

## Articulating Consumer's Rights as Human Rights in Nigeria

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### Abstract

*Consumer protection is usually premised on contract, negligence or criminal provisions of our laws. However, the scope of consumer protection under contract and the tort of negligence is quite limited. Under contract, the doctrine of privity of contract constitutes an impediment. Under the tort of negligence, the scope is wider but the consumer (plaintiff) must prove the three key elements of tort of negligence (duty of care, breach of the duty and consequential damage) to stand any chance of success. Besides, the absence of a legal structure of consumer protection in terms of a general code leaves the consumer at the mercy of disjointed rules and the discretion of the judge. On another look, it appears the protection of the consumer in Nigeria, and even in international law does not give adequate consideration to the rights of the consumer. Where it does, it puts the peg at second generation rights which are usually cumbersome to redress. The belief of this research is that there is a necessary nexus between the protection of the consumer and human rights. While not shifting the gaze from the Contract and Tort approaches of the courts, this work suggests that the law should explore the nexus between human rights and consumerism in the protection of the consumer. That way, it is reasoned that the bottlenecks may be broken. This research is a jurisprudential examination of the true relationship between the consumer and the Producer or service provider. It is a shift in paradigm from the con-tort approach to a rights based approach. This work intends to initiate a new era in consumer protection while engendering a new estate in human rights. It is the work of a human rights activist focusing on consumer protection.*

**Keywords:** consumerism, human rights, consumer protection, consumer rights, rights based approach.

### I. Introduction

In modern era, the consumers are called 'the kings of the market' but this concept of consumer field is not beyond a shadow of doubt because in reality the consumers are still the most deprived part of the market and are in a disadvantageous position due to non- fortification of their rights.<sup>1</sup> They are suffering from lots of undesired element such as misleading advertisements, unlimited direct marketing, unsatisfied service etc. This necessitates the question; whether consumers have rights at all? If yes, what are those rights? And how can they be adequately protected and enforced? This paper seeks an approach to further enhance the protection of the consumer. It examines the relationship between consumerism and human rights.

### II. What is Consumerism?

Consumerism is the buying and using of goods and services; the belief that it is good for a society or an individual person to buy and use a large quantity of goods and services.<sup>2</sup> It has also been defined as a way of life combining high level of material affluence with an emphasis on symbolic and emotional meaning associated with shopping and possessions.<sup>3</sup> Monye describes consumerism as, '... a social movement aimed at enhancing the position of the consumer...' The essence of consumerism is to maximize consumer satisfaction"<sup>4</sup> Consumerism to Salako, is the process by which government seeks to protect its citizens in a capitalist economy against probable exploitation<sup>5</sup>. Consumerism can be interpreted positively as a means of stimulating the economy while facilitating people's liberties to shape their identities and subcultures. Consumerism is approached in this work as the philosophy of, and activism for consumer protection as distinct from the customary approach of viewing it from social and economic order and ideology which encourages the acquisition of goods and services. It is first of all, the promotion of consumer's interests.

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<sup>1</sup> A. I. B Kooffreh, "An Appraisal of the Legal Regime Available for the Protection of Consumers of Telecom Services in Nigeria". *Journal of Law, Policy and Globalization* (2014) 29.

<sup>2</sup> A. S. Hornby, *Oxford Advanced Learners' Dictionary* (8<sup>th</sup> ed. Oxford University Press, Oxford, 2008) p. 400

<sup>3</sup> C. Lizabeth, *A Consumer's Republic: The Politics of Mass Consumption in Postwar America* (Basic Books, New York 2013) p. 20

<sup>4</sup> Felicia Monye, , "The Consumer and Consumer Protection in Nigeria: Struggles, Burdens and Hopes" being the 59 Inaugural Lecture of the University of Nigeria, delivered on May 26, 2011, at pp. 19 and 20

<sup>5</sup> <http://solasalako555.blogspot.com.ng/2009/07/our-power-dilemma.html> last visited 1/2/2017

Consumerism is the stage set for the customer's total satisfaction in any economy. Producers employ various means of engendering this satisfaction and in the process infringe on the consumer's rights. He, consumer, is sometimes called the customer. According to Roger<sup>1</sup>, to attract customers, merchandisers play on consumers' envy, shame and pride, expending 1 trillion dollars annually worldwide on advertising, attractive package and other selling techniques. It may be argued that consumers are rational, hence they have the ability to choose what type of goods and services they want to consume. The effect of this is that little or no attention is paid to the protection of consumers' rights. And this has led to fraudulent and abusive practices by manufactures and merchant of goods and services. Thus, the need to protect consumers becomes imperative by not only making them to be aware of their rights but also by ensuring the enforcement of these rights.

### III. Who is a Consumer?

Statutorily a consumer has been defined by the Consumer Protection Council Act<sup>2</sup> (CPCA), as an individual who purchases, uses, maintains or dispose of products and services. The definition of the CPCA does not streamline the extent of the protection in any way. It appears that CPCA informed the attitude of the courts in maintaining the posture they took in the various cases on consumer protection they attend to. Monye<sup>3</sup> pictures the situation better when she posits thus:

...Some legal sources confine the term to contractual relationships; others give extended meanings that encompass non-contractual relationships. Legal sources confine the term to contractual relationships, others give extended meanings that encompass non-contractual relationships. Some even extend the concept to inanimate things and corporate organizations. Some use the term in a generic sense. Kanyip's definition comes under the last category and includes the hirer, the buyer, the patient, the client, the sailor, the hotel guest, the bank customer, the insured or policy holder and indeed all end users of goods and service.

In that work, Monye defines the consumer as a person who purchases or uses any product or service or is adversely affected by a product or service.

Similarly the Indian Consumer Protection Act 1986, defines a consumer as

any person who buys any good for a consideration and user of such goods where the use is with the approval of a buyer, any person who hires/avails of any service for a consideration and beneficiary of such services, where such services are availed of with the approval of the person hiring the service<sup>4</sup>.

Lamenting about the vulnerable position of consumers in relation to manufacturers of goods and services, John F. Kennedy former US President on 15 March 1962, said:

Consumers by definition include us all. They are the largest economic group affecting and affected by almost every public and private economic decision. Yet they are the only important group ... whose view are often not heard<sup>5</sup>

Consumer of our concern is the recipient of goods and services for use and consumption. This work is conceived from the angle that consumers, when exhibiting their habits or engaging in the purchase of goods and services are not just contracting but are exercising the right they have to CONSUME. That right is a bundle of rights culminating in other legal relationships. It is therefore pertinent that they are protected from that view point and not just measured in terms of contractual or neighbour relationships the Law of Torts bears. This work recognizes the existence of two kinds of consumption; product consumption and service consumption. It is also possible to have a hybrid situation where an act qualifies as both product and service consumption. Service is further divided into abstract service and non-abstract service. Apart from this conceptual division, there exists different kinds of services, to wit, marketing services, energy services, telecommunication services, health care services, hospitality services etc. Any legal person who takes benefit of these products and services having paid due consideration is a consumer.

### IV. Existing Legal Mechanisms for Consumer Protection

As it stands currently it can be asserted that the framework for the protection of the consumer in Nigeria and perhaps some other jurisdictions is fluid. The problem ranges from the unavailability of an

<sup>1</sup>R. Roger, *Consuming Desires: Consumption, Culture, and Pursuit of Happiness* (Island Press, Washington DC 1999) p. 30.

<sup>2</sup>Cap C 25 Laws of the Federation of Nigeria, 2004.

<sup>3</sup>Felicia Monye et al, 'Research Report on the State of Consumer Protection In Nigeria: A Review of Consumer protection in the Telecommunications sector in Nigeria' 2014, pp 10, [www.consumerawareness-ng.org](http://www.consumerawareness-ng.org)

<sup>4</sup>See section 2 (1) (d) of Consumer Protection Act 1986 of India

<sup>5</sup>J. F. Kennedy Special Message to the Congress on Protecting the Consumer interest, March 15, 1962 available at <http://www.presidency.ucsb.edu/ws/?pid=9108>. Accessed 2/02/2016.

umbrella legislation to the inconsistent approach of the courts. Cases *impari materia* are sometimes determined vagrantly and this can be predicated on the discharge of the burden proof. The courts maintain a tort based approach to most defective products cases because of lack of privity of contract. Consumer protection cases may relate to product or service liability. Consumer protection laws are fluid hence the need for streamlining. There is no separate estate of consumer protection jurisprudence except as derived from tort based or contract based cases. Different countries on recognizing the vulnerable nature of the consumers have enacted consumer protection laws to ensure that the rights of consumers are not infringed upon. In Nigeria, the consumer protection Act,<sup>1</sup> is the main legislation that deals with the protection of the consumers. It established the Consumer Protection Council which is a body saddled with the responsibilities of protecting the consumer.

In India the principal law is the Consumer Protection Act 1986 and in South African, it is the Consumer Protection Act No. 68 of 2008. In Nigeria, consumer protection legal regime is derived from a combination of the provisions of some laws creating regulatory agencies and other laws. This situation has left the law of consumer protection without a structure. Currently, case law has not carved a niche for consumer protection law precedents, rather, one will need to scout through contract based and tort based cases to relish consumer protection attitude of the courts. The thought of this work is to advocate a right based approach to consumer protection. The approach will go beyond the mere insinuation that consumer protection has some affinity with human rights but will lean the major weight of consumer protection on human rights.

## V. What Are Human Rights?

Human rights are legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity.<sup>2</sup> They encompass what are known as civil, cultural, economic, political and social rights. Human rights are principally concerned with the relationship between the individual and the state. Governmental obligations with regard to human rights broadly fall under the principles of respect, protect and fulfil.<sup>3</sup>

Human rights are rights held by all human beings unconditionally, unalterable, and they are inalienable<sup>4</sup>. They are rights inherent in all human beings whatever the nationality and place of residence, sex, national or ethnic origin, colour, religious, language or any other status<sup>5</sup>. Thus human rights are those rights which accrue to all humans by virtue of their nature as human beings.

Human rights are protected under the system of international human rights law. The international regime of the protection of human rights is governed by the bill of rights, to wit, the Universal Declaration of Human Rights (UDHR),<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR)<sup>7</sup> and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, (ICESCR).<sup>8</sup> The African Charter on Human and Peoples' Right etc. The rights provided by these instruments are embodied in the constitutions of most countries.<sup>9</sup> Some of the rights include right to life; freedom of thought, conscience and religion, freedom of movement, right to health, safety and welfare etc.

ICCPR and ICESCR were born as an attempt to solve the problem engendered by the polarity between the western and the eastern blocs as to which set of rights has priority. The west insisted that civil and political rights had priority and regarded economic and social rights as mere aspirations. The Eastern bloc on the other hand maintained that some set of rights which lent support to the realization of the ones regarded as civil and political rights were more important. These include right to food, right to good health, right to economic development, right to education, right to shelter, etc., were paramount and that civil and political rights are supplementary. This polarity informed the creation of two separate treaties to cater for the two estate of rights,

<sup>1</sup> Cap C25 LFN 2004

<sup>2</sup> Human Rights: A Basic Handbook for UN Staff issued by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Staff College Project, 1999, p.3.

<sup>3</sup> In turn, the obligation to fulfil contains obligations to facilitate, provide and promote (Section II.33, footnote 23 of General Comment 14 on the right to the highest attainable standard of health adopted by the Committee on Economic, Social and Cultural Rights in May 2000), (E/C.12/2000/4, CESCR dated 4 July 2000) cited and stated in Helena Nygren-Krug, '25 Questions and Answers on Health and Human Rights', *Health & Human Rights Publication Series* Issue No.1, 2002

<sup>4</sup> J. N. Ugwu, "Challenges of Humans Rights in Nigeria under the Present Dispensation 1999-Till Date" (2013) 1 (1) *Benue State University Journal of Private and Public Law* p. 190.

<sup>5</sup> M. Eseyin, "Proffered to others? PLWHA, Human Rights and Public Health: A Selected Discourse" (2009) 1 (3) *Akunba Law Journal* at p. 258.

<sup>6</sup> Adopted by the United Nations General Assembly on 10 December 1948, UN GA Res 217A (III), UN GAOR, 3rd sess UN Doc A/810 (1948).

<sup>7</sup> Adopted 16 December 1966; GA Res 2200 (XXI), UN Doc A/6316 (entered into force 23 March 1976).

<sup>8</sup> Adopted 16 December 1966, GA Res 2200 (XXI), UN Doc A/6316 (entered into force 3 January 1976).

<sup>9</sup> For instance see chapter II and IV of the constitution of the Federal Republic of Nigeria 1999 (as amended).

hence the ICCPR and the ICESCR. In 1979, Karel Vasak<sup>1</sup> proposed three generations of human rights. He made the division following the three watchwords of the French Revolution; Liberty, Equality and Fraternity. The first generation rights are civil-political. They are rights that guarantee liberty and political participation. They are said to protect the individual from excesses of the state.<sup>2</sup> First-generation rights include, among other things, the right to life, equality before the law, freedom of speech, the right to a fair trial, freedom of religion, and voting rights.<sup>3</sup> They are given status in international law by Articles 3 to 21 of the UDHR and the ICCPR. The second generation rights are socio-economic rights which guarantee equality. These rights place duties on government to ensure that individuals get fulfilment from the provisions of these rights. They are enshrined in Articles 22 to 27 of the UDHR and the ICESCR. The third generation rights are collective-developmental in nature. They are entrenched in the principle of fraternity. They are the rights which groups and peoples hold against their state communities. They are also called solidarity rights. Rio Declaration on Environment and Development, and the 1994 Draft Declaration of Indigenous Peoples' Rights and some smatterings in other treaties entrench these rights.

These rights find expression in the regional protection of human rights too. While Europe and America still maintains the dichotomy; the African Charter on Human and Peoples' Rights<sup>4</sup> (African Charter) blurred the distinction and provided for the rights with equal strength. Articles 1 to 14 provides for the civil and political rights, Articles 15, 16 and 17 provides for economic, social and cultural rights. Article 22 provides for right to development. Articles 19 to 21 provides for third generation rights. Worthy of note, is the attitude of the African Charter to the generational dichotomy. The African Charter makes no special reference or insinuation by separation to show that one set of rights are prioritized above others. Right to housing and right to food are also implicitly provided for in the African Charter. This can be deduced from the ruling of the African Commission on Human and Peoples' Rights (African Commission)<sup>5</sup> in the case of *Socio and Economic Rights Action Center and Anor. V Federal Republic of Nigeria*<sup>6</sup>

It is pertinent to analyze the implication of the generational dichotomy on the protection of human rights. The same implications make it difficult to arrogate human rights based approach to some subject areas including consumer protection. Sub regional and national documents are also fashioned after this dichotomy celebrated by the International Bill of Rights. For instance, the Nigerian constitution separates its yardstick for the protection of these rights. In chapter four, it provides for the protection of civil and political rights and refers to them as fundamental rights. While it sends the rights under the ambit of the second and third generation rights to the second chapter of the constitution. It refers to them as 'fundamental objectives and directive principles of state policy'. In essence they are mere aspirations. They are not justiciable. Governments have found it difficult to be responsive to these supposed lower set of rights. Where the individual demands for protection on the basis of these rights he merely begs at the mercy of good governance and not as of right. In the African region, these rights are not separated by virtue of the African Charter. In Nigeria where the African Charter has been domesticated, it is easier to force the hand of government to respect these rights. One can no longer hold tenaciously to right to life and throw right to good health into the wind. There is a necessary nexus between health and rights. When an individual lacks good health he cannot boast of his right to life. Some Indian cases<sup>7</sup> reflect this situation vividly. They represent the fact that there is no longer a regime of superior and inferior rights in the international human rights protection. From these cases it can be deduced that the economic, social and cultural rights together with development rights facilitate the actualization of civil and political rights. Eseyin and Ohaeri<sup>8</sup> posit,

Nigeria, having ratified the African Charter, cannot shy away from the new status of harmonious rights as opposed to the old generational rights. The articles conveying the civil and political rights are not stronger than the ones conveying the economic, social and cultural rights. In essence, the provisions of chapter four of the constitution are not more fundamental than those of chapter two any longer. The extending frontiers in this

<sup>1</sup>

<sup>2</sup> See [https://en.wikipedia.org/wiki/Three\\_generations\\_of\\_human\\_rights](https://en.wikipedia.org/wiki/Three_generations_of_human_rights)

<sup>3</sup> *ibid*

<sup>4</sup> (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

<sup>5</sup> This is a quasi-judicial organ of the African Union charged with the responsibility of monitoring, promoting and protecting human and peoples' rights. It is also involved with the interpretation the African Charter. The commission considers individual complaints of violations of the Charter.

<sup>6</sup> (2001) AHRLR 60 (ACHPR 2001). This case was decided at the Commission's 30th ordinary session, held in Banjul, The Gambia, from 13 to 27 October 2001.

<sup>7</sup> *The State of Bahar v Kamesh Singh* (1962) SCR 889, *State of Bombay v F.N. Barbara* (1951) SCR 682.

<sup>8</sup> M Eseyin and V Ohaeri, *Women's Rights In Nigeria; How Protected* (Uyo: Chewora, 2004), page 5

dimension world over; is that economic, social and cultural rights are as justifiable as their so called fundamental counterpart.

In answer to the question, what are human rights, for the purpose of this work, human rights are construed from the angle of harmonized rights where the dichotomy that may impair full realization of the protection of human rights is totally blurred. Here, human rights are rights that accrue to a consumer by virtue of the use of product or the enjoyment of services violation of which may cause great damage to life and the dignity of the consumer's human person, right to his self-determination and good living conditions. Human rights instruments set out governmental commitments to the protection and enforcement of human rights. These rights have serious affinities with consumer protection. This will be demonstrated later.

## **VI. Consumer Rights and Consumer Protection**

Consumer rights are those rights given to a consumer to protect him from being cheated by manufacturers of goods and services. This is achieved by consumer protection laws. Through the instrumentality of these laws, the government aims at protecting the rights of consumers<sup>1</sup>. There is a logical, moral and political force in the proposition that the consumers should have the right to take decision about the allocation of resources for their own needs. On March 15, 1962, John F. Kennedy<sup>2</sup> presented a speech to the United States Congress in which he extolled four basic consumer rights, which were later called the Consumer Bill of Rights. He identified them as follows:

- A. The Right to Safety - to be protected against the marketing of goods which are hazardous to health or life.
- B. The Right to Choose - to be assured, wherever possible, access to a variety of products and services at competitive prices: and in those industries where competition is not workable and Government regulation is substituted, an assurance of satisfactory quality and service at fair prices.
- C. The Right to Information - to be protected against fraudulent, deceitful or grossly misleading information, advertising, labeling, or other practices and to be given the facts s/he needs to make an informed choice.
- D. The Right to be heard - to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in its administrative tribunals.

Later, the right to consumer education was added to these four, yet they did not cover the whole gamut of consumer needs for protection. These rights were later expanded to eight in the UN Consumer Bill of Rights. The United Nations, in April 1985, adopted its Guidelines for Consumer Protection. The guidelines have been interpreted by International Organization of Consumer Union now known as Consumers International (CI)<sup>3</sup> and translated into clear consumer rights as follows:

- the right to the satisfaction of basic needs
- the right to safety
- the right to be informed
- the right to choose
- the right to be heard
- the right to redress

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<sup>1</sup> U. Ogbonna, "The Challenges of Consumer Protection Rights in Nigeria: A Case Study in the Power Sector and Telecoms in Nigeria". A Paper delivered at the 55<sup>th</sup> Annual General Conference of Nigerian Barr. Association, on Monday August 24, 2015.

<sup>2</sup> See CUTS Centre for Consumer Action Research and Training (CART), <http://www.cuts-international.org/Consumer-Rights.htm>

<sup>3</sup> The Consumers International (CI), former International Organisation of Consumer Unions (IOCU), the umbrella body, for 240 organizations in over 100 countries

- the right to consumer education
- the right to a healthy environment.

The United Nations guidelines for consumer protection were later revised in 1999.<sup>1</sup> The Guidelines address the interests and the needs of consumers worldwide and provide a framework for governments, particularly those developing and newly independent countries to use for elaborating and strengthening consumer protection polices and legislation. These rights are in no doubt inadequate for the holistic protection of consumers which the right based approach demands. In spite of the efforts of the UN guidelines much is still left to be desired in the protection of consumer rights especially in Nigeria. Consumer International<sup>2</sup> stated:

The United Nations Guidelines for Consumer Protection (UNGCP) act as an international reference point of the consumer movement, but with new developments in technology and business practices, there is a strong argument for revising them to ensure they are still relevant to the challenges facing consumers.

### **VII. The Relationship between Consumerism and Human Rights**

The consumer is exposed to many hazardous-physical and environmental exploitation due to unfair trade practices. A Consumer needs protection for instance, against products which are unsafe for consumption such as drugs and adulterated food products and products which may cause serious injury such as defective electrical appliances. He needs protection against mal-practices and deceit by sellers. He should have adequate rights and right of recourse to remedial measures against defaulting businessmen. He needs protection against environmental pollution of air, water and noise and effective measures should be devised to keep the surrounding neat and clean. Poor protection destroys consumerism. Poor consumerism results in poor economy for a state. A writer wrote concerning consumerism thus, “I shop therefore I am”.

This work recognizes new consumerism in the sense that many aspects of consumer activities which are hitherto not imputed to consumer producer/provider relationship are connected to right based approach, for instance, news dissemination is in this work recognized as a consumer ware, in that, wrong information consumed by a consumer through an unethical medium of dissemination is an infringement of the consumer’s right to information. Consumerism occurs in different dimensions. The two broad classes are product consumerism and services consumerism. The former is direct as it pertains to the production, sale of goods and the consumption thereof. Services consumerism could be divided into public service consumerism and private service consumerism. The former covers the provision of services by public and governmental authorities. For example, water board services, power and energy services, etc. The latter affects the provision of services by private legal persons. For example services provided by an automobile mechanic, personal tailors or hairdressers. Consumerism viewed from the right based angle can manifest as gender based consumerism. A hybrid situation may however exist where product consumerism will also involve service consumerism. In a case where a doctor treats a patient, treatment given is a form of service while drug administered will be categorized as product consumerism concern.

The two classes of consumerism do not only create and produce contracts and tort laced infringements but also hinge on human rights. The human rights relationships created are suggested by the right based approach of this work to be the main basis of consumerism. Hitherto the protection of the consumer has been within the confines of criminal sanctions and civil remedy in terms of tort being that the doctrine of privity of contract usually place a barrier between the consumer and his remedy under law of contract. Usually, the consumer is always faced with the herculean task of discharging the onus of proof by proving the three key elements of tort of negligence (duty of care, breach of the duty and consequential damage) to stand any chance of success. Where the infringements are viewed as rights infringement it will be easier for the consumer to get redress and the pendulum will swing in favour of the consumer by reducing the weight of the onus on him, sharing it between the consumer and the producer/provider. The challenge is the nature of our laws. A cursory look the rights in chapter 4 of the Nigerian constitution reveals that consumer rights is not directly listed or contemplated there. However, section 16 (4) of the Constitution of the Federal republic of Nigeria, 1999 contemplates consumer protection as fundamental objective of state policy, and not as an enforceable right. The near absence of consumer rights or the absence of a justiciable consumer rights in the constitution appears to explain the

<sup>1</sup> C. M. J. Sewanaud, “Consumer Protection and Consumerism” (2012). *International Journal of Transformation, in Business Management* at p. 1.

<sup>2</sup>See <http://www.consumersinternational.org/who-we-are/un-guidelines-on-consumer-protection>

nonexistence of a consumer protection law in Nigeria. The rights can however be inferred. For instance, where a consumer's health faces hazard as a result of defective product or bad service, he can approach the courts for the enforcement of his right to life rather than belaboring under the law of torts proving negligence. The existing mechanism which is in favour of the producer/provider rather than the consumer can be dispensed with. Under the right based approach, the onus will be on the provider and producer to prove due diligence and standard practices. It will also celebrate a shift in paradigm from punitive and preventive approach to a compensatory approach.

Adegboruwa<sup>1</sup> asserts that fraudulent and abusive practices by manufacturers and merchants of goods and services are common in Nigeria due to the little attention paid to the protection of consumer rights in the country. His work focuses on telecommunication and power sectors in Nigeria addresses the legal framework for consumer rights in Nigeria. This legal framework includes the Nigerian Constitution, particularly chapters II and IV, African Charter on Human and Peoples' Right and the Consumer Protection Council Act. The work also made a checklist of consumer rights in Nigeria. Although he identified consumer rights under fundamental rights provisions and also under the chapter II of the Constitution (which is non justiciable), his work never identified the nexus between consumer rights protection and human right, neither did it make a case for the enforcement of consumer rights as human rights.

### VIII. Rights Based Approach and Consumer Rights

Here, we discuss the rights that accrue to the consumer and their connotations and inferences. Earlier it has been pointed out that there should be no legal dichotomy between the first and second generation rights in Nigeria because she is a party to the African Charter and has gone further to domesticate it. The African charter has blurred that dichotomy. In essence, rights protection including consumer rights should enjoy uninhibited application in terms of the generations of rights. Udombana<sup>2</sup> writes,

The Charter was one of the very few multilateral human rights treaties to recognize the indivisibility and interdependence of negative and positive rights.

He noted that the same is ascertained in the preamble of the African Charter thus:

...It is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.

For every infringement and harm the consumer suffers, there is covering under the human rights regime. Any service which is unsafe and hazardous will be an infringement on the consumer's right to life, health, safety and welfare. The same could be said of defective products.

For instance, the 1996 kano trovafloxacin litigations<sup>3</sup> where children given trial doses of Trovafloxacin and Ceftriaxone, being drugs manufactured by Pfizer without the consent of their parents or guardians died and many others disfigured. Both drugs were manufactured by Pfizer, an American pharmaceutical company. This shows the extent to which consumers rights to life, safety, health and welfare can be infringed upon. It will be a total failure of justice jurisprudence to allow product manufacturers go scot free once they have proved due diligence or because the consumer is not able to prove the key components of tortious negligence.

The relationship between human rights and consumerism among others, includes the fact that a consumer should have the right to restrict unwanted direct marketing. This includes having the right to protect one's privacy and confidentiality in respect of unwanted or unsolicited correspondence as well as the right to refuse unwanted text message from network providers, telephone calls, letter or "spam" email. This is common practice in Nigeria where mobile network service providers will send to consumers avalanche of text message for product marketing as well as unsolicited calls. The right to fair hearing addresses the principle of access to justice which is a cardinal principle of consumer protection. Thus under sections 2 and 3 of Consumer Protection Act, the council and the state committees have as one of their functions the provision of speedy redress to consumer's complaints through negotiation, mediation and conciliation. In *Nigeria Breweries Plc v. David Audu*,<sup>4</sup> the Court of Appeal referred to the Consumer Protection Act as an Act which seeks not only to preserved the consumer's

<sup>1</sup> E. O. Adegboruwa, "Legal Framework for Consumer Rights in Nigeria with Particular focus on Telecommunication and Power Sector Industries" A Paper delivered at the Benue Hall, International Conference Centre, Abuja, for the 55<sup>th</sup> Annual General Conference of the Nigerian Bar Association, on Monday, August 24<sup>th</sup>, 2015.

<sup>2</sup> Nsongurua J. Udombana, 'Articulating the Right to Democratic Governance In Africa', *Michigan Journal of International Law*, Vol. 24, No. 4, 2003

<sup>3</sup> *Ajudu Ismaila ADAMU et al. v. PFIZER, INC.*, 399 F. Supp. 2d 495 (S.D.N.Y. 2005), *Rabi Abdullahi et al v Pfizer, Inc.* Docket Nos. 05-4863-cv, (L) 05-6768-cv (CON)

<sup>4</sup> (2009) LPELR- 88863

civil right of action for compensation, but also empowers the council to apply to the court to prevent the circulation of any product which constitutes an imminent public hazard.

### IX. Why Protect The Consumer?

The point was made in the introduction, that the consumers are described as kings in today's economic environment. If so, why bother to protect them? Reality has however, shown that consumer are the worst victims of unfair and unethical practices employed by the producers of good and service<sup>1</sup>

There is a global recognition of the fact that there exists real and perceived in balance of power relations between the producers and consumers of goods and services which always goes to the advantage of the producers, who are strengthened by the traditional legal maxims *caveat emptor* (buyer be aware) and the ever growing free market philosophy, which seems to put the producers at liberty to do whatever they want.

Furthermore, consumers need to be protected because of the rapid advancement of information technology and aggressive marketing technique adopted by producers which are more attractive than the product itself. This has made it even more difficult for an average consumer to understand the in-depth truth about the goods and services.<sup>2</sup>

Thus, today consumer choice is mostly influenced by mass advertising art of persuasion and marketing. The consumers may not be aware whether a product meets minimum standards of safety, quality and efficacy. Sometimes he does not know how much he pays for the services.

### X. Enforcing Infringement of Consumers Rights as Human Rights

Infringement on consumers' right is usually seen and enforced as a breach of contract or duty in tort. In most cases, attention is focused on tort-based 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 in most cases. According to Adegboruwa,<sup>3</sup> decided cases have however, shown that the ability of claimants to take advantages of this option is seriously restricted by the burden of proof imposed by law. To succeed, the claimants must discharge this burden by establishing the three ingredients of negligence, namely; that the manufacturer owes him or 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 (claimants) 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. So many cases have been lost by consumers as a result of this.<sup>4</sup>

In view of the above, any other possible means by which consumers can seek redress whenever their rights are infringed upon is worth considering. This paper has shown that there is a nexus between consumerism and human right. Thus, most of the consumers rights that are being 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*, 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 existing rights from subsequent legislative interference and to enable their assertion against arbitrary, oppressive and illegal execution action.<sup>5</sup>

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

<sup>1</sup> A. I. B. Kooffreh, *Ibid* (n. 1) 18

<sup>2</sup> U Ogbonna. *Ibid*(n 12)

<sup>3</sup> E. O. Adegboruwa *Ibid* (n. 15)

<sup>4</sup> See *Nigerian Bottling Co. (Nig.) Ltd. v. Ngonadi* (1985), NWLR (Pt. 4) 739; *Ebelemu v. Guinness (Nig.) Ltd* Unreported suit no. FCA/1/101/82 (1993); *Boardman v. Guinness (Nig.) Ltd.* (1980) NCLR 109; *Soremi v. Nigerian Bottling Co. Ltd.* (1977) 12 CCHCJ 2735.

<sup>5</sup> (1985)2 NWLR



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 being, is being or likely to be contravened in any state may apply to a high court in that state for redress.

Furthermore, the fundamental rights enforcement procedure rules 2009, has widened the scope of locus stands in respect of the enforcement of fundamental rights.<sup>1</sup> Also, it is worthy to note that even those human rights contained in chapter II of the Nigerian constitution which are said to be non-justiciable can now directly be enforced through the African Charter on Human and Peoples' Rights which has been domesticated in Nigeria as part of our laws since March 17, 1983. The charter made no distinction as to justiciable (Civil and Political rights) and non-justiciable (economic, social and cultural rights). Some of the rights in the latter category are right to health, safety and welfare. In addition, under O. II r. 1 of the 2009 Fundamental Rights Enforcement Procedure Rules, the African Charter on human and people's right (ratification and enforcement) Act is included as one of the Act for which enforcement may be applied. It provides as follows;

Any person who alleges that any of the fundamental Rights for in the constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed, may apply to the court in the state where the infringement occurs or is likely to occur for redress.

Therefore, where, in the power sector, the electric power provider deploys naked cables, a consumer should be able to enforce his right to life, health, safety and welfare even when he or she has not come in contact with the naked cable by way of fundamental right enforcement procedure.

## **XI. Conclusion**

This paper has examined the nexus between consumerism and human rights. From the analysis above, it can be seen that the concept of human rights touches every aspect of human life. Consumer's 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.

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<sup>1</sup> The innovation under the preamble to the rules makes persons other than those directly affected by the infringements or threatened infringement, capable of applying for enforcement of the rights contained in both chapter four of the constitution as well as African Charter on Peoples and Human Rights (Enforcement and Ratification) Act. Cap A9, Laws of Federation of Nigeria, 2004.