

ELECTRICITY BAND SEGREGATION IN NIGERIA: EXAMINING ITS IMPACT ON FUNDAMENTAL RIGHTS AND THE PRINCIPLE OF EQUALITY*

Abstract

In April 2024, the administration of President Bola Ahmed Tinubu, through the Nigerian Electricity Regulatory Commission (NERC), promulgated a revised electricity tariff regime that formally classified consumers across Nigeria into five service bands - Band A through Band E, and subjected consumers in each band to different tariff rates commensurate with their assessed quality of electricity supply. The immediate and most consequential effect was a tariff increase of approximately 240 per cent for Band A consumers, justified on the grounds of cost-reflective pricing, with lower bands ostensibly buffered from immediate increases. This article argues that the band tariff structure, as conceived and implemented, constitutes a serious derogation from the fundamental rights of Nigerian citizens to equality before the law and to equal access to public utilities that are essential to the realisation of the right to life and human dignity. Drawing on the constitutional provisions of the 1999 Constitution, the domesticated norms of the African Charter on Human and Peoples' Rights, and the interpretive frameworks developed by Nigerian superior courts and international human rights bodies; the article demonstrates that the band dichotomy reproduces geographic, socioeconomic, and demographic inequalities in constitutionally impermissible ways. It further argues that the framework adopted by the government fails to satisfy the requirements of proportionality and non-discrimination that Nigerian constitutional law and international human rights law jointly impose. It posits that a rights-consistent alternative is both legally compelled and practically achievable. The article calls for structural reform of the tariff regime grounded in principles of energy justice, constitutional equality, and the state's affirmative obligations toward the most vulnerable segments of the Nigerian population.

Keywords: Electricity Tariff, Band Classification, Fundamental Rights, NERC, Cost-Reflective Pricing

1. Introduction

The Nigerian state exists, at its deepest constitutional level, for the welfare and security of the people who compose it.¹ Access to electricity is no longer a peripheral amenity in any credible account of what human welfare requires in the twenty-first century. It is the infrastructure through which medical care is delivered, through which children study after dark, through which small enterprises survive, through which water is pumped and food is preserved. When a government structure access to that infrastructure in ways that systematically advantage one class of citizens over another, not on grounds of demonstrated need, but on grounds of geography and the accidents of infrastructure investment, it raises constitutional questions that are not adequately answered by the economics of utility pricing. This article poses and attempts to answer those questions in the context of the electricity band classification system introduced by the Tinubu administration in the first quarter of 2024. The Electric Power Sector Reform Act 2005 (EPSR Act) (now repealed by the Electricity Act of 2023) established NERC as the independent regulatory authority for the Nigerian electricity sector, with broad powers to determine tariff structures and conditions of service.² Acting under those powers, NERC issued the Multi-Year Tariff Order 2024 (MYTO 2024), which consolidated and substantially revised the band classification system that had been developing in nascent form since the sector's privatisation in 2013.³ The revised framework divided electricity consumers into five service bands based on the hours of supply per day that their distribution company (Disco) was assessed as capable of delivering, and prescribed sharply

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¹Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(2)(b).

²Electric Power Sector Reform Act 2005 (Nigeria), s 76.

³Nigerian Electricity Regulatory Commission, 'Multi-Year Tariff Order (MYTO) 2024: Order No NERC/2024/015' (NERC, Abuja, 2024) 4.

differentiated tariff rates for each band.⁴ The practical effect was that consumers in Band A, predominantly in Abuja's commercial districts and affluent urban neighbourhoods in Lagos and other major cities, were immediately subjected to cost-reflective tariffs approximating N225 per kilowatt hour, while consumers in Bands D and E, who received a fraction of the supply hours, continued at heavily subsidised legacy rates.

The government's rationale was straightforward: the electricity sector had accumulated unsustainable tariff shortfalls; the subsidy regime was fiscally untenable; cost-reflective pricing was the only sustainable path to attracting the investment needed to expand the generation and transmission infrastructure without which supply could never improve for anyone. Ogunbameru acknowledges the force of this fiscal argument, but observes that the manner in which tariff reform is structured, who pays, in what sequence, and on what basis, is not a politically neutral technical determination but a distributive choice with direct implications for the rights of those on whom its burdens fall.⁵ This article takes that observation as its point of departure and subjects the band dichotomy to systematic constitutional and human rights scrutiny.

2. Electricity as a Matter of Fundamental Rights

The formal constitutional text of the 1999 Constitution does not enumerate access to electricity as a Fundamental Right within the Chapter IV framework that protects rights to life,⁶ dignity of the human person,⁷ and equality before the law. This textual omission has been seized upon by government agencies to resist rights-based challenges to electricity policy. It is, however, an insufficient answer for at least three reasons.

First, the right to life guaranteed by section 33(1) of the Constitution has been interpreted by Nigerian courts and the African Commission on Human and Peoples' Rights expansively, to encompass not merely freedom from arbitrary killing but the minimum conditions of dignified biological existence.⁸ Electricity is causally connected to those minimum conditions in ways that are now empirically incontestable. Hospitals without power cannot ventilate patients. Communities without power cannot refrigerate vaccines or insulin. Infants in unventilated homes in the heat of the Nigerian dry season face measurable increases in mortality risk. The causal chain between electricity access and the right to life is not attenuated speculation; it is documented public health reality. Second, the constitutional commitment in section 17(1) of the 1999 Constitution that the state social order shall be founded on the ideals of freedom, equality, and justice,⁹ and in section 17(2)(a) that every citizen shall have equality of rights, obligations, and opportunities before the law,¹⁰ establishes substantive commitments that must inform the interpretation of the Chapter IV rights, including the right to life and the right to dignity. A state social order that delivers electricity to citizens in elite urban corridors at cost-reflective tariffs while denying adequate supply to citizens elsewhere cannot plausibly claim to be founded on the ideals of freedom, equality, and justice. Third, and most directly, the international human rights instruments to which Nigeria is party have progressively expanded the category of socio-economic rights to encompass access to essential services, including energy. Article 25 of the Universal Declaration of Human Rights recognises the right to a standard of living adequate for health and well-being.¹¹ Article

⁴Nigerian Electricity Regulatory Commission, 'Revised Electricity Distribution Service Reflective Cost Order' (NERC Order No NERC/2024/016, 22 April 2024) 3.

⁵A Ogunbameru, 'Tariff Differentiation and Energy Justice in Sub-Saharan Africa' (2022) 14 *Journal of African Law and Development* 45, 48.

⁶Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33(1).

⁷Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(1).

⁸ MJ Omachi 'An appraisal of the right to Life as Guaranteed by the Nigerian Constitution' <CONSUMER PROTECTION AND DEREGULATION OF PETROLEUM DOWNSTREAM OPERATION IN NIGERIA: POLICY AND REGULATORY ISSUES IN CONTENTION> accessed 22 March 2026. See *Jonah Gbenre v. Shell Petroleum Development Corporation & Ors* FHC/B/CS/53/05. See further *Abdel Hadi, Ali Radi & Others v Republic of Sudan* - 368/09.

⁹Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(1).

¹⁰Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(2)(a).

¹¹Universal Declaration of Human Rights, UNGA Res 217A (III) (10 December 1948), arts 7 and 25.

11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to an adequate standard of living.¹² The African Charter, domesticated in Nigeria with the force of an Act of the National Assembly, guarantees the right to the best attainable state of physical and mental health under Article 16 and the right to a general satisfactory environment favourable to development under Article 24.¹³ The UN Committee on Economic, Social and Cultural Rights has held in an evolving body of general comments that access to essential services, including energy is an implicit component of multiple Covenant rights.¹⁴ The cumulative effect of these instruments is to situate electricity access within the human rights framework in a manner that is legally cognisable in Nigerian courts by virtue of the domestication of the African Charter and by virtue of the interpretive principle that the Constitution should be construed in conformity with Nigeria's international obligations.

3. The Architecture of the Band Classification System

A clear understanding of the band classification system is prerequisite to any constitutional assessment of its effects. The EPSR Act empowers NERC to set tariffs in a manner that is cost-reflective, economically efficient, and socially responsible.¹⁵ The Accelerated Stabilisation and Advancement Plan (ASAP), the policy framework endorsed by the Tinubu administration as the foundation for the 2024 reforms, explicitly adopted service-based tariff differentiation as its central mechanism.¹⁶ Under MYTO 2024, NERC designated five service bands. Band A consumers are those receiving a minimum of twenty hours of electricity supply per day; Band B consumers receive a minimum of sixteen hours per day; Band C, twelve hours; Band D, eight hours; Band E, four hours or fewer.¹⁷ The tariff applicable to each band is calculated to reflect the actual cost of providing service at the relevant supply level, with Band A bearing the full cost-reflective rate and lower bands receiving progressively higher implicit subsidies. Nnaji identifies three structural problems with this framework that compound its rights implications.¹⁸ Firstly, the band designation of any given consumer or community is determined by NERC based on assessments conducted by the Discos, who have an evident commercial interest in upward classification. Secondly, the framework assumes a stable supply performance at the designated level that the Discos have historically proved unable to sustain, meaning that consumers are exposed to tariff rates corresponding to service levels they often do not receive in practice. Thirdly, and most critically, the geographic distribution of the bands tracks socioeconomic stratification with an almost grotesque precision: Band A concentrations are overwhelmingly in the commercial districts of Abuja, Victoria Island and Ikoyi in Lagos, Lekki, parts of Port Harcourt, and other areas of established affluence, while Bands D and E are concentrated in rural communities, peri-urban margins, and the historically underserved regions of the North-West and North-East geopolitical zones.

Dada's technical analysis of the band designations reveals that the geographic correlation is not coincidental but is structurally produced by decades of infrastructure investment decisions that channelled grid capacity toward economically productive and politically visible areas at the expense of rural and marginal communities.¹⁹ The band system, in this light, does not merely describe existing

¹²International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 11(1).

¹³African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, arts 3 and 16.

¹⁴United Nations Committee on Economic, Social and Cultural Rights, General Comment No 15: The Right to Water (UN Doc E/C.12/2002/11, 2002) para 2; by analogy, UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Report A/HRC/27/55 (2014) para 69 (extending the amenity-as-right framework to electricity access).

¹⁵Electric Power Sector Reform Act 2005 (Nigeria), ss 62–76.

¹⁶Presidential Action Committee on Electricity, 'Accelerated Stabilisation and Advancement Plan (ASAP)' (Federal Government of Nigeria 2023) 11.

¹⁷Nigerian Electricity Regulatory Commission, 'Multi-Year Tariff Order (MYTO) 2024: Order No NERC/2024/015' (NERC, Abuja, 2024) 7–9.

¹⁸B Nnaji, 'Electricity Sector Privatisation and the Consumer Rights Deficit in Nigeria' (2021) 16 *Nigerian Journal of Energy Law* 1, 6.

¹⁹T Dada, 'The NERC Band Classification System: Technical Rationale and Policy Implications' (2024) 3 *Nigerian Energy Policy Review* 22, 25.

inequality; it formalises, monetises, and entrenches it. It converts a historical pattern of discriminatory infrastructure investment into a permanent regulatory feature of the electricity market. Then it presents that feature as a technically rational tariff mechanism, obscuring its deep roots in political economy. NERC's Order of 22 April 2024 purported to exempt lower-band consumers from the immediate tariff increases, presenting this as a safeguard for the vulnerable.²⁰ Akintunde's household-level welfare analysis demonstrates, however, that this exemption is far less protective in practice than it appears on paper: Band D and Band E consumers still pay tariffs that represent a larger proportion of their household income than the Band A tariff represents for Band A consumers, even at pre-reform rates; and the quality of supply they receive is so degraded as to make their nominal tariff entitlement effectively meaningless, thus paying for electricity that does not reliably flow.²¹ The band system thus produces a double disadvantage for the poor who pay relatively more for absolutely less.

4. Constitutional Equality Analysis

Section 42(1) of the 1999 Constitution prohibits the subjection of any citizen, by reason of their circumstances of birth or the description to which they belong by reason of ethnicity, sex, religion, or political opinion, to disabilities or restrictions to which other citizens of Nigeria of the same description are not made subject. The prohibition is not, on its face, an exhaustive catalogue of prohibited grounds of discrimination; it identifies the most common and historically acute categories. Nigerian courts have interpreted its spirit broadly, consistent with the principle that constitutional provisions protecting fundamental rights are to be given a liberal and purposive construction.

The band dichotomy does not discriminate on grounds of ethnicity, sex, religion, or political opinion in any direct and explicit sense. Its discriminatory operation is structural and geographic. It disadvantages citizens who reside in communities that have historically received inferior infrastructure investment, communities that, as the data demonstrate, are disproportionately rural, disproportionately in the northern geopolitical zones, and disproportionately composed of the poorest quintiles of the Nigerian population. Eze argues that geographic discrimination of this kind is discrimination that falls along lines of residence and socioeconomic status, and they fall within the ambit of section 42's prohibition because it produces equivalent disabilities to the enumerated forms of discrimination. Because a narrow, textually literalist reading of the provision would allow the government to circumvent its equality obligations by using proxies such as geography or infrastructure classification in place of the explicitly prohibited categories.²²

Section 42(1) must be read in conjunction with the equality provisions of the African Charter as domesticated in Nigeria.²³ The Supreme Court has affirmed on multiple occasions that the African Charter, as a treaty with the force of an Act of the National Assembly, is justiciable in Nigerian courts and prevails over inconsistent municipal legislation.²⁴ Article 3 of the Charter guarantees every individual equality before the law. It does not limit this guarantee to the enumerated categories of discrimination set out in section 42 of the Constitution. Its scope is broader, and the African Commission has interpreted it to encompass any form of differential treatment that is not objectively and reasonably justified by a legitimate aim pursued through proportionate means.

The proportionality analysis is critical. The government's legitimate aim, which is the fiscal sustainability of the electricity sector, is not in dispute. The question is whether the band dichotomy

²⁰Nigerian Electricity Regulatory Commission, 'Revised Electricity Distribution Service Reflective Cost Order' (NERC Order No NERC/2024/016, 22 April 2024) 11.

²¹R Akintunde, 'Energy Poverty and Household Welfare in Nigeria: A Post-Subsidy Analysis' (2024) 19 *African Development Review* 88, 93.

²²E Eze, 'Constitutional Implications of Differential Public Utility Pricing in Nigeria' (2023) 21 *University of Nigeria Journal of Public Law* 77, 82.

²³African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, art 3.

²⁴T Fawehinmi v Nigerian Bar Association (No 2) [1989] 2 NWLR (Pt 105) 558 (SC) 599; *Abacha v Fawehinmi* [2000] 6 NWLR (Pt 660) 228 (SC) 290.

represents a proportionate means of achieving that aim. Nweze's comparative analysis of tariff reform mechanisms in other jurisdictions demonstrates that cost-reflective pricing reform can be implemented through universal tariff adjustment combined with targeted cash transfer or subsidy programmes for vulnerable consumers, without producing the structural geographic stratification that the band system entrenches.²⁵ The choice of the band mechanism, rather than a universal adjustment mechanism, reflects a policy preference rather than a technical necessity, and it is a preference whose distributional consequences fall with particular severity on citizens whose equality rights are guaranteed by both domestic and international law. A policy choice that is not technically compelled and that produces constitutionally prohibited distributional consequences fails the proportionality test under the African Charter equality framework and under the evolving doctrine of proportionality that the Supreme Court has cautiously incorporated into its constitutional jurisprudence.

5. The Non-Justiciability Problem and Its Resolution

The most formidable doctrinal obstacle to a rights-based challenge to the band system is the non-justiciability of Chapter II of the 1999 Constitution. The state's obligations to provide adequate public utilities, to secure the basic material welfare of citizens, and to promote economic equality are located in Chapter II as Directive Principles of State Policy. These provisions are not, by express constitutional design, enforceable in any court of law or tribunal.²⁶ Okafor has persuasively critiqued this non-justiciability as a deliberate constitutional design choice that privileges fiscal conservatism over social justice, reflecting the ideological preferences of the military administrations under whose stewardship successive constitutional frameworks were produced.²⁷ The non-justiciability of Chapter II does not, however, extinguish the rights-based case against the band dichotomy. Three lines of argument preserve the constitutional challenge.

The first is the African Charter route. The ECOWAS Community Court of Justice held in *SERAP v Nigeria* that the African Charter's socio-economic rights provisions are directly enforceable against the Nigerian government and that the Charter's equality norms apply to the distribution of public services.²⁸ Nigerian courts have treated the Charter as an independently actionable instrument whose provisions supplement rather than merely duplicate the constitutional framework, and have enforced Charter rights in cases where the equivalent constitutional provision was located in Chapter II.²⁹ The band dichotomy's violation of African Charter articles 3, 16, and 22 is therefore justiciable in Nigerian courts regardless of the non-justiciability of the corresponding Chapter II provisions.

The second is the interpretive route. Sagay has argued, and subsequent judicial decisions have partially confirmed, that the Directive Principles of Chapter II function as interpretive guides to the construction of the Chapter IV rights, such that the content of the right to life, the right to dignity, and the right to equality must be informed by the substantive commitments of Chapter II.³⁰ On this view, the right to life guaranteed by section 33 cannot be read as a purely negative right to freedom from killing; it must encompass the minimum material conditions, including reliable access to electricity, without which the constitutional guarantee of life is merely formal.

The third is the discrimination route. Even if the substantive provision of electricity is treated as a Chapter II matter beyond judicial enforcement, the manner in which a government chooses to distribute

²⁵C Nweze, 'The Doctrine of Equality Before the Law in Nigerian Constitutional Jurisprudence' (2014) 6 *Nigerian Juridical Review* 19, 27.

²⁶Fundamental Rights (Enforcement Procedure) Rules 2009 (Nigeria), Order II, r 1.

²⁷O Okafor, 'Socio-Economic Rights and the Nigerian Constitutional Order: From Non-Justiciability to Incremental Enforcement' (2018) 10 *Benue Journal of Private Law* 1, 9.

²⁸Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria (ECW/CCJ/JUD/07/10) [2010] ECOWAS Community Court of Justice (ECOWAS CCJ) 1, 22.

²⁹*SERAP v Nigeria* (ECW/CCJ/JUD/07/10) [2010] ECOWAS CCJ 22; see also F Viljoen, *International Human Rights Law in Africa* (2nd edn, Oxford University Press 2012) 371.

³⁰I Sagay, 'Human Rights, Directive Principles and the Constitution of Nigeria' (2004) 1 *Abia State University Law Journal* 1, 12.

any service or benefit it does provide is subject to Chapter IV's equality constraint. Once the state undertakes to supply electricity to citizens, as it has done through the EPSR Act framework, it must do so in a manner that does not discriminate unconstitutionally among citizens. The band system, by structuring service delivery in ways that formalise geographic and socioeconomic inequality, crosses from the permissibly non-justiciable terrain of resource allocation into the impermissibly discriminatory terrain of unequal treatment of citizens, which Chapter IV directly and justiciably prohibits.

6. Geographic Discrimination and Regional Inequality

NERC's band classification data reveals a geographic distribution that cannot be disentangled from Nigeria's regional political economy. Band A designations are concentrated in the Federal Capital Territory, in the commercial and residential areas of the South-West geopolitical zone, and in the Delta and Rivers State capitals.³¹ Bands D and E are disproportionately distributed across the North-West, North-East, and parts of the North-Central zones, as well as across the rural hinterlands of states whose urban centres enjoy Band A or Band B status. Nwoye identifies this distribution as the direct consequence of infrastructure investment patterns that followed the economic geography of the colonial and post-colonial Nigerian state, directing grid capacity toward extractive industries and elite residential areas rather than toward population distribution.³²

The National Bureau of Statistics' 2022 poverty data establish that the regions with the highest concentration of Band D and Band E consumers are also the regions with the highest poverty rates, the lowest per capita incomes, and the greatest dependence on electricity-intensive economic activities such as small-scale manufacturing, cottage industry, and agro-processing.³³ The World Bank's access assessment for the Nigerian Electricity Access Project found that communities in the lowest supply bands bore a disproportionate burden of energy poverty, spending higher proportions of household income on alternative sources such as generators and kerosene while simultaneously subsidising through cross-tariff mechanisms the infrastructure that serves higher-band communities.³⁴

Akintunde's welfare analysis provides the dispositive data point, that households in Band D and E areas that operate generators to supplement their nominally subsidised grid supply spend on average between N60,000 and N120,000 per month on fuel costs, an amount that exceeds the all-in electricity cost of a Band A household consuming equivalent units of electricity from the grid.³⁵ The band system's ostensible protection of low-band consumers through lower official tariffs is therefore largely illusory. The real cost of electricity to Band D and E households, accounting for self-generation, is substantially higher than the cost to Band A households, inverting the distributional logic that cost-reflective reform is supposed to serve.

Aina argues that this regional and socioeconomic dimension of the band system constitutes discrimination that, while not explicitly targeting ethnicity or religion, produces effects that are functionally equivalent to ethnic or religious discrimination, given the demographic composition of the most disadvantaged regions.³⁶ This argument draws on the equality jurisprudence of the South African Constitutional Court, which has recognised that formally neutral policies producing racially or ethnically disparate impacts may constitute indirect discrimination requiring constitutional

³¹Nigerian Electricity Regulatory Commission, 'Revised Electricity Distribution Service Reflective Cost Order' (NERC Order No NERC/2024/016, 22 April 2024) 6.

³²A Nwoye, 'Structural Inequality in Nigerian Utility Regulation' (2023) 18 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 55, 61.

³³National Bureau of Statistics, *2022 Poverty and Inequality in Nigeria Report* (NBS, Abuja, 2023) 14.

³⁴World Bank, 'Nigeria Electricity Access Project: Environmental and Social Framework Assessment' (World Bank Report No PAD5382, 2023) 22.

³⁵R Akintunde, 'Energy Poverty and Household Welfare in Nigeria: A Post-Subsidy Analysis' (2024) 19 *African Development Review* 88, 97.

³⁶K Aina, 'Public Utility Regulation and Distributive Justice in Nigeria' (2023) 8 *Bowen University Law Review* 33, 40.

justification.³⁷ Transplanted into the Nigerian context, it supports the conclusion that the band dichotomy must satisfy a justification standard analogous to the proportionality requirements of the African Charter, regardless of the absence of explicit discriminatory intent.

7. The Right to Human Dignity and Socio-Economic Consequences

Section 34(1) of the 1999 Constitution guarantees every individual the right to the dignity of the human person. Okonkwo has argued that this right, properly construed in light of the state's social order obligations under section 17 of the 1999 Constitution, and the African Charter framework, encompasses protection against state-sanctioned conditions of material degradation, including the systematic denial of access to the essential infrastructure of modern life.³⁸ The band system produces a category of citizen - the Band D or Band E consumer, who is formally within the electricity distribution network but is practically excluded from reliable electricity supply, who pays tariffs without receiving commensurate service, and whose aspirations for economic development, health security, and educational advancement are systematically frustrated by the degraded state of the infrastructure serving their community.

Section 42(2) of the 1999 Constitution provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.³⁹ The circumstances of birth in the Nigerian context are not merely a matter of biology: they are substantially a matter of geography. A child born in a community that has been designated Band E inherits an electricity infrastructure deficit that is not of their making, that they have no individual power to remedy, and that the band system now formalises as a permanent feature of their regulatory environment. Dike argues that this intergenerational dimension of the band dichotomy, the way in which the system crystallises historical disadvantage into prospective regulatory architecture, brings it squarely within the prohibition in section 42(2), because the disability imposed is materially a consequence of the circumstances of birth, even if it is immediately expressed in terms of geographic location.⁴⁰

The Supreme Court held in *Uzoukwu v Ezeonu II* that the right to dignity requires a legal system that treats every person as an end in themselves and not merely as an instrument of governmental or economic policy.⁴¹ A tariff regime that treats Band D and B and E consumers as the residual bearers of a dysfunctional system's fiscal consequences, paying for infrastructure that is not delivered and receiving reduced service without commensurate tariff relief, cannot be reconciled with the constitutional requirement that every Nigerian be treated with equal dignity.

8. The Cost-Reflective Pricing Argument Assessed

The government's most sophisticated defence of the band system rests on the economics of cost-reflective pricing. NERC's 2024 orders characterise the band tariff structure as a technically necessary response to the tariff shortfall that has crippled sector investment, and as a transitional measure pending the improvement of supply to lower-band communities that increased investment will ultimately deliver.⁴² The EPSR Act itself requires NERC to set tariffs in a manner that allows licensees to recover the full costs of efficient service provision.⁴³ On this reading, the band system is not a policy choice but a regulatory imperative and the technically correct response to the economics of an underfunded sector. Garba subjects this argument to doctrinal and empirical critique. Doctrinally, the EPSR Act's cost-recovery mandate does not require or compel a geographically stratified band mechanism. It requires

³⁷ N Ramalekanaa and L Mokgoroane 'Intersectionality in the South African Constitution's Equality Clause' (2024) *South African Journal on Human Rights* Vol. 40, Nos. 3–4, 199–225.

³⁸P Okonkwo, 'Electricity as a Constitutional Right: Rethinking the Boundaries of Chapter IV' (2024) 26 *University of Lagos Law Review* 101, 109.

³⁹Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42(2).

⁴⁰C Dike, 'Discrimination, Public Services and the Nigerian Constitution' (2021) 13 *Unizik Law Journal* 1, 8.

⁴¹*Uzoukwu v Ezeonu II* [1991] 6 NWLR (Pt 200) 708 (CA) 745.

⁴²Nigerian Electricity Regulatory Commission, 'Multi-Year Tariff Order (MYTO) 2024: Order No NERC/2024/015' (NERC, Abuja, 2024) 18.

⁴³Electric Power Sector Reform Act 2005 (Nigeria), s 76(3)(a).

cost-reflective tariffs in the aggregate but leaves the distributional architecture to NERC's regulatory discretion.⁴⁴ The band mechanism is one possible exercise of that discretion; it is not the only, and arguably not the most rights-consistent, exercise available. Empirically, the argument that investment will flow to lower-band communities once the sector is financially stabilised depends on a theory of market-driven infrastructure extension that the Nigerian electricity sector's history gives little reason to accept. The sector was privatised in 2013 on precisely this theory; a decade later, the supply situation in low-band communities has deteriorated rather than improved, and there is no structural mechanism in the band framework that compels Discos to direct revenues from Band A tariffs toward infrastructure investment in Band D and Band E areas.

The Manufacturers Association of Nigeria's June 2024 impact assessment documents a further dimension of the cost-reflective pricing argument's internal inconsistency. Industrial consumers classified in Band A, who bear the full cost-reflective tariff, have responded by accelerating their transition to off-grid solar generation, reducing their offtake from the grid and thereby undermining the revenue base that the Band A tariff was designed to generate.⁴⁵ The result is that the fiscal rationale for the band system is being eroded by the behavioural responses it produces, while its equality costs, borne by B and D and B and E consumers who lack the capital to exit the grid, remain intact. Aguda observes that a regulatory mechanism whose fiscal logic is being steadily neutralised by the exit of those it was designed to monetise, while its distributional burdens remain locked in on those least able to exit, cannot be defended as technically sound, let alone as constitutionally proportionate.⁴⁶

9. Comparative Perspectives and International Standards

The Nigerian band dichotomy does not exist in a comparative vacuum. Several African jurisdictions have grappled with the tension between electricity sector financial sustainability and the equality rights of consumers, and their experiences offer instructive lessons for the Nigerian situation. South Africa's post-apartheid electricity policy, administered through Eskom and the National Energy Regulator of South Africa (NERSA), adopted a free basic electricity (FBE) entitlement mechanism under which all households receive a monthly quantum of electricity at no charge, with cost-reflective tariffs applying only above a basic consumption threshold.⁴⁷ This mechanism preserves the fiscal logic of cost recovery at the margin, while insulating the most essential consumption from price exposure entirely. The adoption of the FBE mechanism as a model in the Nigerian context would be constitutionally superior to the band system because it distributes the entitlement to subsidised electricity universally, based on the threshold of essential consumption rather than based on geographic band classification.

Kenya's 2021 electricity subsidy reforms similarly adopted a universal lifeline tariff applicable to all consumers below a defined consumption threshold, with higher tariff bands applying progressively to consumption above that threshold.⁴⁸ The Kenyan model avoids geographic stratification and distributes its subsidy based on actual consumption behaviour rather than on the basis of predetermined infrastructure classifications.⁴⁹ It is more progressive in its incidence, directing subsidy to low-consuming households regardless of their location, and more consistent with equality norms because it treats all citizens identically under the tariff structure, allowing their actual consumption patterns to determine the subsidy they receive.

⁴⁴B Garba, 'Cost-Reflective Tariffs and the Right to Affordable Energy in Nigeria' (2024) 17 *Nile University Journal of Law* 77, 84.

⁴⁵Manufacturers Association of Nigeria, *Impact Assessment of Electricity Tariff Increases on Industrial Output* (MAN Research Department, Lagos, June 2024) 19.

⁴⁶O Aguda, 'Electricity Regulation and Consumer Protection: The Gap in Nigerian Law' (2023) 11 *Lagos State University Law Journal* 55, 63.

⁴⁷ A Dobbins, 'Implementation and delivery of Free Basic Electricity in the face of the restructuring of the electricity distribution industry', MSC Theses, University of Cape Town, 2006.

⁴⁸ Grace Njeru & John Gathiaka & Peter Kimuyu, 'Explaining Electricity Tariffs in Kenya,' *International Journal of Business, Economics and Management*, 2021, vol. 8(2), pages 119-133

⁴⁹ *Ibid.*

The Nigerian band system is an outlier among comparable African jurisdictions in the degree to which it embeds geographic stratification as a permanent structural feature of its tariff architecture.⁵⁰ This outlier status reflects a regulatory design choice that prioritises the fiscal convenience of the Discos over the equality rights of consumers.⁵¹

10. Toward a Rights-Consistent Electricity Tariff Framework

The analysis in the preceding sections compels the conclusion that the band dichotomy, as presently constituted, is inconsistent with Nigeria's constitutional equality obligations and with the domesticated norms of the African Charter. A rights-consistent reform agenda must satisfy three criteria: it must achieve the fiscal sustainability objectives that motivated the 2024 tariff reforms; it must distribute the burdens of cost-reflective pricing in a manner that is consistent with the constitutional principle of equality and with the African Charter's non-discrimination requirements; and it must include enforceable mechanisms for the progressive improvement of supply to communities currently in the lowest bands, so that the formal commitment to service improvement becomes an operational reality rather than an indefinite aspiration.

Ibekwe proposes a four-element reform framework. The first element is a universal transition to cost-reflective tariffs applicable to all consumers above a defined basic consumption threshold, eliminating the geographic band classification as a determinant of tariff rate and replacing it with a consumption-threshold mechanism that operates neutrally across all geographic areas and demographic categories.⁵² The second element is a universal free basic electricity entitlement calibrated to the average essential consumption of a low-income Nigerian household, financed through a combination of general budget appropriation and an industry levy on commercial and industrial consumers. The third element is a supply performance obligation, legally binding on Discos, requiring the progressive improvement of supply hours in all service areas to a minimum of sixteen hours per day within a defined regulatory period, with financial penalties for non-compliance and provisions for consumer redress. The fourth element is an independent consumer rights mechanism, housed within or alongside NERC, with jurisdiction to receive and adjudicate complaints about band misclassification, tariff overcharging, and supply underperformance, and with power to award compensation to aggrieved consumers.

Orji adds a constitutional entrenchment argument: that the right to basic electricity access should be recognised by the courts, through the interpretive route discussed in section 5 above, as a component of the constitutional rights to life and dignity, thereby placing it beyond the reach of ordinary legislative or regulatory reversal and creating a justiciable floor below which no tariff regime may lawfully push access.⁵³ This is an ambitious but not unprecedented doctrinal development. The South African Constitutional Court's recognition of socio-economic rights as justiciable provides a template that the Nigerian courts have the constitutional and jurisdictional tools to follow, should they choose to do so in an appropriate case.

11. Conclusion

The electricity band dichotomy introduced by the Tinubu administration through NERC's 2024 tariff orders is not, on its face, framed in the language of discrimination. It presents itself as a technical regulatory mechanism for the rational organisation of a distressed sector, calibrated to economic realities rather than to any distributional agenda. This article has argued that beneath this technical surface lies a structure of profound inequality that is constitutionally problematic and human rights-compromising in its design, its effects, and its likely trajectory. Nwosu's framework of energy justice, applied to the Nigerian context, captures the essential indictment. A state that organises the distribution

⁵⁰ D Tolu-Kolawole "NLC slams DisCos for classifying consumers into bands, threatens strike" <NLC Slams DisCos, Threatens Strike Over Power Crisis> accessed 24 March 2026.

⁵¹ *Ibid.*

⁵² D Ibekwe, 'The Human Rights Case Against Discriminatory Energy Tariff Regimes in Africa' (2024) 24 *University of Lagos Law Review* 88, 99.

⁵³ F Orji, 'Whither Electricity Subsidy Reform in Nigeria: A Rights-Based Appraisal' (2024) 11 *Afe Babalola University Journal of Sustainable Development Law and Policy* 44, 56.

of an essential public utility in ways that systematically advantage the wealthy and the geographically privileged over the poor and the marginalised is not merely making a debatable economic choice, it is failing its constitutional obligation to every citizen that the social order be founded on the ideals of freedom, equality, and justice.⁵⁴ The band system, by formalising historical infrastructure inequality as a permanent feature of the regulatory landscape, converting the accidents of geography into legally entrenched tariff disadvantage, and insulating its most burdensome effects on those least equipped to bear them, represents precisely the kind of state action that sections 17 and 42 of the 1999 Constitution and articles 3, 16, and 22 of the African Charter were designed to prohibit.

The remedy is not the abandonment of electricity sector reform or the indefinite maintenance of fiscally ruinous subsidies. It is the redesign of the tariff framework on principles of universal entitlement, consumption-threshold-based cost recovery, and enforceable supply improvement obligations. It should be a framework that pursues fiscal sustainability through means that are compatible with constitutional equality rather than through means that compromise it. The legal instruments for such reform are already available - the EPSR Act's framework, the courts' power to develop constitutional rights interpretively, and the African Charter's directly enforceable equality norms all provide the tools necessary for a transition from the current discriminatory architecture to one consistent with Nigeria's deepest constitutional commitments.

The Nigerian state cannot claim to be committed to the rule of law if its regulatory agencies are permitted to implement tariff structures that depart from the constitutional principle that every citizen, regardless of the community into which they were born or the band into which a regulator has placed them, is equal before and under the law.⁵⁵ The African Charter reinforces this conclusion. Articles 3, 16, and 22 collectively require that the benefits and burdens of public services be distributed based on need and principle, not on the basis of historical accident and geographic fortune.⁵⁶ The reform of the band dichotomy is, in the final analysis, not a technical project for economists and engineers alone. It is a constitutional obligation that falls upon the Nigerian state, and a justice imperative that falls upon all who bear responsibility for its fulfilment.

⁵⁴E I Nwosu, 'Energy Justice, Regulatory Fairness and the Nigerian Constitutional Order' (2024) 20 *University of Nigeria Journal of Private and Property Law* 66, 74.

⁵⁵Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 17(1), 17(2)(a), 42(1).

⁵⁶African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004, arts 3, 16, 22.