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APPLICATION OF CRIMINAL SANCTIONS IN THE CONSUMER PROTECTION REGIME IN NIGERIA: AN APPRAISAL

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ABSTRACT

The limitation of consumer rights protection by civil law principles is best captured by the statement; nobody is going to jail. Although human nature suggests that the use of criminal sanctions may be likelier to get the attention of offenders, especially when punishment for conviction is hinged on a loss of personal liberty for natural persons involved. This article proposes to discuss consumer rights in Nigeria, its protection by civil law principles, the limitation of this approach as well as the necessity for a further deepening of criminal sanctions to better protect consumer rights in Nigeria. Several laws have been enacted over the years that, criminalise actions of persons who breach consumer rights. From the Consumer Protection Council Act of 1992 (CPCA), Cap. C25, Laws of the Federation of Nigeria, 2004 to the Federal Competition and Consumer Protection Act, 2018 (FCCPA 2018), several agencies have also been set up to receive complaints from consumers, investigate, and prosecute the offenders. These are all geared towards protecting the interest of consumers and providing succor to aggrieved consumers. This article examines the concept of protection of the rights of consumers from harmful and sharp practices of suppliers of goods and services by a regime of criminal punishment for consumer rights violators. It finds that the application of criminal sanctions to the protection of consumer rights has no doubt proven to be a veritable tool, especially considering the limitations faced by individual consumers in ventilating their grievances in the civil law courts.

The research methodology comprised a consultation of the relevant Nigerian statutory and judicial sources of consumer protection laws, as well as reports, articles, and other literature as deemed necessary. The paper makes recommendations and conclude that criminal sanctions ensure that suppliers of goods and services are constantly deterred from breaching the rights of consumers

Keywords: Consumer rights; Consumer Protection; Criminal Sanctions; FCCPA; Nigeria

1. Introduction

Consumers of products and services are entitled to enforce their rights through the civil courts' mechanism for redress. However, there are several limitations which militate against the individual consumer successfully enforcing his rights against a supplier of defective or substandard goods or services. For one, many individual consumers are unaware of their entitlement to relief for breach of their consumer rights. Where they are, there are several setbacks to justice in the Nigerian civil justice system which may prove a strong disincentivizing factor. [These setbacks include huge financial costs in prosecuting a civil claim in Nigeria. Another setback is one of time involved in prosecuting a civil claim which usually last several years. Hence the appreciation of the importance of the role of criminal sanctions against the suppliers of defective products and services, with a significant benefit for consumers being that the state uses government resources to prosecute and ultimately punish offending suppliers of goods and services. The criminal sanctions, which include stiff fines and terms of imprisonment for individual offenders, corporate bodies, and even directors of the corporate bodies, ensure that suppliers of goods and services are constantly deterred from breaching the rights of consumers. Criminal law is certainly a viable means of discrediting the reputation of an individual in society as the tag of a person as a "criminal" commands immediate condemnation and disgrace more than

any other form of social control.¹ It has, to some extent, been shown that punishment, either by a term of imprisonment or a stiff fine, is an active deterrent to abhorrent behaviour. Although the argument that the protection of consumers and their rights ought to be governed by the interactive forces of the free-market economy and the civil justice system, with the government, if involved at all, playing only the role of an unbiased umpire, may be compelling. However, States impose criminal liability on violators of their consumer protection laws riding on the back of the entrenched belief that for the markets to function well, the state must provide them with a strong framework in which they can operate freely.²

Additionally, the inherent imbalance in power between the private consumer and the corporation, which typically is the defendant in consumer protection claims, necessitates the application of criminal law to protect consumer rights, thus creating a seemingly level playing field. The personal deterrence achieved by removing the veil of incorporation that many erring directors hide under, and punishing directors of companies who violate consumer protection laws, is also an effective tool used to maintain free and fair market economics.³

Since the Consumer Protection Council Act was enacted in 1992, more recent pieces of legislation have been enacted with a litany of provisions imposing criminal sanctions for breaches of consumer rights. However, there is now advancement of the position that perhaps a line should be drawn in the imposition of criminal sanctions for the protection of consumer rights because of the issues arising therefrom. This paper examines the place of

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1. Andrew Ashworth, *Principles of Criminal Law (3rd Edition)* (Oxford: Oxford University Press, 1999) p. 17

² Yael Navon, "Criminal Liability for Violations of the Consumer Protection Law", October 2007, Lexology, <https://www.lexology.com/commentary/product-regulation-liability/israel/levitan-sharon-co-/criminal-liability-for-violations-of-the-consumer-protection-law>

³ Yael Navon, "Criminal Liability for Violations of the Consumer Protection Law", October 2007, Lexology, <https://www.lexology.com/commentary/product-regulation-liability/israel/levitan-sharon-co-/criminal-liability-for-violations-of-the-consumer-protection-law>

criminal law in consumer rights protection, what criminal law seeks to achieve by punishing the defendant, and why it is more beneficial to the protection of consumer rights in Nigeria

This paper is divided broadly into 4 sections. The first deals with the conceptual clarification of relevant terms including the meaning of “consumer” and when conduct can be termed criminal. Second, it proceeds to identify the consumer rights, as encapsulated in the relevant pieces of legislation. Third, the paper discusses further the means of protection of these rights by enforcement under civil law whilst also considering its limitations. Fourth, it considers the legal framework for criminal liability for breach of consumer rights, the issues arising therefrom together with recommendations and conclusion for better consumer rights protection. The research methodology comprised a consultation of the relevant Nigerian statutory and judicial sources of consumer protection laws, as well as reports, articles, and other literature as deemed necessary.

2. Conceptual Clarification of Terms

In discussing consumer rights and their protection, it is important to achieve a proper working understanding of the term “consumer”.

Section 167(1) of the FCCPA defines a consumer to include any person:

- (a) who purchases or offers to purchase goods other than for the purpose of resale, but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale; or
- (b) to whom a service is rendered.

This definition of a consumer of goods is limited as it restricts a consumer to a person who is in a contractual relationship with the manufacturer or supplier of the goods. It appears to insist that the consumer protected by the FCCPA must have either purchased the goods or have offered to purchase the same to be considered a consumer, thus leaving out in the lurch any third party who consumes the goods without a contractual relationship with the supplier of

the goods. For instance, where a person purchases biscuits for his guest and the biscuit contains toxic substances that causes damage to the guest, the guest, who is the actual user of the product, will not be considered as a consumer following the definition of consumer under FCCPA, which does not accommodate a user who does not have a contractual relationship with the seller. Rather, the consumer rights in the transaction is ascribed to the buyer of the biscuits, and not to the guest who is the ultimate user.

The restriction of the definition of a consumer of products to only persons who purchased the products from the seller is baffling when the definition of a “consumer” in the repealed CPCA 2004⁴ is considered. Section 32 of the CPCA defines a consumer as “an individual who purchases, uses, maintains or disposes of products or services”.

When the question of who a consumer is, came up for judicial interpretation in the case of *FCMB v. Consumer Protection Council*⁵ the court adopted a broad-based interpretation of the term when it held as follows: -

“who is a consumer within the intendment of the Act. Section 2(d) & (11) of the Act used the terms "consumer" or "communities". Section 6(1) used the term “consumer” or “community" while Section 6(2) utilized the terms "a consumer, or a person having an interest in a matter". Section 32 of the CPC Act states "in this Act unless the context otherwise requires - "consumer" means an individual who purchases, uses, maintains or disposes of product or otherwise." A communal consideration of the above reveals that a consumer could be an individual within the intendment of Section 32 of the Act. It could be a community or communities within the import of Section 2 (d) and (1) of the Act or Section 6 (1). While Section 6 (2) states that a consumer "could be a consumer or a person having an interest in a matter".

⁴ Federal Competition and Consumer Protection Act, §165 (1) (2018)

⁵ *FCMB v. Consumer Protection Council*, LPELR-55804(CA) (2021)

The Indian Consumer Protection Act⁶ which incidentally was also enacted in 2019, accommodates a third-party consumer of a product when it defined a consumer of goods broadly as any person who: -

“buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose”⁷

In this paper, the author adopts the broad-based interpretation of a consumer as any person who purchases, uses, or offers to purchase goods and services other than for the purpose of resale, excluding a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or articles for sale.

“Person” was further defined in Section 167(1) of the FCCPA to include any natural or legal person, whether incorporated or not.

This definition goes further than that provided in Part II, Article 3 of the United Nations Guidelines on Consumer Protection 2016⁸, wherein the term “consumer” is restricted to a natural person, regardless of nationality, acting primarily for personal, family, or household purposes.

2.1 What Constitutes Consumer Rights?

The term “right” has been defined judicially as an interest recognised and protected by law.⁹

⁶ The Consumer Protection Act, 2019 (2019). The Gazette of India. <https://egazette.nic.in/WriteReadData/2019/210422.pdf>

⁷ The Consumer Protection Act, 2019, § 2 (7)

⁸ “United Nations Guidelines for Consumer Protection”, 2016. United Nations Conference on Trade and Development. https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

⁹ Afolayan v. Ogurinde, 1990 NWLR p. 127, P. 369 (1990)

Hence, consumer rights, when viewed from the prism of the definition of 'consumer' above, refer to the rights provided for the protection of any person, whether corporate or individual, who purchases or uses goods and services for their personal consumption.¹⁰

Consumer rights are generally a reference to a body of law that pertains to things the producers of goods must do to protect consumers from harm. These laws have evolved from the outcomes of several legal disputes over the years.¹¹ Consumers essentially rely on government legislation to protect them.¹² In Nigeria, over the years, several laws have been enacted to protect consumer rights in Nigeria.¹³

In 2019, the Federal Competition and Consumer Protection Act, 2018 ("FCCPA") was enacted substituting the erstwhile Consumer Protection Council Act 2004 which has now been repealed. Section 104 of the FCCPA cements the supremacy of the FCCPA in all matters relating to consumer protection in Nigeria when it provides as follows: -

Notwithstanding the provisions of any other law but subject to the provisions of the Constitution of the Federal Republic of

¹⁰ Ezekiel T. Ebitu, "Consumer Rights, Consumer Protection and Public Policy in Nigeria: A Critical Review". *International Business Research*, Vol. 7, no. 12, November 25, 2014, <https://pdfs.semanticscholar.org/b2a0/1dfdb6aac49e5b37e7480771bc6fec199125.pdf>

¹¹ "What are Consumer Rights?", Legal Resources, Assessed at <https://www.hg.org/legal-articles/what-are-consumer-rights-31356>, on 23rd October 2022

¹² Salem Al-Ghamdi, M. Sohail and Al Khaldi A. (2007), "Measuring Consumer Satisfaction with Protection Agencies: Some insights from Saudi Arabia", *Journal of Consumer Marketing*

¹³ Food and Drugs Act (1974), Weight and Measures Act (1974), Standard Organization of Nigeria Act (SON) 1989, Advertising Practitioners (Registration, Etc.) Act (1988), Federal Environmental Protection Agency (1992), Consumer Protection Council Act 1992, National Agency for Food, Drugs Administration and Control (NAFDAC) Act 2004 Standard Organization of Nigeria Act Cap S9, L.F.N., 2004. The Price Control Act Cap P28, L.F.N., 2004. Nigerian Communications Commission Act Cap N9, L.F.N., 2004. Nigerian Communications Act No. 19 of 2003. Utilities Charges Commission Act Cap. U17, L.F.N., 2004. Post and Telecoms Proceedings Act Cap. P24, L.F.N., 2004. Nigerian Communications Act No. 19 of 2003, Quality of Service Regulations, 2012; S.I. No.3 2012. Nigerian Communications Act No. 19 of 2003, Consumer Code of Practice Regulations; S.I. 32 2007. Counterfeit & Fake Drugs & Unwholesome Processed Foods (Miscellaneous Provisions) Act; Cap. C34 L.F.N., 2004. The Consumer Protection Council Act, Section 1(1) Cap C25, L.F.N., 2004

Nigeria, in all matters relating to competition and consumer protection, the provisions of this Act shall override the provisions of any other law.

3. Rights of a Consumer under the FCCPA

The FCCPA includes several consumer rights to protect the interests of consumers. These rights include the right to¹⁴:-

- i. Be shown information regarding goods and services in a clear manner that would not mislead the consumer of average literacy skills;¹⁵
- ii. Adequate display of the fixed prices of goods and services in Naira;¹⁶
- iii. Not be misled as to the true characteristics of a product by the suppliers of a product using a trade description;¹⁷
- iv. Be informed by a conspicuous notice, of the state of goods as either second-hand, reconditioned, re-built or re-made;¹⁸
- v. Be given full written details of every transaction including applicable taxes;¹⁹
- vi. Freedom to choose different suppliers of goods and services;²⁰
- vii. Cancel a booking for goods or services subject to a reasonable charge for the cancellation;²¹

¹⁴ Faith Saiki, "The Rights Of A Consumer Under The Federal Competition And Consumer Protection Act Of Nigeria", December 2019, Mondaq, <https://www.mondaq.com/nigeria/dodd-frank-consumer-protection-act/877838/the-rights-of-a-consumer-under-the-federal-competition-and-consumer-protection-act-of-nigeria>

¹⁵ Federal Competition and Consumer Protection Act §114 (2018)

¹⁶ Federal Competition and Consumer Protection Act §115 (2018)

¹⁷ Federal Competition and Consumer Protection Act §116 (2018)

¹⁸ Federal Competition and Consumer Protection Act §117 (2018)

¹⁹ Federal Competition and Consumer Protection Act §118 (2018)

²⁰ Federal Competition and Consumer Protection Act §119 (2018)

²¹ Federal Competition and Consumer Protection Act §120 (2018)

- viii. Goods supplied based on description and samples corresponding in material characteristics with the supplier's samples and descriptions;²²
- ix. A full refund paid for defective goods supplied where the goods are defective or not fitting the understood purpose, so long as the goods are returned within a reasonable time of delivery;²³;

The above rights of the consumer and others are described in detail in part XV, from sections 114 to 132 of the Act.

3.1 Enforcement of Consumer Rights in Civil law and its Limitations

A consumer who purchases goods from a supplier of such goods has a right to institute civil proceedings against the supplier if such goods do not meet the express and implied specifications as to quality or fitness. Sections 146(2) and 152 of the FCCPA emphasise the constitutional right²⁴ of an aggrieved consumer to seek redress by instituting a civil proceeding either before making a complaint to the FCCPC or afterwards. If such a consumer can prove that the supplier breached either an express or implied term of the contract, he is entitled to remedies.²⁵

In *Nigeria Bottling Company Plc. v Ruth Ademeli*,²⁶ a case between the manufacturer of beverages and a purchaser, the Court of Appeal held as follows: -

"...the respondent purchaser who bought some soft drinks of the appellant has by the purchase, rights such as (1) that the goods bought are good for the purpose under the Sale of Goods Law which right will ensure in contract. (2) that the goods are free from any manufacturers defect which may cause harm to her..."

²² Federal Competition and Consumer Protection Act §121 (3) & (4) (2018)

²³ Federal Competition and Consumer Protection Act §122 (2018)

²⁴ Constitution of the Federal Republic of Nigeria [as amended], §36 (1999)

²⁵ *Gaoxingl (Nig.) Ltd & Anor v. Michonest Solution Intl. Ltd*, 2021. LPELR-54630 (CA)

²⁶ *Nigerian Bottling Company Plc. v. Ruth Ademeli*, 2015. LPELR-41851 (CA)

It has been argued in this article that consumers of goods are not only those persons who are in a contractual relationship with the supplier of the goods, but also extends to users of the goods or services whether or not they maintain a contractual relationship with the supplier. Nevertheless, under the law of contract, where a third party consumes goods purchased by another person, he is unable to sue the supplier where the goods are defective even if expressly purchased for the third party's benefit. This is owing to the principle of privity of contract.

In *Nospetco Oil & Gas Ltd v. Olorunnimbe & Ors.*²⁷ the Supreme Court dealt with the principle of privity of contract when it held that: -

"Basically, privity of contract is the relation between the parties in a contract, which entitles them to sue each other, but prevents a third party from doing so. Thus, the doctrine of privity of contract is all about the sanctity of contract between the parties to it, and it does not extend to others from outside."

Hence this unwavering limitation of the principle of privity of contract effectively denies a third-party consumer of goods from having the locus standi to sue a supplier of defective goods.²⁸ Only a consumer who has a contractual relationship with a supplier of goods can enforce his rights when breached by the supplier of the goods under the law of contract.

3.2 Enforcement of Consumer Rights under Law of Torts

Under the law of torts, it appears that a consumer who is not in a contractual relationship with the supplier of the goods consumed can maintain an action and even obtain remedies against the supplier of defective goods under the principle of product liability.

This principle is premised on the basis that a manufacturer of products owes the consumers of his products a duty of care in ensuring that such products reach the ultimate consumer in the state in which the products left him with no reasonable possibility of intermediate examination, and with the

²⁷ *Nospecto Oil & Gas Ltd v. Olorunnimbe & Ors.*, 2011. LPELR-55630 (SC), *Basinco Motors Ltd. V. Woermann-Line & Anor*, 2009. LPELR-756 (SC)

²⁸ *Rebold Industry Ltd v. Magreola*, 2015. Nigerian Weekly Law Report (Pt. 1460) 210

knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property.²⁹

In *Okwejiminor v. Gbekeji & Nigerian Bottling Co. Plc.*,³⁰ a consumer of a contaminated orange drink who bought the drink from a distributor of the manufacturer sued the manufacturer for damages. The manufacturer argued that there was no privity of contract between it and the consumer. The Supreme court in dismissing this argument held as follows: -

“Even when there is an absence of privity of contract between plaintiff and defendant, that per se does not preclude liability in tort. It also gives the proposition that manufacturers of products owe a duty of care to the ultimate consumer or user.”

However, this approach of enforcement of consumer rights also has its limitations. First, the consumer is saddled with the responsibility of proving that the manufacturer has breached the duty of care owed him by proving fault of the manufacturer in its manufacturing process. This is more difficult to prove compared to the strict liability of the manufacturer when it comes to claims of contractual breach.³¹ Another limitation is that this approach only avails a consumer who suffered tortuous damage or incurred a tortuous loss. It has no use for instances where the consumer only suffered economic loss.³² For example, where a consumer buys a refrigerator that turns out to be unfit or lacking in quality, the consumer is entitled to recover damages against the manufacturer under the law of contract. However, such consumer cannot maintain a right in contract if the refrigerator was given as a gift as there would be no privity of contract between the user and consumer. Neither can he recover damages under the principle of product liability unless the facts of the case, for instance, include that the refrigerator blew up in his home and

²⁹ NB Plc v. Audu, 2009. LPELR-8863 (CA)

³⁰ *Okwejiminor v. Gbekeji & Nigerian Bottling Co. Plc.*, 2008. Nigerian Weekly Law Report (Pt. 1079) 176

³¹ Gbade Akinrinmade. “The Jurisprudence of Product Liability in Nigeria: A Need to Complement the Existing Fault Theory”. *Journal of Sustainable Development Law and Policy*. Vol. 7, No. 2 (2016)

³² Peter Cartwright. *Consumer Protection and the Criminal Law: Law, Theory and Policy in the UK* (Cambridge: Cambridge University Press, 2001)

caused damages in his household or to his person which the damages sought would be required to restore him to the position he was before the incident.

3.3 Cost Limitations of Civil actions

The cost of the institution of a civil proceeding in Nigeria is prohibitive both in terms of financial expense and the time expended in prosecuting the suit. The challenge of matching the deep pockets of some of the individuals or corporations who are consumer rights abusers has over the years proven to be very daunting, especially considering the delay suffered in a typical civil suit filed at the trial court. An average civil action could take as much as several years to conclude and even where the judgment ends in the favour of the consumer, the defendant is most likely to file a notice of appeal at the Court of Appeal, while bringing an application for stay of execution of the judgment pending the determination of the appeal. As such the defendant would effectively rob the consumer of the fruits of the judgment until the appeal is concluded. Even when the Court of Appeal dismisses the appeal, the respondent may bring a further appeal to the Supreme Court. The whole process could easily go on for several years³³.

The corporation or big business manufacturer usually has a budget for defence of civil claims and simply goes through the motions, while the aggrieved consumer, who usually at some point has to balance the cost of pursuing his claim from the trial court up to the Supreme Court, and the benefits to be derived from getting a judgment in his favour after several years. Many a consumer after a while eventually loses interest in the legal battle, especially where the cost of maintaining the suit is likely to supersede the damages claimed or likely to be awarded if the consumer's claim is upheld at the end of the day.³⁴

³³ Justice Delayed is Justice Denied: An Empirical Study of Causes and Implications of Delayed Justice by the Nigerian Courts by Ayuba, Muhammad, published in 2019/07/13 assessed at https://www.researchgate.net/publication/334443381_Justice_Delayed_is_Justice_Denied_An_Empirical_Study_of_Causes_and_Implications_of_Delayed_Justice_by_the_Nigerian_Court on 23/10/2022

³⁴ Johnson Amadi. "Enhancing Access to Justice in Nigeria with Judicial Case Management: An Evolving Norm in Common Law Countries", March 2009, ResearchGate. https://www.researchgate.net/publication/228208569_Enhancing_Access_to_Justice_in_Ni

4. Legal Framework for Criminal Liability for Breach of Consumer Rights

The highlighted shortcomings of private law enforcement and protection of consumer rights above make it necessary, in the public interest, that a more reliable means of enforcing the protection of consumer rights is adopted. The benefit of criminalising these consumer rights breaches is shared between the society and the individual aggrieved consumer whose rights have been breached.

The primary goal of prosecution of criminal offenders is that where there is a conviction and a sentence, it is likely to serve as a deterrent to the individual offender and to the larger society. Hence, upon criminalisation of the consumer rights breaches, and successful prosecution of offenders, it is likely to bring the society to the place where potential offenders are deterred from breaching consumers' rights, and a resultant effect of heightened protection of consumer rights. The fact that the proceedings are criminal means that the state or government usually is saddled with the task of prosecution of the case, thus removing the worry of cost in time and in finance for the consumer. For the purpose of this discourse, an act is criminal if it is prohibited with criminal consequences.³⁵ Some legislation that contain significant provisions criminalising breach of consumer rights are discussed below.

4.1 The FCCPA

Several portions of the FCCPA provide for criminal liability with severe punishments for breaches of consumer rights in Nigeria. For instance, section 155 of the FCCPA provides that unless a punishment is prescribed in the Act for a specific breach of consumer rights, any natural person who contravenes any consumer right commits an offence and is liable on conviction to imprisonment for a term not exceeding five years, or to payment of a fine not exceeding ₦10,000,000 or to both.

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³⁵ *Proprietary Articles Trade Association v. Attorney General for Canada* [1931] AC 310 at 324.

The FCCPA commendably provides an incentive against nonchalance of directors of a body corporate in section 155(c) which states that where a body corporate is convicted for the breach of consumer rights, the corporation is not only liable on conviction to a fine of not less than ₦100,000,000 or 10% of its turnover in the preceding business year, whichever is higher, its directors are also liable to be proceeded against and dealt with as though they individually breached the consumer rights as natural persons.

Other offences contained in the FCCPA for the direct or indirect protection of consumer rights include: -

- i. Failure to label or describe goods in a manner that will be easily traceable to the manufacturer, importer, or distributor is punishable with an imprisonment term not exceeding 3 years or a fine of N10,000,000 for a natural person while for a body corporate, a fine not exceeding 10% of its turnover in the preceding business year while its directors would be proceeded against individually as natural persons³⁶.
- ii. Failure to notify consumers of any unforeseen hazard arising from the use of goods already placed on the market upon becoming aware of such hazard, and withdrawal of the goods from the market is punishable with an imprisonment term not exceeding 3 years or a fine of N10,000,000 for a natural person while for a body corporate, a fine not exceeding 10% of its turnover in the preceding business year while its directors would be proceeded against individually as natural person offenders.³⁷
- iii. Failure to supply regulated goods or services in accordance with the authorised prices is punishable with an imprisonment term not exceeding 3 years or fine of N50,000,000 for a natural person while for a body corporate, a fine not exceeding 10% of its turnover in the preceding business year while its directors would be proceeded against individually as natural person offenders³⁸.

³⁶ Federal Competition and Consumer Protection Act §134 (2018)

³⁷ Federal Competition and Consumer Protection Act §135 (2018)

³⁸ Federal Competition and Consumer Protection Act §90 (2018)

- iv. Failure of an undertaking to desist from an abusive practice after receiving an order of the commission to that effect is punishable with a fine not exceeding 10% of its turnover in the preceding business year or to such higher percentage as the court may determine given the circumstances of the particular case, while its directors would be proceeded against individually as natural person offenders and upon conviction would be liable to an imprisonment term not exceeding 3 years or fine of N50,000,000, or both.³⁹
- v. Other criminal offences are created where persons or corporate bodies attempt in derailing the investigation of the Commission regarding the breach of consumer rights. These include obstruction of an authorised officer in the performance of his duties,⁴⁰ failure without sufficient reason to appear before the Commission in compliance with a summons or produce a required document,⁴¹ wilful obstruction of the investigations and inquiry of the Commission,⁴² destruction of any record required by the Commission for the performance of any of its functions⁴³ or refusal or willful negligence to furnish to the Commission correct information required under the Act⁴⁴.

4.2 Enforcement of Consumer rights under the FCCPA

In order to enforce consumer rights under the FCCPA, the FCCPA established the Federal Competition and Consumer Protection Commission FCCPC⁴⁵. While the Competition and Consumer Protection Tribunal (“CCPT”) was established to adjudicate over conduct prohibited under the FCCPA.⁴⁶

³⁹ Federal Competition and Consumer Protection Act §74 (2018)

⁴⁰ Federal Competition and Consumer Protection Act §28(5) (2018)

⁴¹ Federal Competition and Consumer Protection Act §33(4) & §113 (2018)

⁴² Federal Competition and Consumer Protection Act §110 (2018)

⁴³ Federal Competition and Consumer Protection Act §36 & §111 (2018)

⁴⁴ Federal Competition and Consumer Protection Act §80(1) & §112 (2018)

⁴⁵ Federal Competition and Consumer Protection Act §3 (2018)

⁴⁶ Federal Competition and Consumer Protection Act §39 (2018)

The FCCPC has the obligation to conduct a hearing regarding, amongst other things, complaints of a breach of consumer rights.⁴⁷

While the CCPT has the powers to hear appeals from any decision of the FCCPC and make orders or rulings thereto,⁴⁸ the order of the CCPT is binding on the parties before the tribunal and is required to be registered at the Federal High Court only for the purposes of enforcement⁴⁹. Any party dissatisfied with the order of the CCPT is at liberty to file an appeal at the Court of Appeal within 30 days after delivery of the order.⁵⁰

4.3 Standards Organisation of Nigeria Act 2015

The Standards Organisation of Nigeria Act established the Standards Council of Nigeria (SCN). The functions of the council include designating, establishing, and approving standards in respect of meteorology, materials, commodities, structures, and processes for the certification of products in commerce and industry throughout Nigeria, and providing the necessary measures for quality control of raw materials and products in conformity with the standard specification.⁵¹

The purpose of the certification of the SCN is apparently to guide consumers on which products are guaranteed to be of acceptable quality. Where a manufacturer exposes for sale, goods with the SCN's industrial standard of certification mark when in fact the SCN had not issued such a mark, the manufacturer is liable upon conviction to a fine of N1,000,000 or to a term of imprisonment not exceeding two years or to both.⁵²

Sale or delivery for consumption of any item which does not comply with mandatory industry standards for manufactured goods is an offence that renders a manufacturer of such goods subject to a fine of not less than 20% of the value of the product or N2,000,000.00 (whichever is higher) or to imprisonment for a term not less than 3 years or to both. The importer of such

⁴⁷ Federal Competition and Consumer Protection Act §18(4) (2018)

⁴⁸ Federal Competition and Consumer Protection Act §47(1) (2018)

⁴⁹ Federal Competition and Consumer Protection Act §54 (2018)

⁵⁰ Federal Competition and Consumer Protection Act §55(1) (2018)

⁵¹ Standards Organisation of Nigeria Act, §4(1), (b) & (c) (2015)

⁵² Standards Organisation of Nigeria Act, §26 (2015)

goods is also liable to a fine not less than 20% CIF (cost, insurance and freight) per shipment or N2,000,000.00 (whichever is higher) or imprisonment for a term not less than 2 years or both. While in the case of a seller, conviction renders him liable to a fine of not less than 15% of the value of the product or N1,000,000.00 (whichever is higher) or imprisonment for a term not less than 2 years or both.⁵³

4.4 National Agency for Food and Drug Administration and Control Act⁵⁴

This is an Act that establishes the National Agency for Food and Drug Administration and Control (the Agency) with the functions, among others, to regulate and control the importation, exportation, manufacture, advertisement, distribution, sale, and use of food, drugs, cosmetics, medical devices, bottled water and chemicals in Nigeria (regulated products).⁵⁵

In order to ensure that consumers are protected from consuming unsafe regulated products, the Agency is empowered to among other functions: -

- i. conduct appropriate tests and ensure compliance with standard specifications for safety in the production processes of the regulated products;
- ii. inspect imported regulated products;
- iii. compile minimum standard specifications for suppliers dealing with the regulated products either during its production, importation, exportation, and distribution; and
- iv. Register the regulated products.⁵⁶

In order to determine that the regulated products are in line with the specified standard, an official of the Agency is empowered to enter premises where the regulated products are being manufactured, stored, or sold and obtain

⁵³ Standards Organisation of Nigeria Act, §26(2) (2015)

⁵⁴ National Agency for Food and Drug Administration and Control Act Cap N. 1 LFN (2004)

⁵⁵ National Agency for Food and Drug Administration and Control Act, §55 (1) Cap N. 1 LFN (2004)

⁵⁶ National Agency for Food and Drug Administration and Control Act, §55 Cap N. 1 LFN (2004)

samples for testing.⁵⁷ Obstruction of any official of the Agency in performance of its duties in any such premises entered is an offence which upon conviction results in a fine of N5,000 or imprisonment for a term not exceeding two years or to both.

4.5 Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act⁵⁸

This legislation prohibits the production, importation, distribution, sale, or being in possession of counterfeit, fake drugs and unwholesomely processed foods.⁵⁹ A breach of this prohibition upon conviction renders the person liable to a fine not exceeding N500,000 or imprisonment for a term of not less than five years or more than fifteen years or to both such fine and imprisonment. The Act also prohibits the sale of any drug in any place not registered by the appropriate authority.⁶⁰ Punishment for breach of the prohibition is a fine not exceeding N500,000 or imprisonment for a term of not less than two years or to both such fine and imprisonment.

4.6 Food and Drugs Act⁶¹

The Food and Drugs Act was enacted to regulate the supply of food, drugs, cosmetics, and devices (regulated products) to consumers.⁶² It prohibits the supply of the regulated products which is either unfit for human consumption or is adulterated.⁶³ The Act also forbids the promotion of an unregistered regulated product as a cure for diseases or to supply any regulated product in a manner that is false or misleading or is likely to create a wrong impression as to true characteristics.⁶⁴

⁵⁷ National Agency for Food and Drug Administration and Control Act, §24 Cap N. 1 LFN (2004)

⁵⁸ Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Cap. C34 LFN (2004)

⁵⁹ Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Cap. C34 LFN §1 (2004)

⁶⁰ Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Cap. C34 LFN §2 (2004)

⁶¹ Food and Drugs Act (2004)

⁶² Food and Drugs Act Cap F. 32 LFN (2004)

⁶³ Food and Drugs Act, Cap N. 1 LFN §1 (2004)

⁶⁴ Food and Drugs Act, Cap N. 1 LFN §2, §5 & §7 (2004)

Any person convicted for carrying out any condemned act under the statute is liable to a fine at least N50,000 or imprisonment for not more than two years or both.⁶⁵

Other enactments that protect consumer rights through prescription of criminal offences for the breach of consumer rights include: Weight and Measures Act, 1974⁶⁶, Advertising Practitioners (Registration, Etc.) Act (1988)⁶⁷, Central Bank of Nigeria Act (CBN)⁶⁸, Tobacco Smoking (Control, etc.) Act⁶⁹, Marketing (Breast Milk Substitutes) Acts 1990⁷⁰, etc.

5. Issues arising from the use of Criminal Sanctions for the Protection of Consumer Rights and recommendations for better consumer protection

Civil law plays an important role in the consumer protection regime, but suffers from limitations that make intervention from the state desirable. However, despite the clear benefits of criminalising breaches of consumer rights as a means of better protection of consumer rights, the operation of criminal law within the realm of consumer protection is also not without its limits and often raises questions as to the extent to which criminal sanctions should continue to play a role in the protection of consumer rights.

Criminalisation of offences also means that the prosecution must establish *mens rea* as well as prove the breach of the rights beyond a reasonable doubt. This is obviously more difficult to attain compared to the relatively less daunting requirement to prove a civil claim on the balance of probabilities.

The discretion to prosecute lies with the relevant agency which may decide that it does not wish to prosecute. Even where the complainant obtains a fiat, the Attorney General could decide to discontinue at any time without needing to give a reason to the complainant.⁷¹ Even where judgment is given in favour

⁶⁵ Food and Drugs Act, Cap N. 1 LFN §17 (2004)

⁶⁶ Cap W3 LFN 2004

⁶⁷ Cap A7 LFN 2004

⁶⁸ Cap. C4, LFN 2004

⁶⁹ Cap. T6, LFN 2004

⁷⁰ Cap M5 LFN 2004

⁷¹ Constitution of the Federal Republic of Nigeria [as amended], §174 (1) & 211 (1999)

of the complainant in the criminal court, the result most times is in sentencing and punishment of the offender to serve as a deterrent and thus in the long run protect consumer rights. However, this does not provide an actual remedy for the economic loss which may have been suffered by the complainant

Arguably the most obvious aim of the criminal law, especially in the regulatory sphere is to act as a deterrent. This involves both individual deterrence (making sure the offender does not re-offend), and general deterrence (detering other members of society from committing offences). The belief in the value of deterrence rests on the assumption that humans are rational beings who always think before they act, and then base their actions on a careful calculation of the gains and losses involved. However, criminals are not exactly known for their foresight and prudent calculation. It is not in doubt that deterrence-based theories have come under fierce criticism in recent years, largely because of doubts as to whether punishment does indeed deter.⁷²

6. Recommendations

In November 2006 Regulatory Justice: Making Sanctions Effective (the Macrory Report)⁷³ was published in the United Kingdom. The report makes a number of suggestions as to how sanctioning of regulatory wrongdoing could be more effective, particularly what it describes as its six penalties principles. The Report maintains that a sanction should aim to change the behaviour of the offender; aim to eliminate any financial gain or benefit from non-compliance; be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction; be proportionate to the nature of the offence and the harm caused; aim to restore

⁷² "Sanctioning and the Criminal Law". University of Nottingham. https://rdmc.nottingham.ac.uk/bitstream/handle/internal/191/Consumer%20Law/Lecture_3_Sanctioning_and_the_Criminal_Law.doc

⁷³ "Sanctioning and the Criminal Law". University of Nottingham. https://rdmc.nottingham.ac.uk/bitstream/handle/internal/191/Consumer%20Law/Lecture_3_Sanctioning_and_the_Criminal_Law.doc; Macrory Richard. "Regulatory Justice: Making Sanctions Effective – Final Report". November 2006. https://www.regulation.org.uk/library/2006_macrory_report.pdf

the harm caused by regulatory non-compliance, where appropriate; and aim to deter future non-compliance. It is the author's view, in aligning with and adopting the recommendations of the report herein, that criminal sanctions should not be applied in a knee jerk manner but with a rounded consideration of all the above, keeping in mind that the ultimate objective is the protection of consumer rights and not the punishment of offenders.

The author also suggests the following additional recommendations;

1. Establishment of a special appellate body within the Consumer Protection Council that reviews the decisions of the consumer protection tribunals, and whose decisions would be final.
2. Compulsory terms of imprisonment for individuals, whether acting for themselves or on behalf of a corporate body, convicted for willful abuse of consumer rights, without options of fines; and
3. Suspension or outright revocation of industry licence of producers whose company is found guilty of abuse of consumer rights.

7. Conclusion

As has been demonstrated above, the application of criminal sanctions to the protection of consumer rights has no doubt proven to be a veritable tool, especially considering the limitations faced by individual consumers in ventilating their grievances in the civil law courts. They are however to be applied with caution, alongside civil sanctions, and only to very serious infractions so as not to distract from the central purpose of the consumer protection regime.