



ICT Consumers' Association Kenya - ICAK

"enlightened consumer enjoying high quality and best priced ICT Services"

4th Ngong Avenue, Gordon Melvin House

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First Consumers Network Meeting Report

ICT Consumers Association of Kenya Workshop held at
4th Ngong Avenue, Gordon Melvin House on 25 May 2007

Theme

"Institutionalising Consumer Protection"

Facilitated by

Kenya ICT Action Network – KICTAnet <http://www.kictanet.or.ke>

Draft Report

(Subject to ratification at the next consumers meeting)

Written by:
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Who are consumers

In free market economics, consumers dictate what goods are produced and are generally considered the center of economic activity. Individual consumption of goods and services is primarily linked to the consumer's level of disposable income, and budget allocations are made to maximize the consumer's marginal utility.

When businesspeople and economists talk of consumers they are talking about person as consumer, an aggregated commodity item with little individuality other than that expressed in the buy/not-buy decision.

Within law, the notion of consumer is primarily used in relation to consumer protection laws, and the definition of consumer is often restricted to living persons (i.e. not corporations or businesses) and excludes commercial users. A typical legal rationale for protecting the consumer is based on the notion of policing market failures and inefficiencies, such as inequalities of bargaining power between a consumer and a business. As potential voters are also consumers, consumer protection takes on a clear political significance.

Concern over the interests of consumers has also spawned much activism, as well as incorporation of consumer education into school curricula. There are also various non-profit publications, such as *Consumer Reports*¹ and *Choice Magazine*², dedicated to assist in consumer education and decision-making.

Political and Economic Importance of Consumer Protection

Social scientists have only in recent years started to develop more systematic explanations for domestic and international outcomes we observe in this policy area. On the basis of these explanations, which are still in their infancy, they have ventured into predicting further developments and proposing solutions to important problems. This is also an area of study where the sub-fields of political science cannot produce satisfactory answers on their own. The most interesting results will come from close collaboration between specialists of domestic and comparative politics, experts of international political economy, specialists of international law and international economics, and to some degree also scholars from the natural sciences. The contributors to this debate hope that their effort will stimulate further research on the controversial points discussed here and the many questions left unanswered³.

Consumer Protection and Democracy

Consumers are now participants in a global market, and possibly in a cybermarket. Law can only protect them (or us—we are all consumers) through rules which are essentially national, and which can only be enforced within national frameworks. Most of those rules have been enacted through a democratic political process. If the rules are useless in practice, people may question the usefulness of democracy and nation states.

Consumer protection laws enable the correction of market failures and the redress of inequalities of information and power. Recent cases indicate that consumer protection laws, for a number of reasons, will be of little practical use to protect consumers in the global economy and in cyberspace. That raises the question of whether democratic politics can ever be used to bring countervailing force against those who abuse their position in the global market or the cybermarket. If so, what other national laws will be rendered useless: labour laws, environmental laws, other laws that result from an often vigorous political process? What functions remain for democratic politics?⁴

Consumer protection programs in any country are an extensive array of laws, regulations and practices that touch on practical problems in commerce. No single government agency is responsible for consumer protection. We have laws to protect personal privacy, fight fraud, and provide consumer information, and lots and lots more.⁵

¹ Consumer Reports is an American magazine published monthly by Consumers Union <http://www.consumerreports.org/>

² Choice Magazine is 100% independent and non-profit, and because it has no advertising or ties to government or industry you can completely trust what you read has been around since 1959, helping consumers make better purchasing decisions and get value-for-money on products. In every issue in-depth tests on everything from dishwashers and digital cameras to espresso machines and LCD TVs. Plus reports on food, health and financial service products. http://www.isubscribe.com.au/title_info.cfm?prodID=3800

³ see Debate: Consumer Protection in a Global Market <http://www.spsr.ch/Archive/Vol6/Issue3/Articles/CPGM2.pdf>

⁴ Abstract, *Consumer Protection, the Nation-State, Law, Globalization, and Democracy*, <http://jcmc.indiana.edu/vol2/issue2/goldring.html>

⁵ J. Love, Consumer Project on Technology paper presented at European Commission Forum on Political Institutions and Democracy in an Information Society, The World Consumer Protection Organization <http://www.cptech.org/ecom/cpt-wcpo.html>

Strengthening Human Rights

Consumer policy is part of the Union's strategic objective of improving the quality of life of all its citizens. In addition to direct action to protect their rights, the Union ensures that consumer interests are built into EU legislation in all relevant policy areas. As the single market and the single currency open trading borders, as use of the internet and electronic commerce grows and as the service sector expands, it is important that all 490 million citizens in the 27-nation Union benefit from the same high level of consumer protection.

Legislation is not the only means. Other methods include co-regulation between consumer and business organisations, and good practice guidelines. Strong consumer organisations, aware of an individual's rights and able to take advantage of them in practice, also have a prominent role to play.

The European Commission actively encourages consumer organisations and individual consumers to take part in the consultation process that accompanies the preparation of new EU legislation affecting their interests. One way is via the EU website at <http://ec.europa.eu/yourvoice/>

Environment

The establishment of standards and guidelines to protect consumers is not new to the United Nations system. The Commission on Transnational Corporations, established in 1974, prepared a draft code of conduct for multinational corporations, although no such code was adopted. WHO and FAO prepared the "Codex Alimentarius" Commission to develop guidelines in the areas of food safety and standards, including the formulation of international standards and codes of practice on a wide range of food commodities, the encouragement to consumers to participate in decision-making on all matters related to food quality and safety, labelling and advertising, and the integration of food safety into health education programmes. 8/ Other activities in the area of consumer protection include the Consolidated List of Products whose Consumption and/or Sale Have been Banned, Withdrawn, Severely Restricted or Not Approved by Governments, which provides information on products harmful to health and the environment 9/, the International Programme on Chemical Safety, and the London Guidelines for the Exchange of Information on Chemicals in International Trade.⁶

The United Nations Economic and Social Council has adopted a number of resolutions which mandate the United Nations to promote the implementation of the Guidelines for Consumer Protection.

Consumer Protection: A comprehensive and integrated approach

The scope of EU consumer protection policy has also broadened, reflecting a shift in people's needs and expectations. New legislation is setting even higher, harmonised EU safety, security and health standards designed to increase consumer confidence. In March 2007, the EU adopted a new consumer protection programme for the period 2007-2013. The budget for the programme totals €157 million. It has two main objectives:

- * to ensure a high level of consumer protection, notably through improved evidence, better consultation and better representation of consumers' interests;

- * to ensure the effective application of consumer protection rules, notably through enforcement cooperation, information, education and redress.

In March 2007, the European Commission set out its strategy for implementing the new programme. This focuses essentially on ways to improve current legislation but also seeks to make it easier for consumers to obtain mortgages for home buying or access to retail banking services in another EU country if they so choose⁷.

Local Advocacy Approach

Consumer protection is a form of government regulation which protects the interests of consumers. For example, a government may require businesses to disclose detailed information about products- particularly in areas where safety or public health is an issue, such as food. Consumer protection is linked to the idea of consumer rights (that consumers

⁶ <http://www.un.org/documents/ecosoc/cn17/1998/background/ecn171998-consumer.htm>

⁷ http://europa.eu/pol/cons/overview_en.htm

have various rights as consumers), and to the formation of consumer organizations which help consumers make better choices in the marketplace.⁸

Consumer protection law or *consumer law* is considered an area of public law that regulates private law relationships between individual consumers and the businesses that sell those goods and services. Consumer protection covers a wide range of topics including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumer/business interactions.

The United Kingdom is a member state of the European Union and so is bound by the consumer protection directives of the European Union. Domestic (UK) laws originated within the ambit of contract and tort but, with the influence of EU law, it is emerging as an independent area of law. In many circumstances, where domestic law is in question, the matter judicially treated as tort, contract, restitution or even criminal law.

Consumer Protection issues are dealt with when complaints are made to the Director-General of Fair Trade. The Office of Fair Trading will then investigate, impose injunction or take the matter to litigation. The Office of Fair Trading also acts as the UK's official consumer and competition watchdog, with a remit to make markets work well for consumers, and at a local, municipal level by Trading Standards departments.

Competition law, known in the United States as antitrust law, has three main functions. Firstly, it prohibits agreements aimed to restrict free trading between business entities and their customers. For example, a cartel of sport shops who together fix football jersey prices higher than normal is illegal. Secondly, competition law can ban the existence or abusive behaviour of a firm dominating the market. One case in point could be a software company who through its monopoly on computer platforms makes consumers use its media player. Thirdly, to preserve competitive markets, the law supervises the mergers and acquisitions of very large corporations. In all three, competition law aims to protect the welfare of consumers by ensuring business must compete for its share of the market economy.

In recent decades, competition law has also been sold as good medicine to provide better public services, traditionally funded by tax payers. Hence competition law is closely connected with law on deregulation of access to markets, providing state aids and subsidies, the privatisation of state owned assets and the use of independent sector regulators.

Behind the practice lies the theory, which over the last fifty years has been dominated by neo-classical economics. Markets are seen as the most efficient method of allocating resources, though sometimes they fail and regulation becomes necessary to protect the ideal market model. Behind the theory lies the history, reaching back further than the Roman Empire. The business practices of market traders, guilds and governments have always been subject to scrutiny, and sometimes severe sanctions. Competition law has become global and National authorities have international support and established enforcement networks.

Consumer protections for a competitive telecommunications industry requires research, establishment consumer protection rules and their application to wired and wireless telecommunications. Evaluation of consumer complaints on termination fees, uncertain carriers applicable rules, inadequacies regarding oral disclosures of certain terms, clearly articulated or enforced jurisdiction and whether to replace fully-competitive service tariffs with consumer protection rules.⁹

Communications Commission of Kenya – CCK is obligated to protect ICT consumers by law¹⁰. The National ICT Policy¹¹ expects consumers to assert their right to widespread, affordable, quality services and to ensure a continued review of government policies in accordance with technological and consumer trends. It was on this basis, that workshop themed *Institutionalising Consumer Protection* was held on 25 May 2007 at Gordon Melvin House Nairobi.

Eleven diverse consumer representatives attended, four sent their apologies but the invited government and regulator did not attend nor send apologies. Chaired by Alex Gakuru, with Linda Oyango the acting secretary this meeting commenced at 9:30 am and was adjourned at around 1 pm.

⁸ http://en.wikipedia.org/wiki/Consumer_protection

⁹ California Public Utilities Commission, "CONSUMER PROTECTIONS FOR A COMPETITIVE TELECOMMUNICATIONS INDUSTRY", February 3, 2000 http://www.cpuc.ca.gov/Static/telco/consumer+information/crreport/index.htm#P230_55247%22

¹⁰ Under sections 23 and 47 of the Kenya Communications Act of 1998

¹¹ Clause 9.6 Role of Consumers and Users

Being our first meeting, there was no previously set agenda. It was tabled for as:-

Agenda

Session I

- i. Opening Prayers
- ii. Welcome Remarks
- iii. Attendance/Apologies
- iv. ICAK Introduction (vision, mission, objectives, strategies, workshop purpose)
- v. Government Speaker
- vi. Regulator Speaker

TEA BREAK

Session II

- vii. Consumer Protection Overview
- viii. Consumer Experiences
- ix. Existing Consumer Protection Mechanisms – Review
- x. Situation Analysis
- xi. Priority Action Areas
- xii. Way Forward
- xiii. A.O.B.
- xiv. Vote of Thanks
- xv. Closing Prayers
- xvi. Adjournment

This agenda was Stephen Ndegwa proposed and seconded by Peter Heho and it was thus adopted.

Attendance:

1. Alex Gakuru – Chair, ICAK
2. Linda Onyango, ICAK Youth Affairs, (ag. Secretary)
3. Stephen Ndegwa (Media Speak Africa)
4. John K. Kanyi – Paental Expectations
5. Eng. Gathuri Njorohio - Technical Advisor
6. Naila Nancy Warshaw – Chairperson, Riera Residents Association
7. Suzanne Drouilh Internet Association of East Africa
8. Robert Yawe - KAY System Technologies Ltd (SME)
9. Judy Otieno – Users Helpline
10. Peter K. Heho (Children's Officer)
11. Evelyne Majale (KICTAnet)
12. Janet Kantai - Consumers Complaint

Absent with apologies

13. Mr. Kiarie – ICAK Company Secretary
14. Francis Ang'ila – Civil society Focal Person
15. E.H.M Aleyne Chairman – Amateur Radio Society of (K)
16. Mr. J. J. Manyara, Rajo Cyber
17. Lucy Kimani

Absent without apologies

18. Government speaker
19. Regulator speaker

Opening Prayers: Mr. Kanyi opened the meeting with prayers

Welcome Remarks: Alex Gakuru

Thanked the Kenya ICT Action Network for facilitating the meeting.

Introduced the ICT Consumers Association of Kenya - organizers and hosts, formed out of the realization that because of their financial muscle, corporate customers ensured they got rights services and value for money regarding ICT in Kenya but fragmented individuals received a raw deal, citing an example on Service Level Agreements to start with.

With respect to ICTs Service Providers do not qualify as consumers as long as they make money providing these services. Also, there exists a fundamental distinction between consumers and customers/users of a company that should not be mixed up. Companies could talk of customer care but it would be fallacious for them to claim to protect consumers because companies are founded on the principle of maximizing profits from goods and services rendered, they are not suited to protect consumers.

Narrated long-running difficulties in impressing upon government to support this consumer welfare association citing official frustrations in securing its registration since November 2005 despite the government twice collecting registration fees after the initial application "was lost" at Sheria House. He asked the network to be very well prepared for the challenges ahead, saying that they are many. He regretted to say that there appeared to be powerful anti-consumer protection forces in government and business. This was curiously contradictory to the National ICT Policy.

The Primary objective of the Association was to ensure that consumers received value for their money. For example, unlike big businesses that had the financial muscle to flex in demanding Service Level Agreements from service providers, individual consumers faced several challenges among which includes awareness of their rights, lack of a powerful association to follow up on their complaints and the poor past record of the CCK at receiving, let alone acting on, consumer complaints. Citing August 2006 employment of an Assistant Director for Consumer Affairs at the CCK, there were indications that may change but only if consumers were officially and practically empowered to assert their rights in the liberalized ICT sector, otherwise they may end up as another window dressing affair by the regulator.

CCK's annual reports since 2000 up to 2004 confirmed the low regulatory priority given to consumers despite the Kenya Communications Act being very clear in tasking the regulator with consumer protection.

The Kenya ICT action network was thanked for being the first person in Kenya to openly stand in support of consumers. He regretted that many officials publicly claimed to support our consumers advocacy but in practice they were quite a far distance from their words.

Introducing our vision "*enlightened consumer enjoying high quality and best priced ICT Services,*" it was clarified that the association is strongly believed in the principle of justice to all parties, providers included.

Knowledge is power and therefore consumer education is a priority to empower consumers select their most favourable services, prices, provider, and holding them accountable to contractual obligations. Consumer hardly knew their rights and until that changed they were bound to continue being exploited through exorbitant telecommunication tariffs and high government taxes.

The purpose of this network meeting was to strategize on sustainable engagement with government and service providers in protecting the consumer rights. Underserved urban (such as residential) and rural areas also enjoyed high quality affordable communication, and that an effective complaints handling mechanism is established.

Answering a question why consumer law never protected consumers, he informed that on his best information and belief, there did not exist any ICT Consumer Protection Laws in Kenya, save for sections 27 and 47 of the Kenya Communications Act; whose past implementation had been highly questionable.

Introductions:

Naila Warshaw (Riara Residents Association)

Her experience:

- Complained she was unable to download, let alone upload small videos and her slow link was stuck at “buffering”.
- Wondered why Kenya lagged behind other countries on quality internet speeds.
- Because the Internet service are not provided efficiently as a result of which consumers are forced to purchase connectivity severally and simultaneously so that when one fails, they could try connecting through the other one.

Suzanne (East Africa Internet Association)

- It's not easy to help or protect consumers because they don't open up.
- The EAIA is dormant because there is no support
- There has not been much noted interest from consumers.
- Advice
 - i. get everybody talking
 - ii. try to get precise coverage of needs from consumers
 - iii. Failing to represent consumers
 - iv. Once a critical number of consumers are interested, critiques will fail to discredit the association
 - v. Conduct detailed good research before stakeholders; accurate data reinforces

Stephen Ndegwa (Media Speak Africa) noted;

- ICT Issues lagged behind in media.
- The EAIA is dormant because there is no support
- Proposed government is engaged on consumers
- The media had a critical role to play on Consumer protection

Linda Onyango (Accountant at a Loss Adjusting Firm)

- Her problem is the slow speed of the Internet
- And the high rates charged

Judy Otieno (Cyber Café Assistant)

- Frequent connection speed drops and failures
- Providers do not give good services
- Challenges them to explain to customers what might be the problem
- Many users do not understand ICT terminologies; tries to them teach as much.

Mr Heho (Children's Affairs Department)

Interested on how ICT affects children and relations

Robert Yawe (ICT Consultant)

- Consumer rights are not known
- Lamented absent Consumer Laws
- GPRS problem issue
- Asked for information to be sent to people.
- Reported that blogging had actually taken off large scale in the USA (VoIP)
- Own webmail service
- E-commerce not available
- Consumers need to become vocal and assertive in the industry
- Many people should to write regular educative media articles on ICT
- Doing ICT and have no idea about it just happens they have done (different from print media)
- We set up electronic forum

Session II

Consumer protection review

- Licences to anyone who wants to join ICT
- 2004-2005 CCK came out clearly about consumer
- Media- expression of interest in ICT
- Consumers to be empowered by CCK
- E-government to be facilitated
- Consumers have good opportunity to ensure rights are protected
- Challenges i.e Suzanne disclosed
- Appointment of officials to care of consumers concerns.

Challenges Lessons from East Africa Internet Association

- Task force for service providers
- No user association
- A lot to discuss on harmonization
- Creation of IPS
- Competition on those who made bandwidth
- Gap created by association and users
- Active programme- training programme on specific objects
- Publication of textbooks on ICT Association
- More wiling to work with representatives
- The Association still legally exists

Consumer Experiences

Experiences with the Postal Corporation of Kenya

- Parcels are opened without addressee being present
- Items stolen/removed
- Fake receipts issued for parcels being sent abroad
- Problem is rampant at Postal Corporation
- Officials in high offices have not been of much help
- Could the CCK intervene?

Existing Consumer Protection Mechanisms – Review

- Lengthy complaints procedure expected of consumers
- Consumers are not educated on these procedure
- They give up/are unable to follow-up to the end
- CCK is slow/does not act as expected
- Consumer apathy persists

Situation Analysis

- There are very many diverse consumer problems
- We should avoid picking issues at face value
- Comprehensive research needed on any one

Priority Action Areas

- Consumers education of their rights
- Providers Relations Establishment
- Research needed before engaging providers
- Strengthening Consumers e-fora (website, e-list , discussion forum)
- To hold CCK accountable to their service charter promises (<http://www.cck.go.ke/html/chatter.asp>)
- Involvement in e-commerce efforts and neighbourhood/community connectivity
- Emergency numbers to be available and accessible across all networks
- Number Portability to be implemented in Kenya

Way Forward

- Secretariat to develop a comprehensive action plan
- Non-engagement with providers without researched data
- To pursue registration certificate while seeking alternatives
- Next meeting will follow after circulation of this document
- To continue monitoring consumer-related developments

Vote of Thanks

- Mr. J K Kanyi gave the vote of thanks

Closing Prayers

Adjournment: The meeting was adjourned at 1:00 pm

Author's Conclusions

1. In line with the meeting theme, it was felt that dealing with institutional issues would enable the network assist consumers better
2. Before engaging on specific industry/providers products and services, detailed information must be at hand
3. Worries that deliberate ICAK Registration Certificate denial created "legitimacy" questions
4. Consumers are unfairly denied their freedom to associate to better lobby for the largest yet un-represented stakeholders
5. KICTAnet was our first partner to "put their wallet where their mouth was"- as it were
6. Repeated Government and CCK absence/disinterest active consumer protection witnessed.
7. ICT Consumer Protection is a thorny issue to many in authority