

SPACES FOR CHANGE (S4C)



E-CONFERENCE REPORT

ON

**ELECTRICITY TARIFF HIKE DISPUTES:
THE ISSUES WITHIN**



CONVENED BY
SPACES FOR CHANGE | S4C

BACKGROUND

LEAD DISCUSSANT	-	COMRADE. CHIKA ONUEGBU STATE CHAIRMAN, TRADE UNION CONGRESS OF NIGERIA (TUC) RIVERS STATE IMMEDIATE PAST PENGASSAN NATIONAL INDUSTRIAL RELATIONS' OFFICER
MODERATOR	-	MR. CHINEDU CHIEFSAN, MEMBER, SPACES FOR CHANGE NETWORK

In December 2015, the National Electricity Regulation Commission, NERC, announced increments in electricity tariffs for all classes of electricity consumers. At the same time, the regulatory agency abolished the contentious monthly fixed charges for all electricity consumers. Fixed charge, a sub-component of the tariff, imposes a fixed charge payable by electricity consumers regardless of whether electricity is consumed during the billing period or not. NERC stated that “the new tariff regime is the result of a transparent, rigorous and credible rate review process. The tariffs will lead to greater reliability in the provision of electricity.”

On Monday, 8th February 2016, labour unions in Nigeria, led by the Nigeria Labour Congress (NLC), Trade Union Congress (TUC) of Nigeria and civil society organizations, rejected the increment in the electricity tariff. Protesting against the increment, labour unions and civil society groups picketed the offices of the electricity distribution companies, known as DISCOs, across the country, disrupting their operations. The labour unions, in a statement, described the protests “as a day of action against the DISCOs, to drive home the fact that unlawful and unilateral hike of electricity tariffs will be resisted by consumers.”

The two-hour e-conference, “*Electricity Tariffs Hike Disputes: The Issues Within*,” held on Facebook on Saturday, February 20, 2016, brought together the TUC Chairman, Rivers State Chapter, Mr. Chika Onuegbu, and the 11, 200 members of Spaces for Change’s Discussion Forum “under one roof” to interrogate the new tariff regime and reasons underlying the protests led by labour unions. Famed for leveraging digital technology to execute high-profile policy campaigns, this e-conference activity is one of the ways Spaces for Change | S4C uses crowd-sourcing techniques and internet-based tools to facilitate debate and public participation in the promotion, evaluation and setting of strategic policy directions in the Nigerian power sector.

This report summarizes the e-conference proceedings, detailing the questions collated from Spaces for Change’s members and the responses given by the lead-discussant. We are grateful to the conference moderator, Mr. Chinedu Chiefsan, the lead discussant, Mr. Chika Onuegbu, all members of Spaces for Change, local and international observers, and a host of volunteers who contributed to the overall success of the e-conference.

February 20, 2016

ELECTRICITY TARIFF HIKE: ISSUES IN FOCUS

Labour Unions' Demands:

The strike was intended to draw the attention of the Federal Government (executive and legislature) to the illegal hike in power tariff by NERC, DISCOs, electricity generation companies (GENCOs) and the Transmission Company of Nigeria (TCN). Labour's core concerns are aptly drafted in a communiqué, jointly signed by the NLC President, Ayuba Wabba; President, TUC, Bobboi Kaigama; Co-ordinator, Electricity Consumer Protection Forum, Adeola Samuel-Ilori; a human rights activist, Toluwani Yemi-Adebisi; and Publicity Secretary, Campaign for Democratic and Workers' Rights, Chinedu Bosah .

Main issues raised include:

1. Breach of Law: Section 76 of the Electric Power Sector Reform Act, 2005, provides an elaborate consultative process before any tariff increase takes effect. By failing to follow this procedure NERC, the GenCos and DisCos are acting unlawfully and must be stopped.
2. Contempt of Court: There is a subsisting court order dated May 28, 2015 by Justice Mohammed Idris of the Federal High Court, Ikoyi, Lagos, in the case of Toluwani Yemi-Adebisi v. NERC & Others, that there shall be no further increment until the determination of the substantive suit. The implementation of increased tariff is therefore an act of lawlessness in a democracy.
3. Breach of Privatization Undertakings: Most consumers are not metered in accordance with the signed privatisation Memorandum of Understanding (MoU) of November 1, 2013, which stipulates that within 18 months gestation period, all consumers are to be metered. Distribution companies have continued to exploit Nigerians using opaque estimated billing system for the majority of consumers whilst deliberately refusing to make available prepaid meters.
4. Rip Off/Credibility Question: There is no correlation between the quality of service delivery and tariff. There has been no significant improvement in service delivery. In Apapa, where we represent over 2000 residents, our annual electricity bill is about N3.5 Million annually. When we include the cost of diesel and generator repairs, our electricity cost becomes even more outrageous. In 2015, we spent over N=50 Million on diesel and generator repairs. When again multiplied by 2000, it is over a N100Billion annually.
5. Insensitivity: The increment at this time negates the present biting and prevailing economic recession which has adversely reduced the purchasing power of ordinary Nigerians and slowed down businesses, including manufacturing. The current hike is not only insensitive, but unjustifiable. It cannot stand.
6. How Not to Create Wealth: The increment is a clear negation of the current government's drive to create wealth through entrepreneurship. By raising the bar in accessing electricity, small businesses are being technically driven away. How can we create wealth when doing business in Nigeria continues to remain a nightmare?

SUMMARY OF E-CONFERENCE PROCEEDINGS

✚ *On Labour Unions being cognizant of the MYTO (Multi-Year Tariff Order) methodology implemented since 2013 and the implication on the latest tariff increase*

Labour Representative - The unions were not carried along by NERC and DISCOs. Rather, some of the DISCOs like the Port Harcourt Electricity Distribution Company, (PHED), disallowed their workers from joining the labour union and completely refused to engage labour and its civil society allies in the processes leading to the tariff hike. The hike is also flawed due to a subsisting court order dated May 28, 2015 by Justice Mohammed Idris of the Federal High Court, Ikoyi, Lagos and the case of Toluwani Yemi-Adebisi v. NERC & Others. The order mandates that there shall be no further increment until the determination of the substantive suit. The implementation of increased tariff is therefore an act of lawlessness in a democratic regime, and labour has a duty to ensure that NERC abides by that court order.

✚ *Shedding more light on the court orders:*

Labour Representative - There have been so many court cases filed against NERC that relate to, and touch on its powers to regulate tariffs. The key issue is always the lack of, or inadequate engagement with and consultation by NERC with stakeholders. This is clearly against the provisions of the EPSRA 2005.

Some of the cases in court where this issue has come up are 'Suit No: FHC/L/CS/438/2015: Phoenix Steel Mills Limited and 4 Others Vs NERC and 11 Others; FHC/L/CS/1040/15: Nigerian Bottling Company PLC (a.k.a. Coca-cola) and 4 Other Vs NERC and 11 Others; Suit No: FHC/L//CS/960/15: 1004 Estates Ltd & Anor Vs. NERC and 3 Others; Suit No: FHC/OW/CS/94/2015: Nweke Ishmael and 2 Others Vs NERC and 3 Others; Suit No: FHC/L/CS/768/15: Toluwani Adebisi Vs NERC'.

The pattern of these cases indicates that NERC as a regulator, appears to be dictatorial and unwilling to obey the law. Toluwani Adebisi Vs ruled that there should pending the final substantive suit. It is NERC and DISCOs increase tariff in total subsisting order of court. Idris of the Federal High on 15th February, 2016, the distribution companies against disobeying subsisting court orders on electricity tariffs. He said NERC must not act in a way that would show disdain for the court in a constitutional democracy.

The point must be made that obedience to the rule of law by all citizens but more particularly those who publicly take the oath of office to protect and preserve the constitution is desideratum to good governance and respect for rule of law. In a constitutional democratic society like ours, this is meant to be the norm."

In the case of NERC, the Court be no tariff increases determination of the worrisome that went ahead to disregard to the Justice Mohammed Court in Lagos had warned NERC and

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constitutional democratic society like ours, this is meant to be the norm." The Judge also said that, “It is an act of apostasy for government to ignore the provisions of the law and the necessary rules meant to regulate matters. I must say it loud and clear that the government of this country shall be a government of laws and not of men”. Note that this remark was made after labour’s picketing.

✚ *On Dr. Sam Amadi's (the immediate past NERC Chairman's) recent advice to labour unions to go beyond rallies and picketing to debate policies to improve the supply of electricity to Nigerian homes and businesses:*

Labour Representative – No one owns knowledge or is all knowing. The ex-Chairman cannot speak for NERC, and also speak for the labour movement. That is why the law provides for an elaborate consultative process.

✚ *On the issue of NERC's prior consultation of labour unions:*

Labour Representative – The unions were not consulted. Neither the NLC, TUC National Executive Council, the TUC Rivers State, nor the national executive council (NEC) of PENGASSAN were consulted.

✚ *On whether labour bodies support the privatization of the power sector:*

Labour unions support the privatization of the power sector, but rejects recourse to tyranny by NERC and the private sector companies in hiking power tariff. Labour supports the Senate’s (National Assembly) position and will be fully represented at the public hearing ordered by Senate. [The Senate arm of the National Assembly on Monday, February 15, 2018, reportedly directed the Federal Ministry of Power, Works and Housing, the National Electricity Regulatory Commission and the distribution companies to suspend the implementation of the new electric power tariff.]

✚ *On the importance of related issues such as 'metering.' The current **Credited Advance Payment for Metering Implementation (CAPMI)** scheme has been largely inadequate in rolling out an estimated deficit of 5 million pre-paid meters and can be pointed at as the cause of the gap in getting power to the consumer. Can the Union suggest a more efficient method to implement and fund roll out of pre-paid metering for end users?*

Labour Representative – We had a re-assuring engagement with PHED over the meter issue. The fact remains that the DISCOs are more comfortable with estimated billings instead of rolling out the prepaid meters. In that meeting, they promised to rollout 200,000 meters this year. Ordinarily, meters are supposed to be funded by DISCOs and deployed free to the consumers. However, it was agreed that consumers can pay for the meters and have the cost refunded over 36 months at 12% interest rate. With this, I don't see why the DISCOs if they are sincere, cannot close the huge metering gap in the country. The main problem is that they seem to profit from estimated billings, and so they are not committed to providing prepaid meters.

✚ *Without higher tariffs, can the private sector be attracted to the power sector?*

Labour Representative – This has always been the government’s argument each time they want to increase tariff in the energy sector; whether it is fuel or electricity prices. For instance, in the case of fuel, the government has from 1973 to 2012, implemented, at least, 18 increases in petrol pump prices with about 6 of them within the period of democracy. Government has curiously advanced the same argument each time – to use the money to provide “critical infrastructure”. You may also recall that in 2006 when Nigeria exited its Paris Club debt, government promised that the savings to be made (i.e. funds that would have been used to service the debts) will be invested in the same “critical infrastructure” – education, health and public works.

The process for tariff hike is clearly stated in Section 76 of the Electric Power Sector Reform Act, 2005. It includes an elaborate consultative process before any tariff increase takes effect because the law recognises that in the absence of such a process, the DISCOs being private monopolies can charge whatever price they desire and justify it on the need for investment. The issue is that there must be a reasonable balance between tariff hike and value to the customers and that need is the essence of the engagement.

Unfortunately, we have witnessed an alarming decline in the state of our public infrastructure since then. In this instant case, the main reason for proper engagement and consultation is so that the NERC, DISCOs and all the key stakeholders can meet and share information and thoughts about how to go about the tariff increase and other challenges of the sector. Unfortunately, and even against the subsisting order of court, NERC and DISCOs unilaterally increased tariff by some 45%. Please take note that the DISCOs are private monopolies and so we have to be very watchful and test their assertions for reasonability and compliance with the law.

✚ *As oil prices fall and government revenues fall, can the Union rely on Federal Government (FGN) revenues to replace private sector funds? If the answer is no... What is the Union proposing? Where will the cash come from to fix the power sector?*

Labour Representative – The DISCOs and investors were not supposed to raise cash from Nigerians arbitrarily just because they are private monopolies. The process for tariff hike is clearly stated in Section 76 of the Electric Power Sector Reform Act, 2005. It includes an elaborate consultative process before any tariff increase takes effect

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✚ *On why the Union is not restricting itself to issues within its purview – such as improved terms and conditions of service of its members; and why the Union seems to usurp the role of Civil Society Organizations in galvanizing Nigerians to protest this tariff increase?*

Labour Representative – There are different models of unionism and how they are applied in Nigeria. In terms of philosophical orientation, trade unions can either tilt towards business

unionism or social unionism. Business unionism is the trade-union philosophy that concentrates on the improvement of wages, hours, working conditions, etc., rather than on the general reform of the socio-economic system. Business unionists are content to negotiate, sign and implement collective bargaining agreements. They are not really concerned about broader social, economic and political issues that have impact on the welfare of the working people. Consequently they play little or no role in the formulation and implementation of public and government policies. However social unionism looks beyond immediate objectives of workers and try to reform socio-economic conditions of the workers.

Social unionists believe that unions have an obligation to better the general society, and not just their members. Unions with strong Social Unionism philosophy are more likely to form broader coalitions with other stakeholders not only for the improvement in the welfare of their members, but also for good governance, social and economic justice. In Nigeria, Industrial Unions are usually tilted towards business unionism while Labour centers (NLC and TUC) are more focused on social unionism.

 *More on the Labour Unions as a vehicle for Social Unionism*

Labour Representative –The focus by Labour centers (Congresses) on Social Unionism is not new. Even Sir Abubakar Tafawa Balewa observed in 1960, that “trade unions” have a key role to play in shaping the society and the nation. Their role in the independence struggle of Nigeria is well documented. So also are their roles in the fight against military dictatorship and the return to democratic government. Even in the current democratic dispensation, they have from time to time influenced the direction of government policies. However, when you look at the position of Nigeria in the committee of nations and the dwindling socio-economic performance of the country, you will agree that much needs to be done. This is more so as the ordinary people of this country look up to the trade unions not only for their protection from obnoxious government policies but also solutions to the many problems of our dear country.

 *On Labour's next steps where the Government refuses to budge? Would it be justified to call its members to action?*

Labour Representative – The government would not test Labour's resolve in this matter because the law is on Labour's side (see the subsisting order of Court aforementioned and refusal to abide by the provisions of 76 of the Electric Power Sector Reform Act, 2005). The Nigerian people who are daily shortchanged by the DISCOs are also on our side. More so, the Nigerian Senate has called for the suspension of the hike. I believe that the Government will call the NERC and the Minister of Power to order. There is no better time for a mass movement to press on in an issue like this. Nigeria belongs to all of us and Labour is optimistic that the government will listen to the Nigerian people and avoid a full scale industrial action. The implication of full scale industrial action on the sick Nigerian economy will be too much.

- ✚ *On what should happen before tariff is increased, given the obvious fact that without an attractive tariff investors will not fund the sector.*

Labour – Adherence to the Law. Section 76 aforementioned is clear. Engage stakeholders through sincere public hearing and follow the Law.

- ✚ *On what recourse for the sector where the Law is anti-business- the DISCOs reiterate that without increase in tariffs the nation would face total blackout.*

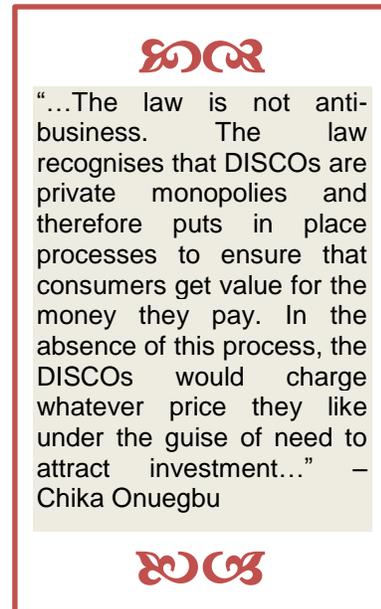
Labour - The DISCOs are just blackmailing Nigerians and the Labour movement. It is just blackmail, but a failed blackmail. The law is not anti-business. The law recognises that DISCOs are private monopolies and therefore puts in place processes to ensure that consumers get value for the money they pay. In the absence of this process, the DISCOs would charge whatever price they like under the guise of need to attract investment. The law is not new; it was in existence before the DISCOs bought the power assets.

- ✚ *On proffering a workable solution to the impasse outside that the DISCOs*

Labour Representative – I think that we are in a democracy and in a democracy rule of law is fundamental. The DISCOs should obey the law and follow the provisions of the law. The Labour movement cannot advise or suggest to private monopolies to disobey the law and act arbitrarily

- ✚ *On whether the outcome would have been different if NERC had engaged stakeholders? What difference would it have made? Would that have prevented the hike in tariffs?*

Labour Representative – First, is that the law would have been complied with and the stakeholders would be on the same page with the NERC and DISCOs on this issue. We would also have requested that efforts be made to vacate the court order. I am aware that NERC has a Consumer Advocacy Unit and conduct public hearings frequently. Who did they consult, if the labour movement and our civil society allies were not part of the consultation? It was a kangaroo consultation aimed at circumventing the law.



- ✚ *Does labour mainstream gender in its labor rights advocacy? Does labour recognize that both consumption patterns and access to electricity for men and women differ?...At least, historical constructs of gender foist certain roles on women, which require women to use more energy than men. Does Labour address issues like this?*

Labour Representative – The Labour movement is a mass movement comprising men and women. Our policies also reflect our diversities and the need for inclusiveness. We know that a higher and in this case reckless hike in tariff would bring so much suffering to women and children and we are determined to ensure that government reverses its position and listens to the Nigerian people. This is a democracy and not an ‘investocracy’.

S4C - Labour has shed so much light on the underlying tariff issues, but also raised pertinent questions that NERC needs to address: First is the issue of non-consultation, others regard non-compliance with court orders and the DISCO's perceived preference for estimated billing. These are issues that need to be interrogated further. Another e-conference with NERC will be organised in March to obtain their response to the any questions and issues raised in this conference.

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