

Consumer Protection in Uganda: The Law in Theory and Practice

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Abstract This paper sets out to analyse the state of consumer protection in Uganda and the legislations that underpin it. This study adopted a descriptive, thematic, and analytical research design. The study established that legislation on consumer protection in Uganda is fragmented. Overtime, however, a new disjointed legal dispensation has taken centre stage. Even with the few interventions in form of legislation, there is a disconnect between the legal provisions and their practical application. The influence of foreign laws on consumer protection legislation in Uganda is apparent. The study concludes that there is a positive relationship between the level of development and the degree of consumer protection. There is also a direct relationship between the source of funds to sponsor legislation and the nature of legislation that is enacted. The study recommends an overhaul of the current legal regime and enactment of a comprehensive consumer protection legislation.

Keywords Consumer · Protection · Telecommunications · Liability · Safety

This paper discusses the disconnect between consumer protection legislation and enforcement. It highlights foreign influences that impinge on consumer protection legislation in Uganda. The Law of consumer protection in Uganda has been largely dominated by the Common Law of England. Both the Common Law of Contract and Torts have been espoused through the doctrine of precedent. The Criminal Law principles of consumer protection are enshrined in the Penal Code Act, which was also adopted from England. In 1902, the Queen of England issued an Order in Council by which all the laws of England before this date were applied to Uganda, including Common Law. Article 15 of the Order in Council provided for reception

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clauses. Recent developments in consumer protection in the services sector are largely influenced by international bodies as well as regional influences as shown infra.

Motivation of the Paper

Uganda has disjointed laws on consumer protection. In 1998, Government of Uganda engaged Reid & Priest LLP as consultants to reform commercial laws on consumer protection. The consultants proposed the promulgation of a Consumer Protection Act, whose purpose was to provide sufficient breadth in its application in order to curtail innovative business fraud schemes that could occur in the future (Uganda Law Reform Commission 2004). The consultants came up with a draft bill. The purpose of the bill was to guide the sellers on how to conduct their business, provide information to consumers on the goods and services they are buying and remedies to consumers who are injured by unfair or deceptive practices (Reid and Priest 1998:1) Nevertheless, the consultants did not propose regulation on quality of goods, services and prices charged for them (Uganda Law Reform Commission 2004). This prompted the Law Reform Commission to make adjustments to the Bill. The Draft Consumer Protection Bill (CPA), 2004 was submitted to the Ministry of Trade, Industry and Cooperatives (MTIC). The Minister was expected to introduce it on the floor of Parliament. It has since not been presented. As the long title of the Bill states it was intended to provide for consumers' rights against fraudulent and deceptive practices by sellers and suppliers of goods and services, to promote ethical standards in relation thereto and to establish small claims courts and other matters. The Proposed CPA has five parts, ranging from implementation of the Act to unfair and deceptive practices relative to the consumer. It proposes a five member Commission constituted of Uganda National Bureau of Standards (UNBS) (2), Uganda Consumer Protection Association (2) and a member from the National Chamber of Commerce and Industry (Reid and Priest 1998:2–3, 31). It provides for standards for gauging whether a practice is unfair or deceptive. It outlaws false advertising, for example advertising reconditioned goods as new (Reid and Priest 1998:3). It provides a buyer with a cooling off period within which to decide whether to continue with the transaction or not. It is an offence to present goods to the consumer with a misleading price.

This draft legislation was influenced by international instruments as well as regional ones. These include Berne Convention for the protection of Literal and Artistic Works, the Common Market for East and Southern Africa (COMESA) GATT 1947, Subsidies and Countervailing Measures Agreement, Tokyo Round 1973-79, United Nations Conference on Trade and Development (UNCTAD) Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, and WTO agreements. They also considered the Mauritius-Export Services Zones Act 1981, the UK's Supply of Goods Act 1994 and Unfair Contracts Act 1977, and Zanzibar Free Economic Zone Authority (Uganda Law Reform Commission 2004). The Bill has remained a bill since 2004. An official of Law Reform Commission in an interview stated that the Bill could not be presented because technology outpaced its provisions, hence the need for serious revisions before presentation to Parliament. Analogous to this process, the Law Reform Commission continued with reforms for disjointed legislation on consumer protection. These include the Contract Act 2010, the Sale of Goods and Supply of Services Bill 2015, the Communications Act of 2013, Regulation of Interception of Communications Act 2010, and the Banking Consumer Protection Guidelines 2010.

A new legal dispensation is in the area of services where a new generation of laws has been enacted. In the privatization or liberalization policy funded by the World Bank in Uganda, many of the services sectors like utilities and telecommunications were privatized. Privatization raised the commercialization of services and this raised need for consumer protection. Consequently, many regulations were enacted to protect the consumer. Some provisions on consumer protection were imbedded in the Acts regulating the sectors.

Of particular interest in this legal dispensation is the communications sector. Government through the Communications Policy of 2011 identified the need for review of the sector. Government noted a number of challenges to wit: there was an overlapping mandate of the regulatory sectors, to the detriment of the consumer; lack of a Tribunal to deal with disputes between providers and consumers; lack of a competition law to protect consumers' interests; lack of customized telecommunication devices in the local language; lack of public ICT awareness; high costs of telecommunication services; and low internet usage due to prohibitive costs. Other than country efforts, there are regional efforts as well on consumer protection discussed infra.

Regional Efforts

The East African Community (EAC) to which Uganda belongs, enacted the East African Community Competition Act 2006 as a key legislation on consumer protection. According to the long title, the Act was established to promote and protect fair competition in the Community, to provide for consumer welfare, and to establish the East African Community Competition Authority and related matters. It prohibits price fixing, collusion in tendering by firms, and trade barriers by partner states (Section 5). Part VII is dedicated to consumer welfare. It prohibits false representation (Section 28), promotes product safety and standards (S. 31), sets product information standards (S. 32), and creates liability in case of unsuitable goods (S. 34). The Act creates a Competition Commission. It is expected to fight trade practices and transactions that are anticompetitive, and ensure product safety and product liability.

The COMESA Competition Regulations 2004, resulting from a multilateral agreement among member states including Uganda protect consumers against, false or misleading presentation of goods and services, unconscionable conduct, poor safety standards, and unsafe goods. The Competition Commission is mandated to enforce the regulations.

Nevertheless, the existence of these regional laws has not provided a bulwark against substandard goods in East Africa. Substandard or dangerous goods continue to find their way on the shelves of various stores (Kibet 2015).

At an international level, the relationship between Uganda and the European Union (EU) in terms of trade has been the Generalised Scheme of Preferences under the scheme called "Everything but Arms". This agreement did not have express provisions on consumer protection but the products from Uganda into the EU must comply with the EU Directives in order to gain entry into the EU market (Regulation (EU) No 978/2012). The Economic Partnership Agreement (EPA) to replace the Scheme is still under negotiation.

The relationship with the United States of America (USA) was in respect of the US Trade and Development Act of 2000 also known as African Growth and Opportunity Act (AGOA) (Public Law 106–200, 2000). S 409(4) thereof has provisions relating to labelling to protect the US consumers, to which Ugandan products must comply. The United States International Trade Commission is enjoined to inform congress on the effect of the goods on the industries

and consumers in the USA. The ripple effect is that Ugandan exporters must ensure quality standards of their goods, in compliance with USA legislation. This indirectly influences product quality in Uganda.

All the above efforts notwithstanding, consumer protection has remained low. It is therefore imperative to understand the social-economic and political circumstances of Uganda to appreciate why the consumer protection situation is as it is.

Social-Economic and Political Factors That Impact Consumer Protection in Uganda

Uganda is located in East Africa. It was part of the British Protectorate Empire from 1894 to 1962. After the Berlin Conference of 1884–85, William Mackinnon established the Imperial British East African Company (IBEAC) with the support of the British Government to maximize trade benefits in East African colonies including Uganda. The company was granted a royal charter by Queen Victoria on 6 September 1888. Goods to Uganda were mainly imported from Britain. In 1893, IBEAC ceded its rights to the British Government after it became bankrupt having taken sides in inter-religious wars in Uganda between Catholics and Protestants. British Citizens were given immunity from prosecution regardless of whether the goods or services they supplied were fit for purpose or not (Encyclopaedia Britannica 2017). In 1902, the Queen of England applied all consumer protection laws of England to Uganda. In 1912, Uganda established its own customs control (Morris and Read 1966). The author's view is that this customs control's role was partly to screen goods entering the territory of Uganda. At independence in 1962, the laws that the British Government had introduced were renamed Laws of Uganda. Since independence, there has been a slow development of jurisprudence in consumer protection. This is attributed to Uganda's political and social and economic characteristics.

Uganda has a total area of 241,550.7 km² (Uganda Bureau of Statistics 2016). Water bodies cover 36,527.4 km². The estimated Population of Uganda in 2017 was 37,673,800 with a growth rate of 3.0%. The sex ratio is 94.8 males per 100 females. The average household size is 4.7. The total fertility rate is 6.2 children per woman. Seventy-two percent of the working population is employed in Agriculture, which is not mechanized and modernized. Only 23.5% of the females in the work force have attained at least secondary school education. Twelve percent of the population has no formal education, after literacy levels increased by 4% in 2017. Only 4.3% of the population had attained tertiary level of education (Uganda Bureau of Statistics (UBOS) 2017). This puts into question whether such an illiterate population would understand counterfeit goods or enforce consumer rights once the goods are and services are not of merchantable quality or harmful. Such an illiterate population cannot form effective consumer protection associations to engender consumer protection. Eighteen percent of the population in Uganda was chronically poor. Poverty levels increased by 1.5% in 2017. 10.1 million lived in absolute poverty in 2017 compared to 6.7 in 2013. There was an overall decline in living standards, reduction in distribution of income, increase in poverty and no notable growth in mean consumption expenditure per adult (UBOS 2017). As the saying goes, a poor man or woman has no choice. Whether goods and services are injurious to his or her consumer rights, the ability to litigate in court is diminished.

In economic terms, agriculture contributes more than 60% of GDP. Industrial sector contributes less than 15%. It is the desire to increase this industrialization that

government has tolerated industries that produce substandard and sometimes harmful products. Uganda has since the 1990s embraced liberalization and privatization. This liberalization is a double-edged sword. Government has left the forces of demand and supply to determine prices and standards of products and services, hence consumer exploitation by oligopolistic tendencies especially in the services sector. On the other hand, liberalization has increased investment. The export proportion of GDP in 2017 was 0.19%. Trade deficit amounted to US\$1992.8 million. Asian continent remained the major source of Uganda's imports (UBOS 2017). This explains why many of the counterfeit goods are from Asia. The COMESA regional bloc remained the main destination of Uganda's exports. The services sector was the largest employer in the urban areas engaging 45% of employed population. In the Capital City, 52% were employed in the services sector. Twenty-one percent are in the rural areas. As shall be shown below, the slow implementation of the legal provisions in the Uganda Communications Act is attributed to this.

Uganda runs a constitutional democracy based on the presidential system. The volume of trade and implementation of laws is affected by political uncertainties. In 2016, imports declined by 12.5% attributed to presidential elections (UBOS 2017).

This may explain the trends in consumer protection laws below.

Trends of Consumer Protection Legislation in Uganda

Uganda has both the first and second generation consumer laws. Many of the first generation laws are a spill over from the pre-independence period. The second generation laws have been prompted by the boom in the utilities sector in the recent past. Suffice to state, all these laws are disjointed and cannot be imbibed in one piece of legislation.

First Generation Laws

The Contract Act and the Sale of Goods Act of England became part of the laws of Uganda in 1902 and they belong to this generation. What changed were the titles of the legislation from England to Uganda. The laws selected below are important because they have provisions relating to consumer protection provisions.

The Sale of Goods Act

This is an old piece of legislation that pre-dates independence. It is a replica of the Sale of Goods Act of England of 1893. It is a partial codification of Common Law principles. It is a relevant piece of legislation when dealing with product quality. It requires the seller of goods to ensure that they are of merchantable quality, should be fit for purpose and if they are sold by description as well as sample, they should correspond with the description or sample (Ss 14–16).

The Common Law of Contract and Torts

This law was applied to Uganda by the Order in Council of 1902, and after independence, the Judicature Act of Uganda. Common law is relevant to this study in that negligence relating to product safety has been litigated under Courts in Uganda. The doctrine of freedom of contract

has been reigning supreme and standard form contracts are the norm. The Doctrine of Freedom of Contract is contained in the Case of *Printing and Numerical Registering Company v Thompson* (1872) and it states that once parties have entered into a contract, courts should treat that contract as sacrosanct regardless of who is disadvantaged by its terms.

Uganda National Bureau of Standards Act

This ensures that goods and services produced and imported into the country meet quality and safety standards therein defined.

New Generation Laws on Consumer Protection

While the Consumer Protection Bill 2004 has never been tabled for debate, a sector specific approach to consumer protection has taken centre stage. The Sale of Goods and Supply of Services Bill No 17 of 2015 is already gazetted and will soon become law after presidential assent. It has introduced a new aspect of services. The internet revolution has made the telecommunications sector so complex that even before legislation is established, the need for review of the existing draft legislation becomes eminent. The advent of mobile money services by telecom companies has presented new challenges for regulation of the sector by the Central Bank. Mobile Telecommunications Network (MTN) has introduced Mo-Cash, which is a loan product to mobile money users, without signing a formal loan agreement. This brings into question aspects of monitoring and control.

Though legislation has advanced, consumer protection in the telecommunications sector remains a challenge as analysed infra. The following are the new generation laws:

The Uganda Communications Act 2013

Section 4 of the Communications Act 2013 establishes the Communications Commission, which is enjoined to protect the interests of the consumer. One of its functions is to regulate rates and charges for communication services with a view to protect consumers from excessive tariffs and to prevent unfair competitive practices (Section 5). The Commission is mandated to promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment (- Section 5(k)). On the Board of the Commission, a representative of consumers recommended by the Uganda Consumers Association must be represented (Section 9(2)(g)).

The Communications (Fair Competition) Regulations 2005

These were enacted **(a)** to monitor and enforce fair competition in the communications sector; **(b)** to investigate all acts in breach of fair competition; **(c)** to conduct proceedings, inquiries or public consultations in order to render or make a decision on acts or conduct in breach of fair competition; **(d)** to apply the Communications (Practice and Procedure) Regulations 2005, where applicable, in fair competition proceedings; and **(e)** to impose sanctions, penalties or issue orders against operators and persons whose acts or conduct are anti-competitive or in breach of fair competition (Regulation 2).

Regulation of Interception of Communications Act 2010

This has put the right to privacy into perspective. As the long title states, the Act was enacted to provide for the lawful interception and monitoring of certain communications in the course of their transmission through a telecommunication, postal, or any other related service or system in Uganda; to provide for the establishment of a monitoring centre; and to provide for any other related matters. While the act was justified as a measure against terrorism, it was seen as a means of snooping into communications of political opponents (Mayiga 2010). The Act enjoins the service telecommunications providers to ensure that their systems technically enable interception of communications by the government agencies (Section 8). These regulations have brought into question the safety and privacy of information transmitted through the networks. There is a constitutional petition challenging this legislation but it has never been heard since it was filed in 2011. This is an extension of failure of courts in protecting consumers.

Despite the existence of this new generation of laws, the practical application of the laws has been a challenge as evidenced from the findings below. It is against this background that the following methodology was adopted to elicit responses from respondents in Uganda on consumer protection.

Methodology

This study adopted a descriptive (Creswell 1994; Glass and Hopkins 1984), thematic, and analytical research design. Given that consumer protection has not been deeply studied in Uganda, this study was aimed at finding out exactly what is happening to a consumer and why the situation is as it is in Uganda. Other than data collection, various statutes and cases were analysed to understand the extent of consumer protection in Uganda.

To simplify the process of determining the sample size for a finite population, Krejcie and Morgan (1970), came up with a table using sample size formula for finite population. For a population of 270, a sample of 159 is proposed. They suggest that there is no need to spend energies to survey a sample above 380 cases regardless of population. A questionnaire was designed and administered to 159 respondents. Some of the respondents were graduates employed in various entities. Eighty respondents were from rural Uganda in the District of Kalungu, provided they had phones. Rural respondents were purposively selected due to literacy issues in rural Uganda. Interviews were conducted with three executive officials from Uganda National Bureau of Standards (UNBS), three from Uganda Consumer Protection Association, three from Uganda Communication Commission (UCC), and three from Kampala City Traders Association (KACITA). A questionnaire was designed on a 4 point Likert Scale of strongly agree, agree, disagree, and strongly disagree. The responses were analysed using SPSS. One sector of telecommunications was singled out in the services sector because it has a new generation of consumer laws. Case law and analysis of statutes was also done. The other aspect of the study was on product safety, and responses were elicited in that regard. The findings are presented infra.

Data Analysis, Findings, and Discussion

When respondents were asked what products they were consuming from telecommunication companies, it was established that overall usage of mobile money services across the sampled networks was approximately 20%, and MTN takes lead in the number of mobile money users accounting for 91%. This was followed by Airtel at 66%. Internet usage was approximately 23% across the sampled network subscribers. Eighty-four percent of MTN subscribers used internet services while 50% of Airtel subscribers accessed internet services. Voice communication overall usage was 20% and put MTN and Airtel at the top with each having 80% and 71% respectively of the sampled subscribers. Data usage across telecommunication companies was approximately 16% of the sampled subscribers. The poor performance of other providers can be attributed to the fact that the two leading companies (MTN and Airtel) have been in business for 22 years. The market is highly saturated and the substitution effect is very weak.

The thematic analysis of qualitative data shows that the above laws notwithstanding, the implementation is poor. An interview with officials from UCC revealed that much as the legal provisions for consumer protection are in place, there are issues that have bogged down the consumers. Consumers continue to complain to UCC about the following:

- Unsolicited text messages: These are sent by the providers to consumers usually promoting certain products. The Commission received 28 complaints in 2016.
- Billing: Customers are overcharged in respect of dropped calls, inappropriate billing, non-crediting of account, non-delivery of services paid for, and failure to credit subscribers with bonuses in any ongoing promotions
- Quality of service-related issues: These include inaccessibility of lines, general network quality, and nonchalant attitude of call or customer care agents.
- Internet and data: There are complaints regarding erratic internet services, subscribers not getting the agreed speed and bandwidth, and random and unfair internet disconnection especially prior to the expiration of validity days.
- Airtime loading failures, failed scratch cards with already used numbers and promotions among others.
- Caller ring back tunes: Complaints regarding unsolicited for call back tunes and unfair deductions for the use of the same.
- SIM Card registration: There are issues related to unregistered SIM Cards or selling already registered SIM Cards, non-usage churned SIM Cards with registration details of previous owners and registered SIM Cards reflecting different registration details.
- Fraud: There are complaints regarding fraudsters, SIM-swap scams, use of duplicate SIM Cards to obtain individual information on monetary transactions, and committing crimes using victims' SIM numbers.
- Tariffs: The Commission has been receiving complaints of tariffs by providers not being fair and transparent. Many customers do not know what they are paying for or what the billing system is and cannot track it. The Commission indeed has been in dispute with MTN for increasing data billing prices without consent from UCC.
- Privacy and data protection: The Commission has been receiving complaints of data protection and privacy. Customers are concerned as to where their data is kept, how it kept, and how it is being used. The customer contacts have been sold to advertising companies which use them to send adverts to customers without their consent.

- Over the top services: The Commission is faced with a challenge of controlling over the top services that do not use telecommunication providers to transmit data. These include Facebook and Twitter that can be obtained from the Virtual Private Network. These can collect data, store it, and can sell it to third parties who can use it the way they want without the control of the Commission.

Apart from UCC, other respondents were also found to agree to the fact that nonavailability of the network (Mean = 3.42, SD = 0.87); dropped calls; charging a full unit for a minute when a customer has used less than a minute; charging customers for units not used at all; poor or slow internet connection; unrecoverable mobile money sent to a wrong account; high charges for withdrawal and transfer of mobile money; high charges of internet; high charges per unit of mobile calls; invasion of privacy by telecommunication companies; and intrusion to private conversation on phones were the main reasons for consumers feeling unprotected from telecommunication companies.

Other reasons advanced by respondents for feeling unprotected from telecommunication companies included charges as a result of uncalled for adverts; blocking communication during elections, hence affecting mobile money transactions; buying internet bundles which are not activated; poor call centre services; charging for voice calls on voice mail; charging twice for the prepaid services and money never refunded to accounts; delay in remitting money collected on behalf of service firms like pay TV, water, electricity; data bundle gets over as soon as it has been loaded; MTN caller tunes install themselves and are charged; providing consumer information to third parties without their consent; and, sending unnecessary messages like football messages or request for song to consumers and then deducting money from them.

Yet, 16% of the respondents were found not to know how to address their grievances. There was unanimity of issues between urban and rural respondents. However, the rural respondents were more concerned with nonavailability and poor mobile network.

The above responses show desperation by customers who seem abandoned by the enforcers of the law. The fact that 16% of sampled customers who are literate do not know how to address their grievances is worrying. This implies that there is a weakness in the civic awareness of the law.

Redress of Disputes

Redress of the above complaints seems to be a challenge either. UCC directed telecom companies to put in place complaints mechanism documented in a complaints manual in 2015. Complaints must be resolved and a report submitted to the Commission on a quarterly basis by telecommunication companies. The providers are also enjoined to do consumer awareness to their customers on their rights. However, compliance by telecommunications providers has been slow and UCC seems to use more of a carrot than a stick. The reason given to me by UCC for this is conflict of interest because UCC is partly funded by the telecommunication providers and as the English adage goes, “he who pays the piper calls the tune.”

Tribunal

The Communications Act of 2013 provides for establishment of the tribunal to handle dispute between the consumers and providers. This tribunal has never been established. UCC has not established it because it would result into many decisions against them. The Minister is also

reluctant to establish it for fear of losing control on UCC and the telecommunication companies. The consumers have not pushed for it either because they do not have a strong consumer protection association and their representation on the Commission is taken as an advantage. When the Consumer Protection Association officials were asked about this, two denied but one of them admitted. In fact, he stated that being on the Commission is an advantage for some of them to earn allowances. To understand how failure to establish a tribunal benefits UCC, the providers and the Minister, the case of *Legal Brains Trust v UCC (2016) can provide some insights*. In the 2016 presidential elections, UCC switched off social media as well as mobile money transactions for a period of more than two weeks to the detriment of consumers. A student from Makerere University filed a suit challenging this action. The High Court in Kampala dismissed the case arguing that the case should have been filed in the tribunal first before it was filed in the High Court in accordance with the law. Yet the tribunal is not in place. This left a consumer stranded. The government benefited from its inaction.

It appears the policy approach by government to consumer protection has been to give too much leeway to telecommunication companies in the name of attracting investors to the detriment of consumers. To counter government *laissez faire* approach, there have been attempts at public interest litigation to challenge the excesses of telecommunication providers. *In Hon. Abdu Katuntu and Kimberly Kasana v MTN Uganda LTD, ARITEL Uganda LTD, WARID Uganda LTD, Uganda Telecom LTD, Orange Uganda LTD, Bank of Uganda LTD, and Uganda Communications Commission (2012)*, the plaintiffs brought a public interest litigation case against the defendants seeking for orders to compel the regulators, i.e., Bank of Uganda and Uganda Communications Commission to regulate the defendants' mobile money services and the promotions conducted by the defendant telecom companies. The main policy lapse challenged in this case was that there was no policy and proper regulation for mobile money services and promotions by telecommunication providers, which UCC was supposed to monitor but did not. Although this case was dismissed on technical grounds (The judge decided that the plaintiffs had no *locus standi* to bring this action), it highlights the policy gaps by UCC's failure to establish an efficient regulatory and dispute resolution mechanism to protect consumers. This case came up because of the policy gaps in regulation. How can one monitor the use of his or her air time both for internet and voice to know what exactly is used?

The situation in the area of product safety is not any better as findings below show.

Product Liability and Product Safety

Product Safety

The only legislation that has come in to cover this grey area of product safety is the Occupational Safety and Health Act 2006. Though relevant to the place of work, the law enjoins a person who designs, manufactures, imports, or supplies any article, chemical substance, or mixture of chemical substance to ensure that it is safe, and without risk to health, and to ensure that there is enough information on the product for its use. This obligation is extended to the receiver of the products who supplies them for final use. There is Joint liability between the manufacturer and the supplier (Section 28). It imposes a duty on the designer or manufacturer of products to pre-test them and to ensure that they are not harmful before they can be supplied to consumers (Section 30). The importer of a product has the liability to ensure

that the goods are safe (S. 33). This in effect means that an employer who imports a chair with inflammable substances must inform the consumer of the product that it is inflammable. Otherwise, liability will be eminent. It also means that a supplier of a phone to a consumer may be liable for its malfunction.

A more express legal regime on product safety is Uganda National Bureau of Standards Act. It creates the Uganda National Bureau of Standards (UNBS). The Bureau is supposed to be a gate keeper for safety and health of goods on the market in Uganda. The Bureau was created upon realising that there were no mechanisms to determine which goods were safe for consumption in Uganda. The Act delimits functions of the Bureau inter alia to **(i)** promote standardization in commerce, industry, health, safety, and social welfare; **(ii)** protection of the public against harmful ingredients, dangerous components, shoddy material, and poor performance and ensure that products conform to the standard specification; and to **(iii)** make arrangements or provide facilities for the examination, testing, or analysis of commodities and any material or substance.

Indeed, the Bureau has intervened in many respects when there is a dispute on product standards. For example, in the case of *Hwang Sung Industries Ltd v Tajdin Hussein, Rainbow Foods Ltd and Nizar Hussein*(2001), the plaintiff, a local manufacturer of ice cream ordered for orange oil flavour and ingredient used in the manufacture and spicing of one of their products called “Cool Cool Bar”. Upon placing an order, the plaintiff paid \$8000 which was 50% of the consideration. The balance was to be paid after delivery of the product. Upon examination, the plaintiff was not satisfied with the product, after examining the goods internally. The plaintiff then subjected the products to UNBS. The Quality Assurance Officer with UNBS testified that after examining the questioned substance in their containers, he observed rusting and labelling anomalies on the drums. Certain painted erasures obliterated the origin and concealed labelling date. The contents were also examined by him and another colleague, and it was found that the substance contained suspended matter that was insoluble. The analysis led them to deny the substance a guarantee of the safety of the product which appeared to have deteriorated in storage.

Court decided that the goods supplied were not fit for purpose for which they were ordered.

The plaintiff was right to reject the goods and was entitled to a refund of the money spent. The court based its decision on the opinion from UNBS as a guarantor of product safety. The relevance of this case is that if bodies mandated to do consumer protection were doing their work effectively, there would be effective consumer protection.

Inspection and Recalls

The UNBS Act is silent on product recalls but provides for monitoring of safety standards. The Bureau is mandated to appoint inspectors whose mandate is to enter premises where goods are manufactured, produced, processed, or treated. The inspectors can take samples of any material, substance, commodity, or component and subject such materials to any necessary tests to determine their safety. In the event that the products are not safe for consumption, UNBS can order their withdrawal from the market.

Pre-shipment Inspection

Pre-shipment inspection is intended to ensure that only safe goods enter the Ugandan market. The Import Inspection and Clearance Regulations 2015 is the guiding legal regime. Furniture is among the products that are subjected to mandatory pre-shipment inspection. An importer of a

product covered by a mandatory standard shall ensure that the supplier of the imported goods subjects them to inspection for conformity to standards in the country of origin and a Certificate of Conformity (CoC) is issued, before the goods are shipped to Uganda. This ensures product safety.

Practical Application of Product Safety Laws in Uganda

Pre-shipment Inspection

What is surprising is that traders in Uganda have been against pre-shipment inspection because it denies them an opportunity to bring in substandard goods which they sale as high-quality goods and make a lot of profit (Muwanga 2007). There was a strike in 2012, by traders against pre-shipment inspection (Mwesigye 2013). However, even with pre-shipment inspection, poor-quality goods still find their way into the market as the following court cases show:

In *Eladam Enterprises Ltd v Societe Generale De Surveillance and 2 Others (2005)*, the judges observed that the respondents, who was charged with pre-shipment inspection in Uganda, failed and or neglected to carry out proper inspection of the goods in accordance with the agreed terms and conditions of the pre-shipment inspection contract. As a consequence, the materials supplied to and received by the appellant were sub-standard. Some of the uniforms made from these materials and supplied to the army by the appellant were rejected. The respondent paid damages.

In *Guangzhou Tiger Head Battery Group Co. Ltd v Milly Nakanjako & Anor (2012)*, the defendant imported counterfeit Tiger Head batteries into the country. The Court found that the defendant's acts of importing counterfeit Tiger Head battery cells amounts to passing off. The goods in issue being counterfeit goods, the Court found that the plaintiff's rights had been infringed by the first defendant.

The policy implication of the above cases is that monitoring of safety standards at the level of importation need to be tightened.

Counterfeit Goods

The director in charge of quality standards in the UNBS, Deusdedit Mubangizi, attributes the increase of sub-standard products to low levels of awareness among traders, consumers, government officials and policymakers. He blamed nondeterrent archaic laws and low penalties for this phenomenon. He gave an example of where he arrested a trader with 260 cartons of expired beef and he was fined 3000 Ugandan shillings (less than \$1) by court. The one who had 800 bags of adulterated cement was fined UGX 30,000 (\$5). He said many of the counterfeit products are from Asia. He had registered substandard goods in every sector. East Africa loses over Shs1.3 trillion – an equivalent of \$500 million – in revenue annually from product imitation and counterfeit (Nakaweesi and Nalubega 2012).

The issue of counterfeit goods in Uganda especially from Asia presents a challenge and bring into question the efficacy of the laws of Consumer Protection and the institutions that implement them. The findings from the respondents show a grim picture.

When respondents were asked whether they have ever purchased a counterfeit product, more than 80% responded that they have ever. 64% have responded that they have ever bought an expired product. On the issue of whether they felt protected by the UNBS 91% of respondents felt they were not. Ninety-one percent felt not protected by the laws on consumer protection either.

On whether the aggrieved consumers do seek legal assistance, 95% of urban respondents were found not to have tried to seek legal assistance while 100% from rural areas did not try at all and did not find it necessary. Those that did not seek legal redress had the following reasons: expensive legal system; country has no known consumer protection policies; did not know the process and where to start from; felt the process may be time consuming; goods sold cannot be returned; they did not know how to go about it; it was wastage of time; thought the case would not be successful because of many requirements and a lot of bureaucracy. When asked about awareness of any laws that protect the consumer of products and services, 59% in urban areas were found not to be aware but this was 90% in rural areas. The awareness gap and exploitation of the consumers by the suppliers can be attributed to lack of goodwill from government agencies in implementing the existing consumer protection laws and the ignorance of the consumers as to how to enforce their rights.

Product Liability

Civil Liability

Product liability in Uganda is not expressly regulated by statutory law. The English Common Law of Torts and penal liability have been at the centre of regulating product liability.

The Common Law of Torts principles of product liability impose a duty of care on the manufacturer of a product and he or she is liable for breach of this duty. In *Kalemera Godfrey & Ors v Unilever (U) Ltd & Anor* (1997), the plaintiff bought a tin of Margarine from a retail shop. His children fell sick upon consuming it. The judge applied Common Law principles in the case of *Donohue vs. Stevenson* (1932).

The judge emphasised that, a manufacturer is liable for its failure to exercise due care to any person who sustained an injury proximately caused by the manufacturer's negligence in (i) designing the product; (ii) selecting materials (including any component products purchased from another seller that are incorporated into a finished product); (iii) using appropriate product processes; (iv) assembling and testing of the product; and (v) placing adequate warnings on the product, which inform the user of dangers of which an ordinary person might not be aware.

The same case also delved into issues of liability for the distributors and retailers. In respect of distributors, the judge stated that once an importer deals in goods manufactured by another and markets them, he or she gives a warranty of their safety. The retailer can therefore be sued.

The effect of this case is that Ugandans now can sue the manufacturer of the product, a distributor as well as a retailer if the products are defective or dangerous. This was intended to cure situations where goods are imported into the country but the manufacturer cannot easily be sued.

Delayed Delivery of Goods

In the event of delayed delivery of goods, the Sale of Goods Act comes to the aid of the consumer. Where delivery is delayed, the buyer has a right to reject the goods and if he or she does so, he or she is not duty bound to return them (Section 30). In addition to this, a buyer can maintain an action for damages against the seller. The Sale of Goods Act where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer can sue the seller for damages for nondelivery. The assessment of damages is estimated based on the effect of breach.

Criminal Liability

It is apparent that many of the laws that impinge on criminal liability for defective or dangerous products are archaic and nondeterrent. The fines enshrined in the National Bureau of Standards Act are in the range of \$1.5 to \$30. S. 27 of the UNBS Act provides that any person who deals in goods which are counterfeit is liable to a fine not exceeding 10,000 Uganda shillings (\$2.7) or imprisonment not exceeding 12 months. Given that these laws were enacted almost 30 years ago, the provisions relating to fines have not kept pace with the inflationary situation in the country. The UNBS Act came into force on 14th October 1983. By then, UGX 10,000 was a lot of money. Analogous to these weak laws is the weak enforcement system that prevails in the country. The Counterfeit Bill 2009 and the Consumer Protection Bill 2004 have remained draft bills. According to the Consumer Protection Association, the consumer associations lack the mobilisation power to push for these legislations because they lack funding (Interview 2017).

Another challenge facing the prosecutors of substandard products or counterfeit products is that the population treasures cheap goods whether they are substandard or not. Many respondents especially in rural areas stated that they prefer counterfeit products because they are cheap. This preference can be attributed to poverty. The traders also prefer to import substandard goods because they make a lot of profit out of them. An interview with the Chairman of Kampala City Traders Association (KACITA) reveals that if you import standard goods that are expensive, few people will buy them. It is therefore difficult to fight substandard goods on the market when the population is poor and illiterate and do not understand their rights as the UBOS statistical indicators above show. This is not to say however that the literate population is vigilant in fighting counterfeit products as the respondents revealed in their responses. Government therefore and UNBS in particular must direct their resources to sensitising the population about the dangers of substandard goods.

Perhaps the continued interaction with foreign laws and influences will change this situation. It is therefore pertinent to examine the influence of foreign legislation on Uganda.

The Influence of Foreign Consumer Protection Laws on Uganda

The entire legal regime in consumer Protection at independence was a replica of the British legal regime. Ever since, there has been significant foreign influence in the legal regime relating to consumer protection.

Section 43 of the Competition Bill of 2004 is a replica of Section 2 of the Sherman Anti-Trust Act of 1890 of the USA with few modifications. This is attributed to the fact that the first draft Competition Bill was drafted by Reid and Priest and American Firm in 1998 with funding from the United States Government. Though the final draft of 2004 was done by Uganda Law Reform Commission, Law Reform Commission acknowledged in an interview with the author that they were also influenced by the discussions under the United Nations Conference on Trade and Development (UNCTAD) forum which led to the set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. These were approved in 1980 and were amended in 2000.

As regards telecommunications legislation, the principle of “he who pays the piper calls the tune” seems to apply regarding the proposed and actual consumer protection legislation in Uganda. The enactment of Uganda Communications Act 2000 was in response to

telecommunication challenges but it became outpaced by technology too quickly. It was drafted by an American Law Firm called White & Case LLP based in the USA, who were the consultants for the Government of Uganda. It had the hallmarks of the American legislation blue print. This information was obtained from the interview with officials in the legal department of Uganda Telecommunications Commission. White and Case provided the initial draft that was improved by the Law Reform Commission. The Law Reform Commission did not make any major improvements. For example, part II of the Uganda Communications Act of 2000 creating the communications Commission is similar to Section 4 [47 U.S.C. 154] of the United States Communications Act 1934, with slight modification on the number of Commissioners. Other provisions were picked from the United States Telecommunications Act of 1996.

The Communications (Fair Competition) Regulations 2005 arising from this legislation were drafted by a Ugandan Law firm of Nyanzi Kiboneka and Mbabazi Advocates but were agents for White and Case and did consult them widely.

In 2013, a new Communications Act was enacted to consolidate and harmonize the Uganda Communications Act and the Electronic Media Act; to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission; and to provide for related matters as the long title of the Act states. According to UCC, the 2013 Act did not change the substance of the 2000 Act. Its main objective was to merge the Communications Act and the Electronic Media Act. However, a few changes were made to the Act. The Communications Commission drafted the 2013 Act with the Assistance of the 1st Parliamentary Counsel. The original draft, however, was drafted by an advocate called Kalori Semogerere who was a resident of the USA for a long time though a Ugandan. The UCC has no doubt that he borrowed a lot from USA where he was a resident then. UCC however claim to have benchmarked from Kenya, South Africa, Tanzania, Nigeria, and the United Kingdom (UK). Nevertheless, some influence was from the International Telecommunications Union. This is a United Nations agency constituted of governments, ICT ministries, communication regulatory bodies, and some industrial prayers. It gave support in form of consultants and provided funding for them although the UCC funded the biggest part of the legislation process. The African Telecom Union also provided some support, both financial and consultative. The new Communications (Fair Competition) Regulations, being drafted which are expected to come into force in 2017 have been drafted with assistance from the Office of Communications (OFCOM), which is the UK's communications regulator for TV, radio, and video on demand sectors, fixed line telecoms, mobiles, and postal services (UCC Interview 2017).

Some of the influence on consumer protection legislation is direct. One of the examples where legislation changed upon conditions imposed by the European Union was the Fish (Quality Assurance) Rules of 2008. The EU put in place regulations based on the Hazard Analysis Critical Control Point (HACCP). This is contained in the EU Directive No. 93/43/EC. Directive 2406/96/EC contains labelling requirements. All companies, therefore, are expected to understand the possible hazards associated with their products at all stages of production up to consumption. The hazards include macro-biological (vermin), microbiological (viruses, bacteria, moulds), toxicology (chemical contamination with pesticides), or physical (wood, metal, glass, plastic, or fabric) risk. In 1998, there was reported poison fishing on Lake Victoria that resulted in the EU banning all fish imports from Uganda. Uganda was given a condition to enact legislation that was in consonance with the EU

directive before the ban could be lifted. Uganda put in place the Fish Quality Assurance Rules 2008. The drafting of the rules was funded by the European Union. The rules contain provisions similar to the above EU Directive. The importance of this directive is that it helped Uganda improve its legislation. This has come a long way to protect consumers in Uganda.

The Weights and Measures (Sale and Labelling of Goods) Rules of 2007 were enacted in compliance with EU Directive 2406/96/EC above, but it is now applied to all the goods in Uganda. This was a good direct influence on consumer protection legislation.

Another influence is in the area of consumer protection is the Law of Contract. The Contract Act of 2010 is a codification of the Common Law of England and the Unfair Contract Terms Act 1977. The Sale of Goods and Supply of Services Bill 2015, though not yet passed into law, was approved by the Cabinet. A close look at the draft bill shows that it follows the UK's Supply of Goods and Services Act 1982. The influence of the UK is attributed to the historical relationship between Uganda and the UK and the fact that Uganda has maintained these links through the Commonwealth. From the above findings, the influence of Legislation therefore can be attributed to the following reasons:

Provision of Consultants

The origin of the consultant and who provides funding for the consultant has a direct relationship between the draft legislation that comes out and the legislation in country of origin. As shown above, many of the laws are drafted after engaging consultants.

Funding of the Legislative Process

The above examples show that where funding of the Legislative process is done by a certain government or body, the draft legislation tends to borrow from the legislation in the home country with few modifications based on the circumstances in the host country. The author established that Danish International Development Agency (DANIDA), EU, USAID, UK Aid, and UN agencies tend to finance law reform in Uganda and have a stake in the final legislation that is drafted. The funding usually has influence on the origin of the consultants.

Historical Relationship

The relationship of Uganda with the UK engrained in the colonial history continues to influence legislation in Uganda. Uganda belongs to the commonwealth club of nations which provides funding to former colonies. Court decisions from the UK are persuasive on courts in Uganda and this tends to influence the developments in the legislation discourse through persuasive decisions.

Conclusion

There is a direct relationship between the source of funds to sponsor legislation and the nature of legislation that is enacted. He who pays the piper calls the tune. It is also apparent that legislation in Uganda is heavily influenced by the historical relationship between the UK and Uganda. It is also established that the level of development and poverty levels determines the

degree of consumer protection. There is a preference for poor quality products in Uganda because they are cheap.

There is a disconnect between the law as it is and enforcement. Uganda needs an overhaul of the legal regime on consumer protection. It is also clear that the social-economic and political circumstances of the country determine the level of consumer protection. Poverty and illiteracy are a hindrance to consumer protection. The available laws are weak and some of them archaic.

It is recommended that a comprehensive legislation similar to that of Kenya or South Africa is the desirable option. A lot of work needs to be done in the area of product safety due to the prevalence of counterfeit goods on the market. Heavy deterrent penalties for breach of standards should be provided for in the law. Enforcement mechanisms need to be strengthened, lest the law remains a paper tiger.

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