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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



UUM

Universiti Utara Malaysia

**DOCTOR OF PHILOSOPHY
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**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 menggunakan 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 remedi; 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 remedi. Tesis ini selanjutnya mengesyorkan penambahbaikan kepada skim bantuan guaman, penubuhan forum tebus rugi pengguna yang ideal, agensi pengawalseliaan yang efisien 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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TABLE OF CONTENTS

PERMISSION TO USE.....	iv
ABSTRAK.....	v
ABSTRACT.....	vi
ACKNOWLEDGEMENTS.....	vii
TABLE OF CONTENTS.....	viii
LIST OF TABLES.....	xiv
LIST OF FIGURES.....	xv
LIST OF CASES.....	xvi
LIST OF STATUTES.....	xvii
LIST OF ABBREVIATIONS.....	xix
CHAPTER ONE INTRODUCTION.....	1
1.1 Background of the Study.....	1
1.2 Problem Statement.....	8
1.2.1 Outdated and Deficient Consumer Protection Laws and Structures.....	11
1.2.2 Lack of Consumer Rights and Remedies Legislation.....	12
1.2.3 Cumbersome Consumer Redress Mechanisms.....	12
1.2.4 Legally and Institutionally Challenged Consumer Protection System.....	13
1.3 Research Questions.....	14
1.4 Research Objectives.....	15
1.5 Significance of the Study.....	15
1.6 Research Methodology.....	17
1.6.1 Research Design.....	17
1.6.2 Research Scope.....	19
1.6.3 Types of Data.....	19
1.6.4 Data Collection Methods.....	20
1.6.5 Data Analysis.....	26
1.7 Limitations of the Study.....	33
1.8 Literature Review.....	34
1.8.1 Definition of Operational Terminologies.....	34
1.8.2 Electricity Sector Deregulation.....	37
1.8.3 Consumer Redress and Access to Justice.....	53
1.8.4 Advancing Consumer Rights and Remedies Protection.....	63
1.8.5 Research Gap.....	67

1.9	Outline of Chapters.....	67
CHAPTER TWO HISTORICAL AND CONCEPTUAL BACKGROUND OF THE STUDY .		70
2.1	Introduction	70
2.2	Historical Background of Electricity Industry and Electricity Sector Reform.....	70
2.2.1	Historical Background of the Electricity Industry before the 2003 reforms.	70
2.2.2	The reform of the Nigerian electricity industry.....	75
2.2.3	Electricity Sector Deregulation	82
2.3	Nature and Historical Background of Consumer Protection	88
2.3.1	Nature of Consumer Protection.....	88
2.3.2	Consumer Protection under the Ancient African Societies and Religious Scriptures.....	89
2.3.3	Consumer Protection in Modern Times	92
2.4	The Philosophy of Consumer Protection.....	103
2.5	The State Regulation of Utility Markets.....	114
2.6	The Philosophy of State Intervention in Deregulated Electricity Markets.....	115
2.7	Conclusion.....	119
CHAPTER THREE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR CONSUMER PROTECTION IN NIGERIA.....		122
3.1	Introduction	122
3.2	International Regimes for Consumer Protection	124
3.2.1	The United Nations Guidelines for Consumer Protection 1985.....	124
3.2.2	The Model Law for Consumer Protection in Africa (AMLCP) 1996	132
3.2.2.1	Critical Analysis of the Legal Regime for Consumer Protection in Nigeria in the Light of the AMLCP	137
3.3	Legal and Institutional Frameworks for Consumer Protection in Nigeria.....	138
3.3.1	The Consumer Protection Council Act (CPC Act), 1992.....	138
3.3.2	The Standards Organisation of Nigeria Act	155
3.4	The State of Consumer Protection and Standards Setting Laws: The Stakeholders Perspectives	161
3.5	A Critical Analysis of the Legal Regime in the Light of Consumer Issues in the Nigerian Electricity Industry	164
3.6	Conclusion.....	168
CHAPTER FOUR THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ELECTRICITY SECTOR DEREGULATION IN NIGERIA		171
4.1	Introduction	171

4.2	The Legal Framework for Electricity Regulation and Deregulation in Nigeria.....	172
4.2.1	The Electricity Corporation Parliamentary Ordinance (ECPO) No. 15, 1950	172
4.2.2	The Electricity Act, Cap. E7, Laws of the Federation of Nigeria, 2004	173
4.2.3	The National Electric Power Authority (NEPA) Act, Cap N33 LFN, 2004	175
4.2.4	The Electric Power Sector Reform Act, (EPSRA) 2005	179
4.3	The Electricity Regulations/Procedures	182
4.3.1	The Nigerian Electricity Regulatory Commission Electricity Supply Regulations (NERCESR) [S.I. 6 of 1996].....	183
4.3.2	The Nigerian Electricity Regulatory Commission’s Customer Service Standards of Performance for Distribution Companies (NERCCSSPDC) (S.I. 40 of 2007)	185
4.3.3	The Nigerian Electricity Commission Customer Complaints Handling: Standards and Procedures (NERCCCHSP), 2006.....	186
4.3.4	The Nigerian Electricity Regulatory Commission Connection and Disconnection Procedures for Electricity Services, (NERCCDPES) 2007.....	188
4.3.5	The Nigerian Electricity Regulatory Commission Meter Reading, Billing, Cash Collection and Credit Management for Electricity Supplies Regulation, (NERCMRBC&CM), 2007	189
4.4	The Institutional Framework for Electricity Sector Regulation under the EPSRA 2005.....	192
4.5	Consumer Safeguards under EPSRA 2005: A Critical Examination	196
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).....	203
4.7	Conclusion.....	213
CHAPTER FIVE CONSUMER REDRESS AND ACCESS TO JUSTICE		215
5.1	Introduction	215
5.2	The Legal and Institutional Frameworks for Access to Justice in Nigeria.....	217
5.2.1	The Constitution of the Federal Republic of Nigeria (CFRN) 1999	218
5.2.3	The Legal Aid Council Act, 1976 (Amended 2011)	220
5.3	Consumer Rights and Remedies under the Nigerian Laws	225
5.3.1	Consumer Rights	226
5.3.2	Consumer Remedies.....	229
5.3.2.1	Prevention.....	230
5.3.2.2	Restitution.....	231
5.3.2.3	Cancellation.....	232
5.3.2.4	Punishment	233
5.3.2.5	The 4Rs Remedies.....	233
5.3.2.5.1	Rejection.....	234
5.3.2.5.2	Refund	235

5.3.2.5.3	Repair/Replacement	236
5.4	The Nigerian Judicial System.....	238
5.4.1	Affordability of Legal Services (Court- related and Legal Practitioners’ Fees).....	243
5.4.2	The Suitability of the Traditional Adjudicatory System for Consumer Dispute Settlement in Nigeria.....	246
5.5	Ideal Institutions/Forums for Consumer Redress	249
5.5.1	The Idea of Small Claims Court and its Connection to Consumer Access to Justice.....	250
5.5.2	Alternative Dispute Resolution (ADR) in Consumer Disputes Settlement	258
5.5.3	Consumer Ombudsman	262
5.5.4	Collective/Class Actions	264
5.5.5	The Public Complaints Commission	265
5.6	Consumer Redress Mechanism in the Electricity Industry.....	267
5.6.1	Complaints to the Customer Complaints Units (CCU)	267
5.6.2	Complaints at the Forum Offices	269
5.6.3	Appeal to the Nigerian Electricity Regulatory Commission (NERC).....	273
5.6.4	Critical Analysis of the Three-tier Complaints Processing in the Nigerian Electricity Industry	274
5.7	Conclusion	275
CHAPTER SIX LEGAL AND INSTITUTIONAL CHALLENGES FOR ELECTRICITY CONSUMER PROTECTION AND CONSUMER REDRESS IN NIGERIA.....		277
6.1	Introduction	277
6.2	Consumer related Challenges	278
6.2.1.1	Lack of awareness	278
6.2.1.2	Lack of Consumer Rights Awareness	279
6.2.1.3	Consumer Ignorance.....	281
6.2.1.4	Lack of Sensitization	282
6.2.1.5	The Consumers not knowing the Consumer Protection Agencies	282
6.2.1.6	Lack of Knowledge of the existing Consumer Protection Laws	284
6.2.2	Cultural and Religious Orientation.....	285
6.2.3	Poverty.....	286
6.2.4	Lack of Organized Consumer Groups in the Electricity Industry	289
6.2.5	Lack of Consumer Activism.....	292
6.2.6	The Consumers’ Failure in Fulfilling their Obligations	294
6.3	Government related Consumer Protection Challenges	295
6.3.1	The state of Nigerian consumer protection laws	295
6.3.2	Funding Problems.....	296
6.3.3	Limited Consumer Protection Offices.....	298
6.3.4	Security Problems for the Staff of Law Enforcement Agencies.....	301

6.3.5	Lack of Political Will and under Rating of Consumer Issues from the Side of Government.....	302
6.4	Enforcement Related Consumer Protection Challenges.....	303
6.4.1	Implementation Problems.....	304
6.4.2	Staffing Problems.....	307
6.4.3	Bureaucratic Bottlenecks.....	310
6.4.4	The Issues of Burden of Proof.....	311
6.4.5	Corruption.....	313
6.4.6	Political Interference.....	314
6.5	Industry Consumer Protection Challenges.....	315
6.5.1	Metering Gap and Arbitrary Billing of Electricity Consumers.....	315
6.6	Analysis of the Legal and Institutional Challenges.....	322
6.7	Conclusion.....	324
CHAPTER SEVEN CONCLUSIONS AND RECOMMENDATIONS.....		326
7.1	Introductions.....	326
7.2	Summary.....	326
7.2	Overall Findings.....	330
7.2.1	Findings on the State of Consumer Laws.....	331
7.2.2	Findings from the Institutional Perspective.....	337
7.2.3	Finding Specific to the Consumer Access to Justice and Redress.....	339
7.2.4.1	Findings on consumer related challenges of consumer protection.....	341
7.2.4.2	Findings on government related consumer protection challenges.....	342
7.2.4.3	Findings on Enforcment related consumer protection challenges.....	343
7.2.4.4	Industry related consumer protection Challenges.....	344
7.3	Conclusion.....	344
7.4	Recommendations.....	345
7.4.1	Recommendations on the Legal Inadequacies.....	345
7.4.2	Recommendations on the Institutional Findings.....	354
7.4.3	Recommendations Relating to Consumer Access to Justice and Redress.....	357
7.4.4	Recommendation on Findings Relating to Consumer Protection Challenges.....	362
7.4.4.1	Recommendations on the consumer related challenges for consumer protection.....	363
7.4.4.2	Recommendations on the governement related consumer protection challenges.....	366
7.4.4.3	Recommendations on the enforcement related consumer protection challenges.....	368
7.4.4.4	Recommendations on the industry related consumer protection challenges.....	373

7.5	Suggestions for Future Research	376
	APPENDIX I	432
	APPENDIX II	437
	APPENDIX III.....	450
	APPENDIX IV: INTERVIEW PROTOCOLS	458
	APPENDIX V	463



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LIST OF TABLES

Table 2.1	Discos /New owners/ Location	79
Table 2.2	Gencos and installed capacities	79
Table 2.3	The National Integrated Power Projects (NIPPs)	80



LIST OF FIGURES

Figure 2.1	The Nigerian electricity services industry	81
Figure 5.1	Institutional Framework for Consumer Redress in Nigeria	281
Figure 5.2	Institutional framework of consumer redress in the Nigerian electricity industry	272
Figure 7.1	The new institutional framework for electricity consumer protection and redress	374



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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
ETRACOPP	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



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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.¹ Government was a major and active player in the economy,² 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.³ 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

¹J.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.

²Sanja 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 Tesaro, "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.

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

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