A CRITICAL EXAMINATION OF THE LEGAL REGIME FOR CONSUMER PROTECTION IN NIGERIA

By

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Abstract

This article examines consumer rights and the legislative efforts towards their incorporation in countries' Constitutions and legislative documents. The article examined the global trends in the deregulation of public utilities and the documented deregulated markets manipulation by private firms across different jurisdictions. The article found that while Consumer Rights have assumed constitutional significance and are made part of constitutional guarantees in countries such as Kenya, in Nigeria no legislation including the principal consumer protection legislation that is the Consumer Protection Council Act incorporated clearly any of the known consumer rights. The paper concludes that there is no time when an articulated and comprehensive legal framework for Consumer Rights is required in Nigeria than now as several utility services in Nigeria are no longer public services but business products for sale in private hands.

Key words: Deregulation, consumer rights, Utility services and legal framework

1.1 Introduction

Until the late 1990s, utilities services such as electricity, telecommunications, transportation and water were globally provided by states as a public service. During this period, the role of the consumer in the market place was passive[70] and the consumer was viewed as citizen not as consumer in the strict sense of the word.[71] The global trend of public utilities deregulation enabled states to withdraw from the ownership, provision and regulation of utilities.[72] Today in most jurisdictions, Nigeria inclusive, utilities such as electricity, telecommunications and water are business products offered for sale by private firms. This change in the handling of public utilities provision comes with consumer concerns relating to access, quality, price and reliability of utility services.

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[70]Nivarajan, V. (2007), "Reconceiving Regulation: Finding a Place for the Consumer," *Competition & Consumer Law Journal* 15 CCLJ: 93. Available at http://www.lexisnexis.com.eserv.uum.edu.my/my/academic/ last visited, 12/03/2013

[71]Bowden, N. S. (2011), "*Lerner Index Provides the Facts About Electricity Deregulation*," Natural Gas & Electricity 28, no. 4: 21

[72]Lersen, G, and Lawson, R. (2013), "Consumer Rights: An Assessment of Justice," *J Bus Ethics*: 520. Published on line 28[th] March, 2012 available at http://ehis.ebscohost.com.eserv.uum.edu.my/ehost/pdfviewer/pdfviewer?vid=4&sid=135bf665-60eb-49db-913d-53da709aabc1%40sessionmgr113&hid=5 visited 6/03/2013

As states have now withdrawn and the private service providers have taken over, shouldn't there be checks to balance the profit maximization motives of these providers? Should the government folds its arms and allow the private companies to determine and control the provision of the above essential services because of the free-market philosophy? Should profit motive be allowed for instance to defeat the availability and access to these essential services by people or areas the service providers consider unprofitable?[73] Could Nigerians claim the right to access based on the right to basic necessities of life when no legislation prescribes such as a consumer right?

Market manipulations by private firms at consumer expense in deregulated sectors such as electricity, telecommunications documented across the world, necessitate consumer rights protection and education. Instead of companies competing, they colluded and cheated the consumer.[74]Furthermore, although proponents of deregulation believe that competitive market affords the consumer a lot of options and price reduction,[75] this was not the case in several deregulated utilities sectors. The variety options associated with deregulated markets has its negative sides. Consumer choice is impaired in competitive market because of the complexities of the consumer goods and services, misinformation, deceptive and misleading adverts. The consumer, therefore, needs to be educated and equipped with information and the basics skills to effectively participate in the changed market place. In particular a consumer needs to know what rights he has and what remedy is available for him in event of the violation of such rights in a deregulated environment.

March 15th, 2013 marked the 51st anniversary of the birth of what we today have as consumer rights. This was the occasion of the declaration of 4 of the rights by President J.F. Kennedy of the United States in his message to the U.S. Congress. Europe and other jurisdictions have taken the lead in enacting legislative instruments clearly enumerating consumer rights and remedies in clear and unambiguous terms. Bangladesh has a consumer Rights Protection Code in 1999.[76] In some jurisdictions like Argentina, Costa Rica, El Salvador and Panama, Columbia, Dominican Republic, European Union, Egypt Mexico, Peru, Poland and Switzerland consumer rights have assumed constitutional significance as they form part of the constitutional provisions of these countries.[77]More interesting is the Republic of Kenya where not only that consumer

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[73] Supra note 2. See also Filipovic Sanja and Gordon Tanic, "The policy of consumer Protection in the Electricity Market", P. 157.DOI:10.2298/EKA0879157F

[74]Janson Eva, 324. See also Tishler Asher and Woo Ch-Keung, (2007) "Is electricity Deregulation Beneficial to Israel?" *International Journal of Energy Sector Management* 1, no.4,:324

[75] Farris Ii, M. T., & Pohlen, T. L. (2006) "Deregulation Delayed Is Deregulation Denied: Appealing the Wright Amendment," *Transportation Journal (American Society of Transportation & Logistics Inc) 45*, no.4: 67.

[76]The Lawyers and Jurists, "Three Aspects of consumer Rights."http://www.lawyersnjurists.com/resource/articles-and-assignment/three-aspect-of-cnsumer-rights/ (accessed 19/3/2013)

[77] Delgadillo, Lucy. (2013). An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica. *Journal of Consumer Policy36*, no.1(2013): 65. doi: 10.1007/s10603-012-9206-9. See also Argentine Constitution, Article 42; Constitución Política de Colombia, Article 78;Constitución Política, Article 46;Constitución Política de la República Dominicana, Article 53; Treaty Functioning European Union

rights are constitutional issues, but were recently made part of fundamental constitutional guarantees equal with civil and political rights such as the right to life. In South Africa too, although consumer rights are not constitutional matters but a comprehensive Consumer Protection Act codifying all the consumer rights was enacted in 2009.

Nigeria the giant of Africa is yet to enact a code that clearly incorporates such rights despite its patronage of the deregulation project in its key utility sectors such as telecommunications and recently the electricity sector. The desire for consumer rights code is to guarantee fair trade practices, quality and satisfactory goods, and services to the consumer. The necessity for a comprehensive legal framework for consumer rights in Nigeria prompted this paper. The paper, therefore, examines the history of consumer rights and what they seek to achieve and the necessity for their incorporation in concrete legislative terms in Nigeria.

1.2 Brief History Consumer Rights

President John F. Kennedy of the U.S. is believed to be the brain behind the development of the jurisprudence on consumer rights. Consumer rights protection is linked to his 1962 message to United State Congress on consumerism. In that message he declared the first generations of consumer rights, namely; the right to safety, to be informed, to choose and the right to be heard.[78]

Consumer organization such as the Consumer International (CI) added another impetus to the jurisprudence on consumer rights. The CI successfully advocated for four additional consumer rights. These are the right to satisfaction of basic needs, the right to seek redress, the right to consumer education and the right to a healthy environment.[79] In 1985, however, the UN General Assembly resolved and declared the eight enumerated rights as consumer rights.[80] Although the guideline is a soft law, it had considerable persuasive value and became a sound basis for the development of consumer policies at national and international levels. In Africa, following the adoption of the said United Nations Guidelines on consumer protection, the African Conference on Consumer protection which held in Harare Zimbabwe from April, 28 to May 2, 1996 passed what could be termed a model law for Consumer Protection in Africa to assist the African states and consumer groups in protecting consumer rights through legislative efforts and other measures such as activism.[81]

(TFEU), Article 12;Constitución de la República de El Salvador, Article 101; Egypt Constitution, Article 14; Constitución Política de los Estados Mexicanos, Article 28;Constitución Política del Perú, Article 65;Constitution of the Republic of Poland, Article 76 and Federal Constitution of the Swiss Confederation, Articles 2, 23, 97.

[78] Kennedy, March 15, 1962, 1962 CONG. Q. 890 cited in

[79] Consumer International, "How are consumer rights defined" World Consumer day: History and Purpose" available at http://www.consmersinternational.org visited 12/3/2013

[80] The UN Assembly Resolution, "Guidelines for Consumer Protection," No. 39/248 of April, 1985

[81] Ukueze, F.O. (2009), "Consumer Protection and the Petroleum Industry in Nigeria", *Petroleum, Natural Resources and Environmental Law Journal,* (Jan.) : 2.

Today the above listed rights constitute what is termed as Consumer Bill of Rights. A clear understanding of the imports of the above rights is vital in the realization of the objectives of the consumer-protection movement the world over.

1.3 Consumer Rights

1.3.1 The Right to Safety

This right requires consumers to be protected against marketing of products and services, and production processes which are hazardous to health or life.[82] Producers of goods and service providers are to ensure that products and services offered for sale should not pose undue risk of physical harm to consumers or their families. The safety standards of products such as impure food, defectively manufactured automobiles and tires, harmful drugs, unsafe equipment appliances and radiation-emitting products capable of causing injuries must be well regulated. This would ensure the protection of consumers against unreasonable risk caused by hazardous consumer products and services[83].

States should equally promote research about the causes and prevention of product – related deaths, illnesses and injuries. Assistance to consumers in comparing the safety of various items offered for sale in the market is also an integral part of this right. Again, government should create and enforce safety standards for consumer products and banning and recalling of hazardous products from the market place.

In most countries, commissions and agencies are established and mandated to ensure safety of products and services delivered to the consumers. Nigeria is not an exception. The Nigerian Consumer Protection Council (CPC) is given such mandate under the Consumer Protection Council Act.[84]Equally, the National Agency for Food, Drugs Administration and Control is mandated to certify the quality and safety of chemicals and related substances, cosmetics, hospital and medical devices, food and bottled water, after appropriate analysis[85]. None of these laws or any Nigerian law, however, made provision defining the right to safety and what it entails. Consumers of electricity for instance should know the safety and the environmental consequences of the electricity supplied to them. Equally, the telecommunications consumer should know the safety of the radiation emitted from the telecommunications mast cited close to their residents and the one emitted from the handset he uses on his overall health. When the right is incorporated and defined in the body of laws, the consumer can demand for it with precision.

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[82] Supra note 12

[83] Evidence abounds of several reported injuries and even death in product related accidents. At some point in the United State about 33 million people were reported injured while about 30,000 lost their lives. (see supra note 27)

[84] See Supra note 6, Section 2 (d) and (j)

[85] Section 5 (i) of the National Agency for Food, Drugs Administration and Control Act, Cap. N, Laws of the Federation of Nigeria, 2004

1.3.2 The Right to be Informed

Naturally, firms rarely volunteer information about the shortcomings of their products or services. The consumer requires accurate and truthful information beyond the information businesses disclose in relation to their goods or service. This right, therefore, requires consumers to be supplied with sufficient information to enable them choose wisely among the competing products and services available in the market. Consumers should be supplied with the necessary information required to compare the quality of the competing products and services, in order to determine their true cost, or to be sure of their suitability or safety. As such adequate and timely consumer information is necessary in free market economy to enable consumers to optimally derive value for their money.[86] Consumers cannot participate effectively in the market where they are not supplied with the necessary information. This could, in the view of neoclassical economics lead to market failure.[87]

The value for the codification of the consumers' right to information is further predicated on the fact that liberalized market offers variety of complex products, and a lot of misleading and deceptive adverts that are usually not informative enough for consumer purposes. Consumers therefore, need to be informed about "the potency, quantity, measurement, quality standard, weight, purity and price of goods and services" so as to protect them against unfair trade practices. An informed consumer will always act wisely and responsibly and the information guards the consumer from falling prey to high pressure selling techniques of producers of goods and services.

To ensure that consumers have the information they need to buy wisely, government in Nigeria made laws mandating businesses to provide truthful information to the consuming public. Good example are the National Agency for Food, Drugs, Administration and Control regulations[88] which require manufacturers of regulated products to provide information regarding the date of manufacture, expiry date and composition of goods manufactured for consumption.

Apart from establishing agencies with the power to dish out regulations requiring truthful disclosures, there is the need for the right of consumers to information as it relates to supply of goods and services provision to be clearly codified in legislation as a consumer right. Equally, as the world is digitalized, the right for consumers to be informed should go beyond the physical market to the virtual market. A consumer or purchaser of goods in the internet should be accorded on minimum level valuable and truthful information that would assist him to make informed decision as to whether to go into the transaction or not. Nigerian consumers of electronic goods and services have the

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[86] Den Hertog John, (2013) "Review of Economic Theories of Regulation. Discussion Paper Series, Tjalling C. Koopmans Research Institute, Utrecht School of Economics, Utrecht University, Netherlands, (2010): P.12 http:// www.uu.nl/rebo/economie/discussionpapers(accessed April 19).

[87] Supra note 1

[88] See for example The Bottled Water Registration Regulations, and the Bottled Water (Labelling) Regulations, 1996

right to key information regarding the goods and services supplied to them in the internet. Although Nigeria prides itself as the giant of Africa, no legislation in country provides for such information disclosure. Yet, every day, Nigerians engage in electronic transaction both locally and internationally. The South African Electronic Communication Transaction Act, 2002 serves as a model law in that regard. It requires a web supplier to provide consumers with the meaningful information in all electronic transaction. The South African Act devoted a chapter for the protection of consumers who contract electronically for the supply of goods or services[89].

It is high time that Nigeria enacts a law that clearly and comprehensively incorporates the right to information in its body of law. This would compel producers of goods and services providers to supply the consumers with requisite information to optimally maximize their welfare through facts needed to make informed choice. The incorporation would further protect consumers against dishonest or misleading advertising and labelling.

Availability of Genetically engineered and modified products in our market equally demands the producers put the necessary labels to enable the consumer know the production processes the products he is buying re subjected to. This is what is in vogue in many jurisdictions.

1.3.3 The Right to Choose

The structure of most economic systems today is premised on the idea that competition where allowed, best regulates the market place. This is the idea that underlies deregulation. Though, this is not always the case. According to this theory, when companies are competing in selling a product or service, for each to attract and keep more customers it tries to keep prices low in a way that allows it to cover costs and make a fair profit[90]

The exercise of this right is best appreciated in a market that is competitive with variety of goods and services available at competitive prices for the consumer to choose. This tallies with the idea that deregulation breads competition and competition leads to variety of produced goods and services supply. It is believed that allowing a market without competition enables suppliers of goods and service providers to set higher price beyond what the consumer can afford.[91] To promote and preserve competition in the marketplace, laws must be enacted to make it illegal for businesses to monopolize an industry by restraining trade, price fixing or from engaging in other anticompetitive

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[89] Chapter VII, South African Electronic Communications Transaction Act, 2002

[90] Consumer Protection, available at http//:www.answers.com/topic/consumer-protection, last visited 8/03/2013

[91] Caution must however be observed as neo-classical economists have acknowledged that markets could still fail even with competition law. This position was adopted by Nivarajan, V. (2007), in his article "Reconceiving Regulation: Finding a place for the consumer" in the Competition & Consumer Law Journal 15 CCLJ 93 available at http://www.lexisnexis.com.eserv.uum.edu.my/my/academic/ last visited

abuses. The law assures consumers access to variety of goods and services at competitive price.

In case of monopolies, however, it means right to be assured of goods and services of satisfactory quality at affordable and fair price. It also includes right to basic goods and services as unrestricted right of the minority to choose can mean a denial for the majority of its fair share. In Nigeria issue of pricing is the responsibility of Prices Control Board[92] and this agency does not seem to exist as it is hardly heard of.

In electronic transaction for supply of goods and services, the supplier is expected to provide the consumer with an opportunity, before he has placed his order, to review the transaction, correct any mistakes, and to withdraw from the transaction. The South African Electronic Communication Transactions Act, 2002 provide the electronic consumer with this right.[93] In fact where the supplier fails to comply or affords a consumer with any of the above requirements, the consumer may cancel the transaction within 14 days of the receipt of such goods or services.[94] No such legislation is provided in the Nigeria context despite the fact that many Nigerians now engage in electronic transactions.

1.3.4 The Right to be Heard

This right can be divided into two premises. First, it requires the consumer to be giving participatory role in decisions that affects them. Secondly, it relates to the issue of access to justice. On the first premise, the right requires that the needs and interests of consumers should be considered when government decisions affecting them are made. In the U.S. under the regime of President Gerald Ford, for example, agencies and departments were mandated to establish procedures to accommodate the views of consumers in certain policy making areas.[95]

On the second premise, informal or less formal arrangements should be made for a consumer who has been cheated or who has bought a product or service that does not perform properly to complain and to get either a replacement of the product, a refund of the purchase price or other remedy.

In some jurisdictions in recent years laws have been passed to help dissatisfied consumers. Some laws penalize deceptive business practices and give consumers the right to sue erring businesses who violates such laws. Successful consumers in such litigations often get up to three times the amount of the damages.[96] Related to this right is the need for businesses to promptly respond to consumers' complaints and correct any erroneous billing claims or undelivered goods or services. This concerns for example problems relating to credit-card bills and resolution of complaints for correction of

[92] Supra note 10.
[93] Supra note 21, Section 43 (2).
[94] Ibid, Section 43 (3).
[95] Consumer Protection, available at http//:www.answers.com/topic/consumer-protection, last visited 8/03/2013
[96] Ibid.

billing errors. With all the large patronage of Automatic Teller Machine (ATM) Card by customers of Nigerian banks for example, no such legal assurances about erroneous billing exist in the country. From personal experience and those of friends and acquaintances, many occasions customers are debited by the ATM without the machine dispensing cash and no prompt and in some cases no reversal of such billing inaccuracies.

Notwithstanding the importance of this right, unfortunately, no legislation incorporates or defines this right and what it entails. No legislation clearly requires the consultation of consumers even on issues that affects them. Even where the consumer voice is referred to, the consultation is made discretionary. A good example is the Nigerian Communications Commission Act, 2003. The Act only requires the Commission to consult in circumstances it deems appropriate.[97]

1.3.5 The Right to Satisfaction of Basic Needs

Consumers are by this right entitled to goods and services of satisfactory quality taking account of any description, the price and other circumstances. Consumers should under this right be afforded the opportunity of having access to affordable basic, essential goods and services necessary for survival. These basic needs include portable drinking water, adequate food, housing, clothing, health, education, telecommunications, electricity and sanitation. Life is unimaginable without these basic necessities of life. These basic needs are to be provided in line with minimum standard of international best practices. With deregulation these essential services are now privatized.

Regrettably, no law in Nigeria provide for the right of satisfaction of basic needs. As Nigeria has privatised basic utilities like telecommunications, electricity, what happens should the service providers of these utilities refuse to connect a section of the populace on the ground of unprofitability? Can the affected community confidently claim any right to satisfaction of the need to have access to such a utility in view of the fact that the sectors are deregulated? It would serve a great deal of good if the right to satisfaction of basic need like electricity is concretized in a legislative instrument or any social policy as obtainable in other jurisdictions like the United States and Europe.

1.3.6 The Right to Seek Redress

This right is closely related to the right to be heard and the idea of access to justice. The right simply is the right of the wronged consumer to seek redress for the loss, damage or injury he sustained flowing from any consumer transaction. Like the other consumer rights, no legislation in the country clearly incorporates the right as such, though it can be situated within the provisions of the constitution dealing with the

[97] Section 5, Nigerian Communication Commissions Act, Cap N97, Laws of the Federation of Nigeria, 2004

general powers of judiciary to hear any dispute on any right or liability etc. submitted to the courts.[98]

By this right, consumer complaints are to be fairly disposed and be provided with a good compensation regime for misrepresentation and shoddy services rendered. This presupposes the existence of small claims court or other administrative mediums for consumer complaints handling. Countries that valued the need to settle consumer grievances such as US, China, Israel, Peru and a host of others have put in place the small claims courts for that purpose. Unfortunately, none exist in Nigeria. The redress to be provided should be fair, timely and inexpensive means of seeking redress. As litigation is costly and time consuming, the development of effective alternative dispute resolution (ADR) mechanisms as a means of resolving consumer disputes is to be encouraged. Unfortunately, the procedure for complaints handling established by many business concerns in Nigeria are not prompt but time consuming. This includes the procedure provided by the Consumer Protection Council Act. By this Act the State Committee where it exists can only mediate between disputing parties. Where settlement is not reached, they recommend to the Council the appropriate remedies. In view of the large size of the Council members, it appears impracticable for the Council to regularly meet to endorse the recommended remedies by the state committee.

The right to redress is an equitable remedy a consumer can seek from the manufacturer or service provider. This is because if the consumer who is always in a weak bargaining position is left to the mercy of the manufacturers against whom the complaint of the wrongs is done, he will definitely be at a losing end.

1.3.7 The right to Consumer Education

Education is a means of empowerment and a powerful tool that protects and enhances the wellbeing of consumers. According to Delgadillo it is "the first step leading to general consumer empowerment."[99] It is only when consumers are informed and empowered that the market and transaction can be fairly balanced and safely conducted. This is because consumer education increases the knowledge levels, attitudes, behaviour and satisfaction of consumer. Consumer education and training is therefore very necessary in the scheme of consumer protection. This right is related to the right of consumers to information as discussed above. Consumers should by this right be given the basic knowledge and skills needed to make informed purchasing decisions and choice about goods and services while being aware of basic consumer rights and responsibilities and how to act on them. Once consumers are equipped with the requisite knowledge and skills, they become informed and safeguard themselves from the exploitation of producers and suppliers of goods and services.

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[98] Section 6, Constitution Federal Republic of Nigeria, 1999, CapC25, Laws of the Federation of Nigeria, 2004

[99] Delgadillo, Lucy. (2013). An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica. *Journal of Consumer Policy36,* no.1 (2013): 62. doi: 10.1007/s10603-012-9206-9

·Under this right consumers need to be educated on the available rights, how to exercise them and the options or remedies open to them in event of violations of any of such rights in any transaction or supply of products or services. This is one of the best ways of ensuring the success of consumer protection.

It is in recognition of the importance of consumer education that many states in the US now require elementary and secondary schools to provide consumer education to students. Regulatory agencies, schools and Non-Governmental organizations equally organize consumer-education programs particularly for adults.[100] Consumer rights education is also included in the primary and secondary schools curricula in Japan and Costa Rica[101]. In Africa the Botswana example is a very commendable effort. In this African country, consumer education was introduced into junior and senior secondary schools curriculum in 1996 and 2002 respectively. In fact it was introduced into university curriculum in the same year 2002.[102]

Regrettably, no school curriculum in Nigeria the "giant of Africa," provides for consumer education. Only recently the Consumer Protection Council canvassed for the introduction of consumer protection as part of Secondary education in Nigeria. The Minister of State for Commerce and Industry Mrs. Josephine Tapgun at the 2nd edition of the National Young Consumer Awards held in Abuja expressed her support for such initiative. It is her belief that when children are trained and empowered to be discerning and assertive consumers, businesses will have no option than to meet the demands of market place[103]. This is a fundamental gap in the consumer protection drive in the country. Without consumer education, it would be difficult for people to acquire knowledge and to develop the skills to become empowered to effectively participate in the market place. There is the urgent need to include consumer education at all levels of education in Nigeria. This could be done by including it in the Universal Basic Education Laws of the country and in a comprehensive legislation for consumer rights in the country.

1.3.8 The Right to a Healthy Environment

The process of service provision of essential services has environmental and safety consequences. Typical example is the electricity production and service

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[100] Supra note 27

[101] Widdows, Richard, Gong-Soog Hong, Jing J Xiao, Misako Higa, Hilary Tso, and Lakshmi Malroutu (1995), "Consumer Issues and Consumer Protection in Asia," *Advancing the Consumer Interest*: 16; Delgadillo, Lucy, "An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica,"*Journal of Consumer Policy 36,* no.1 (2013):76. doi: 10.1007/s10603-012-9206-9. See also Article 3 Letter (d) UN Guidelines on Consumer Protection, 1985; Articles 60 and 61 Argentine Consumer Protection Act.

[102] Peters, S and Ndubiwa, B. (2007), "Consumer Complaints Experienced by Adolescents in Botswana", *Consumer Journal*: 65

[103] Williams Sunday, Minister Wants Consumer Protection put in School Curriculum, Daily Trust Newspaper, 15 April, 2010, P. 44.

provision.[104] Consumers which include everybody are by this right to be informed and assured on time of major changes that could harm his or her environment. It also includes the involvement or participation of all in the decision making process and access to adequate means of redress for the violation of these rights where his or her environment has already suffered damage.[105] This right is as concrete as any other right guaranteed to individuals or groups. Therefore, the consumer and the environment are respectively entitled to be informed and protected from the environmental effects of any activity or manufacturing process and supply of goods and/or service provision that he/she is involved or will be exposed to. Furthermore, the consumer by this right should live and work in an environment that is non-threatening to the well-being of present and future generations.

1.4 Consumer Rights Protection In Nigeria

Like many countries, Nigeria has a collection of laws that are consumer protection related. These include the Consumer Protection Act [106], the Standard Organisation Act,[107] the National Agency for Food Drugs Administration and Control Act,[108] the Weight and Measures Act 1974,[109] the Price Control Act, 1977,[110] and the Nigeria Communications Act, 2003. The bulk of these laws were enacted when government was the sole provider and regulator of utility services. Furthermore, and although there is high illiteracy on the side of consumers in the country, the existence of these laws did not stop the abusive market practices that are all over the Nigerian markets especially the deregulated ones.[111]

Today, President Kennedy's message to US Congress of 1962 - the birth of what today is known as consumer bill of rights is 55 years. Equally, the "United Nations Guidelines for Consumer Protection"[112] (UNGCP) is over 32 years today. The UNGCP incorporated the above consumer bill of rights.[113] The provision of the UNGCP requires

[104] Stevenson, R. (June 1983), "Institutional Objectives, Structural Barriers, and Deregulation in the Electric Utility Industry" *Jei Journal of Economic Issues* 17, no. 2.
[105] Kiss, A. (1992), An introductory note on human rights to environment, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW 199, 201 (Weiss, E.D. ed.)
[106] Now Cap. C 25, Laws of the Federation of Nigeria, 2004.
[107] Now Cap. S 9, Laws of the Federation of Nigeria, 2004.
[108] Now Cap. N, Laws of the Federation of Nigeria, 2004.
[109] Now Cap. W 3, Laws of the Federation of Nigeria, 2004.
[110] Now Cap. P28, Laws of the Federation of Nigeria, 2004.
[111] Central Intelligence Agency, The World Fact Book, https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html (accessed November 5, 2013); Ekanem, Etefia E., "Institutional Framework for Consumers Protection in Nigeria," *International Journal of Advanced Legal studies and Governance* 2, No. 1 (2011):33; Monye, F.N., "Law of Consumer Protection," (Ibadan: Nigeria, Spectrum Books, 2003),1
[112] The UN Assembly Resolution No. 39/248 of April, 1985
[113] The African Conference on Consumer protection held at Harare Zimbabwe from April 28 to May 2nd 1996. Government officials from over 35 African countries, consumer leaders and experts from countries of the region, and members of the international community concerned with issues of consumer protection attended the Conference. The Conference launched the Model Law for Africa, designed to protect the

states parties to the UN (Nigeria inclusive) to take steps to institutionalize those rights in their consumer protection legislation.[114] In many countries (Nigeria inclusive), however, the realization of these rights is far from reality. This is what informed Consumer International's recent call for serious and aggressive effort for the realization of these rights.[115] In Nigeria, neither the principal consumer protection legislation - the Consumer Protection Council Act, 1992(CPC Act) nor the provisions of other sector specific consumer protection legislations clearly and specifically enumerated the consumer rights. Only through deductions one can find few sections in the CPC Act, the SON Act and the NAFDAC Act with bearing on rights to safety and information and not all the consumer rights discussed above.[116] No section of the legislations declared them as rights not to talk of how they can be enforced in event of violation. In fact, in the 33 sections of the CPC Act, the word "consumer right" was used one time.[117] The time for a clear enumeration of consumer rights in consumer protection legislation in Nigeria is riper now than ever if the rights are to be a reality. This is because most public utilities that are key for survival in modern life in Nigeria are no longer public services but business products for sale in the hands of private firms.

It is further submitted that consumers and regulatory agencies in Nigeria can only enforce and protect these rights respectively if they have statutory backing. The lack of clear enumeration of these rights made the Nigerian consumer to live with substandard goods and shoddy services delivery he has not bargained for. Nigerian consumers need a legislative document as obtainable in other jurisdictions like Germany and other European countries where the rights are clearly incorporated and spelt out in legislative documents. The entrenchment of these rights into our legislative documents would give them more force and value and would increase the consumer welfare in the country. This is because the level of Nigeria's "consumer protection is to be measured by the degree to which the fundamental rights of (its) consumers' are incorporated (into its legal) framework."[118]

African consumer and serve as a guide for African Governments in their efforts to develop appropriate policies and legislation and enforcement mechanisms in this area. Ghana was among the first countries that indicated interest to use the Model Law for Africa in the elaboration of its national consumer protection policy. A number of areas that required the special attention of the countries of the region were identified, at the conference in particular health, safety, access to basic services and measures for redress. The Conference also examined the extension of the guidelines into other areas, such as sustainable consumption patterns. See http://www.un.org/documents/ecosoc/docs/1997/e1997-61.htm for more details.

[114] The UN Assembly Resolution No. 39/248 of April, 1985

[115] Consumer International, "Consumer Justice and Protection: Your Rights, Our Mission Strategy, 2015" available at http://www.consumersinternational.org/our-work/consumer-protection-and-law, last visited 10/03/2013

[116] Section 2 (b) Consumer Protection Act, Cap C, L.F.N., 2004; Section 17 Standard Organisation of Nigeria Act, Cap S L.F.N. 2004

[117] Section 8 (a) of the Consumer Protection Act, Cap C, L.F.N. 2004.

[118] Delgadillo. Lucy (2013), "An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica. *Journal of Consumer Policy 36*, no.1(2013): 62. doi: 10.1007/s10603-012-9206-9

The need for a comprehensive legal framework on consumer rights in Nigeria is further predicated on the level illiteracy and poverty in the country.[119] Nigerians under too many pressures cannot resist exploitation. They smile in suffering as a result of the quality of goods and services offered in the market. In fact, even the literate and educated Nigerians are not aggressive and need to be enlightened about consumer rights. The elites do not strongly assert their rights or claims of refund of money due to the supply of substandard goods and poor service delivery that is wide spread in the Nigerian markets.[120]

1.5 Conclusions

The change of global economies including Nigeria's from publicly owned and controlled to market–oriented demands the consumer to become active participant in the market.[121] To function as such and to meet the demands of new competitive market the consumer needs to be informed educated and equipped on his rights. Efficient regulation is equally required if the consumers are to benefit and their rights and interest protected in such deregulated environment.[122]

There is serious need for a comprehensive legal framework that incorporates these consumer rights in our laws. This is because legislation is vital in rights protection. Alternatively, the CPC Act should be amended to have these rights clearly incorporated therein. Specific legislative intervention on consumer rights is required in Nigeria as "general laws and market forces" cannot be relied upon to protect the consumer.

A clear incorporation of consumer rights in a legislative document would raise understanding and facilitate challenge of their violation in Nigeria. If Kenya can make consumer rights fundamental constitutional guarantee, what stops Nigeria from doing so? At least Nigeria should enact a specific legislation on consumer rights. "The value (Nigeria) places on consumer protection and policy will directly impact the level of empowerment that" (Nigerian) consumer experiences."[123] The protection and promotion of the rights and interest of the 174 million people as consumers should be the focal point of Nigeria's consumer protection drive.

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[119] Ake C. (1987), "The African Context of Human Rights, "a paper presented at the International Conference on Human Rights in the African Context, held in Port Harcourt, 9-11 June, quoted in T. Akinola Aguda (1989), Human Rights and the Right to Development in Africa (Lagos: Nigerian Institute of International Affairs), p. 26.
[120] Monye, F.N. Op cit.
[121] Goldring, John (1996) "Consumer Protection, the Nation-State, Law, Globalization and Democracy."*Journal of Computer-Mediated Communication* 2, no. 2.
[122] Consumer International, "Consumer Protection and Quality of Life in Africa through Competition and Regulation, Report." 2004, P. 4; Harvey Brian W. & Deborah L. Parry (2000), The Law of Consumer Protection and Fair Trading, 6th ed. (London: Butterworths), p. 71.
[123] Delgadillo, Lucy. (2013). An Assessment of Consumer Protection and Consumer Empowerment in Costa Rica. *Journal of Consumer Policy36,* no.1(2013): 62. doi: 10.1007/s10603-012-9206-9