

CONSUMER RIGHTS AS CONSTITUTIONAL RIGHTS-A COMPARATIVE ANALYSIS OF SOME SELECTED JURISDICTION*

Abstract

The greatest danger faced by consumers lies in the consumption of fake and adulterated goods. The consequence of consumption of fake and substandard goods is sometimes dangerous to human life. Despite this fact, violation of consumer rights which is the hallmark of consumer protection is still being considered in Nigeria as breaches of either contractual or tortious right. This study analyses from a global perspective the extent to which consumer rights have become entrenched in constitutions of some countries of the world. This study makes a case for the entrenchment of consumer rights as constitutional rights in Nigeria.

Introduction

A consumer right is the hallmark of consumer protection law. There is an inequality of bargaining power between the consumer and the producer which leads to the exploitation of the consumer.¹ Consumer protection covers the rights and privileges of consumers and how these rights should be accorded to them. It also deals with several issues relating to the welfare of the consumer and is also concerned with raising the standard of living in terms of improving the political and social well-being of consumers. The major aim of consumer protection laws is to empower the consumer so as to enable him to enjoy these rights. The rights of consumers are becoming increasingly important around the world. Governments have passed numerous laws to assure that end user of products and services have the same rights as manufacturers and providers of services. However, the inclusion of consumer rights in the Constitution of a country will enhance effective consumer protection.

Who is a Consumer?

There is no universally acceptable definition of a consumer as authorities are divided with respect to the meaning of the term “consumer”. The Black’s Law Dictionary defines “consumer” as a person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.² O’ Grady defines “consumer” as the final or end user of all goods and services produced in an economy.³ Tarr defines “consumer” as any person, natural or legal, to whom goods, services or credit are supplied or sought to be supplied by another in the course of a business carried on by him.⁴ Schiffman and Kanut, learned authors in their definition of consumer have made a distinction between the personal consumer and the organizational consumer.⁵ The

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¹ B.W. Harvey & D.L Parry; **The Law of Consumer Protection and Fair Trading** , 1996, London: Butterworth’s, at pp.13-14

² B.A Garner; **Black’s Law Dictionary** 8th Edition (St Paul Minnesota: West Publishing Co. Ltd.), p, 316

³ Consumer Remedies” 1982, **60 Canadian Bar Review**(No.4)p.549

⁴ Tarr; “Consumer Protection and the Market Place,” 5 Otago **Law Review**, p.397

⁵ **L.G Schiffman, L.L.Kanut, Consumer Behaviour** Eaglewood Cliffs , Prentice-Hall Inc,1978 pp.4-8

personal consumer is the individual who buys goods and services for his own use or for the use of his household and in this respect, the goods or services bought must be consumed as end or estimate user. An organizational consumer on the other hand, refers to private organizations, who must buy products or services to be able to pursue the objectives of such organizations.

The foregoing however, represents the definitions of the word “consumer” as proffered by some law text writers. The word ‘consumer’ has also been defined by way of statutes. The Fair Trading Act 1973 (UK) defines a consumer as any person who is either,

1. A person to whom goods are supplied or are sought to be supplied (whether by way of sale or otherwise) in the course of business carried on by the person supplying or seeking to supply them, or
2. A person to whom services are sought to be supplied in the course of a business carried on by the person supplying them and who does not receive or seek to receive the services in the course of a business carried on by him.⁶

The Nigerian Consumer Protection Council Act defines a consumer as an individual, who purchases, uses, maintains or disposes of products or services.⁷ This definition removes the restrictions imposed by the English legislation by broadening the definition of the consumer to include producers/suppliers who are organizational consumers. The definition has however, been criticized as an aberration to the extent, that such words as “ maintains and disposes” as used in it clearly purports that even after the purchase and usage of a product or a service, a person can still be described as a consumer.⁸

The reference to individuals in the definition of a consumer is also noteworthy. It suggests that only natural persons can be consumers under the Consumer Protection Council Act. It is suggested that individuals should be interpreted to include partnerships and other unincorporated associations that may also engage in commercial transactions in the appropriate circumstances.⁹ The South African Consumer Protection Bill defines a consumer to mean

- a) A person to whom goods or services are advertised, offered, supplied, performed or delivered in the ordinary course of business.
- b) A user of such goods or a recipient or beneficiary of such services; or
- c) The person who has entered into an agreement or transaction with a supplier but does not include a person in the supply chain for those goods or services who, in the ordinary course of business, markets those goods or services in the production of other goods or services, or in the marketing of any goods or services.¹⁰

⁶ S. 137(2) Fair Trading Act 1973 (UK)

⁷ Section 32 of the Consumer Protection Council Act Cap C25, LFN 2004

⁸ See s. 189 (1) of the Consumer Credit Act 1974 (U.K) where individual was defined as including partnership and other unincorporated body of person not consisting entirely of bodies corporate

⁹ S. 189(1) of the Consumer Credit Act 1974(Uk) where individual was defined as including partnership and other unincorporated body of persons not consisting entirely of bodies corporate.

¹⁰ Section I South Africa Consumer Protection Bill 2007 2nd Draft 8th Sept 2006.

The above definition is also restrictive in that it sought to exclude persons who possess goods and services for business purposes. A good definition of consumer should therefore include in its coverage a person acting for business purposes. The English authorities have gone ahead to ascribe to consumer transactions three elements. First; the consumer must be an individual who does not act in a business capacity. Second; the supplier of goods and services must act in a business capacity. Third, the goods or services must be intended for private and not business use.¹¹

This approach to the definition of consumer has however been criticized on two grounds,¹² namely; it is limited in application in providing for a consumer who contracts in the course of business with the effect that the consumer in the contemplation of the principle laid down in the case of **Donoghue v Stevenson**¹³ is excluded. The requirement of contractual relationship presupposes that sanctity and privity of contract which limits protection for the consumers will become applicable. The implication is that only a contractual consumer can qualify as a consumer for purposes of protection. The approach would no doubt adversely affect possible claims of many end users that may not be in direct contractual relationship with the producers or suppliers of goods and services. In view of the foregoing, the term consumer is not confined to purchasers. Rather, it includes contractual consumers; ultimate users as well as any person who come into contact with a product or service in any way whatsoever.

The Concept of Rights

Right has been defined as something that is due to a person by a just claim, legal guarantee, or moral principle.¹⁴ It also means a power, privilege, or immunity secured to a person by law, a legally enforceable claim that another will do or will not do a given act, a recognized and protected interest, the violation of which is a wrong.¹⁵ Right has been construed in the judicial sense to mean a correlative to duty. This is because where there is no duty, there can be no right.¹⁶ But there may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear. For example it may consist of our duty to love our neighbour, but he has no right to our love. The subject of human right is as old as man and indeed its origin, scope and deeper meaning cannot be explained in isolation from the history of man. Human rights are natural rights and are rights conferred on men and women because they are human beings created by God in his own image.¹⁷ They are inherent entitlements and arise from the very nature of man as a social animal and are recognized and protected in a civilized legal order.¹⁸

¹¹ D.W Oughton; “**Consumer Law: Text Cases and Materials**” 1991, Blackstone Press Ltd: London at p. 11

¹² D.W Oughton; *Ibid*: , F.N Monye at p.17

¹³ 1932 A.C 532

¹⁴ B.A Garner ; **Black’s Law Dictionary** 8th edition, 2004, St Paul Minnesota:West Publishing Co. Ltd, p7347

¹⁵ *Ibid* at p.7347

¹⁶ *Ibid*

¹⁷ Eze, O; **Human Rights in Africa: Selected Problems**, 1984, Lagos, Macmillian, p. 5; Gasiokwu, M.O.U; **Human Rights History, Ideology &Law**; 2003, Jos, Feb Educational Books. P. 2

¹⁸ O. Okpara; **Human Rights Law & Practice in Nigeria** 2005, Enugu Chengle Limited, p. 1

The Meaning of Constitutional Rights

The word “constitution” has been defined as the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers and guarantees individual civil rights and civil liberties.¹⁹ Constitutional rights therefore, are those rights guaranteed by the Constitution. The constitutional guarantees of rights are supreme and cannot be overruled by the executive or the legislature unless the Constitution is amended, which again is not an easy task. They are rights antecedent to the political society itself.

Constitutional rights are a primary condition to a civilized existence. They are immutable to the extent of the non-immutability of the Constitution itself. These rights are premised on the existence of individual freedom for one’s maximum development and welfare. They are enshrined in the Constitution for the protection of the Individual from arbitrary and oppressive exercise of government powers-be they legislative, executive or judicial. They cannot be infringed or repealed by simple legislation.²⁰ This places them on a pedestal over and above the ordinary laws of the land.²¹ In fact, the Nigerian Constitution terms such rights as fundamental and their enforcement is within the exclusive jurisdiction of the High Courts. The courts in interpreting their provisions do adopt the liberal and broad approach that would uphold and ensure rather than defeat their evident purpose.²²

The Rights of Consumers vis-à-vis the Constitution

Consumers all over the world are accorded various rights. John F. Kennedy²³ in 1962 proposed four ideals for consumer protection law which he called rights: the rights to safe products, the right to demand information about a product or service, the right to a competitive marketplace and the right to get redress against a manufacturer or a distributor.

Consumer rights emerged after the second generation rights as a reaction to a post modern global world engulfed by scientific evolution. The *Consumer International* proposed eight consumer rights.²⁴ These include the right to safe products, the right to demand and receive information, the right to be heard the right to choose, the right to consumer education, the right to redress, the right to the satisfaction of basic needs and the right to a healthy environment. It is pertinent at this juncture to examine these rights more closely.

a. The Right to Safety

A consumer has the right to demand safe goods. He is entitled to protection from hazardous, unsafe and substandard goods.²⁵ This right entails that a manufacturer must ensure that their products are safe for use by the ultimate consumer. A

¹⁹ B.A Garner ; **Black’s Law Dictionary** 8th edition, 2004, St Paul Minnesota:West Publishing Co. Ltd, p 330

²⁰ *op. cit* at p330

²¹ **Ransome Kuti &Ors v. A.G .Fed & Ors** (1985) 2 NWLR pt.6, p.211 at 246

²² **Ohuka v The State** [1988]1NWLR 539 at.pp.566-560, **Garba v. Unimaid** (1986) 1NWLR 550 at. 583 per Obaseki JSC.

²³ Famous American President 1917 -1963

²⁴ <http://www.consumersinternational.org> (accessed on 19/12/10)

²⁵ <http://www.businessdictionary.com/definition/consumer-rights.htm>(accessed on 06/04/10)

manufacturer of goods therefore, owes a duty of care to ensure that the goods are safe and are free from harmful defects.²⁶ The consumers' right to safety is recognized when damages are awarded to a consumer who suffered harm as a result of the manufacturer's negligent act. A healthy nation, they say, is a wealthy nation. There is need to ensure that all products are safe for consumption. The relevant authorities should continue to insist that expiry dates of all consumer goods be put on the label and should reflect safety status. Most developed countries have adopted laws to reflect this view requiring ingredients labeling so as to eliminate any advertisement or wrong information that creates a wrong impression about the quality or safety of a product in order to protect this fundamental right of the consumer.

Consumers have the right of protection against industrial activities, goods and services, which may damage or destroy their property, injure or even kill them. However, consumers' ability to exercise the right to safety depends wholly on a full prior 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. Precautions that should be taken to avoid accidents, or to mitigate damage or injuries in the case of accidents, and who is to be held liable in the event of consumers having grievances concerning such activities, goods, products or services must be exhaustively communicated to the consumer.

b. The Right to be Informed

Every consumer has the right to complete information on the pricing, quality and ingredients of goods, products, and services, as well as the identity of manufacturers or producers. Consumers have the right to disclosure of information about the production, storage, transportation, use or release of hazardous substances that could potentially endanger human health or life.

c. The Right to Be Heard

Consumers have the right to be heard on issues, policies, plans, programmes and decisions that concern them. The scope of this right entitles consumers to redress of grievances concerning substandard, unsafe, unduly expensive goods and services, unfair claims which are not substantiated by tests and other unfair practices against them.

d. The Right to Choose

Consumers have the right to choose from a variety of quality goods and services available at competitive prices. Where a monopoly is the supplier or provider, consumers have the right to quality goods and services at reasonable prices. However, this right can be exercised only once consumers are able to clinch their freedom to receive or impact information or ideas on goods and services available in the market.

²⁶ *Donoghue v. Stevenson op. cit* at p. 562

e. The Right to Consumer Education

The term *consumer education* refers to the process of exposing people to the knowledge about their rights and duties as well as skills needed by individuals, groups and institutions to be able to prioritize their needs, minimize waste, maximize opportunities for purchasing and utilizing goods and services.²⁷ Consumer education is also about enabling citizens adapt to personal environmental, economic, social and technological changes and be able to take rational decisions and act efficiently in the marketplace.²⁸

A consumer has the right to make himself aware of consumer “evils” in society.²⁹ The greatest asset any consumer can have is education. This is because an educated consumer is a sure bulwark against the phenomena of consumer evils. There is the need for the consuming public to be properly educated on the menace and health hazards arising from the consumption or use of products with false claims. Consumers should be educated on the existing regulatory and protection agencies in the country. Education engenders awareness and enlightenment. Every consumer has the right to be aware of basic consumer rights and responsibilities in order to be able to make an informed decision concerning choice of goods, services, and pricing thereof. The right entails submission to mandatory comparative testing ranking and evaluation of all consumer goods and products such as food and pharmaceuticals with the aim of publication of such findings for consumer education. This may empower consumers into taking action against unsafe products and claims which are not substantiated by laboratory tests.

f. The Right to Clean and Sustainable Environment

The consumer has a right to live and work in an environment that does not threaten their health and life and which does not pose a danger to present and future generations. Consumers and communities who live around industrial units and workers in such industries are entitled to information on such industries’ toxic release inventors. Furthermore, governments by way of legislation should ensure that industries take productive initiative to discharge their obligations to society, to share information on the products and processes and on potential threats to safety arising out of them.

g. The Right to the Satisfaction of Basic Needs

By this right, a consumer is entitled to enjoy the goods or services rendered to him or her. This implies that with respect to products, the goods must be fit for the purpose they were bought. Also, the product in issue should as much as possible correspond with the description given to a consumer or any description he is relying on. The scope of this right is reproduced under the Sale of Goods Act.³⁰ Accordingly,

²⁷ E. Ekhide *op. cit* 78-80

²⁸ P.E Okwuraiwe; Perspective on Consumer as Missing link in the Court of Consumer Protection available at http://www.nigerianobsewvernews.com/4_220220///features_6-html accessed on 22/02/11

²⁹ I.M Chukwu ; “Advertising Practice and Consumer Protection” **Consumer Journal** (2007) vol. 3 p. 36

³⁰ The Sale of Goods Act 1893 Cap 164 of 1958

a breach of any implied condition in a contract of sale entitles the consumer to repudiate the contract of sale, reject the goods supplied him, refuse to pay for them if he had not paid or recover his money if he has already paid for them. However, a consumer may nevertheless consider a breach of any condition in a contract of sale as a breach of warranty. Accordingly, he has only the remedy of damages and cannot repudiate. However the Sale of Goods Act is restricted to contracts of sale and product liability as against liability for services.³¹ In Nigeria, there is no gainsaying the fact that many manufacturers and advertisers have deceived consumers through unfair advertising; unfulfilled promises in sales promotion and exaggeration of product benefits.

There is a strong link between consumer protection and human rights. Consumer protection law emerged in the 1970s in response to problems engendered by mass production and market failure. Human rights law recognizes that everyone is entitled to a social and international order in which his rights and freedoms can be fully realized. Enjoyment of human rights depends on production and distribution of scarce goods and services whose availability, quality and accessibility can be increased through international trade.

The Provisions of International Legal Instruments on the Rights of the Consumer

Consumer protection has been given more importance as a fundamental social value to compensate for loss of control over growing market integration. As trade has become increasingly international, the problem of hazardous goods and defective products is no longer merely a national concern and consumer protection rules have to be regulated at the international level.³² The Universal Declaration of Human Rights provides that everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing, medical care and necessary social services. The UN Declaration of Human Rights affirms that development is fundamental human rights. Therefore, denial of any aspect of development through voluntary or involuntary actions by any economic agent is a violation of the Universal Declaration of Human Rights.³³ Also, the U.N. resolutions on the ‘right to development’ define development in terms of fulfillment of basic needs and human rights.³⁴

In 1966, the United Nations General Assembly adopted the International Convention on Economic Social and Cultural Rights (ICESCR) which is compulsory at the international level and has been in force since 1976. At the regional level, the Council of Europe has established two treaties; the Europe Convention on Human Rights (ECHR) in 1950 and the Europe Social Charter (ESC) in 1961, which can be seen as the social counterpart of the ECHR. Some of the economic and social rights in the ICESCR address consumer protection issues. The right to an adequate standard of living in Article 11 (1) includes food, clothing housing and a continuous improvement

³¹ *Ibid*

³² S..Weather; “European Union Consumer Law Policy” Chetttenham, UK and Northampton 2005, p.16

³³ Peters Mann ; Justice, Human Rights & Markets; **Los Angeles Law Review** Vol. 37,407 at p. 432

³⁴ UDHR Art 28

in living conditions. Adequate food and housing also means safety, information and possible fair prices, which are achieved through consumer protection legislation. The right to physical and mental health in Article 12 ICESCR includes improvements in environmental and industrial hygiene and the prevention of diseases. The protection of individuals' safety from dangerous products is also an aim of consumer law.

On the 9th of April, the United Nation Guidelines for Consumer Protection were adopted at the 106th plenary meeting, 39th session.³⁵ The guidelines are of no legal effect but merely provide what could be called an internationally recognized set of basic objectives.³⁶ In the preamble, the guidelines provide that consumers should have the right of access to adequate information to enable them to make informed choices and availability of effective consumer redress. The UN Guidelines were expanded in 1999 to include a section on sustainable consumption as a new principle of consumer policy.³⁷

According to the general principle of sustainability, the Guidelines attempt to internationalize and internationally harmonize the level of consumer protection while recognizing the danger of misusing consumer protection policies as a justification to erect barriers to international trade and trade obligations.³⁸ The guidelines recommend numerous instruments to strengthen or install sustainable consumption in the Member States. The inclusion of the sustainable clause shows that there is more focus on the empowerment of the consumer such as the promotion of a clean and (sustainable) healthy environment.³⁹

The Guidelines were aimed at giving a structure of basic objectives for the purpose of improvement upon the consumer legislation especially in developing countries. The UN recognized that consumer protection could no longer be construed strictly in domestic terms.⁴⁰ Consumer rights are sufficiently important and have been unanimously accepted by UN member states as basic principles and guidelines which show the need for a stable high level protection. Art.38 provides that Union policies shall ensure a high level of consumer protection. The inclusion of consumer protection in the Charter and the Draft Constitution shows the commitment of the European Union to human values and not only economic market integration.⁴¹

The international unanimous consensus on the Guidelines for consumer protection can be seen as general acceptance of universal rights and constitutes additional support for accepting consumer rights as human rights.⁴² Human rights, and the reciprocal obligations of governments, do not end at national borders. The U.N

³⁵ A/RES/39/248, April 1985, UN General Assembly, "Consumer Protection"

³⁶ Art. 13 UN-Charter

³⁷ UN Decision 54/449, **United Nations Guidelines for Consumer Protection**, (87th Plenary Meeting, 22 December 1999, General Assembly)

³⁸ United Nations Guidelines for Consumer Protection (as expanded in 1999), para. 2 and 10, Section H

³⁹ United Nations, Economic and Social Council "Background Paper for the United Inter-Regional Expert Group Meeting on Consumer Protection and Sustainable Consumption. New Guidelines for the Global Consumer" January 28, 1998.

⁴⁰ Consumer International available at [http://www.consumerinternational.org/9\(as of Dec.19, 2010\)](http://www.consumerinternational.org/9(as of Dec.19, 2010))

⁴¹ G. De Burca ; "Beyond the Character: How Enlargement has Enlarged the Human Rights Policy for the European Union" **Fordhan International Law Journal** 2004. 676-714.

⁴² **A.Eide; A.Rosas** "Economic Social and Cultural Rights: Universal Challenge" 2nd revised edition, the Hague: **Kluwer**, 2001,p.77

human rights law recognizes that everyone is entitled to a social and international order in which the rights and freedoms can be fully realized. Enjoyment of human rights depends on production and distribution of scarce goods and services whose availability, quality and accessibility can be increased through international trade. In many cases, there exists no tradition in consumer policy with the exception of the general principle to preserve public health. The changing economic, social and political circumstances prompted the United Nations General Assembly to proclaim development as a human right. In line with this trend, consumer protection has been established as a constitutional right in some jurisdictions. We propose to examine the position those of jurisdictions.

Constitutional Provisions for the Protection of Consumer Rights in Some Selected Jurisdictions

Consumer protection has not yet become part of the Constitutions of many jurisdictions. In most countries' Constitutions, provisions are made which one way or the other relate to consumer right but nevertheless no specific mention of it is made. Some of these Constitutions include the Constitutions of the Federal Republic of Nigeria 1999, The Constitution of the Republic of South Africa, 1996 and the Constitution of India.

(i) The Constitutions of the Federal Republic of Nigeria (CFRN) 1999

The socio-economic rights of citizens are provided under Chapter two of the Constitution. Chapter Four provides for "fundamental rights". The Chapter did not in any way use the word consumer but their provisions are such as will one way or the other affect the life and rights of the citizens, the bulk of whom are consumers. A close examination of the consumer's rights and the fundamental rights under chapter IV of the Constitution reveals some semblance between the two genres of rights. The consumer's right to safety and health is closely related to right to life. Right to safety and health can be inferred from the Constitution as everyone is entitled to orders refraining institutions and companies including the State from doing anything that would violate or harm a citizen's health. It is pertinent to point out that the scope of the right to life under section 33 is limited and does not envisage the fact that one can lose his right to life by consuming adulterated drug or food products. Therefore, the right to health is not within the contemplation of section 33.

It is pertinent considering the influx of fake/adulterated products in our markets that this section of the Constitution be amended to encapsulate consumer's right to health and safety under the right to life or under a separate section. Also, the Constitution has provided that the state shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. There are adequate medical and health facilities for all persons. The above constitutional provision is to the effect that the government of Nigeria is under an obligation to direct its policy towards ensuring the health, safety and welfare of all persons. The right to life is inextricably linked to the right to health, and the right to safe and healthy environment.

Section 39 (1) of the CFRN 1999 provides that "every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and

impart ideals and information without interferences”. Consumers’ good health and safety are often threatened due to lack of information concerning the quality, safety and reliability of products, goods and services that they buy. Two consumer rights are sub merged under this section, to wit, consumers’ right to information and consumers’ right to choice. It is regrettable that the term “consumer” was not used in relation to this section. It is hoped that the freedom of Information Bill currently before the National Assembly will take cognizance of the precarious position of the Nigerian consumer and the central role of information in the exercise of these rights.

Section 36 (1) of CFFR 1999 provides that “in the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartially. Unfortunately, this section does not seem to make any mention of consumer redress. It is to be noted that a consumer may seek redress in other ways other than the court or tribunal.

Consumer Education may be said to be implicit in the right to basic education under section 18 of Chapter 2 of the CFRN 1999. It is however, regrettable that the draftsman did not include consumer literacy under Section 18. Section 18 provides that the Government shall direct its policy towards ensuring that there are equal and adequate education opportunities. It is to be noted that consumer protection is a joint responsibility of both the government and its citizens. Consumer literacy demands that the consumer be made aware of their basic rights and responsibilities in order to be able to make an informed decision concerning choice of goods, services and pricing thereof. Consumer literacy is also central and at the root of consumer protection. It is my humble view that it is a grave legislative oversight on the part of the draftsman not to have included it under section 18.

The inclusion of consumer rights in the Nigerian Constitution will no doubt enhance effective consumer protection. It is hoped that an amendment of the CFRN 1999 should include consumer protection rights under Chapter IV. The amendment will automatically uphold consumer rights as fundamental rights on the same pedestal as other fundamental rights. This is because consumers in Nigeria like in other developing countries are living under the high risk of hazardous, fake and adulterated products.

(ii) The Constitution of the Republic of South Africa, 1996

Section two of this Constitution merely provides that everyone has a right to life. Section 26 made provisions in relation to access to healthcare services, food, water and social security. Like the Nigerian Constitution. No specific mention was made in relation to the consumer. It is highly recommended that this be made in view of the endangering character of fake and substandard products which do confront the consumers. Section 16 (i) (b) of Act 108 of 1996, provides that “Everyone has the right to freedom of expression which includes freedom to receive or impart information or ideas. This provision is linked with the right of a consumer to be informed. The right to be heard is also implicit in the constitutional right to freedom of expression.

The right to choose is also protected under Section 16 (1) (b) of Act 108 of 1996 which has been referred to above. This is because a consumer can only make a good choice where he has access to adequate information and is at liberty to receive or express his opinion with respect to any consumer good. The right to redress is consistent with section 27 of Act 108 of 1996 which states that “Everyone has the right to have access to healthcare services, sufficient food and water, including, if they are unable to support themselves and their dependants, appropriate social assistance. On the other hand, the consumer right to a healthy environment is consistent with section 24 of Act 108 of 1999 which confers on everyone the right to live and work in an environment that does not threaten their health and life, and which does not pose a danger to present and future generations. Again, the right to consumer education may be said to be implicit in the right to basic education provided under section 29 of Act 108 of 1996 which states as follows:

“Everyone has the right

- (a) To a basic education, including adult basic education:
and
- (b) To further education, which the state, through reasonable measures, must make progressively available and accessible. It is hoped that at the nearest opportunity, the South African Constitution be amended to incorporate the aforesaid rights of the consumer.

(iii) The Constitution of India Republic, 1949

The Constitution of India in Articles 38,39,42,43,46 and 47 provides that the State shall strive to secure a social order for the promotion of welfare of the people, it shall direct its policies in such a way that operation of economic system does not result in the concentration of wealth and means of production to the common detriment, it shall make provision for securing just and humane conditions of work and for maternity relief, it should endeavour to build an economic organization or to make suitable legislation to ensure a decent standard of life to all the workers who constitute the bulk of the consumers, it should promote educational and economic interests of schedule castes, scheduled tribes and other weaker sections and it shall also raise the level of nutrition and standard of living and to improve public health.

Article 46 of the India Constitution provides that the State shall endeavour to protect the economic interest of the weaker section of its population and also protect them from social injustice and all forms of exploitation which means all kinds of harassments and frauds in the marketplace.

The effect of non inclusion of consumer rights in the Constitutions of these countries is that breach of consumer right may not be considered as a constitutional breach. The correlative duties on the part of the producers, manufacturers of consumer products and services may also not form a basis for a constitutional action. It is hereby submitted that the non inclusion is not consistent with effective consumer protection.

Constitutional Consumer Law Models of Some Selected Countries

Some of the countries with specific consumer protection provisions in their Constitution include the Spanish Constitution of 1978, the Portuguese Constitution of 1976, the Polish Constitution and the Lithuanian Constitution.

The Spanish Constitution of 1978

Article 51 of the 1978 Spanish Constitution is an illustration of an acknowledgement of basic consumer rights. Chapter 3 of the Spanish Constitution made specific provisions concerning principles governing economic and social policy. Art. 51(1) of the Spanish Constitution 1978 provides that “the public authorities shall guarantee the protection of consumers and users and shall by means of effective measures, safeguard their safety, health, and legitimate economic interests.

Article 51 (2) continues: “the public authorities shall promote the information and education of consumers and users, foster their organizations and hear them on those matters affecting their members” This provision relates to basic constitutional rights, such as education, information and health and recognizes the role of consumer organizations. The article no doubt protects the consumers’ right to safety, information; redress, literacy and the consumer’s right to be heard. Based upon the Constitution, a Law for the defence of consumers and users was published on 24th July, 1984.

The Portuguese Constitution of 1976

Article 60 of 1976 Constitution declares consumer rights to be basic rights. Article 60 outlines constitutional rights to health, safety, protection of economic interest, fair advertising and the right of consumer associations to be heard. These constitutional provisions were the basis of the Consumer Protection Law of Portugal in 1981.

The Constitution of the Republic of Poland, 1997

Article 76 provides thus: “Public authorities shall protect consumers, customers, hirers or lessees against activities threatening their health, privacy and safety, as well as against dishonest market practices. The scope of such protection shall be specified by Statute.”

This provision in the Polish Constitution integrates consumer protection. Consequent upon this, the State has to protect consumer interests and the constitutional court has the jurisdiction to test the compliance of laws with the principles of consumer protection. These constitutional provisions aimed at rendering consumer policy less vulnerable to short term economic considerations and unfair market practices.

The Lithuanian Constitutions of 1992

Article 46 of this Constitution provides: “Lithuanian economy shall be based on the right to private ownership and freedom of individual economic activity and initiative. The State shall support economic efforts and initiatives which are useful to the community. The State shall regulate economic activity so that it serves the general welfare of the people. The law shall prohibit monopoly of production and the market, and shall protect freedom of fair competition. The State shall defend the interests of

the consumer.” The inclusion of consumer rights in these constitutions has however increased the protection of consumers.

Conclusions and Recommendations

Consumer rights have become fundamental in the wake of global technological and scientific developments which have occasioned negative incidence of adulteration and faking of goods. All forms of hazardous and substandard goods are daily dumped on the world’s consumer population and this has threatened the right to life of the populace of the countries of the world.

In view of the foregoing, it has become necessary to entrench consumer rights in the Constitution of countries of the world so that manufacturers and providers of hazardous goods and services can face the same music as those who threaten and breach the rights of fellow citizens. Consumer rights as presently constituted are still in the domain of private rights leaving a consumer whose life has been threatened with hazardous goods with only those remedies available in the common law concepts of contract and torts. The above scenario is far from the realities of the present times.

Most developed and developing countries such as the United States of America, South Africa and Nigeria have no express provisions for the protection of consumer rights in their Constitutions. However, a few Countries such as Spain, Portugal, Polish and Lithuania have made express provisions in their constitutional documents for the protection and enhancement of consumer rights. This is commendable. It is suggested that consumer rights should be interpreted as fundamental rights in the Constitution of Countries. When this is done, their enforcement will become speedier and more effective. Such a legal regime will serve as a strong deterrent to manufacturers and providers of services from the current practice of imposing all forms of hazardous and substandard goods and services on the hapless consumer.

