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Consumer protection needs of vulnerable and disadvantaged consumers in connection with public utilities

Note by the UNCTAD secretariat

Summary

Access by consumers to essential goods and services and the protection of vulnerable and disadvantaged consumers are two of the legitimate needs that the United Nations guidelines for consumer protection are intended to meet. The guidelines are particularly relevant in connection with public utilities and against the backdrop of the coronavirus disease of 2019 (COVID-19) crisis. In the present note, a framework to better identify the needs of vulnerable and disadvantaged consumers is provided. The most salient aspects of consumer policies – access, special protection measures, information and education, and dispute resolution and redress – to attend to the needs of vulnerable and disadvantaged consumers in the public utilities sector are summarized. In the note, the principles for the provision of public utilities relevant to the private sector, namely regularity, quality of service, affordability and good business practices, are presented. The specific measures taken to protect vulnerable and disadvantaged consumers of public utilities in the context of the COVID-19 pandemic are then reported on. After a brief conclusion, some policy recommendations and possible questions for discussion at the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy are proposed in the note.



I. Introduction

1. The International Covenant on Economic, Social and Cultural Rights¹ recognizes that “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”. In 2010, the United Nations General Assembly explicitly recognized the human right to safe drinking water and sanitation and acknowledged that these are essential to the realization of all human rights.² In 2015, the General Assembly identified clean water and sanitation as Sustainable Development Goal 6 and affordable and clean energy as Sustainable Development Goal 7 of the 2030 Agenda for Sustainable Development.³

2. In 2015, the United Nations General Assembly adopted the revised United Nations guidelines for consumer protection.⁴ The two first legitimate needs recognized by guidelines are: access by consumers to essential goods and services, and the protection of vulnerable and disadvantaged consumers. The guidelines are the only internationally agreed instrument on consumer protection and, although not binding, have been widely implemented by UNCTAD member States.⁵

3. The United Nations guidelines for consumer protection recommend that Member States “should promote universal access to public utilities and formulate, maintain or strengthen national policies to improve rules and statutes dealing with provision of service, consumer information, security deposits and advance payment for service, late payment fees, termination and restoration of service, establishment of payment plans and dispute resolution between consumers and utility service providers, taking into account the needs of vulnerable and disadvantaged consumers” (para. 77).

4. The Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, held in October 2020, requested the UNCTAD secretariat to prepare reports and studies as background documentation on the needs of vulnerable and disadvantaged consumers in connection with public utilities for proposed informal consultations during the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy. In this regard, the secretariat circulated a questionnaire, and inputs were received from 16 member States and six academic institutions.⁶

5. In the present note, a framework to identify the needs of vulnerable and disadvantaged consumers is first provided. The links between public utilities and consumer protection are explored, and the principles for the provision of public utilities are presented. A summary then follows of some initiatives undertaken to attend to the needs of vulnerable and disadvantaged consumers in connection with public utilities in the midst of the COVID-19 induced economic crisis. At the end of the note, a brief conclusion is followed by policy recommendations for member States to better implement the United Nations guidelines for consumer protection, along with proposed questions for discussion at the fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.

¹ General Assembly resolution 2200 A (XXI) of 16 December 1966, annex.

² General Assembly resolution 64/292.

³ General Assembly resolution 70/1.

⁴ General Assembly resolution 70/186.

⁵ TD/RBP/CONF.9/2.

⁶ Albania, Bahrain, Brazil, Brunei Darussalam, Bulgaria, Dominican Republic, Ethiopia, Iceland, Japan, Nigeria, Panama, Seychelles, Sweden, Switzerland, United States of America and Zambia, and the China University of Political Science and Law, International Law Association, International Association of Consumer Law, University of Malaya, Nelson Mandela University and University of Sydney.

II. Identifying the needs of vulnerable and disadvantaged consumers

6. Consumers⁷ face imbalances in economic terms, educational levels and bargaining power in their commercial relations vis-à-vis businesses.⁸ Furthermore, there is a specific category of consumers who are in an even more vulnerable or disadvantaged situation, and thus require special attention.

7. Mindful of such needs, the United Nations guidelines for consumer protection contain specific recommendations.⁹ In the guidelines, the principle of fair and equitable treatment is established, by which businesses should avoid practices that harm consumers, particularly with respect to vulnerable and disadvantaged consumers (para. 11 (a)). The needs of this category of consumers must also be assessed when Member States establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible (para. 37). In developing education and information programmes, special attention should be paid to the needs of vulnerable and disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels (para. 42). Their needs are also highlighted when addressing financial services (para. 66, and remittances in para. 66 (h) in particular) and public utilities (para. 77). Public utilities are the focus of this note.

8. The Intergovernmental Group of Experts on Consumer Protection Law and Policy, at its second session, discussed the issue of the protection of vulnerable and disadvantaged consumers. It underlined the importance of designing and implementing specific measures aimed at the protection of vulnerable and disadvantaged consumers. It recognized that member States may adopt differing definitions to address specific domestic needs, and that further research is needed particularly for this category of consumers in developing countries.¹⁰ The Intergovernmental Group of Experts also established a working group on vulnerable and disadvantaged consumers to highlight best practices, and to facilitate information exchange and consultations.

9. The working group on vulnerable and disadvantaged consumers met informally on five occasions in 2017 and 2018 and reported to the third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.¹¹ The working group gathered best practices concerning the issue, recognizing that there existed no single definition of consumer vulnerability and that each country crafted its national policy based on the specific social and economic needs of the consumers in that country.¹²

10. Of the 22 inputs received for compiling the present background note, only the United States of America reported having a State-level definition of vulnerable and disadvantaged consumers (that is, the State of Arkansas considers utility consumers to be vulnerable when the consumer is over 65 years of age and meets income eligibility qualifications). Countries such as China, Japan, Malaysia, Seychelles, Sweden and Switzerland consider various consumer groups as worthy of special care. The European Union characterizes vulnerable consumers not by virtue of belonging to a particular group of persons but rather on the basis of certain circumstantial considerations: “consumers who are particularly vulnerable to the practice or the underlying product because of their mental

⁷ Defined in paragraph 3 of the United Nations guidelines for consumer protection as a natural person, regardless of nationality, acting primarily for personal, family or household purposes. The guidelines recognize that Member States may adopt differing definitions to address specific domestic needs.

⁸ General Assembly resolution 70/186, annex, para. 1.

⁹ General Assembly resolution 70/186, annex.

¹⁰ TD/B/C.I/CPLP/9.

¹¹ TD/B/C.I/CPLP/15 and contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>.

¹² Ibid.

or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee".¹³ Following the experience of Brazil, the Southern Common Market is currently discussing a regulation to address the "hypervulnerability" of some consumers.¹⁴

11. In its recommendation on consumer policy decision-making, the Organisation for Economic Co-operation and Development (OECD) provided a useful distinction: "vulnerable consumers" are those who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances; while "disadvantaged consumers" are consumers whose attributes or circumstances are such that they are susceptible to detriment on a persistent basis.¹⁵

12. The heterogeneous nature and context specificity of vulnerability and being disadvantaged mean that differences between groups of consumers, such as children, the elderly, tourists, migrants and rural consumers, should be considered in terms of social, demographic, behavioural, personal and market environment factors. As discussed at a previous session of the Intergovernmental Group of Experts, structural factors such as literacy, technical knowledge and socioeconomic status interact with circumstantial factors, such as age, civil status, employment status and psychological health.¹⁶ As recognized by OECD, "all consumers, regardless of education or experience, may at times be vulnerable to detriment, and [that] disadvantaged consumers may be vulnerable on a persistent basis".¹⁷

13. Despite the difficulties in reaching consensus internationally on the defining criteria of vulnerable or disadvantaged consumers, the UNCTAD *Manual on Consumer Protection*¹⁸ and the OECD *Consumer Policy Toolkit*¹⁹ nevertheless can provide guidance on how to better address their needs. The UNCTAD manual contains an example of "poor pay more", which found that there were wide discrepancies in the unit prices paid for water and energy by inhabitants of slum settlements in many developing countries. This is due to their lack of access to official network services that are frequently subsidized, an issue that is addressed later in this note.²⁰ The OECD finds that there are circumstances where all consumers may be more vulnerable, such as in a digital context.²¹ The OECD toolkit contains examples of disadvantaged groups and warns that "remedies that provide benefits to vulnerable consumers need to be carefully designed so as not to have unintended and unwanted effects on more other consumers. They could, for instance, result in undesirable restrictions and/or limitations on the choice of products in a market".²²

14. It is thus important that member States set their own priorities for the protection of consumers, especially for the vulnerable and disadvantaged, in accordance with the economic, social and environmental circumstances of a country and the needs of its population, bearing in mind the costs and benefits of proposed measures. A first step may involve identifying the needs of vulnerable and disadvantaged consumers in selected sectors, such as public utilities. This can be undertaken through consultations with governmental authorities, such as consumer protection authorities and sectoral regulators, as well as relevant stakeholders, including consumers associations, businesses and academia. To this end, the contributions of the working group on vulnerable and

¹³ European Union, Directive 2005/29/EC (11 May 2005), article 5(3) and recital 19, *Official Journal of the European Union*, L 149/22 (June 2005) .

¹⁴ Discussions take place in Technical Committee 7 of the Southern Common Market, as reported by Brazil.

¹⁵ OECD, 2014, OECD recommendation on consumer policy decision-making, available at <http://www.oecd.org/sti/consumer/Toolkit-recommendation-booklet.pdf>

¹⁶ See TD/B/C.I/CPLP/9.

¹⁷ OECD, 2014.

¹⁸ UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication, New York and Geneva).

¹⁹ OECD, 2010, *Consumer Policy Toolkit*, OECD Publishing, Paris.

²⁰ UNCTAD, 2017, p.4.

²¹ OECD, 2019, *Challenges to Consumer Policy in the Digital Age*, p. 33. Available at <https://www.oecd.org/sti/consumer/challenges-to-consumer-policy-in-the-digital-age.pdf>.

²² OECD, 2010, p. 56.

disadvantaged consumers can serve as a useful reference guide.²³ The contributions reflect the experiences of Cambodia, Costa Rica, Ecuador, Egypt, Germany, Israel, Lebanon, the Netherlands, Portugal, Peru, the Russian Federation, Spain, Turkey, the United States of America and Zambia. Defining the needs of vulnerable and disadvantaged consumers better can inform policymaking with regard to consumer policy in public utilities.

III. Consumer protection and public utilities

15. The United Nations guidelines for consumer protection contain recommendations that directly address public utilities. Paragraph 69 of the guidelines states that “Member States should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water, pharmaceuticals, energy and public utilities”. Section K of the guidelines lists several principles to better address consumer interests and meet the needs of consumers in providing for public utilities. Water (para. 72), energy (para. 76) and public utilities (para. 77) are individually addressed.²⁴ In this note, a broad concept of public utilities will be used, understood to be those services essential to consumers to sustain their basic needs. Thus, the following will be considered as public utilities: water, energy, sanitation and telecommunications (including access to the Internet).

16. It is important to note that the guidelines are applicable irrespective of whether a public utility service provider is publicly or privately owned. As stated in para. 2, the guidelines apply to “business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers”. As the nature of a service provider’s ownership is not relevant to consumers as such, this note makes no distinction in this respect.

17. With regard to water, the guidelines state that “Member States should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking” (para. 72). In respect of energy, Member States are encouraged to “promote universal access to clean energy and formulate, maintain or strengthen national policies to improve the supply, distribution and quality of affordable energy to consumers according to their economic circumstances” (para. 76). Provisions for both water and energy require consideration as to the choice of appropriate levels of service, quality, technology, regulatory oversight, awareness-raising programmes and community participation.

18. The United Nations guidelines for consumer protection require that Member States and businesses (paras. 77 and 11, respectively) consider the needs of vulnerable and disadvantaged consumers. As consumer vulnerability may be interpreted differently depending on the public utility sector, measures should employ a tailored approach, rather than a one-size-fits-all approach, in promoting universal access to fair and equitable treatment in public utilities. For example, Bahrain proposes the principle that vulnerable and disadvantaged consumers should receive a level of effective protection that is no less than that afforded to the average consumer. This can be useful for guiding public policy, especially when reassessing the most common measures that involve supporting and protecting vulnerable and disadvantaged consumers as well as awareness-raising and prevention efforts.

19. The following paragraphs contain the most salient policy requirements to protect the needs of vulnerable and disadvantaged consumers in public utilities, which may be summarized as: access; special protection measures; information and education; and dispute resolution and redress.

²³ Contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, p. 6, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>.

²⁴ Public utilities are highlighted in paragraph 77 of the guidelines separately from water and energy, with an emphasis on the needs of vulnerable and disadvantaged consumers.

A. Access

20. Access to public utility services was identified by contributors to this background note as the most important need of vulnerable and disadvantaged consumers. This reinforces the high-level commitment to access to services expressed by the United Nations General Assembly.

21. For example, in its 2018 outcome document, the High-level Panel on Water, convened by the United Nations and the World Bank, at the local, country and regional levels, recommends ensuring universal access to safe water and sanitation, by addressing gaps in service delivery models, technology and behaviour change which limit access to sustainable drinking water and sanitation for all – including the needs of women, girls, people with disabilities and communities in vulnerable situations, recognizing access to safe drinking water and sanitation services as a fundamental human right.²⁵

22. In the area of public utilities, access primarily relates to the inclusion of those who do not yet benefit from the service in question. Great improvements have been made, yet, as reported in 2018 on Sustainable Development Goal 6 on water and sanitation, 844 million people lack basic water services, 2.1 billion lack safely managed drinking water, 4.5 billion lack access to safely managed sanitation and 892 million still practice open defecation.²⁶ Energy access has always been a critical issue in the African continent, with only 43 per cent of sub-Saharan Africa having access to clean and modern electricity,²⁷ which is at half of the global electrification rate of 89 per cent in 2017.²⁸

23. By contrast, developed countries such as Switzerland and member States of the European Union have imposed universal access obligations on service providers, which entail that all citizens must have the option of joining a public utilities service and at a reasonable cost.^{29,30} This general obligation is contained in legislation setting out the rights and obligations of market actors, in particular consumers and businesses. Developing a suitable legal framework is a key step towards ensuring that universal access transits from aspiration to reality.

24. Overall, there is a trend of moving away from regarding access as a simple matter of connectivity to one where the wider issues of quality – continuity, safety, and sustainability, for example – are appreciated more fully. In a similar vein, the importance of the sanitation and energy sectors has also gained growing recognition in the past 20 years. The two sectors are currently fully recognized in the Sustainable Development Goals, with detailed targets for energy and sanitation that cover quality and safety with regard to the consumer protection dimensions, as set out in the United Nations guidelines for consumer protection.

25. Access also relates to preventing the exclusion of those who do not meet the technological requirements to continue having the service in question, particularly in the context of electronic communications, which are the gateway to the digital economy.

²⁵ High-level Panel on Water, 2018, Making every drop count: An agenda for water action, Outcome document, United Nations and World Bank Group, available at <https://sustainabledevelopment.un.org/HLPWater>.

²⁶ United Nations Water, 2018, *Sustainable Development Goal 6: Synthesis Report on Water and Sanitation* (United Nations publication, New York and Geneva).

²⁷ MG Gebreslassie, 2020, COVID-19 and energy access: An opportunity or a challenge for the African continent? *Energy Research and Social Science*, 68(2020), 101677.

²⁸ MP Blimpo and M Cosgrove-Davies, 2019, *Electricity Access in Sub-Saharan Africa: Uptake, Reliability and Complementary Factors for Economic Impact*, World Bank, Washington, D.C.

²⁹ Switzerland, RS 784.10, Loi du 30 avril 1997 sur les télécommunications, available at https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1997/2187_2187_2187/20210101/fr/pdf-a/fedlex-data-admin-ch-eli-cc-1997-2187_2187_2187-20210101-fr-pdf-a.pdf.

³⁰ Developed countries, such as Finland and the United Kingdom of Great Britain and Northern Ireland, have shown though that vulnerable consumers, especially those with low incomes, are likely to pay a larger percentage of their income on annual energy costs than people with a higher income. See European market survey on vulnerable consumer needs, 2018, available at https://www.assist2gether.eu/documenti/risultati/european_market_survey_on_vulnerable_consumer_needs.pdf.

Digital inclusion of vulnerable and disadvantaged consumers is particularly important in the digital era. It has been estimated that, in the United Kingdom of Great Britain and Northern Ireland, 20 per cent of adults with disabilities have never used the Internet, compared to 8.4 per cent of adults without disabilities in 2018. Furthermore, of the 4.5 million adults who had never used the Internet in 2018, more than half (2.6 million) were 75 years of age and over.³¹ Looking at the digital divide shows that only one in five people in the least developed countries use the Internet and, in most developing countries, less than 5 per cent of the population currently buy goods or services online.³² To tackle digital exclusion, Sweden for example has implemented initiatives to protect consumers who are unable to access digital services and shop online due to a lack of digital identity. In a similar vein, the platform for online dispute resolution for consumers of Brazil³³ is compliant with accessibility criteria for consumers with disabilities.

B. Special protection measures

26. As a general principle, the United Nations guidelines for consumer protection require Member States to take special care to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population and people living in poverty (para. 8). According to academic research, specific groups in China, such as women, children, the elderly, people with disabilities, ethnic minorities and people in poor areas, are given special protection by means of various laws and regulations.³⁴ Malaysia requires special services to be provided for people with disabilities who have long-term physical, mental, intellectual or sensory impairments, as they may not enjoy full participation in society due to various barriers.³⁵ In South Africa, Consumer Protection Act 68 of 2008 aims at promoting the welfare of people on low incomes, minors, seniors and people living in remote areas and with limited abilities.³⁶ In the United Kingdom, legislation makes protecting consumers in vulnerable situations a statutory duty of regulators,³⁷ so that vulnerable groups can remain a key priority for regulators' mandates.³⁸ Thus, there are several government measures, which relate to support, protection and prevention, that directly address vulnerable and disadvantaged consumers.

27. Support measures can include both financial and non-financial measures. In Portugal,³⁹ a form of public funding known as a social tariff is used to provide financial assistance for households to pay energy and water bills. Since 2016, it is automatically awarded to households that receive certain social benefits and to low-income households. Around 14 per cent of all Portuguese households benefit from this measure:

³¹ Ibid.

³² UNCTAD, 2020, The COVID-19 crisis: accentuating the need to bridge digital divides, available at https://unctad.org/system/files/official-document/dtlinf2020d1_en.pdf.

³³ See <https://consumidor.gov.br/pages/principal/?1614364587062>.

³⁴ Contribution of J Huang and J Xia, Academics of rule of law, China University of Political Science and Law (see contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>).

³⁵ Contribution of S Rachagan, University of Malaya (see contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>).

³⁶ Contribution of L Best, Nelson Mandela University (see contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>).

³⁷ See United Kingdom, Electricity Act 1989, section 3A (3), and Gas Act 1986, section 4AA (3).

³⁸ United Kingdom, Office of Gas and Electricity Markets, 2019, *Consumer Vulnerability Strategy 2025*, available at https://www.ofgem.gov.uk/system/files/docs/2020/01/consumer_vulnerability_strategy_2025.pdf.

³⁹ See <https://www.energy-poverty.eu/measure-policy/social-tariff>.

786,000 households receive the social tariff for electricity and 34,000 households, for natural gas. In Croatia, vulnerable consumers are entitled to receive allowances for electricity costs up to a certain limit.⁴⁰ In France,⁴¹ the Living Better programme aims to provide financial support to renovate dwellings of low-income households to improve energy efficiency. It includes different types of grants and loans financed by different parts of the Government.

28. Protection measures are aimed at eliminating problematic practices such as disconnection of services. In Spain, a disconnection protection measure in Catalonia prohibits the disconnection of electricity, gas and water supplies for vulnerable households, as certified by local social services.⁴² The measure also applies a precautionary principle according to which utility companies are obliged to check first with local services whether a consumer in arrears is vulnerable or not.

29. In Australia, for example, pre-emptive measures are taken to protect people from unfair business practices, such as poor quality of products or services and market design, that would render them vulnerable in the first place. From a market-outcomes perspective, it is efficient and effective for Governments, regulators, community organizations and industry to prioritize early and pre-emptive interventions wherever possible, rather than focusing on “bottom-of-the-cliff” measures that imply waiting for problems to emerge or until problems have worsened.⁴³

C. Information and education

30. Paragraphs 42 to 49 of the United Nations guidelines for consumer protection advise Member States on the development of education and information programmes, which should also account for the efficient use of materials, energy and water. Bahrain, Brazil, the Dominican Republic, Sweden, the United States of America and Zambia reported in 2021 various priority intervention measures, including information and awareness-raising campaigns on consumer rights in public utilities among vulnerable and disadvantaged populations.⁴⁴ Sweden produced informative videos for certain categories of vulnerable and disadvantaged consumers. In the United States of America, State-level Attorney General offices engage in consumer education. Zambia translated information and education materials into local and braille languages to educate school children, the elderly and people with low literacy and from rural areas.⁴⁵

D. Dispute resolution and redress

31. The availability of effective consumer dispute resolution and redress is a legitimate need addressed in paragraph 5 (g) of the United Nations guidelines for consumer protection. Member States should encourage the development of fair, effective, transparent, and impartial mechanisms to address consumer complaints administratively, judicially or by means of alternative dispute resolution (paras. 37 to 41). There are a myriad of possibilities to enhance consumers’ access to effective dispute resolution and redress, with

⁴⁰ See <https://www.energy-poverty.eu/measure-policy/electricity-allowance-vulnerable-consumers>.

⁴¹ See <https://www.energy-poverty.eu/measure-policy/living-better-programme>.

⁴² See <https://www.energy-poverty.eu/measure-policy/disconnection-protection-catalonia>.

⁴³ E O’Neill, 2019, *Exploring Regulatory Approaches to Consumer Vulnerability, A Report for the Australian Energy Regulator*, Consumer Policy Research Centre, available at <https://cprc.org.au/2020/02/26/exploring-regulatory-approaches-to-consumer-vulnerability-a-cprc-report-for-the-aer/>.

⁴⁴ Contributions of the working group on vulnerable and disadvantaged consumers received by the UNCTAD secretariat in 2021, available at <https://unctad.org/system/files/non-official-document/WG%20Vulnerable%20and%20Disadvantaged%20Consumers%20.pdf>.

⁴⁵ About 300 school clubs were established across the country to educate pupils on consumer rights. Group sessions are offered in local languages to vulnerable groups, such as the elderly and the those with low literacy. Thirty community radio channels are also employed to broadcast consumer rights and perform radio drama shows on vulnerable consumer issues in rural areas.

a growing trend towards favouring out-of-court or alternative means.⁴⁶ In the case of public utilities, Governments and sectoral regulators have instituted ombudspersons to provide for speedy dispute resolution. For example, Australia instituted the Energy and Water Ombudsman to ensure access to dispute resolution and redress. The Dominican Republic facilitated online claim filing and online dispute resolution with a view to better attending to consumers.

32. Paragraph 15 of the guidelines asks 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, which should also be applicable to public law enforcement in public utilities. In the United States of America, State-level Attorneys General protect consumers in the area of public utilities by enforcing States' consumer protection acts, which can result in investigations and fines against public utilities service providers that act in deceptive or unfair ways. State-level Attorneys General also protect consumers against deceptive promotion of alternative suppliers, and work to informally resolve consumer complaints.⁴⁷

IV. Principles for the provision of public utilities

33. Member States should establish consumer protection policies that encourage good business practices (para. 14 of the United Nations guidelines for consumer protection). In the context of public utilities, UNCTAD recognizes four key principles for the provision of public utilities: regularity, quality of service, affordability and good business practices.

A. Regularity

34. Unreliable service supply for basic utilities leads to disruptions. When this occurs on a regular basis, it can cause significant inconvenience and harm, especially for vulnerable populations. The importance of consistent service supply is highlighted in Sustainable Development Goal 7 as it is particularly important for modern energy provisions.⁴⁸ For instance, although global electrification stood at 89 per cent by 2017, up from 83 per cent in 2010, much of this connectivity was intermittent and unreliable.⁴⁹ Similarly, unreliable water pressure and inconsistent quality pose challenges not only to living standards but also for public health, which has been noted by the World Bank from observations of parts of urban Africa.⁵⁰

35. It is vital for consumers to have continuous access to energy (heating and light), water and sanitation, as any disruptions can strongly affect health and overall well-being. For example, the energy regulator of the United Kingdom emphasized that consumers who are financially vulnerable or in debt face higher risks of having their energy supply terminated when they are using a prepayment meter, sometimes due to technical challenges.⁵¹ Disconnecting a customer's energy supply should be a last resort and avoided wherever possible.

⁴⁶ TD/B/C.I/CPLP/11.

⁴⁷ For example, in the State of Arizona, the Attorney General's Office recently settled a lawsuit with Century Link (now Lumen Technologies) for nearly \$11 million, resolving allegations that Century Link failed to disclose fees and engaged in false advertising regarding its prices.

⁴⁸ United Nations, Department of Economic and Social Affairs, n/d, Energy: Related Sustainable Development Goals, available at <https://sdgs.un.org/topics/energy> (accessed 15 April 2021).

⁴⁹ International Energy Agency, International Renewable Energy Agency, United Nations Statistics Division, World Bank and World Health Organization, 2019, *Tracking [Sustainable Development Goal] SDG 7. The Energy Progress Report 2019*, World Bank, Washington, D.C.

⁵⁰ See also C Heymans, K.Eales and R Franceys, 2014, *The Limits and Possibilities of Prepaid Water in Urban Africa: Lessons from the Field*, World Bank, Washington, D.C.

⁵¹ United Kingdom, Office of Gas and Electricity Markets, *Vulnerable Consumers in the Energy Market: 2019*, London.

B. Quality of service

36. Although maintaining a minimum standard for the quality of utility services is necessary, and often mandatory, in all public utilities sectors, a closer look reveals the different priority areas of the sectors. A Sustainable Development Goals progress report warns that matters of water pollution are getting worse: “increasing wastewater in many parts of the world is profoundly affecting the quality and amount of water available to meet human needs and sustain ecosystems”.⁵² This situation underscores how the quality of water has direct and immediate implications for human health, as consumers are extremely sensitive to its quality. Consuming unclean water, contaminated with faecal pathogens or other pollutants, causes diarrhoea and other ailments. Indeed, data from 2016 show diarrhoeal diseases as the second leading cause of death in low-income countries, killing nearly 60 out of every 100,000 people.⁵³ In the telecommunications sector, the quality of electronic communication service is another cause of concern. UNCTAD estimates that, by 2025, only 3 per cent of the population in sub-Saharan African and 8 per cent in Latin America will be able to connect to fifth generation technology, which enables people to access digital commerce quickly, compared with 59 per cent in the Republic of Korea.

C. Affordability

37. For many countries, the issue of affordability reflects the tension between the financial viability of a utility for persons who are vulnerable and disadvantaged and minimizing excessive losses for taxpayers. As essential services are intended to be universally accessible, two broad approaches are employed to balance the scale: social provision and commercial provision. Social provision means tested or otherwise targeted financial assistance provided from a State to individuals, whereas commercial provision applies to tariff structures aimed at benefiting the poor in particular. Notwithstanding well-intended provisions, social and commercial provision have been criticized for potential errors of inclusion, where assistance may not go to individuals in need, as well as errors of exclusion, where eligible consumers are not helped by the schemes.⁵⁴

38. In order to enhance access and ensure affordability, countries such as Bahrain, Bulgaria, Ethiopia, Portugal and the United States of America offer payment flexibility or subsidize public utility services. Although this is fully justified for consumers who are vulnerable and disadvantaged, it may not be justified in the case of subsidies to all consumers. As noted in the UNCTAD *Manual on Consumer Protection*, blanket subsidies tend to favour the better off, who are already connected to services, over those who do not yet have access and are therefore excluded.⁵⁵ An analysis by the Africa Infrastructure Country Diagnostic project found that “if provided with access to utility networks, even at cost recovery prices, poor households would still be better off than they are today using alternative services. This suggest that ultimately, subsidization of connection costs may be a more equitable and cost-effective way of targeting public resources”.⁵⁶

⁵² United Nations Water, 2018. See Sustainable Development Goal 6, target 6.3 of (improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally) and target 6.4 (substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity).

⁵³ C Chase, A Bahuguna, Y Chen, S Haque and M Schulte, 2019, *Water and Nutrition: A Framework for Action*, World Bank, Washington, D.C.; World Health Organization, 2018, WHO methods and data sources for country-level causes of death 2000–2016, Global Health Estimates Technical Paper WHO/HIS/IER/GHE/2018.3, Geneva.

⁵⁴ K Komives, V Foster, J Halpern and Q Wodon, 2005, *Water, Electricity and the Poor: Who Benefits from Utility Subsidies?*, World Bank, Washington, D.C.

⁵⁵ UNCTAD, 2017, p. 128.

⁵⁶ SG Bannerjee and E Morella, 2011, *Africa’s Water and Sanitation Infrastructure: Access, Affordability and Alternatives*, World Bank, Washington, D.C.

D. Good business practices

39. To ensure that the rights of consumers are protected, section IV of the United Nations guidelines for consumer protection outlines the principles for good business practices, which are particularly relevant in public utilities (see box).

United Nations guidelines for consumer protection

11. The principles that establish benchmarks for good business practices for conducting online and offline commercial activities with consumers are as follows:

(a) **Fair and equitable treatment.** Businesses should deal fairly and honestly with consumers at all stages of their relationship, so that it is an integral part of the business culture. Businesses should avoid practices that harm consumers, particularly with respect to vulnerable and disadvantaged consumers;

(b) **Commercial behaviour.** Businesses should not subject consumers to illegal, unethical, discriminatory or deceptive practices, such as abusive marketing tactics, abusive debt collection or other improper behaviour that may pose unnecessary risks or harm consumers. Businesses and their authorized agents should have due regard for the interests of consumers and responsibility for upholding consumer protection as an objective;

(c) **Disclosure and transparency.** Businesses should provide complete, accurate and not misleading information regarding the goods and services, terms, conditions, applicable fees and final costs to enable consumers to take informed decisions. Businesses should ensure easy access to this information, especially to the key terms and conditions, regardless of the means of technology used;

(d) **Education and awareness-raising.** Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to take informed decisions and to access competent and professional advice and assistance, preferably from an independent third party, when needed;

(e) **Protection of privacy.** Businesses should protect consumers' privacy through a combination of appropriate control, security, transparency and consent mechanisms relating to the collection and use of their personal data;

(f) **Consumer complaints and disputes.** Businesses should make available complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden. Businesses should consider subscribing to domestic and international standards pertaining to internal complaints handling, alternative dispute resolution services and customer satisfaction codes.

Source: General Assembly resolution 70/186, annex, section IV, "Principles for good business practices".

40. Periodic reviews and evaluations are a powerful tool to ensure that existing practices remain impactful and relevant. Laws can stipulate requirements for public utility service providers to regularly report any actions taken to tend to the needs of vulnerable and disadvantaged consumers. Along with intelligence gathered by government authorities, periodic reviews and evaluations can provide regulators with a point of reference when conducting reviews and evaluations. The following chapter presents measures that have proven effective in providing targeted public utility support for vulnerable and disadvantaged consumers.

V. Specific measures in the context of the COVID-19 pandemic

41. The COVID-19 pandemic has dramatically increased vulnerability rates globally. Northern Africa exhibits the highest unemployment rates in the world, at a level of

approximately 30 per cent between 2019 and 2021 (as projected).⁵⁷ According to the International Labour Organization, in 2020, lower-middle-income countries experienced the greatest losses in working hours, which causes unemployment and reduced income. Global labour income (before taking into account income support measures) in 2020 is estimated to have declined by 8.3 per cent, which amounts to \$3.7 trillion, or 4.4 per cent of global gross domestic product.⁵⁸ Employment losses were highest in the Americas and lowest in Europe and Central Asia.⁵⁹ Indeed, 34 million jobs were lost in Latin America and the Caribbean due to the economic crisis caused by COVID-19.⁶⁰

42. The lack of employment opportunities or income to pay for basic utilities in the ongoing pandemic exacerbates many of the challenges that are already facing vulnerable consumers. This includes individuals who come from low-income households, have compromised health or lack (full) access to essential services, such as energy and the Internet. Moreover, research from China shows that consumers tend to use more energy during the COVID-19 pandemic: “a significant increase in energy bills (that is, by comparing 2019 and 2020 data) suggesting an average of 67 per cent increase in electricity energy costs in February 2020 (compared to February 2019), 95 per cent in March 2020, 35 per cent in April, and 22 per cent in May”.⁶¹ Insufficient energy supply can greatly impact a common household, where the survival of the most vulnerable is often dependent upon their ability to maintain an acceptable room temperature. This is particularly evident during a pandemic. For example, air conditioning is vital for cooling, improving ventilation to ease respiratory stress, refrigerating medicine, storing and preparing food, and operating medical equipment.⁶² A global review of emergency measures addressing energy poverty shows four main measures have been widely introduced by Governments to cope with the pandemic.⁶³ They are discussed below.

A. Disconnection bans

43. The prohibition of interruption of energy supply induced by service providers in the case of non-payment was by far the most widespread measure introduced by Governments during the COVID-19 pandemic.⁶⁴

B. Energy bills deferral and payment extension plans

44. Continuity of services is identified as a pressing need for vulnerable and disadvantaged consumers. Payment extension plans have been implemented in various countries: 3 months in Germany; 6 months in Italy; up to 24 months in Peru; and 36 months

⁵⁷ International Labour Organization, 2020, Global employment trends for youth 2020: Africa, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_737670.pdf.

⁵⁸ Ibid.

⁵⁹ International Labour Organization, 2021, ILO Monitor: COVID-19 and the world of work, seventh edition, 25 January, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf.

⁶⁰ International Labour Organization, 2020, Labour Overview in times of COVID-19: Impacts on the labour market and income in Latin America and the Caribbean, Technical Note, September, available at https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_756697.pdf.

⁶¹ A Cheshmehzangi, 2020, COVID-19 and household energy implications: What are the main impacts on energy use?, *Heliyon*, 6.

⁶² See K Brosemer, C Schelly, V Gagnon, KL Arola, JM Pearce, D Bessette, L Solabisi, 2020, The energy crises revealed by COVID: Intersections of indigeneity, inequity and health, *Energy Research and Social Science*, 68.

⁶³ P Mastropietro, P Rodilla and C Batlle, 2020, Emergency measures to protect energy consumers during the COVID-19 pandemic: A global review and critical analysis, *Energy Research and Social Science*, 68.

⁶⁴ International Monetary Fund, 2021, Policy responses to COVID-19, Policy tracker, available at <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19> (accessed 13 April 2021). The policy tracker covers 197 economies.

in Colombia. In Australia, Ireland, the United Kingdom and many States in the United States of America, energy suppliers have proposed alternative payment arrangements to consumers.⁶⁵

C. Enhanced assistance programmes

45. Enhanced assistance programmes include energy consumption subsidies for low-income households. The Government of New Zealand doubled the winter energy payment, a transfer of cash that helps certain categories of energy consumers keep their homes warm. In Belgium, the government of the region of Flanders covers one monthly utility bill (with an upper limit of approximately \$250) for those households where at least one member is temporarily unemployed due to the COVID-19 outbreak.

D. Energy bills reduction or cancellation

46. These are measures geared towards commercial and industrial users which include the creation of financing mechanisms. Electricity bill discounts have been introduced in many jurisdictions, including Cyprus and Dubai (10 per cent), Nepal (20 per cent) and Maldives (40 per cent). Energy bills have been cancelled outright in several jurisdictions: the Plurinational State of Bolivia and Chad covered electricity bills for a period of time during the epidemic, while similar measures have also been provided in Bahrain, Ghana and Thailand with conditions attached.⁶⁶

E. Other measures

47. The Competition and Markets Authority of the United Kingdom declared that helping vulnerable consumers during the ongoing COVID pandemic and its aftermath is central to its mission in the entity's 2021/22 annual plan.⁶⁷ The United Kingdom communications service regulator issued a guide outlining measures that providers could adopt to help make sure they treat vulnerable people fairly⁶⁸ and give them the support and services they need during the pandemic.⁶⁹ The United Kingdom energy regulator provides the instruction that "suppliers will have to provide more support for customers struggling to pay their energy bills and extra help for prepayment customers",⁷⁰ but leaves how to implement the instruction to the service suppliers' discretion. From April 2019 to March 2020, energy service suppliers of the United Kingdom provided over \$486 million to support vulnerable consumers, which included \$195 million in rebates to more than 2.2 million people through a "warm home discount" scheme.⁷¹

VI. Conclusions

48. The protection of vulnerable and disadvantaged consumers is a priority for member States, as reflected in the United Nations guidelines for consumer protection. There is no

⁶⁵ P Mastropietro et al., 2020.

⁶⁶ Ibid.

⁶⁷ United Kingdom, Competition and Markets Authority, 2021, Consultation outcome, CMA Annual Plan consultation 2021/22. Available at <https://www.gov.uk/government/consultations/cma-annual-plan-consultation-202021/cma-annual-plan-consultation-202021>.

⁶⁸ United Kingdom, Office of Communications, 2020, Treating vulnerable customers fairly: A guide for phone, broadband and pay-TV providers. Available at https://www.ofcom.org.uk/__data/assets/pdf_file/0034/198763/treating-vulnerable-customer-fairly-guide.pdf.

⁶⁹ Ibid., 2020, Support for customers struggling to pay their phone or broadband bill during the pandemic, 2 July.

⁷⁰ United Kingdom, Office of Gas and Electricity Markets, 2020, Ofgem strengthens protections for customers struggling with energy bills this winter, 19 October.

⁷¹ Ibid., 2020, Warm Home Discount annual report: Scheme year 9, 18 December.

one-size-fits-all definition of vulnerable and disadvantaged consumers, as their characteristics and needs are context-specific and heterogeneous in nature. Nevertheless, it is in the interest of member States to engage in public policy discussions with all relevant stakeholders to identify the needs of vulnerable and disadvantaged consumers in selected sectors, including in public utilities, as a basis to inform policymaking.

49. The first consumer protection priority in public utilities is to guarantee access and inclusion, especially for the vulnerable and disadvantaged. In line with the guidelines, Governments have the primary responsibility to ensure the protection of consumers and can establish the principles of service with which public utilities' providers must comply, including affordability, regularity, quality of service and good business practices. To turn this from aspiration to reality, it is important for member States to enact substantive legislation containing the rights and obligations of market actors, particularly consumers and public utilities service providers. Member States should also establish or encourage oversight bodies with the necessary authority and resources to carry out their mission in protecting consumer rights and monitoring public utilities markets, including through periodical reporting by public utilities service providers.

50. Member States have implemented various specific measures targeting vulnerable and disadvantaged consumers of public utilities. Such measures include support measures such as financial assistance to pay bills; protection measures that adapt to consumers' level of vulnerability; prevention measures to protect consumers from becoming vulnerable; information and education campaigns for vulnerable consumers and disadvantaged consumer to know their rights; and dispute resolution and redress to ensure such rights are enforced and protected. In the specific context of the COVID-19 pandemic, member States have taken decisive actions to protect vulnerable and disadvantaged consumers. These have taken the form of disconnection bans, enhanced assistance programmes and reduction or cancellation of energy bills, among other actions.

51. It is in the interest of member States to regularly review and assess the impact of measures that provide targeted support to vulnerable and disadvantaged consumers, based on consumer protection authorities' intelligence and industry annual reports. To help member States achieve this effectively, UNCTAD proposes several policy recommendations for discussion.

VII. Policy recommendations

52. Due to the distribution of powers among governmental authorities and the essential participation of consumer groups and the private sector, enacting a substantive legal framework and undertaking cross-institutional coordination is paramount to effectively attend to the needs of vulnerable and disadvantaged consumers of public utilities. Such a legal framework should address the rights and obligations of market players, especially consumers and public utility service providers, and articulate the work of the concerned government authorities, including consumer protection agencies, social protection and inclusion authorities, and sectoral regulators.

53. This multilayered situation presents challenges which should be overcome through collaboration and coordination. For example, as consumer protection agencies and sectoral regulators can receive complaints and dispute claims and gather intelligence on consumer concerns in public utilities, they are in a good position to relay information and provide advice to other competent authorities to take action. Given the expertise of social inclusion authorities in a wider social policy context, they are well placed to advise on policy development to attend the needs of vulnerable and disadvantaged populations. Sectoral regulators have regulatory powers and are thus keenly aware of market dynamics, so they can react more quickly if other authorities signal emerging concerns.

54. In addition to cross-institutional coordination, community participation is key to ensuring better protection of vulnerable and disadvantaged consumers. This involves engaging in dialogues with public utilities service providers, consumer associations and other civil society organizations that are tuned in to consumers' concerns, so that public policies can be designed with a targeted approach to maximize their effectiveness.

55. Based on the United Nations guidelines for consumer protection, the *Manual on Consumer Protection* and the inputs received from member States, some policy recommendations are provided below to better attend to the needs of vulnerable and disadvantaged consumers in connection with public utilities:

(a) Engage in public policy discussions with all relevant stakeholders as a first step towards identifying the needs of vulnerable and disadvantaged consumers of public utilities. The process should involve examining concrete examples and avoid a one-size-fits-all approach in policy designs.

(b) Enact substantive legislation containing the rights of consumers of public utilities, including access, information and education and dispute resolution and redress, as well as the obligations of public utilities service providers, including the principles of service affordability, regularity, quality of service and good business practices.

(c) Consider, review and evaluate supportive, protective and preventive measures with respect to public utilities, in light of the special needs of vulnerable and disadvantaged consumers that are identified.

(d) Coordinate policies across institutions and engage in dialogues with public authorities that have an interest in protecting vulnerable and disadvantaged consumers. These include the authorities for consumer protection and for social protection and inclusion, as well as sectoral regulators.

(e) Engage with consumer groups and organizations, business and research institutions to identify the concrete actions required and paths forward in addressing the needs of vulnerable and disadvantaged consumers.

(f) Regularly review and evaluate the impact and effectiveness of policy programmes to ensure that the needs of vulnerable and disadvantaged consumers with regard to public utilities are being met. Intelligence gathered by public authorities and public utilities service providers and reports by public utilities service providers can be useful for these assessments.

VIII. Questions for discussion

56. The fifth session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy may wish to consider the following questions for discussion:

(a) What are the most pressing of vulnerable and disadvantaged consumers in connection with public utilities?

(b) What are some of the policymaking tools and processes that could most effectively attend those needs, particularly in developing countries? Which evaluation criteria are suitable?

(c) In what ways could businesses, civil society organizations and research institutes contribute to effectively address those needs?

(d) How can new technologies assist regulators in resolving the relevant issues regarding vulnerable consumer groups?

(e) How might UNCTAD better contribute to support its membership, especially developing countries and the least developed countries, in attending to the consumer protection needs of vulnerable and disadvantaged consumers in connection with public utilities?