

CONSUMER REDRESS OPTIONS AND DISPUTE RESOLUTION IN THE NIGERIAN ELECTRICITY MARKET: A SOCIO-LEGAL ANALYSIS

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Abstract

The Nigerian electricity industry is undergoing reforms aimed at entrenching private-sector participation and competition. This article examines the efficacy of tier-structured consumer redress mechanisms within Nigeria's electricity market. Employing a socio-legal approach, the article explores the practical application of process pluralism, analysing the consumer redress pathways of Consumer Complaints Units, Customer Forums, Nigerian Electricity Regulation Commission, courts, and public enforcement. The analysis highlights the gap between legal frameworks and practical implementation, but it argues that sector-specific consumer redress framework is the correct approach to provide greater access to justice in a monopolistic market. The article advocates a conjunctive approach rather than "alternative" approach between the industry redress mechanisms and the court.

Keywords: consumer redress; dispute resolution; process pluralism; consumer ADR; electricity distribution; access to justice.

[A] BACKGROUND

The Nigerian electricity market is an emerging and critical sector of the Nigerian economy, which has been undergoing reforms in recent years (Federal Government of Nigeria Power, Sector Recovery Programme 2017–2021). Consumer awareness and expectations have also grown as the electric power sector reforms have taken root with increased private-sector participation. Expanding networks and service improvements have meant more customers are connected to electricity and, consequently, there has been an increase in consumer disputes (Musa 2023). The Nigerian electricity market is currently monopolistic, and a consumer rights regime

that includes an effective redress framework is even more critical in such circumstances. Consumer redress is multidisciplinary and influenced by economics, sociology, law, and political science (Cortés 2018: 11). The Nigerian Electricity Regulation Commission (NERC) *Handbook on Dispute Resolution* (2006) requires that dispute resolution mechanisms of the electricity sector should meet the goals of being accessible, cost-effective, timely and easy to use. This article is an offshoot of a PhD thesis on the socio-legal analysis of redress options for consumers in the Nigerian electricity market and how fit it is for purpose (Ojukwu 2024—hereinafter, the study). The doctrinal and socio-legal approach is used in this article to review existing legislation, consumer rights, redress regulations, and data on redress in the electricity sector in Nigeria. The approach included analysing practical workings of consumer redress in the electricity market by examining industry data and reports provided by the electricity distribution companies (DisCos) and the NERC *Quarterly Reports* (2017-2022). In addition, the study included semi-structured interviews with 26 industry stakeholders, conducted from March 2021 to June 2022. These included six NERC staff, five DisCo Customer Complaints Units (CCU), three industry experts, two independent lawyers, two judges, lawyers of legal departments of two DisCos, one director of a DisCo, one member of staff of the Federal Competition and Consumer Protection Commission (FC&CPC), and five Customer Forum secretaries. The findings in the study are influenced by the perspective provided by these key stakeholders' interviews. Thus, the analysis of consumer redress is not only about the laws and rules but also about the process, persons, and the context in which they are applied.

The article discusses the findings of the study and the extent to which the consumer redress processes in Nigeria's electricity market are fit for purpose. The underlying issue examined and addressed is how the electricity sector's consumer redress framework, comprised of Consumer Complaints Units (CCU) (the internal complaint process of DisCos), the Customer Forum (industry alternative dispute resolution (ADR)), the NERC (the regulatory commission), the courts and public enforcement, provide consumers with access to justice.

[B] INTRODUCTION

Cortés has defined consumer redress as: “The existing formal and informal processes (and their regulations) that consumers use to achieve compensation and justice” (Cortés 2018: 2). This article focuses on the existing processes provided to electricity consumers in Nigeria for redress. The redress pathways in the electricity market present a practical

demonstration of how the theory of process pluralism of Menkel-Meadow applies in dispute resolution and can help evolve dispute resolution design and mechanisms (Menkel-Meadow 2004). Process pluralism provides an effective lens for analysing electricity consumer redress in Nigeria as it allows for determining which process is most fit to provide consumer access to justice. Rabinovich-Einy's description of process pluralism as serving "both as a descriptive lens in observing the dispute resolution landscape and as a normative prism through which various procedural schemes can be evaluated, and procedural reform can be devised" is very apt (Rabinovich-Einy 2022: 55). The study proceeds with the premise that procedural justice for electricity consumers is enhanced by applying the doctrine of process pluralism. The driving view behind process pluralism is that the justice system benefits when multiple processes can be tailored to meet dispute goals of differing situations and claims. The Nigerian electricity market represents a case study of how process pluralism can drive consumer redress outside the traditional dispute resolution routes, such as courts and ADR.

Process pluralism has mostly been discussed in the context of ADR. However, a better emphasis is on using it as a tool where the "alternative" is replaced by "appropriate" dispute resolution. This study recognizes that process pluralism may entail the availability of multiple avenues and is not necessarily an opportunity for disputants to choose freely their preferred processes. Pluralism can extend the consumer redress framework in the electricity market so that disputes are channelled to the most appropriate pathway that provides access to justice. This article summarizes and presents some findings from the study, analysing the consumer redress options in the Nigerian electricity market.

[C] GENERAL FRAMEWORK FOR CONSUMER PROTECTION AND REDRESS IN THE ELECTRICITY MARKET IN NIGERIA

The Nigerian electricity market has progressed from a public utility to a privatized market designed to be competitive in the long term. The DisCos are operating as monopolies, and the market is underperforming in many respects. The lack of competition in the electricity market means that market-driven consumer protection based on consumers' ability to change suppliers has no place. The legal framework for the electricity market in Nigeria creates a tiered, structured redress system based on process pluralism and hybridization. The first level is the CCU, the internal complaints handling system. The second level is the Customer

Forum, the electricity market's consumer ADR process. The third level is the NERC, which functions as the appellate body for the Customer Forum decisions and the public enforcement agency for consumer redress. The fourth level is the traditional judicial process, which is the default mechanism, though there are circumstances where it may be the first and only option. The final tier is public enforcement of consumer rights through the NERC.

Also, several economic and socio-political factors in Nigeria directly impact consumer redress. These include low literacy levels, an inadequate justice system, cultural diversity, and the dispersed nature of the electricity franchises. One of the first things established by the study is the existence of a legal and regulatory regime for consumer protection and redress in the electricity market in Nigeria. Electricity regulation has also recently seen a movement from national to subnational regulations, but federal regulations on consumer redress will remain dominant for some time. The Electricity Act 2023 (Nigeria), section 33, and Federal Competition and Consumer Protection Commission Act 2018 (Nigeria), section 3, created the NERC and the FC&CPC, two key regulatory agencies responsible for consumer protection and redress for electricity consumers.

Consumer protection and redress in the electricity market are based on regulations and the licensing regime of the NERC rather than the general law of contracts and torts (Electricity Act 2023, section 3). This statutory consumer protection regime removes consumers from the vagaries of general consumer law, which has been found inadequate in protecting consumers (Kanyip 2014). The Nigerian Electricity Act 2023, section 232, definition of consumer is much broader than what is obtainable in jurisdictions, such as the United Kingdom (UK), as it defines consumers in an inclusive manner, thereby enhancing access to justice for individual and small businesses acting as consumers (Fair Trading Act 1973, section 137(2); Enyia & Abang 2018: 66733). The definition of a consumer in the Nigerian electricity market thus includes businesses and even persons yet to be connected to the electricity network.

[D] OBJECTIVES OF THE CONSUMER REDRESS FRAMEWORK

The study identified key objectives of the consumer redress framework as enhancing access to justice by providing fair, efficient, expeditious ADR processes; building investor confidence in the dispute regime of the NERC; reducing the cost of resolving disputes; avoiding protracted and unnecessary litigation; building better relationships between

stakeholders; and providing a system that allows discretion, flexibility and delivers justice without being too formalistic (*Handbook on Dispute Resolution*, NERC 2011). This is in line with the common goals of dispute system designs (DSD) suggested by Gills and colleagues (Gills & Ors 2012: 438). Despite a consumer protection and redress regime in the electricity market with these laudable objectives, factors such as lack of information and education and poor awareness hamper its effectiveness (Usman & Ors 2015: 240). A key goal of the DSD for the electricity market in Nigeria is to have an effective ADR process for consumer disputes. This is based on a belief that ADR will better serve the industry than the traditional dispute resolution offered through the courts (Board & Finkle 1994: 308). The Nigerian electricity market DSD preference for ADR is also embedded in the licence conditions of the DisCos. *The Handbook on Dispute Resolution* provides:

It is a licence condition that alternative dispute resolution is an obligatory mode of resolving disputes in the electricity sector. Licensees are obliged to attempt to resolve disputes through direct negotiations failing which the dispute may be resolved through other alternative dispute resolution procedures or arbitration as may be applicable in the relevant Commission's rules and regulations (NERC 2011: part 3, section 4.1).

This preference aligns with contemporary approaches to consumer dispute resolution.

[E] INTERNAL COMPLAINTS HANDLING IN THE ELECTRICITY MARKET (REDRESS LEVEL 1)

The NERC Customer Protection Regulation (NERC CPR) 2023, section 43(1) established the CCUs of the DisCos as the internal complaints handling mechanism of the electricity market. Internal complaints handling through CCUs, though compulsory for the DisCos and optional for the consumer, is usually the first industry-prescribed step in the complaints journey of a consumer. The CCU occupies a unique position because it is not a creation of the DisCos but rather a creation of law. Though the CCU is neither a third-party ADR body nor a tribunal, the fact that it is a creation of law firmly inserts it into the formal consumer justice process. It also affirms its role as a key factor in access to justice for electricity consumers. Although industry processes are technically optional for consumers, some courts recognize the CCU as a necessary first step even when the consumer decides to use the courts for redress (*Yusuf Ahmed v AEDC* 2018). This is the right approach, as consumer redress should

have a collaborative and integrated approach in order to effectively deliver justice.

Despite their relative newness to the consumer redress system, the CCUs continue to receive and process more consumer complaints than any other pathway in the electricity market (*Annual Report*, NERC 2020). The CCUs handle over 800,000 complaints annually, which is much greater than the about 40 cases per DisCo that the formal court process handles (Interviewee (22) and Interviewee (23)). A DisCo processing many complaints through its internal complaint mechanism may imply several positive and negative things. It may signify the commitment of the DisCos towards solving problems in service delivery or a high degree of faith by consumers that they have a better chance of getting justice through the CCUs.

Complaint numbers have generally been on the increase from year to year. For instance, for Ikeja Electric, 152,817 complaints were lodged with the DisCo in 2020 with a 91.16% resolution rate, contrasted with a total of 91,253 complaints in 2018 and a resolution rate of 87.67% (*Annual Report*, NERC 2020: 112). For the Enugu DisCo, 222,652 complaints were lodged with the DisCo in 2020 with a 97.55% resolution rate, contrasted with 70,957 complaints in 2018 and a resolution rate of 63.90%. The DisCos showed increases in the number of complaints and resolution rates in 2020 (*Annual Report*, NERC 2020). Available data also shows that most complaints were about billing, metering and disconnections. The data trend reveals that billing and metering complaints were 59% in 2017 (*Annual Report*, NERC 2017), 57% in 2018, 53% in 2019 (*Annual Report*, NERC 2018), 48% in 2020 (*Annual Report*, NERC 2020) and 70% in 2022 (*Annual Report*, NERC 2022a). This pattern is linked to the poor state of Nigeria's electricity infrastructure. The combination of weak infrastructure and historically poorly managed utilities has fertilized the environment for deplorable customer service up to date. However, it must be noted that even in developed electricity markets, such as the UK, billing, price and metering are the major sources of complaints because they are at the core of electricity services (Ofgem 2014: 16).

The causes and origin of complaints may provide a vital link to the appropriate mechanism or framework for handling, managing, and resolving certain complaints or disputes (Board & Finkle 1994: 308). Consumer complaints sometimes centre on how DisCo staff treat the consumers when offering service or receiving complaints. The perception that consumers feel they are not being heard, reported by Interviewee (13), an industry electricity distribution expert, points to a deficiency of

approach by some CCUs. Consumer unhappiness in these circumstances is based on perceived interactive injustice (Goodwin & Ross 1989: 89; Homburg & Ors 2009: 265). Interviewee (13) stated that some DisCos create discontent and unhappiness in how their CCUs interact with consumers, often giving the impression that complaints are not being taken seriously. Positive outcomes sometimes mean that consumers do not consider these individual strands of justice because procedural justice often merges with substantive justice. However, it would not be out of place if adverse outcomes were to trigger a deeper evaluation of each separate strand of justice by the consumer (Creutzfeldt & Bradford 2016: 985; Tyler & Huo 2002). However, it is also important to point out that many complaints in the electricity market are often transactional and, therefore, not impacted by value-oriented theories of justice. Interviewee (22) suggested that consumers in the electricity market are often concerned more about either compensation or restoration of supply (*Annual Report*, NERC 2020: 112). In these circumstances, outcomes from the CCUs may be more paramount to consumers than fairness perception (Creutzfeldt & Bradford 2016: 985). Put differently, the CCUs work when they meet consumers' expectations regarding outcomes. The CCUs are, therefore, very important for handling many types of purely transactional cases that are better resolved with minimum fuss and delay. Efficient consumer redress mechanisms must be based on some pluralism to properly tackle the different types of complaints arising in these circumstances.

The CCUs are required to resolve complaints within 15 working days except for complaints relating to meter and reconciliation of bills, which are to be resolved within a billing cycle of one month. On the face of it, there is no direct sanction on a DisCo for failure to resolve the complaints within this time limit. In the UK, the timeline for the internal complaint mechanism of the energy utilities to resolve a complaint is eight weeks (Ofgem 2021). The Nigerian regulations would appear more time-friendly for consumers than the UK ones. While the conditions of the UK and Nigeria's electricity markets are significantly different, it is unclear in both situations what drives the set timelines. The timelines could be a function of reasonableness or merely windows created to limit utilities' liability for failure to address complaints. Some interviewees alluded that complaints sometimes take too long to resolve and that there is limited and unsatisfactory feedback to the consumer (Interviewee (13) and Interviewee (17)). One example was a billing and metering complaint that took over a year to resolve. The NERC CPR 2023, section 43(9), provides that consumers have a right to escalate their complaints to the Customer Forum if they are unsatisfied with the resolution or if the CCU

fails to resolve them within the prescribed time. Where a DisCo cannot resolve a complaint within the 15 working days prescribed, a DisCo is required to write to the customer and explain why. NERC CPR 2023, section 43(8), allows the DisCos to request additional time of not more than 15 working days. Unlike the UK, where the rules require a utility to issue a deadlock letter, the NERC CPR 2023, section 43(9), gives the consumer an automatic option of escalating a matter to the Customer Forum if they are dissatisfied with the resolution at the end of 30 working days. Also, according to NERC CPR 2023, section 43(9), the consumer or the DisCo can escalate to the Forum if they cannot agree on a resolution within 30 days. The short timelines for the resolution of disputes are a major advantage of the CCUs. When they work, they are obviously more flexible and able to deliver resolution faster than any other redress pathway, thereby enhancing consumers' access to justice.

A key point to note is that both the consumer and the DisCo in Nigeria have a right to escalate a complaint to the Forum. The right given to the DisCo to escalate to the Forum is unique but in line with the objectives of the industry DSD. However, to encourage dispute resolution at the CCUs and dispute avoidance, such escalation by the DisCos should be discouraged. One measure to address this is for the NERC to introduce an incentive and penalty regime on the DisCos similar to the one employed by the UK Financial Ombudsman model. This model charges banks for any escalated complaint, and this is based on "the polluter pays" principle (Financial Ombudsman Service nd). If the Nigerian electricity market were to adopt this, it would encourage early settlement by the DisCos and discourage dogmatic responses to complaints. Many more disputes would be resolved at the CCUs by the DisCos, and fewer disputes would escalate to the Forum. This could be structured such that the financial burden of DisCos increases as they generate more complaints that escalate to the Forum. Adopting this will help improve the funding of the Forums. It will also help ensure that only serious issues that are difficult to handle get to the Forum. This will also be in line with the subsidiarity principle suggesting that consumer complaints be mandatorily and preferably resolved at the CCUs, and, unless this fails, other pathways ought not be used.

In the UK, for instance, the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 highlight a different and more comprehensive approach in prescribing regulations for internal complaints handling by electricity companies. The UK regulations are prescriptive and provide important guidelines on issues such as recording complaints, allocations, and maintaining adequate resources for handling complaints.

They also cover other issues such as signposting consumers to the redress scheme (Gas and Electricity Regulated Providers (Redress Scheme) 2008), recording steps taken during the handling of the complaint, the definition of resolution, the remedies that the companies should offer, the records to be kept by the companies, the information to be provided to consumers and many other issues (sections 6, 5, 8, 3(3)(h), 4(1 & 2) and 10 of the regulations). The Nigerian regulations leave most of the issues to be covered by internal complaints-handling regulations for the different companies to develop and implement. This was a major criticism of the old regulation (NERC Customer Complaint Handling Standards and Procedure 2006). There is also no guidance in the Electricity Act 2023 or the NERC regulations on the type of remedies to be provided to consumers whose complaints are upheld by the CCUs. To prevent uncertainty, it is suggested that the regulations follow the UK model and specify the type of remedies utilities may offer consumers.

This hands-off approach by the NERC in not providing a prescriptive guidance document may be counterintuitive to developing a process that leads to satisfactory resolution of complaints. Therefore, there should be a statutory role for a consumer body to assist consumers who wish to complain. In the face of an asymmetrical relationship in the electricity market, the absence of such support to consumers limits the CCUs “fitness for purpose”. While it may be in the interests of the DisCos to develop an effective procedure that provides redress and avoids disputes, it may not be safe to trust them to do so, given the monopoly status of the industry.

[F] LIMITATIONS WITH THE CCU AS A REDRESS MECHANISM

For an internal complaint-handling system to work well, the company must, from the onset, clearly articulate the objectives it intends to achieve. It is not always clear from the DisCos whether they consider the CCUs and consumer redress a cost centre or a valued-added service that improves their business. The study also found some other limitations with internal complaints handling by the CCUs. The CCUs are not adequately publicized or brought to the attention of consumers. Despite the availability of online channels, access to the CCUs remains a challenge for rural dwellers due to poor feedback for complaints made through some of these online channels. Reoccurring complaint patterns identified in the study show the ineffectiveness of the CCUs in providing dispute avoidance. From the available industry data, metering, billing, and disconnection have

represented a huge portion of consumer complaints and disputes over the years. Though the NERC reports identify these categories as areas of concern to consumers, there appears to be no definitive action on them as systemic problems requiring a better response from the internal complaints system. The CCUs should be the first to flag a recurring complaint pattern, and, where they fail to do so, the NERC, through its quarterly reports, should expressly flag such issues and draw the DisCos' attention to it. For a more effective redress, there should be a framework requiring the DisCos to provide the regulator with a remedial plan once a pattern of reoccurring complaints is observed within their franchise area.

Some stakeholders interviewed suggest that information imbalance is one of the reasons for the persistent complaints around billing and metering. Poor information availability is not limited to billing and metering but also extends to consumer rights and redress options. The paternalistic approach of the electricity market to consumer rights would only be effective if matched by sustained education and sensitization of the consumers. The low level of consumer knowledge and willingness to enforce the rights directly impacts the accessibility of the redress framework to electricity consumers in Nigeria. The DisCos do not view providing information on the CCUs as particularly important but rather expect dissatisfied consumers to discover avenues of redress by themselves. The visibility of information to consumers on the CCUs is extremely low, with limited information being provided through social media and other online channels. The new regulation requires the DisCos to provide information on redress, but the problem would lie in the effective implementation by the DisCos (NERC CPR 2023, section 43(5)). Information on most of the DisCos' websites is quite opaque on how to complain, whom to complain to, and the process of complaining.

Nigerian consumers are likelier to have mobile and smartphones; thus, phones and social media applications are more likely to have a greater impact when integrated and used for redress. The NERC CPR 2023, section 43(5), now requires that CCUs receive complaints through phone calls, SMS, email, and other social media platforms. The challenge remains in how effectively the DisCos use these channels. Thus, a migration to a more robust online complaint-handling and redress process that is easily accessible through smartphones alongside the manual complaints handling by the DisCos will increase consumer access to redress.

Interviewee (24) suggests a lack of adequate communication from DisCos to consumers on the complaints and their outcome. DisCo employees sometimes appear uncooperative and project an attitude that is not

problem-solving. DisCos should be able to explain to complainants how and why they are making a decision regarding their complaint. Without proper explanations, consumers' perception of an internal complaints mechanism may be that it does not deliver justice (inclusive of retributive, procedural, and interactive), the fallout of which could be a boycott of the system, lack of complaining, and resort to other measures by consumers (Homburg & Ors 2009: 265). The new Customer Protection Regulation attempts to improve the perception of retributive justice offered by the CCUs by introducing additional remedies. This includes the DisCo having to pay a consumer who has been wrongfully disconnected the cost of their average daily consumption (NERC CPR 2023, section 26(2)). Also, the most common remedy of giving a consumer energy credit, as provided in the Regulation, rewards rather than punishes the DisCo. A more fitting remedy would be for the DisCos to make cash payments to consumers when found liable.

As pointed out above, when the CCU fails or is unable to resolve a dispute, then the next tier of consumer redress, the Customer Forum, is an option for the consumer or the DisCos.

[G] CONSUMER FORUM (REDRESS LEVEL 2)

Consumer ADR worldwide developed to aid the formal justice system, which had often struggled to provide redress to consumers due to their lack of legal capabilities and the low value of their disputes. ADR means alternatives to litigating a dispute (Office of Fair-Trading Report 2010; Gill & Ors 2017). Often, consumer cases arise from persons who cannot afford legal representation, and the courts are too slow and formalistic to provide any meaningful redress in the circumstance. The Nigerian situation is not dissimilar as Nigeria's justice delivery lags generally, and even more in consumer disputes. The Customer Forum is the only sector-specific consumer ADR process in Nigeria. It is the second-level redress process following the failure of the CCU to resolve a complaint. The NERC CPR 2023, section 2(16), defines the Customer Forum as the dispute resolution panel established to resolve disputes between DisCos and consumers amicably. The Customer Forum is created and managed by the NERC even though the actual members of the Forum are independent. The Forum can be compared to a consumer Ombudsman, but it is quite a different model of redress mechanism. One cannot, however, with certainty clearly classify the Customer Forum as a quasi-administrative tribunal or simply an ADR body. A review of the Forum's features would suggest it is not a tribunal, especially as the Forum does not have the power to compel parties to appear before it like a court or tribunal.

Another interesting point is whether sector ADR bodies such as the Customer Forum are subject to judicial review. The law on judicial review of consumer ADR bodies is not quite settled. In the UK, the Energy Ombudsman is subject to judicial review even though some other private Ombuds in the UK are not. Creutzfeldt and colleagues argue that the Energy Ombudsman is subject to judicial review because Ofgem's authority to approve the scheme is delegated to it by the relevant government minister (Creutzfeldt & Ors 2012: 308). In a similar vein, in Nigeria it could also be argued that because NERC, which created the Forum, is subject to judicial review, the Forum should also be subject to judicial review. There is, however, nothing in Nigerian law or practice so far to support such a position.

The Forum process has many positives as a consumer ADR scheme. It adopts a hybrid model of mediatory/conciliatory and adjudicatory methods in resolving disputes. There are, however, some identifiable gaps and challenges in performing the function of an alternative complaint and dispute resolution system for electricity consumers. One of the first noticeable challenges the Forum presents is the fact that there are few Forum offices across the DisCo networks (*Annual Report*, NERC 2022a). This raises a critical issue of the Forums' accessibility. Access is a key feature of procedural justice. If consumers cannot access an ADR process, it may lose legitimacy and be deemed unfit for purpose. Even with the growing importance of online dispute resolution (ODR) in the sphere of consumer redress globally (Katsh & Rifkin 2001; Lodder & Zelenikow 2010; Cortés 2018), submission of disputes to the Forum is largely offline, and the Forum does not have websites or use social media channels.

Furthermore, the Forum does not use document-only processes; rather, its cases require a full physical hearing. Virtual hearings have recently been introduced, but low internet penetration may limit their usefulness. With over 227 million phone subscribers, only about 10% use smartphones or even have access to the internet (Nigerian Communication Commission 2012-2023). Despite some scepticism about the effectiveness of an ODR framework in Nigeria's electricity market, it can be suggested that a hybrid Forum that uses both ODR and physical hearings will ultimately benefit consumers and increase access to justice (Cortés 2018; Genn 2010: 192). The scepticism could be linked to the lack of infrastructure and the literacy levels in Nigeria (Adedigba 2017; Monye 2018: 373). The courts' use of online hearings following the Covid pandemic gives some hope that the Forum's introduction of virtual hearings should work, and it could further aid access to justice for consumers (National Judicial

Council 2020; Orji 2020) despite previous failures of use of technology by the judiciary (Ojo 2020).

Another visible challenge with the Forum is the current staffing arrangement. The Forum has only one permanent staff member who oversees the secretariat and supports the Forum members. Interviewee (1) rightly points out that without automation, the workload of the Forum would be too much for a one-person secretariat to manage. For instance, the Ikeja Forum handled over 1571 cases in one year, which is about 131 complaints a month on average (*Annual Report*, NERC 2020). Another noticeable challenge observed with the Forum relates to the enforcement of its decisions. The Forum has no enforcement or monitoring powers or capacity for enforcing its decisions.

[H] GOING BEYOND DISPUTE RESOLUTION

In analysing the Customer Forum, the study evaluated it in comparison to the Ombudsman model of consumer ADR. One of the advantages of the Ombuds model is that it goes beyond dispute resolution to provide other add-on advantages, one of which is signalling the industry about systemic consumer issues. Though the Customer Forum provides regular reports to the NERC, signalling the industry is not a specifically assigned role. Also, the interviews of stakeholders and analysis of the NERC quarterly and annual reports show that this role is not currently being played by any entities connected with consumer redress (NERC 2017–2022). An effective consumer ADR process should go beyond simply reporting data and include analysing and making suggestions on dispute prevention to the NERC and the DisCos based on the data. To effectively do this, the Customer Forum would need to change from a structure comprising independent Customer Forums to a more unitary system. Data aggregation from the Forum is currently done by the NERC rather than the Forums. The Forums are better positioned to perform this role and can provide an independent view to the NERC for its regulatory actions. The Customer Forum can adopt the same process the Energy Ombudsman in the UK uses to fulfil this role (Lucerna Partners 2015).

Another gap that emerged from the research is that the Forum has no structure to provide consumer advisory support. This missing link in the consumer redress process in Nigeria leaves consumers who are disadvantaged by education and social status ill-equipped to engage in formal redress processes. In this respect, there are lessons for the Forum to learn from the UK on how the Energy Ombudsman has evolved. The Energy Ombudsman, in addition to dispute resolution, also provides

advisory support to consumers on the redress process, dealing with many more queries than complaints (Lucerna Partners 2015). The Customer Forums should be empowered to play the dual role of advising consumers in appropriate cases and adjudicating and resolving disputes.

[I] CONSUMER APPEALS TO THE NERC (REDRESS LEVEL 3)

Some ADR escalation mechanisms may be framed as an internal appeal process or an appeal to an external body. Consumer ADR systems tend to be single-tiered, with their decisions being final. This is understandable for several reasons. First, most consumer claims are low value, which means that additional costs associated with appealing may be disproportionate. Also, consumer ADR schemes mostly bind the business and not the consumer. For example, the Energy Ombudsman's decisions in the UK bind only the energy companies but not the consumers. The UK consumers' right to choose whether to be bound by the decisions in this circumstance makes an appellate process unnecessary. The Nigerian electricity consumer redress framework is different in this regard. The decisions of the Forum are binding on both the DisCos and consumers. This, on the face of it, explains why the Forum process requires an escalation or appeal mechanism. Also, appeals have other advantages besides reviewing the lower tribunal's or ADR body's decision, such as setting a precedent for future decisions of the first instance ADR and providing general legal guidance. It is possible to view appeals as unnecessarily complicating a cost-efficient and informal consumer redress process. The appeal to the NERC provides another layer of consumer redress to ensure an effective complaint resolution in the electricity market through the appellate body's corrective power. The Nigerian framework gives both the consumer and DisCo a right of appeal from a Customer Forum. The concept of appeal from a consumer ADR by both the consumer and the business is uncommon and unique to a few consumer ADRs (Hodges 2014: 601). This right of appeal by the DisCo may be considered a flaw in the Nigerian framework. A similar criticism exists about the Irish Financial Ombudsman being a consumer ADR with an appeal process (ibid).

Available information on appeals can be gleaned from the NERC *Annual Reports*, *Quarterly Reports*, and unpublished appeals data from the NERC (available only up to 2021). The aggregated data on appeals from 2019 to 2021 shows an average of 45 appeals per year. The level of usage of the appeal process weighed against the other tiers in the redress process

		2017	2018	2019–2021
1	No of appeals/consumer cases	7	12	134
2	No of cases at the Forum	3742	9137	27,524
4	Top four DisCos with cases on appeal	-	-	Abuja Disco: 32 Benin Disco: 26 Ikeja DisCo: 21 Ibadan DisCo:20

Table 1: Sample data on dispute resolution/appeals to the Commission (data from NERC 2017: 58; 2018: 61; 2020; 2022b).

could raise doubts about its usefulness. For instance, only about 0.53% of complaints at the Forum were appealed in 2020 (*Annual Report*, NERC 2020).

Most of the appeals across the DisCos franchise areas were brought by consumers (Interviewee (16)). In a particular franchise area, however, at least over 50% of the appeals were filed by the DisCo. The right of appeal granted to DisCos is an extension of the right DisCos have to file complaints at the Forum. Generally, consumer redress mechanisms are focused solely on giving the consumer justice. However, the Nigerian consumer redress model is reciprocal and seeks justice for consumers and DisCos.

The Nigerian model recognizes that, given the challenges of the electricity market, DisCos require some protection to encourage investments (Jeremiah 2022). Indeed, Nigeria's consumer DSD objectives include building investor confidence and creating better relationships between DisCos and consumers (NERC 2011, part 1, section 2). There is, however, some reservation about affording businesses the same protection as consumers, given that there is already a power imbalance (Kanyip 2017). The experience where over 50% of appeals in a particular franchise were filed by a DisCo demonstrates pitfalls. The DisCo did this to frustrate compliance and avoid enforcement penalties because appeals by a DisCo put the timeline for compliance by a DisCo in abeyance and shield it from penalties (NERC CPR 2023, section 51(5) and (6)). It can be suggested that this abuse was possible because DisCos are not made to pay filing fees and be liable for costs if the consumer wins the appeal. Fee-paying and cost-bearing by the DisCos would not only improve the funding of the industry redress system but also increase dispute avoidance and resolution at the earliest possible stage by the DisCos, thereby improving access to justice for consumers.

In cases where a monetary award has been made against a consumer at the Forum, a pre-condition must be met before an appeal can be filed. The complainant consumer must first pay the amount before the NERC can have jurisdiction to determine the appeal (NERC CPR 2023, section 52(3)). This condition is not applicable where the failure is on the part of the DisCo. Several rationales have been suggested for this rule. One rationale is that this provision prevents consumers from using the appeal process to deprive the market of revenues. This reasoning is doubtful as it appears not to consider that the DisCos will always be financially stronger than the individual consumer. Also, Interviewee (16) suggested that because consumers are mobile and the DisCo constant, the balance of convenience favours the DisCo retaining a disputed amount pending the outcome of an appeal. A further reason for this rule is that any wrongful payment can always be recovered or considered a prepayment for services from a DisCo.

On the face of it, none of the adduced reasons appears sufficiently convincing to justify putting the weaker party out of pocket. When a consumer eventually succeeds, the money they were forced to pay is not refunded, and they can only receive credit tokens. It is argued that this amounts to the DisCo being granted an unearned credit facility for complaints for which it should be penalized. The requirement to pay before filing an appeal imposes an unnecessary burden on consumers, especially as the condition is not reciprocal. The requirement that the consumer pays cash in advance and the company issues credit tokens in return shows an imbalance of the parties' obligations. It may well be inferred that this will discourage appeals and foist on consumers an acceptance of decisions they would otherwise wish to contest. It may rightly be one of the reasons that less than 1% of Forum users currently use the appeal process.

[J] PRIVATE ENFORCEMENT THROUGH THE COURTS AND PUBLIC (REGULATORY) ENFORCEMENT (REDRESS LEVELS 4 AND 5)

In Nigeria, there are significant obstacles to access to justice through the courts for individual and collective actions, with long delays that have cases lasting an average of three years before judgment being one of them. Also, the court's application of the law in cases that have sought relief under contract or tort over the years has left much to be desired. Kanyip (2014) points to cases such as *Kingsley Emenike Osuji v Nigeria Bottling Company plc* (2012) and *Etukudo Ekefere Nsima v*

Nigerian Bottling Company (2014), which show consumers' difficulties in obtaining redress through the courts. The standard of proof and nature of the contractual rights under Nigerian law is such that it was almost impossible for consumers to succeed in court (*Nigeria Bottling Company plc v Demola Olanrewaju* 2007; *Nigerian Bottling Company plc v Edward Okwejinor* 2008). Much has been written about these limitations of litigation as a consumer redress tool. Though courts may not be suited for individual low-value claims, the courts remain a significant avenue for effective consumer redress in certain circumstances, such as those requiring interpretation of law or award of general damages. Effective consumer redress in the electricity market requires a holistic and pluralistic approach that includes all options. There must be clear points of intersection and interaction between the various redress pathways and tools. The Nigerian courts have, in some cases, such as *Yusuf v AEDC* (2018), insisted that electricity consumers must first exhaust the internal complaints mechanism and sector ADR process before they can access the courts. This is in line with the principles established in *Ojora v Ajip (Nig) plc* (2014: 216) and *Owoseni v Faloye* (2005: 234). This approach accords with reason and judicial precedent. The courts reasoned that these out-of-court processes are established because the law recognizes that specialized or administrative forums are better suited for resolving such disputes. Despite the increased advocacy for using ADR for consumer redress and the shortcomings of litigation, the courts' importance remains an avenue of last resort.

Regulatory enforcement is also becoming a stronger tool for individual and collective consumer redress. When provided effectively, regulatory redress tends to reduce resort to private enforcement through the courts, whether individual or collective actions. The limitations of the current framework lie primarily in how efficiently the NERC commences enforcement action following the failure of the DisCo to comply with a Forum decision. Effective regulatory redress processes tend to reinforce private enforcement and, in many cases, reduce the need for expensive individual or collective court actions. The NERC has, through some of its enforcement actions, demonstrated that regulatory enforcement can be used to deliver individual redress (NERC 2015). Regulatory enforcement proves a more effective mechanism, especially where many consumers suffer similar harm. The NERC has also used it to enforce Customer Forum orders that DisCos had failed to obey (NERC 2016). Regulatory enforcement can deliver individual and collective redress more efficiently and effectively when combined with the other existing redress pathways.

Despite the overall effectiveness of regulatory enforcement, some challenges exist with the current framework in Nigeria. Under the current legal regime, fines and penalties collected by the NERC must be paid to the rural electrification fund (Electricity Act 2023, section 142 (b)). This does not directly benefit the consumers' franchise area or the consumer itself. This seems unfair and can be said to deliver no distributive justice to the consumer. While NERC can order specific redress to affected consumers as an outcome of regulatory enforcement, the NERC should also have the discretion to redirect fines and penalties to benefit affected consumers or their franchise area as it is in the UK model (Gas Act 1986, section 30G, and Electricity Act 1989, section 27G, as inserted by the Energy Act 2013, section 144 and schedule 14; Canto-Lopez 2016: 66). Such a policy would be more in tune with consumer expectations of the outcome of a redress process.

[K] A CONJUNCTIVE RATHER THAN A COMPETITIVE APPROACH BETWEEN THE CUSTOMER FORUM AND THE COURTS

If access to justice is to improve for electricity consumers, then redress pathways must be seen from a pluralistic perspective that does not make them mutually exclusive but complementary. Interviewee (22) suggests that many consumer claims that end up in court do so because of a lack of knowledge of the existence of the Customer Forum. Also, the data from the sampled DisCos suggests a low success rate for the individual electricity consumer cases that reach the courts (DisCos' litigation data from 2019–2021: 2022). Thus, even though the courts must remain a viable choice for consumers seeking redress, greater emphasis must be put on promoting other, more viable options. The absence of small claims or special courts dealing with consumer cases has not helped courts as a redress option. In appropriate cases, even where a consumer has spurned the electricity industry ADR and chosen the courts, court-annexed ADR should remain an option. Referrals are increasingly seen as a more effective tool for advancing court-annexed ADR rather than a sanction-based regime of costs (Cortés 2023). The Nigerian courts' approach should be to safeguard the consumer by redirecting them to the appropriate redress process when they have made a wrong choice. The court's current practice appears to be to strike out the case and then ask litigants to use the industry ADR (*Yusuf Ahmed v AEDC* 2018). There could also be two approaches when the courts in Nigeria are confronted with whether to insist on compulsory use of the electricity industry consumer ADR process or resort to the courts. On the one hand, the court should

strike out suits that have not first attempted using the industry ADR, especially for smaller monetary claims, and follow similar English law principles on compulsory telephone mediation for small claims (Ministry of Justice & Ors 2023). On the other hand, the courts could adopt the process pluralism principle, decide the most appropriate redress pathway for the claim, and refer the consumer to it. Such referral will be justified given that the industry ADR will frequently conclude earlier than the average three years that litigation will take. It should be a two-way flow, which means the industry ADR should be able to refer consumers in appropriate cases to court, and the court should be able to do the same. Also, a decision of the Forum should act as a bar to further proceedings in court, except if it is by way of judicial review. Similarly, the Forum should redirect consumers to court when the issues in contention border statutory interpretation or declaration of rights, in which case the courts are a better fit for this purpose.

[L] RECOMMENDATIONS AND FINAL THOUGHTS

Consumer complaints and disputes are not monolithic and often have different causes, typologies, and remedial differences. The sector-based approach to complaints and dispute resolution in Nigeria's electricity market is unique. In an electricity market where switching is not an option, internal complaints handling cannot be left as an internal performance metric. Strong regulatory oversight is needed to make it a true path to access to justice. It is important to see each component process not as a standalone but as an integrated and linked framework. The electricity market presents a platform to see how effective pluralism in dispute resolution can be, especially in contributing to increased access to procedural justice. This means there is no alternative between ADR, courts, and public enforcement, but rather a plural dispute resolution system that caters for different types of disputes. This article firmly suggests that pluralism and hybridization would ultimately benefit access to justice. The hybridization suggested in this article advocates for a dispute resolution system design approach that better interconnects the pathways of sectoral ADR, courts and public enforcement with the overriding aim of improving access to justice for consumers participating in a monopolistic private market. Accordingly, it would be justifiable to assign each claim to the appropriate pathway rather than making consumers choose between competing options. The CCUs are at the lowest level in the justice chain in the electricity market and are closest to the consumer. Following the subsidiarity rule, resolving disputes at the lowest level is quicker and

cheaper, and this ultimately meets the objectives of access to justice and effective redress for consumers (Portuese 2011: 231). CCUs not only have the capacity to resolve disputes in a manner beneficial to the business of the DisCo, but they can also provide real-time opportunities for the DisCo to learn from recurring problems and avoid disputes. However, this may be undermined by the lack of a competitive market, so added regulatory vigilance by the NERC is required. The fact that sectoral consumer ADR, such as the Customer Forum, has specialization and focus is a major advantage for advancing consumer access to justice. Such a model, if operated as a hybrid of ODR and traditional systems, will create an even more efficient and effective process that delivers justice.

Several of the findings from the study point to a functional consumer redress framework that can be improved upon based on the theory of change that dispute resolution systems can always be better (Lande 2020: 121). Some of the identified general lapses in the consumer redress framework in the electricity market in Nigeria should be addressed by the NERC developing more comprehensive guidelines for CCUs similar to those in the UK electricity market (Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, sections 3–10). The suggested guidelines should address issues like recording complaints, allocating and maintaining adequate resources for complaint handling, proper signposting and effective use of online resources for complaint resolution. Under the current arrangement, there appear to be no regulatory incentives for DisCos to improve the CCUs. The proposed guidelines must, therefore, include penalties and incentive regimes like a polluter-pays principle if disputes are referred from the CCUs to the Forum. Also, the NERC should give the Customer Forum the additional role of providing advisory support to consumers, similar to what the Energy Ombudsman does in the UK. A more balanced consumer appeal process that eliminates the requirement that consumers first pay any sum adjudged to be paid by the Forum before they can appeal is necessary to increase consumer access. The article further recommends a greater role for online tools and a hybridized process allowing physical, document-based, and online hearings at the Forum. The above, together with the simplification of the Forum processes to eliminate the current significant use of lawyers by disputants, will improve the overall performance of the industry redress mechanisms and increase access to justice for consumers.

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