



CONSUMER RIGHTS AS HUMAN RIGHTS: AN APPRAISAL*

Abstract

Consumer Rights are the rights given to a consumer to protect him/her from being cheated upon by unscrupulous traders and service providers. Consumer rights are designed to ensure fair trade competition, free flow of truthful information in the market place as well as provide additional protection for those unable to defend themselves within the ambits of the law. In other for this to be adequately carried out, Consumer Rights has to be adequately considered and carried about as Human Rights. All over the world, Consumer Rights are now being considered as Human Rights taking into cognizance that there now exists several laws to that effect as well as the fact that the Consumer is Human and definitely would be affected in one way or the other by the goods and services they purchase. This work attempts to look into some existing international laws that gave rise to Consumer Rights now being considered as Human Rights.

Keywords: Consumer Rights, Human Rights, Laws, Trade, International Instruments

1. Introduction

A consumer is the one who purchases products/goods and makes use of services for his/her own needs and as such personally consumes or uses such goods or services. Thus, he can be considered as the end-user of any goods or services. Consumer Rights on the other hand generally are a reference to a body of law that pertains to things that the producers of goods and services must do to protect consumers who make use of those goods and services, from harm. Human Rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human Rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression and right to work and education etc. Human Rights are standards that recognize and protect the dignity of all human beings. Human Rights govern how individual human beings live in society with each other as well as their relationship with the state and the obligations that the state has towards them.¹ The international nature of trade, the hazardous and defective goods on the one hand; and sub-standard services consumers are subjected to by businesses globally necessitated international regulatory intervention. Hence, internationally, rules have been articulated to regulate and protect consumer rights in various international instruments. At regional and national levels, these international rules regulating consumer rights protection have been adopted and domesticated.

2. International Instruments Regulating the Protection of Consumer Rights Globally

2.1. Universal Declaration on Human Rights

In 1948, the United Nations General Assembly adopted the Universal Declaration on Human Rights which articulated the rights and freedoms to which every human being is equally and inalienably entitled. The UN Declaration has been asserted to be the first comprehensive human rights

***Prof. Ogugua VC Ikpeze PhD**, Professor of Law and the Dean of the Faculty of Law, Nnamdi Azikiwe University, Awka. She is also a member of several professional bodies, locally and internationally.

Egondu Grace Ikeatu is a doctoral student in the Faculty of Law, Nnamdi Azikiwe University, Awka, Email: egonduikeatu@gmail.com, Tel. No. +234 8034075570

¹ Unicef.org; <https://www.unicef.org/child-rights-convention/what-are-human-rights> accessed on 1st January, 2023 at 10:51pm



declaration to be proclaimed by an international organization.² Among the recognized rights are some rights that invariably, can be said to protect human beings – as consumers. In fact, the economic and social rights contained in the UN Declaration have been noted to be of special significance to consumer protection. Noteworthy are Articles 23(3) and 25(1). Art. 23(3) talks about the individual's right to just and favourable remuneration: ensuring for himself and his family an existence worthy of human dignity. Article 25(1) on the other hand highlights the right to a standard of living adequate for the health and well-being of the individual and of his family. Inasmuch as the UN Declaration's primary focus is not consumer protection, it has been argued that the provisions of Articles 23(3) and 25(1) earlier mentioned can serve as a basis for consumer protection.³ It has even been observed that some workers' unions accordingly established departments of consumer protection to promote an adequate standard of living by minimizing excessive prices resulting from the purchase of defective or overpriced products. It can safely be concluded that although the UN Declaration does not directly deal with consumer protection, its goals and objectives are synonymous to those underlying the basic right of consumer protection.

2.2. International Covenant on Economic Social and Cultural Rights

In 1966, the International Covenant of Economic, Social and Cultural Rights⁴ was adopted by the United Nations General Assembly. The nucleus of the ICESCR centers on the promotion of economic, social and cultural rights without consumer protection specifically in contemplation. All the same, a detailed scrutiny of the ICESCR reveals that it acknowledges consumer rights. For instance, Article 11(1) of the ICESCR stresses the individual's right to adequate food, clothing and housing, and to the continuous improvement of living conditions. As has been rightly observed, consumer protection can be considered an implementation of these rights and a means to achieve these goals.⁵ Actually, adequate food includes quality of food, which is achieved through consumer protection legislation. Article 12 of the ICESCR which is on the right to health is also closely associated with consumer protection. Essentially, one of the focuses of consumer rights protection is protection of consumers from hazards to their health and safety. The object that informs the right contained in Article 12 can be achieved through a consumer protection law. Article 13 dwells on the right to education which is one of the basic consumer rights. Generally, consumer protection may not have been the major object of the ICESCR but a critical appraisal of the ICESCR reveals that the basic principles of consumer protection are imbedded in the provisions of the ICESCR.

2.3. The United Nations Guidelines on Consumer Protection

In 1985, the United Nations Organization adopted its Guidelines for Consumer Protection⁶ which pioneered the formulation of international legal principles for consumer protection.⁷ Research reveals that the concerted efforts of the International Organization of Consumer Unions led to the adoption of the UN Guidelines by the United Nations.⁸ Though adopted in 1985, the UN Guidelines has been revised twice – in 1999 and 2015 to reflect global changes as they affect consumers.

² S Deutch 'Are Consumer Rights Human Rights?' (1994) 32 *Osgoode Hall Law Journal* p. 558

³ *Op cit.* p. 559

⁴ Hereinafter referred to as the ICESCR

⁵ Deutch, *op. cit.* p. 562.

⁶ Hereinafter referred to as the UN Guidelines

⁷ I Benohr, 'The United Nations Guidelines for Consumer Protection: Legal Implications and new Frontiers' (2020) *Journal of Consumer Policy*, p. 105.

⁸ Deutsch *op.cit.* p. 264 The International Organization of Consumer Unions is an amalgam of over 170 leading consumer organizations from more than 60 countries. It is presently known as Consumers International, a consortium of 200 member



Section 1 of the UN Guidelines outline its objectives as follows –

1. To assist countries in achieving or maintaining adequate protection for their population as consumers;
2. To facilitate production and distribution patterns responsive to the needs and desires of consumers;
3. To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
4. To assist countries in curbing abusive business practices;
5. To facilitate the development of independent consumer groups;
6. To further international co-operation in the field of consumer protection;
7. To encourage the development of market conditions which provide consumers with great choice at lower prices.

The tone of the UN Guidelines and the principles contained therein makes a call to the governments of member States to develop their consumer protection policies in line with the provisions of the UN Guidelines. Further, it is expected that each government must set its own priorities according to the economic and social circumstances of its country and population.

The UN Guidelines as a working document is aimed at giving a structure of basic objectives for the purpose of improvement upon the consumer legislation especially in developing countries.⁹ The UN Guidelines are regarded as the global standard for good practice in consumer protection.¹⁰ The UN Guidelines may not be legally binding but their strength comes from their adoption by the United Nations General Assembly, and the consensus of countries and experts from around the world.

The UN Guidelines are said to focus on the 11 legitimate needs of consumers as follows:

1. Access - the ability to access essential goods and services;
2. Inclusivity - protection of vulnerable and disadvantaged consumers;
3. Safety - protection from hazards to health and safety;
4. Protection of Economic Interests - promotion of value for money and protection from risk;
5. Information - access to clear, accurate information to enable informed choices;
6. Education - assistance to understand consumer transactions, and the environmental, social and economic consequences of specific choices;
7. Redress - availability of effective dispute resolution services and redress mechanisms;
8. Representation - the freedom to form consumer groups and have views included in relevant decision-making processes;
9. Sustainability - the promotion of sustainable consumption patterns;
10. E-Commerce Rights - equal protection for consumers dealing with organizations online and offline;
11. Privacy - the protection of consumer privacy and global free flow of information.

The UN Guidelines have been asserted to be an important tool that gives added legitimacy to the principles of consumer rights and also practical support and guidance for the development of

organizations in more than 100 countries to empower and champion the rights of consumers everywhere. Consumers International, 'About Us.' <https://www.consumersinternational.org/who-we-are/> retrieved on October 18, 2021

⁹AG Eze, 'Consumer Rights as Constitutional Rights – A Comparative Analysis of some Selected Jurisdictions' (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, p. 191.

¹⁰Consumer International: UN Guidelines for Consumer Protection Retrieved from <https://www.consumersinternational.org/what-we-do/consumer-protection/global-policy-cooperation/un-guidelines-for-consumer-protection/> on October 18, 2021.



consumer protection around the world. The guidelines contain a number of consumer needs that broadly reflect internationally acknowledged consumer rights.

3. Internationally Recognized Consumer Rights

In an address to the US Congress on the 15th of March, 1962, President John F. Kennedy listed what he envisioned as consumer rights listed below –

1. The right to safety.
2. The right to be informed.
3. The right to choose.
4. The right to be heard.

Over the years, Consumer International and its members conceptualized the following consumer rights that have gradually been acknowledged and gained acceptance internationally. These rights are –¹¹

- i. The right to satisfaction of basic needs.
- ii. The right to safety.
- iii. The right to be informed.
- iv. The right to choose.
- v. The right to be heard.
- vi. The right to redress.
- vii. The right to consumer education.

i. The Right to Satisfaction of Basic Needs

This right basically dwells on the consumer's access to basic, essential goods and services such as adequate food, clothing, shelter, health care, education, public utilities, water and sanitation.¹² This right entitles the consumer to derive satisfaction from goods and services rendered to them. In essence, goods and services acquired by consumers should fit the purpose for which the consumer seeks to use them or the purpose which such goods and services are portrayed to give. Various Sale of Goods legislations contain provisions on fitness for purpose and remedies available when goods do not match the purpose for which they are sold. It is noteworthy to mention that most Sale of Goods legislations are restricted to contracts of sale and product liability as against liability for services.¹³

ii. The Right to Safety.

This is the consumer's right to be protected from hazardous products, production processes and services that pose threats to the consumer's health or life. This right emphasizes that creators of products and services should ensure that their products and services are not harmful but safe for use by consumers. This right is applicable to various areas that affect healthcare, housing, pharmaceuticals, household appliances, food processing and transportation/travel.¹⁴ This right is recognized when consumers are awarded damages by the courts for harm suffered as a result of negligent acts of manufacturers. As has been rightly noted, consumers have the right of protection against industrial activities, goods and services, which may grievously harm their property or person. All the same, the consumer's ability to exercise this right to safety is entirely predicated on initial

¹¹<https://www.consumersinternational.org/who-we-are/faqs/#frequently-asked-questions-what-are-the-consumer-rights> retrieved on October 18, 2021.

¹²National Consumer Federation: The 8 Consumer Right retrieved from <https://www.nationalconsumer.org.uk/consumer-voice/consumer-rights/> on October 20, 2021.

¹³ A G Eze, *op. cit.* p. 190

¹⁴ BK Misra, Consumer Rights retrieved from <https://www.jagorahakjago.com/consumer-rights/> on October 21, 2021



full disclosure being made by operators of chemical, pesticides and allied industries, manufacturers of goods, products and services provider concerning the degree of safety of their industrial activities or reliability of goods, products or services. In order to avoid accidents, or to mitigate injuries, manufacturers need to carefully explain any harmful tendencies of their products or services to consumer.

iii. **The Right to Choose**

Consumers should have the liberty to make choices from a range of products and services that are offered at competitive prices with the assurance of reasonably satisfactory quality.¹⁵ This right seeks to break monopoly by producers of products and services who may want to dominate the markets with substandard products that do not satisfactorily meet the needs of producers.

iv. **The Right to be heard**

The right aligns with the fundamental right to fair hearing. The right to be heard has been explained to mean an assurance that the government will take heed of the concerns of consumers and will protect those interests through sensible laws and administrative regulations.¹⁶ This right entails that the consumer has the right to be heard on issues, policies, plans, programmes and decisions that concern them. The scope of this right entitles consumers to seek redress for grievances relating to substandard, unsafe, unduly expensive goods and services, unfair claims which are not substantiated by tests and other unfair practices against them. A good illustration of this right in action is the development of more fuel-efficient technologies by auto makers in manufacturing environmental friendly vehicles - hybrid, electric and natural gas vehicles. This is the product of the complaint of consumers and consumer rights advocates that earlier manufactured vehicles are environmentally damaging.

v. **The Right to Redress**

This right entitles the consumer to compensation for misrepresentation, shoddy goods or unsatisfactory services. This right entitles the consumers to seek legal remedies in the appropriate court or tribunal seized with the relevant jurisdiction. By virtue of this right, the consumer is assured that his dissatisfaction over any product or service will receive due attention. Additionally, this right entitles the consumer to due compensation when he has suffered any loss or is put into jeopardy due to the fault of the supplier or manufacturer of the good or service that has caused harm. Aaker and Day aptly opined that consumers should be given an opportunity to voice dissatisfaction and complaint is settled satisfactorily.

vi. **The Right to be informed**

This right entails the consumer having access to sufficient information in order to weigh alternatives and to protect the consumer from wrong and misleading claims by producers of products and services in the course of advertising their products and services. This is very pertinent for consumers in the course of accessing health products and services. Knowing the composition of chemicals in food or health products can better aid the consumer to make choices in accessing products for his good and not to his detriment. This can help to curb drug abuse with respect to health products. In line with this right, consumers have the right to get enough information about products and services upon

¹⁵ National Consumers Federation The 8 Consumer Rights Retrieved from <https://www.nationalconsumers.org.uk/consumer-voice/consumer-rights/> on November 1, 2021.

¹⁶ What are Consumer Rights? Retrieved from <https://www.hg.org/legal-articles/what-are-consumer-rights-31356> on November 1, 2021



which to make buying decisions.¹⁷ Information to consumers includes product specification, place of origin, safety warnings, price, mode of payment, date of quality assurance, description of after-sale services, warranty, ingredient, nutritional facts, etc. Consumers expect complete information about the product to be purchased including its use, ingredients or chemical contents, limitations and expiry date.

vii. **The Right to Consumer Education**

Consumer education has been described as the education that prepares individuals to participate in markets as informed consumers.¹⁸ The right to consumer education is essentially the right to acquire the knowledge and skills necessary to be an informed consumer.¹⁹ Additionally, it entails the consumer's right to acquire knowledge and skills needed to make informed, confident choices about goods and services, while being aware of basic consumer rights and responsibilities and how to act on them. It has been asserted that as far as consumers' rights are concerned, all forms of knowledge can affect consumers' defensive behaviors. Ignorance in any form of knowledge can deteriorate the consumers' capacity to exercise their rights. Hence, consumers can, through activism as a result of being informed, compel traders to act in compliance with requirements of consumer legislations. To prevent market malpractices and exploitation of consumers, consumer awareness and education are essentially required.

4. Enforcing Consumer Rights as Human Rights

Consumer Rights are usually seen and enforced as a breach of contract or duty in tort in Nigeria. In most cases, attention is focused on tort-based actions as against contract-based actions. This decision is informed by the fact that tort-based actions (negligence) provide a veritable option to claimants who are not in privity of contract with the person being sued in the manufacturer's stead in most cases. Several decided cases have however, shown that the ability of the consumers to take advantages of this option is seriously restricted by the burden of proof imposed by law. To succeed, the consumer must discharge this burden by establishing the three ingredients of negligence, namely; that the manufacturer owes him/her a duty of care, that the duty has been breached, and that he or she has suffered consequential damage as a result of the breach. To make matters worse consumers are often confronted with the defence of "foolproof" system of production and the defence of lack of nexus between the act complained of and the alleged injury or damage.

Furthermore, most of the consumers rights that are infringed upon by manufacturers of goods and services can be properly situated within the realms of human rights. Some of these rights like right to life, dignity of human person and right to privacy have been entrenched and guaranteed by the constitutions of different countries. Therefore, it is the contention of this paper that consumers' rights can be enforced as fundamental rights. In *Ransome Kuti v. Attorney General of the Federation*,²⁰ the Nigerian Apex court held as follows;

A fundamental right is a right which stands above the ordinary laws of the land and which is antecedent to the political society. It is a precondition to a civilized existence... the entrenchment of a right in the constitution does not create rights where none existed before, rather it is merely intended to protect

¹⁷VC Ibarra and CD Revilla, 'Consumers' Awareness on their Eight Basic Rights: A Comparative Study of Filipinos in the Philippines and Guam' (2014) 7 *International Journal of Management and Marketing Research*, p. 67 & 68.

¹⁸ Simplicable, 11 Examples of Consumer Education retrieved from <https://simplicable.com/en/consumer-education> on November 4, 2021

¹⁹ D Mazlana, AM Redzuana, and DA Bakara, 'Consumer Education in Creating a Consumer Conscious Nation' Being a Paper presented at the International Conference on Communication, Langkawi, Malaysia on 18-20, 2014.; p. 450.

²⁰ (1985)2 NWLR (Pt. 211) p.229



existing rights from subsequent legislative interference and to enable their assertion against arbitrary, oppressive and illegal execution action.

Thus, in Nigeria for example, any consumer whose rights have been violated, say by consuming unsafe and hazardous product can seek redress by way of enforcing his or her human rights to life, health, safety and welfare. This is made possible by Fundamental Rights (Enforcement Procedure) Rules 2009 as well as Section 46 of the Constitution whose provision is to the effect that any person (including a consumer) that any of his fundamental rights contained in Chapter IV of the Constitution has been, is being or likely to be contravened in any state may apply to a high court in that state for redress.

5. Conclusion

This paper has examined the nexus between Consumer Rights and Human Rights. From the analysis above, it can be seen that the concept of Human Rights touches every aspect of human life. Consumer Rights could be properly situated within the realm of Human Rights. The earlier the consumers know this, the easier it will be for them to enforce their rights not only under contract and tort but as human rights.