

THE NIGERIAN JURIDICAL REVIEW

Vol. 13

(2015)

Articles

Pages

Terrorism, Armed Conflict and the Nigerian Child: Legal Framework
for Child Rights Enforcement in Nigeria

~ *Damilola S. Olawuyi*

1

Clearing the Hurdles: A Therapeutic Examination of the Challenges to
the Protection and Enforcement of Economic, Social and Cultural Rights

~ *Damian U. Ajah & Ijeamaka Nnaji*

25

Inequitable Trade Rules in World Trade Organisation (WTO):
Impact on Developing Countries

~ *Emeka Adibe & Obinne Obiefuna*

57

Public Participation in Environmental Impact Assessment in Nigeria:
Prospects and Problems

~ *Hakeem Ijaiya*

83

Rethinking the Basis of Corporate Criminal Liability in Nigeria

~ *Calistus N. Iyidiobi*

103

Elevating Consumer Rights to Human Rights

~ *Festus O. Ukwueze*

131

When a Trademark Becomes a Victim of Its Own Success:
The Irony of the Concept of Genericide

~ *Nkem Itanyi*

157

Environmental Constitutionalism in Nigeria:
Are We There Yet?

~ *Theodore Okonkwo*

175

Requirements of Due Diligence on Capacity of Nigerian Government
Officials/Organs/Agents to Contract - *Godwin Azubuike v. Government
Of Enugu State* in Focus

~ *Rev. Fr. Prof. E.O. Ezike*

217



**FACULTY OF LAW
UNIVERSITY OF NIGERIA, ENUGU CAMPUS**

EDITORIAL BOARD

General Editor

Dr. Edith O. Nwosu, LL.B., LL.M., Ph.D., B.L

Assistant Editor

Dr. Chukwunweike A. Ogbuabor, LL.B., LL.M., Ph.D., B.L

Statute and Case Note Editor

Professor Ifeoma P. Enemo, LL.B., LL.M., Ph.D., B.L

Book Review Editor

John F. Olorunfemi, LL.B., LL.M., B.L

Distribution Coordinator

Damian U. Ajah, LL.B., LL.M., B.L

EDITORIAL ADVISORY BOARD

Professor Boniface O. Okere,
Docteur d'Université de Paris
Professor, Faculty of Law
University of Nigeria

Professor Obiora Chinedu Okafor
LL.B (Nig), LL.M, (Nig) LL.M,
(Canada), Ph.D (Vancouver),
Professor, Osgoode Hall Law
School Canada, Chairperson, UN
Human Rights Council Advisory
Committee; General Editor, The
Transnational Human Rights
Review

Professor Chukwunonso Okafo
LL.B (Nig), LL.M, Ph.D
Professor of Law, University of
Nigeria.

Professor G. Chukwuemeka Nnona
LL.B (Ife), LL.M (Lagos) LL.M
(Harvard) Ph.D (Harvard)
Professor of Law, University of
Nigeria

Professor Ikechi Mgbeoji
LL.B (Nig), LL.M, JSD
Professor of Law,
Osgoode Hall Law School

Dr. Damilola S.Olawuyi
LL.M (Calgary), LL.M (Harvard),
Ph.D (Oxford), Director, Institute
for Oil, Gas, Energy,
Environmental and Toronto,
Canada Sustainable Development,
Afe Babalola University, Ado-
Ekiti, Nigeria

Professor Anthony O. Nwafor
LL.B (Jos), LL.M (Nig), Ph.D (Jos)
Professor of Law, University of
Venda South Africa

Hon. Justice Centus Chima Nweze
LL.B (Hons), LL.M., Ph.D (Nig.) B.L.
Justice of the Supreme Court of
Abuja, Nigeria.

Professor Obi Aginam
LL.B (Hons.), LL.M., Ph.D., B.L.
Senior Research Fellow & Head
Governance for Global Health
United Nations University-
International Visiting Professor,
IR3S University of Tokyo;
Adjunct Research Professor
of Law, Carleton University,
Ottawa, Canada

Professor Dakas C. J. Dakas, SAN
LL.B (Jos), LL.M., Ph.D
Professor of Law,
University of Jos, Nigeria.
Ben Nwabueze Distinguished
Professor of Law, Nigerian
Institute of Advanced Legal
Studies, Abuja, Nigeria

NIGERIAN JURIDICAL REVIEW

VOLUME 13 (2015)

To be cited as: **(2015) 13 Nig. J. R.**

ISSN: 0189 - 4315

© Faculty of Law, University of Nigeria, Enugu Campus

CONTRIBUTIONS

The Journal welcomes articles in any area or related subjects for publishing considerations. Articles and correspondence should be forwarded to:

The General Editor,
Nigerian Juridical Review, Faculty of Law,
University of Nigeria, Enugu Campus, Enugu, Nigeria.
nigeriajuridical@unn.edu.ng, nigeriajuridical@yahoo.com

PUBLISHED BY

Faculty of Law, University of Nigeria,
Enugu Campus

PRINTED BY:

Sylva Prints, Enugu & Abuja
+234-08063978826; +234-08181610325
onyekasyivanus@yahoo.com; sylvanusonyekachi@gmail.com

ELEVATING CONSUMER RIGHTS TO HUMAN RIGHTS*

Abstract

In the spirit of the United Nations Guidelines on Consumer Protection (UNGCP), consumer rights are enshrined in the constitutions of some countries while many other countries have legislation which create fundamental consumer rights. Yet in academic circles, opinions are divided on the appropriateness of elevating consumer rights to the level of human rights. Views against elevating consumer rights to human rights are similar to those that question the appropriateness of the economic, social and cultural rights contained the International Covenant on Economic, Social and Cultural Rights (ICESCR) as human rights. In the light of the complexities of products and services brought about by advancement in technology, globalisation and increasing roles of multinational corporations in trade, it is strongly argued in this paper that there is need to elevate of consumer rights to human rights, nationally and internationally.

Keywords: *Consumer Protection, Consumer Law, Consumer Rights, Human Rights*

1. Introduction

Consumer protection, like human rights, has become a useful instrument for the protection of the weak and vulnerable groups in the society. Consequently, the concept consumer rights have become increasingly prevalent both in national and international circles. The protection of the individual consumer can be perceived not only as part of the protection of human life but also as maintaining human dignity – especially against big businesses, monopolies, cartels and multinational corporations. Some, therefore, argue that there is need to acknowledge consumer rights as human rights,¹ while others, for various reasons, oppose the idea of elevating consumer rights to

* **F. O. Ukwueze, LL.M, BL. (Nig.)**, Lecturer, Faculty of Law, University of Nigeria, Enugu Campus, Enugu State, Nigeria. E-mail: festus.ukwueze@unn.edu.ng; website: <http://www.unn.edu.ng>.

¹ See generally, S. Deutch, "Are Consumer Rights Human Rights?" *Osgoode Hall Law Journal*, Vol. 32, No. 3, (1995) 537 – 578 and I. Benöhr and H. W. Miclitz, "Consumer Protection and Human Rights" in G. Howells, *et al* (eds.) *Handbook of Research on International Consumer Law* (Gloucester: Edward Elgar Publishing Ltd., 2010) pp. 18 – 46.

human rights.² This article is a modest contribution to the debate whether consumer rights are human rights, or whether consumer rights can be elevated to human rights.

2. Clarification of Relevant Concepts

2.1 Human Right

There is no unanimity as to the precise meaning and scope of the term “human rights”.³ Human rights have been defined as “demands or claims which individuals or groups make on society some of which are protected by law and have become part of *ex lata* while others remain aspirations to be attained in future.”⁴ It is something that pertains to all men at all times of which no one may be deprived without a great affront to justice.⁵ Human rights are therefore, claims by individuals and groups against the community or the state which are recognised as essential to human nature or personality.

Human rights derive from moral and natural rights. They are the moral principles that set out certain standards of human behaviour, and are regularly protected as legal rights in national and international law, as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being.⁶ Human rights derive from that intrinsic logic of the dignity of human person and are directed towards providing a minimum standard of decent living worthy of man as a human being. They represent the very fundamental demands or claims which

² See for example, P. Alston, “Conjuring up new Human Rights: A Proposal for Quality Control” *American Journal of International Law*, Vol. 78 (1978) p. 609; P. Alston & H. J. Steiner, *International Human Rights in Context: Law, Politics, Morals: Text and Materials* 2nd ed. (Oxford: Oxford University Press, 2000).

³ The concept of “right” itself is not free from controversy. A legal right has been summed up as “a well founded claim which has been recognized by a legal system and which has become enforceable by the power of the state.” See C. A. Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, 2nd *Idigbe Memorial Lectures* (Lagos: Nigerian Law Publications Ltd., 1988) p. 38.

⁴ O. C. Eze, *Human Rights in Africa: Some Selected Problems* (Lagos: Nigerian Institute of International Affairs with Macmillan Publishers, 1984) pp. 5 – 6.

⁵ H. O. Agarwal, *International Law and Human Rights* (Allahabad: Central Law Publishing, 2010) p. 731.

⁶ M. Sepúlveda, *et al*, *Human Rights Reference Handbook*, 3rd Rev. ed. (Cuidad Colon, Costa Rica: University of Peace, 2004) p. 3.

individuals or groups make on themselves, their society and government which differ from appeals to benevolence and charity.

In recognition of the importance of human rights, the UN has put in place a number of international standards to secure such rights. Notable among these are the Universal Declaration of Human Rights (UDHR), 1948⁷; the International Covenant on Civil and Political Rights (ICCPR),⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁹ both of 1966. A number of regional instruments have also been put in place to foster human rights. Prominent among these are the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; the American Convention of Human Rights, 1970 and the African Charter of Human and Peoples Right, 1981 (ACHPR). Human rights can be classified into personal rights, political and moral rights, procedural rights, proprietary rights and equality rights. Personal rights include the rights to life, to dignity of human person, personal liberty and freedom of movement. Political and moral rights include the rights to freedom of expression, conscience and religion. Proprietary rights include rights to property and privacy. Procedural or due process rights include the rights to fair hearing and to have one's cause heard. Equality rights include the right to freedom from discrimination.¹⁰ Human rights have also been classified according to the period they emerged or were recognised (also referred to as generations). The first generation rights - the civil and political rights are aimed at securing the liberty of the individual from the arbitrary actions of the state. Political and civil rights are usually couched negatively requiring states to avoid their breach.¹¹

The second generation rights correspond to the economic, social and cultural rights which emerged with the Russian revolution and

⁷ UNGA Res 217 A(III) (adopted 10 December 1948).

⁸ GA res. 2200A (XXI) 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967) (adopted 16 December 1966, entered into force 3 January 1976).

⁹ GA res. 2200A (XXI), 993 UNTS 3 / [1976] ATS 5 / 6 ILM 360 (1967) (adopted 16 December 1966, entered into force 23 March 1976).

¹⁰ C. M. Peter, *Human Rights in Africa - A Comparative Study of the African Human and Peoples' Rights Charter and the New Tanzanian Bill of Rights* (New York: Greenwood Press: 1990) p. 53.

¹¹ See arts. 3 - 21, UDHR and generally the ICCPR.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

echoed in the welfare concepts which developed in the West as a response to the abuses of capitalism which tolerated exploitation of the working classes and colonial peoples.¹² These rights entail positive obligations on state to provide necessary conditions for living. Without these rights enjoyment of civil and political rights would be onerous.

The third generation rights consist of rights “that have not been recognized as international human rights but have nevertheless been approved by various organizations of the United Nations.”¹³ They include the right to development; right to share in the common heritage of mankind; right to international peace and security and environmental rights.¹⁴

2.2 Consumer Rights

A review of the literature on the subject of consumer protection reveals that the term “consumer” is not free from conceptual controversy as there seems to be no consensus among writers and legal draftsmen on the precise meaning of the term. The term has been defined in a variety of ways depending on one’s orientation and the purpose for which the definition is being rendered. Major issues often found in most definitions of term include:

- (a) whether there should be a contractual relationship between the consumer and the seller or supplier;
- (b) whether the term should relate to the consumption of goods only to the exclusion of services;
- (c) whether the term should be restricted to individuals only or should include non-natural (juristic) persons such as partnerships and incorporated bodies, and
- (d) whether the term should be restricted to persons only or should include things such as animals and inanimate objects.

To fully grasp the legal meaning of the term consumer one has to consider all the relevant laws. Any definition that seeks to restrict the term to contracting parties would be considered inadequate. Similarly, any definition that restricts the meaning of consumer to the buyer, hirer or user of goods thereby excluding the consumer of

¹² This class of rights is contained in arts. 22 - 28 of the UDHR and the ICESCR.

¹³ Benöhr and Miclitz, above note 1, p. 20.

¹⁴ For example art. 28, UDHR; art. 12, ICESCR and art. 23 - 24, ACHPR.

services, or which totally excludes non-natural persons from the meaning of the term will not be generally acceptable. Preferred are definitions that cover both goods and services and are not confined to purchasers but extend to ultimate users and any person who legitimately comes into contact with a product or service. The word consumer is generic and broad, encompassing different categories of persons. The hirer, the buyer, the patient seeking medical services, the client seeking legal or other professional services, as well as the hotel guest, the commuter, the bank customer, and all end users of goods and services qualify as consumers. A consumer is a person or group of persons (other than incorporated bodies) to whom goods or services are supplied or sought to be supplied for use not for resale, by another person in the course of a business carried on by that other person, or any person who uses or is affected by the use of a product or service.

The goal of the law of consumer protection is the prevention of harm or injury to the consumer and the provision of redress for an individual purchaser, user or disposer of any product or service. Statutes creating offences or providing for administrative control in favour of consumers have accident prevention or deterrent policies underlying them. Consumer protection law is an amalgam of private law and public law as well as statute law and case law. It combines civil remedies, criminal sanctions and administrative regulation in the quest to effectively protect the consumer from the exploitation of the producer.¹⁵

The genesis of consumer protection law has often been narrowly and restrictively traced to the American consumer movements of early 1960s and President John Kennedy's speech¹⁶ on 15 March 1962 outlining four basic consumer rights.¹⁷ While acknowledging that these two factors contributed immensely to the articulation of modern consumer rights and consumer protection law, to attribute to them the genesis of consumer protection law would be a short-sighted denial of history. For centuries and in diverse cultures, it has been thought expedient to protect by means of law the consumer of

¹⁵ Deutch, above note 1, p. 542.

¹⁶ J. Kennedy, *Special Message to the Congress on Protecting the Consumer Interest*, 15 March, 1962, available online at <http://www.ifklibrary.org/Asset-Viewer/Archives/IFKPOF-037-028.aspx>, last visited on 18 June 2014.

¹⁷ See for example, Benöhr and Miclitz, above note 1, p. 19.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

goods and services against fraudulent or dangerous practices of the producer. There are traces of consumer protection principles in both the Judaeo-Christian Mosaic law as recorded in the Bible¹⁸ and Islamic law.¹⁹

On the level of human posited law, the Hammurabi Code Laws²⁰ contained provisions that protected consumers. In England, the

¹⁸ The Bible contains a number of principles of consumer protection. The first is the principle of responsibility: God holds us accountable for our actions and our negligence. Thus, individuals are liable for injuries resulting to others caused by them; See *The Holy Bible*, Ex. 22. The second is the principle of justice and restitution. Anyone who has done wrong to another person or his property must recompense his wrong. Cheating in trade was not permitted and God admonished the Israelites not to cheat in weights and measurements. The Biblical 'neighbour principle' (Lev. 19: 18; Lk. 10: 27) formed the basis for the decision in the landmark case of *Donoghue v. Stevenson* (1932) 1 AC 562, per Lord Atkin at p. 580, which established the liability of the manufacture of a defective product to the ultimate consumer for injuries to the consumer caused by the product even in the absence of contractual relationship between the two.

¹⁹ Mancuso writes that the basis of consumer protection is "...that the *Qur'an* refers many times to the necessity of protecting the individuals within the Islamic society, and that Islam has extremely high respect for the right of every member of the society to protect his personal life against any interference." See S. Mancuso, "Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law" *Journal of International Commercial Law and Technology*, Vol. 2, No. 1 (2007) p. 6. According to Islamic jurisprudence, Islam provides a complete way of life and its values of truth, justice and brotherhood protect consumers in their daily transactions. Islamic law embodies many principles and sets many ethical standards that provide sufficient protection to consumers whether they are the parties in the transactions or not. For key issues in consumer protection under Islamic law, see M. A. Khan, *Consumer Protection in Islamic Law: An Analytical Study* (Islamabad: Lambert Academic Publishing, 2011) and D. Morris and M. Al Dabbagh, "The Development of Consumer Protection in Saudi Arabia" 28 (1) *International Journal of Consumer Studies*, Vol. 28, No. 1 (2004) pp. 2 - 13.

²⁰ The Hammurabi Code is collection of the laws and edicts of the Babylonian King, Hammurabi, who ruled in ancient Babylonia around 18th Century BC. It contained provisions relating to the liability of builders and physicians for negligence resulting in death, and bailee of goods and gold for negligent loss or misappropriation of the subject matter of the bailment. See L. W. King (trans.) *Hammurabi Code Laws* (1910), paras. 112, 120, 124 (bailment); paras. 218 - 225 (physician); and paras. 228 - 233 (builders). The Napoleon Code contains provisions relating to implied warranty for peaceable possession of the thing sold and against secret (latent) defect in articles sold, and conferred on the purchaser the right to elect to return the thing and obtain restitution of the price or to keep the thing and claim a proportion of the price paid.

regulation of food by statute for purposes of protecting the consumer can be traced back to the Assize of Bread and Ale²¹ which regulated the price, weight and quality of bread and beer manufactured and sold in English towns, villages and hamlets. In France, the Civil Code (the Napoleon Code)²² contained provisions that protected consumers.²³ Early legislation in the United States touching on consumer protection include the Sherman Antitrust Act 1890 passed to control the effects of trusts and monopolies in commerce; the Pure Food and Drug Act 1906 to prohibit mislabelling of the contents of foods, liquor and medicine; the Agricultural Meat Inspection Act 1907 providing for federal inspection of meat-packing plants engaged in inter-state shipment of meat. Even pre-colonial Indian and African communities have been credited with the concept of consumer protection.²⁴

The main reason for protecting the consumer is his vulnerability to exploitation by producers of goods and providers of services. This protection is justified by the inequality of bargaining power between the consumer and the producer; the disparity of knowledge of the characteristics and technical composition of the goods and services and the fact that the producer who often is a corporate body is more economically situated than the consumer. Furthermore, the industry with its superior technological expertise can and do manipulate prices and demand through advertisement and sales promotion

²¹ Attributed to Act 51 Hen. III, occurring about 1266–1267 which was amended by the Bread Acts of 1822 and 1836. See H. Gibbins, *The Industrial History of England* (London: Methuen, 1897) p. 229 and P. Cartwright, *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK* (Cambridge: Cambridge University Press, 2001) p. 152.

²² See Spence, G. (trans.) *The French Civil Code* (1804) available at on line at http://www.napoleon-series.org/research/government/c_code.html (Accessed 15 February 2014); Book III, Chap. IV, s. II, paras. 641 – 644 and s. III generally.

²³ The Napoleon Code contains provisions relating to implied warranty for peaceable possession of the thing sold and against secret (latent) defect in articles sold, and conferred on the purchaser the right to elect to return the thing and obtain restitution of the price or to keep the thing and claim a proportion of the price paid.

²⁴ For the Indian position see A. R. Prasad, “Consumer Access to Justice: Indian Perspective” *Consumer Journal*, Vol. 2, No. 1 (2006) p. 56. For the African position, see B. B. Kanyip, *A Historical Analysis of Consumer Protection Laws in Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 1997).

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

which greatly hamper the ability of the consumer to make prudent buying decisions. To redress these imbalances between the individual consumer and the producer, legal protection is needed.

Following the adoption of the United Nations Guidelines for Consumer Protection (UNGCP)²⁵ presently eight basic rights of the consumer are identifiable. These are right to satisfaction of basic needs; right to safety; right to information; right to choose; right to be heard; right to redress; right to consumer education; and right to healthy and sustainable environment. These rights are intrinsically derived from the principles and stated legitimate needs of the UNGCP, namely:

- (a) the protection of consumers from hazards to their health and safety;
- (b) the promotion and protection of the economic interests of consumers
- (c) access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- (d) consumer education, including education on the environmental, social and economic impacts of consumer choice;
- (e) availability of effective consumer redress;
- (f) freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them; and
- (g) the promotion of sustainable consumption patterns.²⁶

3. Consumer Rights as Human Rights

The United Nations Guidelines for Consumer Protection, adopted in 1985 and revised in 1999, propose a list of objectives described as “legitimate needs”: right to be heard; right to information; right to safety; right to choose; right to consumer education; right to consumer redress; freedom to form consumer groups; promotion of sustainable consumption patterns; and promotion of economic interests of consumers. Several of these objectives appear to have

²⁵ Resolution 39/248 of 9 April, 1985 (expanded in 1999).

²⁶ UNGCP, Art. 3

their origins in human rights, such as the right to safety for instance, which echoes the Universal Declaration of Human Rights' Security of Person. The freedom to form consumer groups and availability of redress can be traced both to political freedom, as well as to the right to access to justice.²⁷

It is necessary to identify the characteristics of human rights which can serve as parameters to assess whether consumer rights are human rights. According to Deutch, there are both substantive and procedural tests essential for the recognition of a right as a human right.²⁸ The substantive guidelines include that (a) human rights should pertain to the entire human community and not to any specific group; (2) human rights are the characterisation of the individual as a primary concern, emphasizing the individual's prosperity, honour, and development; and (3) human rights are rights of the individual against powerful governments.²⁹

Essentially human rights are rights that pertain to the individual person in that only human beings can enforce human rights.³⁰ Similarly, even though groups such as partnerships and unincorporated bodies can, in appropriate cases, be regarded as consumers, consumer rights are rights of the individuals and not rights of a group as such. Consumer rights focus on the right of the individual to safe products, services, fair trade and access to justice.

²⁷ Consumers International, *A Guide to Developing Consumer Protection Law* (London: Consumer International, 2011) p. 9.

²⁸ Deutch, above note 1, pp. 551 – 557.

²⁹ *Ibid.*, p. 551.

³⁰ Although there is increasing recognition of certain rights that can be said to belong to groups under international human rights law, eg. protection of races under International Convention on the Elimination of All Forms of Racial Discrimination March 1966; protection of women under the Convention on the Political Rights of Women; Convention on the Elimination of All Forms of Discrimination against Women 1979 and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999; protection of children under Convention on the Rights of the Child 1989; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000; protection of persons with disabilities under the Convention on the Rights of Persons with Disabilities, 2006 and Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

These rights aim at the maintenance of human dignity and well-being in the market-place.

Increasing privatisation and cross-border purchases lead to inequality of bargaining power which diminishes the consumer's ability to negotiate through fair market conditions and undermines his autonomy.³¹ With internationalisation of trade and commerce "the big business organisation should be considered less like an individual who bargains on equal terms, and more like governments, who control the private consumer".³² The problem of hazardous and defective products is no longer merely a national concern and consumer protection regulation at international level has become imperative.³³ Thus, consumer rights evidently embody the three main characteristics of human rights, namely universality and wide recognition, improvement of individual well-being, and protection against powerful governments or groups. The recognition of consumer rights in international treaties³⁴ is evidence of universal acceptance of such rights.

The procedural test for international recognition of human rights is whether the rights have been integrated into a formal international document.³⁵ The first international document to deal with the issue of economic rights as human rights is the UDHR which was based on the United Nations Charter.³⁶ The economic and social rights proclaimed by the UDHR are of special significance to consumer protection. Among other rights, the Declaration clearly states that the individual has a "right to a standard of living adequate for the health and well-being of himself and of his family."³⁷ Though the Declaration is not a treaty, it has received binding status over the

³¹ See C. Harding, U. Kohl and N. Salmon, *Human Rights in the Marketplace: The Exploitation of Rights Protection by Economic Actors*, (Aldershot: Ashgate, 2008) pp. 56 – 70.

³² Deutch, above note 1, pp. 552 – 553.

³³ Benöhr and Miclitz, above note 1, pp. 20 – 21.

³⁴ For example, see art. 38, Charter of Fundamental Rights of the European Union, *Official Journal of the European Union*, C.83/02 (2010).

³⁵ Deutch, above note 1, p. 557. See also Alston, above note 2, p. 609.

³⁶ The UN Charter in art. 55 (c) declares *inter alia*, that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all..."

³⁷ UDHR, art. 25 (1).

years. Thus, according to Sohn,³⁸ the Declaration, as an authoritative listing of human rights, has become a basic component of international customary law, binding on all states, not only on members of the United Nations.

In line with the Declaration, the primary basis of consumer protection is to assist people in reaching an adequate standard of living. Consumer protection is concerned with the protection of the consumer's health and, as such, is intended to enhance the standard of living and the well-being of the individual as a consumer. Although the Declaration does not directly deal with consumer protection, its goals and objectives are synonymous to those underlying the basic rights of the consumer, particularly the right to satisfaction of basic needs.

Many regional organizations have adopted human rights instruments suffused with the principles of the UDHR. For example, the Council of Europe established two treaties, the European Convention on Human Rights (ECHR) in 1950 and the European Social Charter (ESC) in 1961. The latter is the social counterpart of the former. The countries of the Western Hemisphere under the umbrella of the Organisation of America States (OAS) adopted the American Convention on Human Rights (ACHR) also known as the Pact of San José,³⁹ in 1969 which came into force in 1978. African countries under the umbrella of the Organisation of African Unity (now African Union) in 1981 adopted the African Charter on Human and Peoples Rights (ACHPR)⁴⁰ which entered into force in 1986. These regional treaties are considered to be international human rights instruments.⁴¹

³⁸ L.B. Sohn, "The New International Law: Protection of the Rights of Individuals Rather Than States" *American University Law Review*, Vol. 32 (1982) pp. 16 - 17.

³⁹ OAS, *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: <http://www.refworld.org/docid/3ae6b36510.html>, accessed 20 February 2014.

⁴⁰ *African Charter on Human and Peoples' Rights (Banjul Charter)*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.refworld.org/docid/3ae6b3630.html>, last accessed 20 February 2014.

⁴¹ These regional treaties contain many adaptations of the UDHR, ICCPR and ICESCR; hence in the ensuing discussion, where the provisions of these international instruments are cited, equivalent provisions of the regional treaties will be cited in the footnote as may be appropriate.

Towards a New Consumer Rights Paradigm: Elevating Consumer Rights to Human Rights ~ F.O. Ukwueze

To flesh out the skeleton of the rules accepted in the UDHR, the UN General Assembly in 1966 adopted two international covenants. These are the ICCPR and the ICESCR. While the economic and social rights embodied in the ICESCR have more affinity with consumer rights, both are binding international treaties and some of the rights contained in them can serve as a basis for elevating consumer rights to human rights.

Benöhr and Miclitz, assert that the economic and social rights in the ICESCR can comprise consumer protection.⁴² This assertion is correct. For instance, the right to an adequate standard of living briefly stated in UDHR, is elaborated upon in article 11 of ICESCR. Article 11(1) refers to right to “adequate food, clothing and housing, and to the continuous improvement of living conditions.” Consumer protection can be considered an implementation of these rights and a means to achieve these goals. Adequate food should necessarily include the quality of food, safety, information and fair price all of which are achieved through consumer protection legislation.⁴³ Protection of individuals’ safety from dangerous products is one of the important aims of consumer protection. Thus, although consumer protection was not specifically mentioned in ICESCR, it is a means by which the goals of the ICESCR can be achieved.

Furthermore, the principles of ICESCR “derive from the inherent dignity of the human person.”⁴⁴ The dignity of the individual is also a basis for consumer protection. Article 11 of the Covenant⁴⁵ includes provisions requiring the improvement of methods of food production and distribution. Improving the distribution of food includes improving not only methods of distribution but also methods of hygienic distribution, price, and other means of consumer protection. Contaminated and overpriced food certainly cannot be considered properly distributed food. Accordingly, consumer protection is vital for implementing ICESCR principles and other relevant international instruments.

⁴² Benöhr and Miclitz, above note 1, p. 21.

⁴³ For right to housing, also see ESC, Part I, para. 31 and art. 31.

⁴⁴ See the preamble to the Covenant.

⁴⁵ See also ICCPR, art. 10; ACHR, art. 5 (right to humane treatment) and ACHPR, Art. 5;

The right to physical and mental health, elaborated upon in article 12 of ICESCR,⁴⁶ is also closely associated with consumer protection. A basic consumer right is the protection of consumers from hazards to their health and safety. The right to physical and mental health includes improvements in environmental and industrial hygiene and the prevention of diseases.⁴⁷

The rights to freedom of assembly, association and expression contained in the international and regional human rights statutes⁴⁸ form the foundation for the basic consumer rights to information, consumer education and to be heard. These fundamental freedoms allow for the creation of consumer associations and groups to promote and defend consumers' interests. They allow consumer organisations and their members to receive information, form, hold and disseminate opinions and information.

Many of the international and regional human rights treaties contain right to fair trial within a reasonable time.⁴⁹ This represents citizens' access to justice and right to redress. Since the consumer is also a citizen, adequate legislation and procedure have to be in place to enable him or her bring an action and defend himself or herself before the court.⁵⁰

Although none of the documents expressly mentions consumers, these principles which have been accepted at international and regional levels support the assertion that basic consumer rights are deeply rooted in accepted international human rights and that further recognition would merely be a strengthening of existing rights.

The UNGCP constitutes an outstanding step in the international recognition of consumer rights as human rights. The stated objectives of the Guidelines include to:

- (a) assist countries in achieving or maintaining adequate protection for their population as consumers;

⁴⁶ See also ESC, Part I, para. 17, art. 11; ACHPR, art. 16.

⁴⁷ Benöhr and Miclitz, above note 1, p. 21.

⁴⁸ See ICCPR, arts. 19, 20 and 21; ECHR, arts. 10 and 11; ACHR, arts. 15 and 16; ACHPR, arts. 9, 10 and 11.

⁴⁹ See ICCPR, arts. 9 (2), 14 and 15 (2); ECHR, art. 6; ACHR, art. 8; ACHPR, art. 7.

⁵⁰ Benöhr and Miclitz, above note 1, p. 22.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

- (b) facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) facilitate the development of independent consumer groups;
- (f) further international cooperation in the field of consumer protection;
- (g) encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) promote sustainable consumption.⁵¹

The Guidelines identify seven areas that governments have to focus in their consumer protection mechanisms, according to their economic and social circumstances. These areas are: (1) physical safety; (2) promotion and protection of consumer's economic interests; (3) safety and quality standards of consumer goods and services; (4) distribution facilities for essential consumer goods and services; (5) improved consumer redress; (6) consumer education and information; (7) measures relating to specific areas such as food, water and pharmaceuticals and sustainable consumption.⁵²

Although not a legally binding instrument, the UNGCP is considered by some to be the first and most important international document including consumer rights on an international scale.⁵³

⁵¹ UNGCP, art. 1.

⁵² Sustainable consumption as a new consumer protection principle was added to the Guidelines in 1999. See UN General Assembly Decision 54/449, *United Nations Guidelines for Consumer Protection*, (87th Plenary Meeting, 22 December 1999).

⁵³ The Economic and Social Council (ECOSOC) of the UN played a major role in the preparation of the Guidelines. For an abbreviated official history of the United Nations actions leading to the adoption of the Guidelines, see *1992 United Nations Report*, p. 99. The activities that led to the adoption of the UNGCP are recorded in several articles. See for example, D. Harland, "Implementing the Principles of the United Nations Guidelines for Consumer Protection" *Journal of Indian Law Institute*, Vol. 33 (1991) pp. 189 - 190; D. Harland, "The United Nations Guidelines for Consumer Protection. Reply to the Comment by Wiedenbaum in JCP, 10, 1987/4" *Journal of Consumer Policy*, Vol. 11 (1988) pp. 111 and P. Merciai, "Consumer Protection and The United Nations" *Journal of World Trade Law*, Vol. 20 (1986) p. 206.

Legally, guidelines differ from treaties, in that a treaty binds all parties who have signed, ratified, or approved it but a guideline imposes only moral and political obligations. Deutch, however, asserts unanimous approval of guidelines may contribute to or be evidence of the formation of international customary law.⁵⁴ But opinions differ as to whether the fact of unanimous adoption can elevate a non-mandatory guidelines to a binding customary international law.⁵⁵

The UNGCP emphasizes “that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection.”⁵⁶ The Guidelines adopts the approach of the ICESCR by presenting general principles, and governments are called upon to develop their consumer protection policies in line with these principles. Each government must set its own priorities according to its economic and social circumstances. In this respect, UNGCP resembles ICESCR, which upon adoption was not intended to be immediately implemented due to the expense involved in its enforcement. The fact that consumer protection is subject to the conditions of each country indicates that consumer protection is not a luxury for the industrialised countries, but is also intended for the developing countries, according to their ability and needs.⁵⁷

A close analysis of UNGCP reveals that it is derived from, and can be viewed as an implementation of UDHR and ICESCR. Although the UNGCP is not a mandatory international document, it does have an effect on national and international consumer protection laws. According to Peterson:

International guidelines can serve as a *Charter of Human Rights* in the consumer area. That does not mean that every nation would scrupulously obey and implement those principles. Many may not. But the existence of a UN-sponsored *Charter of Consumer Rights*

⁵⁴ Deutch, above note 1, p. 564.

⁵⁵ See D. Harland, “International Agreements and Guidelines as a Means of Consumer Protection” *Journal of Behavioural and Social Sciences* (1992) p. 119 and R. Kanniah, *International Law and the Consumer Interest – A Select Annotated Bibliography of International Instruments relating to Consumer Protection* (Penang, Malaysia: International Organization of Consumer Unions, 1990).

⁵⁶ See art. 1 of the Guidelines (as expanded in 1999).

⁵⁷ Deutch, above note 1, p. 567.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

can simply not be ignored by any nation which wishes to be considered civilized. These guidelines are, at most, expressions of support for the kind of consumer protection which have been in effect in the US, and for consumers in most other industrial nations as well.⁵⁸

Some consider the UNGCP as international soft law.⁵⁹ This view is supported by the increasing recognition of the international characteristics of consumer protection and the fact that the principal significance of UNGCP is that it represents international agreement toward the minimal principles that national consumer protection legislation should contain. Its unanimous adoption is a significant development in international recognition of the principles of consumer protection. The influence of UNGCP on the domestic and international activities of several countries is clearly evident in actions taken by countries since its adoption.⁶⁰ The UNGCP is therefore, recognition by the international community that consumer protection is not merely an issue of domestic interest. This recognition has already led to an increase in consumer legislation. Several countries have included consumer rights in their constitutions.⁶¹ These provisions reflect the apprehension of the fundamental responsibility of the state to protect consumers, not

⁵⁸ E. Peterson, "The United Nations and Consumer Guidelines" in T. Wheelwright (ed.), *Consumers, Transnational Corporations and Development* (Sydney: Transnational Corporations Research Project, University of Sydney, 1986) p. 347.

⁵⁹ See B. Stauder, J. Feldges and P. Mülbart, "Consumer Protection in Switzerland by Means of 'Soft Law' - Practices and Perspectives" *Journal of Consumer Policy*, Vol. 7 (1984) p. 231; J. Stuyck, "Consumer Soft Law in Belgium" *Journal of Consumer Policy*, Vol. 7 (1984) p. 125 and J. Tala, "Soft Law as a Method for Consumer Protection and Consumer Influence. A Review with Special Reference to Nordic Experiences" *Journal of Consumer Policy*, Vol. 10 (1987) p. 341.

⁶⁰ See *Development and International Economic Co-operation - Consumer Protection. A Report of the Secretary-General*, 29 May 1992, UN Doc. E/1992/48. See also a list of international agreements, protocols, guidelines, recommendations, resolutions, and declarations relating to consumer protection in Kanniah, above note 55.

⁶¹ There are constitutional provisions on consumer protection in Spain, Portugal, Brazil, Switzerland, Philippines and Japan. See Harland, *loc. cit.*, note 53, pp. 209 - 210.

only for economic efficiency, but also as part of the quest for social justice and human rights.

In a recent report by the United Nations Conference on Trade and Development (UNCTAD) on the implementation of the UNGCP, the Conference concludes that:⁶²

- (a) The UNGCP have been widely implemented by member States since 1985 to the present and all areas of the Guidelines remain valid and useful;
- (b) In general, most Member States have adopted the core objectives of the UNGCP.
- (c) In many cases, such as Colombia,⁶³ Costa Rica,⁶⁴ the Dominican Republic,⁶⁵ the European Union,⁶⁶ El Salvador,⁶⁷ Egypt,⁶⁸ Mexico,⁶⁹ Peru,⁷⁰ Poland⁷¹ and Switzerland,⁷² consumer rights have been enshrined into Constitutions.
- (d) All countries have a consumer protection law, recognising consumer rights.
- (e) The right of access to non-hazardous products and the right to just, equitable and sustainable economic and social development and environmental protection are contained either in consumer protection laws or other national sectoral norms, such as competition or environmental protection laws.

Despite the wide acceptance of the principles of UDHR and ICESCR and the unanimous adoption of the UNGCP, opinions are divided on the inclusion of essentially economic rights such as consumer rights either in an international treaties or national constitutions. The

⁶² UNCTAD, *Implementation Report United Nations Guidelines for Consumer Protection (1985 – 2013)* p. 18.

⁶³ Constitution of Colombia 1991, art. 78.

⁶⁴ Constitution of the Republic of Costa Rica, art. 46.

⁶⁵ Constitution of the Dominican Republic, art. 53.

⁶⁶ Treaty of European Union, art. 12.

⁶⁷ Constitution of the Republic of El Salvador 1983, art. 101.

⁶⁸ Constitution of the Arab Republic of Egypt 2014, art. 27.

⁶⁹ Political Constitution of the United Mexican States 2013, art. 28.

⁷⁰ Political Constitution of Peru 2006, art. 65.

⁷¹ Constitution of the Republic of Poland, art. 76

⁷² Federal Constitution of the Swiss Confederation 1999, art. 97.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

views of the antagonists of “international second and third generation consumer rights” can be summarised as follows:

- (a) Economic and welfare rights are of “ideological nature, and do not merit being considered equal with inalienable human rights (such as the right to life, freedom and physical integrity).”⁷³ Thus, consumer rights are rights of secondary importance and are only qualified as state principles instead of directly enforceable rights by the individual.⁷⁴
- (b) The accumulation of new human rights would water down high level rights.⁷⁵ Alston insists that human rights are limited in number and characterising many values as human rights might weaken the significance of human rights compared to other legal rights.⁷⁶
- (c) Acknowledging consumer rights as fundamental would amount to over protection of the consumer which would weaken the freedom of companies that would have to comply with high safety standards.⁷⁷
- (d) Economic and social rights are luxuries and as such are applicable only to wealthy industrial states.⁷⁸ The inclusion of such rights in constitutions in the absence of necessary economic and financial capacity to implement and sustain them would give false hope of a high living standard to the citizenry. Such social legislation should be dependent on the

⁷³ Benöhr and Miclitz, above note 1, p. 24

⁷⁴ M. Wiedenbaum, “The Case against the United Nations Guidelines for Consumer Protection” *Journal of Consumer Policy*, Vol. 4 (1987) 432.

⁷⁵ See Alston and Steiner, above note 2, 237; J. Kenner, “Economic and Social Rights in the EU Legal Order” in T. Hervey and J. Kenner (eds) *Economic and Social Rights under the EU Charter of Fundamental Rights, A Legal Perspective* (Oxford: Hart Publishers, (2003) p. 3.

⁷⁶ P. Alston, “Human Rights and Basic Needs: A Critical Assessment” *Human Rights Journal* (1979) p. 39.

⁷⁷ See M. Wiedenbaum, *Is the U.N. Becoming a Global Nanny? The Case of Consumer Protection Guidelines* (St. Louis: Centre for the Study of American Business, 1983) p. 428; M. J. Trebilcock and D. N. Dewees, “Judicial Control of Standard form Contract” in P. Burrows and C. G. Veljanovski (eds.) *The Economic Analysis of Law*, 4th ed. (London: Butterworths, 1981) pp. 21 – 28.

⁷⁸ Alston and Steiner, above note 3, p. 16.

financial and economic prosperity of a country to avoid such false hope.⁷⁹

- (e) It is not politically right to elevate economic and social rights to fundamental rights. It is argued that where too many social obligations “are placed on the legislature by the constitution, decisions will no longer be taken by the democratically legitimized parliament but by judges who have not been elected by the people”.⁸⁰ Furthermore, fundamental rights should not be too precise so as to leave discretionary power with the executive, so that it is able to act effectively and is not totally restricted by the constitution and the judicial power.⁸¹

In spite of the apparent erudition in these views, they are not altogether convincing. Protagonists maintain that consumer rights should be protected as fundamental rights for a number of reasons which include:

- (a) Globalization with the attendant internationalization of trade, increasing privatization of business and public utilities coupled with the complexities of modern products and services due to advancement in technology have combined to put today’s consumer in a precarious situation where state protection is inevitable.⁸²
- (b) Consumer rights are sufficiently important and have been unanimously accepted by the UN General Assembly as basic principles which point to the need for a more robust and stable high level protection.⁸³
- (c) Constitutional rights are difficult to change and in most cases remain even after a change of government.⁸⁴ Explicit human rights reference is the only way to guarantee that consumer

⁷⁹ See G. Bognetti, “Social Rights, a Necessary Component of the Constitution? The Lesson of the Italian Case” in R. Bieber and P. Widmer (eds.) *The European Constitutional Area* (Zurich: Schulthess, 1995) p. 85.

⁸⁰ M. Butt, J. Keubert and C. Schultz, “Fundamental Social Rights in Europe” *Working Paper, European Parliament* (DG for Research, Social Affairs Series, 1999) p. 11.

⁸¹ Benöhr and Miclitz, above note 1, p. 25.

⁸² See Harding, Kohl and Salmon, above note 31.

⁸³ Benöhr and Miclitz, above note 1, p. 25

⁸⁴ Alston and Steiner, above note 2, p. 147.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

rights cannot be modified by ordinary legislation or judicial decision.

- (d) Fundamental rights are interdependent and equal. Liberal civil and political rights also need some positive implementation measure by States and can undermine social rights if the latter are not granted the same human right level.⁸⁵ Some have argued that social rights are more important than civil and political rights.⁸⁶

From the foregoing analysis, there are strong arguments in favour of elevating consumer rights to the level of human rights and regarding consumer protection itself as an extension of international human rights law. Most of the reasons for the contrary view are founded on premises which seek to maintain the status quo in terms of rights. But as Deutch points out the importance of consumer rights can be seen from the manner in which they have increasingly attracted international and national considerations. The acknowledgement of these rights as fundamental rights both at the national and international levels is crucial to protect their infringement. This will allow them to receive the same level of respect as other fundamental rights in national constitutions and international instruments. The argument that social and economic rights are luxuries beyond the reach of poor countries is unfounded and untenable.

It has been shown that the basic consumer rights not only complement the civil and political rights but derive from international instruments that institutionalised the civil and political rights. For example, the right to safe product cannot be removed from the right to life and human dignity. To argue that citizens of any country are not entitled to safe products because they are poor is, in effect, to argue that they are not entitled to live. The right to safe and quality product and service if not protected can result in

⁸⁵ M. Weiss, "The Politics of the EU Charter of Fundamental Rights" in B. Hepple (ed.) *Social and Labour Rights in a Global Context* (Cambridge: Cambridge University Press, 2002) pp. 73 – 94.

⁸⁶ See A. Eide and A. Rosas, "Economic and Cultural Rights: A Universal Challenge" in A. Eide, C. Krause and A. Rosas (eds.) *Economic, Cultural and Social Rights: A Textbook*, 2nd Rev. ed. (The Hague: Kluwer, 2001) p. 17.

loss of life and serious physical injuries to the consumer. This, no doubt, equates to a right to life. There is no reason why a consumer who has suffered serious physical harm or is in an imminent danger of suffering such harm through fake and hazardous drugs or products, intentionally produced and distributed, cannot bring action under human rights law to safeguard his right to life.

Several internationally acknowledged human rights can be classified under the heading of the right to human dignity. Human dignity has been described as a “universal social good.”⁸⁷ Protection of the individual consumer is part of maintaining human dignity. If not given the right to fair trade, the right to a fair contract, and the right of access to the courts, a person’s dignity will be seriously undermined. The individual consumer is entitled to protection against big business organisations, monopolies, cartels, and multinational corporations.⁸⁸ The inequality of bargaining power between the big businesses and the individual consumer leads to contracts of adhesion and to the erosion of the basic right to negotiate.⁸⁹ In a contract between an individual consumer and a big business organisation, the latter can impose its will on the former on

⁸⁷ O. Schachter, “Human Dignity as a Normative Concept” editorial comment, *American Journal of International Law*, Vol. 77 (1983) p. 848.

⁸⁸ The big business organization should be considered less like an individual, who bargains on equal terms, and more like a government, which controls the private consumer. There is a school of thought that considers standard contracts as private lawmaking by large economic corporations. See W. D. Slawson, “Standard Form Contracts and Democratic Control of Lawmaking Power” *Harvard Law Review*, Vol. 84 (1971) p. 529 and S. Deutch, *Unfair Contracts: The Doctrine of Unconscionability* (Lexington, MA: Lexington Books, 1977) pp. 3 – 4. See also, A. J. Duggan, “The Economics of Consumer Protection: A Critique of the Chicago School Case against Intervention” *University of Adelaide Law Review Research Papers* (Adelaide: University of Adelaide, 1982) pp. 60 – 88.

⁸⁹ See F. O. Ukwueze “Unfair Terms in Consumer Contracts in Nigeria: The Need for Stricter Statutory Control” *Consumer Journal*, Vol. 3 (2007) pp. 41 - 63; F. Kessler “Contracts of Adhesion—Some Thoughts About Freedom of Contract” *Columbia Law Review*, Vol. 43 (1943) p. 632 and S. Deutch “Standard Contracts—Methods of Control: The Conceptual Framework of the 1982 Law” *Tel-Aviv Studies in Law*, Vol. 7 (1985) p. 166.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

“a take it or leave it” basis, thereby disregarding the consumer’s honour and dignity.

In consumer protection, the rights to fair hearing, freedom of expression and association are also of vital importance. The right to fair hearing is particularly important for individuals in dealing with public authorities and corporations that provide public utilities because the scope of the right is not confined to proceedings in court only but extends to administrative determinations.⁹⁰ This will, no doubt, greatly enhance consumer’s access to redress through ombudsmen, administrative and regulatory agencies.

Freedom of expression presupposes that an individual is free to establish, own, and operate any medium for dissemination of information, ideas and opinions. The right to freedom of express is invaluable for consumer education and information. It will amount to violation of an individual’s right to freedom of express to stop a person from disseminating information on the quality of goods and services. This is particularly useful for consumer organizations or associations that engage in consumer education and enlightenment.

The right to peaceful assembly and association covers all assembly and association of individuals to protect their legitimate interests. Thus, consumers can organize and publicly carry out peaceful rallies, marches, walks or demonstration and form associations for the protection of their interests as consumers. Any interference with this right will, without doubt, amount to a violation of the human rights of the individuals concerned.

4. Incorporating Consumer Rights into Human Rights is Critical for Developing Countries

The UNGCP was especially aimed at developing countries to “give a structure of basic objectives as to how they could improve their consumer legislation”.⁹¹ The Guidelines were adopted –

⁹⁰ See O. N. Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press, 1999) pp. 132 – 138.

⁹¹ Benöhr and Miclitz, above note 1, p. 23.

(T)aking into account “the interests and needs of consumers in all countries, *particularly those in developing countries*; recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection.⁹²

The stated objective of the Guidelines include to assist countries in achieving or maintaining adequate protection for their population as consumers; facilitate production and distribution patterns responsive to the needs and desires of consumers; encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers; facilitate the development of independent consumer groups; further international cooperation in the field of consumer protection; encourage the development of market conditions which provide consumers with greater choice at lower prices; and promote sustainable consumption. While the issues addressed in the objectives are of relevance to consumers everywhere, the position of consumers in the developing countries are evidently more critical. Such countries are often characterized by low income, high dependence on agricultural produce and extractive industry; low manufacturing capacity and heavy dependence of imports of consumer goods. The obvious implication of this is that without strict legal regulation of product quality and trade practices citizens of these countries are vulnerable to hazardous products and unethical trade practices. Most of these countries lack political stability and have high rates of corruption, weak domestic regulatory regimes and weak judicial systems which expose consumers to preventable health hazards from fake and low quality products as well as losses due to trade malpractices.

⁹² UNGCP, art. 1. Italics added.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

Perhaps a real life event will serve to illustrate the point here. Following an epidemic of cero-spinal meningitis in Kurna-Asabe quarters of Kano State, Nigeria in 1996, a US-based pharmaceutical company, Pfizer donated large doses of a new drug called *Trovan* which at that time had not been tested or approved for use in the US by the Food and Drug Administration (FDA) Department. Due to inefficient enforcement of extant regulations, the donation was warmly received but when the drug was administered to innocent Nigerian children in the area of the epidemic, the result was disastrous. Over twelve children died, many suffered one form of permanent disfigurement or another including brain damage, deafness and paralysis.⁹³

In the circumstances of the case, and assuming Pfizer is a Nigerian-based company or an individual carrying on business in Nigeria, should the victims (that is, their parents on their behalf) not be able sue the company for breach of the fundamental right to life of the victims under the Nigerian Constitution? Again, if they decided to embark on peaceful demonstration to protest what happened, or to form an association to prosecute the case would it not have amounted to a violation of their rights as consumers, if they were forcibly dispersed, or barred from forming the association, for which they can bring action under the Constitution? There is no doubt, in our view, that the conduct of Pfizer amounted to violation of the rights to life and dignity of the victims. The answer to the above

⁹³ See G. Haruna, "Kurna-Asabe: Life after the Pfizer Drug Trial" *Thisday*, Wednesday, August 1, 2007, p. 24; S. U. Ortuanya, "The Need for Legal Protection of Research Subjects in Developing Countries: An Analysis of Pfizer's Trovan Clinical Trials in Nigeria" *Perspectives on Democracy, Rule of Law and Globalisation* (2010) pp. 284 - 313. The Kano State Government and the Federal Government of Nigeria sued Pfizer in a US court for negligence, causing wrongful deaths and unethical conduct. The case was later settled out of court with Pfizer agreeing to pay the sum \$75 million in compensation to the plaintiffs but it is doubtful whether a large chunk of that amount got to the victims of the drug test and their families. See J. Edwards, "Updated: Pfizer Settles Trovan Case For \$75m; Nigerian Kleptocrats to Get \$40m" http://www.cbsnews.com/8301-505123_162-42842296/updated-pfizer-settles-trovan-case-for-75m-nigerian-kleptocrats-to-get-40m/, accessed 04May 2012.

questions is that such suits would be permitted under the fundamental rights provisions of the Constitution.⁹⁴

6. Conclusion

Since every person is a consumer, consumer rights are rights of the individual and, as such, should be acknowledged as human rights. It has been established that within the framework of the UN, human rights include consumer rights.⁹⁵ The unanimous adoption of UNGCP is evidence of acceptance of “consumer protection as an important international principle which may be a process of transforming consumer rights into human rights.”⁹⁶ It is urged that developing countries should continue to push for the elevation of the principles of the UNGCP to a mandatory level. Meanwhile, a good starting point will be for them to raise consumer rights to fundamental rights within their domestic jurisdictions to pave way for the international acceptance of consumer rights as human rights. Presently some developing countries have included in their constitutions aspects of consumer rights,⁹⁷ while the constitutions of some countries embody aspects of consumer rights simply as

⁹⁴ See F. O. Ukwueze, “Litigating Consumer Rights as Human Rights in Nigeria under the Fundamental Rights (Enforcement Procedure) Rules 20092, in H. H. Mensah, H. P. Faga and J. O. Okpara (eds.) *A Colossus of Legislative Governance: Juridical Papers in Honour of Rt. Hon. Eugene Odo* (Enugu: Rocana Ltd., 2012) pp. 52 – 72.

⁹⁵ Also, modern theories of human rights provide a solid ground for admitting consumer rights as human rights. One such theory anchors human rights on justice - perceiving principles of fairness, self-respect, and equality as the foundation of human rights. Another is the theory based on dignity, which maintains that human dignity is an ultimate value.

⁹⁶ Deutsch, above note 1, pp. 562, 573 – 574 and Benöhr and Miclitz, above note 1, p. 26.

⁹⁷ It has been reported that at least 26 countries, most of them developing countries, now have constitutional provisions recognising consumer rights. The countries are listed as follows East Timor, Cambodia, Philipines, South Korea, Thailand, Vietnam, South Africa, Republic of Yemen, Republic of Uzbekistan, Republic of Cape Verde, Turkey, Andorra, Bulgaria, Lithuania, Poland, Portugal, Spain, Switzerland, Ukraine, Argentina, Brazil, Colombia, Costa Rica, Ecuador, Paraguay, Peru and Mexico. See Benöhr and Miclitz, above note 1, p. 26.

**Towards a New Consumer Rights Paradigm: Elevating Consumer
Rights to Human Rights ~ F.O. Ukwueze**

fundamental objective and directive principles which are intended to merely guide the government in formulating policies but which lack binding force and are not enforceable by the citizens.⁹⁸ The time is ripe to shift the paradigm of consumer rights by elevating consumer rights to human rights.

⁹⁸ See for example, the Constitution of the Federal Republic of Nigeria 1999 (as amended) which in Chap. II, ss. 13 – 24 which contain provisions relating to the responsibility of the State to provide medical and health care, free education at all levels, adequate shelter, suitable and adequate food, all of which are not justiceable under s. 6 (6) (c).