

## Consumer Rights Protection in Kenya: Towards a Regulatory Framework

By

**Stella Nyongesa & Fredah Mwiti**  
Strathmore University,  
Nairobi, Kenya

## ICBE POLICY BRIEF



### EXECUTIVE SUMMARY

The concept of consumer protection is still alien in Kenya with many companies exhibiting unethical behaviour in the past while the consumers and other stakeholders are unaware of actions to take.

This paper looks at the options that Kenyan consumers have in terms seeking justice when wronged by corporations. It also demonstrates how failure to have a policy and legal framework governing consumer protection has left many lost when seeking redress against unethical corporate behaviour.

Corporate Social Responsibility (CSR) and Cause Related Marketing (CRM) programs are concepts many companies around the world are embracing to show concern for the less privileged in society. These are however internal initiatives among many companies and in many instances rarely address what is at the heart of consumer concerns. Despite the numerous calls for companies to behave ethically towards their stakeholders, many companies still take advantage of the vulnerability of consumers.

A study undertaken in Kenya between August and October 2007 sought to determine the awareness levels of CSR and CRM by Kenyan consumers. The study also sought to establish whether consumer behaviour is affected by a company's involvement in CSR and CRM activities and determine if there is a difference in behaviour in terms of gender, age and income.

The study was conducted in Nairobi's urban and Nakuru's peri-urban areas using a sample of 528 respondents drawn from an infinite population of consumers.

The study found out that while majority of respondents seemed aware of what CSR and CRM are all about, the CSR efforts by companies in Kenya did not seem to heavily influence consumers' purchase decisions. Instead, quality and price of the product were the dominant factors influencing purchase behaviour.

It found out that there was no significant difference in consumer behaviour based on age, income or gender.

The study also revealed that although most consumers in Kenya were aware of what constitutes responsible or irresponsible corporate behaviour, majority did not know their rights as consumers. Most consumers had no idea how to seek redress in the event their rights as consumers were violated by a company.

In light of the study findings, recommendations with policy implications were made.

These include the enactment of the consumer rights bill, establishment of a consumer protection authority, formation of more effective partnerships between existing consumer protection bodies, and the education of consumers on their rights. While the Consumer Protection Bill was recently assented to law in early 2013, the implementation of the law, for instance the creation of the Consumer Protection Authority that is central in addressing consumer grievances, is yet to commence.

The purpose of this policy brief is to propose a series of action steps aimed at creating an environment in which Kenyan consumers and business are treated fairly by consumer law by empowering them to know their rights and how they can use them effectively.

### HEADQUARTERS

TrustAfrica  
Lot 87, Sacré Coeur 3  
Pyrotechnie x VDN  
BP 45435  
Dakar-Fann, Senegal

T +221 33 869 46 86  
F +221 33 824 15 67  
E [info@trustafrica.org](mailto:info@trustafrica.org)  
W [www.trustafrica.org](http://www.trustafrica.org)

The ICBE Research Fund is a joint initiative of TrustAfrica and the International Development Research Centre.

## INTRODUCTION

This presents an argument for a consumer protection policy, in both social and economic spheres. Consumer interests come in different forms and it is thus important to realise that the fundamental consumer interests of food, water and shelter must first be satisfied before economic and social consumer interests can be addressed, i.e. quality products, fair price, variety and right to seek redress.

In Kenya, the rights of consumers are not specified explicitly. There is a great deal of ambiguity surrounding the nature of protection for consumers when their rights are violated. Although some consumer rights activist groups exist, none of these bodies' efforts to promote consumer rights have been impactful due to the absence of the appropriate laws and regulations.

The intention of this document is to show the alternative options for promotion of consumer rights. The Consumer Protection Act should be implemented starting with the establishment of a Consumer Protection Authority. Consumer activists groups should be entrusted with the mandate to educate consumers about their rights and the steps they could take to keep their vigilance on irresponsible companies.

These recommendations are as a result of a study that was undertaken in 2007 to establish the effect of the corporate social responsibility efforts on consumer purchase behaviour. The findings revealed that consumers in Kenya were largely ignorant about where to turn to for redress following an encounter with an irresponsible company. This situation exists because of a largely non-existent consumer protection system.

## DESCRIPTION OF THE PROBLEM

The aim of the study was to determine whether consumers take seriously the CSR activities of companies. It was important to find this out because consumer vulnerability is said to be particularly prevalent in Kenya and other parts of Africa due to lack of basic skills and knowledge. While many companies have put in place policies to indicate

their CSR concerns, consumers in Africa and in this case Kenya still remain at the mercy of irresponsible and unscrupulous corporations. Some of these companies have perfected the art of proliferation of counterfeits, goods of sub-standard quality, fraudulent advertising and labelling of goods, and poor treatment of communities and employees. The findings revealed that though consumers were largely aware of the concept of CSR and CRM, they did not base their purchase decisions on how socially responsible a firm was. The study attributes this to a number of factors which include; lack of knowledge on the course of action to take if a firm was found to be socially irresponsible, lack of many options in terms of goods and services so as to boycott those products from a socially irresponsible company, non-existence of consumer protection law.

**Currently, the consumer protection framework in Kenya involves a number of bodies carrying out fragmented roles which often overlap each other.**

Considering that the most pertinent issues arising from this research had to do with consumer protection, our recommendations thus dwelt mainly on how to enhance consumer protection.

Following a series of discussions with the relevant stakeholders dealing with consumer protection issues, it emerged that the issue of consumer protection is a complex one that requires careful negotiations and partnerships with the relevant parties. The issue also requires working more towards policy formulation rather than direct confrontation between consumer protection bodies (including government agencies) and corporate offenders.

Currently, the consumer protection framework in Kenya involves a number of bodies carrying out non-coordinated roles which often overlap each other. This has resulted in a reduction in the efficiency of each body.

Meanwhile, consumers are represented by a confusing array of public institutions such as Kenya Bureau of Standards (KEBS), private bodies such as Consumer Information Networks (CIN) and voluntary

bodies such as Kenya Association of Residents Association (KARA) and the Consumer Federation of Kenya (COFEK), sometimes duplicating each other in their efforts to inform, educate and advise consumers of their rights.

The end result is an environment which is not meaningfully helpful to the consumer.

## **PUBLIC POLICY OPTIONS**

The following is an analysis of the alternative policy options proposed to address the issue of consumer rights in Kenya.

### **THE CONSUMER RIGHTS LAW**

Consumers have various rights including; the right to safety, right to information, the right to choice, right to be heard, right to redress, and the right to consumer education. Having a bill comprising these rights passed as law is the first step towards consumer protection in Kenya.

In Kenya, although consumer protection laws exist at various levels, for instance, those dealing with quality of foods and beverages, weights and measures among others, these laws are fragmented and not coordinated. There is thus need to organize these pieces of legislation under one law for better enforcement.

**This law is crucial because it will provide consumers with the means to seek redress when companies violate their rights as consumers.**

A recently enacted Consumer Protection Act is expected to consolidate some the idea of consumer protection from irresponsible behaviour by corporates. Its implementation is however pending, leaving consumers in the same state as they have been in without such a law.

### **CONSUMER PROTECTION AUTHORITY**

The Consumer Protection Act provides for the creation of a body that will be a custodian of consumers' rights. It is expected that the Authority will work with lobby groups and other consumer protection organisations. This will enable consumer's grievances to be adequately addressed.

It will ensure that their rights and warranties are upheld and protected from inaccurate or misleading estimates, protection from deceptive representation by businesses, punish unscrupulous businesses while protecting the honest and genuine ones.

The channelling of consumer complaints is presently being handled by officers from the ministry of trade and the Kenya Bureau of Standards. However, many consumers seem unaware of these avenues. The mandate of the Standards body is also diverse and hence while consumer protection is one of its core functions, the consumer complaints function might not be given the resources that it might be necessary.

As per the Consumer Protection Act, the Consumer Protection Authority will be allocated funding from the government to cater for consumer education on a national scale. The Authority will thus have officers charged with the responsibility of ensuring that consumer education campaigns are held frequently countrywide.

### **PRIVATE CONSUMER BODIES/ LOBBY GROUPS AND EDUCATION OF CONSUMERS**

The consumer activists groups should be entrusted with the mandate to educate consumers about their rights, the steps they could take to protect their rights as consumers from being violated and how to keep their vigilance on irresponsible companies.

Consumers in Africa suffer from a cumulative effect of lack of education, lack of opportunities to acquire consumer skills, lack of information about products and their potential hazards and lack of availability of alternative choices. As a result, many consumers

are not in a position to competently evaluate marketing offers made by any company.

Education campaign activities are thus a key strategy that would go a long way in providing consumers with the much needed information on their rights.

Though there are a number of consumer activist groups in Kenya, their impact however, is not felt in the marketplace especially by the 'common man'. Some of the notable active groups are Consumer Information Network (CIN), the Consumers Federation of Kenya (COFEK) and the Kenya Association of Residents Association (KARA). The Kenya Bureau of Standards (KEBS) is a government agency entrusted with the mandate of ensuring consumers get quality products and services.

CIN has been involved to a small extent in holding consumer open days. KEBS on the other hand has also been conducting some consumer education campaigns. Their efforts are however limited because the budgetary requirements for this activity are quite high and without external support, it is uphill task. Consumer education efforts in Kenya have thus not yielded much in terms of creating awareness among consumers about their rights. It is expected that if such campaigns were well planned and executed, the ordinary consumer would eventually know how to evaluate products and services on offer, and where to channel complaints in the event of encountering a non-conforming product or service.

CIN is a member of the International Consumer Organization (ICO), an international consumer protection umbrella body. This gives them an opportunity to discuss consumer issues at a global level. CIN also works with KEBS and sits in a number of technical committees of KEBS which discuss consumer protection issues.

Despite of these efforts, consumers seem unaware of CIN's existence and impact in the marketplace as seen from the research findings. Interviews held with the CIN chief executive officer to establish why this was the case revealed that the body faced various challenges such as constrained funding, opposition from corporate bodies and the fact that they're not established by an act of parliament has limited their ability to sufficiently confront irresponsible corporate organisations.

The model that has worked for CIN in their consumer protection efforts is where they sit in relevant committees

and advice on policy, rather than visible activism.

KARA, on the other hand, though not a member of the International Consumer Organization, has been more successful than CIN in their consumer protection activities. The Association played a key role lobbying for the consumer protection law. Part of the reason for this success has been their ability to raise funds through corporate organisations, who subscribe to the Association as members.

**Despite of these efforts, consumers seem unaware of CIN's existence and impact in the marketplace as seen from the research findings.**

KARA has managed to sell the idea to corporate organisations that by their subscription, their interests too would be represented, and that by working with other stakeholders' part of their social responsibility objectives would be met. This has greatly reduced the opposition KARA would face from corporate organisations, but has also hindered KARA from being registered as a member of ICO.

The CEO of KARA also revealed that the membership to their consumer body is through consumer associations on individual basis and corporate entities. He however highlighted that they found it more effective to represent consumer associations rather than individual consumers because individual consumers tend to have very diverse needs which become more difficult to represent in the absence of an overall regulatory framework set up by Parliament.

They have also found it more difficult to get consistent subscription from individuals. Another challenge faced by KARA is the unsatisfactory government support with regards to hastening consumer protection issues.

## THE COST OF NEW LEGISLATION

The new law may bring about additional costs for businesses which will tend to be passed on to consumers in form of higher retail prices of products and services. Although consumers have shown that they value quality products as revealed from our research findings, in which

case they would accommodate justified price increases, the proposed bill has provisions for unreasonable price hikes. Businesses that are notorious for unnecessary hike of prices might take this as a cue to increase product prices.

Since the Act advocates for responding to customers' needs, Consumer Protection Bodies may take up the chance to market it to corporate organisations with the message that it is another way of embracing the marketing philosophy to gain competitive advantage.

The marketing philosophy holds that for a business to succeed, it must understand and meet the needs of its customers better than the competitor. For firms which pay more than only 'lip service' to the marketing concept, support of the consumer protection law should not be a difficult issue to take up and support. Such firms could act as pace-setters by publicly declaring their support of the bill since they are already practicing what is being advocated for in the bill.

## **CERTIFICATION SYSTEM**

Discussions held with government officials from the Ministry of Trade also revealed that the CSR activity is not regulated in Kenya. However, the Kenya Bureau of Standards (KEBS) was working on standards which when enacted, businesses will be encouraged to apply them into their policies, albeit voluntarily. The regulation of CSR has in the past been met with stiff resistance, and hence KEBS intentions to introduce the standards voluntarily and eventually work towards enforcing them over time.

This would be a similar activity related to the already existing systems of quality certification (e.g. ISO 9000) program. Once certified to be CSR compliant, such a firm could use this aspect of certification in their promotional messages to show how responsive they are to consumer needs. In Kenya, a lot of companies with the ISO certification do not hesitate to include this fact in their promotional messages. Consumers too will feel safer dealing with companies that are ISO certified.

## **POLITICAL WILL**

As much as the introduction of new legislation by government may lead to additional costs to enforce the law, for consumer protection to become a reality in Kenya, there is need for government support. The consumer protection act seems to have gathered reasonable political goodwill so far with regard to the need to protect consumers from unfair business practices. The fact that the law sailed through Parliament, got presidential assent and even gazetted as an Act is a show of political goodwill that could be used to get the government to start implementing the law.

## **CONCLUSION**

Competition and consumer policy are both areas of vital importance for citizens of any country because they lead to business and economic growth. Empowered consumers and fair competition policy drive competitive markets which in turn promotes efficiency and innovation in business. Kenya's consumer policy system however is yet to be given the necessary attention which leaves the consumer still vulnerable to exploitation by businesses.