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**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights**

REFERENCE: AL Housing (2000-9) Poverty (1998-11)  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on extreme poverty and human rights pursuant to Human Rights Council resolutions 15/8 and 17/13.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **limited access to and affordability of electricity in Nigeria, in particular following the Multi-Year Tariff Order II (MYTO II) enacted by the Nigerian Electricity Regulatory Commission (NERC) on 1 June 2012, and its potential detrimental impact on the realization of human rights of people living in extreme poverty in Nigeria.**

According to information received:

Poverty remains prevalent in Nigeria. The country was ranked 153 out of 187 countries in the United Nations Development Programme (UNDP)'s Human Development Index (HDI) in 2012, based on such variables as life expectancy and average years of schooling. According to the World Bank, "poverty rates remain high in Nigeria, particularly in rural areas". The World Bank finds that while the officially reported growth rates of GDP well exceed population growth in the country, the pace of poverty reduction has not kept up, implying that "the number of poor Nigerians living below the poverty line has grown measurably".

Information received indicates that access to electricity (and regularity of supply) is a significant problem in Nigeria. According to information received, at the end of 2012, Nigeria with a population of about 160 million people only generated about 4,000 megawatts of electricity, which is ten times less than some other countries in the region with less population. The Minister of State for Power announced in June 2013 that 75 per cent of Nigerians (approximately 120 million

people) currently live without electricity. The World Bank lists Nigeria with 50.3 per cent of the population having access to electricity in 2010.

According to information received, the Nigerian Electricity Regulatory Commission (NERC) recently started to implement a new Multi-Year Tariff Order (MYTO II), determining the cost of electricity sold by distribution/retail companies for the period 1 June 2012 to 31 May 2017. The tariff plan is reportedly in effect since June 2012, with the most recent annual incremental increase in tariffs taking place in June 2013. According to our understanding, all electricity maintenance and construction had originally been handled by a state-owned monopoly, the Power Holding Company of Nigeria (PHCN). Following the Electric Power Sector Reform Act of 2005, the State broke up the state monopoly amongst eleven regional distribution companies, six generation companies, and one transmission company.

It is reported that the tariffs set up in the MYTO II are differentiated across five broad categories of customers and by the eleven distribution zones, corresponding to the eleven Distribution Companies (Discos). In such a scheme, each category of consumer is split up into different pricing groups depending on the amount of electricity consumed on a monthly average. As a result, consumers in each category face two charges: i) a monthly fixed charge in Nigerian Naira (NGN) regardless of whether the electricity has been consumed or not and ii) an energy charge per kWh of electricity consumed. All customers are subject to change in classification if their usage increases.

The MYTO II reportedly subdivides residential consumers into four groups based on the average monthly electricity consumption from the past three months. Two of these residential groups are of particular interest in this letter: R1 and R2 residential consumers, which, it has been reported, are considered by the NERC itself as 'vulnerable tariff classes'.

We were informed that R1 consumers are those who consume between the minimum zero and 50 kWh/month of electricity, and the next category up of R2 customers are those who consume between 50 and 200 kWh/h. According to some calculations that have been shared with us, 50 kWh allows for only very restricted electricity usage. R1 customers must pay the R2 tariff prices once one of their monthly electricity averages exceeds 50 kWh, recalculated every three months.

Across all regions, R1 customers now pay a steady energy usage charge of NGN 4.0 per kWh that does not increase over the years. While we welcome this specific element designed to exempt the lowest-income residents from paying any fixed monthly charge, we are concerned that they will have to pay a flat rate of NGN 4.0 per kWh, while in 2012 under the MYTO I, they had to pay a flat rate of NGN 2.2 per kWh, which represents an increase of 82%.

It is also reported that R2 customers across all Discos have experienced increases in their monthly fixed charge. R2 consumers who were paying a fixed charge of NGN 250 per month and an energy charge of NGN 7.4 per kWh for electricity

consumed under the MYTO I , are now paying a fixed charge of NGN 500 per month and between NGN 11.32 and NGN 12.99 per kWh under the MYTO II . This represents an increase of 100% in the monthly fixed charge and between 53% and 76% in the energy charge per kWh of consumption.

Concerns have also been raised that a metering system has not been sufficiently implemented to effectively measure electricity usage. Allegedly, less than 50 per cent of registered electricity customers have access to electricity meters, and ongoing inaccuracies in measuring electricity usage will continue to hinder fair electricity access and exchange.

Customers are reportedly required to pay large sums for electricity meters according to the Credited Advance Payment for Metering Implementation (CAPMI). While the MYTO II clearly stipulated that the Discos use the added revenue to provide meters to its customers, as of now it is reportedly unclear how this money has been used. Information was brought to our attention in reference to alleged mismanagement throughout the privatization process. Allegedly around 3.5 billion USD has been mismanaged annually over the last ten years, and a total of 16 billion USD released to improve electricity supply in the country has not been properly accounted for. Allegedly, the Business Units which have taken over from the PHCN participate in large-scale corruption such as graft from exorbitant consumer bills, rejection of payment to independent third parties such as banks to keep management of funds secret, unprecedented disconnection of consumers' power lines, general bribery and fraud amongst staff, adding up to over NGN 1 billion extra charged to consumers annually. The information received claims that there is widespread impunity and lack of accountability with regard to this alleged fraud and corruption, which has a negative impact on access to electricity and affordability. A recent report by Transparency International, which ranks Nigeria as 35th most corrupt out 176 countries, would seem to underline the magnitude of the challenge posed by corruption to social and economic development in the country.

These increases in electricity tariffs, problems with measuring electricity usage, lack of improvement in the quality of the service and lack of transparency in the use of funds, reportedly disproportionately impact on those with little disposable income, as well as exacerbate the scarcity of energy supply for those who already cannot afford electricity even if connected to the grid. In addition, due to regular blackouts it is reported that even those connected to the power grid must purchase expensive generators in order to have a reliable power supply, which people living in extreme poverty cannot readily afford. The situation is reportedly not likely to improve considering that the production of electricity is not proportionate with the rapidly growing population.

In this context, concerns have been raised on the impact of the MYTO II on people living in extreme poverty in Nigeria. In particular, such significant tariff increases are said to disproportionately impact people living in extreme poverty, some of whom are not able to pay the new tariff and therefore will be deprived of electricity, and to exacerbate and perpetuate poverty and worsen living conditions for millions of Nigerians

who are already vulnerable and marginalized. In addition, given that the MYTO II's tariffs are calculated on the basis of consumption, the lack of a functioning metering system will limit the ability to accurately set the prices and leave electricity bills vulnerable to mismanagement and arbitrary decisions, which are likely to disproportionately affect people living in extreme poverty. Certain groups already vulnerable to poverty and social exclusion may be especially impacted by the rise in tariffs under MYTO II, including women heads of households, and persons living in informal settlements and in rural areas.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to its obligations under various international human rights instruments and in particular: the International Covenant on Economic, Social and Cultural Rights (ICESCR, acceded to by Nigeria in 1993), the International Covenant on Civil and Political Rights (ICCPR, ratified by Nigeria in 1993), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW, ratified by Nigeria in 1985) and the African (Banjul) Charter on Human Rights and People's rights (ratified by Nigeria in 1983). We would also like to draw the attention of your Excellency's Government to the existence of the Guiding Principles on Extreme Poverty and Human Rights, contained in document A/HRC/21/39, adopted by the Human Rights Council by consensus at its 21st session (resolution 21/11).

According to the provisions of Article 25 of the Universal Declaration of Human Rights, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services".

The right to an adequate standard of living is further enshrined in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, to which Nigeria is a party. Parties to the Covenant recognize 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'. This article must be read in conjunction with Article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavourable conditions", the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that "the right to housing should be ensured to all persons irrespective of income or access to economic resources. The Committee clarified that "all beneficiaries of the right to adequate housing should have sustainable access to energy for cooking, heating and lighting".

Article 12 of the ICESCR recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee interpreted the

right to health in General Comment No. 14 and particularly underlined that this right should be broadly understood as encompassing not only health care, but also the “underlying determinants of health”. States have a positive obligation to ensure minimum levels of provision of such determinants like safe food, adequate housing and living conditions.

In this connection, we wish to further call the attention of your Excellency’s Government on Article 16 of the African Charter on Human and People's rights, which also provides for the right to health. The African Commission on Human and People’s Rights has adjudged the failure of the States “to provide basic services such as (...) electricity” as violating the right to health<sup>1</sup>.

Furthermore, we wish to recall your Excellency’s Government that, according to the provisions of Article 2(1) of the ICESCR, State parties must ensure the progressive realization of all economic, social and cultural rights, to the maximum of its available resources.

In its General Comment No.3, the CESCR stressed that deliberately retrogressive measures affecting the level of enjoyment of economic, social and cultural rights are in violation of the States’ obligations under Article 2(1). When adopting such a measure, the burden of proof lies with the State to demonstrate that the measure has been introduced with careful consideration of all possible alternatives and that it is “fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”.

States are bound to make full use of the resources available to ensure progressive realization of economic, social and cultural rights, even in times of resource constraints. The Committee also stressed the fact that “even in times of severe resources constraints (...) vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes”.

The human rights framework does not dictate a particular form of service delivery and leaves it to States to determine the best ways to implement their human rights obligations. However, the State cannot exempt itself from its human rights obligations when involving non-State actors in service provision. On the contrary, when non-State actors are involved in service provision, there is a shift to an even stronger focus on the obligation of the State to protect.

As part of its obligation to protect, the State must safeguard all persons within their jurisdiction from infringements of their rights by third parties. Involving non-State actors in service provision requires, inter alia, clearly defining the scope of functions delegated to them, overseeing their activities through setting regulatory standards, and

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<sup>1</sup> The African Commission on Human and People’s Rights, Opinion of 4 April 1996/10 July 1996, Communications 25/89, 47/90, 56/91 & 100/93, *Free legal assistance group, Lawyers Committee for Human rights, Union Interafricaine des droits de l’Homme, les témoins de Jehovah vs. Zaïre (now DRC)* para. 47.

monitoring compliance. Given the fact that in Nigeria electricity provision has been outsourced to the private sector, the obligation remains for the Nigerian government to ensure that private sector actions do not result in violations of the right to an adequate standard of living. CESCR General Comment 15 on the right to water sets out standards for service providers with regard to water provision; some of these are also relevant for electricity provision, given its relevance to the right to an adequate standard of living, the right to housing, and the right to health. These standards include sufficient quantity; quality and safety; regularity of supply; accessibility of services; and affordability of services. Regulation must also set standards about pricing; tariffs and connection costs must be designed in such a way as to make them affordable to all people (including through social policies).

We would also like to draw the attention of your Excellency's Government to the core principles of equality and non-discrimination in Article 2 of the Universal Declaration of Human Rights, and common Article 2 of the ICESCR and ICCPR.

Measures discriminating against individuals living in a situation of poverty, even without explicit or direct discriminatory intent, may contravene the principle of non-discrimination. In its General Comment No. 20, the CESCR elaborated on the prohibited grounds of discrimination. The inclusion of 'other status' in Article 2(2) indicates that the list given there is not exhaustive and other grounds may be derived from this category. Thus, the Committee further listed 'place of residence' and 'economic and social status' as prohibited grounds of discrimination.

The Committee also stressed that it is enough for the measure to have the 'effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights' in order to constitute a violation of a State's human rights obligations.

Furthermore, the Committee stressed in paragraph 17 of its General Comment No. 20 that some individuals or social groups may face discrimination on more than one of the prohibited grounds. This situation, described as 'cumulative discrimination', requires particular attention from the State. Regarding this issue, we would like to call your Excellency's Government's attention to the prohibition of discrimination on the ground of gender enshrined inter alia in Articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights, read in conjunction with article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women. This latter article states that Parties to the Covenant should take steps to eliminate discrimination against women in rural areas, in order to ensure that they enjoy adequate living conditions and "particularly in relation to housing, sanitation, electricity and water supply, transport and communications" (emphasis added).

We would also like to draw the attention of your Excellency's Government to the Guiding Principles on Extreme Poverty and Human Rights (A/HRC/21/39), adopted by the Human Rights Council by consensus at its 21st session (resolution 21/11). Your Excellency's Government may find paragraphs 73 and 74 of the Guiding Principles on the right to an adequate standard of living, and paragraphs 79 and 80 on the right to adequate housing, especially relevant. Also relevant are paragraphs 56 to 60, which call on States to ensure that facilities, goods and services required for the enjoyment of human

rights are accessible, available, adaptable, affordable and of good quality. Paragraph 56 particularly underlines that even where the private sector is involved in the provision of goods, services and facilities, “States are responsible for ensuring quality, affordability and coverage and have the duty to protect individuals against abuses committed by private service providers”. The Guiding Principles further recall in that respect that services must be provided without discrimination towards people living in poverty and that “no one should be denied access to essential services because of an inability to pay”.

Lastly, we would like to recall that, at the recently concluded review of Nigeria under the Universal Periodic Review on 22 October 2013, (A/HRC/WG.6/17/L.4 Unedited Version), your Excellency’s Government accepted to continue improving the access of its inhabitants to adequate housing (see recommendation 134.130 made by Ecuador: “Continue the efforts undertaken by the Government to guarantee inhabitants access to adequate housing and take the legal measures required to ensure the right to land tenure, in conformity with international law and international standards, and thus avoiding forced evictions”).

It is our responsibility, according to the mandates entrusted to us by the Human Rights Council, to clarify all allegations brought to our attention. We would therefore greatly appreciate detailed information from your Government concerning the above situation and about the measures taken by the competent authorities. We would be grateful for your cooperation and would appreciate receiving information and your observations on the following matters:

1. Are the facts alleged in the above summary of the situation accurate?
2. What kind of impact assessments were conducted to gauge the potential impact of the electricity tariff increases on the human rights of people living in extreme poverty in Nigeria? If so, please provide details.
3. Did public consultations take place, including with potentially affected persons and especially people living in extreme poverty, prior to the adoption of the new Multi-Year Tariff Order II? If yes, please give details of the dates, participants and outcomes of the consultations. Was accessible and culturally adequate information about the measure actively disseminated through all available channels prior to consultation?
4. What measures have been put in place to ensure that the human rights of people living in extreme poverty in Nigeria will not be undermined by the increase in electricity tariffs?
5. In particular, what measures are in place to ensure that they can enjoy their right to adequate housing, including sustainable access to energy for cooking, heating and lighting, which is a component of this right?
6. Are there any accessible independent review or complaint mechanisms in place, such as administrative mechanisms through the NERC Power Consumer Assemblies (PCA), available for individuals to challenge the classification of customers and/or the corresponding tariffs? If such mechanisms exist, please give details.

7. What mechanisms exist to ensure transparency, accountability and regular monitoring over the use of tariff revenue within the government? What mechanisms are available to address allegations of corruption, or other complaints? What mechanisms are in place to monitor and regulate service provision by private actors, as required under the State's duty to protect?

8. Please describe any existing policies or measures aimed to promote affordability of electricity provision for people living in extreme poverty. Are any subsidies already available and implemented? What is being done to mitigate the hardship imposed by increased tariffs, especially for persons living in poverty?

We would be most grateful to receive a response within 60 days. We undertake to ensure that the response of your Excellency's Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency's Government's consideration pursuant to the terms of our mandates. Your Excellency's Government's response will be made available in the report that we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration

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