

# *THE STATE OF KENYAN CONSUMER REPORT 2012*

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## Background

On 6<sup>th</sup> September 2012, Consumer Unity and Trust Society, Africa Resource Center (CUTS ARC) Nairobi office, convened a dissemination workshop to present the report entitled State of the Kenyan Consumer 2012 prepared under the project ‘Consumer Rights Empowerment for Social, Economic Justice and Good Governance in Kenya (CONSREG)’. The objective of the report State of the Kenyan Consumer, and indeed this workshop was to raise the need for development of a well-functioning consumer protection regime in the country. The report focused on five sectors namely *water, public transport, electricity, telecommunication and public healthcare*. It also contained an assessment of consumer perception about these services in four towns in Kenya namely *Kisumu, Mombasa, Nyeri and Nairobi*. It is anticipated that this study would mark a step towards operationalization of a consumer protection regime in the country and fast-track the process of developing the Consumer Protection Law in Kenya. The aim of the dissemination workshop was to launch the report as well as engage key stakeholders to chart the way forward for evolving a consumer protection regime in Kenya.

## Introduction and Welcome Remarks

*Mr. Clement Onyango, Director, CUTS ARC Nairobi Office*

Mr. Onyango welcomed the participants to the dissemination workshop. He stated that consumer work has occupied CUTS work since its inception in 1983 in India. It was inspired in India where there were a lot of consumer concerns at the time, for instance, buying a matchbox with 30 sticks rather than 50 sticks as the box claims. In Kenya, consumer issues have not been addressed adequately. A good illustration is the switching off of all counterfeit mobile phones in the country by end of September yet one wonders how such phones found their way into the market in the first place. This shows that law enforcement is weak. Mr. Onyango further stated that we have an opportunity to address this problem by ensuring that policies and laws are in place and implemented to the letter. But for this to be achieved, research must be done; we need data on which to build the argument. This is the time to make a change.

## Key Note Address

*By Prof. Jasper Okello, WTO Chair's Programme, University of Nairobi School of Economics.*

Prof. Okello began by arguing that we have a big problem, but the problem is us as consumers; it is not outside there. Consumer protection provisions are spread all over the place hence there is no room for anyone to take action and when there is an attempt it always results in blame game by the various agencies involved.

Prof. Okello informed the participants that he has been an activist in the consumer movement for a long time. During the infancy of the movement, they faced resistance even from policymakers,

for instance, when they were fighting to have expiry dates inscribed on beer and Coca Cola products' bottles. In addition, the advertisements and marketing using drugs had been eradicated in the '80s and early '90s but now they are everywhere, supported by large corporations. All the efforts made towards consumer protection have been thrown out the window.

By advocating strongly, they hoped that Kenyans would take the initiative. There is power in information. Informed consumers have the power to reject goods/services and to drive businesspeople out of their businesses. He further claimed that no government has succeeded (even the most powerful ones) in protecting consumers because the government cannot be everywhere. The only thing that has worked is the consumer himself. A strong consumer movement would educate consumers to know their rights and to know the market. The Act that is coming up is just a statement on a piece of paper that can be thrown away. *If we educate people to know their rights and to know the market then even the government will respect us.* It is our responsibility (us in Kenya and in the region) to stop the mayhem as far as consumer issues are concerned. Unfortunately this is not happening. The reason why we are responsible is because we as consumers are everywhere, we are suffering and we know where the shoe hurts. We need to wake up! This CUTS Report is a wake-up call for all of us.

Prof. Okello also mentioned on the need to go back, reverse and check where all the consumer laws are. Can we put them together? We also need to strengthen our consumer movement. We have to do something for our people because some people may not genuinely know so we have to stand in for them. We need to work together rather than separately/divided. We need to form a large movement/union. As long as different organizations do not see eye to eye we cannot succeed.

The issue of consumer protection is so serious that we need to have done it a long time ago. It is so serious that there is need to form one large strong movement. In most African countries, the sectors covered by the report (telecommunications, water, public road transport, public health, and electricity sectors) are the major services/rights to the people. Majority of people in the continent are poor and require these services. *These services are so critical that they should not even have been privatized in the first place.* No country has ever privatized the railway system yet Kenya did so and also privatized the Kenya Bus Service because of selfish interests.

### **Remarks from the Donor: AkibaUhaki Foundation**

#### ***Mr. Felix Kyalo***

Mr. Kyalo gave a brief overview of the Akiba Uhaki Foundation and the work it does in the region. He stated that Akiba Uhaki Foundation is a social justice organization and supports work in the East African Community region. It supports initiatives at the community level especially those touching on socio-economic issues, and empowerment of the grassroots communities. Support of the CONSREG project was a follow-up to a similar work that had been done in

Uganda. The organization is interested not just in the state of Kenyan consumers but also in the state of the consumer movement.

He was impressed by the attendance from the government but pointed out his disappointment in the poor representation from consumer organizations citing unhealthy competition among organizations which is an impediment to the realization of a strong consumer movement in the country. He noted that consumer organizations are not supporting each other and instead they are fighting for resources and for publicity. It is high time we started bringing the various actors together. Kyalo further argued that if we have a Constitution that is good on paper but does not really help our people, then we as a consumer movement should be worried. There is need to educate the consumers on their rights and on what they can do if their rights are violated. There is need to engage the people and inform them of the existence of the movement. This (awareness creation) is the major interest of AkibaUhaki Foundation. Kyalo concluded by calling upon the participants to partner with the foundation on these and other issues.

### **Introduction of the CONSREG project:**

On his presentation of the “[The State of Kenyan Consumer Report 2012](#)”, Mr. Daniel Okendo Asher commenced by giving an overview of the whole project of consumer empowerment. He mentioned that the project goal was to strengthen the consumer voices towards sound consumer policy development and implementations with an objective of enhancing the profile of consumer protection issues in Kenya through advocating the need for developing an effective consumer protection regime in the country that conform to the existing best international practices, for the benefit of all Kenyan citizens.

He informed the participants of the existence of Consumer Complain and Advisory Cell at CUTS offices in Nairobi where consumers can now access free assistance in case they feel aggrieved by the business persons or the utilities. The Consumer Cell links consumers with the respective sector regulators and give advisory services on lodging complaints apart from arbitrating between consumers and the business.

He also mentioned the established and dedicated Consumer Protection Website [www.consumerforum.co.ke](http://www.consumerforum.co.ke) where consumers, private sectors and policy makers can now engage in consumer related topical discussion through the social media (face book, twitter and YouTube) and welcome all the participants to take advantage of the interactive Consumer Empowerment Forum Website to share their views and concerns.

Daniel then proceeded to present the idea of research, components, its methodology, study limitations, findings analysis and sector specific recommendations of which were summarised in the Policy Brief. The session was followed by the deliberations from the floor.

## Discussants Session

### *First Discussant: Mr. Francis Orago, Executive Director, Kenya Consumer Organization*

Mr. Orago argued that the legislations and Constitution are there in paper but there is need for a consumer organization in all areas. The legislation currently being put together has been a long process which they have discussed with the government. He further stated that the workshop offers a healthy discussion and hoped that the government will strengthen the consumer organization and partner with it. Consumers should also support consumer organizations. The media should also play its role, which is dissemination of information.

### *Second Discussant: Mrs. Beldine Omolo, Head, Consumer Affairs Division, Competition Authority of Kenya (CAK)*

Mrs. Omolo pointed out that the Competition Act came into force in 2011. It addresses four types of consumer concerns:

- Misleading advertisements
- Unquestionable contracts, for instance, electricity meters, loans by banks
- Unsafe goods, for instance, sub-standard goods or banned goods finding their way back into the market
- Product information standards

The Authority works with consumer bodies because some of the issues can be addressed at that level. It also works with government agencies as well as relies on media reports. It acts in unison with other consumer rights protection agencies in cases where the Authority lacks competence to address a particular issue. In reference to the country's devolution, the Authority plans to appoint liaison officers at the county level. It has the power to impose fines and jail terms (through the local courts), impose bans, recall products from the market and even destroy goods. In addition, the Authority uses non-enforcement measures such as education and advocacy. Consumers also have the leeway to go directly to court without passing through the Authority.

On the adequacy and effectiveness of the Competition Act to address consumers issues Mrs. Omolo stated that the Act is effective compared to the old one. This is because the Act has a broader mandate and it is accountable and reliable because the investigation processes and timeframe are clear. The Act also saw separation of powers into: Policy arm, Management arm, and Regulatory arm, which ensures the independence of decision making.

Mrs. Omolo informed the participants that consumer rights in the Constitution are provided in Article 46. Moreover, the country's long-term development agenda, Vision 2030, which seeks to ensure high quality of life of Kenyans, cannot be attained if consumer issues are not addressed. On whether there is need for a separate consumer protection law besides Competition Act in Kenya, on her personal opinion, she felt that there is no need for a separate consumer law

because currently there are so many pieces of consumer legislations, which congest the regulatory space. The Competition Act is sufficient and therefore adding legislation will just confuse consumers. The Authority also works with sector regulators although their responsibilities are different; whereas the Authority handles only competition issues, the sector regulators handle technical issues. However, agencies such as the Communication Commission of Kenya and the Central Bank of Kenya handle all types of consumer-related issues.

According to Mrs. Omolo, the most valuable aspect of the report is that it provides a platform for the authority (Competition Authority of Kenya) to undertake advocacy and public education campaigns. She mentioned the need to enforce existing laws against violators. She called on policy makers (ministries) and legislators to have a look at the challenges and enact enabling legislations to actualize the report's recommendations.

### **Floor Deliberations**

- There is need to engage the business community as well: there is a lot of creation awareness among consumers but not the business community. This is important so that if businesses are regulated, the regulators will do so on the ground that the businesses had been informed.
- Water is a human right and although coverage has been increasing in the past three years (currently at 52%), the country is still far behind the MDG target of 80%. The Water Services and Regulatory Board has put up consumer action groups to disseminate information and address consumer complaints. It is also projecting an SMS and web-based system through which consumers can forward their complaints. The Board is heading towards a consumer-based approach and will continue to be demand-driven rather than service-driven.
  
- **Consumer concerns in the energy sector:**
  - What is the Energy Regulatory Commission doing to ensure that the poor man is not ripped off?
  - Where can paraffin issues be addressed?
  - Pump prices go up with immediate effect but the same does not happen when pump prices are reduced. Why?

### **Response from the CAK and ERC:**

CAK: The government has had a headache trying to establish whether cartels in the energy sector exist or not because prices go up and down in unison. Furthermore, prices' going up is a worldwide phenomenon.

ERC: Proving the existence of cartels is a big problem; bursting them is even more problematic. There is a provision in the Energy Act that allows the Minister to control cartels (or delegate the responsibility to someone else; this responsibility was delegated to the ERC). In 2006, the ERC came up with a formula to determine the pump prices, which was implemented in late

2008/2009. Now that fuel prices have gone down globally, the formula has ensured that pump prices in the country have also gone down. The benefit of this formula is that it has made fuel prices predictable. The downside to it is that there are winners and losers. Given that the formula takes into account the logistics of moving the fuel from Mombasa to other destinations, the implication is that regions which are further away from Mombasa pay higher costs of fuel than those close to Mombasa. The ERC also conducts supervision and punishes the non-compliers

▪ **Consumer concerns in the ICT sector:**

- How can young consumers be protected from pornographic material?

Response from the CAK and CCK:

CAK: Challenges in the ICT sector should be looked into, particularly cybercrimes and pornography, although these are issues the CAK is not addressing at the moment.

CCK: The CCK recently held a workshop on challenges facing children with internet. The agency recognizes the importance of enlightening children on the dangers of ICT. It is therefore planning a campaign to sensitize children. The agency also uses a consultative approach in which it publishes and holds stakeholders meetings but in most of these meetings/forums, consumer organizations are usually not present.

▪ **Consumer concern in the food industry:**

- Where can I get redress in case I buy meat and find out that it weigh less in my weighing machine?

Response from the weights and measures department of Trade Ministry

It is within their mandate to ensure that all weighing and measuring machines used in the country conform to the internationally accepted standards. Weights and Measures Department of the Ministry of Trade informed the participants that they have offices in all the regions so anyone can report issues/problems to their offices where they receive complaints and take action against users of wrong measuring and weighing equipments. As a department, weights and measures is expanding scope to capture new areas of water meters, electricity meters, air pressure and health gauges.

**Other consumer concerns:**

- The Matatu Sacco's are more of cartel like in their operation because they determine who uses the transport means and who does not by dictating prices.
- The existence of a culture in which ordinary citizens do not report non-compliers, for instance, in reference to fuel pump prices.
- Problem with consumer desks in most companies is that they are not effective because they are the same people involved in the products/services

## **Final Remarks and Conclusion**

*Mr. Clement Onyango, Director, CUTS ARC Nairobi Office*

People everywhere ask how the ERC came up with the formula. But the *Wanjikus* (the ordinary Kenyans) do not care about the technical bits of the formula. What they care about is that they are paying high prices for fuel. What can be done?

There is need for consumer organizations to come together. Different organizations have different niches. CUTS undertake evidence based policy advocacy. However it does not engage on street activism but it appreciates those organizations that do the street activism for the impact they make. We need a comprehensive consumer protection law.

There cannot be a Constitution without Constitutionalism

## **Participants' Recommendations for enhancing consumer Protection in Kenya**

Participants recommended in their feedback form that CUTS should spearhead the following initiatives in taking forward consumer agenda in the country.

- a) Recommends a similar study for food and housing sectors, consumer challenges with fast moving consumables (electrical gadgets, electronic goods) - these are the basic necessities that consumers grapple with on a day to day basis.
- b) Assessment of the impact of value added tax on the vital commodities such as food stuffs since this has had a major concern to consumers who feel that VAT on vital commodities could lead to increase in the cost of living. This is an area that would be important to discuss.
- c) Organizing Forums to engage consumers with both regulators and business communities as a way of enhancing consumers, regulators and manufactures/ business people synergies and best approaches to deal with consumer issues in respective sectors.
- d) Organizing/Holding consumer forums at the grassroots to identify further challenges in other sectors and to sensitize them on their rights and responsibilities as provided for in the constitution and other existing laws.
- e) Undertaking a study on the capacity of regulatory agencies to offer consumer protection services. The outcome of the study would be recommendation on how the same may be improved to offer effective services.
- f) To develop a strategy that will enable all consumer agencies to work as a team for synergy
- g) Organizing/Having an annual event where all consumer organizations/agencies and regulators are brought together for exchange of ideas and bonding and where relevant units can contribute effectively on how best consumer protection issues can be addressed.
- h) Undertaking a study on consumer experiences and concerns in the financial sector especially capital markets, insurance and retirement benefits industries.

- i) Organizing advocacy meetings with specific sector players to influence government to align existing and future policies, programmes and legislations to consumer laws.
- j) Organizing stakeholders' sensitization meetings to broaden their understanding on various policies and regulations for effective uptake and implementation.

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