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GUIDELINES

ON CONSUMER PROTECTION:

Agency Structure and Effectiveness



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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CARICOM	Caribbean Free Trade agreement
COPOLCO	Consumer Policy Committee of the International Organization for Standardization
DGCCRF	<i>Direction Générale de la Concurrence, la Consommation et la Repression des Fraudes</i>
IBA	International Bar Association
ICPEN	International Consumer Protection and Enforcement Network
IGE	Intergovernmental Group of Experts
ILA	International Law Association
ISO	International Organization for Standardization
MDG	Millennium Development Goals
MENA	Middle East and North Africa
SDG	Sustainable Development Goals
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines for Consumer Protection
WTO	World Trade Organization

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	III
LIST OF ABBREVIATIONS.....	IV
FOREWORD	VI
1. INTRODUCTION	1
2. INTERNATIONAL CONTEXT AND BENCHMARKS FOR CONSUMER PROTECTION .	2
2.1 United Nations Guidelines for Consumer Protection.....	2
2.2 Other UNCTAD instruments.....	3
2.3 Organisation for Economic Cooperation and Development	3
2.4 The Group of 20	4
2.5 International Standards Organisation	5
2.6 The notion of consumer rights: UNGCP “legitimate needs”	6
2.7 Consumer protection and constitutional provisions	6
2.8 Consumer rights in the MENA region	7
3. CONSUMER POLICY AND CONSUMER PROTECTION LAW.....	10
3.1 Generic or sectoral laws?	10
3.2 Framework legislation	10
3.3 Consumer Protection laws in the MENA region.....	12
4. INSTITUTIONAL ARCHITECTURE OF CONSUMER PROTECTION AGENCIES	16
4.1 Structure and functions of Consumer Protection Agencies: global perspective	16
4.2 Structure and functions of Consumer Protection Agencies in the MENA region.....	19
4.3 Resources and accountability	22
4.4 Stakeholder participation in consumer protection.....	23
4.5 International cooperation	27
5. CONCLUSIONS: CHALLENGES TO CONSUMER PROTECTION IN THE MENA REGION.....	29
5.1 Feedback from the region.....	29
5.2 Future issues	30
5.2.1 Access to essential goods and services and vulnerable consumers	30
5.2.2 E-commerce and privacy	30
NOTES	34

FOREWORD

These guidelines and the accompanying analysis are based on a range of sources as well as exchanges with colleagues in the MENA (Middle East and North Africa) region. The sources include the 2015 *Inception Report* and survey data provided to UNCTAD secretariat from some of the countries. These are set in the context of the *United Nations Guidelines for Consumer Protection*, first drafted in 1985 and with subsequent revisions in 1999 and 2015. Other UNCTAD sources are referred to, in particular the Manual on Consumer Protection first published 2004 and later revised over the period between 2016 and 2017. It was then published as a provisional advance copy for the UNCTAD Ministerial Conference in July 2016. The analysis of legislation is heavily concentrated on Consumer Protection Acts in the countries under study, namely Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and the State of Palestine. Readers are advised that other legislation, covering particular sectors will also contain protections for consumers. However, although such legislation is referred to wherever possible, it is too extensive to be subjected to the same levels of detailed analysis. Of note, it is possible that some inaccuracies may occur due to the translation of documents from Arabic into English and/or French. These languages are the main ones in which the consumer protection team is working.

These guidelines for Consumer Protection Agencies are accompanied by a sister volume of *Guidelines on Consumer Protection: Business engagement*. They also form part of a series which also includes competition policy: *Good Governance Guidelines: Independence and Transparency*, and *Competition Guidelines: Leniency Programmes*; and UNCTAD, MENA programme, 2016. Readers are recommended to refer to those publications whenever possible.

1. INTRODUCTION

A consumer protection framework covers a range of institutional mechanisms which include consumer protection agencies, being the subject of these guidelines. The State has an important role to play in ensuring that consumer protection functions effectively and in a way that does not shackle the freedom of business to operate legitimately, or stifle the freedom of consumers to exercise individual choice. The essential elements of a consumer protection framework are as follows:¹

- A national consumer policy that sets out the approach of the State towards consumer protection, enumerates the rights of consumers, and apportions responsibility for consumer protection to appropriate official organs;
- A designated consumer protection agency responsible for the development and application of consumer protection, whereby an agency can collaborate closely with the different relevant ministries and

consult with other stakeholders such as consumer organizations, business, academics and the media.

This study draws upon the work of Consumer Protection Agencies within the MENA region and, where appropriate, on the expertise of analogous agencies elsewhere. “Agency Structure” as stated in the title, is relatively self-evident. However, “Agency Effectiveness” is open to both broader interpretations covering policy and narrower interpretations which concentrate on operational matters - including measures of performance. We adopt elements of both approaches, although, in practical terms, operational details are difficult to find. We aim to construct guidelines that are in line with our analysis. We refer to our guidelines as “recommendations” in order to distinguish them from those in the *United Nations Guidelines for Consumer Protection* - which are accessible in Arabic, Chinese, English, French, Russian and Spanish at the UNCTAD website.²

2. INTERNATIONAL CONTEXT AND BENCHMARKS FOR CONSUMER PROTECTION

2.1 UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION

There is no absolute “gold standard” for consumer policy and practice. A major reference source for comparative study is that of the *United Nations Guidelines for Consumer Protection* (from here on referred to as UNGCP). They provide a multilaterally and unanimously agreed set of principles that have been endorsed by the United Nations General Assembly - a truly global body which includes all the beneficiary countries in the MENA program on consumer protection.³ The UNGCP incorporates other bodies together with their principles and objectives such as those agreed under the Sustainable Development Goals (SDGs), and other guidelines issued by the OECD for e-commerce and the G20 (through the OECD) for consumer protection in financial services.⁴

The UNGCP are not a uniform template by any means. They recognize in Guideline (from now on abbreviated to GL) 4, the need for Member States to set their own priorities “in accordance with the economic, social and environmental circumstances of the country and the needs of its population, and bearing in mind the costs and benefits of proposed measures.”

In terms of the structure of consumer protection agencies, the UNGCP are open in their recommendations. UNGCP GL 8 specifies that Member States should “provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies.” Guideline 14 sets the goals that consumer protection policies should be aiming for, namely:

- A. Good business practices;
- B. Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them. This may include information such as the identity of the business, its legal name and the name under which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government registration or licence numbers;

- C. Clear and timely information regarding the goods or services offered by businesses and the terms and conditions of the relevant transaction
- D. Clear, concise and easy to understand contract terms that are fair;
- E. A transparent process for the confirmation, cancellation, return and refund of transactions;
- F. Secure payment mechanisms;
- G. Fair, affordable and speedy dispute resolution and redress;
- H. Consumer privacy and data security;
- I. Consumer and business education.

Guideline 15 calls upon Member States to “work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases.” This makes the crucial point about ensuring resources while leaving open to interpretation the precise form of the machinery. In addition, Section VI on International Cooperation requires improved cooperation between agencies - again without specifying structures. It sets out the general expectation of commitment while leaving the actual processes of how to structure the relevant agencies to the relevant national governments.

The United Nations Guidelines themselves have a structure which can be emulated by national measures to the extent considered appropriate by national policymakers, including legislators. The major sections are:

- I. Objectives;
- II. Scope;
- III. General Principles;
- IV. Principles for good business practices;
- V. Guidelines;
- VI. International cooperation;
- VII. International Institutional machinery.

Section V, titled “Guidelines,” is by far the longest and embodies the core objectives of the UNGCP. It is structured into the following sub-headings:

- A. National policies for consumer protection;
- B. Physical safety;
- C. Promotion and protection of the economic interests of consumers;
- D. Standards for the safety and quality of consumer goods and services;
- E. Distribution facilities for essential consumer goods and services;
- F. Dispute resolution and redress;
- G. Education and information programs;
- H. Promotion of sustainable consumption;
- I. Electronic commerce;
- J. Financial services;
- K. Measures relating to specific areas.

Many of these sub-subsections contain further divisions, notably the last one which singles out certain sectors for special consideration: food, water, pharmaceuticals, energy, public utilities and tourism. The “signposting” of the sections makes the UNGCP a relatively easy publication to navigate, in spite of being 99 paragraphs in total.

Despite the wide array of issues taken into consideration by the UNGCP - including those sectors listed in Section K above - there are, nevertheless, sectors which receive little attention. Although there is a new section on e-commerce, there is little on the associated sectors of telecoms and digital products. Both trade law and intellectual property law do not feature with much prominence despite the importance of trade in regions like MENA which are developing regional integration. Where individual sectors are not mentioned specifically, then they should be covered by the other more “horizontal” provisions of the UNGCP. An example of this is the “Principles for Good Business Practices” under Section IV.

The UNGCP are frequently referred to in national legislation. Sometimes this can be either explicitly or implicitly by the adoption of portions of text or concepts from the UNGCP. However, it is important to be clear here that in actual legal terms the UNGCP are not a set of legally-binding guidelines that can be enforced upon States. They are the result of a United Nations

General Assembly resolution which was adopted by consensus. Thus, they carry a high moral authority on all United Nations Member States. This moral persuasion has proved to be remarkably successful judging from the number of Member States that have referred to and used the contents of the UNGCP.

Recommendation 1: We recommend that the UNGCP be used by MENA jurisdictions as a checklist for consumer policy, consumer law and consumer institutions. This does not have to mean precise reproduction of the Guidelines, which, as the name suggests, offers much scope for flexibility. Furthermore, Member States are free to go beyond the requirements of the Guidelines should they wish to do so.

2.2 OTHER UNCTAD INSTRUMENTS

The UNGCP are not the only UNCTAD instruments regarding consumer protection. Equally relevant is the *Manual on Consumer Protection* which was first drafted in 2004, then received extensive revision in 2016. It is currently being reissued in 2017 and an advance version was presented at the UNCTAD Ministerial Conference in Nairobi in mid-2016.⁵ The Manual encompasses all the areas covered by the UNGCP and more, going into greater detail in sectors such as utilities, food, and financial services. The discussion is mainly at policy level but there are also operational chapters devoted to consumer law, consumer agencies and associations, self-regulation, international cooperation, as well as new chapters on recently emerging issues such as e-commerce and privacy.

In addition, UNCTAD has recently completed some innovative work on e-commerce and digital consumer protection. Its Cyberlaw Tracker refers to the four main areas of regulation in e-commerce, namely e-transaction laws; data protection and privacy laws; cyber-crime laws; and consumer protection laws. In 2015, the Cyberlaw Tracker concluded that while legislation covering those areas is already in place in developed countries, developing ones are lagging behind.⁶ This is discussed in greater detail under future challenges in Section 5.

2.3 ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

OECD comprises 32 predominantly high income countries and has a Committee on Consumer Policy (CCP) in which Egypt participates. As well as a range of policy discussion documents, the OECD issues

recommendations which have a degree of legal force, having been adopted by the council of OECD ministers. They also have undoubted intellectual impact well beyond the OECD membership. In the words of the OECD website: “Recommendations are not legally binding but practice accords them great moral force as representing the political will of Member countries and there is an expectation that Member countries will do their utmost to fully implement a Recommendation.”⁷ The list of recommendations that have passed through the CCP is as follows:

- Consumer product safety: six recommendations dating between 1977 and 1989, the last of which pertained to notification systems for product safety;
- Consumer credit, 1977;
- Consumer protection, 1998, Ministerial Declaration on *Consumer Protection in the Context of Electronic Commerce*, revised in 2016;
- 2003, Recommendation of the Council concerning *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders*;
- 2007, *Recommendation of the Council on Consumer Dispute Resolution and Redress*;
- 2014, *Recommendation of the Council on Consumer Policy Decision-Making*.

Some of the above are cited in the UNGCP, namely the E-commerce Guidelines and, thus, by extension, the privacy guidelines which are also cited in the same document. (They did not originate from the CCP).

In 2010, the OECD developed a Consumer Policy Toolkit, being a definitive guide to intervention by consumer protection Agencies. The dilemma which agencies face is that the potential scope for intervention is very vast while they have limited resources at their disposal. The OECD has constructed a six-step decision process and is as follows:⁸

- Step 1. What is the problem? Define the consumer problem and its source;
- Step 2. How serious is it? Measure consumer detriment;
- Step 3. Is action required? Determine whether consumer detriment merits a policy action;

Step 4. What are the options? Set a policy objective and identify the range of policy options;

Step 5. What option is best? Evaluate options and select a policy action;

Step 6. How effective is the policy? Develop a policy review process to evaluate the effectiveness of the policy.

The aspect that has attracted perhaps the most international attention is the analysis pertaining to “consumer detriment,” which, in itself, has become a term of art. Detriment can include “both financial and non-financial impacts, such as direct financial losses, time loss, stress and physical injury.” The decision on whether to intervene should consider questions such as the scale of the consumer detriment, who is experiencing it, the expected duration and trend, as well as the likely consequences of inaction and costs to the economy other than those of the consumer. This analysis now focuses on steps 4, 5 and 6.

Recommendation 2: Consumer protection agencies need to identify the seriousness of consumer detriment and the likely results of intervention before engaging their scarce resources at the expense of other alternative actions. The OECD Toolkit places options in an evaluative logical structure and is, therefore, worth considering as an aide to helping consumer protection Agencies make judgments regarding the scope for, and effectiveness of, intervention.

2.4 THE GROUP OF 20

The G20 is the grouping of the world's 20 principal economies and has come to prominence in recent years - in particular when responding to any financial crisis. For example, it mandated the OECD to produce High Level Principles (HLPs) on Consumer Protection in Financial Services, which were produced in 2011 and are cited in the UNGCP section on Financial Services.⁹ This citation, therefore, extends the UNGCP to other principles for financial inclusion, emerging from the G20 and also the *Good Practice Guidelines of the World Bank*.¹⁰ Conversely, the UNGCP cover some issues, including remittances, responsible lending and bank deposit insurance, which are not covered in the OECD/G20 HLPs. In aggregate, the ensemble acts as a reasonable checklist for a very large sector, albeit not concentrated in one document.

2.5 INTERNATIONAL STANDARDS ORGANISATION

Rather more precise than the above documents are the standards developed by the International Organization for Standardization (referred to from here on as ISO) and other international standard setting bodies in cooperation with their national institutions for standardization. ISO celebrated its 70th anniversary in 2017 with studies showing the benefits for consumers and businesses of international standards. For example, the ISO study titled “Economic Benefits of Standards” found that the advantages of using standards varied between 0.15 per cent and five per cent of annual sales revenues. This was in terms of the contributions to companies’ gross profits and according to the case studies commissioned.¹¹ More detail on this is provided in the accompanying Guidelines to the Business Sector in MENA.

ISO has had a formal relationship with the United Nations since 1949, only two years after the latter’s foundation. It also works jointly with the International Electrotechnical Commission (IEC). The ISO has 163 members worldwide, three-quarters of whom are from developing countries, and it currently has a portfolio of 21,500 standards. These have evolved from physical standardization of components and measuring equipment (for example, pollution levels), and management systems (for example, supply chain organizations), and to more conceptual systems such as customer services. The latter includes complaints handling procedures and corporate social responsibility commitments. Certain standards have landmark status such as ISO 9001 (1987) on quality management which evolved into the world’s first management systems standard with one million certifications worldwide. Others are ISO 14001 (1996) on environmental management with 320,000 certifications; ISO 26000 (2010) on social responsibility; and ISO 50001 (2011) on energy efficiency.¹²

Major efforts are currently underway in the area of digital goods and services, and also regarding the contribution that standards can make towards the achievement of the SDGs. Such potential was recognized by the United Nations General Assembly in the resolution adopting the revised UNGCP in 2015. Furthermore, the main text of the Guidelines endorses the use of industrial standards in GL 33.

In 1978 the ISO Committee on Consumer Policy (COPOLCO) was established and continues to encourage consumer input on the setting of

standards. For example and with COPOLCO support, ISO adopted the now published international standard on customer care in energy services.¹³

ISO standards are voluntary and, therefore, not legally binding, unlike regulatory standards which can be enforced by administrative law through public bodies such as the consumer protection Agencies, or through judicial procedures. ISO does not certify users of the standards - it develops the standards which are then tested by independent certification bodies. Standards for conformity assessments cover such matters as testing laboratories, conformity certificates, accreditation and mutual recognition of conformity assessment results. The role of voluntary standards has expanded over the years as legislation has struggled to keep up with technical changes. Accordingly, international trade law has recognized, through the World Trade Organization (WTO) treaties, the legitimacy of standards developed by bodies such as ISO and *Codex Alimentarius*. They serve as a basis for regulatory standards and are referenced in United Nations GL 70.

Justifiable barriers to trade have long been recognized under Article 20 (the “Exceptions clause”) of the General Agreement on Tariffs and Trade, which allows a Member State to prevent imports of goods likely to be injurious to human, animal or plant health. This is provided that all countries are treated alike and that the standards are applied equally to imports and to domestically produced goods.

One of the merits of standards - that are not legally binding - is that in the absence of pre-existing regulation or statute they can be adopted by governments as “off the shelf” regulations and adapted as governments see fit. Standards are sometimes seen as a relatively quick route to some form of regulation and, in the absence of alternatives, they could be adapted in due course by legislators to impose good practice. In fact, it is often difficult to distinguish between legal regulations and ISO-type standards.

The importance of international trade requirements to the MENA region has been emphasized not just for the protection of consumers, but also by the fact that as exporters, the producers in MENA often have to adapt to the requirements of importing countries - such as within the European Union. For example, the Jordanian Food Law of 2015 makes provision for the certification of its exports. Even when voluntary, standards have become part of the architecture of consumer protection.

Recommendation 3: In order to reinforce the high level of attention to national standards in consumer protection legislation in the MENA region and to aid international trade and regional cooperation, consideration should be given to the adoption, in full or in part, of ISO and IEC standards. Government regulators may adopt standards as statutory requirements or they may encourage their adoption by companies - particularly in the absence of national standards.

Which of these routes that ought to be adopted is a matter for local decision makers, but it also requires an appreciation of the variety of standards. Some are appropriate for legislation such as safety limits, while others are matters of good practice, such as principles of customer care.

2.6 THE NOTION OF CONSUMER RIGHTS: UNGCP “LEGITIMATE NEEDS”

Guideline 5 of the UNGCP is the most widely referenced and is generally known as the “legitimate needs” of consumers. It appears in Section III on General Principles and often these “legitimate needs” are referred to informally as the “consumer rights.”

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

- A. Access by consumers to essential goods and services;
- B. The protection of vulnerable and disadvantaged consumers;
- C. The protection of consumers from hazards to their health and safety;
- D. The promotion and protection of the economic interests of consumers;
- E. Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- F. Consumer education, including education on the environmental, social and economic consequences of consumer choice;
- G. Availability of effective consumer dispute resolution and redress;
- H. Freedom to form consumer and other relevant groups or organizations, and the opportunity of such organizations

to present their views in decision-making processes affecting them;

- I. The promotion of sustainable consumption patterns;
- J. A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce;
- K. The protection of consumer privacy and the global free flow of information.

Of note, the extent to which the MENA countries apply the “legitimate needs” is discussed in Section 2.8.

2.7 CONSUMER PROTECTION AND CONSTITUTIONAL PROVISIONS

In 2013, UNCTAD reported that “in many cases, consumer protection has been constitutionally enshrined and some countries have recognized consumer rights as human rights.”¹⁴ UNCTAD specifically referred to Egypt and to the recognition of the human rights dimension by the Mexican Supreme Court in 2012. In a 2016 publication sponsored by the International Law Association, their opening chapter on the UNGCP concludes that “it is undeniable that the UNGCP constitute an international reference for consumer protection and policy standards.”

In the MENA region, Articles 85 and 125 of the Algerian constitution mention consumers and the Egyptian constitution of 2014 refers - in Article 27 - to the “commitment to the criteria of transparency and governance...taking into account...regulating market mechanisms...achieving balance between the interest of different parties to maintain the rights of workers and protect consumers.” The constitution refers also to particular sectors in a way that could be interpreted as establishing consumer rights, such as access to comprehensive health care (Article 18); the rights of all Egyptians to legal protection in the domain of intellectual property (Article 69); and the right to food and clean water (Article 79). Regulatory mechanisms are enshrined in the constitution such as the Financial Supervisory Authority (Article 221), and the right to establish associations - such as consumer associations - with a “legal personality upon notification” dissolvable only by judicial ruling. Of note, other countries in the broad region also refer to consumer rights in their constitutions, including Turkey (2011) and Sudan (2005).

According to Elkins, Ginsburg and Melton, 47 national constitutions incorporate some sort of consumer rights, although these do not necessarily correspond to the legitimate needs as outlined in the UNGCP.¹⁵ Analysis of constitutional provisions indicates great differences in content. They emphasize “high level” principles such as:

- The generic consumer rights that are to be protected by law, quite often drawing upon the “legitimate needs” and;
- The freedom to form independent consumer associations and confer them with the required legal standing (*locus standi*) to represent both individual and collective consumer interests in the decision-making process and in the courts.

These recognitions are not just window dressing, they can have practical consequences. A constitution, being the supreme law of a jurisdiction, takes precedence over all other laws, thereby strengthening, legitimizing and prioritizing any rights guaranteed by it. Hence, the case for consumer protection could be strengthened when anchored by constitutional provisions. For example, in Brazil, consumer protection was inserted into the Federal Constitution in 1988, although and according to C. L. Marques, this provision was not really effective until the Consumer Defence Code (CDC) was developed in 1990. In 2001, the banking federation launched a challenge to the applicability of the CDC with regards to themselves, but the courts ruled in 2006 that the relevant constitutional provisions were indeed applicable. In the context of privatization of public utilities, the CDC has also been applied to “merchant” public services, (for example, public utilities) despite arguments to the contrary.¹⁶

At the regional level, CARICOM (Caribbean Free Trade agreement) and the European Union have used elements of the Guidelines’ “legitimate needs” for provisions of their comprehensive regional trade agreements.¹⁷ The European Union Consolidated Treaty on the Functioning of the European Union states that “In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organize themselves in order to safeguard their interests.”¹⁸

The European Charter of Fundamental Rights sets out in Article 38 - under the title of Solidarity - the requirement for a high level of consumer protection. It is written that “Union policies shall ensure a high level of consumer protection.” Other rights relevant to the legitimate needs are set out elsewhere in the Charter under Respect for Privacy (Article 7); Protection of Personal Data (Article 8); Freedom of Association (Article 12); Access to Health Services (Article 35); and Public Utility Services (Article 36). Such high-level principles are often considered most appropriate for constitutional content.

Sometimes vital consumer issues are covered by constitutions but they may not necessarily be indicated as “consumer rights.” Typical examples of this are to be found in the access to basic public services in the South African constitution where the word “consumer” does not appear in the relevant clauses.¹⁹ Article 184 of the Constitution mandates the Human Rights Commission to demand that “relevant organs of State” provide information on the measures being taken to protect the rights of citizens when they concern housing, health care, food, water, social security, education and the environment. These are referred to as socio-economic rights which the State must “respect, protect, promote and fulfil.”

It is not for UNCTAD to recommend what states should insert in their constitutions. Nevertheless, they state the following - as based on their findings:

Observation 1: Constitutional law can be used to establish or reinforce fundamental consumer rights, as well as provide some guiding principles. In particular, constitutional provisions can be a tool for leveraging much needed improvement in levels of access to essential goods and services.

2.8 CONSUMER RIGHTS IN THE MENA REGION

Our first comparative analysis is to determine to what extent consumer rights are cited by consumer protection Acts and constitutions, and how frequently the UNGCP are cited in consumer protection legislation in the MENA region. This information is set out below in Table 1. In summary, all of the MENA jurisdictions list consumer rights but they are incomplete in the degree to which they reflect the UNGCP.²⁰

Table 1: Consumer rights in national legislation in the MENA region

Algeria	
Law No. 09-03 of Feb 25, 2009, on Consumer Protection and Repression of Frauds;	
Articles: Obligations of suppliers rather than rights of consumers. Each obligation covered by a chapter: Hygiene and food safety; Product safety; Legitimate expectations of consumers: origins, quality, composition, conformity to regulations; Guarantees and after-sales service; Information; Moral and material interests.	
Egypt	
Law No. 67 of 2006, on Consumer Protection;	
Article 2. Right to health and safety; Correct information and data; Free selection of products; Personal dignity and respect of religious values; Information relating to rights; Right to join consumer protection organizations; Access to legal actions; Compensation for damages;	
Proposed revised law of 2014	3 New Rights: Protection in distance sales; Protection in financial services; Protection in cross-border sales.
Jordan	
Law No. 7 of 2017, on Consumer Protection Act;	
Article 3. Consumer right to: Availability of goods and services without damage; Access to “complete and correct information” displayed on goods or services; “Clear and complete information before completion of supply process”; Selection without undue pressure; Proof of purchase; Prosecution of infringements and compensation; Information on suppliers.	
Lebanon	
Law of 4 February 2005, on Consumer Protection Law;	
Article 3. Consumer health and safety; Fair and non-discriminatory treatment; Information; Exchange repair or refund if goods non-compliant; Compensation for damages when used under proper conditions; Right to establish or adhere to consumer protection Association; Right to sue or assert rights through consumer protection Association or independently.	
Morocco	
Law No. 31-08, on Consumer Protection;	
Preamble sets out consumer rights: Information; Protection of economic rights; Representation; Withdrawal from contracts; Choice; The right to be heard.	
Tunisia	
Law No. 92-117 of 7 December 1992, relating to the protection of consumers;	
Safety; Fairness; Information; Guarantee; Choice; Withdrawal; Compensation; Invoice/receipt.	
State of Palestine	
Law No. 21-2005, on Consumer Protection;	
Article 3. Consumer rights: 1. To health and safety; 2. To fair treatment without discrimination; 3. To establish associations for consumer protection and be affiliated therewith; 4. To live in a clean and safe environment and obtain compliant goods and services; 5. Free choice of goods or services; Fair transactions with assurance of quality and reasonable price and right to refuse coercive transactions; 6. To access correct information; 7. Remedy by immediate litigation or through Consumer Associations; 8. Replacement, repair of goods and redemption of price, compensation for non-compliance; 9. Proof of purchase.	

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

The insertion of four new “legitimate needs” into the UNGCP in 2015 is too recent to have been reflected, as yet, in the consumer protection Acts. So, the new legitimate needs not explicitly listed are GL 5a) “Access by consumers to essential goods and services,” and GL 5b) “The protection of vulnerable and disadvantaged consumers.” In contrast, one of the best known legitimate needs is GL 5c) which

covers “The protection of consumers from hazards to their health and safety.” This was set in 1985 and is cited as a consumer right in Jordan, Egypt, Lebanon, Tunisia and the State of Palestine. In Algeria it is cited as an obligation on suppliers whereas in Morocco it does not appear in the consumer protection Act, but in a separate Product Safety Act which sets out a general obligation on suppliers.

GL 5d) covers “The promotion and protection of the economic interests of consumers.” It is inconsistently cited and not necessarily using the same terminology. For example, in Algeria this is referred to as “material interest” while in Morocco the phrasing “economic rights” is employed. However, the tenor of most of the legislation is that the guidelines are assumed to be defended by the consumer protection Acts. This is significant in that MENA jurisdictions have retained the right of the state to intervene, often through prosecution when correcting individual contracts that are unjust rather than rely on “disclosure” as a form of consumer protection. Given the failings revealed during the financial crisis, this stance which might have appeared old-fashioned a few years ago, is now becoming current again.

GL 5e) “Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs.” This is cited in terms of information in all the studied jurisdictions and less widely in terms of choice - particularly in Morocco, Tunisia and the State of Palestine. It should be noted here that choice has never been written into the UNGCP as an absolute.

GL 5f) “Consumer education” is not listed widely as a right, but it is frequently cited in the legislation as a function of consumer protection agencies (State of Palestine), or consumer associations (Tunisia), or both (Jordan and Lebanon), while in Egypt and Morocco both countries refer to the need to spread “consumer culture.”

GL 5g) “Availability of effective consumer dispute resolution and redress” is highly cited in terms of access to judicial or administrative redress (Egypt, Jordan, Lebanon and the State of Palestine), and in the other jurisdictions (Algeria, Morocco and Tunisia) within the text of the consumer protection Acts. There are few references to alternative dispute resolution - that is non-judicial - but several jurisdictions refer to the role of consumer associations as litigants and to the role of representatives. For example, under GL 5h) it is written “Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.” In Jordan, the role of consumer associations is very prominent although it does not feature in the consumer protection Act’s list of consumer rights. The right to form or join consumer associations is listed in Egypt and Lebanon along with the “right to be heard” in Morocco, where there

is a very active consumer movement (as there also is in the State of Palestine). It is not listed in Tunisia; however this has not prevented the development of wide participation in consumer institutions.

GL 5i) “The promotion of sustainable consumption patterns” rarely features; the clearest reference appearing in the Palestinian Consumer Protection Act as a right to live in a clean and safe environment. Elsewhere sustainable consumption appears sometimes as an element of consumer education in relevant texts. In his speech at the signing ceremony for the Paris Climate Agreement on April 22nd 2016, the United Nations Secretary-General said, “The era of consumption without consequences is over,” This important message is only just beginning to impact on consumer policy.

The final two legitimate needs are: j) “A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce” and k) “The protection of consumer privacy and the global free flow of information.” Neither feature explicitly as consumer rights in consumer protection acts throughout the region - this is a surprising omission given the rapid increase in e-commerce. They could, and should, feature indirectly in references to distance sales and in generic references to transactions, but the specific requirements of data protection and privacy that are raised in this context do not feature in the overall legislation.

Observation 2: Generally, the impact of the UNGCP - and in particular the “legitimate needs” often set down as “consumer rights” - is significant but remains incomplete regarding the recently revised “legitimate needs” that were introduced in 2015. Even on the basis of this brief survey we can conclude that the UNGCP have made positive contributions to consumer protection acts in MENA as well as other, narrower, legislation. Indeed, as noted below in the case of e-commerce and data protection, some national legislation has proved to be ahead of the UNGCP - at least prior to their updating in 2015.

Recommendation 4: The MENA countries, having found the “legitimate needs” of the UNGCP (GL 5) to be a useful reference point for their framework legislation, should continue to apply those principles and update their texts in the light of the 2015 revision and seek approval by the General Assembly.

3. CONSUMER POLICY AND CONSUMER PROTECTION LAW

It is a big step from the high principles of constitutions and human rights to the more prosaic details of legislation and other statutes. The UNGCP make clear that legislation is not the only route and the early years of the twenty-first century have seen growing efforts to seek other methods alongside legislation, including self-regulation, co-regulation, voluntary standards and codes, “nudges” and consumer empowerment. The question “is legislation obsolete?” can be asked.

3.1 GENERIC OR SECTORAL LAWS?

The existence of a consumer protection act is not a sufficient precondition for consumer protection to exist. Conversely, it is not necessarily the case that if a government has not passed a comprehensive consumer protection act, then consumers are not protected. Some very successful jurisdictions do not have a consumer protection act (notably Germany and Hong Kong, China), and others have consumer protection Acts with a very narrow range (United Kingdom of Great Britain and Northern Ireland). It is not necessary for all of consumer life to be covered by a single act. At this point in the twenty-first century and in the context of new member accession, the approach of the European Union was to check national legislation for its conformity to the *acquis communautaire* rather than search for a consumer protection Act in particular.²¹

The idea of a comprehensive consumer protection Act existed within the concept of a model law that was widely circulated during the 1990s, particularly in regions with a degree of linguistic and legal homogeneity such as Latin America. In the MENA region, the Francophone and Anglophone legal traditions have led in different directions during the twentieth-century. However, the concept of a model law, while not totally abandoned, has been overtaken by the development of sectoral legislation that is often bolstered by dedicated regulatory offices, such as a Food and Drug Administration in Jordan. The provision for a Financial Services supervisor - as set out in the Egyptian constitution - is a further example.

Consumer protection law can be promulgated through framework legislation that sets out certain broad principles and practices and which can be followed up by specific legislation for specific sectors. Framework

Acts were passed in a number of countries during the late twentieth-century, including Japan, Canada, the Bolivarian Republic of Venezuela, Mexico, India, the Russian Federation, China and France. Some governments also made rapid progress during the 1990 to 2000 period in incorporating consumer rights into sectors - notably in the public utilities which had been neglected. This was frequently in the context of reforms after sectoral regulatory bodies were set up following an increase in participation by the private sector. A case to illustrate this point is Chile, where sectoral regulatory offices were created as well as measures to help low income consumers.

Some consumer protection legislation is written in the form of a consolidated code and covers the whole spectrum of consumer protection. One of the best known examples is that of Brazil where the twenty-fifth anniversary of the code was celebrated in 2015.²² Professor Claudia Lima Marques highlights its strong emphasis on universal protection, stating “This equality of the different, of the laity not (just) professionals, the weak, and the recognition of the vulnerability of consumers is the touchstone....the cornerstone that helped build this successful 25 years.”²³ The code sets out four definitions of “consumer” as an economic agent, including “final user;” the collective; a distinct group; or future generations. The latter being a concept sometimes used in environmental law and which underpins the SDGs. The code is a classic framework in the sense that it does not enter into the management of particular sectors, but sets out generic rights of consumers across all goods and services.

Recommendation 5: The approach to evaluating consumer protection legislation at national level should not be restricted to analysis of the existence, or the content, of a consumer protection act. There needs to be consideration of the wider picture including sectoral legislation and/or regulation.

3.2 FRAMEWORK LEGISLATION

The directions that can be taken when analysing consumer protection legislation are vertical (sectoral) and horizontal (generic). The horizontal elements set out the high level principles in framework legislation, particularly concerning fair transactions across all

sectors, while vertical legislation relates to the technical matters of economic sectors.

Sometimes a single act contains two approaches. For example, in the Moroccan Consumer Protection Act the general principles on fair trading are followed by detailed provisions on financial services, particularly paying close attention to consumer credit. Indeed, the UNGCP themselves are an amalgamation of high level principles, containing the cross-cutting “legitimate needs” as well as individual sectors such as financial services and public utilities. This can lead to some confusion.

The United Nations Consumer Protection Manual lists critical areas that should be covered by consumer protection laws. These include:

- A. A definition of “consumer”;
- B. Rights of consumers;
- C. Standards for goods and services;
- D. Prohibition of business conduct that prevents consumers from enjoying their consumer rights and regulation of conduct so that it does not encroach on those rights;
- E. Regulation of agreements entered into between consumers and suppliers;
- F. Registration and licensing of suppliers of certain goods and services, including publicly owned providers;
- G. Powers for the authorities to take pre-emptive measures to protect consumers;
- H. Sanctions, compliance and enforcement mechanisms for dealing with offences;
- I. Designation of an agency for consumer protection and prescribed roles for it;
- J. Mechanisms for authorities to receive, investigate, and act upon complaints by consumers as well as assist consumers in making and pursuing complaints.

This list includes, for example, details on standards for specific sectors, registration and licensing of certain practitioners. Equally, there are specific details on the rights of consumers which belong in sectoral legislation, and other more general provisions such as fair business conduct and regulation of agreements. The latter fit into framework legislation.

Given the wide scope of the framework and its diverse legislation, having such a structure is helpful. As previously discussed, the UNGCP state their objectives, scope and general principles.

Scope: This sets out the practical applicability of the legislation. For example, GL 2 of the UNGCP includes state-owned enterprises - and is a vital extension of the scope of the UNGCP. One might think it obvious that the scope is for the protection of consumers, but this presupposes a definition of consumer that is both variable and open to interpretation. Scope, therefore, can have multifarious meanings while a definition of “consumer” is provided in the UNGCP, GL 3.²⁴ The consumer protection legislation in MENA often lacks a clear definition of scope and this will have to be established by synthesizing the range of possibilities.

Objectives: These reflect the general policy of the institution. The UNGCP contain a very clear set of objectives in GL 1 which allows for specific factors to be emphasized. Crucially, it recognizes that consumers often face imbalances in their relationships with producers due to the disparities related to bargaining power, technical knowledge, financial and other resources. GL 1 refers to the need for an “adequate” level of protection but also to “responsive” production patterns, “high levels of ethical conduct,” “development of independent consumer groups,” and “just, equitable and sustainable economic and social development and environmental protection.” The resolution that serves as an introduction to the Guidelines also refers to the SDGs. In other words, the objectives clarify the broad aims of the legislation while providing the relevant contexts. This assists both the general public and those in the judiciary who are responsible for interpreting the intentions of the legislators.

As an illustration of how legislation can reflect policy objectives, the European Union Consumer Directive makes explicit reference to Articles 114 and 169 of the European Treaty by underscoring a “high level of consumer protection” within the completion of the single market (also referred to in Article 26). The Directive is, thus, set in the context of a key policy objective.

Principles: Principles reflect values and that is why, perhaps, the “legitimate needs” of the UNGCP are the most widely discussed. They encompass the principles of universality (access); choice and transparency (information); sustainability (of consumption); privacy; equivalence of protection of different forms of transaction; special measures for the vulnerable; and freedom to form associations. These elements all have moral dimensions.

Recommendation 6: The effectiveness of consumer protection law is improved when the objectives of legislation are stated, the scope defined and the principles governing how to achieve these objectives

are clearly laid out. This is especially true of framework legislation and applies across the range of consumer protection. Sectoral legislation may need fewer wide-ranging principles as the scope is more obvious, and the substance of the legislation emerges in the objectives.

In practice, it is difficult for governments to adopt a purely theoretical approach. When faced with the constraints of legislative time, they will try to resolve a variety of urgent consumer issues within the same legislation. For example, one of the most recent major jurisdictions to pass a framework consumer protection act is China, which adopted a new version of its Consumer Protection Act in 2013. This combines issues of principle (it transfers the burden of proof from consumers to traders); legal practicalities (it protects distant consumers by providing the right of withdrawal); judicial guidelines (it increases punitive compensation to three times consumer payments

and twice the damages suffered; and institutions (it enhances the position of the Chinese Consumers Association).²⁵ However, the overall emphasis is horizontal rather than sectoral.

3.3 CONSUMER PROTECTION LAWS IN THE MENA REGION

How do the laws in the MENA region stand in relation to this analysis? We have seen in paragraph 2.8 that many of the UNGCP principles have been adopted by the MENA countries. Here, the focus shall be on the objectives and scope.

Objectives: Table 2 details the extent to which consumer protection acts in the region set out objectives. In Egypt and Jordan, no objectives are listed. The Jordanian draft Consumer Protection Act of 2013 contained a preamble with “Determining motives” which referred, in turn, to “international practices,”

Table 2: consumer protection Acts in MENA and their objectives

Algeria
Law No. 09-03 of February 25 2009, Consumer Protection and Repression of Frauds; Article 1. This law aims to set applicable rules with regard to consumer protection and repression of fraud.
Egypt
Law No. 67 of 2006, on Consumer Protection with a proposed revised law of 2014; No objectives defined.
Jordan
Law No. 7 of 2017, on Consumer Protection Act; No objectives defined.
Lebanon
Law of 4 February 2005, on Consumer Protection Law; Article 1. Objectives: Outline consumer protection rules for safety and quality of goods and services; Assert consumer rights and guarantee transparency of transactions; Protect consumers from fraud and misleading advertising; Prevent their exploitation.
Morocco
Law No. 31-08, on Consumer Protection; Article 1. Objectives: To ensure that consumers have access to appropriate clear information with respect to goods and services used or acquired; To guarantee the protection of consumers with regard to contract terms, notably those concerning consumer credit, housing (mortgage) loans, advertising, distance and door-to-door sales; Development of legal/contractual guarantees regarding products, after sales services and compensation for defects; Strengthening of the consumer movement by allowing consumer protection associations to be recognized as public utilities and as litigants. Application of all legislation related to the above is most favourable towards the consumer.
Tunisia
Law No. 92-117 of 7 December 1992, relating to the protection of consumers; Article 1. The objectives are to set rules governing product safety, the fairness of economic transactions and the protection of the consumer. The law applies equally to suppliers and to advertisers.
State of Palestine
Law No. 21-2005, on Consumer Protection; Article 2. This Law aims to achieve the following: To protect and safeguard consumers from health hazards, inequity, or economic losses; To provide goods and services without exploitation and manipulation of prices; To protect the rights of consumers to obtain compliant goods and services, and to ensure transparency of economic transactions; To ensure economic transactions in an expedited and accurate manner safeguarded by the law.

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

the “United Nations principles,” as well as the main institutions of consumer protection and its judicial oversight. Of note, this preamble was removed when the 2017 Act was passed. The Algerian Consumer Protection Act simply states that the law lays down applicable rules with regard to consumer protection and repression of fraud. Lebanon sets out the same as Algeria but goes into more detail when referring to safety and quality, transparency of transactions, and misleading advertising. Tunisia sets out a similar set of objectives, as does the State of Palestine - neither which specify advertising.

The most detailed list of objectives is that of Morocco which refers to clear information, contract terms that single out credit conditions for special mention, door-to-door and distance sales. Also listed are guarantees, after sales services and compensation for defects. Of particular note is the mention, as an objective, of the strengthening of the consumer movement. The stated principle that legislation must be interpreted in the manner most favourable to the consumer is the logical extension of the UNGCP GL 1 that addresses the imbalances in the supplier-consumer relationship.

Observation 3: These examples illustrate how UNGCP objectives - such as balancing interests of consumers and producers, promotion of business ethics, sustainable consumption, international cooperation, and development of consumer groups - all occur at various points in the MENA legislation. Their inclusion is variable and they certainly would be given more prominence if political support promoted their inclusion in an explicit set of objectives in the national legislation.

Scope: This is not widely defined in the consumer protection acts throughout the MENA regions. It is sometimes very briefly described, as in the Algerian Consumer Protection Act, but generally it is implicit in the lists of definitions. This is not just a matter of semantics or presentation. Where there is sectoral or

other specific legislation running parallel to a general consumer protection act, it is important to be clear that the consumer protection act applies. Care should be taken not to undermine specific advantages to consumers that may have been gained in sectoral legislation (particularly recent legislation).

It should be assumed that if a sector, or specific dimension of consumer protection, is simply not mentioned then it needs to be clear that principles set out in the consumer protection act do apply. This is one of the reasons why principles are important. A clear example of this is in the case of e-commerce which is not explicitly covered by many of the consumer protection acts in the MENA region (this situation is equally a global predicament). It must not be assumed that the lack of explicit references to e-commerce means that it is not covered by consumer protection law.

Recommendation 7: In the absence of specific provisions covering consumer protection - in particular sectors or forms of transaction - the principles set out in the general consumer protection acts should be presumed to apply.

Table 3 below lists the provisions of the consumer protection acts within the region as sent to the UNCTAD secretariat and contained in the Inception Report. Notably, they are heterogeneous but certain common elements can be singled out. One is that consumer protection acts in the MENA region tend to concentrate heavily on institutions to such a degree that this exceeds many other jurisdictions - especially where the membership of consumer protection Agency governing bodies would not necessarily be subjected to primary legislation in such a way. This is discussed in Section 4. One “traditional” issue that has received less attention among richer regions - but which is now growing in importance due to environmental reasons - is after sales service, which is widely emphasized in MENA. There is a heavy reliance on product safety standards but less emphasis on product liability

Table 3: Scope of consumer protection acts in MENA region

Algeria	
Law No. 09-03 of February 25 2009, on Consumer Protection and Repression of Frauds;	
Article 2. General scope: Goods and services, purchased or given, throughout consumption chain; Articles 4 to 8 on food safety; 9 to 10 on product safety; 11 to 12 on conformity to standards; 13 to 16 on guarantees and after sales service; 17 to 18 on information; 19 to 20 on moral and material interests (especially credit); 21 to 24 on consumer associations; 25 to 28 on agency inspectors; 29 to 34 on control procedures; 35 to 38 on testing laboratories; 39 to 42 on sampling; 43 to 52 on expert evidence; 53 to 67 on safeguard measures and precautionary principles; and 68 to 93 on sanctions;	
Other relevant laws:	Health Law; Veterinary Law; Phytosanitary Law; Law on Metrology; Law on Standardization.

Table 3: Scope of consumer protection acts in MENA region

Egypt	
Law No. 67 of 2006, on Consumer Protection;	
No specific scope: Article 2 on consumer rights (see Table 2); 3 on labelling; 4 on supplier information; 5 on proof of purchase; 6 on advertising; 7 to 9 on product defects and liability; 11 on instalment payments; 12 to 22 on consumer protection Agency; 23 on consumer associations; and 24 on sanctions;	
Proposed revised law of 2014;	
3 proposed new rights: Protection in distance sales; Financial services; and Cross-border sales.	
Jordan	
Law 7 2017. Consumer Protection Act;	
No specific scope: Article 3 on consumer rights (Table 2); 4 on supplier obligations; 5 on after sales service; 6 to 7 on product defects; 8 on advertising; 9 to 10 on consumer protection Council; 11 to 13 on consumer protection Directorate; 14 to 16 on Consumer associations; 17 to 18 on legal representation; 19 to 21 on product liability; 22 on unfair contracts; 23 on criminal law; 24 on consumer protection law applicable to regulated sectors; and 25 on fines.	
Industry and Trade Law;	
Maintains market surveillance, regulates and controls domestic and foreign trade, includes price specifications and so on;	
Competition Law;	
Makes sure prices of goods and services are determined according to the free market mechanism;	
Standards and Metrology Laws;	
Protect human health, safety and the environment;	
Food and drug Laws;	
Ensure food and drug safety, and quality for human consumption.	
Lebanon	
Law No. 659 of 4 February 2005, on Consumer Protection Law;	
Article 3 on consumer rights; 4 to 10 on information; 11 to 14 on advertising; 15 to 16 on special offers; 17 to 27 on fair contracts including credit; 28 to 34 on guarantees, spare parts and defects; 35 to 47 on product safety; 48 to 49 on prohibitions including metrology and counterfeiting; 51 to 59 on distance and door-to-door sales; 60 to 64 on consumer protection Council; 65 to 66 including the new Article 8 on consumer protection Directorate; 67 to 70 on consumer protection associations; 71 to 81 on directorate procedures; 82 to 104 on dispute resolution; 105 to 127 on sanctions; and 128 on the distribution of fines.	
Morocco	
Law No. 31-08, on Consumer Protection;	
Article 2. Consumers operating in personal capacity; Articles 3 to 11 on information and proof of purchase; 12 to 14 on delivery; 15 to 20 on unfair contract terms; 21 to 24 on advertising; 25 to 44 on distance sales including Article 29 on e-commerce; 45 to 52 on door-to-door sales; 53 to 56 on special offers; 57 on tied sales; 58 on pyramid sales; 59 on exploitation of vulnerabilities; 60 to 64 on lotteries; 65 to 73 on guarantees and after sales service; 74 to 111 on consumer credit; 112 to 141 on housing loans; 142 to 151 on general credit rules; 152 to 165 on consumer protection Associations; 166 to 172 on inspection procedures; and 173 to 195 on sanctions;	
Other relevant laws:	Law No. 24-09 on Security of goods and services; Law No. 28-07 on Sanitary security of foodstuffs; Law No. 09-08 on Protection of private data of physical persons.
Tunisia	
Law No. 92-117 of 7 December 1992, relating to the protection of consumers;	
No scope but definitions. Articles 3 to 10 on product safety; 11 to 14 on fair transactions, fraud and advertising; 15 to 20 on information and guarantees; 21 to 31 on agency procedures; 32 to 48 on sanctions; and 49 on expert evidence;	
Other relevant laws:	Law No. 91-64 of 29 July 1991, relating to competition and prices; Law No. 2009-69 of 12 August 2009, relating to distributive trades; Law No. 98-40 of 2 June 1998, relating to sales techniques and to commercial advertising; Law No. 98-39 of 2 June 1998, relating to credit sales; Law No. 2000-83 of 9 August 2000, relating to electronic commerce; Law No. 94-41 of 7 March 1994, relating to foreign trade; Decree/Arrêté of the Minister of Commerce of 3 September 2008, relating to labelling and presentation of pre-packaged foodstuffs; Other sectoral laws: transport, telecoms, insurance and banking.
State of Palestine	
Law No. 21-2005, Consumer Protection;	
No stated scope. Articles 4 to 6 and 23 on consumer protection Council; 7 to 14 on safety; 15 to 22 on impartiality of transactions; 24 to 26 on fair transactions and supplier obligations; 27 to 31 on sanctions; and 32 on time limit for legal action;	
Other relevant laws:	Palestinian Standards Law No. 6-2000; Public Health Law No. 20-2004.

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

provisions than throughout the European Union where strict liability is now widely accepted. This means that there are fewer requirements to prove negligence or bad faith on the part of the supplier. This issue is discussed in further detail in the parallel Guidelines to the Business Sector.

This survey of scope is too lengthy to review in detail. The specific points of interest in national legislation are set out below.

Algeria: The Consumer Protection Act sets out the powers of the consumer protection Agency and clearly refers to goods and services throughout the consumption chain. It enters into some sectoral detail regarding food safety and Articles 53 to 67 specify the precautionary principle, which remains a major issue in consumer protection worldwide and does not feature in the UNGCP. The precautionary principle (or approach) is set out in the Sanitary & Phytosanitary agreement of the WTO and allows states to take measures against particular products where there is reasonable scientific concern about the possible risks involved in consumption, or use of the product. This extends to those circumstances where the risks are uncertain.

Egypt: In Egypt, Law 67 of 2006 on Consumer Protection contains provisions on labelling and identification data. In particular, Article 4 covers registration and trademarks, and undisclosed information. It provides for the establishment of the Consumer Protection Agency - now in place.

The Consumer Protection Agency has prepared a new draft of the consumer protection Bill which has not yet been passed. The Bill extends “consumer rights” updates as well as the definition of “consumer.” The latter now incorporates small traders and artisans. Furthermore, it adds a definition of “distance sales,” including the Internet.

A potentially powerful restriction within the draft law is that advertisements may not be disseminated for any products before obtaining a license from the competent authority. In order to be granted such a license the products have to comply with Egyptian standards. The draft law increases the period for returning and replacing defective goods from 14 to 30 days. Suppliers of durable goods and vehicles are requested to provide spare parts and qualified maintenance centres during the presumptive lifecycle of the product. Distance sales providers are requested to add information that clarifies precisely what the

consumer rights include. Consumers are equally permitted to return any purchased items, having a three-day period of grace and without being obliged to give a reason. Of note, any contractual conditions judged to be “arbitrary” are to be null and void.

Jordan: A new Act on Consumer Protection was passed in early 2017. It does not enter into individual sectors but remains cross-cutting. So as to avoid any potential clashes of legislation, it contains the key clause - Article 24. Here, the scope of coverage of the consumer protection act is detailed in the following manner, “In addition to the relevant legislation, the provisions of this Law shall apply to suppliers submitted to sectoral regulatory bodies.” This is a crucial inclusion as it means that protections not explicitly listed in sectoral legislation can be invoked under the consumer protection act. This demonstrates the complementary nature and interconnectedness of horizontal and vertical legislation.²⁶

Lebanon: The Lebanese Consumer Protection Act also covers institutions and general consumer protection issues without entering into sectoral detail.

Morocco: Among the other laws related to the protection of consumers, particularly in recognition of the need for updating consumer protection, is Law No. 09-08 on the protection of private data of physical persons.

Tunisia: The Tunisian framework law is relatively brief, having been drafted when consumer protection laws were at an early stage in global terms outside of the OECD countries. Nevertheless, it is reinforced by a long list of laws and decisions relating to consumer protection, in addition to the general consumer protection Law No. 92-117 of 7 December 1992. Particularly noteworthy for this report is the Law No. 2000-83 of 9 August 2000 that relates to electronic commerce. In Tunisia, this was passed well in advance of many other countries and indeed prior to the inclusion of e-commerce in the UNGCP. There are particularly numerous sector-related laws on transport, telecommunications, insurance, banking, including the 1998 law that covers credit sales. These laws are considered to have been relatively successful in providing comprehensive consumer protection, and they were achieved by a sectoral strategy approach rather than a new generic consumer protection act.

State of Palestine: Likewise, the Palestinian Consumer Protection Act does not enter into sectoral law and is reinforced by public health and standards law.

4. INSTITUTIONAL ARCHITECTURE OF CONSUMER PROTECTION AGENCIES

4.1 STRUCTURE AND FUNCTIONS OF CONSUMER PROTECTION AGENCIES: GLOBAL PERSPECTIVE

The function of consumer protection falls within both public and private bodies and may be conferred by specific laws, or assumed by them, through virtue of their status. Below is a list of the functions that are needed to protect consumers throughout the production chain, and information on the kinds of bodies which have been developed to carry out those functions. A wide range of bodies are involved and consumer protection Agencies need to acknowledge this involvement as well as gain access to the relevant expertise that may be available. For example, when entering into the six-step process that is described in 2.3 of the OECD Toolkit.

Functions:

Mechanisms for compliance or enforcement of product safety or integrity laws should be in place, extending from the upstream production process to the retail level. Pre-emptive mechanisms could include licensing and registration, while post-market mechanisms include product recalls together with the option of resorting to the courts - if needed. These elements are to be found in MENA legislation.

Pre-market controls: The potential scope of consumer protection enforcement is vast; its priorities will always have to be set, and the work of sister bodies will need to be called upon. Not all bodies concerned with these processes need to be part of the machinery of government; indeed, they are not obliged to be wholly dedicated to consumer protection. For example, in Singapore, the international standards for goods such as ISO have to be recognized, subjected to national or regional variations, and the products regulated by specific laws, such as health or food. Significant improvements have been identified since this regulatory regime was introduced in 2011.²⁷ This was a good example of the additional incorporation of the work of bodies other than the consumer protection agencies.

In contrast, in Malaysia under the consumer protection Act 1999, the general regulator can apply standards for all goods except food and health care - even if

otherwise regulated by other laws and regulators. In other words, the consumer protection Agency could overrule sectoral regulators. In practice, very few performance standards have been set as the task is simply too vast. In anticipation of such problems, Section 21 of the Malaysian consumer protection Act imposes a “general safety requirement,” with no reference to international standards.

As a way of simplifying the problems that emerge when facing a multiplicity of statutory standards, in 1979, the European Union adopted the principle of mutual recognition. Goods produced to safety standards required in one European Union country would be deemed to satisfy standards in another importing country. The 1985 Product Liability Directive required a more harmonized procedure and introduced strict liability. The initial “minimum” harmonization evolved towards “maximum” harmonization. This has been described as shifting standards “from floor to ceiling” with mutual recognition becoming redundant if standards are converging within the European single market.²⁹ This complex issue has yet to be resolved in the MENA region and the concept of product liability is still rather circumscribed in some jurisdictions.

Post-market controls: Many jurisdictions - and some regional associations such as the Association of South-East Asian Nations (ASEAN) - have wide-ranging powers to ban products after their entry into the market, or force recalls. Even so, a survey by the ASEAN found that Member States often have no legal requirement for companies to inform the regulator in the event of a voluntary recall, unlike in Australia where such action is required.³⁰ One would not want to discourage voluntary recalls by imposing sanctions on companies that have applied them, but requirement of notification seems appropriate and could be helpful in informing consumers should the recall be reinforced and disseminated by the appropriate consumer protection Agency. Article 7 of the Egyptian 2006 Consumer Protection Act does require notification of a defect that is discovered by the supplier without specifying the concept of a voluntary recall. Likewise, the Lebanese legislation contains similar provisions.

Systems for monitoring and surveillance should be in place regarding consumer problems in the marketplace. This includes the full range of consumer

detriments - many of which might not be perceived by consumers themselves such as defective products, or unfair contract terms. Hence, the need for market/household surveys with the objective of identifying consumer problems. Many countries in the MENA region still apply price regulations for a wide range of products. This is sometimes viewed as outmoded, nevertheless, it should also be borne in mind that many jurisdictions in OECD countries regulate prices in the natural monopoly sectors - such as water or electricity - and can impose penalties on financial service providers through the use of usury laws, and also in the event of excessive pricing. All of the MENA countries studied have such mechanisms in the legislation.

Consumer redress mechanisms in the event of consumer complaints should be affordable, accessible, independent and provide prompt redress to aggrieved consumers. Mechanisms for conciliation, mediation and arbitration are useful in ensuring that consumer problems are handled effectively. Some of the MENA legislation incorporates dispute resolution mechanisms within the consumer protection Agencies. In doing so, this closely follows the UNGCP which establish the general “legitimate need” in GL 5g), and elaborate further in 14g): “fair, affordable and speedy dispute resolution and redress.” The UNGCP do not necessarily envisage state organized dispute resolution mechanisms, but neither do they rule it out. For example, GL 37 requests states to “encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases.” A range of possible options is envisaged, for example under self-regulation which includes informal and voluntary mechanisms. Not all redress mechanisms have to pass through the consumer protection agency or through the courts. One of the major forms of progress in consumer protection in recent years has been the development of alternative dispute resolution mechanisms. The recognition of such mechanisms has yet to be widely reflected in the legislation throughout the region.

Consumer education and information programmes should be made available to consumers so they can protect themselves and become responsible consumers. Consumer education may be incorporated into school curricula. Information programmes may be supported by national consumer protection programmes and can be conducted

through the media and other community activities, often with the assistance of consumer organizations with experience in this area. Most legislation in the MENA region envisages such programmes being encouraged by consumer protection Agencies and by their advisory councils. It should also be noted that there is a need to educate suppliers and manufacturers too in the requirements of consumer law and standards, and in the possibility of developing consumer friendly mechanisms for better relations. This includes, for example, complaints mechanisms.

International co-operation and networking is essential among consumer protection agencies in different countries to ensure regular exchanges on the sharing of information and reciprocal enforcements of multilateral agreements on consumer protection issues. Regional and international cooperation is also necessary to develop common positions when negotiating for standards and other measures. This is discussed in some detail in Section 4.5 below.

Institutions:

Government agencies may be departments of consumer affairs placed within ministries or independent agencies set up specifically to administer and enforce consumer protection laws. In some countries, there are also Consumer Advisory Councils which have broad-based representation and serve as a consultative mechanism to advise the Government on consumer protection policies. In several MENA countries, such councils are established by legislation with codified functions.

A major reason why multi-stakeholder advisory councils are needed is because not all matters of interest to consumers are administered by the designated consumer protection Agency. Indeed, as the South African example shows, some consumer rights do not even use the term “consumer.” Matters relating to food, health and nutrition may be managed by the Ministry of Health; consumer credit may come under the auspices of the Ministry of Finance or a Central Bank; consumer education under the Ministry of Education; matters on sustainability under the Ministry of Environment; and utilities under local, State, or federal agencies. No matter which agency is designated with the responsibility for the management of areas of interest to consumers, it is to be expected that there will be government-sponsored mechanisms for providing consultation and cooperation. Such measures will ensure that consumer interests are taken into account during the policy-making process.

Statutory/non-statutory standards bodies may be Government and non-governmental bodies established to set standards for product safety and quality control, and to issue certification marks. Most countries have national standards bodies with an autonomous status - usually affiliated to ISO - which negotiates standards between representatives of industry and other stakeholders, including consumers.

Of the countries being studied here, all are members of ISO and so have the right to sell and adopt ISO standards at national level. All the bodies participating in the MENA consumer protection programme are members of the Arab Regional Standards Body.

Ombudsmen is a term of art that was first developed in Scandinavia. In Spanish speaking countries, it is referred to as *El Defensor del Pueblo* and provides the public with information and advice on consumer rights. Equally, it assists in the settlement of disputes through mediation and arbitration. In 1974, the International Bar Association (IBA) defined it as “An office provided by the constitution or by action of the legislature or Parliament and headed by an independent high level public official who receives complaints from aggrieved persons against government agencies, officials and employers or who acts on his or her own motion, and has power to investigate, recommend corrective actions and issue reports.”

Initially, as the above quotation highlights, the Ombudsmen developed in order to deal with maladministration in public services. Since then, they have spread to the private sector - sometimes imposed by government, sometimes developed voluntarily by industry. A further variation of the model remains within the public sector but envisages a generic consumer protection remit in a given locality - Polish local government is one such example.

Through its unique role as an independent intermediary between the government and the citizen, the Ombudsman has the potential of adding significant value to the overall accountability framework of a country.³¹ This is facilitated by the Ombudsmen logging the total number of cases while taking care to safeguard confidentiality, and issuing annual reports, alerting regulators and the public to specific issues arising from the cases brought to them.

Without employing the Scandinavian term, institutions analogous to Ombudsmen exist in MENA countries, including Algeria, Jordan, Morocco, and Tunisia. They generally assume the classical role of handling

complaints regarding practices and decisions taken by public administration. In Tunisia, the *Mediateur Administratif* operates under a mandate vis-à-vis public administrations - as does the Jordanian equivalent which deals with complaints treating any “decree, procedure, practice or act of refusal by public administration.” One example of this is the publication of social security executive directives. In Morocco, the Ombudsman “*Al Waseet*” reports to the King and operates mainly in the domain of human rights - as does the Algerian Human Rights Ombudsman whose aim is “to improve relations between the administration and its citizens.”

Professional and industry associations: Professional and industry associations may conduct their own complaints handling and disciplinary proceedings against their members and develop Codes of Conduct - often in negotiation with consumer protection agencies. Aggrieved consumers may refer their problems to these mechanisms for settlement. Alternatively, some companies may have set up their own complaints handling mechanisms for consumers so that they can refer their grievances about products or services purchased. Sometimes these industry bodies are referred to as Ombudsmen. These mechanisms are discussed in the accompanying volume of Guidance to the Business Sector.

Self and co-regulation: The role of self-regulation takes in some of the functions mentioned above. The process of “registration” for liberal professions has long existed with controls that limit entry into particular professions. However, this concept has evolved as a branch of public policy as well as a form of corporate governance, and no longer simply refers to the regulation of products and services or to complaints. Attracting a wider range of stakeholders than actual companies, governments may choose to rely on such co-regulatory schemes in order to relay regulations which would otherwise be promulgated by the State. These regulatory schemes reserve powers to a) make voluntary codes compulsory; b) require industry to have codes; or c) impose or prescribe mandatory codes with the clarification that observance of codes is tantamount to legal compliance.

Consumer associations: A well-organized and widely representative group of individual consumers can become a strong contributing force to public policy. The independent consumer movement is now well recognized in many consumer protection regimes as a legitimate representative of the interests of consumers.

Thus, consumer representatives are called upon to sit in on Government-recognized committees where they voice the views of consumers. In more and more jurisdictions, consumer associations are being granted legal standing to bring cases on behalf of consumers. They can also provide consumers with independent and objective advice on products and services based on tests and surveys they have conducted. The development of consumer protection Councils is a particular feature of MENA jurisdictions, being provided for in the consumer protection acts of all the countries.

4.2 STRUCTURE AND FUNCTIONS OF CONSUMER PROTECTION AGENCIES IN THE MENA REGION

Faced with the array of functions set out in 4.1.1 above, which of them should be administered by consumer protection Agencies in particular? The UNCTAD Consumer Protection Manual lists the following:

When an agency is delegated with both rule making and administrative powers, its powers may mandate it to:

- A. Enforce consumer protection and competition laws;
- B. Register and issue licences for certain designated types of business activities;
- C. Issue administrative rules to regulate conduct of business entities and ensure protection of the consumer interest;
- D. Advise the government on appropriate measures for consumer protection;
- E. Represent the consumer interest in other intergovernmental committees;
- F. Advise consumers and businesses of their rights and obligations under the relevant consumer protection laws;
- G. Conduct, or commission, market surveys and research into consumer protection problems;
- H. Conduct or commission product testing for safety and quality and disseminate information to consumers;
- I. Manage and/or monitor the performance of consumer tribunals or other mechanisms for the mediation of consumer claims;
- J. Consult with relevant stakeholders to understand consumer issues and develop policy to address problem areas;
- K. Organize public education and information programmes independently or in collaboration with consumer organizations or business entities;
- L. Represent the national consumer interest at international negotiations on individual cases and discussions of international policy.

Not all of the above functions are adopted by all consumer protection agencies. However, most of these points would be within their potential ambit. The manual concludes: "The UNGCP show a large degree of flexibility, given differences in national traditions and geographies, with a focus more on results than on the specifics of structures. Accordingly, there is a wide range of approaches to the precise location of consumer protection within the institutional architecture of Government."

The above list raises questions of structure as there are possible risks of conflict over functions and the need to draw the distinctions between policy, adjudication and administration. As expressed in the UNCTAD Good Governance Guidelines for competition in the MENA region: "There are major differences in the structure of enforcement systems in that, in some countries, the investigative arm of the ... authority is established as a department within a Ministry, and the adjudicative arm of the authority is constituted either as a separate, collegiate body in the form of a board of commissioners or a council. It might be that certain jurisdictions differ in terms of the degree of importance they attach to awarding independence across specific functions in ... enforcement."³² Although this was applied to competition, the same issues are, nonetheless, relevant to consumer protection. The report elaborates further, stating: "The trend across most jurisdictions in both developed and developing regions is to establish ... enforcement regimes comprising separate institutions that have substantial administrative autonomy from traditionally vertically-integrated ministries. This is the case in most developed economies as well as in the majority of developing countries and economies in transition."

One contrast between competition and consumer protection is that the latter covers a wider field in terms of sectors, transactions and legislation.

Table 4: Jurisdiction and powers of Consumer Protection Agencies in the MENA region

Algeria
Law No. 09-03 of February 25 2009, on Consumer Protection and Repression of Frauds;
Article 24. National council – powers and members unspecified; Article 25. Consumer Protection Agency staff pursue infractions covered; Specific judicial authorisation required; Testing for product conformity, inspection, including frontier controls; Proper records of inspections; Agents 24/7 access to premises; Authorised laboratories with accreditation; Samples; Application of precautionary measures; Fines enforced by courts.
Egypt
Law No. 67 of 2006, on Consumer Protection;
Article 12. Consumer Protection Agency “a public independent legal entity, affiliated to the competent minister,” which “may have branches or offices in the governorates.” Functions to a) set work plans and programmes to protect consumers’ rights; b) receive and investigate complaints; c) coordinate with a state’s various authorities to apply the law; d) study suggestions and recommendations sent to the Agency.
Proposed revised law 2014;
Functions of Consumer Protection Agency: Receive complaints; Technical support to ministries; Support and review NGOs in consumer protection; Cooperate with regulators.
New Egyptian Constitution, 2014;
Article 27 maintains the legal framework of the Consumer Protection Agency.
Jordan
Law No. 7 of 2017, on Consumer Protection Act;
Article 9. Consumer Protection Council will be formed as directed by the minister of Trade, Industry and Supply. Directorate responsible for market surveillance, receiving complaints and informing relevant sectoral authorities. Staff “have the status of the judicial police,” with powers of entry and inspection.
Lebanon
Law No. 659 of 4 February 2005, on Consumer Protection Law;
Article 61. Consumer Protection Council; Article 63. Consumer Protection Directorate in the Ministry of Economic Development and Trade. Directorate scrutinizes advertising and enforces correction; Weights and measures; Consumer contracts; Testing goods at accredited laboratories; Suspension of sale if necessary, applying precautionary principles. Article 60. National consumer protection council may make proposals. New Article 8. Directorate ascertains quality and safety; Controls prices; Prepares consumer education materials; Conducts research. Article 82. Dispute-settlement mechanism; Mediator appointed by Minister. Article 128. Fines and penalties applied by courts but inspectors can share in the proceeds, including when not commissioned.
Morocco
Law No. 31-08, on Consumer Protection;
Department for Consumer Protection in Ministry of Investment, trade and digital economy. Investigators in 29 provincial delegations. Local market surveillance inspectors and control unit for merchant websites. Article 18. Price threshold reference to sectoral regulators.
Tunisia
Law No. 92-117 of 7 December 1992, relating to the protection of consumers;
Article 15. Conseil national de protection du consommateur meets biannually at initiative of chair, presided by the Ministere du commerce et de l’artisanat. Secretariat, Ministry of Trade, Directorate of Quality and consumer protection. Inspectorate powers of entry and inspection.
State of Palestine
Law No. 21-2005, on Consumer Protection;
Article 4. Consumer Protection council. Council has executive authority. Article 5. 1. Liaison between all bodies concerned with the protection of consumers; 2. Supporting the role of consumers in the national economy; 3. Participating in policy-making regarding safety and quality; 4. Adopting educational programmes including those on the environment; 5. Developing special plans and programmes related to consumer rights; 6. Following up governmental policies and monitoring competent authorities; 7. Taking part in organizations with similar objectives on the Arab and international levels; 8. Monopoly control with recommendations to ministry; 9. Standards and quality of goods;
Ministry of National Economy competent authority, including listing consumer protection associations. Also monitoring Israeli products from settlements; combating counterfeiting; courts have executive powers.

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

Furthermore, many sectoral regulators also have to care for consumers, leading to a certain dispersion of responsibility. Many transactions in the consumer protection area are very small compared with the kinds of cases that are usually brought to a competition authority - and minor transgressions are more likely to be dealt with by locally based inspectorates. Nevertheless, and discussed below, the global trend is towards a higher public profile for consumer protection agencies - even within Ministries - and the development of autonomous communication channels to the public.

Before proceeding to recommendations, the question is: how do the functions of the consumer protection Agencies in the MENA region compare to the consensus list of functions set out above, and what steps are taken regarding independent adjudication?

The functions listed above and in the UNCTAD manual all feature in the work of consumer protection agencies in the region. The least evident from perusal of the consumer protection Acts is the final one detailing international cooperation. However, this does feature through the MENA programme - even though it is not prominent in the legislation.

The predominant structure in the region is for Member States to establish a network of locally based inspectorates staffed by government functionaries who are often based in local Governorates, and under the direction of the relevant Ministry. The functionaries of the consumer protection Agencies usually have the powers to enter and search business premises and impose sanctions, or seek their imposition through the courts. This is the geographical model that has developed under Francophone jurisdictions – a national service with local presence as with the French *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (DGCCRF).

Typical legislation allows for the ministry to be advised by a council with membership drawn from business and from consumer associations, but also from the relevant “sister” Ministries responsible for the individual product sectors. So, there are separate identities for Council and Directorate. The least evident in this regard - judging from the consumer protection act - is the State of Palestine where the consumer protection council seems to have executive authority, as do the courts to some extent. The role of the “competent ministry” (Ministry of National Economy) is not spelt out clearly in terms of market surveillance.

Even where the roles of the Council and the Directorate are clear, there is still a potential confusion regarding the role of government members. It is worth considering whether ministry participants should be observers rather than full members of such advisory Councils. This would at least mitigate the paradox of ministry representatives giving so-called “independent” advice to bodies on which they serve as full members. This stated, it is striking to see the scope for consultation structures, although not all of them are functioning as yet. Jordan, for example, is in the process of setting up its CPC and Algeria is quoted in the *Inception Report* as seeking to establish the national council. The attendance of the relevant sectoral ministries allows for face-to-face consultation between stakeholders and government and that, by all accounts, is an important forum. Other forums for exchange of ideas including business and consumers - as outlined in the *Inception Report* - involve the development of partnership committees with the private sector, and often along sectoral lines.

One matter of potential concern is the scope for boards to get involved in the jurisdiction of individual cases. We have noted an ambiguity in the Palestinian legislation. This also seems to be implied by the yet to be enacted provisions for the Board of the Egyptian consumer protection Agency to issue mandatory resolutions regarding any disputes between businesses and consumers. One would not usually expect such a dispute resolution to be enacted at the level of the board. In contrast, considerations made by the board that concern actual issues raised by a case seem relevant as opposed to any decisions being made on a case.

Observation 4: The development of multi-stakeholder models for consultation with consumer protection agencies supports the belief that the inclusive spirit of the UNGCP is being recognized throughout the MENA region. However, there are risks regarding the overlap of advisory and executive functions and of executive and adjudication functions.

Recommendation 8: Attention should be paid to the necessary separation of roles in the development of agency structures while maintaining the involvement of a wide range of stakeholders in advisory and consultative roles.

4.3 RESOURCES AND ACCOUNTABILITY

Any mention of the annual reports in the legislation and budgets of the consumer protection Agencies in the MENA region is scarce. This may be due to the common status of the agencies as directorates within ministries. Ministerial agencies seem to lack public visibility and sometimes less than other consumer organizations such as the vibrant consumer associations in Morocco, Algeria and the Tunisian *Institut National de la Consommation*.

The global trend is for greater autonomy, not so much in terms of administrative status – after all, the French DGCCRF is part of the Ministry of Economy, Industry and Digital affairs - but in terms of public profile and a degree of operational autonomy. Some public bodies are set up as consumer councils funded by government, but without enforcement powers. This is true of the consumer councils for Fiji and Hong Kong, China - both are very effective and high profile institutions that handle complaints.

One concern about budgets that relates to the practice in some countries is the partial funding of consumer protection Agencies from the proceeds of fines imposed by their inspectors in the field. Obviously, this raises several issues, one of which is the inevitable need that this generates for a certain number of fines to be levied. The Governance Guide on competition states, for example, “While a few countries award their ... authority a portion of the fines they collect in enforcement action, this is considered with suspicion in most countries, as this could give the ... authority incentive to take inappropriate actions to impose heavy fines in order to increase its budget.”³³ It is quite conceivable that if a government wanted to shift its strategy away from penal sanctions and towards adverse publicity, for example, then it may be inhibited from doing so because of any loss of revenue.

A further point of concern is the risk of corruption if inspectors who - by gaining income from the imposition of fines - have a greater incentive to levy fines when the actual aim of the service should be to reduce the infractions. This can deteriorate into imposing “informal” fines or even asking for payment in return for not pursuing cases. This scenario has been known to happen in some jurisdictions around the world. This is not to detract from the need for penalties but rather to highlight the general worry about the link between penalties and institutional funding, which could have the effect of discouraging other models.

Observation 5: There is a concern, also expressed in the competition Guidance, regarding the financing of consumer protection agencies from fines.

Recommendation 9: Reiterating the finding stated within the guidance document on competition in MENA: “The role of the parent ministry and/or the Ministry of Finance, Treasury and/or the auditor general, and ultimately Parliament, is especially important when it comes to accountability in the budgetary process...In some countries, a detailed operational strategy is an additional requirement tied to the authority’s budget allocation.” In addition, such transparency is also important as an aid to constructive involvement of consumer associations and through them, the general body of consumers.

The UNCTAD Manual concludes its chapter on consumer protection Agencies as follows: “There is no single best model for consumer protection agencies, as history and geography are legitimate influences on structures. Nevertheless, certain trends can be discerned ... the autonomous functioning of a consumer protection agency allows it to develop a high public profile which brings consumers into contact and allows their experience to bear directly on policy. In this regard, a local presence of some kind is a big advantage, as many markets remain local, especially for the poor, despite the sophistication of modern electronic commercial relations. It is interesting to note that many of the agencies located within ministries have high public profiles, as do others...which have a more autonomous position in formal or legal terms. The precise form of the institutional architecture does not seem to be the determining factor in public recognition – what matters is that such recognition is possible.”

Recommendation 10: Consumer Protection Agencies, whether acting within Ministries or more autonomously, should develop public profiles through reporting on their own activities and on the “state of the nation” in consumer terms. As is increasingly happening worldwide - and in the case of Ombudsmen - they should report on the issues emerging from analysis of the problems being brought to their attention by their complaints handling service. Then, they should have the right to propose administrative or regulatory solutions. This can happen either through the advisory councils to which they report or in their own right. In any event, such reports which may take the form of presentation of options ought to be made public.

4.4 STAKEHOLDER PARTICIPATION IN CONSUMER PROTECTION

As Table 5 sets out below, the participation of stakeholders in the work of consumer protection agencies in the MENA region appears to be very developed and in some jurisdictions it is explicitly written into the Consumer Protection Acts. This is particularly true for Egypt, Tunisia and Jordan where

there are very precise allocations of places in the advisory commissions to the consumer protection Agency. The membership of these councils includes representatives of ministries as well as non-governmental organizations such as consumer associations, businesses, industry (for example the Chambers of Commerce), and professional associations.

Table 5: Membership of consumer protection agencies and related institutions

Algeria
Law No. 09-03 of Feb 25, 2009, on Consumer Protection and Repression of Frauds;
Article 24. National Council for consumer protection to make policy proposals; set out in same section of act (Ch. 7) as consumer protection Associations. Membership and competences set out in regulation.
Egypt
Law No. 67 of 2006, on Consumer Protection;
Article 13. Agency Board of Directors, 15 members nominated by minister, 2 from the Ministry of Trade and Industry; VP of state council; 2 from consumer associations; 1 from union of consumer associations; 1 from consumer co-operatives; 1 from Chamber of Commerce; 1 from the Association of Egyptian Industry; 3 members with related experience; 3-year terms, renewable once.
Jordan
Law No. 7 2017, on Consumer Protection Act;
Article 9A. Consumer Protection Council to be chaired by minister. Members comprise the Secretary General of Ministry; the Director General of Standards Institute; the Director General of Food and Drugs Agency; Ministry of Environment; Ministry of Tourism; Amman Municipality; Jordan Chamber of Commerce; Jordan Chamber of Industry; Chair of Union of Consumer Protection Associations; Representative of consumer protection Associations. Higher Education Institutions; Federation of Farmers; 2 representatives of the private sector; 4 categories, 2-year terms, renewable once.
Lebanon
Law of 4 Feb 2005, on Consumer Protection Law;
Article 60. Under Ministry of Economy and Trade; Director General of Economy and Trade, Industry, Agriculture, Public Health, Environment, Tourism, Telecoms, Information, Education; Chair of Institution of Standards and Metrology; Chambers of Commerce, Industry and Agriculture, Industrialists Association, Syndicate of Advertising Agencies, 2 representatives of consumer protection Associations appointed by Minister.
Morocco
Law No. 31-08, on Consumer Protection;
Article 204. Independent consultative council; Article 205. Membership and role fixed by legislation and described as “recently created” (in 2015); Of note: judicial role of National Federation of Consumer Associations potentially important – see Table 6 below.
Tunisia
Law No. 92-117 of 7 December 1992, relating to the protection of consumers;
Article 15. Conseil National de Consommation envisaged; Safety information and quality; Functions and membership fixed by decree. CNC membership under law of 2004: 13 Ministries represented; 5 scientific institutes; 15 national organizations.
State of Palestine
Law No. 21-2005, on Consumer Protection;
Listed in definitions: Article 4. Of the consumer protection Act: members of CPC: Ministers of Economy, Finance, Health, Agriculture, Environment Authority, Standards Institute, professional associations including Chamber of Commerce, consumer associations (5 representatives); Power of request to Minister.

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

The consumer protection agency, as a Directorate of the competent Ministry, may well be under an obligation to consult with other government departments. This is institutionalized where Ministries are members of the consumer protection councils, but that may not be the most appropriate or effective forum for consultation about specific issues, particularly those revolving around investigation for serious breaches of statutes.

Specific mention is often made of particular entities. For example, the Lebanese Consumer Protection Act mandates consultation with the accreditation council (for testing bodies), the Palestinian legislation refers to the standards institution with a view to setting “binding technical instructions.” Likewise, Tunisia mandates cooperation with the national standards body, the national council against counterfeiting, and the national council on services.

Recommendation 11: It should not be necessary to mandate government ministries to consult or to be consulted by the consumer protection agency. It should go without saying that as fellow agencies of government, each body should have the freedom and the duty to consult and be consulted as appropriate. The consumer protection agency, covering as it does the entire consumer landscape, should have this right clearly stated in its mandate. However, it should not be necessary to make detailed provision such as a given number of meetings per year, which could easily become a ritualistic series of exchanges rather than a substantive agenda.

Role of consumer associations: Table 6 below sets out the relevant articles of the national consumer protection Acts governing the establishment of consumer associations and the rights and functions. The various consumer protection Acts bestow high levels of recognition on associations in the MENA region - all of them recognizing their right to form and be registered. Registration requires a degree of supervision, including the possibility of non-registration or deregistration. There are rules governing registration such as a non-commercial character and non-political aims - in the sense of not being linked to specific political parties. Regarding these conditions, there needs to be a degree of freedom. For example, it is to be expected that consumer associations may have activities with a revenue raising element such as publication. However, it must operate within a non-profit general framework that is widely accepted as normal practice such as under the rules of Consumers

International - to which many consumer associations affiliate. Equally, it is inevitable that discussions on policy will involve some engagement with the political process and indeed, consumer associations may be expected to be partisan on behalf of consumers without aligning with a party. These issues can be delicate.

In some cases, financial support is given to consumer associations by government. Equally, there is the same concern about revenue from fines in the case of consumer associations - as expressed above in the case of consumer protection agencies. Government support for consumer associations is widely accepted worldwide, but financing that is specifically lined to the proceeds of fines can have a perverse effect in that it pushes organizations towards the pursuit of judicial solutions. It is to be welcomed that associations are granted *locus standi* (legal standing), thus enabling them to trigger judicial processes and to represent consumers in legal forums - as is commonly the case in the MENA region. But it is also of concern that alternative dispute resolution (ADR) mechanisms are not being developed to the extent of countries elsewhere in the world. While we cannot clearly establish cause and effect, there is an obvious risk that if consumer associations were to re-orientate their efforts towards ADR rather than the courts, then this may result in reduced revenue from fines. Even more tenuous is the risk that if the consumer protection agencies rely on the courts rather than encourage ADR then that might affect not only the consumer protection agency revenue, but consumer associations’ revenue to the extent that it is linked to fine revenue allocated to the agencies.

Observation 6: The independence of consumer associations is a vital principle listed in the UNGCP under the Objectives (GL 1e). Associations such as the “freedom to form” are listed in the “legitimate needs” (GL 5h). There are, nevertheless, various potential controls that can be exercised over them by government. These may be financial such as the prospect of withdrawal of government funding, or legal through the registration process, or judicial via the risk of loss of locus standi. It is highly positive that locus standi is generally legislated. Registration and funding could conceivably lead to pressure (or perceived pressure) to follow government directives. However, MENA governments have already undertaken moves to respect their independence through their endorsement of the UNGCP Guidelines cited above.

Consumer education: One vital form of communication between consumer protection Agencies and consumers is through consumer education, whose importance is recognized by the UNGCP GL 5f), and the role of government agencies and consumer associations which is cited in GL 42. Presented below in Box 1 are examples of consumer education programmes. Such programmes can have the double benefit of better preparing consumers for the marketplace and also raising the profile of the consumer protection agency. A further potential benefit is that consumer associations can often be a major vector of consumer education,

and so their participation can be an additional form of cooperation with government.

As a word of caution, we should warn against excessive expectations of consumer education. As experienced, it did not prevent the financial crisis from developing in the rich economies. The 2005 OECD *Recommendations on Principles and Good Practices for Financial Education and Awareness* warned that “the promotion of financial education should not be substituted for financial regulation, which is essential to protect consumers (for instance against

Table 6: Rights and functions of consumer associations

Country
Algeria
Law No. 09-03 of February 25 2009, on Consumer Protection and Repression of Frauds; Article 21. Legal registration; Article 22. Judicial access; Article 23. Group representation; Article 24. National council.
Egypt
Law No. 67 of 2006, on Consumer Protection; Listed in definitions: Article 2. Right to join organisations, councils and committees; Article 23. Legal actions and surveys on price, quality, information, violations of the above, reporting of problems to CPA; Spreading “consumer culture,” no revenue from suppliers.
Jordan
Law No. 7 2017, on Consumer Protection Act; Articles 13 and 14. Protection and supervision of consumer protection Associations; Article 15. Functions: Education/awareness; Advice and guidance; Receive complaints and take actions; Conduct or intervene in litigation; Represent consumers in bodies taking complaints against suppliers; Survey prices, quality, reliability; Report to relevant authorities; Consumer/producer liaison and dispute resolution; Research databases; Article 16. Union of Consumer Associations: Coordination; Supervision of interests; Represent associations; “rationalization of consumption”; Strengthen links with suppliers; Regional and international cooperation; Article 17. Locus to file lawsuits individually or collectively.
Lebanon
Law of 4 February 2005, on Consumer Protection Law; Listed in definitions: Non-commercial, non-political; Education, advice and guidance of consumers, representation before private and official authorities; Article 67. Functions: as above plus testing, litigation and media; Article 3. Membership listed as consumer right; Article 69. Special register; Article 70. Annual report and budget; Article 97. Participation in disputes; Article 128. Receive proportion of fine revenue (common fund).
Morocco
Law No. 31-08, on Consumer Protection; Article 152. Non-profit, non-commercial (no advertising, no business funding), non-political; Article 154. Registration; Article 155. National federation recognized by decree; Article 156. National fund derived from fines, general taxes and donations and held by ministry, to help development of associations and “culture consumériste”; Article 157. National federation with judicial locus, individual associations with authorization; Article 158. Group action only if authorized in writing by consumer, very detailed provisions follow; Three federations listed – regionally based; 60 or more associations. Fondation Marocaine du Consumérisme reported in 2015.
Tunisia
Law No. 92-117 of 7 December 1992, relating to the protection of consumers; Represented on national council; Organization for defence of the consumer; Association 20 million consommateurs; Tunisian association for information of consumer.
State of Palestine
Law No. 21-2005, on Consumer Protection Listed in definitions: Non-profit, non-commercial, non-political; Representation before official and non-official bodies; Article 3. Listed in consumer rights, formation and litigation; Article 4. Five members on national council; Article 6. National register with Ministry of National Economy;

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

fraud) and which financial education is expected to complement.”³⁴ A World Bank study reinforced that view in 2010 and especially in the context of transitional economies, writing “Financial education cannot substitute for adequate financial regulation.”³⁵

Most consumers do not look at consumer protection provisions and if they do it is only when they are making a specific transaction. The consumer’s attention is more focused when there is a specific activity under consideration. Therefore, targeted transaction advice can be helpful but some consumers may

never become experts. It must also be considered that many consumers may have reading difficulties. Transactions are often carried out on small computers and mobile phones, thus increasing the difficulties of comprehension.

Recommendation 12: Consumer Protection Agencies should take care not to try to transfer the burden of consumer protection to consumers while also expecting them to be experts. The regulatory bodies still have an important job to do in guarding against abusive business practices.

Box 1: Consumer education programmes in the MENA region

Algeria: A Guide for the Algerian Consumer has been produced by the consumer protection Directorate as well as more specialist ones such as the Guide on the cold chain, handbooks on telephones and advertisements. Radio and TV channels issue regular programs for consumers. Workshops and seminars are also held at local and national levels, and in cooperation with consumer and professional associations.

Egypt: The Consumer Protection Agency has developed a public outreach programme in coordination with the media, NGOs, universities, women’s councils and regulatory stakeholders. Since 2015, the consumer protection Agency advocates - including consumer rights in school curricula - that main consumer rights and obligations are incorporated in all primary school curricula. NGOs work together with the consumer protection Agency, and in partnership with the Global Environment Facility, in an Energy Efficiency Project in order to raise public awareness of sustainable energy and misleading advertisements of LED lamps. Television and radio talk shows frequently invite the Consumer Protection Agency Chairman and senior staff to discuss consumer protection issues and the Consumer Protection Agency regularly briefs around 40 journalists. A radio feature was prepared by Consumer Protection Agency staff and produced by Arab-Voice Radio during Ramadan to raise public awareness of fraudulent practices and misleading advertisements.

Lebanon: As part of the consumer protection Directorate’s awareness campaign, more than 300 presentations on consumer rights and duties inside schools and universities were made during the three years leading up to 2015. The consumer protection Directorate launched a programme for student volunteers to be part of its surveillance patrols and assist inspectors. The Directorate also designed several inter-university competitions to educate students about issues related to consumer protection, such as food safety. To create awareness about its consumer protection services, the consumer protection Directorate launched a Mobile Application, Facebook page and Twitter account titled “Consumer Protection Lebanon.” They then sent short message service (sms text) notifications to all mobile telephones in order to publicize the Directorate’s hotline number and its mobile application. Other advocacy events included the yearly preparation of features about consumer protection and then screening these on all TV stations, conducting training for businesses about the application of by-laws, and the printing and distribution of multiple awareness brochures.

Morocco: Each year on March 15, the National Consumer Day is celebrated in conjunction with the World Consumer Rights Day. The Consumer Protection website is constantly updated with practical information and news as well as reminders of consumer rights. Support is also provided to the consumer movement so as to assist them in their efforts of advising, educating and enlightening consumers.

State of Palestine: The introduction of a computerized system at the Consumer Directorate has permitted various media awareness campaigns to evolve and these provide protection for many of the commercial agents while also facilitating consumer protection in the services sector as well as new sectors. At the same time, this development also addresses the issue of products from settlements.

Source: UNCTAD.

4.5 INTERNATIONAL COOPERATION

The United Nations General Assembly Resolution 70/186 on Consumer Protection of 22 December 2015 recognizes the value of international cooperation. Mentioned in the preamble is “coordination and partnership with established multilateral organizations,”³⁶ and Guideline 1 explains that the aim of the UNGCP is “to further international cooperation in the field of consumer protection.”

Section VI of the UNGCP on International Cooperation was significantly expanded as a result of the revision process. Guideline 79 exhorts Member States to cooperate in exchanging information on policy and measures taken on testing, and on consumer information and education. Guideline 80 calls for strengthened information links regarding banned, withdrawn or restricted products - which is vital for consumer safety. Guideline 81 asks for work towards ensuring that differences between countries in quality of products do not become detrimental - a matter of judgment that is contestable. Guideline 82 calls for cooperation on cross-border fraud while also entering the caveat made in Guideline 83 that national consumer protection agencies retain authority. This implies that States may need to “avoid interference” in the work of consumer protection agencies in other jurisdictions. Guideline 85 envisages bilateral and multilateral arrangements. Guideline 88 states that national authority to investigate and share information should extend to cooperation on judicial and inter-agency enforcement with foreign counterparts. In other sections, the need for collaboration between Member States in cross-border cases is specifically mentioned. Guideline 65 covers the new sections on electronic commerce; GL 68 on financial services; and GL 78 details tourism.

In Section VII, the UNGCP mandate UNCTAD - in collaboration with the Intergovernmental Group of Experts on consumer protection law and policy (IGE) - to carry out various cooperation activities. These involve reviewing and advising member States on consumer protection laws and policies, conducting training and capacity-building activities on consumer protection issues for member States, and supporting regional and multilateral initiatives. The UNCTAD *Implementation Report* (2013) points to a wide variety of cooperation initiatives between member States.³⁷ It lists several bilateral cooperation agreements, usually comprising exchanges of information and capacity-building activities.

One particular issue remains unresolved concerning cross-border consumer protection. Resolution 70/186, mentioned above, refers explicitly to this when it declares

that “certain consumer protection issues, such as applicable law and jurisdiction, may be addressed most effectively through international consultation and cooperation”. The phrasing “applicable law and jurisdiction” does not appear in the body of the actual Guidelines, although GL 39 calls for access to justice and redress mechanisms, particularly in cross-border disputes, to be enhanced. The OECD Guidelines on e-commerce paragraph 54 vi) - which the UNGCP reference - ask Governments to “consider the role of applicable law and jurisdiction in enhancing consumer trust in e-commerce.”³⁸

Guideline 90 of the UNGCP refers to the OECD Guidelines for protecting consumers from fraudulent and deceptive commercial practices across borders. In paragraph III. A) the avoidance of jurisdictional conflict is mentioned in these terms, “Member countries should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices recognizing that cooperation on particular investigations or cases remains within the discretion of the Consumer Protection Enforcement Agency being asked to cooperate.”³⁹ There are limits as to how far cross-border transactions should be prioritized by consumer protection agencies over “domestic” ones. But as e-commerce expands and brings with it more retail consumer transactions, this issue can only increase in importance. It is worrying, therefore, that so few consumer protection Acts in the MENA region pay attention to e-commerce. This is elaborated on below.

Given the lack of progress on applicable law and jurisdiction at global levels, regional efforts are being made. The International Law Association (ILA) has included the “most favourable protection” principle among its International Principles on Consumer Protection - as agreed by the ILA in 2012.⁴⁰ The principle states: “It is desirable to develop standards and to apply rules of private international law that entitle consumers to take advantage of the most favourable consumer protection.”

Article 4 of the Treaty of MERCOSUR (the South American common market) provides four alternatives for the applicable law, namely the place of consumer’s domicile; the place of conclusion/execution of contract; the headquarters of the supplier; and giving parties the right to choose. In the absence of agreed choice, consumer’s domicile is the default applicable law as it is considered to be the most favourable to the consumer’s interest.⁴¹ In China, the recently revised Consumer Protection Act (Rev. 2013-Art 42) provides for the jurisdiction of habitual residence to be assumed, except when the supplier has no business operation in the consumer’s country of residence (as is frequently the case with tourists).⁴²

It is not possible to establish a definitive answer on this legal issue. However, the UNCTAD Consumer Protection Manual strongly suggests that the current route to international consumer protection passes by way of institutional, rather than judicial, solutions. This is not only because of the intrinsic difficulty of filing judicial cases across borders, but also because there are no definitive inter-agency cooperation agreements of a judicial nature. In the case of tourism and international visits there is a choice between quick and basic dispute resolution in the country of destination - that may involve some relatively non-judicial procedures such as alternative dispute resolution - or protracted long-distance litigation with little guarantee of success. The former route seems to be prevailing and existence of practical arrangements between consumer protection agencies represents a great improvement in this regard. One might hope that MENA, with its moves towards regional cooperation, might make similar progress even without having to make legal or judicial commitments.

Consumer Protection Alert Systems: Some sophisticated mechanisms have been developed to alert consumer protection agencies to dangerous products and dishonest business practices across borders. The International Consumer Protection and Enforcement Network (ICPEN) is composed of organizations in over 50 countries. They aim to share information about cross-border commercial activities that may result in consumer detriment, and to encourage global cooperation among law enforcement agencies. While the membership is predominantly from OECD countries, the reach covers all regions, including Egypt among the project countries, neighbouring Saudi Arabia and Turkey (which holds the presidency at the time of writing).

ICPEN runs education campaigns such as the annual Fraud Prevention Month and it carries out the annual Internet Sweep which searches for websites that may be defrauding consumers. The sweep is described by the UNCTAD *Implementation Report* as administering “parallel and coordinated law enforcement actions.” Such actions signal the existence of a global law enforcement network and enable pro-active enforcement. ICPEN aims to enable cross-border e-commerce complaints “through means other than formal legal action,” and distributes incoming complaints to national consumer protection agencies.

Another regional example of inter-agency cooperation is the European Commission’s rapid alert system for dangerous non-food products, RAPEX. The Commission publishes a weekly overview of the alerts on products reported

by the national authorities. They include information on the dangerous products found, the identified risks and the measures taken in the notifying country in order to prevent, or restrict their marketing or use. Measures can be ordered by national authorities (compulsory), or be taken directly by producers and distributors (voluntary).

The OECD hosts the Global Recalls Portal which is an online tool containing regularly updated information on consumer product recalls issued by jurisdictions across the world - and not limited to the OECD countries. The portal includes information on mandatory and voluntary consumer product recalls which were issued by a governmental body and were made publicly available. Consumers and businesses have access to the portal and global coverage is envisaged eventually.⁴³ The OECD portal will also be of added value to countries which do not have an electronic system on data recalls as it can be easily adapted, customized and used in their jurisdictions. The means are, therefore, open to MENA countries to establish links internationally in order to protect their consumers against dangerous and dishonest practices across borders. This includes abuses in the home country that may be, as yet, undetected by its consumer protection Agency.

As a service to individual consumers, the European Union has also developed the network of European Consumer Centres with a presence in all of the 28 Member States - including Norway and Iceland. The centres assist consumers with a free service offering cross-border mediation, advice on matters such as judicial procedures or dispute resolution, and they have the capacity to produce policy reports. Although often seen as a service for tourists, the remit of the centres applies to a wide general public, taking in all cross-border disputes between consumers and service providers. By 2015, they were receiving 100,000 contacts from consumers per annum, including 40,000 complaints with 30,000 being referred to national consumer protection agencies. Again practical action, not necessarily requiring litigation, follows the institutional arrangements.

Recommendation 13: There is much that can be done by consumer protection agencies without first requiring legislation. In many cases, an enquiry or a warning may be enough to deter further malpractice. Cross-border legal action may not be necessary if the consumer protection agencies in both countries can work in parallel. Jurisdictions in the MENA region are encouraged to explore the above initiatives with a view to further their cooperation.

5. CONCLUSIONS: CHALLENGES TO CONSUMER PROTECTION IN THE MENA REGION

5.1 FEEDBACK FROM THE REGION

An *Inception Report* was prepared by the UNCTAD secretariat on the basis of information supplied by member countries at the outset of the programme in 2015. One section was devoted to asking the member States what were the greatest challenges that they faced. Some survey evidence was also gathered on the basis of questionnaires. Some of the concerns that were listed by colleagues in the member States are synthesized below. They divide roughly into matters of resources, law and the need for widespread input into the policymaking process.

Regarding consultation, there was wide acceptance of the principle of collegiality and inclusion in the region. For example, the Algerian Consumer Protection Agency clarified that “Consumer and professional associations should be encouraged to maintain and reinforce links among themselves and ensure exchange of information takes place between enterprises and consumers, for the benefit of the market.” Jordan wanted to “promote stakeholders” participation, including the involvement of consumers themselves, stating that “there is need for a voice to represent the consumers.” Tunisia was particularly detailed regarding:

- Developing civil society’s role as a means of bringing forward proposals, support and lobbying, through increased technical assistance;
- Increasing civil society’s role in councils and decision-making bodies;
- Encouraging specialization of consumer protection associations (such as banking, telecoms, et cetera).

This was followed by a highly specific recommendation to improve the resources of the National Consumer Institute, the INC. In two other countries, respondents suggested that consumer associations were often better informed than the functionaries and even regulators, presumably referring to their knowledge of what was happening in the “real” market. There seemed to be a welcoming attitude towards civil society participation and support for its increased professionalization and technical competence.

There were mentions of the need for ADR from Tunisian and Algerian respondents, the latter in the context of public utilities, where terms and conditions of supply were occasionally problematic. Reference was made to the need to speed up adjudications in Morocco, whereas in the State of Palestine, the lack of enforcement of court judgments was considered problematic. As far as the direct needs of consumers were concerned, several respondents referred to the urgent need to tackle access to essential goods and services for the lower income groups of society. Sectors marked out for attention were supermarkets, especially in Francophone North Africa, and utilities such as energy.

A shortcoming widely encountered around the world was also reported in this North African region, namely the need to enforce existing laws, apply standards and to raise the capacity of the agency staff. There was, however, relatively little call for new legislation apart from Egypt where the Consumer Protection Agency sought the application of the recently passed Consumer Protection Act 2014. An Algerian respondent wanted to see the application of the 2011 decree setting up quality inspectorates; a Tunisian respondent looked forward to the application of the new frameworks for food safety and industrial safety, and the adoption of more sophisticated risk management. Egypt also mentioned these two issues and the need for an “early warning” system regarding dangerous products. Overall, product safety was certainly widely mentioned.

Several respondents drew attention to business’s greater knowledge of competition law than consumer protection law. This is somewhat counter-intuitive as one might have hoped that having face-to-face contact with consumers might make business more responsive to consumer needs.

The respondents from the region were self-critical and open to ideas. While there were few calls for legislation, there was recognition of the need to apply the current law and for improved professional capacity - not only for consumer protection agency staff but also for consumer associations who were universally seen as having a contribution to make.

Below, we set out some salient issues that emerged and that are reflected in the new version of the UNGCP. To some extent, they meet the need for “future proofing” of consumer protection as the market place changes.

5.2 FUTURE ISSUES

As indicated in Section 2, there are four new “legitimate needs” in the 2015 publication of the UNGCP. As of yet, they are not very influential in consumer protection law and policy in the MENA region. They are briefly considered below.

5.2.1 Access to essential goods and services and vulnerable consumers

The first two “legitimate needs” listed in UNGCP GL 5 are: a) “Access by consumers to essential goods and services”; and b) “The protection of vulnerable and disadvantaged consumers.” The General Assembly resolution on Consumer Protection, which adopts the UNGCP, further reinforces the importance of these two legitimate needs when referencing the SDGs: “recalling ... in particular in the pursuit of development and the eradication of poverty.”⁴⁴ Particularly relevant Sustainable Development Goals here are: Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture; Goal 6. Ensure availability and sustainable management of water and sanitation for all; Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all; and Goal 12. Ensure sustainable consumption and production patterns.⁴⁵

Economically disadvantaged consumers are clearly the most lacking in access to essential goods and services and also the most vulnerable in the market place. Their needs tend not to be dealt with by consumer protection agencies for two reasons. Firstly, the consumer protection policy tends to focus on transactions and the poorest sectors of society may be outside of this framework. For example, there is a problem of “non-consumers” who are not connected to water and electricity networks. Secondly, the ministries that deal with vital goods and services have their own legal and administrative regimes, operating separately from consumer protection agencies. The consequence may be that consumer protection agencies tend not to deal with these vital services and the sectoral ministries lack a consumer protection outlook.

This is a worldwide issue and, therefore, not peculiar to the MENA region. Furthermore, the MENA countries are performing remarkably well in trying to deliver vital services to the many displaced and traumatised people following the recent disruptions. Given the emergency conditions under which governments have to act,

it may seem superficial to talk of consumer rights. Even so, many temporary settlements have a way of becoming more permanent and existing settlements get renewed. Under such difficult circumstances, these issues of access to, and delivery of, vital goods and services develop a more permanent character. Nevertheless, consumer protection principles may still have something to offer and our recommendation is, therefore, posed rather tentatively:

Recommendation 14: Consideration could be given to applying wider consumer policy and the UNGCP - in particular the Sustainable Development Goals - towards meeting “legitimate needs” 5a) and b).

5.2.2 E-commerce and privacy

A very obvious issue for “future-proofing” is e-commerce, the development of which has intensified concerns about privacy. The other two new “legitimate needs” reflect these developments as follows: GL 5 j) “A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce”; and k) “The protection of consumer privacy and the global free flow of information.”

The UNCTAD secretariat note on “Consumer protection in electronic commerce” - prepared for the second session of the IGE in consumer protection law and policy in July 2017 - pointed to varying legal approaches, commenting “Many countries have a legal framework for e-commerce transactions and many promote self-regulation by businesses. The type and extent of legislation vary significantly among countries. (Some jurisdictions) rely on general civil law to address e-commerce issues, while ... others have special provisions on e-commerce in consumer protection laws. Some countries have specific e-commerce legislation. E-commerce is also dealt with in various laws, such as those regulating credit card sales, competition, distance sales, telecommunications and unfair competition.”

As Table 7 illustrates below, the MENA region contains elements of all these approaches. Algeria, Jordan, Lebanon and the State of Palestine make no specific reference in their consumer protection Acts to e-commerce, data protection, or privacy. Neither does Tunisia, whose Consumer Protection Act dates from 1992. However, Tunisia was an “early mover” in legislating for e-commerce in 2000. Morocco adopts the approach of reference to e-commerce

in its Consumer Protection Act while also legislating separately for privacy in 2008. The draft Egyptian Consumer Protection Act of 2014 includes sales through the internet as a form of distance sales and includes consumer protection as a new “consumer right.” It also includes the right to cross-border consumer protection in line with international agreements which is understood to include the UNGCP. The new 2014 constitution also refers to a “right to privacy” in Article 57, and to the inviolability of electronic correspondence.

Generally, the references to e-commerce and privacy are scant, and some may even go unreported. While Tunisia and Morocco have taken some initiatives, the recent 2017 Jordanian Consumer Protection Act makes no reference to e-commerce.

Recommendation 15: The lack of explicit reference to e-commerce should not be taken to imply in any way that e-commerce is not included in consumer protection law. The same principles of fair dealing should apply online and off-line, as called for by the UNGCP “legitimate needs” clause in GL 5j). This, as discussed, seeks to offer “A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce.” It might be advisable for guides to be produced by national consumer protection Agencies making clear that the consumer protection regimes cover transactions made ‘online and off-line.’

Table 7: E-commerce in consumer protection acts in MENA

Country
Algeria
Law No. 09-03 of February 25 2009, on Consumer Protection and Repression of Frauds; No specific mention of e-commerce or privacy/data protection.
Egypt
Law No. 67 of 2006, on Consumer Protection; Article 4. Electronic data relating to identity of supplier (not to transaction); Revised law of 2014: Reference in definitions to “distance sales,” including goods and services supplied through the internet; three new consumer rights including “distance sales” (also financial services and cross-border sales in line with international agreements); New constitution of 2014; Article 27. Refers to consumer protection; Article 57. Right to privacy; Inviolability of electronic correspondence.
Jordan
Law No. 7 2017, on Consumer Protection Act; No mention of e-commerce or privacy/data protection.
Lebanon
Law of 4 February 2005, on Consumer Protection Law; No specific mention of e-commerce or privacy/data protection.
Morocco
Law No. 31-08, on Consumer Protection; Article 25. Reference to “cyber-commerce” under distance contracts; Article 27. Electronic distance sales submitted to law 53-05 on electronic data exchange; Law No. 09-08, on protection of private data of physical persons. Linked to distance contracts.
Tunisia
Law No. 92-117 of 7 December 1992, relating to the protection of consumers; No mention of e-commerce (note date); Law No. 2000-83 of 9 August 2000, relating to electronic commerce.
State of Palestine
Law No. 21-2005, on Consumer Protection; No specific mention of e-commerce, privacy or data protection.

Source: UNCTAD MENA programme Inception Report 2015 and national legislation.

UNCTAD's work has tracked progress in this area by using its "Cyberlaw Tracker." This refers specifically to the four main areas of regulation in e-commerce, namely e-transaction laws; data protection and privacy laws; cyber-crime laws; and consumer protection laws. In 2015, the Cyberlaw Tracker found that while legislation covering those areas is already in place in developed countries, developing ones are lagging behind.⁴⁵ The share of countries that have adopted a law was generally highest for e-transactions and lowest for the protection of online consumers. Perhaps the recent revision of the UNGCP will help to move things forward.

Regarding the issue of privacy, UNCTAD summarized the core principles as:

- A. **Openness:** Organizations must be open about their personal data practices;
- A. **Collection limitation:** Collection of personal data must be limited, lawful and fair, usually with knowledge and/ or consent;
- A. **Purpose specification:** The purpose of collection and disclosure must be specified at the time of collection;
- A. **Use limitation:** Use or disclosure must be limited to specific, or closely related, purposes;
- A. **Security:** Personal data must be subject to appropriate security safeguards;
- A. **Data quality:** Personal data must be relevant, accurate and up-to-date;
- A. **Access and correction:** Data subjects must have appropriate rights to access and correct their personal data;
- A. **Accountability:** Data controllers must take responsibility for ensuring compliance with the data protection principles.

These eight principles appear in some form or other in all of the key international and regional agreements and guidelines regarding data protection.⁴⁷ They point to an additional principle – data minimization – which only appears in the European Union Data Protection Directive, but which they uphold as carrying considerable global influence.⁴⁸

It should be borne in mind that matters of customer privacy in transactions have wider implications than e-commerce. For example, suppliers of basic utilities

often require and store personal information, and that state-owned enterprises now fall within the scope of the UNGCP.

Recommendation 16: Governments should consider the above principles in developing legal protection for the privacy of consumers, bearing in mind that UNGCP GL 5 k) "The protection of consumer privacy and the global free flow of information" is not restricted to online transactions.

It is important to note that the UNGCP cite the OECD Guidelines for e-commerce and that, in turn, they direct many recommendations to business. Those recommendations are elaborated in the sister volume on *Guidelines on Consumer Protection: Business engagement*.

At the turn of the twenty-first century, the regulations together with the bodies that were set up to apply them were in retreat in the developed countries, while they were still being established in many developing regions. However, since the financial crisis, there has been greater global acceptance of the need for oversight of the market place. At the same time, an aim is to make regulations "smart" so as to achieve consumer protection goals and avoid unnecessary regulations.

The limitations of consumer protection law, based on contract, have become increasingly exposed by the now widely accepted understanding that consumers do not read the "Terms and Conditions" of contracts. Therefore, contracts form a very weak basis for consumer protection. The consumer protection structures in the MENA region appreciate this fact and retain the right of consumer protection Agencies to intervene in the event of unfair business conduct through abusive contracts.

However, while the MENA jurisdictions guard the right of agencies to intervene, they place great emphasis on post-market intervention with little envisaged scope for non-judicial forms of intervention by individual consumers. This approach has two weaknesses. Firstly, consumers face a limited range of options for redress - given their actual reluctance for a variety of reasons to embrace judicial procedures. Secondly, intervention post-market is "downstream" by definition, signifying that consumer protection Agencies are following rather than leading the market. Many of the envisaged court actions and the sanctions-based interventions could be avoided if a more upstream orientation were to be

developed. This approach places greater emphasis on pre-market intervention and education of the business sector so that abusive practices are prevented from entering the market from the outset.

In Table 2, the sister volume on *Guidelines on Consumer Protection: Business engagement* is set out. It underscores the very strong element of punishment in the legislation throughout the region. It can be asked critically whether the balance of retribution and other measures is the correct one? In 2006, the environmental lawyer Professor Richard McRory developed the “McRory Penalty principles” for adoption by the Government of the United Kingdom. The aims were to:

- Change the behaviour of the offender;
- Eliminate financial gain from non-compliance;
- Consider appropriate sanctions for the particular case, including punishment and public stigma arising from a criminal conviction;
- Be proportionate to the harm caused;

- Aim to repair that harm;
- Aim to deter future non-compliance.

Professor Christopher Hodge considers this to have constituted a “revolutionary shift in the policy, justification and purposes of regulatory enforcement, away from a retributive approach, to an approach based on maximizing compliance and justice.”⁴⁹ Even so, this is not concluding that retribution is to be abandoned. There have been some successful interventions that have immediately impacted the industry sector’s conduct.⁵⁰ But there have also been large fines paid by banks, for example, which have been integrated into their cost structure. This seems far too mild in consideration of the fact that if penalties go so far as to endanger the stability of the companies, then consumers can suffer if they collapse. Clearly, the retribution must have long lasting effects and be a sufficiently powerful deterrent so that any improper and punishable conduct will not reoccur. That, in itself, requires a dialogue with the business sector and is precisely the focus of the sister volume on *Guidelines on Consumer Protection: Business engagement*.

NOTES

1. This section borrows from the 2016 edition of the UNCTAD *Manual on consumer protection*.
2. <http://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>
3. General Assembly resolution A/RES/70/186 of 22 December 2015, *United Nations Guidelines for Consumer Protection*. The terms “UNGCP” and/or “Guidelines” are used to apply to the full set of guidelines in this manual. Sections of the UNGCP are referred to as appropriate. In French, the Guidelines are referred to as *Principes Directeurs*.
4. OECD, October 2011, *G20 high-level principles on financial consumer protection*; OECD, 2016, *Consumer protection in e-commerce: OECD recommendation*, (Paris).
5. UNCTAD, 2016 advance copy edition, *Manual on consumer protection*. The author of this document declares an interest as the revising editor of the Manual.
6. UNCTAD, 2015, *Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries*.
7. OECD Ministerial declarations are “legal instruments” but are not legally enforceable. This gives them the character of public/ political commitments by the OECD Member States Governments on the understanding that they will be integrated into national jurisprudence.
8. OECD, 2016, *OECD Consumer Policy Toolkit*; Figure 0.1, *Consumer policy making steps*. See also page 12.
9. OECD/G20, 2011, *High-Level Principles on Financial Consumer Protection*, October 2011; and UNGCP Guideline 68.
10. World Bank, 2012, *Good Practices for Financial Consumer Protection*. Access via the innovation sub-group of the G20 Financial Inclusion Experts Group, 2010, *Innovative Financial Inclusion: Principles and Report*.
11. ISO, 2012, *Economic benefits of standards, Vol.2; International case studies*. Three of the nine case studies were conducted by MENA.
12. Gary Lambert, 2017, “A stroll down quality street,” (*ISO Focus*, July).
13. ISO, 2017, IS 50007, *Activities relating to energy services – Guidelines for the assessment and improvement of energy services to users*.
14. UNCTAD secretariat, April 2015, *Implementation Report on the United Nations Guidelines on Consumer Protection, 1985–2013*. In *The Case of the Supreme Court of Mexico*, see http://www.senado.gob.mx/comisiones/justicia/docs/Ministros2/JCVM_DC-82-2012.pdf
15. Elkins, Zachary, Tom Ginsburg, and James Melton, 2014, “Characteristics of National Constitutions, Version 2.0,” *Comparative Constitutions Project*. Last modified April 18 2014 and available at <http://www.comparativeconstitutionsproject.org>
16. Claudia Lima Marques, 2016, “25 years to celebrate: horizons of the 1990s, Brazilian Consumer Protection Code and new horizons, especially on international protection of consumers,” in *The Future of International Protection of Consumers*, eds C. Lima Marques and Dan Wei. (Committee on International Protection of consumers – International Law Association, Porto Alegre).
17. 2001, Article 169, *Treaty of Chaguaramas*.
18. Article 169.1 of the Consolidated version of the *Treaty on the Functioning of the European Union*, 26.10.2012 C 326/47.
19. For a further discussion on this, see Ran Greenstein, 2005, “Social Rights, Essential Services and Political Mobilization in Post-Apartheid South Africa,” (*University of the Witwatersrand, Johannesburg, South Africa*).

20. A slight qualification is that the Algerian CP Act is different from the others in that attention is drawn to the “obligations” of suppliers rather than to rights of consumers. Although there is also some reference to the “legitimate expectations” (*attentes legitimes*) of consumers in Article 11.
21. The *acquis communautaire* is a term applied by the European Union for the accumulated body of European Union law.
22. Secretaria Nacional do Consumidor, 2015, *Codigo de Protecao e Defesa do Consumidor, 25 anos da lei, edicio Comemorativa*.
23. Claudia Lima Marques, 2016, “25 Years to Elaborate: Horizons of the 1990 Brazilian Consumer Protection Code and New Horizons, especially on International Protection of Consumers,” in *The Future of International Protection of Consumers*, eds C. Lima Marques and Dan Wei. (Committee on International Protection of consumers – International Law Association, Porto Alegre).
24. Under the UNGCP, GL 3, states that the term “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.
25. Dr Ying Yu, 2016, *Chinese Approaches to Reform of CP Law; Substantive Law and Conflict Law*, in *The Future of International Protection of Consumers*, eds C. Lima Marques and Dan Wei, (Committee on International Protection of consumers – International Law Association, Porto Alegre), p. 172.
26. See UNCTAD analysis of Jordanian consumer protection, presented to seminar Amman, July 27, 2017. Available from UNCTAD MENA consumer protection programme.
27. L. Nottage and S. Thanitcul, 2016, “Economic integration and consumer protection in SE Asia: AEAN product liability law and safety regulation,” in *The future of international protection of consumers*, eds C. Lima Marques and Dan Wei. (Committee on International Protection of Consumers – International Law Association, Porto Alegre), p.86.
28. *Ibid* p. 85.
29. Geraint Howells, 2006, “The Rise of European Consumer Law — Whither National Consumer Law?” *Sydney Law Review*. It should be noted that “minimal harmonization” in this context refers to the setting of minimum standards on which Member States can build, thus raising the floor. In contrast, maximum harmonization refers to a ceiling of required standards.
30. ILA *op cit.* p. 87.
31. Workshop on the role of check and balance institutions, April 28-30 2014, Caserta, Italy; Elin Bergman, *Ombudsman Institutions*, available at Worldbank.org/publicsector/ombudsman
32. UNCTAD, 2016, *Good Governance Guidelines: Independence and Transparency*, UNCTAD MENA programme.
33. UNCTAD MENA programme 2016, *op cit.* See http://unctad.org/en/PublicationsLibrary/ditccpl2016d2_en.pdf
34. *Recommendations on Principles and Good Practices for Financial Education and Awareness*, 2005, C(2005)55/REV1).
35. S. Rutledge, N. Annamalai, R. Lester and R. L. Symonds, 2010, “Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool,” *World Bank*, Foreword.
36. A/RES/70/186.
37. UNCTAD, *Implementation Report on the United Nations Guidelines on Consumer Protection*, 1985–2013, Note by UNCTAD secretariat.
38. OECD, 2016, *Consumer Protection in E-commerce*, OECD Recommendation.

39. OECD, 2003, *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*, Recommendation of the Council.
40. ILA Resolution 4, 2012, “*Statement on the Development of International Principles on Consumer Protection*,” (Sofia).
41. A. Amaral Junior, L. Klein Vieira, 2016, “International consumer protection in Mercosur,” in *The future of international protection of consumers*, eds C. Lima Marques and Dan Wei, (Committee on International Protection of Consumers – International Law Association, Porto Alegre), p.61.
42. Ying Yu *op cit* p.164.
43. www.globalrecalls.oecd.org
44. UNGA, A/RES/70/186. February 4th 2016.
45. United Nations, 2015, *Transforming our world: the 2030 Agenda for Sustainable Development*. A/RES/70/1. 2015.
46. UNCTAD, 2015, *Information Economy Report 2015: Unlocking the Potential of E-commerce for Developing Countries*.
47. UNCTAD, 2016, *op. cit*. The principles are chiefly drawn from the European Union Data Protection Directive, the OECD Privacy Guidelines and the Council of Europe, Convention 108. The order and terminology is a modified version of the work on this issue by Graham Greenleaf. See also G. Greenleaf, 2014, “Standards by which to assess data privacy laws” in *Asian Data Privacy Laws*, (Oxford).
48. UNCTAD, 2016, *Study on Data Protection and International Data Flows*, available at http://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf
49. R. McRory, 2006, “Regulatory justice: making sanctions effective,” *HM Treasury*, Hodges *op cit*. p. 183.
50. See the United Kingdom Financial Conduct Authority and the payday lending sector; also Hodges p. 298.