia. Businesses would be scared more to violate consumer codes in these jurisdictions compared to Nigeria where the fines are meager. In Malaysia for instance, a violator of the Consumer Protection Act, (MCPA) 1999 could after conviction under section 25 MCPA 1999 be fined up to RM250,000 (₦14,500,000 at ₦58/RM1) for first offenders. In fact, repeat offenders could be fined up to RM500,000 (₦29,000,000). It is therefore recommended

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<sup>172</sup> Ronald L. Akers, “Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path not Taken,” *Journal of Crim. Law & Criminology* 81 (1990): 655; Managing Editor, “Consumer Protection-new Hope Following Failure of Civil and Criminal Remedies,” *Journal of Criminal Law and Criminology* 66, no. 3 (1975): 271.

<sup>173</sup> Ronald L. Akers, *Criminological Theories: Introduction and Evaluation* (Routledge, 2013), 17.

<sup>174</sup> Ronald, (2013):19; Charles R. Title, *Sanctions and Social Deviance*, (New York: Praeger, 1980),

that the fines imposbale in the CPC Act, EPSRA 2005 and the SON Act be accordingly reviewed. For instance, section 9 (2) of the CPC Act be reviewed from ₦50,000 (Fifty Thousand Naira) to ₦5, 000,000 (Five Million Naira). The CPC Act should also borrow the differentiation of fines between the first offender and the repeat offenders obtainable under MCPA 1999. The same recommendation for the review of the fines under Section 9 (2) from ₦50,000 (Fifty Thousand Naira) to ₦5, 000,000 (Five Million Naira) is recommended for Sections 11 and 12 (c ) of the CPC Act. It is further recommended that Section 18 CPC Act that provided for a ₦10,000 fine be reviewed to ₦1,000,000 (RM17, 241) for the first offender and the sum of ₦5,000, 000 (RM86,206) for the repeat or subsequent offence. This should apply to wherever a fine of N10,000 is provided under the CPC Act such as Sections 19 and 21. Recommendations for upward review of the imprisonment terms in the relevant sections of the CPC are equally and accordingly proffered. Similar recommendations are made in respect of the fines and imprisonments provided under the SON Act. Wherever ridiculous fines between ₦200 to ₦1000 (RM3.4 to RM17.2 at ₦58/RM1) as in Sections 15 and 19 are provided, for example, a review to ₦ 5, 000,000 is recommended. Where however, the fine is ₦10,000, as in Section 16 (4) is provided a review to a ₦10, 000,000 is recommended. Equally, imprisonment terms are doubled from three months to six month, one year to two years in that pattern. Additionally, where compensation is not factored following conviction, this research recommends the inclusion of sub-sections or sub-paragraphs in the relevant provisions of the SON Act. Like it was recommended under the CPC Act, provisions for different and stiffer punishments for repeat and subsequent offenders are made for penal provisions of the SON Act. See **APPENDIX III.**

On the lack of appropriate compensation regime or the less emphasis of the EPSRA, 2005 on compensation compared to penalties and fines, it is recommended that the NERC, the industry regulator works out a compensation regime for the lack of service quality and failures in the industry. This research, however, is by no means against the provisions of penalties and fines for infraction of consumer laws or violation of consumer rights. The research however, argued that compensation should be emphasized because it directly benefits the consumers as opposed to fines and penalty that go to the government coppers. The prison term awarded to the violators of consumer law following conviction, does not also directly benefit the consumers. In fact, the consumers as tax payers indirectly bear the cost of maintaining the offender of the consumer statutes in the prisons. The recent settlement reached between Citi Bank and the US Consumer Financial Protection Bureau (CFPB) wherein the former agrees with the later to refund it's customers the sum of \$700 million USD for misleading the customers in credit card usage as well as the payment of \$70 million in form of fine to CFPB is a good example for the NERC. Similar settlement was also reached in 2012 where Discover Bank paid \$14 million USD penalty for deceptive conducts and a separate \$200 million USD as restitution to affected customers.<sup>175</sup> Any decision to be taken by the NERC, the regulator of the Nigerian electricity industry in relation to service quality, billing frauds and other consumer issues should not only be fines or penalties focused. It should as well factor the

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<sup>175</sup> Spencer Weber Waller, Jillian G. Brady, R. J. Acosta, and Jennifer Fair, "Consumer protection in the United States: an overview," *European Journal of Consumer Law* (2011):14

need to compensate the consumers as demonstrated by the CFPB in the US banking industry.<sup>176</sup>

Legal aid is a strong alternative for improving access to justice for the poor. It should be granted to Nigerian consumers. This research, therefore, recommends that the state legal aid should accommodate consumers as done in places such as Australia. On the limitation of cases which LACON can handle (especially in civil spheres), it is recommended that the scope of the Legal Aid Act 2011 should be expanded to expressly include consumer cases. Nigeria can borrow from the provisions of Article 47 of the European Union (EU) Charter on Fundamental Rights. Article 47 declares that legal aid shall be available to all poor EU citizens especially in circumstances when the aid would ensure access to justice. Legal aid in Nigeria for the poor consumers would improve access to justice to the over 100 million Nigerians to whom access to justice remains in theory. The country should, as suggested by the learned Chief Judge Jonathan Lippmann of the New York Court of Appeals,<sup>177</sup> prioritize legal services provision just like other essentials of life such as education and housing.

This research further suggested that if Nigeria cannot fully provide the “lawyer- based” legal aid,” other alternatives can be explored. Paralegal should be involved to assist the case of consumers. This should be the case even if on advice and minor assistance basis

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<sup>176</sup> Consumer Financial Protection Bureau (CFPB), “CFPB Orders Citibank to Pay \$700 Million in Consumer Relief for Illegal Credit Card Practices, July 21, 2015. <http://www.consumerfinance.gov/newsroom/cfpb-orders-citibank-to-pay-700-million-in-consumer-relief-for-illegal-credit-card-practices/>. (accessed July 21, 2015).

<sup>177</sup> Jonathan Lippmann, “Brennan Lecture: The Judiciary as the Leader of the Access-to-Justice Revolution,” *New York University Law Review* 89 (2014): 1573.

as opposed to legal representation in courts. On the underfunding problems of the legal aid, this research recommends that the LACON should be well funded as funds are vital in access to justice project.

It is further recommended that the courts can serve a great role in improving access to justice/representation to the poor by being more pro-active. The need for this pro-activism in guaranteeing access to justice to all citizens who are also consumers is a responsibility of the courts.

On the lack of stand-alone competition law and the neglect of competition provision in the entire CPC Act as well as the lack of comprehensive competition provision in the EPSRA, 2005, this research recommends stand-alone competition legislation. The legislation should be fashioned to meet the realities of the deregulated and competitive electricity markets. This is because competition law is integral and in fact, the cornerstone of consumer law. With Nigeria's decision to privatize and deregulate its utilities such as electricity, Nigeria should have envisaged developing its consumer law in line with its economic reforms and other economic policies. In fact, successful consumer protection systems "require periodic upgrade"<sup>178</sup> to meet the emerging issues in the marketplace. In other words, vital issues in deregulated environments such as competition regulation should not be left to chance without a law or adequate provisions. This is so especially when a country such as Nigeria has decided to deregulate the commanding heights of its economy such as the electricity. The country should have taken note of the international best practices and standards as well as the experience and approaches

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<sup>178</sup> William E. Kovacic, "China's Competition Law Experience in Context," *Journal of Antitrust Enforcement* (2015): 16.

adopted by other countries. In China for instance, their consumer protection law was amended a year following the introduction of their economic reforms.<sup>179</sup>

#### **7.4.2 Recommendations on the Institutional Findings**

On the lack of prosecutorial powers of the CPC, the SON and other consumer protection agencies, this research recommends that these consumer protection agencies especially the CPC should be empowered to prosecute consumer cases in-house. The current arrangement whereby the CPC relies on the AGF's office for the prosecution of consumer rights offenders is untenable. The arrangement is bureaucratic and contrary to the spirit of expeditious disposal of consumer cases sanctioned by Section 2 of the CPC Act. In-house prosecution of offenders would give the CPC and other consumer protection agencies the opportunity of handling consumer cases with dispatch and all the seriousness they deserve. Leaving prosecution of consumer cases in the already burdened AGF's office would make consumer cases to be treated like any other matter without according them the expeditious disposal they deserve.

In a related context, the consumer protection agencies especially the CPC should be empowered and granted the powers to impose civil fines, file civil suits against companies who fail to comply with its orders and the powers to prosecute. This approach happened to the Federal Trade Commission (FTC) of the US between the 1930s running to the 1960s when the Congress realized that the FTC was not functioning effectively in taming companies such as Holland Furnace Company from consumer exploitation. This

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<sup>179</sup> Zhixiong Liao, "The Recent Amendment to China's Consumer Law: An Imperfect Improvement and Proposal for Future Changes," *Beijing Law Review* 5, no. 03 (2014): 164

necessitated the passage of the Magnuson-Moss Warranty-Federal Trade Commission Improvement (MWFTCI) Act in 1975. This MWFTCI came to enhance the enforcement powers of the FTC; to grant the FTC the powers to file civil suits for the imposition of civil fines and for seeking compensation for and on behalf of consumers against the dishonest business enterprises/recalcitrant companies.<sup>180</sup> The NERC as the Nigerian electricity industry regulator should equally learn from the recent steps taken by the US Federal Communications Commission (FCC) that recently fined AT&T Mobility, a telecommunications service provider \$100 million for misleading its unlimited data subscribers through a severe slowing of the speed of the data without notifying its subscribers.<sup>181</sup> The NERC can fine the electricity service providers for the frequent and terrible service failures and quality issues that are common in the industry. The whole idea behind the recommendation for a strong institutional regulator is the finding that most of the electricity sector reform failures across jurisdictions were linked to weak institutions.

On the lack of institutional autonomy (financially and otherwise) of the CPC and the other consumer protection agencies, this research recommends that the relevant consumer protection agencies should be granted financial autonomy and the independence in their operations and issuance of regulations. Consumer protection is a serious issue that affects everybody. Consumer protection institutions should have independence in operations and budgetary terms. The tying of consumer protection institutions to their relevant

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<sup>180</sup>Northwestern University, School of Law, Managing Editor and United States of America. "Consumer Protection-New Hope Following Failure of Civil and Criminal Remedies," *Journal of Criminal Law and Criminology* 66, no. 3 (1975): 281.

<sup>181</sup> Allison Zieve, "FCC to fine AT&T Mobility \$100M for Misleading Consumers About Data Plans," Consumer law & Policy Blog, Wednesday, June 17, 2015.

Ministries' budget and the requirement of ministerial approval for any regulation issued should be revisited. Expediency requires that they should be allowed autonomy and independence. Only then they can function efficiently. This is the practice in EU. In fact, Electricity Directive 2009/72 EC of the European Parliament and Council, 2009 specifically requires this independence in respect of electricity industry.<sup>182</sup>

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<sup>182</sup>Eva Niesta and Albert Jolink, "Regulating Opportunism in the Electricity Industry and Consumer Interests," *Utilities policy* 20, no. 1 (2012): 38

Article 35, Electricity Directive 2009/72EC of the European Parliament and Council, 2009. Article 35, (4) provides;

Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member State shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

- (a) is legally distinct and functionally independent from any other public or private entity;
- (b) ensures that its staff and the persons responsible for its management:
  - (i) act independently from any market interest; and
  - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. This requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties under Article 37.

#### Article 35 (5)

In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

- (a) the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties; and
- (b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

In regard to point (b) of the first subparagraph, Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their

Institutions are the mechanisms through which law and policies are enforced. This research, therefore, argues that Nigeria needs a competition regulatory authority as done in several jurisdictions. The country needs it and its establishment recommended. Where the country feels it does not need a stand-alone competition regulatory authority, it is recommended that the CPC be redesigned and named “Consumer and Competition Agency” as done in places such as Ireland and New Zealand.<sup>183</sup> Additionally, although the courts have demonstrated their penchant to guarantee the protection of the consumers, it is further recommended that more pro-activism in affording consumers easy access to the judicial system will assist the cause of the consumer.

#### **7.4.3 Recommendations Relating to Consumer Access to Justice and Redress**

Cost, delays and bureaucracies identified with the traditional justice system makes it inappropriate for redressing consumer claims that are often small. To make justice accessible to the consumer and to improve on consumer redress, this research, therefore, recommends the establishment of ideal institutions for consumer redress. In this connection, this research recommends that consumer friendly schemes and avenues that are less expensive, less technical and expeditious such as the Small Claims or Consumer Courts, Consumer Ombudsman (COm) and Restrictive Trade Practices Tribunal be established. The legal aid scheme would also serve useful purpose in assisting the poor

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term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

<sup>183</sup>Productivity Commission, “Australian and New Zealand Competition and Consumer Protection Regimes,” *Productivity Commission, Government of Australia Research Reports* (2005); Mary Catherine Lucey, “The New Irish Competition and Consumer Protection Commission: Is this ‘Powerful Watchdog With Real Teeth’ Powerful Enough Under EU Law?” *Journal of European Competition Law & Practice* (2014).

consumers in getting redress. These structures immensely facilitate consumer access to justice and would improve consumer redress.<sup>184</sup> This recommendation would make the recommendation for a concrete regime for consumer rights and remedies fruitful. As rightly observed by Naemah consumer rights would be “worthless in the absence of an effective redress mechanism which is suitable, practicable and inexpensive to enforce.”<sup>185</sup> Additionally, establishing consumer rights alone would not serve the consumer interest if the consumer is left to ventilate his/her grievance through the current justice system that is expensive and delays-prone. This is because as Elizabeth rightly observed “a right too expensive to exercise is no right at all.”<sup>186</sup> The Small Claims Court (SCC) for instance, is among “the most promising” means for effective consumer rights and redress.<sup>187</sup> The SCCs are recommended in view of the delays-prone nature of the Nigerian judicial system and in the light of Nigeria’s obligation as a member of the United Nations and being a member in the comity of African countries. Nigeria needs a comprehensive law to back up the establishment of the SCCs, provide consumer rights and remedies if the Nigerian electricity consumers are to enjoy value for their expenditure in the electricity industry.

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<sup>184</sup> Thomas and Joan, (1971):286

<sup>185</sup> Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: an Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore:Lexis Nexis, 2010),172.

<sup>186</sup> Elizabeth J. Cabraser, “Apportioning Due Process: Preserving the Right to Affordable Justice,” *Denver University Law Review* 87, no. 2 (2010):446. The observation of Spiller is equally instructive. Spiller argues that “there is little point in offering consumers legal protections in principle that are inaccessible. Peter Spiller and Kate Tokeley, “Individual consumer redress,” in *Handbook of Research on International Consumer Law* (2010): 482.

<sup>187</sup> Cappelletti and Garth, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective,” *Buffalo Law Review* 27 (1978):181

Furthermore, Nigeria needs to learn from the experience of other jurisdictions in terms of who to be appointed to preside over the SCCs; who can be plaintiffs and whether lawyers should be allowed audience by the SCCs? On who to appoint as judges to man the SCCs, they need orientation about the overall rationale of establishing the SCCs. The SCCs' should be made to appreciate that the traditional technicalities and legalities accustomed to the ordinary or regular courts need to be eliminated.<sup>188</sup> The suggestion comes in the light of the attitude of Nigerian lawyers and litigants towards technicalities. Issue of lawyers' appearance needs to be carefully examined. Lawyers should be barred or discouraged. This is because their appearance would defeat the objective of cheap, expeditious disposal of consumer disputes. The exclusion of lawyers from the SCCs is not only desirable but necessary if the SCCs as stated in the US case of Prudential Insurance Co. Vs. Small Claims Court,<sup>189</sup> are to achieve their basic functions of affording cheap and expeditious disposal of consumer cases. It is important that businesses and corporations be excluded from being plaintiffs before the SCCs to avoid turning the SCCs into debt collection agencies as happened in many jurisdictions. Additionally, cases to be submitted to the SCC should overall be decided on their merits and in line with substantial justice and not technical justice. Provisions such as section 15 (4) of the New Zealand's Small Claims Tribunal Act, 1976 are instructive. The section provides:

“The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give

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<sup>188</sup> The New York City Civil Court Act provides a good example of a provision that bars lawyers from appearing before the small claims court. By section 1804, the “court shall conduct hearings upon small claims in such a manner as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions on rules of practice, procedure, pleading or evidence . . .”

<sup>189</sup> Prudential Insurance Co. v. Small Claims Court, 76 Cal. App. 2d 379, 173, P.2d 38 (1946), cited in Thomas and Joan, (1971):295.

effect to strict legal rights and obligations to legal technicalities.”

Where the creation of SCCs appears not feasible, this research recommends in the alternative that a special and simple procedure or a Consumer Dispute Practice Direction for redressing consumer disputes be established within the traditional justice system. In other words, alternatives to the establishment of SCCs is by modifying the judicial processes of case filing before the regular courts in consumer dispute. This can be done by creating simple practice direction specific to guide the consumer cases adjudication. This would assist in the elimination of delays and cost to consumers and proper consumer case management. The example of a research finding across 25 EU member states, US, Canada and Australia is instructive.

Court filing fees are barriers for access to justice.<sup>190</sup> Therefore, another way out for improved consumer redress is to institutionalize a “Court Processes Filing Fee Exemption Scheme” in consumer cases should the above recommendation for the establishment of the SCCs appears difficult for the state. This would assist in the reduction of cost to consumers and would likely increase consumer activism. Furthermore, the country needs the Consumer Ombudsman (COn) arrangement. In fact, the COn is a good alternative for consumer redress to the delay prone and expensive ordinary Nigerian courts. The main function of the COn it is less expensive, accessible and it is an alternative to civil courts in the resolution of civil disputes. The establishment of COn is more relevant in view of the limited coverage of the CPC, the EPSRA, 2005 and other consumer protection agencies. A legislation to back up the establishment of a COn or desk offices

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<sup>190</sup> Affordable Legal Services Review - The Law Society, <http://www.lawsociety.org.uk/Policy-campaigns/Campaigns/Access-to-justice/docume> (accessed June 23, 2015)

as done in other countries is recommended. Alternatively, the CPC Act can be amended to make provisions for the COM at least in each senatorial zone. This would bridge the gap in terms of location and access to NERC, FO and other consumer redress avenues in the electricity industry. Establishing COM across the country would assist in handling consumer complaints against utility service providers such as the Discos. This would serve a useful purpose. This is to ensure expeditious disposal of consumer complaints. The unfairness of requiring electricity consumer to travel several hundreds of kilometers to complain over their small claims would be obviated by the establishment of the COM. Similarly, there should be put in place individual redress mechanisms as well as group based redress mechanism such as the collective action.

On ADR, this research recommends that Nigeria places significant emphasis on ADR mediums in redressing consumer complaints. The country can borrow from the US or the EU by enacting a law or regulation on ADR processes but with more emphasis on mediation because of its wider acceptability across jurisdictions. In the case of the EPSRA 2005, it should include provisions for mediation and conciliation for the resolution of consumer disputes. In other words, the focus of EPSRA 2005 to ADR for only the resolution of disputes between licensees should be corrected and be made applicable to consumer dispute in the electricity industry. See the draft recommendation in Appendix I. In the alternative, this research recommends that ADR mediums should be clearly incorporated in the Customer Complaints Handling: Standard and Procedures Regulation, 2006 - the main electricity industry regulation for complaints handling. In the case of the CPC Act, though mediation and conciliation are included, this research

recommends further that the CPC should issue an “ADR Regulation in Consumer Dispute Settlement.” The Regulation to be issued should spell out the use and process for the ADR windows in consumer complaints processing. Further on the CPC Act, the recommendation of this thesis on raising consumer awareness is repeated here in the context of the existing ADR windows included in the CPC. The researcher is of the opinion that by raising consumer awareness on the existence of the CPC and the ADR windows in the CPC Act would raise the utility of the ADR windows in the resolution of consumer disputes.

Conclusively, it is recommended that the consumer redress process in the Nigerian electricity industry should be restructured. It should not be unnecessary long. All the consumer friendly avenues highlighted above should be considered to facilitate greater consumer access to justice and redress.<sup>191</sup> The Nigerian consumer needs such avenues to enable him/her enforce the little right he/she has and the larger class of rights this research advocated entrenching in the body of our consumer protection laws.

#### **7.4.4 Recommendation on Findings Relating to Consumer Protection Challenges**

As the findings on the legal and institutional challenges of consumer protection were categorised, the recommendations followed the same groupings of the challenges. The recommendations for the consumer-related challenges were provided first followed by the recommendations on the identified government –related challenges. The next recommendations are on the enforcement-related challenges and lastly the

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<sup>191</sup> Roscoe Pound :315; Arthur Bestf *et al.* :346.

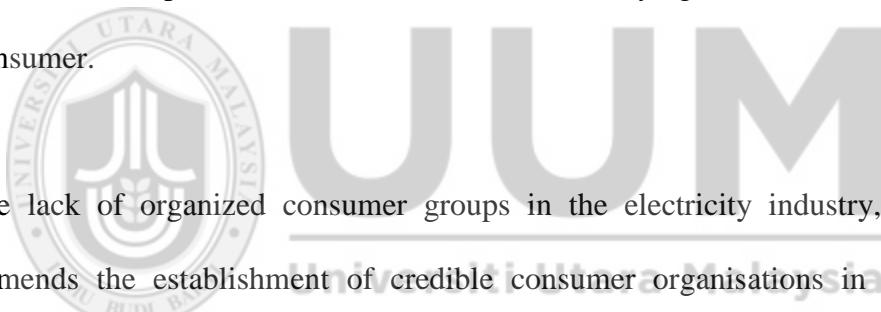
recommendations provided under this part of the chapter were on the industry-related challenges.

#### **7.4.4.1 Recommendations on the consumer related challenges for consumer protection**

On lack of awareness, this research recommends that enlightenment campaigns through the electronic and print media be vigorously explored. Awareness about consumer protection safeguards is a vital tool for consumer protection. Consumer education and awareness assist in developing responsible business behavior in the marketplace. Where the consumers know the consumer protection laws, where they know the channels to ventilate their grievance and are educated on their rights and responsibilities as consumers, a lot of the consumer exploitations can be prevented if not minimized. The radio has a wider audience than all the other communications mediums especially in the rural areas. The CPC and other relevant consumer protection agencies should as a matter of urgency come up with different educational programmes (in at least the three major Nigerian languages, Hausa, Yoruba Igbo) that would enlighten the consumers especially the rural consumers on their right to have value for their expenditure as well as their safety when they purchase goods or pay for a service.

Although, cultural and religious orientation, and beliefs are difficult to jettison, they have militated against consumer activism. Consumer attitudinal change is the first step towards consumer liberation. The cultural or religious orientation of leaving things to God even when one should take steps in redressing the prevalent consumer wrongs leaves much to be desired in the consumer protection drive in the country. This research therefore,

recommends a re-orientation for change of the consumer attitudes towards consumer activism. The suggestions of Naemah and Elistina are quite apt in this direction. The duo posit that “the sentiment of ‘strive for our rights’ should be inculcated in consumers so that they are willing to take action not because of the amount of losses but more important to stop the traders from taking advantage of consumer ignorance.”<sup>192</sup> This reorientation can come through the involvement of religious and community leaders. This is because of the respect they command from their followers. The consumers need to know that pursuing their rights where same is deliberately violated by the unscrupulous businesses is a right step in checking fraudulent business owners. This would send some sense to the unscrupulous businesses that have been relying on such attitudes to swindle the consumer.



On the lack of organized consumer groups in the electricity industry, this research recommends the establishment of credible consumer organisations in the electricity industry. Although the NERC lately recognized the importance of organized consumer association in the industry by midwifing a consumer network in the industry, it is important that consumers on their own realize the importance of forming strong consumer organisations to check the excesses of the Discos and the in-actions of the NERC. The recommendation for formidable consumer organisations in the electricity industry becomes more relevant in northern part of the country where the consumer enlightenment and activism is fairly low compared to the southern part of the country.

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<sup>192</sup> Naemah Amin and Elistina Abu Bakar, “ADR for Consumers: an Appraisal of the Tribunal for Consumer Claims in Malaysia,” in *Mediation in Malaysia: The Law and Practice*, ed. Mohammad Naqib Ishan Jan and Ashgar Ali Ali Muhammad (Singapore:Lexis Nexis, 2010),182.

This would provide the consumer with other alternative forums and mechanisms to complain on abuses such as overbilling instead of personally approaching the Discos.

On poverty as a challenge to consumer protection, this research recommends appropriate or increase funding of the Legal Aid Council of Nigeria (LACON). This recommendation is in addition to the recommendation for the expansion of the scope of LACON to incorporate consumer cases. This is borrowing from the experience of other jurisdictions such as UK where the Legal Aid has been one of the means of effective consumer redress. There is equally the need for increase in pro-bono activities by the private legal practitioners on consumer cases. Happily and recently, a legal practitioner filed a case before the Federal High Court of Justice, sought and obtained an injunction restraining the NERC and electricity service providers from increasing the electricity tariff pending their improvement in the electricity supply to the consumers.<sup>193</sup> More of this pro-bono and consumer focused litigation are encouraged. The consumers stand to gain the protection of the courts of law which they ordinarily cannot afford.

On the lack of activism, consumers need to change their attitude from docility to activism. The consumer needs change of attitude. Consumers should be persistent in enforcing their rights because the saying goes only “the squeaky wheels get grease.”<sup>194</sup> Electricity consumers would only strive to satisfy the persistent and assertive consumers through a timely, satisfactory and responsive resolution of their complaints. This is

<sup>193</sup>Innocent Anaba, “NERC, DISCOS Warned Against Tariff Hike,” June 25, 2015. <http://www.vanguardngr.com/2015/06/nerc-discos-warned-against-tariff-hike/>

<sup>194</sup> Amy Schmitz, “Access to Consumer Remedies in the Squeaky Wheel System,” *Pepperdine Law Review* 39 (2012): 279.

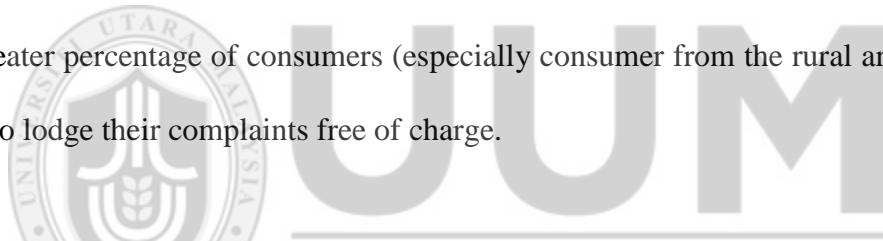
because activism is a fundamental ingredient for rights enforcement and the protection of consumer interest especially in deregulated sectors where private firms are the service providers. Activism would also facilitate the development of the jurisprudence on consumer protection in Nigeria. It will put to test the working of Nigerian consumer protection laws as well as the consumer protection agencies in the country.

On the consumers failing to fulfill their obligation, this research recommends that the consumers should be enlightened and made to understand that on equitable grounds he/she who seeks equity must do equity. As such the consumer protection agencies such as the CPC and NERC cannot protect the consumers where they fail to fulfill their own side of the bargain. In this connection, electricity consumers should be informed of the dangers and criminal status of electricity theft and failure to pay for electricity consumed. This would assist in letting the consumer appreciate that much as he/she has a right he/she has a responsibility especially in doing his/her own side of the bargain.

#### **7.4.4.2 Recommendations on the government related consumer protection challenges.**

Funding of the consumer protection agencies is one of the institutional challenges identified in this research. The research, therefore, recommends for the government a “steady and substantial” funding of the institutions in charge of consumer protection and consumer redress. The current practice of starving the consumer protection agencies such as the CPC of funds must be revisited. This is necessary if serious activity towards protecting the consumers is to be executed.

On the problem of limited electricity consumer protection agencies' offices across the country, it is recommended that zonal arrangement of the CPC, NERC and the Forum Offices should be revisited. The CPC, NERC and the forum offices should at least be accessible with little or no stress. They should exist if not in all the local government councils but in all states and at least in all the senatorial zones in the respective states which are three per state. This is because electricity is not only in the zones or states' capitals. The services extend to the rural communities who suffer the worst of consumer abuses. In view of the limited presence of both the CPC and NERC in the country, it is recommended as an interim measure (as obtainable in the US's Federal Trade Commission) that the CPC should have toll free number (s) or hot line (s) through which the greater percentage of consumers (especially consumer from the rural areas) can reach them to lodge their complaints free of charge.



On security risk of consumer protection agencies' staff especially the staff in the surveillance and enforcement units, this research recommends that insurance packages be institutionalized for the consumer protection staff whose lives are at risk whenever they go out for operation. This research further recommends that more security personnel should be assigned to the consumer protection agencies or at least the surveillance and enforcement units of the consumer protection agencies. These measures would motivate and encourage the staff to check consumer abuses, and to weed out fake and substandard and hazardous products in the marketplace without fear of harm.

On the lack of political will and under rating of consumer issues, this research argues that consumer affairs are so vital to be neglected by the executives. The research, therefore, recommends that the President, as well as the governors of the thirty-six states of the Nigerian federation, should as matter of priority have among their advisors and special assistants, consumer affairs advisors or special assistants. This has been in existence in the US since the 1964 starting with Presidents J. F. Kennedy and Lyndon Johnson.<sup>195</sup> As far back as 1962, there was a Consumer Advisory Council as part of the Council of Economic advisors to President J.F. Kennedy of the US. The President Johnson's regime was the first government to appoint a Special Assistant on Consumer Affairs to the White House.<sup>196</sup> Advisors on consumer affairs are more compelling in Nigeria in view of the level of consumer literacy and state of consumer abuses and exploitations.

On the lack of a dedicated ministry for consumer affairs, Nigeria needs to have a Ministry for consumer affairs and protection obtainable in jurisdictions such as Austria, Canada, India, Malaysia and Mauritius. This would place the consumer interest in its right place and would show how important consumer issues are, because they affect everybody. Establishing a Ministry is another means of enlightening the consumers of their importance in the economy and the need for their protection.

#### **7.4.4.3. Recommendations on the enforcement related consumer protection challenges**

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<sup>195</sup>David A Aaker and George S. Day, *Consumerism*, 4th Ed. (New York: Free Press, 1982), 7; James Ciment, *Postwar America: An Encyclopedia of Social, Political, Cultural, and Economic History* (Taylor & Francis, 2015), 304; Robert N. Mayer, "The US Consumer Movement: A New Era amid Old Challenges," *Journal of Consumer Affairs* 46, no. 2 (2012): 171.

<sup>196</sup> Robert N. Mayer, "The US Consumer Movement: A New Era amid Old Challenges," *Journal of Consumer Affairs* 46, no. 2 (2012): 172

On implementation problems, it is recommended that implementation is essential in giving life to extant consumer protection laws. To protect consumers and ensure the enforcement of extant consumer laws in Nigeria, consumer protection agencies as recommended elsewhere in this research must have access to sufficient funds and powers. This is one of the recommendations in the report of the UK House of Commons Committee of Public Accounts on the how to effectively enforce the consumer laws to protect the consumers.<sup>197</sup> With the agencies being empowered, they should be able to enforce all existing consumer protection safeguards. This recommendation stems from the state of the agencies especially the CPC in enforcing the CPC Act, and in line with the observations and comments of the research participants interviewed especially the participants selected from the CPC.

Further related to implementation problems, this research recommends that the regulatory agencies live up to their responsibility. They should ensure that businesses comply with the set quality standards and procedures. The agencies must ensure that Directives on the issues of metering and billing, complaints handling in the electricity industry are complied with and violation meted with appropriate sanctions. This has a deterrence effect. Heavy fines for consumer exploitations can adequately prevent future consumer abuse or exploitation. The metering directives of all consumers must be met as a matter of urgency. The NERC should mandate and ensures it sanctions Discos that fail to meter the consumers within the fixed period. Electricity service providers must not be allowed to ride on the consumers. Exploitations such as arbitrary price hike must be met with

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<sup>197</sup> House of Commons Committee of Public Accounts, “Protecting Consumers – the System for Enforcing Consumer Law,” Fifty-fourth Report of Session 2010– 12.

appropriate sanctions by the regulatory agencies and consumer must be compensated for any such violations. The electricity services providers can be fined and compelled to return some amount of money or give some kilowhatt to the affected consumers. All these depend on strong regulatory agencies which are pillars for a successful electricity sector deregulation.

Adequate manpower is a key component for the successful implementation and supervision of the market and the players. The current situation where a zonal office that services seven states (with 176 local government areas and a population more than that of Malaysia),<sup>198</sup> is having a total of about 14 staff is untenable. With respect to inadequate staffing of the CPC, and NERC, this research, therefore, recommends the adequate staffing of the consumer protection agencies especially the CPC. In the light of the recommendation of allowing the CPC to prosecute consumer abuses in-house, this research, in particular recommends that the legal department of the CPC should be adequately staffed with qualified legal practitioners. This recommendation if implemented would equally facilitate in-house prosecution of consumer cases as the CPC or any agency would be empowered to file mass restitution suits for damages or injunctive reliefs” on behalf of consumers for “repeated, multiple and persistent violation of any consumer law”<sup>199</sup> without having to wait for the ever busy and understaffed AGF’s office. With respect to the SON, although it is relatively better than both the CPC and NERC in terms of offices across all the states of the federation, it is not adequately

<sup>198</sup> The Malaysian population as at 2013 stood at 29,947.6 million. Department of Statistics, Malaysia. [https://www.statistics.gov.my/index.php?r=column/ctimeseries&menu\\_id=NHJlaGc2Rlg4ZXIGTjh1SU1kaWY5UT09](https://www.statistics.gov.my/index.php?r=column/ctimeseries&menu_id=NHJlaGc2Rlg4ZXIGTjh1SU1kaWY5UT09). (accessed August 19, 2015)

<sup>199</sup> Ross Cranston, “Access to Justice for Consumers: A Perspective from Common Law Countries,” *Journal of Consumer Policy* 3, no. 3-4 (1979): 298

staffed to cover the porous Nigerian borders. It is, therefore recommended that the SON should recruit more personnel to cover the porous borders through which the bulk of fake and substandard products are imported into the country.

On the difficulty in discharging the burden of proof on the consumer plaintiff in cases filed before the courts, this research recommends the relaxation of the burden in consumer protection cases. Clues can be taken from the recent amendments to the Chinese Consumer Protection Law 1993. In selected contracts such as the sale of durable goods and contract for certain services, the amendments shifted the burden of proof from the consumer to the suppliers. Defects in goods and/or services are deemed to exist until the contrary is proved by the suppliers or service providers.<sup>200</sup> In this regards, this research recommends that the Nigerian Evidence Act, 2011 (the law that regulates the administration of evidence in the country) should be amended to shift the burden of proving that all the standards and procedures in production and service provisions have been met by the manufacturers and service providers. The provisions of Sections 133<sup>201</sup> and 134<sup>202</sup> of the Evidence Act, 2011 that place on the plaintiff the burden of proving civil claims (such as consumer claims) on the balance of probabilities should be exempted in consumer cases. Similarly, where sequel to the violation of any provision of the consumer law a crime is committed and conviction entered against any business owner, any consumer injured from such violation should be granted the right to sue

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<sup>200</sup> Section 23, People's Republic of China Consumer Protection Law, 2013.

<sup>201</sup> The section provides that “in civil cases, the burden of first proving the existence or non- existence of a fact lies on the party against whom judgment of the court would be given if no evidence were produced on either side, regard being had to the presumption that may arise on the pleadings”

<sup>202</sup> The burden of proof shall be discharged on the balance of probabilities in all civil proceedings.

without any burden of proving such violation as obtainable in Australia.<sup>203</sup> Alternatively, the consumers affected by the conducts of a convict in any consumer protection prosecution as obtainable in places such as Malaysia should be deemed to have proved such violations upon the production of a certified true copy of the proceedings from the court where such conviction was entered.<sup>204</sup>

Corruption has been a big and difficult problem to handle in Nigeria. Like it has been a problem in many areas, corruption is a problem in checking the influx of fake and substandard electrical and electronic gadgets and equipment. It is also a problem that prevented the electricity industry from growing and contributes to the billing frauds in the industry. Again, the courts where the consumer could approach for redress are also not spared by the problem. This research, therefore, recommends that transparency in the running and supervision of the electricity industry need to be improved. The idea of allowing electricity service providers funding the election of a sitting president of the country must be stopped. Connected to corruption is the issue of political interference in the operation of the consumer protection agencies. Electronic equipment and gadgets imported into the country whether by a common importer or the big business owners close to the corridor of power must be subjected to the rigours of screening at the ports and borders. This is one sure way of controlling the importation and circulation of fake and substandard electric gadgets and appliances in the country. This would serve the consumer interest. Further, corruption must be checked otherwise it would undermine all

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<sup>203</sup> Trade Practices Act of Australia 1974 now Consumer and Competition Act, 2010.

<sup>204</sup> Section 29 (4), MCPA, 1999.

the legal and institutional structures recommended in this research no matter how sound and important they may be in the protection of the consumer.

On bureaucratic bottlenecks, this research recommends that process and access to forums for redress for instance be straight forward. The court procedures which have been identified by the research participants be simplified especially for consumer cases. The recommendations under **7.4.3** for a special Court Practice Direction for the disposal of consumer cases is repeated here. Similarly, the bureaucratic provisions such as section 10 of the CPC Act be amended. The section should vest powers on CPC to stop any person engaged in business conducts detrimental to the consumer interest. The current provision that limits the powers of the CPC to only requesting for a written assurance of stoppage of detrimental conducts and where the perpetrator persist the CPC is directed to report to the office of the Attorney General of the Federation for legal actions need to be revisited. The section should vest powers on the CPC to act swiftly in stopping the detrimental conducts and where the person continues with the conduct, the CPC should be empowered to impose administrative penalties as well as the powers to prosecute such violators where necessary. The recommendations under **7.4.2** for the vesting of prosecutorial powers on the CPC is repeated here. Relying on the ever busy and understaffed AGF's office to institute action against persons who persist in conducts detrimental to the consumers is illogical.

#### **7.4.4.4. Recommendations on the industry related consumer protection challenges.**

No problem bites on the consumer pockets more than the metering gap and arbitrary billing of electricity consumers. The research recommends that consumers should not be compelled to pay for meters as done in places such as Australia.<sup>205</sup> The consumers should be adequately metered because adequate metering helps in accurate billing and overall consumer interest protection. The current state of metering should be addressed as a matter of urgency and in the consumer interest. This is because the metering gap has lingered and has been deliberately exploited at the consumer expense. The Discos benefit from the non-metering of the consumers as they defy and stall all the NERC's orders and the meter rolling plans in the industry. In this regards, this research therefore, recommends that NERC should mandate the Discos to meter all consumers within shortest possible period. The NERC can give a deadline and a rule of "no meter no billing" after the passage of the deadline. This is one sure way that the NERC can stop the arbitrary billings in the industry. Furthermore, metering of consumers, it is suggested has a double role in the industry. From the Discos' perspectives it will check electricity theft and reduce collection losses. In the consumer context, it will instill discipline in terms of electricity consumption. It will be on the basis of pay as you go or consume. It is further recommended that the NERC must live up to its responsibility in ensuring that recalcitrant Discos that engage in arbitrary inflation of electricity consumers' bills are adequately sanctioned and the consumers compensated.

On the issuance of bills in English language, this research recommends that electricity bills should be issued in the native languages of the consumers. As rightly observed by

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<sup>205</sup> Paul Simshauser and Tim Nelson, "The Outlotimelineok for Residential Electricity Prices in Australia's National Electricity Market in 2020," *The Electricity Journal* 26, no. 4 (2013): 81.

Steven non-English literate electricity consumers in Nigeria “deserve the same protection as other consumers.”<sup>206</sup> At least electricity bills should be written in both English and the predominant languages of the area of coverage of the Discos. For instance, the Kano Distribution Company (KEDCO) should be compelled to issue electricity bills in both English and Hausa, the Ikeja Distribution Company covering Lagos (a Yoruba dominated area) should be made to issue bills in both English and Yoruba. The bills to be issued by the Enugu Distribution Company (an Igbo language dominated area) should be made to issue bills in both English and Igbo. This is in line with the Nigerian Electricity Regulatory Commission’s Regulation on metering and billing that requires bills to be issued in clear and understandable manner.<sup>207</sup>

Overall, the institutional framework for consumer protection in the Nigerian electricity industry from the regulatory perspectives as well as consumer redress if the recommendations above are accepted is depicted in Figure 7.1.

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<sup>206</sup> Steven W Benber, “Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace,” *American University Law Review* 45 (1995): 1030.

<sup>207</sup> Regulation 4 (3), Nigerian Electricity Regulatory Commission Meter Reading, Billing, Cash Collection and Credit Management for Electricity Supplies Regulation, 2007.



Figure 7.1

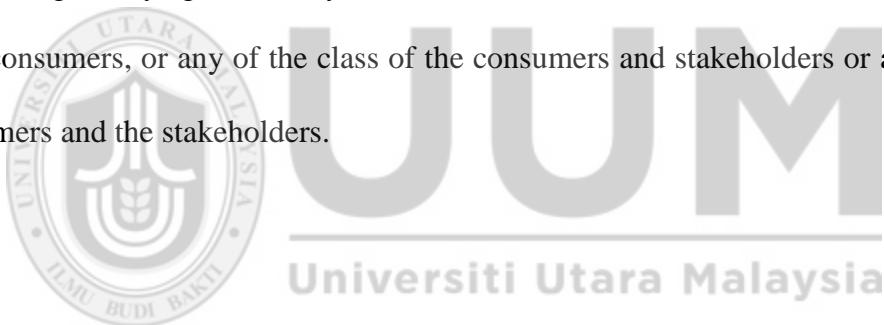
*The new institutional framework for electricity consumer protection and redress*

## 7.5 Suggestions for Future Research

Private electricity firms took over the business of electricity generation and distribution to the end consumer on November 1, 2013. This research, therefore, commenced at the peak of the electricity sector deregulation and only involved elites (law enforcement agents as well as consumer organisations) as participants in the data collection process. This research, therefore, recommends that future research can look at the issue of consumer protection in the industry from November 2015 and subsequent years to assess whether most of the consumer issues such as the quality and reliability of electricity supply, metering, estimated billings and arbitrary increase in tariff have improved in the best consumer interests. Equally, future research can involve the staff and management of the electricity generating and distributing companies; or different class of electricity

consumers such as the commercial; the residential; and plaza and shopping malls on the wide range of issues of consumer protection in the Nigerian electricity industry.

Considering the research design adopted in this research being doctrinal/qualitative (using interviews as the data collection method), this thesis further recommends the exploration of the other qualitative data collection methods. The quantitative research approach through the aid of survey questionnaire to quantitatively ascertain the level of consumer protection in the Nigerian deregulated electricity sector could also be explored. This can be realized by collecting or using the perception of either the staff of the relevant regulatory agencies; any of the classes of the consumers, or a combination of the class consumers, or any of the class of the consumers and stakeholders or all the class of consumers and the stakeholders.



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