

**A Draft Action
Plan for the
more effective
implementation
of the
Consumer
Rights
Protection Act,
2009 in
Bangladesh**

2010

A research report prepared by The Foundation for Effective Markets and Governance (FEMAG) for Consumers International in relation to consumer protection in Bangladesh.

GLOSSARY OF TERMS USED IN THIS REPORT

ASEAN	Association of Southeast Asian Nations
Boksheesh	a gift or payment that may serve the purpose of a bribe
CRPA	<i>Consumer Rights Protection Act, 2009</i> (Bangladesh)
CUTS International	Consumer Unity and Trust Society International- a non-government organisation
Godown	A warehouse
Lakh	A unit of measurement used widely in South asia, representing 100,000.
NGOs	Non-Government organisations
OECD	Organisation for Economic Co-operation and Development
Parishad (Union)	Council, electoral area- Lowest tier of Government
Salish	Informal traditional justice mechanism operating at the local/village level, based on principles of mediation
Taka (Tk)	Bangladeshi currency
UNIDO	United Nations Industrial Development Organisation
UNNAYAN SHAMANNAY	A Bangladeshi Non-Government Organisation
Upazila (Union)	Electoral area, second lowest tier of Government

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The Foundation for Effective Markets and Governance

The Foundation is a non-profit organisation with members having a strong philosophical commitment to the welfare of people, especially the least advantaged. Members have general experience and expertise in public policy and administration and the role of civil society in good governance. Members have particular expertise in consumer and competition policy and regulation and accountability systems both for government and industry. Its members have undertaken a wide variety of projects in Australia and developing countries.

The Foundation has a close relationship with the Regulatory Institutions Network (RegNet) of the Australian National University. Two of its directors are RegNet scholars.

Directors Allan Asher and Robin Brown researched and prepared this report. Substantial assistance was given by Steffanie von Helle.

Further information about the Foundation can be found at www.femag.anu.edu.au.

Project Outline

In April 2010, Consumers International was commissioned by the United Nations Industrial Development Organisation (UNIDO) to assist in the economic and social development of Bangladesh by reviewing the current state of consumer protection. In carrying out this mission, Consumers International, with the assistance of the Foundation for Effective Markets and Governance (FEMAG), undertook an analysis and evaluation of consumer protection measures in Bangladesh and prepared this report.

This project includes a review of the trajectory of development and implementation of the Millennium Development Goals within Bangladesh, a comparative analysis of the current consumer law in Bangladesh, explores current policy settings and identifies the need for interactive consumer and competition measures.

The *Consumer Rights Protection Act, 2009* (CRPA) is a recent enactment of the Parliament of Bangladesh. While the Act shares much in form with comparable legislation from India and South Africa in substance its drafting is such that there are many gaps, The Act has not been effectively implemented and there are no viable institutions to support it.

The law (The *Consumer Rights Protection Act, 2009*) was assessed against the UN Consumer Protection Guidelines 1985, and against relevant regional and other Consumer statutes. In particular the *Consumer Protection Act* of South Africa is reviewed and summarised as a point of reference. Comparisons are made and recommendations provided.

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Executive Summary

This report commences with a short review of the history of the current law and then provides a comparison of the key provisions of the *Consumer Rights Protection Act* contrasted with the UN Consumer Protection Guidelines. Key operative sections of the Act which spell out the powers and functions of the Director General are reviewed and contrasted with the objectives of the UN Guidelines.

Chapter 2 of this report sets out the policy context for the effective implementation of the *Consumer Rights Protection Act* of Bangladesh.

The rationale of the legislation is to protect the economic interests of consumers, and reference is made to both the Organisation for Economic Cooperation and Development (OECD) and Association of Southeast Asian Nations (ASEAN) regional policy developments in consumer protection. There follows a fuller discussion of the development of consumer laws in Bangladesh and an account of aspects of the market which are needed for the implementation of both strong consumer protection laws as well as competition law.

The report continues with extracts from a recent publication prepared by CUTS International and UNNAYAN SHAMANNAY entitled '**Relationship between Competition Policy and Consumer Protection Policy**'. This report provides a number of specific case studies involving public transport, sole distributorship, the communications sector and the pharmaceutical industry.

Having described the new law and a range of practices occurring within Bangladesh, the paper sets out provisions from the World Bank and OECD model laws to illustrate best practice in consumer legislation. This is supplemented with examples of consumer problems experienced in India.

Chapter 3 incorporates an assessment of the *Consumer Rights Protection Act* against the objectives of the UN Guidelines. This assessment includes conclusions drawn by local and visiting experts, a comparison with the new South African statute and other Asian jurisdictions and comments on inadequacies of the law and makes suggestions for improvement.

Chapter 4 discusses the implementation of the UN Guidelines in Bangladesh so as to give effect to the eight consumer rights adopted by the global consumer movement.

Chapter 5 examines the very important issue of the institutional framework that is required to provide adequate protection. Linking the objects of the consumer protection guidelines with the theoretical basis for institutional design and the elaboration of key functions, this chapter seeks to spell out essential elements for a successful consumer agency by reference to the United Nations guidelines and the consumer rights. References are made to issues of

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governance and to the need for more significant levels of consumer involvement in policy-making and implementation.

Appendix 1 provides an English translation of the *Consumer Rights Protection Act, 2009*

Appendix 2 reproduces the project proposal and research methodology

Appendix 3 consists of a copy of the UN Guidelines for Consumer Protection as expanded in 1999.

Recommendations for action to improve implementation of consumer protection in Bangladesh

An indication of the proposed time frame for action has been added in brackets at the end of each recommendation. Short term means that action should be commenced and outcomes achieved within the coming year, medium term means that the recommendation should be completed or substantially addressed within five years, and long term recommendations may take up to ten years to realise a profound cultural or institutional change, and should be addressed with a longer term strategic objective.

While it has been suggested that all proposed amendments to the Act are to be medium term challenges (reflecting the pragmatic reality of legal mechanisms), action to consider these issues with government and other stakeholders should commence immediately.

Recommendations in relation to the *right to basic needs*

1. *The National Consumer Rights Protection Council should establish a five-year action plan to identify critical areas of access to essential needs, particularly for consumers in rural and isolated areas, identify strategies to mitigate those risks and engage in public education and advocacy within the government to overcome critical areas of shortfall. (Medium term)*
2. *The Government of Bangladesh should take urgent action to support the development of local consumer groups, bazaar committees, student consumer awareness groups and local complaint cells in several districts, through awareness raising programmes and training materials, and provide advice and technical assistance for effective organisation. (Short term).*
3. *All stakeholders should be invited to contribute to the development of education and information materials to be disseminated amongst the poor and rural communities to enable them ready access to advice and assistance in meeting their essential needs. (Medium term).*

Recommendations with regard to the *right to safety*

4. *The CPRA be amended to incorporate standard international precepts of strict liability and to prevent liability shifting through contractual means. (Medium term)*

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5. *Administrative mechanisms need to be developed to make all those responsible for putting goods and services into circulation aware of their liabilities in the event that defects cause loss or damage to consumers.(Short term)*
6. *To better ensure the safety of Bangladesh consumers in relation to services liability, the act should be amended to incorporate provisions on unfair conduct or unfair contract terms and unconscionability. (Medium term)*

Recommendations in relation to the *right of choice*

7. *The Government of Bangladesh should elaborate a strategy of ensuring that the demand side of the marketplace be given more attention in the development of policies for industrialisation and export promotion.(Long term)*
8. *Consumer protection laws need to be reviewed and revised to ensure that adequate incentives are provided for those who placed goods and services on the market provide timely accurate and relevant information concerning the goods and services to consumers. This might be accomplished through product standards all requirements to disclose essential elements of the performance and price of goods and services.(Medium term)*

Recommendations in relation to the *right to information*

9. *Urgent provisions are required to the consumer law of Bangladesh to enshrine the right to information for consumers. Provision of timely, relevant and accurate information to consumers is a prerequisite to the development of competitive and responsive markets. It is also the case that unless traders are adequately told of their responsibilities and obligations, successful enforcement action to gain general compliance with the law will not be possible. (Short term)*

Recommendations with respect to the *right to consumer education*

10. *A systematic programme should be developed by the National Consumer Rights Protection Directorate to design and implement comprehensive consumer education programmes through both the formal educational sector as well as informally amongst rural and illiterate communities.(Short term)*
11. *In developing programmes for consumer education, steps should be taken to cooperate with other branches of the government and to engage civil society in both the development implementation and monitoring of such programmes.(Short term)*
12. *Adequate provision should be made in the budgets of agencies and provided by the central government to ensure institutional mechanisms are provided to conduct training on a regular basis.(Medium term)*

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13. *Milestones should be set for all such programmes to enable effective monitoring and assessment of consumer education progress over time. (Short term)*

Recommendations in relation to the right to representation

14. *Strengthen the legislative intent and resource requirements to ensure the development of an independent consumer movement. (Medium term)*
15. *Constitutional provision is required not only for access to information but for representation as a fundamental right of citizens. (Long term)*
- 16.. *Mandatory consumer impact assessment and consultation in every area of government where consumer interests are involved.(Short term)*

Recommendations in relation to the right to redress

In addition to measures suggested under the right to safety, the following recommendations are made:

17. *Government should establish networks of urban and suburban and rural dispute resolution forums. This could include the establishment of District Level Consumer Protection Directorates, to accept and hear grievances at the local level. (Short term)*
18. *Legislation should be enacted for the swift resolution of complaints including a strong emphasis on alternative dispute resolution and/or binding arbitration (Medium term)*
19. *Business enterprise should be encouraged to establish voluntary codes, consumer complaint mechanisms, voluntary arbitration mechanisms and information dissemination mechanisms for publicising these facilities to all consumers.(Long term)*

Recommendations for achieving a healthy environment

- 20.. *Environmental issues recognise no national or regional boundaries and measures implemented in Bangladesh should be linked to international or regional environmental programmes (Medium term)*
- 21.. *Bangladesh should adopt the suite of measures proposed under the UN Guidelines for safe manufacturing processes, handling and disposal waste products and enforcement of appropriate laws and standards.(Short term)*

Recommendations for *Improving Consumer Protection Institutions in Bangladesh*

Research

22. *Function (g) of the National Consumer Right Protection Council is “to undertake research on consumer rights”. This should be expanded to read “to undertake research and to commission research and to cooperate in research with other bodies, both domestic and international, on all matters relating to protection of consumers advancement of their interests and achievement of sustainable consumption.”(Medium term)*
23. *Funding from international donors should be sought to support research and all opportunities to undertake collaborative research internationally should be taken. (Short term)*

Advocacy

24. *The functions of the National Consumer Right Protection Council be amended to ensure that the Council has these two functions:*
- (a) to analyse and recommend on any matters referred by the Government regarding the protection of consumer rights;*
 - (b) to advise and co-operate with the Government in formulating necessary laws and administrative directions with an aim to protect and promote consumer rights; (Medium term)*
25. *As the Council has in its membership representatives of most of the relevant interests it provides a forum for consumer policy advocacy. While it is very useful that the Minister is the Chair and thus can hear directly the views expressed, there are aspects of its membership that should be reviewed. Potentially only one consumer movement voice would be present – that of the Chair of the Consumers Association of Bangladesh. It should be specified that in making appointments pursuant to 5 (19) (three eminent citizens appointed by the Government) the Government must ensure that balance is struck as between members with the capability to advocate producer interests and members with the capability to advocate consumer interests. (Short term)*
26. *In line with earlier recommendations, function (d) of the National Consumer Rights Protection Council should be expanded as follows:*
- “to advise and co-operate with the government in formulating necessary policies, laws and administrative directions with an aim to protect and*

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promote consumer rights and advance their interests and to achieve sustainable consumption” (Medium term)

27. *In addition, provision should be made for the Chair of an appropriate citizens’ environment association and an official responsible for development of environment policy to be appointed to the Council (if these positions are not covered in the existing membership). (Medium term)*

Consumer Movement Advocacy

28. *The Government of Bangladesh should satisfy itself that the Consumers Association of Bangladesh has the resources needed to perform a strong advocacy role. There are many demands on government funding in Bangladesh. However, any government funding that is directed towards providing the Association with the necessary resources to perform its important role would be well spent. The improvements on efficiency and equity of markets that a strong national consumer movement can achieve multiply many times the value to the community of providing such funding. (Short term)*
29. *Having said this, it is also appropriate for funding from international donors to be sought and for other funding sources to be explored. One such funding model that might be appropriate is that which has been employed in the USA. It involves utility services collecting a very small donation from consumers as part of the bills that they pay. (Short term)*

Compliance Action and Consumer Support

30. *The Act should be amended to provide for the Council to meet only twice per annum and to provide for the establishment of an Executive Committee of the Council of five persons as follows:*
- *Chairman of the Consumers Association of Bangladesh or his/her nominee*
 - *Chairman of the Federation of Bangladesh Chamber of Commerce and Industries or his/her nominee*
 - *Two members appointed pursuant to 5 (20) and*
 - *One eminent citizen appointed pursuant to 5 (19) ideally a judicial officer or former judicial officer capable of impartially chairing the committee. (Medium term)*
31. *The functions of the National Consumer Rights Protection Council should be amended as follows:*

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- (a) *to collaborate with consumer groups, business and other relevant organisations of civil society to deliver necessary educational and promotional campaigns to raise public awareness regarding consumer rights and to assist moves towards sustainable consumption. (Medium term)*
32. *The Government of Bangladesh, in consultation with the Consumers' Association of Bangladesh, should consider providing for mechanisms for citizens organisations to participate in compliance action. (Short term)*
33. *The Government of Bangladesh, in consultation with Consumers' Association of Bangladesh, the Federation of Bangladesh Chamber of Commerce and Industries and other relevant parties should undertake a comprehensive investigation of the potential role of non-statutory regulation in all relevant sectors of industry. In so doing it should seek assistance from countries with well developed non-statutory regulatory systems such as Australia. (Short term)*
34. *The functions of the National Consumer Rights Protection Council should be amended as follows:*
- (a) *to collaborate with consumer groups, business and other relevant organisations of civil society to deliver necessary educational and promotional campaigns to raise public awareness regarding consumer rights and to assist moves towards sustainable consumption (Medium term)*

CHAPTER 1

Background and Objective of the Study.

The *Consumer Rights Protection Act, 2009* (the Act) was passed by the Government of Bangladesh in April 2009 to ensure consumer protection by realizing consumer's right to quality goods and services at fair prices. Despite the enactment, there has been little in the way of Government action to implement and enforce the law to prevent malpractices in the market. Aggrieved consumers are not able to seek redress under existing circumstances due to lack of adequate institutional arrangements for the implementation of the Act. Bearing in mind both the importance of protecting consumers, and the contribution this will make to economic and social development, it is important that steps are taken to encourage the Government to consider the adequacy of the present Act, make any necessary amendments to ensure its effectiveness, and to assign sufficient resources and provide institutional arrangements to implement and enforce the law.

25 years ago, the UN General Assembly adopted the "Guidelines for Consumer Protection 1985". In 1999, the guidelines were extended to include a chapter on Sustainable Consumption. This report is a comparative study of the Bangladesh Act against those guidelines, making a number of recommendations to greater align the Government of Bangladesh's efforts at consumer protection with those international standards.

The Guidelines

Although expressed in terms of applicability to consumers in all countries, the UN Consumer Protection Guidelines (the guidelines) are focused particularly on developing countries where it is recognised that consumers often face imbalances in economic terms, educational levels,

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and bargaining power. The preamble to the guidelines notes that “consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection”

The central task of this research project is to examine the capacity and potential of the provisions and implementation of the *Consumer Rights Protection Act* to accomplish the objectives of the UN guidelines.

The key provisions of the Act are those found in section 21 which defines the power and functions of the Director General of the Consumer Rights Protection Directorate, established under the Act. :

21. Power and Functions of Director General:

(1) For the purpose of this Act, the Director General may take all necessary actions as he deems expedient and necessary for protection of consumer rights, prevent anti consumer rights practice, disposal of the complaint against violation of consumer rights.

Subsection (2) of Section 21 provides a comprehensive set of powers for the Director-General to take in relation to “anti consumer rights practices”, but it is in the definitions section (2) that an elaboration of prescribed practices is found:

Section 2 (20) “anti consumer rights practice” means-

- (a) to sell or offer to sell any goods, medicine or service at a higher price (than) fixed by any Act or Rules;*
- (b) to sell or offer to sell adulterated goods or medicine intentionally;*
- (c) to sell or offer to sell any goods containing any ingredient which is extremely injurious for consumer’s health and the mixing of which with any food item is forbidden by any Act or Rules;*
- (d) to deceive consumers by untrue or false advertisement with the purpose of selling any goods or service;*
- (e) not to properly sell or deliver any goods or services purchased at a given price;*
- (f) to sell or deliver less than the offered weight while delivering or selling any goods;*

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- (g) if the weight or any other weight measuring instrument used for measuring weight in selling or delivering goods shows more than the actual weight;*
- (h) to sell or deliver less than the offered amount while delivering or selling any goods;*
- (i) if the length measuring gauge or anything else used for measuring length in selling or delivering goods shows more than the actual length;*
- (j) to make or manufacture any imitated goods or medicine;*
- (k) to sell or offer to sell any goods or medicine which has expired;*
- (l) to do an act which may endanger life and security of the consumer and which is forbidden by any Act or Rules;*

As noted above, The Director General's powers are found in section 21 (2) as follows:

“In conformity with the provision of sub-section (1) the Direction General may take all or any of the following action, such as:

- (a) to collaborate with functions of any party or organisation who is related to the object of this Act;*
- (b) to take necessary steps to prevent any imminent act which may violate consumer rights, to determine and take preventive measures thereupon;*
- (c) to supervise the maintenance of quality of goods or service by the seller and take necessary actions thereupon;*
- (d) to supervise whether any fraud is committed in respect of weight or quantity in selling or supplying goods and take necessary actions thereupon;*
- (e) to supervise whether there is any making, manufacturing of copied goods or medicine and whether buyers are being deceived thereby, and to take necessary actions thereupon;*
- (f) to supervise whether any goods or medicine is being adulterated and to take necessary actions thereupon;*

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- (g) to supervise whether date of manufacture or expiry of the goods or medicine are inscribed in the cover of such goods or medicine under provision of any act or rules, and to take necessary actions thereupon;*
- (h) to supervise whether any expired goods or medicine are being sold and to take necessary actions thereupon;*
- (i) to supervise whether any food items that are hazardous for human life or health are being made, manufactured or sold and to take necessary actions thereupon;*
- (j) to supervise whether any goods are being manufactured or processed in a process injurious for human life or health and to take necessary actions thereupon;*
- (k) to supervise whether any medicines are being made or manufactured anywhere without any valid license and to take necessary actions thereupon;*
- (l) to supervise whether general consumers are being deceived by false advertisement for selling goods or services and to take necessary actions thereupon;*
- (m) to supervise whether the life of commuters are being put into risk by illegally running general public transports such as – minibus, bus, launch, steamer and train by unskilled or unapproved drivers and to take necessary actions thereupon; and*
- (n) to supervise whether life or security of service receivers are being jeopardized by violating any injunction imposed under any law or rules and to take necessary actions thereupon.*

These powers and functions are contrasted with the objectives of the UN guidelines which are:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;

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- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) To promote sustainable consumption.

In any country, the effectiveness of legislation is measured by the capacity to implement its spirit or intent, and to deliver the intended outcomes to the people. While the Director General, in Bangladesh, will have extensive and broad powers to ‘supervise’ a number of functions relating to consumer protection he/she will need to be supported by political will, strong institutions, an empowered polity, sufficient human and administrative resources and sound rule of law and justice institutions. That is, successful legislation is dependent on a network of factors working in conjunction with one another.

In a developing nation, such as Bangladesh, this is an ambitious task. Any one of those elements could be the subject of comprehensive development assistance programmes (and indeed civil administration and the rule of law are being addressed in that country at present). Bangladesh is one of the richest countries in the world in terms of active non-government organisations (NGOs). There is significant opportunity to develop synergies with those already working in development in Bangladesh, to raise awareness of consumer rights and protection principles. For example, there are a number of NGOs working with the victims of acid attacks, yet very little activity surrounding the purchasing of the acid that is used to perpetrate these obscene acts of violence. Greater awareness and more stringent measures on the sale of acid may reduce the incidence of acid attacks. Similarly, there are several NGOs

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working on decreasing infant mortality, yet there are few restraints on the sale of infant formula. Consequently, many mothers purchase cheaper milk formulas that are contaminated by melamine (or mixed with contaminated drinking water), and unwittingly cause harm to their babies, possibly even death. There is opportunity for lateral thinking to raise awareness of a number of commercial issues that can have significant consequences for the health and safety of this frequently poor and uneducated society.

Furthermore, there is opportunity for the Consumer Rights Protection Council and Directorate to participate in other forms of development occurring in Bangladesh to strengthen the legal, justice and regulatory environment. Noting that consumer protection cuts across all fields, the Director General has a legitimate interest in a number of civil service disciplines, including health, education, utility (gas, water, electricity) provision, law enforcement and justice. Accordingly, the Director General should become actively involved in other initiatives to strengthen the integrity of government institutions.

CHAPTER 2

Policy Context for the Effective Implementation of the Consumer Rights Protection Act of Bangladesh

Measures to protect the economic and social interests of consumers are increasingly being recognised as a necessary condition of thriving economies throughout the world. For the past 30 years, international development agencies and donor countries have deemed the implementation of effective competition policy as essential for the efficient allocation of resources, to promote innovation, increase total factor productivity, to create more employment and income earning opportunities, and to enable small and medium enterprises to participate in the market.

More recently, the same agencies have come to realise that policies which are largely aimed at efficiency and output on the supply side, but which ignore distributional consequences and delivered consumer welfare, are largely wasted. For many decades the OECD has supported policy work on competition law and policy as well as consumer policy. More recently the ASEAN group of nations have added to their policy framework serious work on consumer policy.

Taken together, measures to promote competition which encourage innovation and supply-side efficiency *plus* effective consumer policy to ensure that efficiency gains and safe effective goods and services are in fact delivered to consumers are useful tools for growth and poverty reduction. Put another way, the key goal of ***competition policy*** is that it enables the potential of lower prices, better quality, and freedom of choice to consumers. While the objects of ***consumer policy*** are to ensure that the potential is realised. Refer to Chapter 5 of this report for further analysis of this issue.

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As noted above, the objectives of the UN guidelines are to assist countries in the protection for their population as consumers by improving production and distribution patterns; encouraging ethical conduct by traders; and curbing abusive business practices. The guidelines seek to assist developing countries to achieve these objectives through the development of independent consumer groups and also by international cooperation.

Consumer law and policy thus play an important role in seeking to fulfil the minimum basic needs of the people, removing some of the sources of poverty and marginalisation. **Laws** provide enforceable substance to the *policies* that seek to ensure that the efficiencies and innovation benefits brought about by competition are not retained by producers (through misleading and deceptive conduct or unfair practices), but are instead shared with consumers. A further dimension of consumer protection policy is that it seeks to ensure that consumers can make well-informed decisions about their choices and that sellers will fulfil their promises about the products they offer. In other words, effective consumer protection policies prevent producers from engaging in unfair practices while seeking to increase their sales. Consumer protection law gives effect to consumer protection policy, for example, by banning unsafe products. Together, law and policy provide an important safety net in markets where some businesses try to gain an unfair competitive advantage.

Consumer Protection in Bangladesh

In 2004, a law on protection of consumer rights was approved in the Cabinet of the Government of Bangladesh. The *Consumer Rights Protection Act* was passed by Parliament in April 2009. The Act establishes the Consumer Rights Protection Council (the Council) as the body charged with lead carriage of the Act. This law emphasises the consumers' right to obtain goods and services at competitive prices. It also highlights consumers' right to information regarding quality, quantity, standard and value of the goods and services. However, the absence of any well resourced institutional structure is a hindrance to the promotion of consumer protection in Bangladesh.

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The ability of consumers to verify the product information given to them is extremely limited and, in most cases, impossible to achieve. Therefore, in the absence of an effective market mechanism (such as that provided by informed consumers using their purchasing power to discipline suppliers), the protection of consumer interests will necessitate more than the enactment of laws. Needed are mechanisms which enable and encourage consumers to act in their own interests where they can, and to provide effective and timely intervention on their behalf when they cannot.

In Bangladesh, in common with many other developing countries, governments play a critical role in the economy not only as regulators and protectors of the public interest, but also as owners of major assets and business enterprises. Sectors such as railways, telephones, and other public utility services, have established anti-competitive structures which may inhibit the modernisation of these services and hinder private investment into these sectors. Whilst, in recent times, the private sector has entered into the business of cellular/mobile telephones, competition has been restricted to only a few firms. This structure severely limits the ability of consumer choice to shake markets or discipline monopoly providers.

To illustrate the need for both an effectively implemented competition law and consumer law, a recent publication from CUTS International and UNNAYAN SHAMANNAY entitled “*Relationship between competition policy and consumer protection policy*” sets out the problem descriptively and then follows up with cogent example is taken from issues arising in Bangladesh:

“Despite certain reforms in the domestic economy such as sectoral regulators, Bangladesh still possesses a rather weak competition regime. This impedes the efficiency gains in the domestic economy. Moreover, a weak competition regime implies that the interest of the consumers may be partially overlooked. Setting up an effective regime, in this regard, will remain a challenging task for Bangladesh, as it would require, amongst other things, legal and regulatory reforms, implementation of rule of law and development of civil society group protecting the consumers’ interest.”

Moreover, competition policy is not panacea for competitiveness. This depends, to a significant extent, on factors such as human capital, institutional infrastructure, ethical business codes and commitment to good governance. The civil society too has a role to play in raising consciousness regarding vices of anti-competitive practices. Education, media and social organisations have a role in mobilising the society for an appropriate competitive regime.

The CUTS International study sets out a number of instances of anti-competitive behaviour which are also anti-consumer in impact. The first concerns the vital issue of public transport where cartel like behaviour amongst operators caused actual harm to consumers.

Bus Operators Threatened for Reducing Fare

Transport associations influence the transport fare in Bangladesh because of the absence of any competition law in the country. The Rajshahi Sarak Paribahan Owners' Group (RSPOG) has threatened to shut down other bus operators on the Rajshahi-Dhaka route, if they reduce fares. The threat came when a section of private transport owners were thinking of reducing the bus fare on the route after the opening of the 55-kilometre Bonpara-Hatikumrul link road to Bangabandhu Jamuna Bridge. The link road reduced the distance by over 85 kilometres. The RSPOG directed the Rajshahi-Dhaka bus operators to charge at least Tk 200 for a ticket. "If less than Tk 200 is charged, a fine of Tk 500 will be realised for each ticket and for non-payment, the bus counter will be kept shut for seven days", said a RSPOG notice hung at the bus stand. Nazrul Islam, Joint Secretary of the RSPOG, signed the notice. Once, the competition law is implemented, such an act would be termed as a cartel according to section 3 (c) and would be illegal under section 4 of the competition Act.

The second example cited in the study concerns **motor vehicle distribution and the consequences of sole distributorship**

In Bangladesh, local manufacturing companies often appoint one sole distributor, in a region of the country, allowing it to dictate or manipulate prices in that region. Often, foreign manufacturing companies even go so far as appointing one sole distributor or agent for the entire country. This sole distributor or agent establishes a monopoly for that product and charges prices according to their whim. They never display company price lists, and may even refuse to show it if a customer asks to see it. As an example, H.S. Enterprise has been the sole distributor in Bangladesh -of Honda Motor Company Limited, Japan, for 20 years, and the distributor declares its status as a sole distributor in public.

The third case study concerns the **communications sector and tied sales**.

City Cell is a company involved in the mobile telecommunication business. When a consumer takes a mobile phone connection from City Cell, they have to pay for the particular mobile set supplied by the company. In this case, the consumer is deprived of having the option of another mobile set. This is a tying arrangement which through the imposed limitation on consumer choice can lead to loss of consumer welfare.

In a more specific case study involving misleading and deceptive conduct details are

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provided of patients being coaxed into what a newspaper account described as a ‘**Treatment Trap**’. A further quote from the study which sets out this issue:

“A key feature of any consumer protection law is prohibiting misleading or deceptive conduct such as misleading consumers about the need to go to a private clinic etc. This is what happened in the following case.

A law-enforcement agency is making a list of unscrupulous physicians involved in luring patients from public hospitals at Sher-e-Bangla Nagar to private clinics and laboratories to make money. About 24 private clinics and pathological labs have also been bracketed for being the lynchpin of such organized crime. “We’ve so far detected about 15 such dishonest physicians and nearly 24 clinics and labs”, confirmed a senior official in that agency, seeking anonymity. The owners of the clinics and labs, in collusion with brokers and certain amoral physicians, lab technicians and the staff of the Pangu (orthopaedic) Hospital, the Suhrawardy Hospital and the National Institute of Cardiovascular Diseases (NICVD), compel helpless patients to take treatment outside public hospitals, at exorbitant prices. Though government hospitals are equipped with pathological facilities, some doctors send patients to get tests done in the labs of their choices. The physicians reportedly get commission, ranging from 40 percent to 60 percent of the total costs, from these medical outfits. Investigators have already gathered enough evidence against the already bracketed doctors and owners of the clinics and labs. Most of the private clinics and labs in question are located at Mirpur Road, Babar Road, Humayun Road, and Ring Road and are within two km sphere of the government hospitals at Sher-e-Bangla Nagar. Ideally, private clinics should be located where government healthcare facilities are not available, but that is not the case here. Private clinics and labs

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have mushroomed in the area and are doing booming business. Patients from rural areas are the easy preys of brokers. “A broker gets Tk 1,500 to Tk 2,000 from private clinic owners, if he/she can hook a patient”, an employee of a private clinic near Pangu hospital told The Daily Star. “Like us, most of the clinics have their paid people at Pangu, NICVD and Suhrawardy hospitals to trap patients”, he confided. Such behaviour amounts to unfair trade practices that harm the consumers. They would be illegal under *the Consumer Rights Protection Act* passed by Parliament in April 2009.”

A final case study of potentially unlawful behaviour concerns the activities of the **pharmaceutical industry** in relation to promotions to doctors. Also based on newspaper accounts, the study reports:

“Pharmaceutical Cos-Doctors’ Nexus: Fix of Freebies”
Some pharmaceutical company salesmen in Bangladesh are bribing doctors to prescribe their drugs, with the result that patients are often given inappropriate or unnecessarily expensive medicine. A large number of doctors accept ‘gifts’ from drug companies, admitted S.M. Shafiuzzaman, the President of the Bangladesh Association of Pharmaceutical Industries. Gifts include paperweights, cash, and free air ticket for foreign trips, computers, mobile phones, air conditioners, table lights, telephones, towels, calendars and pens. The value of gifts depended on the ‘quality’ of the doctor. ‘Quality’ is defined by the number of patients the doctor sees every day. An ‘A’ class physician treats at least 30 patients a day. Because these doctors prescribe so many drugs, pharmaceutical salesmen visit them seven times a week, offering not only bribes but also drug samples worth a minimum of Tk 500 on every visit. Free samples are an investment for the company, because the doctor is likely to prescribe the drug for many patients. A ‘B’ class doctor, who treats 20 patients daily, will get three or four visits a week by salesmen, who hand over samples worth at least Tk

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300 a visit. The bribers also target senior physicians “because when a senior professor prescribes an item, the juniors follow him”, one representative explained.

A professor from Bangabandhu Sheikh Mujib Medical University, requesting anonymity, said, “It is, of course, bribery and ultimately patients have to pay”. The samples may not be the best or cheapest on the market and doctors may be encouraged to prescribe them for other illnesses and conditions, for which the drugs are not ideally suited. “Doctors often feel obliged to prescribe our products. So they sometimes prescribe drugs which the patient doesn’t need”, admitted one young medical representative. It is not a one-way traffic: the medical representatives interviewed by The Daily Star claimed that some physicians ask them for money in exchange for a promise to prescribe particular products. Giving an example of unnecessary prescribing of costly drugs, a teacher from the pharmacy department of the Dhaka University said: “Pure vitamins fall under the government’s price control system. One out of 500 patients might need a bit of zinc, which would cost, for example, Tk 1. But, vitamins mixed with the zinc solution are not under price control and could cost, say Tk 50, even though the real value may be not more than Tk 2. In such a case, a pharmaceutical company makes an extra profit of Tk 48 just by persuading the doctor to prescribe that product”

These examples above are unfair trade practices that harm consumers. In turn, the definition of Anti-consumer Rights Practices is very broad. In legislative terms, numerous provisions in the Consumer Rights Protection Act empower the Director General to deal with the circumstances described in the case studies above. As noted, section 21 of the Act provides that the Director General may take all necessary actions as he/she deems expedient and necessary for protection of consumer rights, prevent anti consumer rights practices, and the disposal of the complaint against violation of consumer rights. To the extent that the law is

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unclear, there need to be amendments to overcome ambiguity. There needs to be a responsive institution able to effectively receive consumer complaints and act on them. Whilst effective enforcement of consumer laws is a vital dimension of obtaining and maintaining consumer welfare, the role of consumer law is more than public enforcement. Consumer protection policy also works to ensure that consumers can make well-informed decisions about their choices and those traders fulfil their promises about the products they offer and provide for remedies where they fail. Consumer protection policy thus prevents producers from engaging in unfair practices while seeking to increase their sales.

Anti-Consumer Rights Practices

The definition of anti-consumer rights practices is very broad. “Anti-Consumer Rights Practices” as set out in section 21 of the Consumer Rights Protection Act, when read in the context of the definitions provisions, captures well some of the objects of the UN Consumer Protection Guidelines. Not only do Anti- Consumer Rights Practices harm the consumers, they also harm other market players in the process, and more importantly, they harm the market as a whole. While preventing and punishing anti-consumer rights practices, consumer protection laws do more than safeguard the interests of the consumers and promote consumer welfare. If a seller is harming consumer interest in some way, consumers should be able to turn to another seller. But this other seller will be present only if there is competition in the market.

To further quote from the CUTS International and UNNAYAN SHAMANNAY study cited above, anti-consumer rights practices:

“Encompass a broad array of torts, all of which involve economic injury brought on by deceptive or wrongful conduct. Anti-consumer rights practices include use of deceptive representations or designations of geographic origin causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, causing confusion or misunderstanding as to affiliation or connection or association with by another, etc. The legal theories that can be asserted include claims such as trade secret misappropriation, unfair competition, false advertising, passing-off, dilution and disparagement. Anti-consumer rights practices can also arise in any field of technology and frequently appear in connection with the more traditional intellectual property claims of

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patent, trademark and copyright infringement”.

Specific types of anti-consumer rights practices prohibited in domestic law depend on the law of a particular country. The World Bank and OECD Model Law, for example, lists the following trade practices to be unfair:

1. Distribution of false or misleading information that is capable of harming the business interests of another firm;
2. Distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, and suitability for use, or quality of goods;
3. False or misleading comparison of goods in the process of advertising; fraudulent use of another’s trademark, firm name, or product labelling or packaging.
4. Misleading advertising.

Misleading advertising refers to any false or misleading representation that is made to the public by a person in the course of business. The representation may be about the nature, character, size, type of contents, weight or performance of a product. It also includes warranties, statements, or guarantees that are not based on adequate and proper tests. This concept has been incorporated in laws the world over and may contain slight differences depending on the jurisdiction. However the essential concept remains the same. Powers conferred under the *Consumer Rights Protection Act* adequately cover the four practices described above.

Examples of consumer protection law breaches from other jurisdictions:

A clear example of misleading advertising is an advertisement which describes a pair of shoes which was "Made in Taiwan" as "English Handmade". Through the use of an expression associated with a long history of quality shoes, the merchant had made a misrepresentation as to the type of shoe that was being sold. Another example of misleading advertising occurs when a

merchant makes a promise to a consumer to deliver an item in a certain number of days and does not fulfil this promise deliberately. Failure to disclose information, which is material to the consumer's purchasing decision, will also amount to misleading advertising.

Misleading Advertising and Bait-and-Switch

The *Consumer Protection Act of India* (COPRA), incorporates broad prohibitions similar to the *Consumer Rights Protection Act*. In the case of the Indian statute, anti-consumer rights practices are described as Unfair Trade Practices (UTPs), which are now exclusively within the scope of the *Monopolies and Restrictive Trade Practices Act* (MRTPA) in August 1984. In its complaint before the Commission, an Indian consumer group, CUTS, stated that misleading advertisement and bait-and-switch selling that followed caused harm and inconvenience to the public and buyers.

Employment Related Deception.

A further example from India demonstrates the breadth of consumer law in that the deception related to misleading employment advertisements. In this case the MRTP Commission restrained an institute that coaches students for civil services (Indian Administrative Services exam) from publishing what the Union Public Service Commission (UPSC) called misleading advertisements. Acting on a complaint from UPSC that three coaching institutes were issuing misleading advertisements to solicit students.

CHAPTER 3

Assessment of the Consumer Rights Protection Act against best practice consumer laws in other jurisdictions.

As previously noted, United Nations Guidelines for Consumer Protection adopted by the UN General Assembly in 1985 (and amended in 1999) provide a suitable reference point for the assessment of national consumer laws and practices. Though somewhat dated, the guidelines contain the essential elements of comprehensive consumer protection and stand as an international policy framework for governments to use for the development and strengthening of consumer protection policy and legislation aimed at promoting consumer welfare.

The purpose clause for the *Consumer Rights Protection Act* provides that it is:

“An act to provide for the protection of the rights of consumers, prevention of anti-consumer rights practices and for the purpose of making provisions for matters connected therewith.”

On the face of it, the breadth of the Bangladesh Act is wide, and its intent is to provide substantive protection for consumers. However, there are numerous shortcomings in the structure and processes prescribed in the legislation. This chapter sets out a more specific outline of the provisions of the UN Guidelines and highlights dimensions of the *Consumer Rights Protection Act* which fall short of meeting the objectives of the guidelines.

As noted on a number of occasions, many countries have used the UN guidelines to consumer protection as a template against which national consumer protection laws and policy have been drafted. Perhaps the most recent and extensive example of this is found in the new consumer protection act of South Africa. Like many other consumer statutes in developing

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countries, it is clearly written around redressing imbalances of market power and providing the framework for the economic advancement of consumers.

In the case of South Africa, it is not the first consumer protection law however it does make an effort to substantially upgrade laws and combine various statutes which sought to protect the interests of consumers in different ways into a single uniform act. A key goal for all such laws is to increase fairness and equality among consumers; give consumers the information they need to make good choices and to know what their rights are.

For the purposes of this study it is useful to outline the key objectives and provisions of that Act as they seek to replicate the themes of the UN consumer protection guidelines. The stated goal is to promote and advance the social and economic welfare of consumers in South Africa by;

1. Establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;
2. Reducing and ameliorating any disadvantages experienced in accessing any supply of goods or services by specified categories of consumers;
3. Provide for improved standards of customer information, harmonization of consumer laws, and the establishment of the National Consumer Commission.
4. Protecting consumers from
 - (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices and
 - (ii) deceptive, misleading, unfair or fraudulent conduct.
5. Providing for an accessible, efficient and effective system of redress.

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The South African Act consists of *eight thematic chapters* dealing with the following issues:

1. Right of equality in consumer markets

Consumers will be guaranteed equal access to markets. This means that suppliers must make goods and services available to everyone at the same price and quality, and also under the same terms and conditions.

2. Right to privacy

Consumers' privacy will be protected. The Act will lay out strict rules regarding direct marketing and the way it is carried out. Customers will be able to ask any marketer to stop marketing to them, and the Act may even put the groundwork in place to pre-emptively opt out of any direct marketing.

3. Right to Choice

Consumers will have a right to choose. This affects a number of issues including:

- Not forcing customers to buy bundled services
- How customers can exit fixed term contracts
- Customers must sign off estimates for repairs and services before work commences
- Customers get five days to change their mind about a purchase
- What are fair cancellation fees if a customer cancels an advanced booking
- Products that are bought by mail order or from a sample must correspond with the original.

4. Disclosure and information

This requires fair disclosure of information to customers including clear descriptions in plain language of products and services, clear pricing information, commissions charged by intermediaries, and even good identification when a supplier needs to go to a customer's home.

5. Fair and responsible advertising, marketing and promotion

In addition to the opt-out rules surrounding direct marketing, suppliers may not use misleading or fraudulent marketing tactics. The following marketing practices will be illegal: bait marketing – where a non-existent special offers lures customers into the shop; negative

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options – where customers have to ask NOT to be sold something, for example, not to be sent the book of the month from a book club else they will be charged for it; referral selling – when customers are encouraged to buy products or services based on potential future rebates or commissions. And fair practices will be set in place for direct marketing, loyalty campaigns and competitions.

6. Fair and honest dealings

Customers will be entitled to honest and fair dealing. This includes issues such as overselling and overbooking of services. The Act will outline what compensation customers can claim, for instance if they miss a flight and subsequently miss a hotel or car booking. In addition force and other unfair tactics to get someone to buy something are banned.

7. Right to fair, just and reasonable terms and conditions

Terms and conditions need to be fair, just and reasonable. The Act explains what this means, and also makes clear that supplier liabilities need to be highlighted.

8. Right to fair value, good quality and safety

- Consumers should expect fair value, good quality and safe products. For the first time a law will make clear where liability lies, and also guide issues such as product recalls.
- Suppliers' accountability to customers sets out rules on how lay-buys should be offered. It also says that pre-paid vouchers and credits need to be valid for five years.
- Finally, consumers have a right to be heard and receive compensation if they are unfairly treated. The Act outlines the procedures for doing this. Complaint and compensation methods need to be accessible and the consumer should not be victimised.

Overall, the Bangladesh Act is constructed from an entirely different premise. Rather than being rights-based, the Bangladesh Act is predominantly procedures-based. All of the seven Chapters of the *Consumer Rights Protection Act* deal with some form of administrative procedure or power, and this forms the basic structure of the legislation- in stark comparison to the consumer focused construction of the South African Act.

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- Chapter 1 (I) details all of the preliminary matters, such as definitions and relationships within the broader legislative context. This Chapter does introduce a definition for ‘anti-consumer rights practice’ (s.20) that provides the broad principles that could give rise to a consumer grievance- such as over-pricing, under-cutting, deceit through false advertising, use of unsafe ingredients and so on. While consumers are mentioned in this definition, they are only secondary to the wrong committed by the manufacturer or trader. That is, the manufacturer or trader remains the subject of the legislation.
- Chapter 2 (II) establishes the Council (and District Committees), and provides the conditions under which the Council meets and makes decisions.
- Chapter 3 (III) establishes the Directorate and the office and the powers of the Director General in the enforcement of the Act.
- Chapter 4 (IV) establishes the offences and punishments. While this Chapter is the one in the Act that is most closely related to daily commercial operations in Bangladesh, it can be distinguished from the South African Act by the fact that it is addressed towards the wrongdoings of the trader or service provider, with no mention of the rights of the consumer. Such legalistic provisions are most likely to be ineffective, and even ignored, if there is no reliable structure for the monitoring and enforcement of the law. Neither the police nor the criminal justice system in Bangladesh are sufficiently resourced or skilled to deal with the levels of crime, let alone civil matters relating to compensation.
- Chapter 5 (V) outlines the procedures for trial where there has been a breach of the provisions of the Act. Built within this section are rigid limitations on the making and acceptance of a complaint (s.60 and s.61) which would not be considered realistic or fair towards persons not having a high consumer literacy and do not satisfactorily take into consideration the reality of delays in accessing justice in Bangladesh. Furthermore, this Chapter makes reference to the power to take samples for examination and testing. It is questionable whether Bangladesh has the resourcing and technical competence to manage this aspect of the legislation should it be called upon.

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- Chapter 6 (VI) provides for the making of a civil remedy, as a redress for ‘A consumer, being damaged by any anti-consumer rights practice’. This is a limited form of redress that places numerous burdens upon the aggrieved consumer by lodging an application in an already overburdened and discouragingly formal civil court system.
- Chapter 7 (VII) is for miscellaneous matters. However, it contains some interesting provisions that might be selectively engaged to protect manufacturers or traders against criminal action. S.77 provides that a consumer is excluded from the making of a civil or criminal action against a person if that person acted in ‘good faith’. This section also precludes the taking of civil action against the Government, the Council, any member of the Council, the Directorate and any officer or employee of the Directorate. A cynical commentator might assume that the ‘good faith’ of a trader might be proven in many circumstances by the making of boksheesh (a gift or payment that serves the purpose of a bribe).

Other International Experiences

In Malaysia, the Tribunal for Consumer Claims (TCC) was established through the *Consumer Protection Act 1999* to respond to consumer grievances. The Tribunal is intended as an alternative redress mechanism to traditional Courts, and is designed to be speedy, simple and affordable. The Tribunal has a capped jurisdiction of 25,000 Malaysian Ringitts (approximately \$7000 USD) to limit the types of cases that can be heard in this forum, and to maintain the simplicity of the mechanism.

The Malaysian Tribunal is able to sustain both a metropolitan and regional outreach by operating through existing branches and sub-branches of the Ministry of Domestic Trade and Consumer Affairs. Consequently, those with grievances can file a claim locally, and existing administrative facilities (counter staff of the Ministry) can be utilised for processing claims. All that was required at the establishment phase to give effect to the Tribunal functions at the regional areas was additional administrative staff and training of existing staff in consumer rights and practices and the new law.

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Persons wishing to make a claim under the Malaysian system complete a simple form and lodge a flat, affordable fee (5.00 Ringitt, approximately \$1.40USD) for filing. The same fee and process is extended to any person making their defence in the Tribunal. A commitment has been made that all claims are to be settled within 60 days of lodging. The Malaysian Tribunal also offers a legal advisory service, conducted by paralegal administrative staff, to assist potential claimants in determining the best course of action. This is complemented by a network of consumer associations and advisory groups which provide consumer rights education and legal advice on lodging through the TCC. These filtering functions ensure that deserving matters are channelled towards a hearing with a qualified judge, and that those cases that would be better addressed elsewhere can be referred on to a more appropriate avenue of resolution.

In this sense, the TCC has concentrated on universal accessibility to justice and has marketed its services across the nation (not just in the larger cities) through television, radio and participation in public forums. Similarly, the Singapore model has prioritised equitable access by introducing the mobile court system, which has the capacity to reach those people who may not be able to travel to an administrative centre. Such an approach would align well with the governance structure of Bangladesh, and an approach should be made to the relevant Ministry and/or public department to determine whether there are existing outlets that could be adapted to enhance outreach.

Since its commencement, the Malaysian Tribunal for Consumer Claims has had a sharp increase in the number of matters lodged. This has been recorded through statistics on the TCC's performance, which are also used to initiate specific campaigns in certain sectors and industries where trends have emerged.

It is worth noting here that the Bangladeshi *Consumer Rights Protection Act* is restricted to operating through the formal court system. The legislation has an emphasis on *criminalising* the behaviour of the trader, but does little in terms of redress for aggrieved consumers. While this may have a deterrent effect if the legislation can be properly monitored and enforced (which has proven to be a challenge in Bangladesh for even law enforcement agencies, such as Police), it will not assist the capacity of consumers to shape the market by actively seeking quality products and shunning unsafe or unjust service providers. Furthermore, strict

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limitations on the time available for the making of grievances (30 days post suffering under s.60) effectively deny justice for a great deal of potential complainants- particularly those who are illiterate, isolated or injured.

Like India, the Malaysian and Singapore Tribunals have been effective because they operate outside of the traditional court system- which can be lengthy (due to case backlogs and complexity) and intimidating (due to the formality of proceedings). Besides India there are other precedents for separate Tribunals in South Asia in Pakistan and Sri Lanka. Tribunals have the advantage of being more flexible and accessible in rural and regional areas, and because the less strict administrative procedures can be implemented through existing facilities they are more familiar and less threatening.

The *Consumer Protection Act of India* (COPRA) enables class actions to be mounted to enable multiple consumers to receive redress through legal actions. This has efficiency benefits and can be less demanding on both the aggrieved consumer and the system because the issue need only be handled once (rather than multiple times). Such a function could be consistent with the legalistic model adopted by Bangladesh, and could be an effective deterrent for those recalcitrant offenders who repeatedly put unsafe goods or services on the market. India still has more work to do however on the education side to make these actions more effective and to create more literate consumers less dependent on legal support.

There is also an opportunity for Bangladesh to learn from some of the developments in informal justice that have been implemented in that country over the last decade or so. Alternative Dispute Resolution (ADR) has been explored by a number of non-government organisations and development projects- notably the Madaripur Legal Aid Association. While these have tended to focus on access to justice in criminal and social matters (such as land grabbing or domestic violence) the principles can be extrapolated to mediate disputes between traders and consumers. The United Nations Development Programme (UNDP) in Bangladesh has commenced a project on *Activating Village Courts in Bangladesh* to bring consistency, reliability and rigour to informal justice. The projects of the Madaripur Legal Aid Association and UNDP seek to draw upon the strengths of the traditional 'Salish' or village courts mechanism of redress- which facilitate negotiation between aggrieved parties through comfortable and understandable processes and in an informally binding manner.

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However, a note of caution must be given, as these village-based systems of justice are conducted by the elite, and so tend to favour the rich, powerful and predominantly male. If left unchecked, an over-reliance on village justice can simply entrench inequities and reinforce the capacity of the already powerful to further exploit the powerless. In the case of consumer protection, the balance of power might be tipped unreasonably in favour of the traders, manufacturers and service providers.

Competition Law

Competition laws are an important adjunct to consumer laws- one is about regulating the market to enable a range of providers to compete and prevent monopolies- while the other is about focusing on outcomes for the end-users by setting boundaries on the actions of producers and providers. These two forms of legislation are closely related and frequently work together to establish effective markets with in-built protections. However, Bangladesh has to date only implemented legislation focusing on consumers (however weak that focus may be). There has been some political discussion about the enactment of competition laws, but without an integrated enactment and monitoring of both legislations the scaffolding is incomplete.

In Bangladesh, as in other less developed countries, the Government is a monopoly provider of certain key services- especially energy, telecommunications, transport and other public utilities. With high rates of corruption, such monopoly provision is highly likely to mean that modernisation and development is inhibited, and private investment is hindered.

A salient example is that of the Government owned Water and Sewerage Authority (WASA), which falls significantly short of being able to meet demand for safe water- a basic need. In 2009, extensive networks of corruption in that organisation were exposed. While the wealthy of Bangladesh are able to afford private water supplies, the poor and extreme poor are priced out of the alternative market and frequently have to rely on contaminated waters for drinking, bathing, farming and agriculture. This has significant health consequences for large percentages of the population.

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In recent years, some competition has been allowed in telecommunications. This has enabled those in the middle classes to access a greater range of services, but state owned services have been able to continue to operate inefficiently. Likewise, the opening up of the airline industry to private operators assists the wealthy, but does little for city-dwelling villagers who are highly dependent on the poorly run (and frequently unsafe) state-owned railways and ferries.

In short, a lack of competition regulation is having an inequitable impact on those who are already marginalised.

CHAPTER 4

Implementing the UN Guidelines in Bangladesh

The UN Guidelines are set in the context of a series of policy objectives and general principles to inform them. A full version of the Guidelines can be found at Appendix 3.

In the 25 years since the guidelines were adopted, policymakers and governments of more than 100 countries have extracted from the objectives, general principles and guidelines to establish consumer laws and policies which suit their domestic circumstances and needs. During this period, the organised international consumer movement, led by Consumers International have come to render the guidelines into a set of eight interrelated consumer rights. Rights used in this context go beyond the notion of an enforceable obligation on another party, to include some which are aspirational in character.

To be of maximum utility, this report will proceed to analyse law policy and practice in Bangladesh through the lens of the Consumers International elaboration of consumer rights.

The following section sets out and explains the rights, identifies the roots within the guidelines and includes a description of their operational characteristics. This is followed with an illustrative section which provides some Bangladesh-specific examples of consumer problems to ground the discussion.

This summary of the UN Guidelines and Consumer Rights Protection Act of Bangladesh is also informed by a review of the consumer statutes of India, South Africa, the European Community and the states in Commonwealth of Australia.

The formulation by Consumers International of the basic consumer rights traverses much wider territory than consumer policy. Most areas of government activity are in one way or another connected with the satisfaction of consumer rights. Countries typically develop a

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consumer policy which will incorporate suggestions or advocacy amongst other arms of government and public administration in seeking to implement the rights.

The Guidelines in brief

The UN Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around the following eight issues:

- Physical safety
- Economic interests
- Standards
- Essential goods and services
- Redress
- Education and information
- Specific areas concerning health
- Sustainable consumption

In the 25 years since the Guidelines were first agreed, commentators and policymakers have come to describe the principles in the language of consumer “rights”. In this regard a common restatement of the Guidelines can be found in the Charter of Consumers International which renders the Guideline as eight consumer rights. They are the:

1. Right to basic needs
2. Right to safety
3. Right to choice
4. Right to redress
5. Right to information
6. Right to consumer education
7. Right to representation
8. Right to healthy environment

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Although specifically elaborated to deal with issues of consumer protection, the Guidelines have also become widely accepted as having a dimension in competition law and policy. This is hardly surprising as the objectives of competition law and policy in common with consumer policy is the enhancement of the welfare of consumers.

Each of these principles is addressed separately below, and applied to the Bangladesh context.

1. The right to basic needs

The basic needs of the people of Bangladesh include all of those services and facilities which are required to sustain and maintain a decent standard of living. In a developing country such as Bangladesh, the hierarchy of basic needs includes food, clothing and shelter, plus access to healthcare, clean drinking water, sanitation and education. In recent years, some consumer groups, including The Consumer Unity and Trust Society, which is based in Jaipur India, has asserted that basic needs should also be extended to the right to energy and the right to transportation. For the purposes of this report and an evaluation of policy settings and legislation in force in Bangladesh all of these dimensions will be considered.

It is noted that the UN guidelines do not expressly provide an object or principle concerning the right to basic goods, however the guidelines do invite governments to take appropriate measures so that consumers can have easy access to ‘essential goods and services’.

The precise formulation within the guidelines is that:

“ in advancing consumer interests, particularly in developing countries, governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policy should be adopted or maintained for product quality control, adequate and secure distribution facilities, standard international labelling and information as well as education and research programmes in these areas. Government guidelines with regard to specific areas should be developed in the context of the provisions of this document”

This is not the only reference to what might be regarded as a foundation for a right to basic needs. The guidelines also call on governments to consider adopting and maintaining

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policies to ensure the efficient distribution of goods and services to consumers, and also providing assistance for the creation of adequate storage facilities in rural centres and encouraging the establishment of consumer cooperatives especially in rural areas.

Policy recommendations in relation to the right to basic needs

- 1. The National Consumer Rights Protection Council should establish a five-year action plan to identify critical areas of access to essential needs, particularly for consumers in rural and isolated areas, and identify strategies to mitigate those risks. The Council should engage in public education and advocacy within the government to overcome critical areas of shortfall.*
- 2. The Government of Bangladesh should take urgent action to support the development of local consumer groups, bazaar committees, student consumer awareness groups and local complaint cells in several districts, through awareness raising programmes and training materials, and advice and technical assistance on effective organisation.*
- 3. All stakeholders should be invited to contribute to the development of education and information materials to be disseminated amongst the poor and rural communities to enable them ready access to advice and assistance in meeting their essential needs.*

2. The right to safety

Safety is a foundational consumer right and one accepted in virtually every country in the world. Safety is described in the guidelines in two complimentary ways. The first is physical safety, and the second relates to standards of the safety and quality of consumer goods and services. The developed world takes many aspects of safety for granted- for example, water is generally clean and hygienic, food service adheres to strict standards, public transport is secure and well-maintained and the supply of electricity, gas and other energy sources is regulated. In a developing country such as Bangladesh, these rights are generally only secured by the elite or those who are in a privileged position to corrupt the system to their advantage. Weak enforcement mechanisms enable unscrupulous manufacturers and service providers to offer unsafe products and services without fear of repercussion. If one considers the plight of a Compressed Natural Gas (CNG) auto-rickshaw wallah who is faced with rising fuel costs, one can appreciate the temptation to speed or drive recklessly in order to accept as many rides as possible. Ultimately, it is the safety of

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the passenger that is compromised. Similarly, market vendors will prefer to stock cheaper Chinese baby formula with questionable food safety standards over more expensive highly regulated European versions. And indeed, the customer will prefer the cheaper option if they are not aware of the potential health consequences of milk without safety standards. In fact, because of the high levels of extreme poverty, Bangladesh is a market which acts predominantly on one element - cost- with little awareness of the other elements that make a sensible exchange – such as safety, value or sustainability. It is therefore imperative that any laws regarding the safety of goods and services is comprehensive enough to extend to all of the people, not just those who can afford preferential treatment.

In relation to physical safety, the UN guidelines call for governments to adopt measures, and regulations, standards and records to ensure that products are safe for either intended or normally foreseeable use. (See below for a full excerpt from the UN consumer protection guidelines).

Given the high levels of illiteracy in Bangladesh, vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible. Policy should be adopted to ensure that manufacturers compensate consumers for the consequences of defective or hazardous products.

In relation to the second category of safety in relation to standards for the safety and quality of consumer goods and services the guidelines provide:

“ Governments should as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international level for the safety and quality of goods and services and give them appropriate publicity. These standards should also be reviewed periodically to conform to accepted international standards. Further, the government should encourage ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.”

The consumer's right to safety, though self evident in relation to products, also applies to a range of services, for example in ensuring consumers are not put at risk in unsafe public transport or subject to risks in hotels with inadequate fire protection. An integral part of consumer safety is the standard setting process, for different goods and services. Standards

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perform several important functions in an economy, in which high-tech industries are the drivers of growth and innovation. They provide the information to producers and consumers to enable them to judge the quality of products produced by others, and also to determine the safety levels of those products. In addition, they also ensure the compatibility between complementary products, and even between the various parts of a particular product.

The right to physical safety is enshrined in the UN guidelines in Principle A:

“Physical safety

11. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

12. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

13. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.

14. Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated”.

Application of the Right to Safety in Bangladesh

Although there are a number of provisions in the *Consumer Rights Protection Act* which relate to safety, they can be avoided through complex phraseology and the silence of the Act in determining who is liable when a defect causes injury. It is noted that in Europe the

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producer of the product is typically held strictly liable. In any revision of the *Consumer Rights Protection Act*, the more modern European formulation of this law should be enacted.

In a conference paper entitled '*Consumer Protection in Bangladesh: Present Status Than Some Thoughts for the Future*', Professor Mizanur Rahman PhD, said in relation to product safety and liability:

the Bangladesh law follows the modern trend to fulfil consumers' natural expectations about the safety and quality of goods and services. In so doing the law avoids some of the troublesome legal doctrines that have hindered consumers in other nations. Most of the provisions of the CRPA take a transactional approach focusing on the rights and remedies of consumers who have purchased defective products (sections 41, 42, 43, 46, 47 and 48) or have engaged the services of a provider who does not perform satisfactorily (sections 45, 52 and 53). It deals principally with two of the three concepts familiar to Western consumerists: claims of personal injury or property damage resulting from the use of defective products such as product liability claims for the lost value of the defective product itself and secondly liability to the performance of defective services. The third essential concept, that of warranty liability is however missing in the CPRA. In each of these areas the CPRA promises consumers a multitude of benefits and creates some restrictions on entrepreneurial freedom.

In an extensive treatment of the issue of product liability and service liability, Professor Rahman states that the provisions of the Bangladesh law governing obligations resulting from the infliction of damage, are analogous to tort liability in the West, and for the last 30 years fault has been the general basis to recovery. Although there was a presumption of fault if a defect caused injury, the producer could overcome this presumption by proving its compliance with all known safety precautions. Rahman then notes that under the Bangladesh law, liability can be avoided as the burden to prove fault may be shifted to the complainant when the damage occurred notwithstanding compliance with standards. The law's central issue is causation, not fault, and thus can be viewed as a partial return to the now discredited civil law system. Rahman also notes that the Bangladesh law is silent in determining who was liable when a defect causes injury.

In much of Europe the producer of a product can be held strictly liable in tort on the theory that the existence of a defect is evidence that some aspect of the design or manufacturing

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process was unsafe, but the nonproducing retail seller cannot usually control. This is because in the modern world a retailer is usually the distributor of the product and has no voice in the design or manufacturing process.

In a developing country such as Bangladesh, as material wealth grows and the range of goods and services on the market increases, it is also likely that the range of consumer related problems concerning services will increase. It is the international norm for consumer protection laws to cover consumer services; such measures typically include aspects of repair and maintenance of household appliances, dry cleaning, home improvements travel and construction. As such matters are very hard to directly monitor or assess, these are typically achieved through modifications to contract law to prevent or restrict the application of unconscionable or unfair contract terms. Throughout Europe, the United States and in Australia, such provisions are in force. As a relatively new enactment, it is disappointing to note that the Bangladesh law fails to deal with protections of this character.

Policy recommendations with regard to safety

4. *CPRA needs to be amended to incorporate standard international precepts of strict liability and to prevent liability shifting through contractual means.*
5. *Administrative mechanisms need to be developed to make all those responsible for putting goods and services into circulation aware of their liabilities in the event that defects cause loss or damage to consumers.*
6. *To better ensure the safety of Bangladesh consumers in relation to services liability, the Act should be amended to incorporate provisions on unfair conduct or unfair contract terms and unconscionability.*

3. Right to Choice

If the right to safety is a foundational consumer right, so is the right to choose. In the last 50 years, most national economies have moved to some form of market economy. Central to the effective operation of the market economy is the ability of consumers to choose between competing alternative goods and services. The right to choose can be defined as an

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assurance, wherever possible, of availability, ability and access to a variety of products and services at competitive prices.

In Bangladesh, a country with major market failure and pressing needs, the attainment of conditions for effective markets is a long way off. Thus the right to choice is more than a natural artefact of the way in which markets work, but will require considerable efforts by policy makers, legislators and advocates to ensure consumers are able to shape supply to their demand rather than merely having to accept whatever goods and services providers care to offer.

The right of choice, though a fundamental element of consumer protection, is a vulnerable one. Consumers seek full factual and relevant product information, however too often information is partial, confusing or inaccurate. Unfair trade practices can also diminish the effectiveness of the right of choice. Consumers with low or no buying power have particular difficulties in asserting a right to choose. They are commonly restricted due to low purchasing power.

In relation to choice, the UN guidelines do not specifically address the issue. However many elements of the guidelines do relate to economic aspects through protection of consumers economic interests. The broad objective is to provide an enabling framework under which consumers can obtain optimum benefit from their available economic and other resources. Another major objective is to ensure that the providers of goods and services adhere to laws and mandatory standards so that consumers' economic interests are not violated. More importantly, the consumer protection guidelines note that governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost. Specific provisions in the guidelines which relate to the right to choose include:

Call on governments to control restrictive business practices, ensure goods meet the standards of durability, utility, reliability and fitness the purpose and availability that consumers might reasonably demand. Further provisions in the guidelines call for protection of consumers from unfair contracts and regulation of promotional markets in sales and also calls for the review of legislation and enforcement of weights and measures.

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In recent years, under the Government of Bangladesh has brought forward proposed laws and institutions to deal with both anti-competitive practices and anti-consumer practices. Though these laws are generally speaking aligned in a policy sense with similar international measures, there are serious concerns about their ability to achieve their stated policy goals due to deficiencies in the institutional arrangements under which they would be carried out and available resources in to ensure adequate levels of enforcement and monitoring.

Recommendations in relation to the right of choice in Bangladesh

7. *The Government of Bangladesh should elaborate a strategy of ensuring that the demand side of the marketplace be given more attention in the development of policies for industrialisation and export promotion.*
8. *Consumer protection laws need to be reviewed and revised to ensure that adequate incentives are provided for those who place goods and services on the market to provide timely accurate and relevant information concerning the goods and services to consumers. This might be accomplished through product standards all requirements to disclose essential elements of the performance and price of goods and services.*

4. Right to information

There are a number of elements in the UN guidelines which underpin this right. Amongst other provisions, the guidelines provide that government should encourage all concerned to participate in the free flow of information on all aspects of consumer products, including:

- information to consumers on the proper use and risks associated with consumer products,
- information on weights and measures, prices, quality, credit conditions
- Information on availability of basic necessities, and finally,
- information on available redress and other dispute resolution procedures.

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The right to information is a key complementary right to the right to safety and to choice. The Consumers International formulation of the consumer's right to information contemplates that consumers should have the right to be informed about quality, quantity, potency, purity, standard and price of goods and services, so as to make the right decision and protect themselves against abusive practices. It is a necessary extension of this right that consumers also have access to information related to public goods and services which are provided by the government and its agencies.

A consumer without adequate or accurate information about the product or service purchased is at risk of deception or loss of value. Without information on quality, quantity, potency, purity, standard and price of goods and services, consumers would not be able to make the right decisions. If consumers cannot make the right decisions, then the process of the marketplace fails.

Consumers who are ignorant of their rights are, generally speaking, incapable of enforcing them. Traders who are ignorant of their obligations are generally speaking incapable of living up to them. For this reason the absence of any well thought through or articulated provisions on provision of public and trade information are serious gaps in the law. A key recommendation from the conference entitled *Empowering Consumers toward Creating a Healthy Marketplace*, which was held in Dhaka on May 14, 2009 was that the new law should be disseminated widely throughout the country to raise awareness amongst consumers and make them accountable for their own decisions.

Importantly, the recommendations continued with the note that consumers in Bangladesh should be engaged in creating a healthy marketplace so that individual consumers accept that their small actions could be joined with those of others to make a big leap forward. Through proper enforcement, consumers must be empowered to realise their rights in the thriving marketplace. It was felt that there is little presence of consumer representation in the process of decision-making on different consumer aspects such as health, housing, telecommunications and financial services. Therefore, civil society groups should aim for alliance building and networking for strategic partnerships by forming a federation to work on consumer related issues so as to build critical mass in the country. The conference

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proposed creating a national level platform of different stakeholders to raise consumers' voices throughout the country.

Relevant to this, the European Union has sponsored the UNIDO Bangladesh Quality Support Programme (BQSP) to actively bring international standards to Bangladesh's consumer goods and services by raising awareness. This has included holding a number of conferences on key industry areas (such as energy, food security and food safety), to support informal redress mechanisms such as Salish (Village Court mediation) and to establish Consumer Movement Cells at the District and Regional level to spread the movement outside of the city.

Recommendations in relation to the Right to Information in Bangladesh

- 9. Urgent provisions are required to the consumer law of Bangladesh to enshrine the right to information for consumers. Provision of timely relevant and accurate information to consumers is a prerequisite to the development of competitive and responsive markets. It is also the case that unless traders are adequately told of their responsibilities and obligations, successful enforcement action to gain general compliance with the law will not be possible.*

5. The Right to Consumer Education

An immediate flow on from the provision of information to consumers about the goods and services they are acquiring is a need for institutional development of capacity to educate consumers use information effectively. The same applies to traders. In other words, consumer education means the right to acquire the knowledge and skills to be an informed consumer. In a country with relatively high levels of illiteracy, special measures are called for to enable consumers to function adequately. Even amongst the literate and educated classes of consumers, consumer education is a vital tool to create and develop a vibrant economy which is responsive to the needs of citizens. The best form of consumer protection is well informed consumers acting in their own interests in fair and informed markets. Educated consumers can better protect themselves against unscrupulous sellers. However consumers in developing countries are generally not well-educated. General Principle 3 of the Guidelines provides:

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“The legitimate needs which the guidelines are intended to meet are the following:

(c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;

(d) Consumer education, including education on the environmental, social and economic impacts of consumer choice”

There are no provisions in the Consumer Rights Protection Act which directly contribute to the achievement of General Principle 3 in the guidelines. This is a serious deficiency which needs to be rectified.

As with the right to information, the UN guidelines have much to say about consumer education. According to the guidelines, government should encourage the development of general consumer education programmes, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making informed choices of goods and services and conscious of their rights and responsibilities. In developing such programmes special attention should be given to the needs of disadvantaged consumers. The UN guidelines have some specific provisions relating to consumer education. They are:

- the introduction of consumer education in basic school curricula,
- consumer education programmes should be delivered in the mass media and
- that government should pay specific attention to problems of consumers in rural areas and the illiterate.

There is a call on business to become involved in the provision of relevant consumer education programmes and finally a call that governments themselves organise training programmes for the community including the mass media, consumer organisations teachers and professionals.

Bangladesh is not alone in a shortfall in the provision of consumer education. In many countries, particularly developing countries there is no clear-cut policy with respect to consumer education. Many individual government ministries or agencies might undertake

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small but typically uncoordinated exercises in education but these are rare and limited. The majority of consumers in developing countries are not fully aware of the rights they possess or the nature of consumer protection legislation or its implementation mechanisms.

These are very large obstacles to overcoming the problems of inadequate consumer education. These include a low ratio of literacy particularly in rural communities together with the high incidence of poverty. A critical issue is the lingering lack of awareness about consumer issues which prevent consumers acting in their own interests. It should also be noted that the most effective forms of consumer education are provided on the subject matter and at the time where issues are of concern to consumers. In this regard consumer education should be needs-based and should attempt to teach skills which go beyond dealing with issues immediately apparent.

Many NGOs are active in Bangladesh providing social education, and community education on other rights. There are opportunities for the Consumer Rights Protection Council and Directorate to work with those NGOs to integrate consumer protection education into other existing programmes. For example, programmes relating to infant and maternal health can include components on how to make better choices when purchasing safe food and water, programmes for school children can include components on being aware of false and inflated claims made by universities and higher education providers, housing and habitat programmes for informal (slum) dwellers can include components on smart purchasing of energy and other basic needs. The relevant Government agencies should also assume more of the responsibility for community awareness- such as the Ministry for Health with regard to the provision of medicines (particularly with regard to safety of medical products, and to assist consumers to determine when medical assistance is required).

Recommendations with respect to achieving the right to consumer education in Bangladesh

- 10. A systematic programme should be developed by the National Consumer Rights Protection Directorate to design and implement comprehensive consumer education programmes through both the formal educational sector as well as informally amongst rural and illiterate communities.*

11. *In developing programmes for consumer education, steps should be taken to cooperate with other branches of the government and to engage civil society in both the development implementation and monitoring of such programmes.*
12. *Adequate provision should be made in the budgets of agencies and provided by the central government to ensure institutional mechanisms are provided to conduct training on a regular basis.*
13. *Milestones should be set for all such programmes to enable effective monitoring and assessment of consumer education probe checks over time.*

6. The right to representation

Also described as the right to be heard, the right to representation refers to the essential ability of consumers to communicate their concerns about policies and problems to decision-makers. It means the right to advocate consumers' interests with a view to receiving full and sympathetic consideration in the formulation and execution of economic and other policies which affect the interests of consumers.

Understood in its widest sense, the right to representation includes the right to representation before the government and all relevant policy-making and regulatory bodies as well as a right to be heard in the development of goods and services before they are produced or put into circulation.

The UN guidelines on consumer protection deal with the issue of representation in a number of different ways. Governments are called on to facilitate the development of independent consumer groups, opportunities are to be provided to consumer groups for presenting their views in the decision-making process or to speak up on behalf of consumers and, in particular, measures are to be put in place to represent the interests of disadvantaged consumers.

Laws and policies which are designed to protect the interests of consumers are almost certain to fail in their objective unless there is a systematic opportunity for consumers and their representatives to influence the policy, its expression in legislation and the administration of

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that legislation or regulation. In his keynote speech to a 2009 conference on *Consumer Protection in Bangladesh*, Doctor Atiur Rahman, Governor of the Bangladesh Bank spoke of the lack of civil society organisations involved in representing consumers' interests within Bangladesh. Objective 1 (e) of the UN guidelines calls for:

'(e) Government action to facilitate the development of independent consumer groups.'

Objective 3(f) provides that there should be freedom to form consumer and other relevant groups or organisations and that there should be the opportunity for such organisations to present their views in decision-making processes affecting them.

In both these areas the consumer policy of Bangladesh falls short of the aspiration of the Guidelines

In commenting on implementation problems of the right to representation in India, a publication, *State of the Indian Consumer* (2001), states

" a major problem related to representation is because of the corruption in the system itself. Corruption leads to unnecessary delays in obtaining justice. Secondly, there is a lack of effective coordination between different consumer organisations to ensure proper representation. The third major factor is the lack of proper handling of different representations. The apathy and lack of coordination between different administrative departments towards consumers causes additional problems".

In proposing possible solutions, the report noted that there should be a balance between the supply and demand of justice. Secondly, the administration should be effectively trained to handle situations as and when they arise. Thirdly, there should be a simple and holistic law to provide the right to representation, covering the entire gamut of the issue. Fourthly, and most importantly, consumer organisations should increase cooperation among themselves and other NGO's to achieve speedy and effective representation on important issues. The Government of India has established the Central Consumer Protection Council at the national level, and also some State and District level councils, to represent collective consumer

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interests and advocate on their behalf. This is an important mechanism in that context, as the COPRA permits the making of class actions.

Recommendations in relation to the right to representation

It is recommended that Bangladesh adopt the legislative measures implemented in India:

- 14. Strengthen the legislative intent and resource requirements to ensure the development of an independent consumer movement;*
- 15. Constitutional provision is required not only for access to information but for representation as a fundamental right of citizens; and*
- 16. Mandatory consumer impact assessment and consultation in every area of governments where consumer interests are involved.*

7. The right to redress

The right to redress includes the right to receive compensation for misrepresentation or to recover compensation or damages for loss caused by wrongful acts of traders. It should extend to remedies in relation to unsatisfactory goods and services and contemplates the establishment of effective forums for obtaining remedies.

The UN guidelines for consumer protection provide a framework for governments to use in elaborating on strengthening consumer protection policies and legislation. One of the major objectives of the guidelines is that governments should establish or maintain legal and administrative measures to enable consumers to obtain redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible. Another objective is to encourage all enterprises to resolve consumer disputes by establishing a range of mechanisms, including advisory services and informal complaint handling mechanisms. The third objective is that the information available on redress and other dispute resolution procedures should be made available to consumers on a regular basis.

Consumers' right to redress goes to the core of consumer protection. While it is always better to prevent the occurrence of a problem in the first place, even in the most developed markets

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things will always go wrong. In every market measures need to be in place to provide for swift and inexpensive redress for consumers.

Chapter E of the UN Guidelines provides, in relation to redress:

Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

Doctor Mizanur Rahman, Professor in the Department of Law at the University of Dhaka, speaking at the National Conference on Consumer Protection in Bangladesh, said the lack of informal mechanisms for consumer redress in a quick, inexpensive and fair manner was highlighted as an important area for improvement in the Consumer Rights Protection Act. He said, the Act further bars individual consumers to seek any relief through litigation except through the Directorate. In any case, if the Directorate fails to move the Court within 90 days of filing the complaint by the consumer, there is a lack of any remedy, which virtually means the consumer is denied justice. Therefore, he stressed the need for fundamental changes to be made to the enforcement provisions to enable individual enforcement and promote consumers' collective interests through a low-cost arbitration or informal dispute resolution system such as a Small Claims Tribunal.

Also speaking on the issue of consumer redress in Bangladesh, Doctor Tureen Afroz, Barrister at Law, National Expert in Legal Affairs and consumer complaints, said that the principle is that if the consumer is sustaining loss or damage, he or she should be entitled to compensation. She stated that the current consumer redress mechanism in Bangladesh under the formal justice system suffers from unnecessary 'over criminalisation syndrome', and

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‘irrational bureaucratisation phobia’. Under the provisions of the Consumer Rights Protection Act there is no provision for separate tribunal Court to try consumer offences as in India or Malaysia. The Consumer Rights Protection Act seems to have been enacted in the spirit of ‘additional crimes, increased punishments’, which seems to continue the criminalisation process. The Act does have provision for aggrieved consumers to take recourse to civil Courts for monetary compensation. However, the aggrieved consumer can only seek such compensation after the Directorate has actually initiated the criminal procedure in a Magistrate’s Court. Alternatively, consumer redress mechanisms under the informal justice system, though visible, needs to be developed and popularised as it always fails to attract the attention of the mainstream policymakers, scholars, activists and professionals. However, the informal judicial system favours the rich and powerful and there is a gender bias in favour of men.

Professor Afroz went on to say “The establishment of specialised consumer Courts in the formal system linking them with informal alternative dispute resolution systems under the *Consumer Rights Protection Act*, to ensure for an effective consumer redress mechanism in the country is necessary and therefore the amendments to the consumer rights protection act, must be immediate. Consumer education and mass awareness on consumer rights through grassroots activities are also required.”

A third speaker at the conference, Mr Rungit Singh, Chairman of Consumers’ Tribunal, Ministry of Domestic Trade and Consumer Affairs, Malaysia described the setting up of the Malaysian Consumers’ Claims Tribunal established under *the Consumer Protection Act 1999* as an alternative redress mechanism available to consumers in Malaysia as opposed to traditional Courts. The Tribunal, which has a tagline of ‘simple cheap and quick’, has nationwide jurisdiction, a monetary limit and may resort to consumer jurisprudence to develop consumer protection law. The hearing of the claim is in open court and within the stipulated 60 days of filing. The role of consumer tribunals internationally is to provide a ‘win – win’ resolution to consumer disputes

The legislative and administrative structure for consumer protection in Bangladesh is not adequate to ensure the right to redress. It is unclear that there is any serious government commitment or enthusiasm to deal with issues of redress and the framing of consumer

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protection laws misses some important elements of redress while failing to deal at all with others. This issue is tightly bound up with issues of safety and a further discussion of redress can be found under that heading. A critical dimension to redress is the availability of speedy, informal and no cost or low-cost measures. In order to attain this right, significant improvements are needed in Bangladesh institutions, procedures and statements of consumer rights. In particular, consideration should be given to the local governance structure of Bangladesh, noting that the majority of village dwellers will not have the resources, the skills or the awareness to access city-based redress mechanisms. Any sustainable system of redress must be based (or at least facilitated) at the District level, and where possible should align with the Upazila and Union Parishad mechanisms for justice. The current formulation of this right under the Bangladesh provisions is complex and contract related whereas decentralised, informal and swift mechanisms are clearly needed.

Recommendations in relation to the right to redress

In addition to measures suggested under the right to safety, the following recommendations are made:

- 17. Government should establish networks of urban and suburban and rural dispute resolution forums. This could include the establishment of District Level Consumer Protection Directorates, to accept and hear grievances at the local level.*
- 18. Legislation should be enacted for the swift resolution of complaints including a strong emphasis on alternative dispute resolution and/or binding arbitration*
- 19. Business enterprise should be encouraged to establish voluntary codes, consumer complaint mechanisms, voluntary arbitration mechanisms and information dissemination mechanisms for publicising these facilities to all consumers.*

8. The right to a healthy environment

An unfortunate consequence of the consumer society has been generation of environmental problems especially the potential peril of climate change. The consumer right to a healthy environment is perhaps one of the most important. Key to attainment of this right is to ensure that resources used in the production and consumption of goods and services should be utilised in a healthy and ecologically sound manner. More than most other rights, this is a complex right and one which for which there are concomitant consumer responsibilities.

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The basic premise underlying consumer policy, with regard to market-oriented solutions and environmental self-regulation, is that environmental goals will lead to the development of markets for new environmental activities. In that way, a climate of free competition will lead to efficient solutions for environmental problems. In other words, self-regulation may be able to make a better contribution to positive environmental performance, if the incentives provided by the market mechanism are ensured. The use of market-oriented instruments, such as levies and tradable emission rights, within environmental policy is the most direct way of interpreting the 'polluter pays' principle (OECD, 1996).

The UN consumer protection guidelines call for governments to adopt measures relating to the use, production and storage of pesticides and chemicals. This is important in Bangladesh from a general health and safety perspective, but also relevant when we consider that a common form of violence against women is the use of acid and other chemicals. More stringent regulation around the availability of these products might increase awareness of the potential harm that they can cause and limit opportunity for their improper use.

Government should also ensure the inclusion of health and environmental information in the labelling of pesticides and chemicals, especially given the prevalence of agriculture as a source of income for many undereducated or poorly skilled workers. A substantial revision of the consumer protection guidelines adds an entire chapter on sustainable consumption, and it is in this area that consumers have both rights and responsibilities. Achievement of the right to a healthy environment is subject to a great number of complications and difficulties. It involves application across the entire range of laws and policies as well as the need for administrative mechanisms, development of profiles of current consumption and better recording of that information. In the effective implementation of pollution reducing and other environmental policies there are a great number of stakeholders and hence a great number of risks of failure. Lack of awareness by consumers of rights and responsibilities, corruption in public administration and laziness or indifference on the part of industry all contribute to this.

Recommendations for achieving a healthy environment in Bangladesh

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20. *Environmental issues recognise no national or regional boundaries and measures implemented in Bangladesh should be linked to international or regional environmental programmes.*
21. *Bangladesh should adopt the suite of measures proposed by the UN guidelines for safe manufacturing processes, handling and disposal waste products and enforcement of appropriate laws and standards.*

CHAPTER 5

Improving Institutional Arrangements for Consumer Protection in Bangladesh

The soundest **laws**, both consumer protection and competition, are necessary, but not sufficient for effective protection of consumers, advancement of their interests and the achievement of sustainable consumption.

Three additional conditions are critical:

- Each type of **market**, for its efficient and equitable operation, needs to be disciplined by a proportion of educated and informed consumers. The proportion needed will vary depending on the characteristics of the market in question.
- The **institutions** for consumer protection need to be well designed and well resourced
- The **people responsible** for complaint resolution and regulatory enforcement must be not only well trained, but be able to act uninfluenced and be prepared to take some risks.

The underpinning of all four conditions is of course sound public policy - in this discussion, consumer policy. Consumer policy is aimed at achieving equity and efficiency for consumers and the public interest by means of the most efficacious mix of market forces and regulatory or other intervention.

Consumer policy can be divided into three main subsets:

1. policy to empower consumers to act in their own interests - *Consumer empowerment policy*
2. policy to provide for protection of consumers and action on their behalf in circumstances where, for one reason or another they are not able to fully able prosecute their interests - *Consumer protection policy*, and

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3. policy to ensure, as far as possible, consumers benefit from competition so that efficiency gains make standards as high as possible and prices as low as possible - ***Competition policy***.

While all three areas of policy relate to some extent to all the consumer rights there is a closer nexus between certain of the rights and one or other of these policy areas as follows

1. Right to basic needs
2. Right to safety
3. Right to choice
4. Right to redress
5. Right to information
6. Right to consumer education
7. Right to representation
8. Right to healthy environment

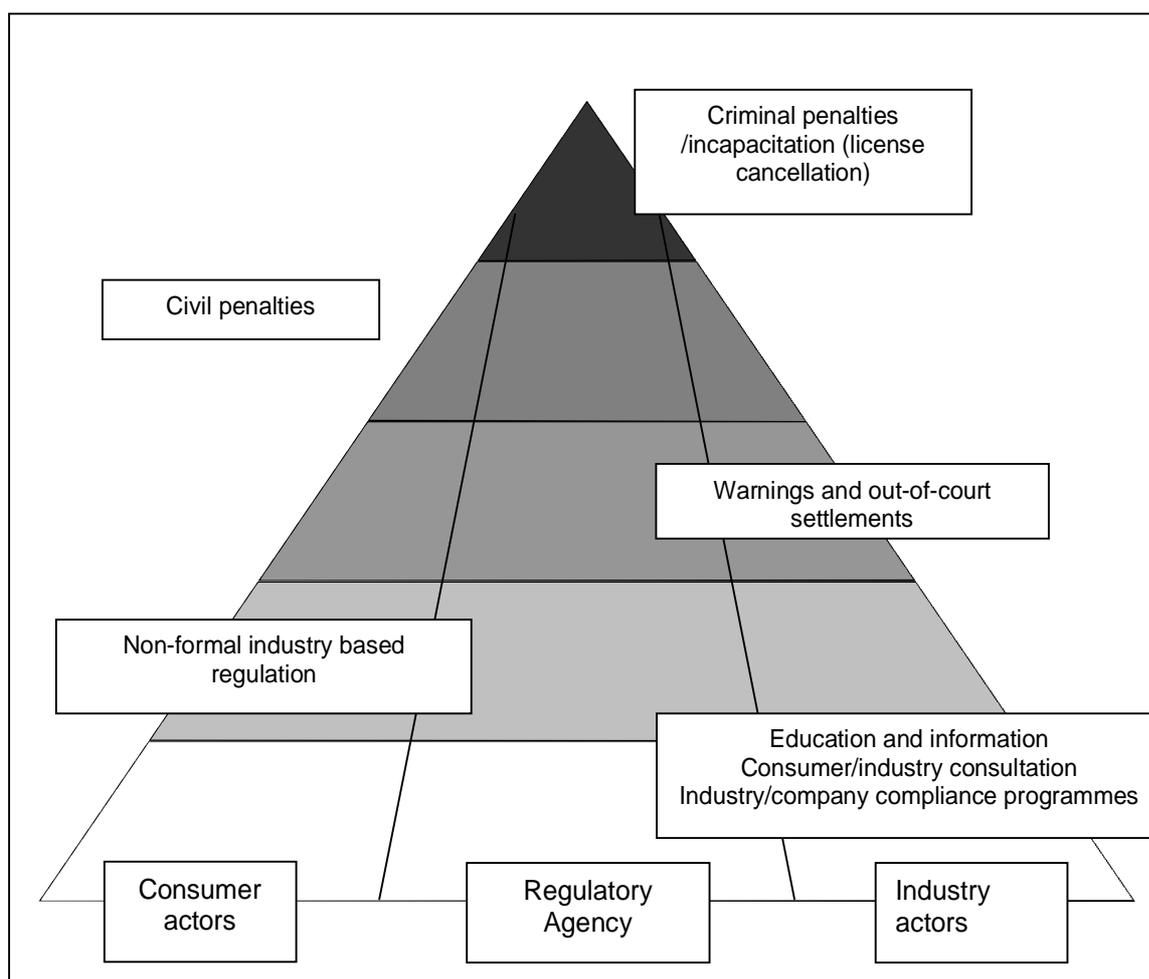
Consumer empowerment policy relates mainly to 4 (redress), 5 (information), 6 (education) and 7 (representation):

Consumer protection policy, which in broad terms is policy concerning the standards of goods and services and to conditions directly affecting the trade between buyer and seller relates mainly to 1 (basic needs), 2 (safety), 4 (redress), 5 (information) and 8 (healthy environment):

Competition policy relates mainly to 3 (choice) though it affects most other rights.

The Compliance Pyramid

Development and implementation of consumer policy should be informed by the compliance pyramid model. The diagram below depicts a typical pyramid. The number of levels and the activities at each level will vary from regulatory regime to regulatory regime. The idea is that the bulk of effort and activity occurs at the base of the pyramid and this diminishes towards the top.



Under all regulatory regimes there is considerable scope for both *consumer actors* and *industry actors* to contribute at the base level. Individual consumers can contribute by drawing a company's attention to marketplace problems. Industry associations and companies can do much in the way of compliance programmes and complaint handling.

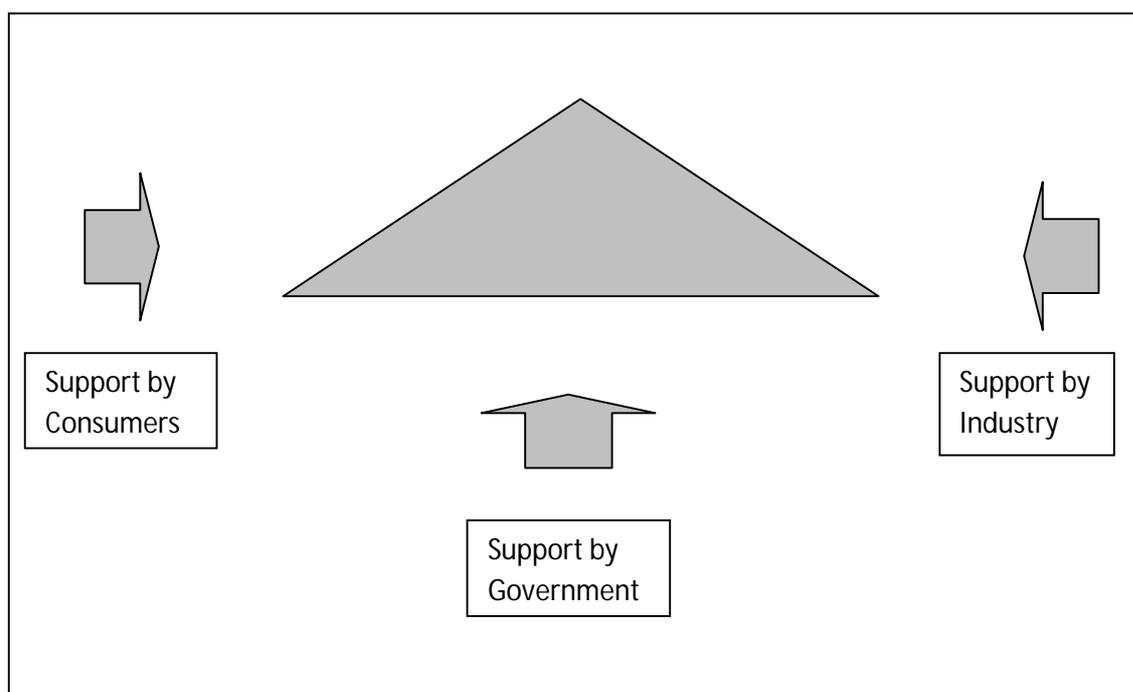
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Consumer organisations work with industries and companies and can distribute information to consumers.

In some regulatory regimes there is scope for both consumer and industry actors to contribute right up to the top level. The effect of this contribution from consumer and industry actors is of course to broaden the pyramid, to increase the activity at the lower levels, thus reducing the need for activity at the higher levels and making the regulatory regime more effective and efficient.

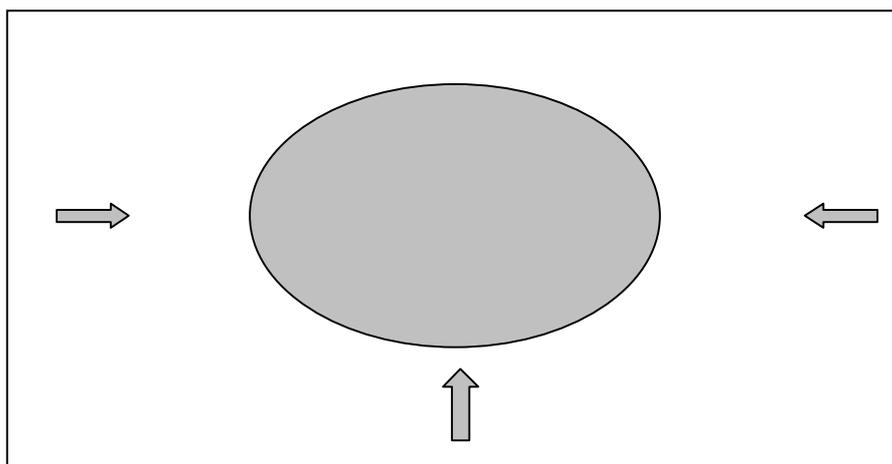
For regulatory regimes to be fully effective the top level has to be, and be seen to be, real. This does not mean it has to be utilised, but a real potential for utilisation is necessary. In the end, the government of the day must make it clear that it is prepared to back up the regulatory agency involved.

The stronger the commitment and support from government, industry and consumers (or citizens in respect of public interest issues or workers in respect of worker protection), the broader the regulatory/compliance pyramid can be at its base and thus most effective and efficient as depicted in the diagram below.



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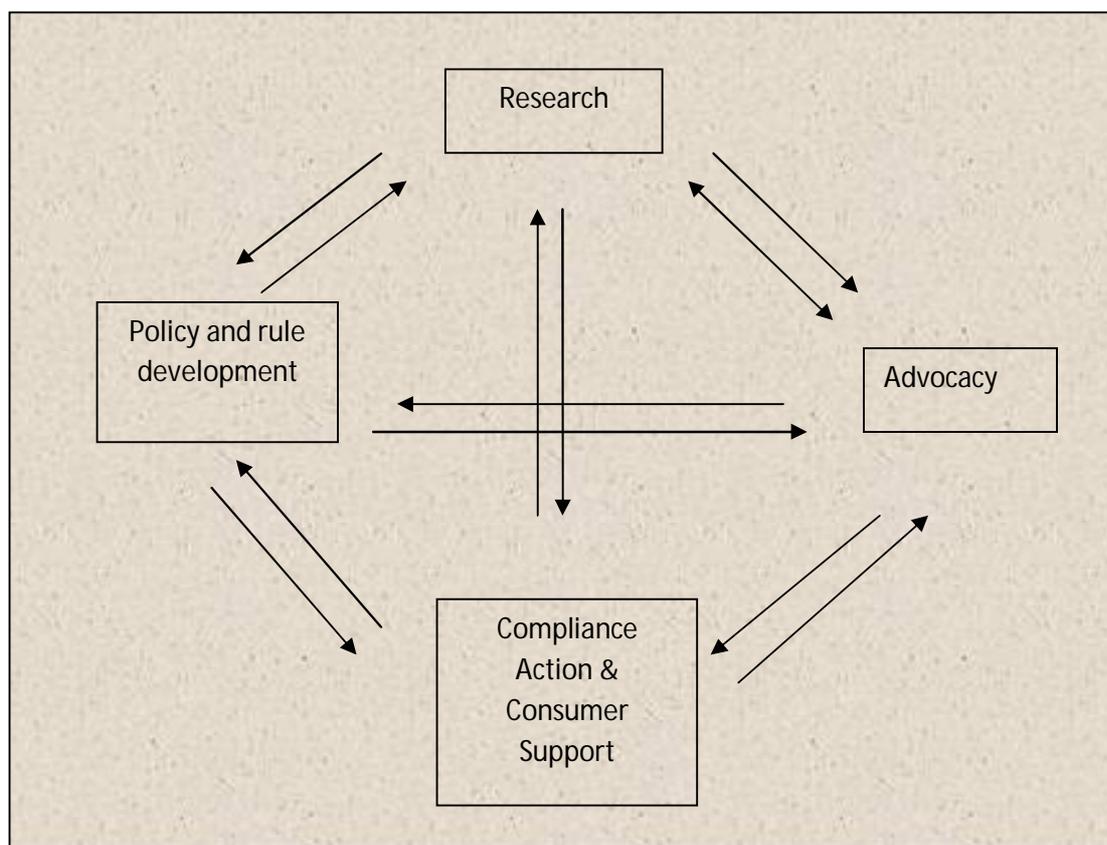
Where tripartite commitment is weak or lacking the pyramid structure collapses and the regulatory agency is limited to relatively ineffectual activity in the middle levels as represented in the diagram below.



Sound consumer policy and its effective implementation will only be achieved with the four following interdependent activities well undertaken:

- Research
- Advocacy
- Policy and rule making
- Compliance action & consumer support.

There must be two-way interaction between all four and the process must be continual and continuous (as depicted in the diagram below) as the process of change in the characteristics of markets rarely pauses.



The main functions that need to be performed in respect of these four areas of activity are as follows:

Research

- research and analysis of market sectors – both supply and demand sides
- collection of data on the performance of market sectors

Advocacy

- producer advocacy
- consumer advocacy
- for policy and/or regulatory reform
- regulatory decisions – tariff approvals etc

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- for improved administration of regulation
- individual cases
- for improvements in companies' services
- public interest advocacy for sustainability
 - for ordinary consumers
 - in relation to or for disadvantaged consumers

Policy and rule making

- policy development
- rule/regulatory instrument development and review
- review and reform of regulation of a market sector.

Compliance action & consumer support

Education, information, compliance programmes, rule enforcement, dispute resolution

- education and dissemination of information to consumers
- education and dissemination of information to suppliers
- industry association and company level programmes for compliance with regulation and for continuing consumer service improvement
- administration of general regulation for consumer protection and competition and for worker protection and environment protection
- administration of market sector regulation
- collection of complaints/disputes
- independent mediation/conciliation and arbitration of complaints/disputes and
- management of particular cases (e.g. hardship cases).

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There are many options in terms of allocation of performance of these functions to different agents and many may be undertaken by more than one stakeholder. All these functions are integral to the effective operation of a market.

RESEARCH

II 8 of the UN Guidelines states:

“The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.”

Promotion of sustainable consumption is a very important and large part of the UN Guidelines. There are a number of references relevant to research needs including:

45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.

and

55. Governments and other relevant organisations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

In many countries there is an inadequate capacity in this area, particularly in terms of knowledge of how consumers are coping with changing markets. For example we do not know for a number of markets whether sufficient consumers are undertaking information searches so that the demand side is making competition work adequately. Frequently advantage is not taken of the large amount of data that many community based organisations have to inform policy development. Research is needed in all countries in this area. In Bangladesh, where there are high levels of extreme poverty and low levels of literacy and education, it is especially important to know how well ordinary consumers are coping with markets for basic needs and how well those markets are delivering.

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On the matter of research on consumer behaviour related to environmental damage, while there is need for this in Bangladesh, the larger responsibility is with developed countries where the environmental footprint of the individual consumer is many times larger.

Recommendation regarding Research

22. *Function (g) of the National Consumer Right Protection Council is “to undertake research on consumer rights”. This should be expanded to read “to undertake research and to commission research and to cooperate in research with other bodies, both domestic and international, on all matters relating to protection of consumers advancement of their interests and achievement of sustainable consumption.”*
23. *Funding from international donors should be sought to support research and all opportunities to undertake collaborative research internationally should be taken.*

ADVOCACY

While broad agreement can usually be achieved amongst a range of views on the other three elements, the resources they consume and the manner in which they should be performed, there is often controversy on advocacy. However there is no denying that advocacy plays a very significant part in public policy formulation and implementation.

While the research on a market might be comprehensive, policy and rule makers and regulators are likely to hear more about aspects and perspectives relevant to the interests of those whose livelihoods are involved in the market than about aspects and perspectives relevant to the interests of consumers or to the public interest. It is the costs and benefits of advocacy that determine this. In the extreme, policy and rule makers and regulators can be captured by producer interests. This becomes a particularly complex issue when the producers themselves may also be struggling to maintain financial security, and the temptation to ‘cut corners’ can mean the difference between surviving or not.

Getting citizens in general to advocate their interests or pay up to have their interests represented as consumers of a good or service or beneficiaries of a clean environment is much harder. The benefits of participation in advocacy are often seen to fall well below the

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costs. This is largely due to the “collective action problem” described by in 1965 by Mancur Olson. So, where public policy and regulation should reflect a diffuse public interest, members of the community at large will, not unreasonably, question why they should devote a lot of time and energy with everyone else “free riding” on their efforts.

Of further concern is the fact that many people in disadvantaged groups in the community are, in any case, disempowered in advocacy. For a range of reasons they are unable, or find it very difficult, to engage in participation processes available.

Regulatory arrangements need to be adaptable. This means that care must be taken to provide for the weakest voices to be heard in the adaptation process.

The increasing globalisation of public policy formation is problematical. Compromises from national positions often occur at international forums. Such compromises are more likely to be in favour of producer interests because members of national delegations to forums are rather more likely to be exposed to the advocates of producer interests than consumer movement advocates. Advocacy can be seen as occurring both extra and intra state. ***Intra state advocacy*** is provided by the agency charged with consumer policy development and other interested agencies and by members of parliament. In many countries it is also provided by consumer advisory committees in various forms. When such committees have statutory independence they can be more effective.

Extra state advocacy is provided by:

- The consumer movement and other community sector interests
- Industry and industry organisations
- Academics
- Professional bodies

Countries with industry ombudsman and other external dispute resolution administrators, because these agencies have so much information on what is really happening in the market, make important contributions to advocacy. However, it is somewhat constrained, as they must be careful to maintain their status as impartial umpires between producers and consumers.

Recommendation regarding Advocacy

24. *That the functions of the National Consumer Right Protection Council be amended to ensure that it has these two functions:*

(a) to analyse and recommend on any matters referred by the Government regarding the protection of consumer rights;

(b) to advise and co-operate with the government in formulating necessary laws and administrative directions with an aim to protect and promote consumer rights;

25. *As the Council has in its membership representatives of most of the relevant interests it provides a forum for consumer policy advocacy. While it is very useful that the Minister is the chair and thus can hear directly the views expressed, there are aspects of its membership that should be reviewed. Potentially only one consumer movement voice would be present – that of the Chair of the Consumers Association of Bangladesh. It should be specified that in making appointments pursuant to 5 (19) (three eminent citizens appointed by the Government) the Government must ensure that balance is struck as between members with the capability to advocate producer interests and members with the capability to advocate consumer interests.*

26. *In line with recommendations function (d) of the National Consumer Rights Protection Council should be expanded as follows:*

“to advise and co-operate with the Government in formulating necessary policies, laws and administrative directions with an aim to protect and promote consumer rights and advance their interests and to achieve sustainable consumption”

27. *In addition, provision should be made for appointment to the council of the chair of an appropriate citizens’ environment association and of an official responsible for development of environment policy if this is not covered in the existing membership.*

Consumer Movement Advocacy

Objective 1 (e) of the UN Guidelines is:

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“To facilitate the development of independent consumer groups”.

In a number of developed countries, consumer organisations have been successful in building membership or supporter groups by essentially selling the results of their product testing. However, this has been largely restricted to middle class consumers able to afford the price of the information. This means that products or markets dealt with are largely those related to middle class consumption patterns. In addition there is a limit to the extent that income from information selling can cross-subsidise public interest advocacy. The structure of the movement in most developed countries, therefore, comprises a single large product-testing organisation and a large number of relatively small or poorly resourced groups either geographically or issues based. It would seem that product-testing organisations are generally able to secure national monopolies for their services to consumers

In some countries, notably the USA, significant extra resources have been available from donations from charitable foundations, for example. The personal contribution of Ralph Nader from the earnings of his books and lectures is not inconsiderable. This sort of support has been rather limited in other countries.

Developed country governments though, have recognised the resource constraints of consumer organisations and provided state financial assistance. Referring particularly to consumer policy issues, William Gormley shows that even in the USA, where consumer organisations are better resourced from their own efforts than anywhere else, there is still a need for state assistance:

“Without such support, citizens must often choose between passive acquiescence and hysterical appeals to the mass media for publicity. With government support, citizens can sharpen their own understanding of complex issues before they make a case to the bureaucracy. The playing field (between producer and consumer interests) may not be equalized, but it does become more equal.” (Gormley, William T, 1991 - “The Bureaucracy and its Masters: The New Madisonian System in the US”, *Governance: An International Journal of Policy and Administration* Vol 4 No 1 January 1991).

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In Australia the argument for state assistance being provided to public interest groups was well articulated in the report of the *Royal Commission into Australian Government Administration (1976)*. Appendix 2D of the Report specified that to receive such assistance:

“citizens’ groups should meet the following criteria:

- (i) they represent certain interests deemed worthy of support; especially of the economically and socially deprived and the public at large,*
- (ii) they are properly constituted,*
- (iii) the funds are used for specified purposes,*
- (iv) the group’s accounts are audited,*
- (v) the group report on how the funds were spent”*

The Commission recommended (R90) that a special neutral agency be established to provide this assistance. This has not been implemented, but all governments since then have given financial assistance to consumer organisations amongst others. It is critical that while some of this assistance has been given in response to particular project proposals, organisations have received grants-in-aid to provide general support for their operations and activities that they independently decide to undertake from time to time. This has meant, for example, that they have been able to be advocate policy positions not favoured by the government of the day.

Recommendation regarding *Consumer Movement Advocacy*

28. *The Government of Bangladesh should satisfy itself that the Consumers Association of Bangladesh has the resources needed to perform a strong advocacy role. There are many demands on government funding in Bangladesh. However, any government funding that is directed towards providing the Association with the necessary resources to perform its important role would be well spent. The improvements on efficiency and equity of markets that a strong national consumer movement can achieve multiply many times the value to the community of providing such funding.*
29. *Having said this it is also appropriate for funding from international donors to be sought and for other funding sources to be explored. One such that might be appropriate has been used in the USA. It involves utility services providing for consumers to make a very small donation as part of the bills that they pay.*

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POLICY AND RULE MAKING

The UN Guidelines state:

II. General principles

2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:

(a) The protection of consumers from hazards to their health and safety;

(b) The promotion and protection of the economic interests of consumers;

(c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;

(d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;

(e) Availability of effective consumer redress;

(f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;

(g) The promotion of sustainable consumption patterns.

4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.

5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.

6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that

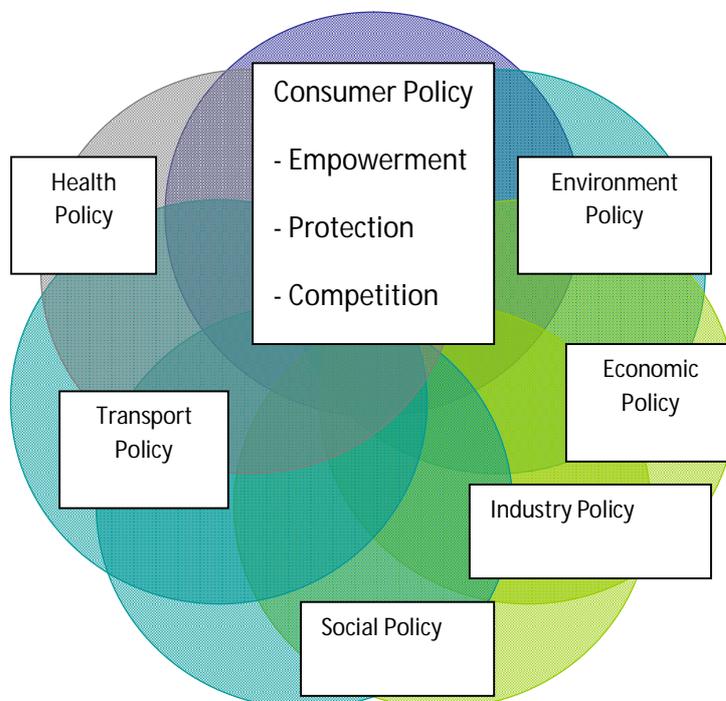
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measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.

7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)

8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

Consumer policy is clearly at least as complex as any other area of public policy and requires perhaps even more extensive whole of government approach. There is always large overlap between areas of public policy, which of course is why interdepartmental committees, Cabinet coordination processes and whole of government approaches are frequently needed to make sound public policy. Consumer policy has more overlaps than most policy areas. Perhaps only defence policy is outside its circle. The diagram below illustrates this. Clearly a large part of the consumer policy role in government is informing other policy makers about the consumer interest, e.g. through consumer advisory bodies or consumer impact statements.



COMPLIANCE ACTION & CONSUMER SUPPORT

In many countries consumer regulation enforcement is undertaken by a statutory agency which is not directly answerable to the government of the day. The Bangladesh model is something of a hybrid with the Directorate being answerable to the *National Consumer Rights Protection Council* which is chaired by the Minister, but which has a large number of non-government members – potentially a majority, depending on how many persons are appointed pursuant to 5 (20). The Council as the ultimate governing body for the agency could well be effective in, *inter alia*, ensuring that the agency is not unduly influenced by one interest group or another. However, with a membership of at least 30, the Council is too

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large to function well to govern the agency's work from month to month. If the Government will not consider amendment of the legislation to reduce the Council to a more functional size, then consideration should be given to seeking as diverse interests as possible. For example, at least 30% of the Council should be women (with a goal of parity), and around 10% each should represent the interests of the indigenous populations of Bangladesh and the poorer members of society. Diversity of representation is an important aspect of any sound governance mechanism, but especially so when rights relating to safety, security and personal wellbeing are involved, as is the case with consumer protection.

Recommendation regarding compliance action and consumer support

30. *The Act should be amended to provide for the Council to meet only twice per annum and to provide for the establishment of an Executive Committee of the Council of five persons as follows:*

- *Chairman of the Consumers Association of Bangladesh or his nominee*
- *Chairman of the Federation of Bangladesh Chamber of Commerce and Industries or his nominee*
- *Two members appointed pursuant to 5 (20) and*
- *One eminent citizen appointed pursuant to 5 (19) ideally a judicial officer or former judicial officer capable of impartially chairing the committee*

Joint administration of consumer protection and competition regulation

In some countries consumer protection and competition regulation are administered by a single agency and this model can be very effective. However, there is a problem of giving balanced attention to:

- big issues involving big powerful players – mergers, takeovers, cartels etc
- issues that are small, but affect many small players
- issues that affect few small players, but severely.

This can be a difficult management task perhaps in part because big powerful players can make more noise than small players. Some suggest that the only way it can be achieved is by having separate agencies. In our view, on balance the advantages of a fused agency in terms of synergies and the value of understanding competition, consumer protection and

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empowerment issues in a particular market outweigh the disadvantages. A separation of responsibilities for consumer protection and competition regulation between the statutory officers of the agency is a possible way to ensure balance.

Community support for competition policy and regulation is sometimes weak as the benefits are not well understood making it politically difficult for governments to make the needed reforms and for laws to be effectively enforced. Where a single act of parliament provides for both consumer protection and competition regulation and where a single agency is responsible for enforcement of both kinds of regulation it is easier to build community understanding of the benefits of competition and thus support. The Australian Competition and Consumer Commission, for example, is invariably described in the media as the “consumer watchdog” whether its consumer or competition actions are being reported.

Recommendation regarding *joint administration of consumer protection and competition regulation*

31.. As Bangladesh moves towards developing competition regulation it should consider the benefits of establishing an agency that is responsible for both consumer protection and competition regulation.

There are problems in other areas of compliance action. There can be prioritising difficulties in mixing regulatory responsibility for product safety and product information. For example food contamination issues can take over from non-urgent less readily assessable issues which could have more significant health effects such as food label breaches.

A Compliance Role for Consumer Associations

In some countries, the UK for example, citizens’ consumer organisations have been given special legislated roles to bring complaints before regulatory agencies on behalf of numbers of consumers (In the UK these are called “Super complaints”) and this can be very effective in ensuring that agencies are dealing effectively with market place abuses.

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Another mechanism is to provide for consumer associations to have standing in litigation on behalf of classes of consumers. Such mechanisms need to be accompanied by a means of providing financial support to cover legal costs.

Recommendation regarding a compliance role for consumer associations

32. *The Government of Bangladesh, in consultation with the Consumers' Association of Bangladesh, should consider providing for mechanisms for citizens organisations to participate in compliance action.*

Non-statutory regulation

The UN Guidelines state:

B 26: Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organisations, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organisations and other interested parties. These codes should receive adequate publicity.

and

E. Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

In a number of countries non-statutory codes of conduct regulate industry sectors and often result in higher standards than are required by black letter law. These may be initiated by

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government or industry or citizens organisations. They are ideally administered by independent agencies. Some are governed by bodies with balanced industry and consumer representation. In other cases they can be administered by government officials. In Australia for example the national government ombudsman is commissioned to administer the code for the postal and courier industry and deal with disputes.

Such schemes are usually established by a deed amongst the companies involved. The great advantage to a complainant is that a complaint can be adjudicated and remedial action and/or compensation up to an amount specified in the deed ordered by the administrator of the scheme.

Of particular importance is that these schemes are funded by the industries involved and thus are not a demand on the public purse. Industries covered usually include financial services, electricity and communications. In the context of developing countries such industries would tend to be those the products of which are mainly consumed by better off consumers. This means the cost of consumer protection in the markets of those industries can be contained to the participants in the markets. Therefore government funded consumer protection agencies can devote more of their resources to protecting lower income consumers.

Recommendation regarding non statutory regulation

33. The Government of Bangladesh, in consultation with Consumers' Association of Bangladesh, the Federation of Bangladesh Chamber of Commerce and Industries and other relevant parties should undertake a comprehensive investigation of the potential role of non-statutory regulation in all relevant sectors of industry. In so doing it should seek assistance from countries with well developed non-statutory regulatory systems such as Australia.

Consumer Support through Education and Information

Consumer education is dealt with in Chapter 4 in relation to the Right to education. It is reemphasised that education efforts need to include programmes to assist moves towards sustainable consumption.

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In F 35 of the UN Guidelines it is stated, *inter alia*:

“Consumer groups, business and other relevant organisations of civil society should be involved in these educational efforts.”

Recommendation regarding consumer support through education and information

34. The functions of the National Consumer Rights Protection Council should be amended as follows:

- (d) to collaborate with consumer groups, business and other relevant organisations of civil society to deliver necessary educational and promotional campaigns to raise public awareness regarding consumer rights and to assist moves towards sustainable consumption*

Conclusion

Clearly this report makes a large number of recommendations that are intended to assist Bangladesh to achieve better outcomes for the consumers of Bangladesh. The premise of these recommendations is that there is international precedent for stronger governance in the field of consumer rights and protection, not only in the developed world, but also in the developing world. India and Malaysia are particularly highlighted as countries that face comparable challenges to Bangladesh, but that have been able to implement effective mechanisms for enhancing the capacity for consumers to experience better quality goods and services, with accessible avenues of redress in the event that quality or safety standards have been breached.

The recommendations in this report have been divided into short, medium and longer term goals. It is envisaged that a committed Bangladesh Government would immediately commence action on those recommendations that have been designated short term. These will provide ‘quick wins’ which in turn will spur progress towards the medium and longer term goals. Of course, success in this area depends upon co-operation and collaboration between the government, right-focused non-government agencies and commercial enterprises. As these three actors may not be accustomed to working together in Bangladesh, a priority in the short term should be the establishment of relationship building initiatives. There has been a significant focus in this report on consumer education and advocacy, but it should not be forgotten that the key actors in this field may also require significant capacity building to develop better awareness of their roles and responsibilities, and the potential and limitations of consumerism in Bangladesh.

While there are undoubtedly many challenges for Bangladesh in this field, the deep interconnectedness of consumer rights to all other human rights means that action should be taken as a priority. This is particularly so if the Government of Bangladesh wants to build upon the resilience and resourcefulness of her people and lift the nation into a higher category of development.

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Furthermore, consumerism is a chain that links Bangladesh to the rest of the world, and will only increase in importance as other markets throughout Asia and the world develop and improve. Bangladesh reduces its opportunities for trade and economic development if it cannot demonstrate the premium it places on consumer safety and protection to its neighbours and potential economic partners.

Finally, as has been well demonstrated in many countries, effective empowerment and protection of consumers means they can help to make markets work as they should and this results in broad economic efficiency and equity gains.

Appendix 1

(Translated Version)

Consumer Rights Protection Act, 2009

An Act to provide for the protection of the rights of consumers, prevention of anti-consumer rights practices and for the purpose of making provisions for matters connected therewith.

Whereas it has become necessary and expedient to provide for the protection of the rights of consumers, prevent any anti-consumer rights practices and to make provisions for matters connected therewith;

It is hereby enacted as follows:-

Chapter I

Preliminary

1. Short title and commencement-

- (1) This Act may be called the Consumer Rights Protection Act, 2009.
- (2) It shall immediately come into force.

2. Definition- In this Act, unless there is anything repugnant to the subject and context, -

- (1) “**directorate**” means the National Consumer Rights Protection Directorate established under section 18;
- (2) “**complaint**” means any allegation in writing made by a complainant to the Director General against any trader for any conduct in contravention of the consumer rights under this Act;

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(3) **“complainant”** means the following person or persons, making any complaint under this Act-

- (a) any consumer;
- (b) one or more consumers with common interest;
- (c) any consumer association registered under any Act;
- (d) National Consumer Rights Protection Council or any officer authorized to file any complaint on its behalf;
- (e) the Government or any government officer authorized by the Government for that purpose; or
- (f) concerned trader, wholesaler or retailer;

(4) **“manufacturer”** means a person, who-

- (a) makes or manufactures any good or part thereof;
- (b) does not make or manufactures any goods but lawfully assembles parts thereof made or manufactured by others and claims the goods so assembled as manufactured by him;
- (c) lawfully puts or causes to be put his own trademark on any goods made or manufactured by any other manufacturer and claims such goods to be made or manufactured by him; or
- (d) where the goods are manufactured outside Bangladesh and the manufacturer of the goods does not have any branch office or business office in Bangladesh, a person who imports and distributes such goods;

Explanation: Where the manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office;

(5) **“medicine”** means any medicine, allopathic, homeopathic, Unani, ayurvedic or any other method, used for preventing or curing disease of human, fisheries and livestock;

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- (6) **“imprisonment”** means rigorous or simple imprisonment;
- (7) **“food”** means any food including fruits and minerals for the livelihood, nutrition and preservation of health for human, fisheries and livestock;
- (8) **“laboratory”** means any laboratory or organisation, whatever the name is, established by or under any law for the time being in force or recognised by the Government;
- (9) **“copying”** means making or manufacturing similar goods by unauthorized copying of any goods which is authorised for marketing irrespective of the property, ingredients, elements or quality of such copied goods;
- (10) **“prescribed”** means prescribed by rules and until such rules are made, prescribed by written orders of the Director General;
- (11) **“goods”** means any movable commercial commodities which the buyer buys or contracts to buy from any trader in exchange of money or price;
- (12) **“council”** means the National Consumer Rights Protection Council established under section 5;
- (13) **“regulation”** means any regulation made under this Act;
- (14) **“Code of Criminal Procedure”** means the Code of Criminal Procedure, 1898 (Act no. V of 1898);
- (15) **“rules”** means any rules made under this Act;
- (16) **“trader”** in relation to any goods includes any maker, manufacturer, supplier, whole-seller or retailer;
- (17) **“person”** includes any person, company, society, partnership firm, statutory or other organisation or representatives thereof;
- (18) **“adulteration”** means adulteration defined in section 3(1) of the Pure Food Ordinance, 1959 (Ordinance No. LXVIII of 1959) and in section 25C of the Special Powers Act, 1974 (Act No. XIV of 1974) or adulteration defined in any other Act;
- (19) **“consumer”** means any person, -
 - (h) who without resale or commercial purpose-

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- (i) buys any goods for a consideration which has been paid or promised to be paid;
 - (ii) buys any goods for a consideration which has been partly paid and partly promised;
 - (iii) buys any goods for a consideration under any system of deferred payment or instalments;
- (i) who uses any goods bought under clause (a) with the approval of the buyer;
 - (j) who buys any goods and uses it commercially for the purpose of earning his livelihood by means of self-employment;
 - (k) who-
 - (i) hires or in any manner avails of any service for a consideration which has been paid or promised to be paid;
 - (ii) hires or in any manner avails of any service for a consideration which has been partly paid and partly promised;
 - (iii) hires or in any manner avails of any service for a consideration under any system of deferred payment or instalments;
 - (l) who enjoys any service hired or availed under clause (d), when such services are availed of with the approval of the person who hires or avails it;

(20) “**anti consumer-rights practice**” means-

- (a) to sell or offer to sell any goods, medicine or service at a higher price fixed by any Act or Rules;
- (b) to sell or offer to sell adulterated goods or medicine intentionally;
- (c) to sell or offer to sell any goods containing any ingredient which is extremely injurious for consumer’s health and the mixing of which with any food item is forbidden by any Act or Rules;
- (d) to deceive consumers by untrue or false advertisement with the purpose of selling any goods or service;

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- (e) not to properly sell or deliver any goods or services purchased at a given price;
 - (m) to sell or deliver less than the offered weight while delivering or selling any goods;
 - (n) if the weight or any other weight measuring instrument used for measuring weight in selling or delivering goods shows more than the actual weight;
 - (o) to sell or deliver less than the offered amount while delivering or selling any goods;
 - (p) if the length measuring gauge or anything else used for measuring length in selling or delivering goods shows more than the actual length;
 - (q) to make or manufacture any imitated goods or medicine;
 - (r) to sell or offer to sell any goods or medicine which has expired;
 - (s) to do an act which may endanger life and security of the consumer and which is forbidden by any Act or Rules;
- (21) **“Director General”** means the Director General of the Consumer Rights Protection Council; and
- (22) **“service”** means service of any description which is made available to potential users and includes the provision of facilities in connection with transport, telecommunication, water supply, drainage, fuel, gas, electricity, housing construction, residential hotel and restaurant and health service, but does not include the rendering of any service free of charge or under a contract of personal service;

3. Act not in derogation of any other law- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

4. Immunity from this Act- The government may, by notification in the official Gazette, immune any service or area from the application of this Act for a specific period of time.

Chapter II

Establishing Council, etc.

5. Establishing Council- To fulfil the objects of this Act, there shall be a council to be known as the National Consumer Right Protection Council, which shall consist of the following members, namely-

- (1) the Minister in charge of the Ministry of Commerce who shall also be its Chairman;
- (2) the Secretary of the Ministry of Commerce, *ex officio*;
- (3) Director General of the National Security Council, *ex officio*;
- (4) Director General of Bangladesh Standard and Testing Institute, *ex officio*;
- (5) an officer from the Ministry of Industries, not below the rank of Joint-Secretary;
- (6) an officer from the Ministry of Agriculture, not below the rank of Joint-Secretary;
- (7) an officer from the Ministry of Fisheries and Livestock, not below the rank of Joint-Secretary;
- (8) an officer from the Ministry of Food and Disaster Management, not below the rank of Joint-Secretary;
- (9) an officer from the Ministry of Home, not below the rank of Joint-Secretary;
- (10) an officer from the Department of Energy, Power and Mineral Resources, not below the rank of Joint-Secretary;
- (11) an officer from the Ministry of Law, Justice and Parliamentary Affairs, not below the rank of Joint-Secretary;

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- (12) Chairperson of the National Commission for Women, *ex officio*;
- (13) an officer of the rank of Additional Inspector General from Police;
- (14) Chairman of the Federation of Bangladesh Chamber of Commerce and Industries, *ex officio*;
- (15) Chairman of the Association of Pharmaceutical Industries, *ex officio*;
- (16) Chairman of the Consumers Association of Bangladesh, *ex officio*;
- (17) Chairman of the National Press Club, *ex officio*;
- (18) Director of the Directorate of Drug Administration, *ex officio*;
- (19) three eminent citizens appointed by the Government;
- (20) Not less than four members including two women members, appointed by the Government, who are experienced in economics, commerce, industries and mass-administration;
- (21) one teacher representative appointed by the Government;
- (22) one representative of labour appointed by the Government;
- (23) one representative of agriculture appointed by the Government; and
- (24) Director General, who shall be the Secretary of this Council.

6. Duration of membership:

- (1) Subject to the provision of sub-section (2), the tenure of any appointed member of the Council shall be for a period of two years and six months from the date of appointment;
- (2) Notwithstanding the provision of sub-section (1), the appointing authority may at any time cancel any appointment and appoint a new suitable person.

7. Meeting of the Council:

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- (1) Subject to other provisions of this section, the Council may prescribe proceedings of its meetings;
- (2) The Council shall meet at such time and place as the Chairman may think fit;
- (3) The Council shall meet at least once in every 2 (two) months;
- (4) The Chairman shall preside over in all the meetings of the Council;
- (5) In the absence of the Chairman, the Secretary of the Ministry of Commerce shall preside over in the meetings;
- (6) Not less than 10 (ten) members shall make the quorum of the meetings of the Council;
- (7) Decision shall be taken by the majority of votes of the members present in the meetings and in case of equality, the presiding member shall have the power to cast a deciding vote;
- (8) No proceedings of the Council shall be void or called into question only because of the vacancy in any membership or any defect in establishing the Council.

8. Functions of the Council: The functions of the Council are as follows-

- (e) to give direction to the Director General and the District Committee to enact and enforce regulations regarding the protection of consumer rights with a view to fulfilling the objects of this Act;
- (f) to enact necessary regulations to fulfil the object of this Act;
- (g) to analyse and recommend on any matters referred by the Government regarding the protection of consumer rights;
- (h) to advise and co-operate with the government in formulating necessary laws and administrative directions with an aim to protect and promote consumer rights;
- (i) to undertake necessary educational and promotional campaign to raise public awareness regarding consumer rights;
- (j) to take necessary steps to raise public awareness regarding the usefulness of protecting consumer rights and bad affects of anti-consumer rights practice;
- (k) to undertake research on consumer rights;

(l) to observe and inspect the activities of the Directorate, Director General and District Committees;

(m) to take any further steps required to perform the aforementioned duties and responsibilities.

9. Fund of the Council:

(1) The Council shall have its own fund for performing its functions and money collected from the following sources will be deposited to this fund-

(a) Donations from the Government;

(b) Donations approved by the Government from any foreign Government, institution or any international organisation;

(c) Donation from any local authority;

(d) Profit derived from capital investment of the Council;

(e) Money from any other legal source.

(2) The fund of the Council or part thereof may be invested on any sector approved by the Government;

(3) The money saved in the fund shall be kept in the name of the Council in a scheduled bank as approved by it;

(4) The fund is to be maintained and expended in the manner prescribed by the regulations.

10. Establishing District Consumer Rights Protection Committees:

(1) To fulfil the objects of this Act, there shall be a district committee in every district named District Consumer Rights Protection Committee, which consists of the following members-

(a) District Commissioner, *ex officio*, who shall be its Chairman;

(b) Chairman of the District Industry and Traders Association, *ex officio*;

(c) One representative nominated by any Government approved Consumer Rights Institution;

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- (d) Civil Surgeon, *ex officio*;
 - (e) Police Super, *ex officio*;
 - (f) One representative nominated by the Mayor of Union Parishad or City Corporation as the case may be;
 - (g) Four representatives appointed by the Government, who are experienced in economics, commerce, industries and mass-administration;
 - (h) One officer nominated by the District Commissioner from his office, not below the rank of Assistant Commissioner, who also will be the Secretary of this Committee.
- (2) The tenure of a member of District Committee shall be for a period of two years and six months from the date of appointment;
Provided, the appointing authority may, at any time, cancel any appointment and appoint a new suitable person.

11. Responsibilities and Functions of the District Committees:

The responsibilities and functions of the District Committee are as follows-

- (a) to comply the direction of the Council, if any, regarding consumer right protection;
- (b) to co-operate with the Council in performing its functions in order to fulfil the objects of this Act;
- (c) to create public awareness through arranging necessary promotions, meetings, seminars and workshops regarding consumer right protection;
- (d) to inspect and examine functions of the organisations which manufacture and sell various goods for consumers, including the wholesale and retail business organisations;
- (e) to perform any other functions entrusted by the Council; and
- (f) to carry out any such correlated tasks which is required to perform the abovementioned functions.

12. Meetings of the District Committee:

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- (1) Subject to other provisions of this section, the Committee may determine the proceedings of its meetings;
- (2) The Committee shall meet at such time and place as the Chairman may think fit; provided, there shall be at least one meeting of the Council in every month;
- (3) The Chairman of the District Committee shall preside over in all meetings of the Committee;
- (4) Not less than 5 (five) members shall make the quorum of the meetings of the Committee;
- (5) No proceedings of the Committee shall be void or called into question only because of the vacancy in any membership or any defect in establishing the Committee.

13. Upazila Committee, Union Committee etc.:

- (1) To fulfil the objects of this Act, if necessary, the directorate may establish Upazila Consumer Rights Protection Committee in every Upazila and Union Consumer Rights Protection Committee in every Union;
- (2) Of every Upazila Committee and Union Committee under sub-section (1)-
 - (a) number of members, nomination of members, qualification, removal and resignation thereof; and
 - (b) responsibilities, functions and proceedings of the meetings;shall be determined by regulations.

14. Fund of the District Committee etc.:

- (1) Each District Committee, Upazila Committee and Union Committee shall have individual fund.
- (2) Maintenance of the fund of District Committee, Upazila Committee and Union Committee, expenditure from the fund and other related issues shall be determined by regulations.

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(3) Costs for cases under this Act, laboratory tests including other necessary expenses of the Committee shall be met from the fund of the District Committee, Upazila Committee or Union Committee, as may be provided by regulations.

15. Budget: The Council shall in every year, within the time prescribed by the Government, submit its budget for the next fiscal year to the Government in the form prescribed by the Government and the budget must mention the amount of money that shall be needed from the Government in that fiscal year by the Council including District Committees, Upazila Committees and Union Committees.

16. Keeping Accounts and Audit:

(1) The Council shall properly keep accounts of its fund and prepare an annual statement of the accounts.

(2) The Comptroller and Auditor General of Bangladesh, hereinafter referred to as the Auditor General, or any other person authorised by him for this purpose shall audit the fund of the Council every year and submit one copy of his Audit Report to the Government and the Council each.

(3) For conducting audit under sub-section (2), the Auditor General or any other person authorised by him for this purpose, may examine all records, deeds and documents, cash money or fund kept in bank, security money, stock and any other properties and he may also examine any member of the Council, Director General and any officer or employee of the Council.

17. Annual Report: The Council shall submit an annual report to the Government within the 30th June of every year containing the details of its function for the last one year ending on the 31st December and the Government shall, as soon as possible, take steps to place the report to the Parliament.

Chapter III

Directorate, Director General, etc

18. Establishing Directorate etc.:

- (1) To fulfil the objects of this Act, there shall be a Directorate, which shall be known as National Consumer Rights Protection Directorate.
- (2) The Government shall establish the National Consumer Rights Protection Directorate by notification in the official gazette.
- (3) The Directorate will co-operate with the Council in performing all of its functions and will also help to execute the decisions of the Council.

19. Head office of the Directorate, etc.:

- (1) The head office of the Directorate shall be situated at Dhaka.
- (2) The Government may, if necessary, establish District Office of the Directorate in any district.

20. Director General:

- (1) There shall be a Director General for the Directorate.
- (2) The Director General shall be appointed by the Government and his terms of employment shall be determined by the Government.
- (3) The Director General shall be a full-time officer of the Directorate and, according to the provisions of this Act, shall be performing such functions and duties and exercising such powers as per the direction of the Council.
- (4) To facilitate the functions of the Directorate, any person may request the Director General through fax, email or any other means for taking necessary steps.
- (5) In case of vacancy in the Office of the Director General or if the Director General is unable to perform his duties due to absence, illness or any other reason, a

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person appointed by the Government shall temporarily perform the duties of Director General until a newly appointed Director General takes charge of the office or till the Director General becomes able to perform his duties again.

21. **Power and Functions of Director General:**

(1) For the purpose of this Act, the Director General may take all necessary actions as he deems expedient and necessary for protection of consumer rights, prevent anti consumer rights practice, disposal of the complaint against violation of consumer rights.

(2) In conformity with the provision of sub-section (1) the Director General may take all or any of the following action, such as:

- (o) to collaborate with functions of any party or organisation who is related to the object of this Act;
- (p) to take necessary steps to prevent any imminent act which may violate consumer rights, to determine and take preventive measures thereupon;
- (q) to supervise the maintenance of quality of goods or service by the seller and take necessary actions thereupon;
- (r) to supervise whether any fraud is committed in respect of weight or quantity in selling or supplying goods and take necessary actions thereupon;
- (s) to supervise whether there is any making, manufacturing of copied goods or medicine and whether buyers are being deceived thereby, and to take necessary actions thereupon;
- (t) to supervise whether any goods or medicine is being adulterated and to take necessary actions thereupon;
- (u) to supervise whether date of manufacture or expiry of the goods or medicine are inscribed in the cover of such goods or medicine under provision of any Act or Rules, and to take necessary actions thereupon;
- (v) to supervise whether any expired goods or medicine are being sold and to take necessary actions thereupon;
- (w) to supervise whether any food item that are hazardous for human life or health are being made, manufactured or sold and to take necessary actions thereupon;

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- (x) to supervise whether any goods are being manufactured or processed in a process injurious for human life or health and to take necessary actions thereupon;
- (y) to supervise whether any medicine are being made or manufactured anywhere without any valid license and to take necessary actions thereupon;
- (z) to supervise whether general consumers are being deceived by false advertisement for selling goods or service and to take necessary actions thereupon;
- (aa) to supervise whether the life of commuters are being put into risk by illegally running general public transports such as – minibus, bus, launch, steamer and train by unskilled or unapproved drivers and to take necessary actions thereupon; and
- (bb) to supervise whether life or security of service receivers are being jeopardized by violating any injunction imposed under any law or rules and to take necessary actions thereupon.

(3) The Director General shall, by April 30 of each year, prepare a consolidated report for the last 1 (one) year ending on December 31 of his own functions and the functions of the districts, if there are, and shall submit such report to the Council for its approval.

22. Appointing Officers and Employees: For proper functioning of the Directorate, the Government may appoint as many officers and employees as required and their terms of employment shall be determined by the rules.

23. Investigation power of the Director General or any other officer:

- (1) For investigation of any offence under this Act, the Director General shall have the same power of an officer-in-charge of a police station.
- (2) The Government may, by notification in the official gazette, empower any person subordinate to the Director General with the same power of an officer-in-charge of a police station for investigating any offence under this Act.

24. Power to issue warrant of arrest:

(1) The Director General or any person empowered for this purpose by the Government has reason to believe that, -

- (a) any person has committed any offence under this Act; or
- (b) any person is in possession of any thing relating to any offence under this Act or any document, paper or any other things necessary to prove such offence;

then, after recording such reasons in writing, may issue warrant to issue such person or to search any place where such thing, documents, papers or other things are kept.

(2) any person to whom the warrant issued under sub-section (1) is sent for execution, he shall have the same power of an officer mentioned in section 23.

25. Power of arrest or seizure in open place, etc.: Any officer while performing any investigation or inquiry under this Act, has reason to believe that in any open place or any vehicle there are goods in violation of this act, then he may, after recording the reasons in writing, seize such goods after search and arrest the accused related to such goods.

26. Procedure of search etc.: If there is nothing otherwise in this Act, the relevant provisions of the Code of Criminal Procedure shall apply in relation to search, seizure, warrant, arrest and detention.

27. Order of temporary shut down of any shop, business enterprise, etc. for any anti consumer rights practice:

(1) If it appears that in any shop, commercial enterprise, factory, workshop or godown any anti-consumer-rights goods are being manufactured or sold or stored, the Director General or any person empowered by the Directorate may order temporary shut down of such shop, commercial enterprise, factory, workshop or godown.

(2) On failure of complying with the order passed under sub-section (1), such shop, commercial enterprise, factory, workshop or godown may, as immediate step, be shut down by the Directorate under lock and key.

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(3) After steps taken under sub-section (1) and (2), the Directorate shall take the final decision after conducting hearing, examination and investigation and on consideration of consumer rights and whether any anti consumer rights practice has been committed in actual violation of any provision or not.

(4) If any service providing person or organisation does any anti consumer rights practice in violation of any provision of this Act, the Director General or any power so empowered by the Directorate, may order temporary shut down of the business of such person or organisation.

(5) On failure of complying with the order passed under sub-section (4), such service providing business may be shut down by the Directorate.

(6) After temporary shut down of any service business under sub-section (4) and (5), the Directorate shall take the final decision after conducting hearing, examination and investigation and on consideration of consumer rights and whether any anti consumer rights practice has been committed in actual violation of any provision or not.

28. Taking assistance from any law enforcing agency or any other authority: The Director General or any officer so authorized by him may request assistance of any law enforcing agency or any other public or statutory authority for enforcing powers or execution of functions under this Act, and upon such request the public or statutory authority shall give such assistance.

29. Prohibition on manufacturing, selling etc. of goods injurious to human health: If any goods is proved to be injurious to human health, the Government may, in consultation with the Director General, by notification in official gazette, order stopping of manufacturing, import, sale, display for sale, distribution, transportation for commercial purpose or commercial use of such goods in whole country or any specified area or conditional performance or management as determined by such notification.

30. Power of entry etc.:

(1) Subject to the provisions of this section the Director General or any person generally or specially empowered for this purpose may, in any reasonable time, with necessary assistance at his discretion, be entitled enter into any building or place for the following purposes:-

- (a) to perform any functions entrusted to him under this Act or Rules;
- (b) to inspect in pursuance of any notice, order or direction issued under this act or rules;
- (c) to examine and verify, in relation to any goods or service, any record, register, deed or any other information related thereto;

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(d) to direct searches in such building or place if he has reason to believe that any offence had been committed in such building or place in contravention of any order or direction issued under this act or rules;

(e) to seize any goods, ingredient, record, register, deed etc. which may be used as evidences in relation to any offence under his act or rules.

(2) Any person related to sale or manufacturing of any goods or service shall be bound to give all assistance to such person performing any function under this section.

31. Power to collect sample etc.:

(1) The Director General or any person so authorized by him for this purpose, may, for the purpose of examination, collect any goods or any ingredient used in such goods from any shop, godown, factory, yard or place.

(2) Subject to provisions of sub-section (3) and (4), the sample or the examination report of such sample or both mentioned in above sub-section of the sample collected under this section, shall be admissible as evidence in the relevant proceeding.

(3) Subject to the provisions of sub-section (4) the sample collecting officer under sub-section (1) shall –

(a) send notice to possessor or agent of such place in the manner prescribed by rules about his intention of collecting such sample;

(b) collect sample in presence of such possessor or agent;

(c) after putting such sample in a container mark it by the signature of himself and such possessor or agent and affix seal thereon;

(d) after preparation of a report on such sample, put his own signature and shall also take signature of the possessor or agent thereon;

(e) immediately send the such container to laboratory as designated by the Director General;

(4) In a situation where sample is collected under sub-section (1) and the collecting officer sends notice under sub-section (3)(a), if, in that case the possessor or the agent intentionally remains absent at the time of collection of such sample or being present refuses to sign in sample or report, then the collecting officer shall, in presence of two witnesses, assure such sample by putting his own signature and affix it with seal and shall, by mentioning the absence or refusal, as the case may be, of the possessor or the agent, immediately send such sample to laboratory as designated by the Director General for examination.

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32. Subject of confiscation etc.: The goods, elements, machineries, tools, ingredients, vessel, container, cover, which are related to an offence under this Act, shall be subjects of confiscation.

33. Procedure for confiscation:

(1) In as departmental proceedings under this act it is proved that any goods are subject of confiscation under section 32, the investigating officer may, whether offence is proved against any person or not, order confiscation of such goods.

(2) In case any goods are detained which are subjects of confiscation under section 32 but the accused related to such goods is not found, the Director General or any officer authorized by him for this purpose who shall be superior to the confiscating officer, may confiscate such goods by order in writing.

(3) Notwithstanding any contained in sub-section (1) or (2), notice shall be sent under the prescribed rules giving opportunity to raise any objection against any such confiscation before any order of confiscation is passed, and the person objecting shall be given reasonable opportunity of hearing within the time mentioned in the notice which shall not be less than 15 (fifteen) days from the date of service of such notice.

(4) Any person aggrieved against any order passed under sub-section (2), may, within 30 (thirty) days of such order --

(a) appeal to the Director General when such order is passed by an officer subordinate to Director General; and

(b) appeal to the Government when such order is passed by the Director General.

(5) The judgment of the appellate authority, mentioned in sub-section (4), shall be final and no suit shall be filed against that in any Court.

34. Disposal of decomposing goods: Any goods detained under this Act which is decomposing, such as – fish, vegetables, etc. shall, without preserving it, be used, transferred, destroyed or distributed in any other way in prescribed manner.

35. Disposal of distribution of confiscated or detained goods: As soon as any goods which is a subject of confiscation under this Act is confiscated, it shall immediately be handed over to Director General and the Director General may take steps for use, transfer, destruction or distribution in any other way of such goods in prescribed manner.

36. Direct detention and disposal of adulterated goods: In any inquiry, investigation or judicial proceeding it appears that any goods is clearly unfit for human consumption or injurious for human health and such allegation is admitted or not denied by the contesting

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party, then such goods shall, after direct detention, be used, transferred, destroyed or distributed in any other way in prescribed manner.

Chapter IV

Offences, Punishment, etc.

37. Punishment for not using cover of goods etc:

Whoever violates any obligation under any law or rules to sell any goods in covered manner and to inscribe on the cover the maximum retail price of that goods, date of manufacture, date of packing and date of expiry, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand (50,000) or both.

38. Punishment for not showing price list of goods:

Whoever, in violation of any obligation under any law or rules, does not show the price list of goods by hanging it in a conspicuous place of his shop or organisation, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand (50,000) or both.

39. Punishment for not preserving and showing price list of services:

Whoever, in violation of any obligation under any law or rules, does not preserve price list of his shop or organisation or shows it by hanging it relevant conspicuous place, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand(50,000) or both.

40. Punishment for selling goods, medicine or service at higher price than fixed:

Whosoever sells or offers to sell any goods, medicine or service at a higher price than fixed under any law or rules, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand or (50,000) both.

41. Punishment for selling adulterated goods or medicine:

Whosoever intentionally sells or offers to sell any adulterated goods or medicine, shall be sentenced to imprisonment not exceeding three years or fine not more than Tk. Two lakhs or both.

42. Punishment for mixing prohibited materials in foods:

Any ingredient which is injurious for consumer's health and the mixing of which with any food item is prohibited by any Act or rules, whosoever mixes any such ingredient food item shall be imprisonment not exceeding three years or fine not more than Tk. Two lakhs (200,000) or both.

43. Punishment for illegally manufacturing or processing goods:

Whosoever manufactures or processes any goods in a process which is injurious for life and health and which is prohibited under any law or rules, shall be sentenced to imprisonment not exceeding two years or fine not more than Tk. Two lakhs (200,000) or both.

44. Punishment for deceiving buyers by false advertisement:

Whosoever deceives any buyer by any false or untrue advertisement for the purpose of selling any goods or service, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Two lakhs (200,000) or both.

45. Punishment for not properly selling and supplying offered goods or service:

Whosoever does not properly sell or supply offered goods or service purchased at a given price, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand (50,000) or both.

46. Punishment for deceiving in weight:

Whosoever sells or supplies any goods to consumer less than the offered weight, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand (50,000) or both.

47. Punishment for deceiving in weight or other measuring instrument:

In any shop or commercial organisation of whosoever, any weight or other measuring instrument, used for measuring weight in selling of supplying goods, shows more than the actual weight, he shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. fifty thousand (50,000) or both.

48. Punishment for deceiving in measurement:

Whosoever sells or supplies to the consumer less than the offered amount, shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. Fifty thousand (50,000) or both.

49. Punishment for deceiving in measuring gauge or anything used for measuring length:

In any shop or commercial organisation of whosoever, fraud in committed in the length measuring gauge or anything used for measuring length in selling or supplying goods, he shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. fifty thousand (50,000) or both.

50. Punishment for manufacturing and producing copied goods:

Whosoever manufactures or produces copied goods shall be sentenced to imprisonment not exceeding three years or fine not more than Tk. Two lakhs (200,000) or both.

51. Punishment for selling any expired goods or medicine:

Whosoever sells or offers to sell any expired goods or medicine shall be sentenced to imprisonment not exceeding one year or fine not more than Tk. fifty thousand (50,000) or both.

52. Punishment for doing any act detrimental to consumer's life and security:

Whosoever, in violating of any prohibition under any Act or Rules, does any act which is detrimental to consumer's life and security, shall be sentenced to imprisonment not exceeding three years or fine not more than Tk. Two lakhs (200,000) or both.

53. Punishment for damaging consumer's money, health or life etc. by negligence:

Any service provider who by its negligence, irresponsibility or carelessness damages consumer's money, health or causes death, shall be sentenced to imprisonment not exceeding three years or fine not more than Tk. Two lakhs (200,000) or both.

54. Punishment for filling false or harassing cases:

Whosoever, with a motive to harass any trader or service provider or to defame him publicly or to damage his business reputation files any false or harassing case, shall be sentenced to imprisonment not exceeding three years or fine not more than Tk. Fifty thousand (50,000) or both.

55. Punishment for reoccurring offence:

Whosoever convicted of any offence mentioned in this Act does the same offence again, shall be sentenced to twice the maximum punishment provided for that offence.

56. Confiscation etc.:

In addition to the sentences provided in the above sections of this chapter, the Court if thinks fit, may order to forfeit in the favour of state the illegal goods or manufacturing ingredients related to offence

Chapter V

Trial etc.

57. Trial:

- (1) Offences under this Act shall be tried by the First Class Magistrate or Metropolitan Magistrate.
- (2) Nothing shall limit the power of the First Class Magistrate of imposing fines prescribed under this Act in spite of the of limitation on such First Class Magistrate of imposing fines under the *Code of Criminal Procedure, 1898*.

58. Summary Trial:

Without prejudice to section 57, the Court may, in case of trial of offences under this Act, *mutatis mutandis* follow the summary procedure prescribed in Chapter XXII of the *Code of Criminal Procedure, 1898*.

59. Bail, Cognizable and Compoundable of offences:

All offences under this Act shall be bailable, cognizable and compoundable.

60. Complaint:

No complaint shall be accepted if such complaint is not made by any person to the Director General or any person so authorize by the Directorate within 30 (thirty) days of the cause of action of any anti consumer rights practice under this Act.

61. Limitation:

Notwithstanding anything contained in the Limitation Act, 1908 (Act of IX of 1908), Magistrate shall not take cognizance of any offence if charge sheet is not submitted within 90 (ninety) days of complaint made under section 60.

62. Examination of Product's defect:

1. If the Magistrate deems fit, in determining the truth of a complaint about a product's defect, that it cannot be so determined without a proper analysis or examination of that product, he may
 - a) Collect a sample of that product from the complainant and attest that sample with seal in prevailing process/manner; and
 - b) Send that product, sealed under clause (a), to proper laboratory with necessary orders to examine the presence of the defect raised or any other defect.
2. The examination report about the product, sent to laboratory for examination under sub section (1), shall be presented to such Magistrate within 2 (two) months of such sending.

Provided that such time may be extended on request of the laboratory.

3. Magistrate shall order complainant to deposit the specified money or fees for examining the complaint made against a product before sending any sample of that product to laboratory.

63. Power of Magistrate:

Magistrate may, upon conviction of any person, impose any sentence approved by this Act in a trial held under this Chapter.

64. Prohibition on Second Trial:

Any person, convicted or acquitted in a trial according to the provisions of this Act for an offence punishable under this Act, shall not be tried again for the same offence under any other law.

65. Appeal:

Any party aggrieved by any judgment or order passed by Magistrate may prefer an appeal to the Sessions Judge of local jurisdiction within 60 (sixty) days of that judgment or order.

Chapter VI

Civil Proceedings and Remedies

66. Civil Remedies:

1. Nothing shall debar any aggrieved consumer, in appropriate cases, to file a civil suit in a Civil Court for civil remedies against a person who has been convicted for a criminal offence for violating consumer rights or for initiation of any criminal proceedings against him for violating such consumer rights.
2. The competent civil Court shall mean the Court of Joint district judge of local jurisdiction.
3. A consumer, being damaged by any anti consumer rights practice by any seller and if such damage is measurable in terms of money, may file a civil suit claiming compensation not exceeding five times of that measured damage.
4. The Court, after considering plaint, written statement, evidences and other circumstances, may allow compensation not exceeding five times of the actual damage as the Court may think fit, proper and just.
5. Notwithstanding anything in the *Code of Civil procedure, 1908, Contract Act, 1872* and *Civil Courts Act, 1887*, the provisions of this section shall apply.

67. Powers of Civil Court:

The Civil Court may allow all or any of the following remedies; such as-

- (a) Ordering defendant to replace the defective product by appropriate product.
- (b) Ordering defendant to take back the defective product and pay back the price to the buyer.
- (c) Ordering defendant to give compensations, not exceeding five times of the proved damage, and to pay cost of the suit.

68. Civil Appeal:

Notwithstanding anything in the *Code of Civil Procedure, 1908* and *Civil Courts Act, 1887*, an appeal may be made only to the High Court Division within 90 days of the judgment or decree passed by the Court under section 67.

Chapter VII

Miscellaneous

69. Power of District Magistrate under this Act:

1. Any District Magistrate within his local limit of jurisdiction shall have same powers and functions which a Director General has under this act and such District Magistrate may enforce such powers and perform such duties without any previous approval of Director General.
2. District Magistrate may delegate his powers to any subordinate Executive Magistrates under such conditions as may be determined by him
3. District Magistrate or Executive Magistrate, as the case may be, shall immediately inform the Director General, in writing, about any proceeding taken under this section.

70. Administrative Actions by Directorate:

1. To prevent any anti consumer rights practice or to take any action against any anti consumer rights offence, the Director General or any person so authorized, in spite of occurrence of any offence under Chapter IV of this Act, if deems fit may, impose fine or cancel trade license or take administrative actions by suspending commercial functions, permanently or temporary, without imposing any sentence and taking any action to file criminal proceeding.
2. No fine, more than the maximum fine specified in this Act, shall be imposed in case of administrative actions taken under sub-section (1).
3. Imprisonment shall not be imposed for non-payment of fines imposed under administrative actions under sub-section (1) and (2).
4. Any fine imposed under this section shall be paid by the accused voluntarily within 5 (five) working days.
5. If the imposed fine is not voluntarily paid by the accused under sub-section (4), the sentencing authority may realize that sum in accordance with the procedure prescribed in clause (a) of sub-section (1) of section 386 of the *Code of Criminal Procedure* by attachment and sale including 25 per cent additional sum as cost.

71. Limitation on Criminal Proceeding:

1. No criminal case shall be directly filed in the Court of First Class Magistrate or Metropolitan Magistrate against any person accused of anti consumer rights practice.
2. Every complaint by a consumer or a complainant shall be filed to the Director General or any person empowered by him or District Magistrate or any Executive Magistrate empowered by District Magistrate.

72. Special provision for medicine:

1. Although the Director General has the power and duty to investigate and discover any adulteration or copying of medicine but no judicial proceeding shall be initiated or case shall be filed in the Magistrate Court in respect of those matters.
2. Cases shall be filed under section 25C of the *Special Powers Act, 1974* (Act No. XIV of 1974) for offences specified in sub-section (1).

73. Inspection of private health care service:

1. Director General shall have the power to inspect and discover defects in private health care service.
2. Director General shall not take any preventive measures in respect of the defects in private health care services and only inform the Secretary, Health Ministry and Director General, Health Department.

74. Informing superior officer about arrest or seizure:

1. If any person is arrested or any goods is seized under this Act, the arresting or seizing officer shall immediately inform his superior officer by a report in writing and send a copy thereof to Director General.

75. Method to be followed for offences under any other law:

Notwithstanding anything contained in law for the time being in force, if any offence under this Act (e.g. adulteration, copying etc.) bears a higher sentence as a special punishable offence under any special law, then there shall be no legal bar to try that offense under this Act considering such offence as anti consumer rights practice provided that in consideration of the nature and gravity of the offence, the Directorate is of opinion that it shall be expedient to try and sentence that offence in the relevant Special Tribunal, then Directorate shall, for

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effective trial of such offence, take necessary steps to file case in such special tribunal instead of filing any case in Magistrate Court..

76. Complaint and complainant's share in fine:

1. Any person, who is a consumer or may be a consumer, may make a written complaint to the Director General or any person authorized by the Director General against an anti consumer rights practice under this Act.
2. The authority upon receiving a complaint under sub-section (1), shall immediately investigate or inquire into such complaint.
3. If such complaint is proved to be true after investigation, the Director General or any officer authorized by him may, in his administrative action, impose fine upon the guilty person.
4. If the fine, imposed under sub-section (3) is realized, 25% of such realized fine shall immediately be paid to the complainant mentioned in sub- section (1).

Provided that if the complainant is an officer or an employee of the Directorate, he shall not be entitled to receive such 25% mentioned in this sub-section..

5. If any regular criminal case is filed in a Court or in a Special Tribunal under this Act and if the accused is sentence to fine upon found guilty and if the fine is realized, then the 25% of the realized fine shall be paid to the complainant mentioned in sub-section (1).

Provided that if the complainant is an officer or an employee of the Directorate, he shall not be entitled to receive the 25% mentioned in this sub-section.

6. Any person, to fulfil the purpose of this section, may make complaint by examining the matter of adulteration or copying of goods in a public or private laboratory at his own initiative.

77. Acts done in Good Faith:

If any person is affected, or if there is possibility to be affected, by any act done in good faith under this Act or any rules, then no case - civil or criminal- can be filed or no legal procedure can be taken for that against the Government, the Council, any member of Council, the Directorate, any officer or employee of the Directorate.

78. Indemnity:

1. No steps shall be taken for imposing any sentence against any seller by accusing him of any offence under this Act, if such seller has no intentional affiliation with any act violating any provision of this Act.

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2. In case an adulterated or defective goods is sold from a shop, no criminal or administrative action or proceeding shall be taken against the owner or the director of such shop, if such goods is manufactured from a legal or licensed workshop, factory or organisation and he has not relation to such workshop, factory or organisation or with making or manufacturing process of that goods.
3. No person shall be liable under this Act if such person, to earn his livelihood, buys and sells goods as hawker or peddler and such goods are adulterated, copied or has any other defects and for such consumer's rights are affected unless it is comprehensible beyond reasonable doubt that he with motive to illegally gain profit, intentionally or knowingly or in collusion, buys that goods to sell to buyer.
4. If any quick decomposing goods, such as fish or vegetable, are found in naturally decomposed manner from any hawker or peddler or any shop, no criminal proceeding or administrative action shall be taken against such hawker, peddler or shop keeper accusing as such, unless it is easily comprehensible that he kept such goods for selling or tried to sell such goods knowing well that such goods has decomposed.
5. Any person indemnified under this section shall, upon order or request by authority, be bound to help such authority to discover source of adulteration or copying.

79. Delegation of Power:

The Director General, in necessity and on conditions determined by Council, may delegate, in writing, any of his powers or responsibilities under this Act to any officer or employee of the Directorate.

80. Power to make rules:

To fulfil the purpose of this Act, the government may make rules by notification in the Official Gazette.

81. Power to make regulations:

To fulfil the purpose of this Act the Council may, with previous permission of government and by notification in the Official Gazette, make Regulations.

82. Publication of a translation in English, etc:

1. Bengali shall be the main text of this Act, and the Government, if necessary, shall publish an authentic translation of the main text in English.
2. In the event of conflict between the Bengali and English text, the Bengali text shall prevail.

Appendix 2

PROJECT PROPOSAL

Effective implementation of the Consumer Rights Protection Law (CRPL) in Bangladesh.

Background:

Consumers International, has been commissioned by UNIDO to assist with the economic and social development of Bangladesh by reviewing the current state of consumer protection. In particular, Consumers International wishes to analyse and evaluate consumer protection measures in Bangladesh. This project proposal provides for a comparative analysis of the law in Bangladesh. The Law will be assessed against the UN Consumer Protection Guidelines, relevant regional and other consumer statutes, a comparison made and recommendations provided.

Current law

The *Consumer Rights Protection Act* was passed in April 2009 to ensure consumer protection realizing consumer's right to quality goods and services at fair prices. Despite the enactment, there has been no consistent effort from the Government of Bangladesh to implement and enforce the law to prevent malpractices in the market. Consumers are not able to seek redress in the existing state of condition due to lack of implementation of the Act. In the face of public demand for protecting consumer rights, it is important that effective lobbying is done with the Government to implement and enforce the law at the earliest the country.

Purpose of Research: To carry out comparative research and analysis on the implementation of CRPA 2009 viz-a-viz the UN Guidelines on Consumer Protection.

Work to be accomplished: Comparatively analyzing the *Consumer Rights Protection Act* 2009 with consumer protection legislation within the region, highlighting best practices on

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areas relating to safety, representation, consumer redress and information viz-a-viz the UN Guidelines for Consumer Protection 1985(revised 1999). The Guidelines address the interests and needs of consumers worldwide and provide a framework for governments to use for elaborating and strengthening consumer protection policies and legislation. The research results will be published and disseminated to relevant stakeholders in Bangladesh and be used as a guide for CAB to advocate for better consumer protection measures.

Methodology

1. Comparative assessment of the Consumer Rights Protection Act, 2009 (Act number 26 of 2009) against United Nations Guidelines for Consumer Protection (as expanded in 1999)

- a. legislation
- b. institutions
- c. enforcement –
- d. consumer engagement
- e. linkages with competition law and policy
- f. linkage with trade law or export facilitation
- g. available resources
- h. Case studies
- i. policy framework
- j. international engagement

2. Regional Comparative Consumer Protection Laws

- a. identification of key comparative jurisdictions
- b. summary of legislative protections for consumers
- c. thematic comparison
- d. identification of differences

3. Other Consumer Laws of Relevance

- a. Consumer Laws from other jurisdictions of use in comparison
- b. features absent from Bangladesh law

4. Evaluation of Act Number 26 of 2009

- a. strengths and weaknesses
- b. possible areas for revision
 - i. policy issues
 - ii. proposed amendments
 - iii. the new provisions
- c. strategies for effective implementation
- d. proposed two-year review

5. Timeframe

- a. This activity will be carried out between May 1 to May 30 2010
- b. This activity will require 10-15 days of research and writing

6. Outputs

- a. key outputs will be in written reports on:
 - i. Comparative assessment of the *Consumer Rights Protection Act, 2009* (Act number 26 of 2009) against United Nations Guidelines for Consumer Protection (as expanded in 1999)
 - ii. Regional Comparative Consumer Protection Laws- best practices
 - iii. Other Consumer Laws of Relevance
 - iv. Evaluation of Act Number 26 of 2009

7. Project Costs

- a. Subject to CI assessment of project components
- b. 10-15 days at 1000 US per day

Appendix 3:

United Nations guidelines for consumer protection (As expanded in 1999)

I. Objectives

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices;
- (h) To promote sustainable consumption.

II. General principles

2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.

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3. The legitimate needs which the guidelines are intended to meet are the following:
 - (a) The protection of consumers from hazards to their health and safety;
 - (b) The promotion and protection of the economic interests of consumers;
 - (c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
 - (d) Consumer education, including education on the environmental, social and economic impacts of consumer choice;
 - (e) Availability of effective consumer redress;
 - (f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organisations to present their views in decision-making processes affecting them;
 - (g) The promotion of sustainable consumption patterns.
4. Unsustainable patterns of production and consumption, particularly in industrialized countries, are the major cause of the continued deterioration of the global environment. All countries should strive to promote sustainable consumption patterns; developed countries should take the lead in achieving sustainable consumption patterns; developing countries should seek to achieve sustainable consumption patterns in their development process, having due regard to the principle of common but differentiated responsibilities. The special situation and needs of developing countries in this regard should be fully taken into account.
5. Policies for promoting sustainable consumption should take into account the goals of eradicating poverty, satisfying the basic human needs of all members of society, and reducing inequality within and between countries.
6. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty.
7. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)
8. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

III. Guidelines

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9. The following guidelines should apply both to home-produced goods and services and to imports.

10. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

A. Physical safety

11. Governments should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

12. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

13. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Governments should also consider ways of ensuring that consumers are properly informed of such hazards.

14. Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

B. Promotion and protection of consumers' economic interests

15. Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They should also seek to achieve the goals of satisfactory production and performance standards, adequate distribution methods, fair business practices, informative marketing and effective protection against practices which could adversely affect the economic interests of consumers and the exercise of choice in the market place.

16. Governments should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory

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standards. Consumer organisations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.

17. Governments should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this connection, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.

18. Governments should adopt or maintain policies that make clear the responsibility of the producer to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provision of services.

19. Governments should encourage fair and effective competition in order to provide consumers with the greatest range of choice among products and services at the lowest cost.

20. Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.

21. Consumers should be protected from such contractual abuses as one-sided standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.

22. Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.

23. Governments should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.

24. Consumer access to accurate information about the environmental impact of products and services should be encouraged through such means as product profiles, environmental reports by industry, information centres for consumers, voluntary and transparent eco-labelling programmes and product information hotlines.

25. Governments, in close collaboration with manufacturers, distributors and consumer organisations, should take measures regarding misleading environmental claims or information in advertising and other marketing activities. The development of appropriate advertising codes and standards for the regulation and verification of environmental claims should be encouraged.

26. Governments should, within their own national context, encourage the formulation and implementation by business, in cooperation with consumer organisations, of codes of

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marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established Jointly by business, consumer organisations and other interested parties. These codes should receive adequate publicity.

27. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

C. Standards for the safety and quality of consumer goods and services

28 Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

29. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

30. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

D. Distribution facilities for essential consumer goods and services

31. Governments should, where appropriate, consider:

(a) Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas. Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

(b) Encouraging the establishment of consumer cooperatives and related trading activities, as well as information about them, especially in rural areas.

E. Measures enabling consumers to obtain redress

32. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.

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33. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

34. Information on available redress and other dispute-resolving procedures should be made available to consumers.

F. Education and information programmes

35. Governments should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of changes in consumption, bearing in mind the cultural traditions of the people concerned. The aim of such programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels. Consumer groups, business and other relevant organisations of civil society should be involved in these educational efforts.

36. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.

37. Consumer education and information programmes should cover such important aspects of consumer protection as the following:

- (a) Health, nutrition, prevention of food-borne diseases and food adulteration;
- (b) Product hazards;
- (c) Product labelling;
- (d) Relevant legislation, how to obtain redress, and agencies and organisations for consumer protection;
- (e) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities;
- (f) Environmental protection; and
- (g) Efficient use of materials, energy and water.

38. Governments should encourage consumer organisations and other interested groups, including the media, to undertake education and information programmes, including on the environmental impacts of consumption patterns and on the possible implications, including benefits and costs, of changes in consumption, particularly for the benefit of low-income consumer groups in rural and urban areas.

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39. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.

40. Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.

41. Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

G. Promotion of sustainable consumption

42. Sustainable consumption includes meeting the needs of present and future generations for goods and services in ways that are economically, socially and environmentally sustainable.

43. Responsibility for sustainable consumption is shared by all members and organisations of society, with informed consumers, Government, business, labour organisations, and consumer and environmental organisations playing particularly important roles. Informed consumers have an essential role in promoting consumption that is environmentally, economically and socially sustainable, including through the effects of their choices on producers. Governments should promote the development and implementation of policies for sustainable consumption and the integration of those policies with other public policies. Government policy making should be conducted in consultation with business, consumer and environmental organisations, and other concerned groups. Business has a responsibility for promoting sustainable consumption through the design, production and distribution of goods and services. Consumer and environmental organisations have a responsibility for promoting public participation and debate on sustainable consumption, for informing consumers, and for working with Government and business towards sustainable consumption.

44. Governments, in partnership with business and relevant organisations of civil society, should develop and implement strategies that promote sustainable consumption through a mix of policies that could include regulations; economic and social instruments; sectoral policies in such areas as land use, transport, energy and housing; information programmes to raise awareness of the impact of consumption patterns; removal of subsidies that promote unsustainable patterns of consumption and production; and promotion of sector-specific environmental-management best practices.

45. Governments should encourage the design, development and use of products and services that are safe and energy and resource efficient, considering their full life-cycle impacts. Governments should encourage recycling programmes that encourage consumers to both recycle wastes and purchase recycled products.

46. Governments should promote the development and use of national and international environmental health and safety standards for products and services; such standards should not result in disguised barriers to trade.

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47. Governments should encourage impartial environmental testing of products.
48. Governments should safely manage environmentally harmful uses of substances and encourage the development of environmentally sound alternatives for such uses. New potentially hazardous substances should be evaluated on a scientific basis for their long-term environmental impact prior to distribution.
49. Governments should promote awareness of the health-related benefits of sustainable consumption and production patterns, bearing in mind both direct effects on individual health and collective effects through environmental protection.
50. Governments, in partnership with the private sector and other relevant organisations, should encourage the transformation of unsustainable consumption patterns through the development and use of new environmentally sound products and services and new technologies, including information and communication technologies, that can meet consumer needs while reducing pollution and depletion of natural resources.
51. Governments are encouraged to create or strengthen effective regulatory mechanisms for the protection of consumers, including aspects of sustainable consumption.
52. Governments should consider a range of economic instruments, such as fiscal instruments and internalization of environmental costs, to promote sustainable consumption, taking into account social needs, the need for disincentives for unsustainable practices and incentives for more sustainable practices, while avoiding potential negative effects for market access, in particular for developing countries.
53. Governments, in cooperation with business and other relevant groups, should develop indicators, methodologies and databases for measuring progress towards sustainable consumption at all levels. This information should be publicly available.
54. Governments and international agencies should take the lead in introducing sustainable practices in their own operations, in particular through their procurement policies. Government procurement, as appropriate, should encourage development and use of environmentally sound products and services.
55. Governments and other relevant organisations should promote research on consumer behaviour related to environmental damage in order to identify ways to make consumption patterns more sustainable.

H. Measures relating to specific areas

56. In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and secure distribution facilities, standardized international labelling and information, as well as education and research programmes in

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these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.

57. Food. When formulating national policies and plans with regard to food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organisation of the United Nations and the World Health Organisation Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including, *inter alia*, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

58. Governments should promote sustainable agricultural policies and practices, conservation of biodiversity, and protection of soil and water, taking into account traditional knowledge.

59. Water. Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.

60. Governments should assign high priority to the formulation and implementation of policies and programmes concerning the multiple uses of water, taking into account the importance of water for sustainable development in general and its finite character as a resource.

61. Pharmaceuticals. Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, *inter alia*, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Governments should take special account of the work and recommendations of the World Health Organisation on pharmaceuticals. For relevant products, the use of that organisation's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other international information systems on pharmaceuticals should be encouraged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organisation.

62. In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals in regard, where relevant, to their use, production and storage, taking into account such relevant health and environmental information as Governments may require producers to provide and include in the labelling of products.

IV. International cooperation

63. Governments should, especially in a regional or subregional context:

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(a) Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;

(b) Cooperate or encourage cooperation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such cooperation could be collaboration in the setting up or Joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, Joint training programmes and Joint elaboration of regulations;

(c) Cooperate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such cooperation could include Joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.

64. Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

65. Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.

66. To promote sustainable consumption, Governments, international bodies and business should work together to develop, transfer and disseminate environmentally sound technologies, including through appropriate financial support from developed countries, and to devise new and innovative mechanisms for financing their transfer among all countries, in particular to and among developing countries and countries with economies in transition.

67. Governments and international organisations, as appropriate, should promote and facilitate capacity building in the area of sustainable consumption, particularly in developing countries and countries with economies in transition. In particular, Governments should also facilitate cooperation among consumer groups and other relevant organisations of civil society, with the aim of strengthening capacity in this area.

68. Governments and international bodies, as appropriate, should promote programmes relating to consumer education and information.

69. Governments should work to ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

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Main sources of information used in the compilation of this report:

The authors of this report have drawn extensively from the materials listed below.

1. Consumer Rights Protection Act, 2009. Translated Version
2. United Nations Guidelines for Consumer Protection as expanded in 1999
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