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CONSUMER PROTECTION FOR AFRICA

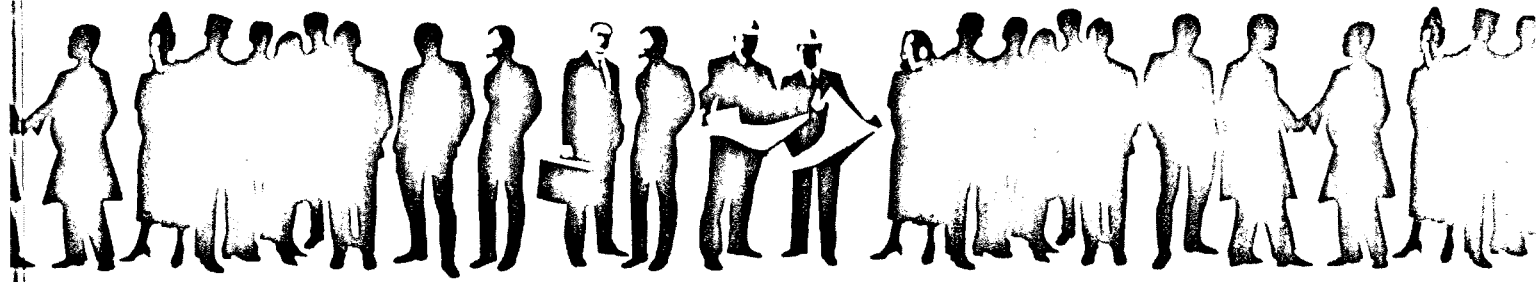
of the

frica Conference on

Consumer Protection

Harare, Zimbabwe

1-2 May 1996



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Consumer Protection for Africa

Report of the Africa Conference on Consumer Protection

Harare, Zimbabwe,
28 April–2 May 1996



UNITED NATIONS
New York • 1997

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INTRODUCTION

Organized by Consumers International in cooperation with the Department of Economic and Social Affairs* of the United Nations Secretariat, and with the support of the European Union and the Government of Zimbabwe, the Africa Conference on Consumer Protection was held at the Harare International Conference Centre from 28 April to 2 May 1996.

The objective of the Conference was to encourage and assist countries of the African region in their efforts to enact and enforce policy and legislation on consumer protection, within the framework of the Guidelines for Consumer Protection,¹ which were adopted by the United Nations General Assembly in its resolution 39/248 of 9 April 1985.¹ The Conference brought together, for the first time, a number of representatives of Governments and consumer organizations, as well as experts concerned with consumer protection issues, to discuss the protection of the African consumer. The Conference was also intended to familiarize Governments of the Africa region with the Guidelines for Consumer Protection; to exchange ideas and experience concerning the state of consumer protection in Africa; and to promote regional and subregional cooperation in the area of consumer protection.

The present report reflects the discussions and outcome of the Conference, including the resolutions adopted at the Conference and the Model Law for Consumer Protection in Africa, which was also adopted by the Conference.

Part One of the report contains the resolutions (chap. I) and report (chap. II) of the Conference. The main features of the Conference were a regional meeting in advance of its official opening (chap. II A); an in-depth analysis (chap. II B 2) of the progress achieved in the area of consumer protection in the intervening years since the adoption of the Guidelines for Consumer Protection in 1985; a keynote session on the consumer movement and its development in Africa (chap. II B 3); a plenary session to consider a number of country reports on national experience in consumer protection issues (chap. II C 1); five plenary sessions on specific issues of consumer protection (chap. II C 2-5); a guest speakers session (chap. II D) and the launch of the Model Law for Consumer Protection in Africa (chap. II E). Part One of the report also reviews the discussions held during six workshops on issues covered in the Guidelines for Consumer Protection (chap. II G).

Part Two of the report contains the text of the background papers discussed at the Conference: a report on the implementation of the Guidelines for Consumer Protection (chap. III) and eight country reports on national experience in consumer protection issues (chap. IV).

Part Three of the report contains the text of the Model Law for Consumer Protection in Africa (chap. V).

Part Four of the report contains the list of participants (annex I) and the programme of work of the Conference (annex II).

Notes

¹ United Nations publication, Sales No. E.86.IV.2.

* Former Department for Policy Coordination and Sustainable Development.

Part One
RESOLUTIONS AND REPORT OF THE CONFERENCE

Part One. RESOLUTIONS AND REPORT OF THE CONFERENCE

I. RESOLUTIONS ADOPTED BY THE CONFERENCE ON 2 MAY 1996

Preamble

Realizing the need to protect the African consumer, the following consumer organizations came together as the Africa Conference on Consumer Protection at Harare from 28 April to 2 May 1996, under the auspices of Consumers International (formerly International Organization of Consumer Unions) Regional Office for Africa and the United Nations Secretariat, supported by the European Union and the Government of Zimbabwe, to discuss the theme "Protecting the African consumer":

Benin	<u>Association pour la protection du consommateur et de son environnement au Benin</u>
Burkina Faso	<u>Ligue des consommateurs du Burkina</u>
Burundi	<u>Association burundaise des consommateurs</u>
Cameroon	<u>Mouvement national des consommateurs</u>
Central African Republic	<u>Association des consommateurs libres en Centrafrique</u>
Côte d'Ivoire	<u>Union ivoirienne des consommateurs Qualité plus</u>
Egypt	Egyptian Consumers Association
Ethiopia	Ethiopian Consumers Organizing Committee
Kenya	Kenya Consumers Association
Lesotho	Lesotho Consumers Organization
Liberia	National Consumer Counsel of Liberia
Madagascar	<u>Association des consommateurs de Madagascar</u>
Malawi	Consumers Association of Malawi
Mali	<u>Association des consommateurs du Mali</u>
Mauritius	<u>Association consommateur Ile Maurice</u> Institute for Consumer Protection
Morocco	<u>Association marocaine des consommateurs</u>
Mozambique	Proconsumers
Namibia	Namibia Consumer Lobby
Niger	<u>Organisation des consommateurs du Niger</u>
Nigeria	Consumer Protection Organization of Nigeria Consumer Times Association
Senegal	<u>Association de défense des usagers de l'eau, de l'électricité, des télécommunications et des services</u>
Seychelles	National Consumers Forum
South Africa	National Consumers Forum Consumer Protection Justice South African National Consumers Union North West Consumer Council
Swaziland	National Consumer Association of Swaziland
Togo	<u>Association togolaise pour la défense du consommateur</u>
Tunisia	<u>Organisation de la défense des consommateurs</u>
Uganda	Uganda Consumer Protection Association
Zambia	Kitwe Consumers Association
Zimbabwe	Consumer Council of Zimbabwe

Also attending and participating in the Conference were representatives of the following Governments:

Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Central African Republic
Egypt
Ethiopia
Ghana
Guinea
Kenya
Lesotho
Madagascar
Malawi
Mali
Mauritius
Morocco
Niger
Senegal
Seychelles
South Africa
Sudan
Tunisia
Uganda
Zambia
Zimbabwe

The Conference has also been privileged with the participation of the following international, regional and subregional bodies:

Common Market for East and Southern Africa
Union douanière et économique de l'Afrique Centrale
Economic Commission for Africa
European Union
Food and Agriculture Organization of the United Nations
United Nations
International Labour Organization
World Health Organization

The Conference notes that since the adoption of the Guidelines for Consumer Protection¹ by the United Nations General Assembly in its resolution 39/248 of 9 April 1985, many African Governments have not enacted policies or measures to protect consumers, and also notes that much of the consumer legislation in place in the African countries that have such legislation is ineffective.

¹ United Nations publication, Sales No. E.86.IV.2.

The Conference recognizes that new programmes in the globalization and liberalization of markets have led to new constraints and opportunities for consumers.

The Conference also recognizes that structural adjustment programmes have an adverse effect on the consumer.

The Conference is determined to familiarize African Governments with the Guidelines for Consumer Protection and to lobby them to incorporate them in their legislation.

The Conference is also determined to sensitize regional economic bodies towards protection of the African consumer.

Mindful of the purpose and objectives of the Conference, delegates have deliberated for five days of panel discussions and thematic workshops, after being addressed by several speakers on the following topics, among others:

- (a) The consumer movement and its development in Africa;
- (b) The role of regional and subregional bodies;
- (c) The role of the European Union in promoting consumer protection in developing countries;
- (d) The extension of the Guidelines for Consumer Protection;
- (e) The Model Law for Consumer Protection in Africa.

During its deliberations, the Conference has acknowledged that there are five basic groups which must be taken into consideration if the objective of protecting the African consumer is to be achieved:

- (a) The international community at large;
- (b) The respective Governments of member States;
- (c) The producers of goods and services;
- (d) The consumers of these goods and services themselves;
- (e) The media.

The Conference has also taken into consideration all previous declarations and resolutions of Consumers International related to the African continent - specifically, the Nairobi Declaration of 1988, the Dakar resolutions of 1992, the Cotonou resolutions of 1993, the Kadoma resolutions of 1994, the Blantyre resolutions of 1995, the Bamako resolutions of 1995 and the Ouagadougou Declaration of 1995.

In furtherance of its objectives, particularly the implementation of the Guidelines for the protection of the African consumer, including consumer organizations, various government representatives have reviewed and discussed at length the Model Law for Consumer Protection in Africa,² among other relevant issues, and the Conference therefore adopts resolutions 1-14 set out below.

² As contained in chapter V below.

A. Consumer organizations

1. Consumer organizations should confirm and affirm all previous resolutions and declarations adopted by the consumer movement in Africa.

2. Consumer organizations should adopt the Model Law for Consumer Protection in Africa.² In so doing, the Conference hereby specifically mandates each country consumer organization, in keeping with the Guidelines for Consumer Protection¹ adopted by the United Nations General Assembly in its resolution 39/248 of 9 April 1985 and the Model Law, immediately to undertake the following and report the level of achievement to the Consumers International Regional Office of Africa within the next 12 months:

(a) Encourage their respective Governments to ratify the Guidelines for Consumer Protection, and in so doing to enact legislation for the protection of consumers in their respective countries, using the Model Law as the basis and formula for such legislation, taking into consideration their existing national laws and the culture of their societies;

(b) Encourage their Governments to proceed immediately to enact appropriate legislation to implement those aspects of the Model Law that are universally applicable, such as:

- (i) The establishment of small claims courts or similar bodies for the adjudication of consumer-related complaints, which would afford the indigent consumer speedy redress of grievances;
- (ii) Include in the school curriculum consumer education programmes at the elementary, secondary and university levels;
- (iii) Encourage the participation of consumers in the decision-making process of all matters related to and that affect consumers;
- (iv) Include consumer representatives on government commissions, boards and committees that are involved in the administration of matters affecting the rights of consumers;

(c) Ensure that, as African Governments embark upon the liberalization of their economies, the rights of the consumer are protected in the course of the liberalization process.

3. Consumer organizations should foster a close relationship with the press, professional organizations, trade unions and other relevant bodies whose objectives are similar to theirs.

4. Consumer organizations, in collaboration with Consumers International, should approach the United Nations, the European Union and other multilateral organizations to involve consumer organizations, government ministries or departments in setting standards and promoting consumer protection. Ministers to be invited should include the ministers of commerce and trade, foreign affairs, planning and economic affairs, finance, justice and health.

B. Governments

5. Governments should cooperate with and support consumer organizations financially and materially in their efforts to ensure better living standards and quality of life for the consumer.

6. Governments should encourage the participation of consumer organizations in the prosecution of violators of laws where such violations affect the rights of consumers at large.

C. United Nations

7. The United Nations should instruct its local offices in the various African countries to interact with consumer organizations as a means of making Governments aware of the interest which the United Nations has in the protection of the rights of the consumer.

D. Other matters

8. The Conference extends its appreciation to the United Nations for launching a 25 billion dollar initiative to combat poverty and underdevelopment in Africa in the priority areas of education, health, water and food. As these areas are also high on the priority list of consumer organizations, the Conference congratulates the United Nations Secretary-General for this humanitarian consideration.

9. The Conference calls on consumer organizations in Africa to work closely with the United Nations bodies that will be coordinating efforts to improve nutrition, health, education and access by the population to basic services.

10. The Conference calls on the organizations and bodies of the United Nations system, including the World Bank, to include consumer organizations as partners in advancing the initiatives of the United Nations Secretary-General.

11. The Conference hereby adopts all papers delivered during and all reports concerning activities at the Conference, including but not limited to the reports of the various workshops.

12. The Conference decides that copies of its resolutions 1-14, together with copies of the final Conference report and the Model Law, shall be sent to all African Governments, the United Nations, the European Union and any other relevant government or organization.

13. The Conference expresses its concern at the peculiar situation of the African continent, as a result of which abject poverty prevents the majority of African people from participating in consumption; acknowledges the recognition of this problem in the Guidelines for Consumer Protection and United Nations policies concerning sustainable development and consumption; and calls upon Governments and the international community to address poverty alleviation as a basic element of consumer protection.

14. The Conference extends the thanks and appreciation of participants to the United Nations, the European Community and the Government of Zimbabwe for their support in making the Conference a success.

Adopted at Harare
2 May 1996

II. REPORT OF THE CONFERENCE

Consumers International, in cooperation with the Department for Economic and Social Affairs* of the United Nations Secretariat and with the support of the European Union and the Government of Zimbabwe, organized and held the Africa Conference on Consumer Protection at the Harare International Conference Centre, Harare, Zimbabwe, from 28 April to 2 May 1996.

The Conference was attended by over 140 government officials, consumer leaders and experts representing a number of government and consumer organizations of the region, as well as regional and subregional economic organizations. Representatives of a number of organizations and bodies of the United Nations system, Consumers International and the European Union also participated. The list of participants is contained in annex I.

The overall purpose of the Conference was to encourage and assist African countries in their efforts to enact and enforce appropriate policies and legislation on consumer protection within the framework of the Guidelines for Consumer Protection, which were adopted by the United Nations General Assembly in its resolution 39/248 of 9 April 1985. The objectives of the Conference were to familiarize African Governments with the Guidelines and with the Model Law for Consumer Protection in Africa, to exchange ideas and experiences on the state of consumer protection in Africa, and to sensitize regional economic bodies and government officials on issues related to consumer protection.

The programme of work of the Conference, which is contained in annex II, featured a regional meeting; presentation of a background paper prepared by the United Nations Secretariat on the implementation of the Guidelines for Consumer Protection; a keynote address; presentation of government background papers on national experiences in consumer protection issues; discussions on the link between the Guidelines for Consumer Protection and the Model Law for Consumer Protection in Africa; the state of consumer protection and legislation in Africa; the extension of the Guidelines for Consumer Protection; and the role of the European Union in promoting consumer protection in developing countries. Workshop discussions were held on six thematic areas: (a) physical safety and quality; (b) economic interests; (c) distribution facilities; (d) redress; (e) education and public awareness; and (f) new areas. The Conference served as the launching platform for the Model Law for Consumer Protection in Africa.

On 2 May 1996, the Conference adopted 14 resolutions. For the text of the resolutions, see chapter I above.

A. Regional meeting

A regional meeting was held on 28 April 1996 in advance of the official opening of the Conference.

1. Memorial

Before the regional meeting took place, a special event was held in memory of Mr. Joshua Gwitira, the former Director of the Consumers International Regional Office for Africa. Mrs. Ngaite Chimbandi and Mr. Amadou Kanoute,

* Former Department for Policy Coordination and Sustainable Development.

Regional Directors of the Consumers International Africa Programme Offices for Eastern and Southern Africa, and Western and Central Africa, respectively, made statements on the work of the former Director. Other statements were also made by Chief Durojaiye of Nigeria on behalf of African non-governmental organizations. Mrs. Erna Witoelar, President, and Mr. Dick Westerdorp, Honorary Secretary, Consumers International, made statements on behalf of the executives of Consumers International, and Mr. Jose Vargas, Regional Director, Consumers International Regional Office for Latin America and the Caribbean, made a statement on behalf of the directors of Consumers International.

2. The Africa region: the development of the consumer movement

The regional meeting focused on ways to enhance the commitment by Governments of the region to promote the consumer movement in Africa, and to enhance cooperation and partnership between the regional offices and headquarters offices of Consumers International in order to strengthen consumer organizations.

Mr. J. Wendell Addy, National Consumer Council, Liberia, chaired the first portion of the meeting. He introduced Mrs. Erna Witoelar and Mr. Julian Edwards, President and Director-General, respectively, of Consumers International.

Mrs. Witoelar welcomed participants and cited the major problems still being faced by the consumer in Africa in such areas as food security, health, malnutrition, poverty and education. She stated that the African consumer needed more protection today than in the past. Mr. Julian Edwards welcomed participants, and focused his statement on the characteristics of the consumer movement in Africa, which operated under an environment where economic reforms are being implemented. He noted the new trends in the globalization of trade and liberalization of markets, and their implications for consumers everywhere. He also indicated the harmful social impact of structural adjustment programmes in Africa. In addition, he stressed that the African situation was compounded by poverty, the monopolistic characteristic of the market, and the level of education and information available to the consumer. He noted, however, the rapid growth in the number of consumer organizations in Africa, indicating that there remained only 16 African countries which did not have consumer organizations. Consumers International would continue to make efforts to establish contact with those countries in the very near future, and in particular would work closely with African francophone consumer organizations with the objective of strengthening the consumer movement in the African region.

Ms. Pamela Chan, Executive, Consumers International, chaired the segment of the meeting devoted to the presentation of country reports by member consumer organizations. The presentations briefly summarized the historical background of the organizations, identified their successes and difficulties, and offered an overview of future activities.

Mr. Youssouf Jhugroo, Executive Director, Institute for Consumer Protection, Mauritius, chaired the segment of the meeting devoted to a discussion on the situation of the consumer movement in Africa and the future plans of the regional offices of Consumers International in Africa. Mr. Jhugroo noted the need for strengthening the consumer movement and consumer organizations in Africa. He then introduced three speakers: Mr. Julian Edwards, Ms. Ngaite Chimbandi and Mr. Amadou Kanoute.

Mr. Edwards reiterated that efforts would continue to be made to strengthen the consumer movement by strengthening the programme offices of Consumers International in Africa. Ms. Chimbandi, of the Programme Office of Consumers International for Eastern and Southern Africa, recalled the evolution of the movement, which had rapidly increased during the last five years. At present, there were 84 consumer organizations fully registered. The challenge for the regional offices was to get the remaining countries that did not have consumer representation to do so in the near future. She spoke of the plans of the Programme Office for Eastern and Southern Africa for strengthening the consumer movement in Africa. She indicated the need to focus on capacity-building, and in this connection, she emphasized that those consumer organizations that were already developed should be utilized as training centres for strengthening the consumer movement in Africa. She also pointed out that efforts would be made for initiating workshops on various issues, such as the mass media, the networking process, the publications programme and consumer education. Mr. Kanoute, of the Programme Office of Consumers International for Western and Central Africa, gave an account of the difficulties, successes and opportunities that had characterized the African organizations. He mentioned the strengths and weaknesses of the consumerism movement, the challenges ahead, and the development plans of the Programme Office of Consumers International for Western and Central Africa. The strengths of the organizations derived from the expertise of their members, and the availability and role of their leaders. The fact that they were voluntary, the absence of technical expertise, difficulty in generating resources and their lack of visibility were among the difficulties that faced many organizations. He pointed out the need to work closely with governmental and non-governmental organizations, as well as with the media, to strengthen the consumer movement in Africa.

B. Official opening of the Conference

The Conference was officially opened on Monday, 29 April 1996, by the Honourable Cde. Herbert Murerwa, Minister of Commerce and Industry of Zimbabwe. He welcomed participants to Zimbabwe and to the Conference, and expressed the satisfaction of the Government of Zimbabwe in hosting the Conference.

In his address, Mr. Murerwa emphasized that the basic rights of consumers included the protection of the consumer against products and services that were hazardous to health, and freedom of choice. He emphasized that the consumer had the right to a healthy environment that should enhance the quality of his/her life and that of future generations, and that environmental awareness was, therefore, an issue that should be integrated into all consumer education programmes.

1. Welcome

Prior to the official opening of the Conference, Mr. Muchaneta Nyambuya, Chairman of the Consumers Council of Zimbabwe, introduced Ms. Erna Witoelar. She also welcomed participants and pointed out that it was the first time that so many countries were getting together with the objective of discussing the protection of the African consumer.

2. Ten years of the Guidelines for Consumer Protection

Ms. Rhoda Karparkin, Vice-President of Consumers International, chaired the segment of the Conference devoted to the examination of the 10 years of the Guidelines for Consumer Protection. She welcomed participants, and introduced the United Nations representative, Mr. Ahmedou Ould-Abdallah, Special Coordinator for Africa and the Least Developed Countries, of the Department of Economic and Social Affairs* of the United Nations Secretariat, who introduced a background paper entitled "Implementation of the Guidelines for Consumer Protection", which was prepared by his Department. The text of the background paper is contained in chapter III below.

In his address, Mr. Ould-Abdallah expressed the appreciation of the United Nations Secretariat to Consumers International, the European Union and the Government of Zimbabwe for their cooperation, support and contributions to the Conference.

Mr. Ould-Abdallah pointed out that the Guidelines for Consumer Protection, which had been adopted by consensus by the General Assembly in its resolution 39/248 of 9 April 1985, continued to provide an international framework for Governments for the elaboration and strengthening of consumer protection policy. The Guidelines were a mechanism that provided a valuable set of principles for developing and enacting consumer protection policies and legislation, and they continued to be of importance and relevance, in particular for African developing countries. In countries where government interest in consumer protection was still relatively recent, the Guidelines defined essential issues to be dealt with, such as on areas of health and safety, access to goods and services, and measures for redress. They also represented an instrument for assisting in the identification of what needed to be done in the future, particularly in the light of emerging trends in a globalized and liberalized world economy. He indicated the importance that the Economic and Social Council attached to the issue of consumer protection in its adoption of its resolution 1990/85 of 27 July 1990 on consumer protection, in which, inter alia, it had encouraged Governments to develop, as appropriate, national policies and legislation in this field, and to collaborate in joint efforts for the protection of consumers. He also noted Economic and Social Council resolution 1995/53 of 28 July 1995, in which, inter alia, the Council had recognized the role of civil society and non-governmental organizations in promoting the implementation of the Guidelines, and had also noted that the Commission for Sustainable Development had recommended, at its third session in 1995, that the Guidelines be expanded to include guidelines for sustainable consumption patterns.

Mr. Ould-Abdallah noted a number of activities that had been undertaken by the organizations of the United Nations system in the implementation of the Guidelines, in particular a seminar on consumer protection for Latin America and the Caribbean (Montevideo, 9-11 March 1997) and a seminar on consumer protection for Asia and the Pacific (Bangkok, 19-22 June 1990), in which Consumers International had played an important role.

Mr. Ould-Abdallah noted that there had been important growth in the number of consumer organizations in Africa. In 1985, at the time of the adoption of the Guidelines, there were only six consumer organizations in four countries; in 1996, there were more than 80 organizations in nearly 40 African countries.

* Former Department for Policy Coordination and Sustainable Development.

However, it had to be recognized that consumer protection legislation was still very weak in the majority of African countries.

Mr. Ould-Abdallah then proceeded to discuss the future of the Guidelines for Consumer Protection. The role of the Guidelines had become ever more important in view of changes in the processes of production and distribution, new consumption patterns and the imperatives of sustainable development. Environmental issues, the global debt crisis, the spread of financial services and the revolution in the information field were having a profound effect on consumers. He emphasized that there was a close link between production, consumption and disposal of goods and services, and sustainable development. He also emphasized that while the formulation and implementation of consumer policies were optional and voluntary, there was a need for close cooperation between Governments and consumer organizations to achieve the best results. He encouraged participants to use the Conference as a forum and a catalyst for promoting the issue of consumer protection in African countries, and as an opportunity for making inputs into the revision and refinement of the Guidelines.

3. Keynote session: the consumer movement and development in Africa

Ms. Louise Sylvan, Honorary Treasurer, Consumers International, chaired the keynote session. She introduced Mr. Yash Tandon, Executive Director, Africa in Transition, who spoke on the consumer movement and development in Africa. Mr. Tandon indicated the trend towards a globalized market economy, the ongoing economic changes and its ramifications, and the need for consumer organizations to be ready to achieve their mission of protecting the consumer in today's economic scenario (which involved the presence of transnationals, as well as the new trade regime introduced by the Uruguay Round of multilateral trade negotiations). He indicated a number of areas deserving the particular attention of African consumer associations, such as poverty and unemployment; access to water; structural adjustment programmes; food security; social goods (health, education, pension); the debt issue; and the acquired immune deficiency syndrome. He emphasized the role of civil society as a mechanism which, through collaboration with governmental institutions, should be instrumental in protecting the African consumer. He recognized the increased number of consumer organizations in Africa, and recommended the creation of linkages among such organizations in order to cooperate in the use of their best comparative advantages.

C. Plenary sessions

1. Government perspectives on consumer protection: government country reports

The 1st plenary session was devoted to the presentation of Governments' perspectives on the issue of consumer protection. It was agreed that in order to have a broad view of the state of consumer protection policy and legislation in the African region country representatives would make presentations according to the following schedule:

(a) 1st meeting: Zimbabwe, Malawi and Senegal (Chairman - Ms. Sheila McKechnie, Executive, Consumers International);

(b) 2nd meeting: Ghana, Tunisia and Egypt (Chairman - Ms. Marilena Lazzarini, Executive, Consumers International, and Executive Coordinator, Instituto Brasileiro de Defesa do Consumidor of Brazil);

(c) 3rd meeting: Cameroon and Uganda (Chairman: Mr. Victor Shingiro, Chief, Joint ECA/UNCTAD Unit, Trade and Development Finance Division, Economic Commission for Africa);

The texts of the presentations are contained in chapter IV below.

2. Link between the Guidelines for Consumer Protection and the Model Law for Consumer Protection in Africa

Mr. Dick Westendorp, Honorary Secretary, Consumers International, chaired the 2nd plenary session, which considered the link between the Guidelines for Consumer Protection and the Model Law for Consumer Protection in Africa. He introduced Ms. Andrea Lazzarini, Instituto Brasileiro de Defesa do Consumidor of Brazil, who spoke about the experience in Latin America in the formulation of a model law; the need to elaborate a model law that would serve as a framework for the elaboration of national laws; and the need for the model law to regulate the relationship between consumers and suppliers

Mr. Westendorp then introduced Professor S. Sothi Rachagan, Faculty of Law, University of Malaya, who stated that before the model consumer legislation was established in Latin America, it had been necessary to consider several issues, such as whether other laws, such as financial and credit laws, should be considered, whether there was a need to have the price control law embedded in the consumer protection model law, and whether criminal law should be part of the model law.

Mr. Westendorp introduced Mr. Pradeep S. Mehta, General Secretary, Consumer Unity and Trust Society of India. Mr. Mehta pointed out that consumers were at the centre of all economic activity, and drew the parallel of workers to politics, as consumers are to the economy. Mr. Mehta spoke of the experience in India with consumer protection activities, stating that consumer legislation had been in existence in India for a long time. He noted, however, that legislation did not allow for consumer redress. Therefore, the Consumer Legislation Act had been established, which provided for the establishment of district consumer courts at the state level and consumer courts at the national level. The Act recognized the right of a consumer organization to take up a case on behalf of an aggrieved consumer, even if the consumer did not belong to the organization. In addition, the Act protected civil society and defined consumer rights, in particular in the areas of health, nutrition and access to rights. However, the right to basic needs had not yet been achieved.

3. State of consumer protection legislation in Africa

Mr. Bernard Sihanya, Public Law Institute, Kenya, chaired the 3rd plenary session, which considered the state of consumer protection legislation in Africa. He introduced Ms. Petronella Maramba, a legal consultant from Zimbabwe for Consumers International Regional Office for Africa, who presented an overview entitled "Study on consumer protection in Africa: a case study of consumer protection law in Africa", which had served as a basic document for the preparation of the Model Law for Consumer Protection in Africa. She indicated that African Governments had gone a considerable way towards enacting

legislation to protect consumers, and that various mechanisms had been put in place at the national, subregional and regional levels to enforce consumer protection legislation. Given the fact that consumerism was still a relatively new concept in Africa, Governments should be commended for their achievements. She stressed that consumer organizations should be recognized for their efforts in assisting Governments in the formulation of appropriate legislation and policies.

Ms. Petronella indicated that the current situation in Africa called for action by both Governments and consumer organizations at the national, subregional, regional and international levels. At the national level, she suggested a number of areas for action, such as the strengthening of existing consumer laws and structures, and the systematic reform of laws, regulations and administrative procedures governing consumer matters. At the subregional and regional levels, relevant cooperating treaties already concluded should be reviewed and structured in such a way that they addressed the concerns of consumers. At the international level, she recommended that the possibility of establishing an international body to monitor the progress achieved at the national, subregional and regional levels in terms of consumer protection policy and legislation should be studied.

4. Model Law for Consumer Protection in Africa

Ms. Petronella Maramba, legal consultant from Zimbabwe for Consumers International Regional Office for Africa, chaired the 4th plenary session, which considered the Model Law for Consumer Protection in Africa. The members of the panel discussed elements of the Guidelines for Consumer Protection and consumer organizations' experiences, and highlighted the main components of a comprehensive consumer legislation relevant to the African context. The panel discussed in depth the proposed Model Law.

5. Extension of the Guidelines for Consumer Protection

Ms. Maria Elena Hurtado, Director, Global Policy Campaigns Unit, Consumers International, chaired the 5th plenary session, which considered the extension of the Guidelines for Consumer Protection. Ms. Hurtado opened the session, stating that issues of sustainable consumption and development and the increasing integration of markets through, among other things, new communications technology, made it necessary to maintain the relevance of the Guidelines for consumers and businesses. She noted that although the Guidelines were almost universally implemented in Organisation for Economic Cooperation and Development (OECD) countries, perhaps the greatest need was for their prompt implementation in developing economies. There was a need to recognize the interests of the consumer and to operationalize the Guidelines' broad statements of principle. She introduced Mr. Allan Asher, Competition and Consumer Commission of Australia, who pointed out that the Guidelines for Consumer Protection, which had had a major impact on the global economy, must also be updated to meet the challenges of the next millennium. He also emphasized the need to forge partnerships or alliances between governmental and non-governmental organizations to meet the challenges of the new global market economy.

Ms. Hurtado then introduced Mr. S. Sothi Rachagan, Professor of Law, University of Malaya, who indicated that establishing legal rights that serve

the interests of those currently denied access to justice was the basis for providing redress to consumers.

6. The role of regional and subregional bodies

The 6th plenary session was devoted to the discussion of cooperation between consumer organizations and regional and subregional bodies, particularly since consumer issues transcended national borders and transfrontier problems required increasing regional attention in their settlement. It was stressed that cooperation among government activities at the regional level, particularly with respect to testing, training, consumer information exchange and education programmes, should enhance the development of a strong consumer movement. The role of consumer organizations in implementing decision-making at the level of regional bodies and the role of regional campaigns in the strengthening of the consumer movement were also discussed. The session undertook the revision of draft resolutions of the Conference.

Mr. Jose Vargas, Regional Director, Consumers International Regional Office for Latin America and the Caribbean, chaired the session. He introduced Ms. Louise Sylvan, Chief Executive Officer, Australian Consumers' Association, who chaired the segment of the session on regional campaigns. She introduced Ms. A. Lazzarini, Instituto Brasileiro de Defesa do Consumidor of Brazil, who highlighted the important role of consumer organizations in implementing decision-making at the level of regional bodies. Such a role was particularly important because consumer issues were transcending national frontiers and required close attention at the regional level.

Mr. Muchaneta Nyambuya, Managing Director, Consumer Council of Zimbabwe, chaired the segment of the session devoted to the review of draft resolutions. He introduced Mr. David Jallah, Legal Advisor, National Consumer Council of Liberia, who presented the draft resolutions of the Conference. For the text of the resolutions, see chapter I above.

D. Guest speakers session

1. Role of the European Union in promoting consumer protection in developing countries

Mr. Ahmedou Ould-Abdallah, United Nations representative, chaired a discussion of the role of the European Union in promoting consumer protection in developing countries. He introduced Ms. Emma Bonino, then European Commissioner for Development and Consumer Affairs*. Ms. Bonino expressed the appreciation of the European Union to the Government of Zimbabwe for hosting the Conference. She also congratulated the Department of Economic and Social Affairs** of the United Nations Secretariat and Consumers International for their cooperative efforts in organizing the Conference.

She stated that the Conference had come at a particularly opportune moment, coinciding with the tenth anniversary of the Guidelines for Consumer Protection. She pointed out that the discussions should serve to evaluate how the Guidelines

* Currently European Commissioner for Humanitarian Aid, Fisheries and Consumer Policy.

** Former Department for Policy Coordination and Sustainable Development.

were applied in Africa, and to promote measures to extend them with a minimum of legislation to protect the health and safety of African consumers. She recalled that a number of African countries had already adopted consumer protection legislation and had a number of influential consumer organizations. At the same time, there was a need to undertake a careful analysis of the consumer movement in the light of the contemporary international economy and existing political priorities.

Ms. Bonino indicated that there were very close links between consumer policy and development policy, an issue that was being addressed by the European Commission, the European Parliament and the European Council. She emphasized that consumer policy should help all citizens to consume more wisely, without any risk to health and safety, preventing wastage and ensuring the preservation of nature and natural resources for the use of future generations. Consumer policy should protect disadvantaged populations against the eventuality of dangerous products or products whose shelf-life had expired, or against unclear advertising that might mislead the consumer. She recalled that the origins of the consumer movement focused on basic needs, and she was of the view that consumer policy in Africa should also focus on how to satisfy basic needs.

Ms. Bonino stressed that the dual concept of consumption and development was one of the priorities of the three-year action plan for the protection of consumers adopted in November 1995 by the European Commission. She adhered to this concept, and recommended that efforts be continued to link development and consumer protection policies everywhere.

Ms. Bonino expressed the view that the Guidelines for Consumer Protection, which had served as a benchmark in a large number of countries throughout the world, should be adapted to the African environment. While there was agreement on the need for the right to information and education or for product safety, the rights to drinkable water, medicines, wholesome foods etc. were also of great interest to the African consumer.

2. Special guest speaker

Mr. Ould-Abdallah then introduced the special guest speaker of the Conference, Ms. Lubeskey Masha, Deputy Minister for Industry and Trade, Government of Israel. Ms. Masha described various aspects of consumer protection currently in effect in Israel, and emphasized that consumer protection was an integral principle of the economy in current times, particularly since the economic system played a major role in the life of nations, and was ever more important today.

E. Launch of the model law for consumer protection in Africa

Mr. Ahmedou Ould-Abdallah chaired the session on the launch of the Model Law for Consumer Protection in Africa. He introduced Ms. Emma Bonino, then European Commissioner for Development and Consumer Affairs*. Ms. Bonino launched the Model Law for Consumers Protection in Africa. The text of the Model Law is contained in chapter V below.

* Currently European Commissioner for Humanitarian Aid, Fisheries and Consumer Policy.

In her statement, Ms. Bonino congratulated all those involved in the preparation of the Model Law, which represented a set of legal principles to assist African Governments, consumer groups and associations, individual consumers expert and activists in their work of protecting the rights of the African consumer through legislation, legal intervention and activism.

F. Closing session

Mr. Jayen Chellum, Executive, Consumers International, and Secretary-General, Consumer Association of Mauritius, chaired the closing session of the Conference. He introduced Mr. Wendell Addy, who gave a vote of thanks. Mr. Wendell Addy, in turn, introduced the Honourable Minister Cephas Msipha, Minister of State of the Office of the President of Zimbabwe, who officially closed the Conference on 2 May 1996.

G. Workshops

1. Physical safety, standards and quality

Chair: Mr. Michael O'Connor, Director, Programme for Developed Countries, Consumers International.

Speakers: Ms. Lillibeth Moolman, Chairman, South African National Consumer Union, and Ms. Najia Zakraoui, Association marocaine des consommateurs.

The workshop emphasized the need to set standards and to ensure the safety of products available to the African consumer, and recognized that the health of consumers should be considered in all aspects of trade.

Ms. Moolman spoke of the experiences in this area in the South African environment. She recalled that "Safe food for all" had been the theme of World Consumer Rights Day in 1996, and indicated that a ministry/department for food was expected to be established in South Africa in September 1996.

Ms. Zakraoui pointed out that the health system in Morocco needed strengthening, and that the Association marocaine des consommateurs collaborated closely with the Government and civil society, in particular with pharmacists, in a number of areas of concern, such as the fight against tetanus.

2. Economic interests

Chair: Mr. Hassan Gemei, Vice-President, National Association of Consumer Protection, Egypt.

Speaker: Mr. Muchaneta Nyambuya, Director, Consumer Council of Zimbabwe.

The workshop explored a number of strategies on how consumers' needs and interests could be served and protected, taking into consideration recent changes and the adoption of economic reform policies, in particular the globalization of trade and liberalization of markets. These reforms had led to great economic hardships, such as inflation, aggressive advertising and dismantling of trade barriers, which had resulted in the replacement of locally produced goods by imports.

Mr. Nyambuya pointed out that great economic hardships had developed for the African consumer as a consequence of economic reform policies. He indicated the need for consumer organizations to explore ways and means for protecting consumer interests.

3. Distribution facilities

Chair: Mr. Mathias Some, Ligue des Consommateurs du Burkina Faso.

Speakers: Mr. Babacar Ndaw, Chairman, Senegalese Association for the Defense of the Environment and the Consumer, and Mr. Habib Guerfel, Chairman, Organisation de la défense des consommateurs of Tunisia.

The discussion focused on the need to formulate strategies and measures to ensure a more equitable distribution of goods and services, including financial services, health and educational facilities.

Mr. Ndaw said that regulation of the distribution of services required close attention, and that it was necessary to ensure an equitable distribution of goods and services.

Mr. Guerfel stressed the need for concerted action between Governments, non-governmental organizations and the private sector to ensure the adequate and equitable distribution of goods and services.

4. Redress

Chair: Mr. David A. B. Jallah, Board of Directors and Legal Advisor, National Consumer Council of Liberia.

Speakers: Professor Tobie Van Rhijn, Consumer Representative, Maize Board, South Africa, and Ms. Najia Zakraoui, Association marocaine des consommateurs. The workshop explored the need for consumers to have access to legal redress through the establishment of various mechanisms, including small claims courts or tribunals, legal complaint services and ombudsman's schemes.

Professor Van Rhijn stated that redress was not the equivalent of consumer protection, because consumers generally think about redress only when a problem occurs: hence the need for legislation to protect consumers.

Ms. Zakraoui informed participants about the various redress mechanisms available to consumers in Morocco, such as the courts, traditional and arbitral methods, and class action suits.

5. Education and public awareness

Chair: Mr. Dick Westendorp, Honorary Secretary, Consumers International.

Speaker: Mr. Heiko Steffens, University of Berlin.

The workshop was devoted to the examination of how consumers education can become a strategic necessary condition for consumer protection.

Mr. Steffens stated that the objective of the consumer education and public awareness programme was to enable the consumer to meet his or her basic needs and at the same time become a responsible consumer in terms of the environment and society at large. He spoke of the role of information offices in the education of the consumer, and indicated a number of objectives of these offices, such as the dissemination of information on prices and quality of goods and services, and assistance in furthering greater transparency of the market. He pointed out that among the means for the dissemination of information, press releases, pamphlets, magazines, booklets and audio-visual communication were the most widely used. He emphasized the need for information offices to be independent from industry and government in order to serve the consumer effectively.

6. New areas

Chair: Mr. Jean Marie Courtois, Chief, Consumer Policy Division, European Commission.

Speaker: Ms. Maria Elena Hurtado, Director, Global Policy Campaigns Unit, Consumers International.

It was stated at the workshop that there had been dramatic worldwide changes in terms of environmental issues, the global debt crisis, the increasing globalization of trade, production and finance capital, the information revolution, and the move towards privatization and smaller state mechanisms, all of which had had an impact on the consumer. Within this context, it would be necessary to update the Guidelines for Consumer Protection. The workshop reviewed a number of areas for the possible revision and extension of the Guidelines, as indicated below.

Ms. Hurtado made reference to chapter 4 (Changing consumption patterns) of Agenda 21,¹ an issue of great interest to the consumer. She also recalled Economic and Social Council resolution 1995/53, in which the Council had called on the United Nations, inter alia, to elaborate guidelines in the area of sustainable consumption patterns and to explore the extension of the Guidelines into other areas. She introduced a number of proposals for the expansion of the Guidelines related to: (a) measures that Governments can take to promote a more environmentally friendly use of products and services; (b) reforming fiscal and pricing policies in order to incorporate the environmental cost of products; (c) the promotion of energy conservation and efficiency and development, and the demand for durable, repairable and reusable products; (d) support and the promotion of the environmental testing of products; (e) the promotion of the provision of accurate and reliable information to consumers about the environmental impact of products and services; and (f) the education of consumers on the environmental impact of their lifestyles, the options for improvement and the benefits of more sustainable consumption.

Suggestions were also made to review several of the articles of the existing Guidelines, in particular articles 16, 17 and 19, pertaining to the principle that goods should meet reasonable demands of durability, utility and reliability; the need for fair and effective competition; and the availability of such services as conscionable conditions of credit. In addition, the following issues were proposed for consideration in the Guidelines: (a) basic services, including public utilities (health, water, electricity, gas, including consumer representation in the relevant regulatory bodies); (b) financial services (accurate credit reporting with privacy protection, regulated rates and

terms, disclosure of costs and terms of credit); and (c) consumer representation (representation in trade negotiations, setting of products standards, and the need for mechanisms for consumer participation in decision-making processes).

Notes

¹ See Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

Part Two

BACKGROUND PAPERS

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III. IMPLEMENTATION OF THE GUIDELINES FOR CONSUMER PROTECTION

A. Introduction

The General Assembly, by its resolution 39/248 of 9 April 1985, adopted the Guidelines for Consumer Protection. The Guidelines provide an international framework for Governments for the elaboration and strengthening of consumer protection policy and legislation.

A number of activities have been undertaken by the United Nations in the area of consumer protection since the adoption by the Economic and Social Council of resolution 1979/74 of 3 August 1979, in which it recognized that consumer protection has an important bearing on economic and social development, as well as on the health, safety and welfare of the people of all countries. At its second regular session of 1990, recognizing that there still remained a great need for assistance in consumer protection, particularly in developing countries, the Council adopted resolution 1990/85 on consumer protection. In so doing, it strengthened its earlier mandate (resolution 1988/61) for the implementation of the Guidelines, while encouraging all Governments to develop further, as appropriate, national legislation and policies in this field, and to collaborate in joint efforts for the protection of consumers.

In its resolution 1990/85, the Council called for a programme of action to be developed over the next five years on the implementation of the Guidelines, under the leadership of the Secretary-General and in cooperation with the development funds and programmes of the United Nations, the regional commissions and other relevant bodies and agencies of the United Nations system. The programme was to be reviewed on the occasion of the tenth anniversary of the adoption of the Guidelines, in 1995, subject to its implementation based on the availability of extrabudgetary resources. However, the extent to which the Secretary-General has been able thus far to undertake the activities called for in Economic and Social Council resolution 1990/85 has been constrained by the limitation of the availability of extrabudgetary resources.

In its resolution 1995/53 of 28 July 1995, the Council recalled its earlier resolutions 1988/61 of 27 July 1988 and 1990/85 of 27 July 1990, as well as resolution 48/7 of 23 April 1992 of the Economic and Social Commission for Asia and the Pacific.¹ The Council also noted the impact that the Guidelines for Consumer Protection have had since their adoption in promoting just, equitable and sustainable economic and social development through their implementation by Governments. It also recognized the role of civil society and non-governmental organizations in promoting the implementation of the Guidelines, and urged Governments to continue their efforts to implement them, create the appropriate legal framework, and establish the means to develop, implement and monitor policies and programmes for consumer protection.

The Council also noted that the Commission on Sustainable Development, at its third session in 1995, had recommended that the Guidelines for Consumer Protection be expanded to include guidelines for sustainable consumption patterns.² In addition, it reiterated its request to the Secretary-General, inter alia, to continue to provide assistance to Governments, upon their request, for elaborating guidelines in the area of sustainable consumption patterns, taking into account the work undertaken in other intergovernmental

forums, and to examine the possible extension of such guidelines into other areas.

In addition, in accordance with Council resolution 1995/53, the Secretary-General was expected to report to the Council at its substantive session of 1997 on the implementation of the resolution.³

The present paper covers the activities set in motion by the Secretary-General to implement the resolutions of the Council, and contains information on the impact that the Guidelines for Consumer Protection have had on national, regional and international consumer work undertaken by Governments, intergovernmental and non-governmental organizations during the 10 years since their adoption in 1985. In the following review, it is suggested that despite the achievement to date there is still scope for the United Nations system to give greater focus to the issue of consumer protection, given its importance for the economic and social well-being everywhere.

B. Implementation of Economic and Social Council resolution 1990/85

Although in its resolution 1990/85 the Council emphasized the importance that member Governments assign to the implementation of the Guidelines for Consumer Protection and the need for assistance in this regard, the activities called for in the implementation of the programme of action have been constrained by the limitation of extrabudgetary resources, as indicated above.

The United Nations has undertaken two surveys of measures carried out by Governments in implementing the Guidelines, one in 1992 (see E/1992/48) and the other in 1995 (see E/1995/70). Proposals for the possible extension of the Guidelines are contained in the discussion of areas of emerging concern (see sect. C below).

The Guidelines are of continuing importance and relevance in both developed and developing countries. In countries where governmental interest in consumer protection is relatively recent, they define essential issues to be dealt with, such as health and safety, access to goods and services, and measures for redress. In countries where consumer law is more developed, they provide a point of reference against which existing laws can be evaluated to see whether certain areas need strengthening. The Guidelines, as an instrument in assisting the identification of what needs to be done in the future, particularly in the light of the new globalized world economy and its interdependent character, are important to both developed and developing countries. In addition, the role of the Guidelines is growing in importance in view of the shifting of production and new consumption patterns and the imperatives of sustainable development.

In carrying out the activities mandated by the Council, the Secretary-General has enjoyed a particularly fruitful collaboration with Consumers International and its regional offices in Africa, Europe, Asia and Latin America. Consumers International has assisted in focusing worldwide attention on this issue on 15 March each year through the celebration of World Consumer Rights Day. In 1995, the theme was "Know your rights! Ten years of the United Nations Guidelines for Consumer Protection."

In the recent past, Consumers International has provided expertise for the regional seminars for Latin America and the Caribbean (1987) and Asia and the Pacific (1990). In addition to the Africa Conference on Consumer Protection,

organized jointly with the United Nations and the European Union, it is expected that it will collaborate with the United Nations in the convening of other regional seminars (in Eastern Europe for example). Consumers International has also taken an active role in pursuing follow-up action to implement the recommendations emanating from these seminars (see sect. B3 below).

The Department also regularly participates in Consumers International's world congresses. During the Fourteenth Triennial World Congress, which was held at Montpellier, France, in September 1994, 30 resolutions were adopted on substantive issues of concern to consumers, such as trade, the environment and sustainable consumption, debt and financial services, information and advertising, the protection of privacy, consumer education, food, health and basic needs. The Congress also called for a United Nations seminar on consumer protection for economies in transition.

1. Guidelines for Consumer Protection

The Guidelines for Consumer Protection address the interests and needs of consumers worldwide. They recognize that (a) consumers often face imbalances in economic terms, educational levels and bargaining power; and (b) the importance of promoting just, equitable and sustainable economic and social development.

The Guidelines provide a framework for Governments, particularly those of developing countries, for enacting, further elaborating and strengthening consumer protection policies and legislation, and also provide a stimulus for further international cooperation in this field. The Guidelines are designed to assist countries in achieving or maintaining adequate protection for their population as consumers; facilitate production and distribution patterns responsive to the needs and desires of consumers; encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; assist countries in curbing abusive business practices by all enterprises at the national and international level that adversely affect consumers; facilitate the development of independent consumer groups; and encourage international cooperation in the field of consumer protection and the development of market conditions that provide consumers with greater choice at lower prices.

2. Implementation of the Guidelines for Consumer Protection by Governments

The governmental role in consumer protection is vital, and finds expression through policy-making, legislation and the development of institutional capacity for its enforcement. To provide a legal basis for enforcing basic consumer rights, every country needs to have an irreducible minimum of consumer protection legislation, covering physical safety, promotion and protection of consumers' economic interests, standards for the safety and quality of goods and services, distribution facilities, redress, and education and information programmes, issues that are addressed by the Guidelines to Consumer Protection. Governments also require the necessary machinery to enforce such legislation.

The Guidelines encourage Governments to develop, strengthen or maintain a strong consumer protection policy. In so doing, each Government must set its own priorities for the protection of consumers, in accordance with its economic and social circumstances and the needs of its population.

The Economic and Social Council, in its resolutions 1988/61 and 1990/85, urged all Governments to implement the Guidelines, and encouraged Governments to collaborate, as appropriate, in joint efforts for the protection of consumers. In the 10 years since the Guidelines were adopted, there have been many actions taken by individual Governments in implementing those Guidelines. Regional seminars were held by the United Nations for government policy makers and consumer representatives in Latin America and the Caribbean and Asia and the Pacific in response to requests by Governments in those regions for assistance in implementing the Guidelines, and a number of requests have also been received from Governments of Eastern Europe.

Within the context of the programme of action through 1995, the Economic and Social Council requested that a survey of consumer protection measures undertaken by Governments be carried out. Responses of member Governments to the questionnaire prepared for this purpose by the Department of Economic and Social Affairs* of the United Nations Secretariat provided an indication of recent developments in consumer policy, helped to identify areas where Governments felt a need for assistance from the United Nations system, and suggested a number of areas where the Guidelines might be extended. Information was also provided on the actual utilization of the Guidelines in developing consumer policies and in setting up appropriate structures to carry out such policies.

Twenty-seven replies to the questionnaire were received from Governments, including a limited number from Governments from the African region. While the limited number of responses did not allow for a full analysis of the status of the implementation of the Guidelines worldwide, the information obtained did cover all regions and did allow for some general observations to be made. It also indicated the need to encourage Governments, in particular those of developing African countries and countries in transition, to develop, enact and strengthen consumer protection policy.

Governments of both developed and developing countries and of those in transition reported that the Guidelines for Consumer Protection continued to play an important role in their work. The replies stressed how important Governments consider the issue of consumer protection to be to the economic, social and environmental well-being of their citizens. In Finland, the Guidelines have been of great importance in formulating national consumer policy and in drafting a consumer policy programme in 1991. The Guidelines have been the main basis for many aspects of the work of the Meeting of Consumer Affairs held in New Zealand. The Government of the Netherlands has reported that it has used the Guidelines as a point of reference in the evaluation of Dutch consumer policy. In Guatemala, a programme for consumer education based on the Guidelines was initiated in 1994. The Guidelines were used in preparing legislation, such as the Consumer Protection Act (1986) of India and the Consumer Affairs Act (1994) of Malta. The Government of Malaysia has developed legislation in line with the Guidelines, and has considered drafting a comprehensive consumer protection law based on them. Other Governments, such as those of Morocco and Slovakia have recently prepared draft laws based on the Guidelines. The Government of Sweden, among others, indicated its commitment to supporting all efforts to make the Guidelines known in countries where consumer policy still is not very developed and considers that the United Nations should find ways and means to help underdeveloped countries to become more aware of the importance of consumer protection by organizing conferences or seminars in regions where these countries are situated.

* Former Department for Policy Coordination and Sustainable Development.

Developing countries have indicated an interest in receiving assistance in the training of officials concerned with consumer protection policy, and in the development of consumer education and information programmes.

The United Nations system is being requested to help facilitate the implementation of the Guidelines in African developing countries and in countries in transition that lack the necessary infrastructure, testing facilities and trained staff. Advisory services are required to set up government offices and establish testing laboratories. There are many requests for increased exchange of information among countries and for study visits in countries with more developed institutions and facilities.

A number of respondents to the United Nations questionnaire noted that new consumer protection policy problems are being posed by increasing globalization, technological developments, environmental issues and changes in financial markets. Several specific suggestions have been put forward to review the Guidelines in order to address some of these issues (the globalization of trade, business and commerce). For example, the Government of Australia considers that the Guidelines should be revised to include guidelines for the conduct of global business. Norway suggests that paragraph 8 of the Guidelines be rephrased to contain a provision that evaluation of health hazards based on documentation on the specific situation in a country, such as patterns of consumption and dietary patterns, could necessitate national measures that should be accepted even if these measures are barriers to international trade. Antigua and Barbuda considers that the Guidelines should reflect the responsibilities of consumers for the protection of the environment and the promotion of a functional international network in the sphere of consumer protection. This network would be comprised of all designated national public authorities responsible for consumer affairs, and would serve to tackle transboundary unfair practices, and exchange information about developments at a national level in consumer legislation. Such an activity would be similar to - though far broader - than that undertaken by the Organisation for Economic Cooperation and Development (OECD) International Marketing Supervision Network. India recommended that a United Nations specialized agency be established in the field of consumer protection.

3. Regional and international cooperation

The Guidelines for Consumer Protection place emphasis on international cooperation in the field of consumer policy. Indeed, consumer problems transcend national borders, and trans-frontier disputes require increasing international attention in their settlement. Cooperative activities can be of great value in enabling countries to draw on each other's experiences and avoid unnecessary duplication of efforts. Often, joint activities among Governments at the regional level, particularly with respect to testing and training and the exchange of consumer information and education programmes, lead to enhanced results.

The Guidelines recommend the development of cooperative measures at the regional and/or subregional levels. In this context, it is useful to note that two regional seminars have already been organized by the United Nations to date. Both seminars emphasized the need to tap the great potential for developing and strengthening regional mechanisms for the sharing of experiences and pooling of resources for the more efficient use of technical research and training facilities.

The first seminar was held for the Latin American and Caribbean region from 9 to 11 March 1987 at Montevideo, Uruguay. It was attended by participants from 20 countries and by observers from donor Governments, intergovernmental organizations and non-governmental organizations. The meeting was financed by the Governments of Norway and Spain and by the United Nations Development Programme (UNDP).

Specific recommendations were adopted with regard to areas that were considered to be of priority for the region. These included the establishment of an informal communications network among the organizations of the region dedicated to consumer protection and to encouraging the creation, development and use of national and international data banks. Consumers International developed a model law on consumer protection, based on the Guidelines for Consumer Protection and taking into account the Latin American and Caribbean legal experience. The model law, which is a dossier of existing laws and regulations in the region, has been used as a guide by a number of countries in their consideration of new legislation. In the intervening eight years, the Government of Brazil has raised consumer protection to the constitutional level, and has adopted a consumer protection law. The Governments of Honduras, Argentina, Ecuador, Costa Rica, Mexico and Peru have formulated consumer protection legislation, as has El Salvador, whose Peace Agreement contained a specific clause on consumer rights. Other countries, including Guatemala, Uruguay, Chile, Nicaragua, Honduras, Colombia and Bolivia, are in the process of developing new laws. In addition, a significant number of Governments have established special departments and offices for consumer protection, consumer education, information and complaints handling.

Government officials and consumer representatives attended a regional meeting at the headquarters of the Economic and Social Commission for Latin America and the Caribbean (ECLAC) at Santiago in November 1990. At that meeting, which was co-organized by ECLAC, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and Consumers International, specific recommendations were adopted with respect to consumer access to basic goods and services, consumer education, and mechanisms for the enforcement of legislation. There was a proposal at a follow-up meeting in December 1991, submitted to the United Nations, for a second regional seminar on consumer protection to be held under United Nations auspices, in the light of the success of the 1987 meeting and of the need for continued assistance to Governments of the region. For such event to take place, it would be necessary to obtain the requisite resources.

In the decade that has elapsed since the adoption of the Guidelines for Consumer Protection, the Consumers International Regional Office for Latin America and the Caribbean reports that the Guidelines have served as a fundamental factor in the development and growth of the region's consumer organizations, increasing enormously their profile and ability to represent consumers. Because of the existence of the Guidelines, many organizations have been able to develop public campaigns and lobbying activities designed to urge their Governments to improve the state of consumer protection in their countries. The results have contributed greatly to the enhancement of democracy and living standards in the region. ECLAC has indicated that it looks forward to continuing its collaboration with Consumers International, and is prepared to contribute further to the implementation of the Guidelines.

The United Nations Regional Seminar on Consumer Protection for Asia and the Pacific took place at the Economic and Social Commission for Asia and the Pacific (ESCAP) headquarters at Bangkok from 19 to 22 June 1990. The meeting

was attended by participants from 19 countries, and by experts and representatives of organizations of the United Nations system and non-governmental organizations. The meeting was financed by the Government of Australia and UNDP, with a small grant from the American Express Foundation.

Forty-five specific and action-oriented recommendations were adopted, and they laid the groundwork for follow-up activities. At the seminar, the Government of Australia made a commitment of a three-year grant to Consumers International for follow-up work in the South Pacific. In February 1992, Consumers International held a subregional workshop in Samoa on consumer education and law for government officials, where a model consumer protection law for the South Pacific based on the Guidelines was discussed and subsequently developed in 1992. There is a large-scale education programme in the subregion, which uses the Guidelines as both a reference and a teaching tool. Consumers International also held a training seminar at Hanoi in August 1990, at which participants from Viet Nam, Cambodia, the Lao People's Democratic Republic and Myanmar called for the speedy implementation of the Guidelines through their national legislation. At the 1990 seminar, the Government of Japan stated its intention of following up on the recommendations at the regional level by holding a meeting on consumer policy for government officials. In 1993, Consumers International convened an Asian seminar on consumer law at Kuala Lumpur, at which the value of the Guidelines was once again endorsed.

In recognition of the importance of the Guidelines in regional work, member Governments adopted a resolution at the ESCAP meeting in April 1992, in which they called upon the Executive Secretary, in cooperation with non-governmental organizations and development funds and programmes of the United Nations, and other relevant bodies and agencies in the United Nations system, to promote the implementation of the Guidelines for Consumer Protection, initiate specific activities to follow up on the recommendations of the 1990 seminar, and seek such extrabudgetary contributions as might be necessary for that purpose.

Consumers International reports that, over the past decade, the influence of the Guidelines in the Asia and the Pacific region has been enormous: in India alone, the number of consumer groups has grown from 25 to several thousand. Consumers International also now has members in China and Viet Nam, countries in which consumers are facing vast changes.

The Asia and Pacific region is geographically, socially and economically diverse. While a number of Governments have well established consumer policies, and others - such as those of Malaysia, Pakistan, Thailand and Singapore - have recently developed national legislation, much work remains to be done to ensure full implementation of the Guidelines.

In Central and Eastern Europe and in the Commonwealth of Independent States, the transition from centrally planned to market-led models of economic management has involved much hardship for consumers, and for administrations in the process of reform. The opening up of markets has brought in products of varying quality, including imported goods, as well as a flurry of unregulated services, especially financial services. Consumers often lack the basic information required to make informed choices.

Against this backdrop, the Guidelines have played an important role in providing a framework for Governments and consumer groups to build the structures, legal systems and policies that are appropriate to their own conditions.

Indeed, at a seminar organized by OECD on consumer protection in market economies, held at Vienna from 21 to 23 April 1991, representatives from Central and Eastern Europe stated that they had been using the Guidelines to persuade their Governments to develop consumer policy. In some countries, such as Hungary, Czechoslovakia and the former USSR, legislation had been prepared that was consistent with the Guidelines.

Subsequently a regional consumer conference for consumer groups was held by Consumers International in October 1992 at Bled, former Yugoslavia, with the participation of 100 consumer activists from 21 countries. The problems facing consumers in the transition period were discussed, with the Guidelines serving as both benchmark and unifying theme. The Conference called upon Governments in the region to introduce consumer protection legislation, develop education and information programmes, and support consumer groups. The declaration adopted by the conference stated that the Guidelines for Consumer Protection have a vital role in achieving these objectives.

Consumers International reports that, in all their activities in the countries-in-transition, the Guidelines remain one of the few constant reference points in a region where virtually nothing else has remained stable. Quoted, cited, relied upon and aspired to, they remain an invaluable ethical code and a force for positive change. Several Governments in the region have requested the United Nations to hold a seminar on consumer protection that would focus on addressing their specific needs.

In the region covered by the Economic and Social Commission for Western Asia (ESCWA), the Commission reports that although it had disseminated copies of the Guidelines to member Governments in 1990, no other actions were taken, owing to the special circumstances that ESCWA had been facing in the past several years. It indicates, however, that it is now prepared to collaborate in the convening of a regional seminar on consumer protection.

In the case of the African region, there were just six consumer organizations in four countries at the time of the adoption of the Guidelines for Consumer Protection. Today, nearly 40 African countries are host to more than 80 consumer organizations. This remarkable growth reflects both the influence of the Guidelines and the democratic reforms, structural adjustment programmes and market liberalization policies being adopted by a growing number of Governments, and the increasing involvement of civil society in consumer protection activities. But although a number of Governments - such as those of Ghana, Mali, Nigeria, South Africa and Zimbabwe - have recently taken measures, consumer protection legislation is still very weak in the majority of African countries.

The Economic Commission for Africa (ECA) has focused its work on such areas as the harmonization of standards and quality control, and the development of storage facilities and distribution channels within domestic and intra-African trade. It organized a symposium in July 1994 on the role of non-governmental organizations in the implementation of the United Nations New Agenda for the Development of Africa in the 1990s,⁴ which focused, *inter alia*, on the promotion of consumer organizations in the region. At the symposium, the importance of the consumer movement to the development and democratization process in Africa was recognized, and the convening of a regional conference on consumer protection was recommended.

A regional conference was held at Harare in 1994 by Consumers International for more than 100 consumer representatives from 20 countries. Given that

consumer protection laws in most African countries are still not fully developed and sometimes lack specified enforcement mechanisms, work in the region focuses on providing support for consumer legislation campaigns and on consumer education. In recent years, three workshops have been held on the use of the Guidelines at Dakar, Harare and Cotonou.

4. Systemwide implementation of the Guidelines for Consumer Protection

Organizations of the United Nations system were sent a copy of the questionnaire sent to Governments, and were requested to provide information on programmes and projects that were targeted to assisting Governments in implementing the Guidelines for Consumer Protection. The responses indicate that in recent years, there has been a significant increase in interest and activity relating to the Guidelines, stemming from the focused attention given to consumer protection through implementation of Economic and Social Council resolutions 1988/61 and 1990/85, and from heightened international scrutiny of the environment and related safety and quality issues. These activities are likely to gain increased impetus in coming years, particularly through the implementation of Agenda 21.⁵

It should be noted in this connection that the Guidelines call for Governments to give priority to areas of essential concern for the health of the consumer - namely, food, water, pharmaceuticals, pesticides and chemicals. Since those areas touch on environmental policy as well, they are also under examination by the Commission for Sustainable Development. With regard to the consumer, the Guidelines state that government policies should be adopted or maintained for product-quality control, adequate and secure distribution facilities and standardized international labelling and information, and for education and research programmes, including those in the area of the environment.

The responses received from many organizations of the United Nations system indicate that most of their activities, while clearly related to assisting Governments in implementing the Guidelines, also predate their adoption in 1985. For example, the Food and Agriculture Organization of the United Nations (FAO) has been implementing projects and programmes in the area of food safety and standards for many years. Specifically, it provides advice and technical assistance in food-quality control at the national level, inter alia, through the training of technical personnel.

The joint FAO/World Health Organization (WHO) Codex Alimentarius Commission, comprising 151 member countries, formulates international standards and codes of practice on a wide range of food commodities, and makes recommendations on issues related to food safety, including pesticide residues in food, additives and contaminants. The Codex Alimentarius also elaborates codes of practice as guidelines for Governments, and promotes the adoption of open-date marking and ingredient labelling.

FAO is also ensuring that the subject of consumer protection is given due consideration in international forums. The Joint FAO/WHO International Conference on Nutrition, which was held in December 1992 in Rome, included as one of its major themes the subject "Protecting the consumer through improved food quality and safety". The Conference made specific recommendations to member Governments and to the sponsoring organizations on this subject.

Furthermore, FAO is encouraging consumer participation in decision-making on all matters related to food quality and safety. An FAO expert consultation on integration of consumer interest in food control was held in Rome in 1993, with the participation of representatives of international, regional and national consumer organizations. The expert consultation identified barriers to consumer involvement, and addressed ways to increase consumer knowledge and understanding of food quality, food control and techniques for the safe handling, preparation and serving of foods. Recommendations emanating from the consultation included providing consumers with greater access to developing and implementing food control policy and programmes at the national, regional and international levels.

These activities are complemented by those of UNESCO, which offers assistance in the areas of teacher training and curriculum development for food safety. These efforts are targeted at the nutritional health and well-being of consumer groups, especially children and mothers, to prevent food-borne infections and contamination of foods.

The WHO Food and Safety Programme is geared towards the protection of consumers from unsafe or potentially unsafe foods. WHO collaborates with Governments of developing countries in developing and revising food legislation and in strengthening measures to enforce food laws and regulations. It also has projects on the integration of food safety into health educational programmes.

The WHO/United Nations Children's Fund (UNICEF) International Code of Marketing of Breast-milk Substitutes, adopted in 1981, is aimed at the protection of a vulnerable group of consumers - that is, infants and young children. It encourages high levels of ethical conduct for enterprises that produce and distribute breast-milk substitutes. In the years following, more than 150 countries took action to put the Code into effect.

The Department of Economic and Social Affairs* of the United Nations Secretariat collaborates with WHO and the United Nations Environment Programme/International Register of Potentially Toxic Chemicals (UNEP/IRPTC) in the publication of the Consolidated List of Products Whose Consumption and/or Sale Have Been Banned, Withdrawn, Severely Restricted or not Approved by Governments. The purpose of the List is to consolidate all information on products harmful to health and the environment, based on the work of relevant intergovernmental organizations, including, in addition to WHO and UNEP, the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO), FAO and the International Labour Organization (ILO). The current issue (fifth edition) of the List,⁶ published in 1994, contains information on restrictive regulatory measures taken by 93 countries on some 700 pharmaceuticals, agricultural and industrial chemicals and consumer products. The List is widely used by Governments and non-governmental organizations in considering the scope for regulatory measures at the national level. Pursuant to resolutions of the General Assembly, the List is reviewed every three years with a view to determining its continued usefulness. A detailed review of the work of the United Nations system in the area of protection against products harmful to health and the environment is contained in the report of the Secretary-General on this subject submitted to the General Assembly at its fiftieth session (A/50/182-E/1995/66).

UNEP and FAO are collaborating in the implementation of a programme on prior informed consent with respect to agricultural, industrial and consumer

* Former Department for Policy Coordination and Sustainable Development.

chemicals. Accordingly, an international shipment of a chemical or pesticide that is banned or severely restricted or is known to be causing health or environmental problems will not proceed without the explicit agreement of the designated national authority in the importing country. Any decision banning or severely restricting the import of a chemical must also apply equally to production for domestic use. To aid importing countries, decision guidance documents, which include environmental and toxicological data, are provided, together with or shortly after the notifications of control actions. Countries may also, at their request, receive further information and technical assistance necessary for them to take the appropriate decisions. At present, 127 countries participate in the procedure. Negotiations are now under way with a view to making the procedure legally binding through the development of a convention.

The UNEP Code of Ethics on the International Trade in Chemicals was developed to encourage high levels of ethical conduct for private-sector parties engaged in the production and management of chemicals, by setting out principles governing standards for the environmentally sound management of chemicals in international trade. UNEP has identified the important role of consumer groups in monitoring activities of industry in complying with the Code.

WHO administers the Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce, based on a set of standards for good practice in the manufacture and quality control of drugs, adopted in 1969 by the World Health Assembly. The Certification Scheme is an administrative instrument that requires each participating member State, upon application by a commercially interested party, to attest to the competent authority of another participating member State whether a specific product is authorized to be placed on the market within its jurisdiction; whether the plant in which it is produced conforms to good manufacturing practices; and whether all submitted product information, including labelling, is currently authorized in the certifying country.

The United Nations International Drug Control Programme (UNDCP) has a number of legal assistance programmes which are designed to help countries to establish regulatory systems for the control of narcotic drugs and psychotropic substances. While the focus of such systems is to prevent the diversion of such drugs from the licit to the illicit market, which has important advantages for consumer safety in itself, UNDCP considers that such systems will in many cases be capable of being extended by interested Governments to cover the areas set out in paragraph 41 (pharmaceuticals) of the Guidelines for Consumer Protection.

WHO, together with UNEP and the ILO, administers the International Programme on Chemical Safety. The objective of the Programme is to develop a globally harmonized hazard classification and compatible labelling system, including material safety data sheets and easily understandable symbols. The system, which is meant to be multidisciplinary, requires an international framework to translate the result of the technical work into an instrument that would be legally applicable at the national level.

Twenty different organizations of the United Nations system are active in specific areas of water resources development and management. The promotion of cooperation and coordination with respect to the activities of the system is carried out through the Subcommittee on Water Resources of the Administrative Committee on Coordination (ACC). These efforts are supplemented through an Inter-agency Steering Committee. In a broader context, the Collaborative Council for Water Supply and Sanitation provides a forum for multilateral and bilateral external support agencies, including the organizations of the United

Nations system, non-governmental organizations, professional associations, and developing countries.

The Mar del Plata Action Plan⁷ adopted at the 1977 United Nations Water Conference established the basic framework for action at the national and international levels. More recently, chapter 18 of Agenda 21, adopted at the United Nations Conference on Environment and Development in 1992, sets forth objectives and recommendations with a view to ensuring the sustainable development of water resources.

The United Nations Conference on Trade and Development (UNCTAD) carries out activities for the promotion and protection of the economic interests of consumers. In 1980, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was adopted by the General Assembly in its resolution 35/63. UNCTAD has also prepared the Model Law on Restrictive Business Practices, which contains a provision on consumer protection. The issue of whether competition and consumer protection laws and the machinery for enforcement should be combined or not has been the subject of lengthy discussions at the Intergovernmental Group of Experts on Restrictive Business Practices. Moreover, in its technical assistance efforts aimed at implementing the rules on restrictive business practices, the UNCTAD secretariat has indicated to national officials the benefits of competition policy for the economic interests of consumers, drawing the attention of Governments to the Guidelines for Consumer Protection. In some countries, the UNCTAD secretariat has provided advisory services on both competition legislation and consumer protection legislation. It also participated actively in the preparation and holding of the Conference on Competition Policy in the Context of Liberalization. The Conference was organized by the Consumer Unity Trust Society of India, in cooperation with Consumers International, and was held at New Delhi from 20 to 21 January 1995. UNCTAD contributes towards the promotion and protection of consumers' economic interests through its extensive technical cooperation activities in developing and other countries aimed at assisting Governments in adopting competition legislation, advising them in the drafting of legislation, and training officials responsible for the effective implementation of competition legislation.

The ILO has projects for the establishment of networks of consumer retail societies and wholesale societies through which basic consumer goods of good quality are made available to the general public at minimum cost. It also undertakes projects promoting small-scale cottage industries that use production and packaging techniques drawing on available raw materials that satisfy local consumer preferences.

The ILO is also active in the area of standard-setting. Its Occupational Safety and Health Convention, Guarding of Machinery Convention, Benzene Convention, Occupational Cancer Convention, Asbestos Convention, Convention Concerning the Prevention of Major Industrial Accidents and Convention Concerning Safety in the Use of Chemicals at Work are all concerned with the safety of the consumer at the workplace.

During the decade since the adoption of the Guidelines for Consumer Protection, UNDP has supported 34 projects at a total of \$17 million in the area of consumer protection, covering consumer cooperatives, credit schemes and training and advisory services in the fields of standard setting, quality control and marketing. It funded a project in Chile to support public policy related to consumer rights and a project in the Arab States region on women as consumers, and has contributed towards regional seminars in Latin America and

the Caribbean and in Asia and the Pacific. With respect to measures relating to specific areas, UNDP has provided financing for an array of projects in the areas of food and water security, including improved transport, storage facilities, control of contamination and enforcement of higher standards.

The ILO and UNDP are jointly carrying out a six-year programme on local economic development in Central and Eastern Europe, the Baltic States and the Commonwealth of Independent States. The development of the effectiveness of consumer organizations in these regions constitutes an integral component of the local economic development project. Consumers International was commissioned under the programme to undertake an assessment of the regulatory frameworks for consumer protection and their effective enforcement in the Czech Republic, Slovakia, Poland, the Russian Federation, Ukraine and Belarus, based upon the objectives cited in the Guidelines for Consumer Protection.

The World Intellectual Property Organization (WIPO) is concerned with the protection of consumers in the area of industrial property, particularly with respect to laws on trade marks, trade names and competition. WIPO has worked to set norms, establish model laws and assist developing countries in creating or updating intellectual property systems.

The International Civil Aviation Organization (ICAO) plays a major role in the development of universal standards and recommended practices for civil aviation. It assists Governments in developing legislation and policies to protect consumers in the area of air transport, inter alia, in connection with such subjects as fare guarantees, baggage and denied boarding. ICAO has developed a Code of Conduct for the Regulation and Operation of Computer Reservation Systems. While directly aimed primarily at States, suppliers and subscribers to computer reservation systems, the Code has as one of its underlying motivations the interests of consumers, and is currently under review with a view to making any necessary changes towards possible evolution into a more formal international arrangement. ICAO policies on the taxation of international air transport are also designed to assist countries in achieving adequate protection for their population as consumers.

The World Tourism Organization (WTO), which in 1977 entered into an agreement of cooperation with the United Nations, is concerned with the consumer of goods and services during travel, in places of touristic interest and at tourist facilities. At present, its activities include the analysis of information from Governments on security and protection measures and the preparation of standards for means of transport and accommodations used by the handicapped. Its General Assembly has adopted resolutions on health protection for consumers of travel services (1993) and on tourism opportunities for the handicapped (1991). WTO is also undertaking a programme on quality in tourism services, and will shortly complete a report on the legal aspects of consumer protection for tourism. It considers that its forthcoming report may provide the basis for formulating targeted guidelines in that area.

5. Activities of non-governmental organizations

A stated objective of the Guidelines for Consumer Protection is to facilitate the development of independent consumer groups with the freedom to present their views in decision-making processes affecting them. The Guidelines state that consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing, and service frauds. Business and consumer groups should also be

encouraged by Governments to formulate codes of marketing and other business practices to ensure adequate consumer protection. Consumer groups have a role to play as well in undertaking education and information programmes, particularly for low-income populations.

Promoting the growth of a strong consumer movement and increasing protection for people in their role as consumers are central aims of Consumers International's work. To this end, it assists newly formed consumer groups in developing countries. Consumers International's independence is guaranteed by strict membership rules - organizations that join must be non-profit-making and non-commercial, and must operate exclusively in the consumer's interest.

Consumers International has general consultative status with the Economic and Social Council. As indicated above, Consumers International has cooperated with the Department of Economic and Social Affairs* of the United Nations Secretariat in efforts to promote the implementation of the Guidelines. It is also involved in various initiatives of UNDP, UNICEF, UNCTAD, UNESCO, WHO, FAO, UNEP, ESCAP, the Economic Commission for Europe and ECLAC. In 1986, Consumers International was admitted into official relations with WHO, with which it collaborates in various programmes, either directly or in association with specialized international networks of non-governmental organizations. These programmes concern, inter alia, implementation of the International Code of Marketing of Breast-milk Substitutes, combating smoking, promotion of the concept of essential drugs and of ethical marketing of drugs, and ensuring food safety. It is also actively involved with the International Programme on Chemical Safety and with the Codex Alimentarius Commission, at the Commission itself and at regional and special subject committees. Since 1991, Consumers International's regional office for Latin America and the Caribbean has a formal partnership agreement with UNESCO to introduce consumer education in Latin American schools. In the area of technical standards, Consumers International has liaison status on 11 committees of the International Organization for Standardization (ISO) and the International Electrotechnical Commission and observer status on the Consumer Policy Committee of ISO. Consumers International also has consultative status with the Council of Europe, OECD and other intergovernmental bodies.

ISO, a federation of national standards bodies from some 90 countries, also has general consultative status with the Economic and Social Council. The main contributions of ISO to the Economic and Social Council are through the regional commissions, the United Nations Centre for Human Settlements, UNCTAD and UNEP. In addition, ISO actively collaborates with the United Nations Industrial Development Organization, FAO, GATT, the International Atomic Energy Agency, ICAO, the ILO, the International Maritime Organization, the International Telecommunication Union, the Universal Postal Union, UNESCO, WHO, WIPO and the World Meteorological Organization, and works in particularly close collaboration with the Codex Alimentarius Commission. ISO promotes the development of international standards in all fields except that of electrical and electronic engineering standards, which are the responsibility of the International Electrotechnical Commission (IEC). Together, ISO and IEC form the world's largest non-governmental system for voluntary industrial and technical collaboration at the international level. Some 450 international organizations are in liaison with ISO. By 1991, the work of ISO had resulted in nearly 8,000 international standards.

* Former Department for Policy Coordination and Sustainable Development.

The Committee on Consumer Policy of the ISO Council (COPOLCO) conveys the requirements of consumers to ISO member bodies or technical bodies, where appropriate, in the form, inter alia, of resolutions, statements and guides, which are discussed and approved during meetings, for subsequent submission to the ISO Council. COPOLCO also holds annual workshops for consumer representatives, public authorities, manufacturers and experts on such subjects as product safety, consumer information, packaging, energy saving, child safety and the advantages of world standards for consumers.

The International Cooperative Alliance (ICA), which has general consultative status with the Economic and Social Council, is composed of over 200 national and international cooperative movements from about 80 countries. ICA collaborates with UNDP, UNCTAD, the United Nations Capital Development Fund, the regional commissions, the ILO, FAO, UNESCO, UNIDO and the World Bank. ICA has a Consumer Committee, focusing on the development of consumer cooperatives. The Committee celebrates International Consumers Day every 15 March.

C. Future scope of the Guidelines for Consumer Protection

When the General Assembly adopted the Guidelines for Consumer Protection 10 years ago, it recognized that consumer protection could no longer be seen strictly in domestic terms. Yet Member Governments could not have anticipated the speed with which the world was changing. Environmental issues, the global debt crisis, the spread of financial services and the effect of advertising and the mass media on information available to consumers have had a profound effect on consumers. So has the rapid globalization of manufacturing, production and distribution and financial systems. As policy debates converge and the international marketplace becomes yet more globalized, tools such as the Guidelines, aimed at providing universally accepted norms, become ever more important.

In tandem with these developments, there has been growing recognition that consumer policy is essential to the effective workings of modern market economies. Indeed, what is good for the consumer is good for the economic profile of countries as well, leading to growth, competition and the expansion of world trade. Governments of both developing and developed countries have stressed the importance of the Guidelines for Consumer Protection as a framework within which they have elaborated and strengthened consumer policy. The moral force of this international consensus has given countries the impetus to introduce general laws and raise consumer policy to the constitutional level.

As noted in the 1992 report of the Secretary-General on consumer protection (E/1992/48), which had been prepared prior to the United Nations Conference on Environment and Development, there is a strong link between the production, consumption and disposal of goods and services and a sustainable environment. In recognition of the significant role consumer behaviour plays in either exacerbating or alleviating environmental problems, the traditional consumer concern for "value for price" has broadened to encompass responsibility for the environment.

In order to make the appropriate choices, however, consumers need accurate information on the environmental impact of the goods and services they purchase. At present, some 30 countries, concentrated in the developed world, have elaborated eco-labelling schemes. This has raised a number of concerns in developing countries over production, trade and environmental effects. There is need for increased transparency, the use of scientific data, consideration of

the specific environmental conditions of producer countries, transfer of environmentally sound technology, accurate and systematic life-cycle analysis, and participation of foreign producers in the development of the schemes.

In the decade since the Guidelines for Consumer Protection were adopted, the issue of environmentally sustainable consumption has taken a leap forward by the adoption of Agenda 21, specifically by means of the objectives set out in its chapter 4 on changing consumption patterns. At its recently concluded third session, held in New York in April 1995, the Commission on Sustainable Development had before it a report of the Secretary-General on changing consumption patterns (E/CN.17/1995/13). It subsequently adopted a work programme which called for, inter alia, the expansion of the Guidelines to include guidelines for sustainable consumption patterns. Such guidelines might cover schemes for the dissemination of properly researched information and advice on the environmental impact of consumer products, including eco-labelling and eco-profile schemes; the promotion of joint environmental testing; educational programmes on sustainable consumption; and standards on environmental claims and advertising.

The increased globalization of the world economy presents consumers with both new possibilities and new problems. As capital, goods and services move more rapidly across borders, new measures are required to keep consumers adequately informed and protected in areas including transborder data and information flows, cross-border sales of financial services, and food, products and advertising standards. Following the Uruguay Round of multilateral trade negotiations,⁸ domestic norms with respect to intellectual property, food and product standards must already be reconciled with international norms. In addition, where effective competitive policies and enforcement are lacking, the economic gains from increased national and international competition do not always translate into meaningful benefits for consumers, who may be faced with fewer choices at higher prices.

The Guidelines for Consumer Protection need not be viewed as a static document. Indeed, several Governments, in responding to the questionnaire, indicated that there should be a recognition of the role of codes of conduct and voluntary forms of regulation in solving consumer problems. While the Guidelines acknowledge a role for self-regulation, they do not set forth standards for how industry, consumers and Governments could work together to get the best results. Also needed is a recognition of the importance of national and international competition as a means of protecting the interests of consumers. It is suggested that a provision could be included under the heading "Promotion and protection of consumer economic interests". Finally, a number of suggestions for amplifying the Guidelines have been made by the organizations of the United Nations system.

The United Nations Secretariat is prepared to continue to assist Governments in implementing the Guidelines and to study further areas where there is an expressed need to extend the Guidelines. It is anticipated, for example, that guidelines for sustainable consumption patterns will be developed through the mechanism of the Commission on Sustainable Development. The Economic and Social Council of the United Nations might consider whether it might not also be useful to develop expanded guidelines in the area of services, including financial services, and to elaborate codes of conduct in solving consumer protection disputes. This is an issue on which seminar participants may wish to contribute some ideas.

The demand for assistance by the United Nations system to help Governments implement the Guidelines is increasing. Requests for training and advisory services, education and information programmes based on the Guidelines have been received from many Governments. The United Nations Secretariat is prepared to continue to provide, subject to availability of extrabudgetary resources, the assistance requested from it.

Since a decade has now passed since the adoption of the Guidelines for Consumer Protection, it is time to take stock. There can be no doubt as to the moral force and normative impact the Guidelines have had and continue to have around the globe in improving the quality of life of consumers in an increasingly interdependent world. It may, therefore, be timely for the international community to consider the need for the revision and refinement of the Guidelines, and also to use the opportunity to provide a stimulus for increased international cooperation in the area of consumer protection.

Notes

¹ See Official Records of the Economic and Social Council, 1992, Supplement No. 11 (E/1992/31), chap. IV.

² See ibid., 1995, Supplement No. 12 (E/1995/32), chap. I, para. 45.

³ See Official Records of the General Assembly, 1997, Supplement No. 1 (A/52/1).

⁴ General Assembly resolution 46/151, annex, sect. II.

⁵ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and Corrigendum), resolution 1, annex II.

⁶ United Nations publication, Sales No. E.94.IV.3.

⁷ Report of the United Nations Water Conference, Mar del Plata, 14-25 March 1997 (United Nations publication, Sales No. E.77.II.A.12), chap. I.

⁸ See Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Geneva, GATT secretariat, 1994).

IV. GOVERNMENT COUNTRY PAPERS ON CONSUMER PROTECTION

A. Cameroon*

The issue of consumer protection in Cameroon has for long been a real concern of the Government. However, legal measures to protect the consumer are still embryonic, if existent, while the measures or instruments established so far are insufficient, and the various institutions involved in consumer affairs are still dispersed.

1. National policy on consumer affairs and measures/instruments adopted within the framework of the Guidelines for Consumer Protection

Cameroon does not yet have a national consumer policy. However, some legislative instruments or measures and regulations have been established, a number of which are described below.

Law 90/053 of December 1990 lays down freedom of association and easily justifies the existence of the 15 consumer associations in Cameroon.

Law 90/031 of 10 August 1990 governs commercial activity and guarantees the physical safety and quality of goods as well as the protection of consumers' economic interests.

Subsequent documents regulate the publishing of prices for the benefit of consumers and define trade practices that inhibit competition.

Law 94/001 of 20 January 1994 governs forests, fauna and fishing and protects the environment and natural resources that can be used by the consumer with a view to guaranteeing a stable and rational supply.

A bill concerning the protection of the consumer has just been rejected by the Prime Minister's Office. The draft bill has been sent back to the respective ministry for review.

Specific measures have been taken unilaterally or jointly by departments to regulate specific areas or resolve problems as they arise. These include a joint order by the Ministry of Industrial and Trade Development and the Ministry of Public Health, which sets the minimum and maximum levels of iodine that must be contained in salt sold in Cameroon.

2. Current priority areas of the Government in the field of consumer protection

The Government's four priority areas are health, trade, production and water.

2.1 Health

Government action in this area is centred on:

- (a) Education on nutrition;

* Paper presented by Ms. Marie Madeleine Nguidjoi.

(b) Information on hygiene, through radio and televised programmes, such as the weekly programme "Health for all: all for health";

(c) Quality control on foodstuffs and medicinal drugs;

(d) Publication and monitoring of Codex standards or those developed by the French Association of Standards.

2.2 Trade

Government action in this area is as follows:

(a) Consumers are kept informed and their awareness heightened through the publication of a monthly information bulletin on food security, and the weekly publication of information on prices, stocks and the volumes of transactions carried out in the various national markets;

(b) Monitoring of stocks helps to ensure the stability of supplies of goods;

(c) Current regulations on pricing, weighing and measuring instruments protect the consumer from unfair business practices;

(d) Introduction of a trader's card, which organizes the informal trade sector, could help the consumer to identify his/her interlocutor in the event of disputes.

2.3 Production

Government action in this area focuses on:

(a) Ensuring that technical and labelling requirements governing pharmaceutical and industrial products are met;

(b) Monitoring the quality, access to and use of pesticides or other chemical products through the National Commission for the Approval of Pesticides.

2.4 Water

In rural areas, the State encourages the creation by villagers of committees to manage, guard and maintain water from wells, boreholes, streams or harnessed water resources.

In urban areas, it sets up water conveyance points through the Cameroon National Water Supply Company and hands them over to third parties which manage them.

3. Institutional consumer protection structures

These generally involve the Administration, the international network and consumer organizations.

3.1 Administration

The table below indicates the ministries involved in consumer protection:

<u>No.</u>	<u>Ministry</u>	<u>Jurisdiction</u>
1	Territorial administration	Registration of consumer associations
2	Industrial and trade development	Physical safety; informing the public; distribution channels for essential goods and services; and, soon, standardization
3	Public health	Monitoring the quality and distribution of pharmaceutical products; consumer health; educating and informing the public
4	Agriculture	Plant health inspection; food security; ensuring sufficient and satisfactory production
5	Livestock farming, fisheries and animal-based industries	Physical safety, monitoring of fish and animal products
6	Mines, water and energy	Availability and quality of drinking water
7	Justice	Penal regulations that penalize practices harmful to the consumer
8	Economy and finance	Regulations on prices, weights and measures; physical checks on the quantity and quality of exported and imported goods
9	National education	Civil education and basic principles of hygiene are imparted to primary and secondary school students

3.2 International network

The international network mainly provides assistance in terms of food supply (World Food Programme), education on the standards and the packaging of medical drugs (World Health Organization) and food and agriculture (Food and Agriculture Organization of the United Nations).

3.3 Consumer organizations

There are 15 registered consumer associations in Cameroon. The impact of their actions is impaired by a lack of cohesion between them, which significantly compromises their development.

4. Projects aimed at strengthening consumer protection

4.1 Health

The National Programme Against Diarrhoeal Diseases aims to reduce the number of deaths caused by diarrhoea. It is carried out by means of:

- (a) Publicity work and popularization of oral rehydration therapy;
- (b) Strengthening the participation of communities in solving public health problems;
- (c) Monitoring and combatting diarrhoeal diseases and epidemics through appropriate epidemiological observation;
- (d) Information, education and communication.

4.2 Food

The Food Security Programme comprises five projects (the first three of which are run by the Ministry of Agriculture):

- (a) The Agricultural and Community Micro-enterprises Investment Fund mainly provides financing in rural areas;
- (b) The National Early Warning System disseminates information on local markets;
- (c) The Aerial Locust and Bird Treatment Unit is involved in health coverage;
- (d) The Market Infrastructure Project, which is housed at the Property Loans Office, strives towards the creation of centres where goods are pooled;
- (e) The Nutrition Education Pilot Project is run by the Public Health Ministry.

In addition, the Codex Alimentarius Programme, for which a national committee will soon be set up, is responsible for standardization in the area of food. The National Committee, with its permanent secretariat at the Ministry of Industrial and Trade Development, will be responsible for elaborating a body of legislation and standards governing foodstuffs and monitoring their implementation.

5. Role of civil society and non-governmental organizations in consumer protection

Generally, this role involves the defense of the consumer's interests by:

- (a) Denouncing infractions to regulations;
- (b) Informing the public on and increasing its awareness of existing trade practices and the hygiene conditions of foods sold on the streets;
- (c) Mounting education programmes;
- (d) Raising funds for these programmes;

- (e) Drawing the State's attention to frauds and arbitration;
- (f) Listening to consumers;
- (g) Cooperating with associations in other countries.

In conclusion, the situation with regard to consumer protection reflects a sharp division between the Government of Cameroon and private initiators. While the latter remain weak because they confront state institutions in isolation from one another, the Government has not involved them in decision-making, whereas it has been withdrawing more and more from its traditional spheres of activity.

The issues of effectively undertaking action to protect the consumer and of consumer associations playing a more important role are problematic. In order to attain this goal, consumer associations will first have to achieve some cohesion so as to constitute real pressure groups vis-à-vis the State, as well as other actors targeted by consumer protection. They will then have to plan coordinated action over a given period of time, and finally educate the public and give their members training aimed at ensuring a high level of professionalism.

The Government, for its part, urgently needs to delegate more responsibility to private initiators, closely collaborate with them and establish an appropriate legal framework.

B. Egypt*

Egyptian experience in the field of consumer protection

In the 1960s, the Government of Egypt adopted a central economic policy. The goals of that policy were to ensure the availability of basic supplies, including foods and drugs and other basic products and services. The Government created several specialized institutions to implement the programmes of the Government in this area.

In the late 1980s, the Government started the implementation of a number of policy reform programmes, which aimed to liberalize the economy and establish free trade. These goals support the strengthening of the democratic process in Egypt. Under this umbrella, consumer protection is an important factor of development. In order to fulfil this goal the Government has undertaken and continues to undertake many important steps, including:

1. Policies

(a) Supporting the creation of consumer protection societies and helping them to realize their objectives;

(b) Stabilization of the market, and taking the appropriate measures to prevent illegal competition and fraud in trade;

(c) Creating employment opportunities, and raising the standards of living by stimulating investment and promoting the appropriate environment for investors;

2. Legislation related to the establishment of consumer protection policies

(d) Adopting measures for the creation and coordination of field societies, such as:

- (i) Establishment of a permanent council for consumer protection under the presidency of the Minister of Trade and Supply; taking into consideration the autonomy of this council;
- (ii) Coordination between the existing consumer protection societies and the National League of Consumers Protection in order to harmonize the consumer protection movement;
- (iii) Assisting in the establishment of new subnational consumer protection societies, and preventing any bureaucratic obstacles to their registration;

(e) Legislation (ministerial decisions):

- (i) Prohibiting the marketing of products that may not conform with specifications and where sources are unknown;

* Paper presented by M. H. Salem.

- (ii) Taking appropriate measures in the field of specification and control of unexpected events in import and export;
- (f) Decision on the prohibition of the advertising of foods and pharmaceuticals products, before the acceptance/approval of the Ministry concerned (of Trade or Health);
- (g) Promulgation and rectifications of the laws and by-laws on the prohibition of fraud of products (Act 48/1941, modified by Act 281/1994);
- (h) Regulating the use of expiration periods on packaging, and prohibiting the registration of any information on stickers;
- (i) The Government is taking the necessary steps towards the promulgation of the following laws:
 - (i) Consumer protection law;
 - (ii) Anti-trust and anti-dumping laws;

3. Development and consumer protection

- (j) Promotion of the improvement of the bread quality programme in order to raise its nutritional value and prevent nutritional diseases;
- (k) Improvement of bakeries to minimize pollution and to raise productivity;
- (l) Subsidies for basic food and drugs, such as bread, sugar and oil;
- (m) Strengthening and promoting consumers cooperatives;
- (n) Regulating the marketing of seasonal sales;
- (o) Establishing anti-dumping institutions;
- (p) Establishment of the anti-monopoly institution and elaboration of relevant legislation;
- (q) Upgrading the capability of Control laboratories, and establishing import and export inspection institutions;

4. Institutional framework

- (r) Governmental institutions:
 - (i) Central department for domestic trade including a specialized organism for fraud control;
 - (ii) General department for consumer protection awareness, established in the Ministry of Trade and Supply in 1995;
- (s) Non-governmental institutions:

- (i) The Permanent Council for Consumer Protection, which consists of representatives of consumer protection societies and experts under the presidency of the Minister of Trade; taking into account the autonomy of the Council;
- (ii) The National Legal Consumer Protection Society;
- (iii) The non-governmental consumer protection societies (at present there exist 22 consumer protection societies);

5. Coordination between the Government and non-governmental organizations

(t) Promotion of cooperation towards the establishment of information networks specialized in the area of consumer protection (in Egypt and within the region);

(u) Subsidies to support consumer protection societies, including technical assistance (provision of experts) in cooperation with specialized centres, such as the legal and technical research centre;

(v) Promotion of coordination with the national legal consumer protection society in order to support consumer protection societies in their legal actions with producers, importers, distributors (class action);

(w) Coordinating with national consumer protection societies in order to establish a consumer protection league and encourage and harmonize the activities of the consumerism movement.

Finally, the Government of Egypt is very aware of the importance of the consumer protection movement and the need for coordination between regional efforts and the Government. The Ministry of Trade and Supply supports related efforts of non-governmental organizations concerned with consumer protection, as well as the creation of regional bodies in the area of consumer protection.

C. Ghana*

1. Introduction

As a result of the Government's economic reform programme, which resulted in the removal of exchange rate restrictions, abolition of import licensing and the eventual liberalization of the Ghanaian economy, there was the need to put in place a mechanism that would help curb restrictive business practices.

2. Measures

With the assistance of the United Nations Conference on Trade and Development, a draft competition and fair trading law has been submitted to Parliament. The draft law, which has a section on consumer protection, was drafted within the guidelines of the United Nations Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices as adopted by the United Nations General Assembly in its resolution 35/63 of 5 December 1980.

Comments from the Ghana National Chamber of Commerce and the Ghana Bar Association are expected. The Consumer Protection Association of Ghana has already submitted comments.

The draft law calls for the establishment of a competition and fair trading commission, as well as a tribunal. The objective of the commission is to ensure effective administration, supervision, regulation and control of competition in trade in Ghana. The function of the tribunal is to hear and determine appeals from persons aggrieved by orders and decisions of the commissioner.

3. Current areas of focus

In the absence of the passage of the law and the establishment of the commission, there exist various boards, agencies, departments etc. that have traditionally been dealing with isolated cases under their domain. The focus on national consumer protection activities has been in the areas of pharmaceutical drugs, food (imported) for human consumption - in most cases where consumption dates have expired. Unsafe electrical appliances and fixtures have of late become targets of inquiry. Environmental concern about the use of both agrochemicals and industrial chemicals have resulted in import restrictions and close monitoring by environmental protection agencies.

4. Institutional structures for consumer protection

Although the Consumer Protection Association of Ghana has been in existence for sometime, it has no legal powers to prosecute offenders. It can only educate consumers and provide them with information on products. At times, the Association advises aggrieved consumers to resort to the regular courts for redress. It is envisaged that the commission, once established, will carry out investigations and bring charges and redress for consumers (in other words provide legal backing to consumers' claims).

* Paper presented by Ben A. Peasah.

However, there are already a number of regulatory bodies, institutions and agencies in place, such as the pharmaceutical board that regulates and monitors the activities of the pharmaceutical profession, as well as pharmaceutical products and the importation of drugs. Also actively involved in quality control is the Ghana Standards Board, which requires the application of a certification mark on all products before they may be presented for exhibition, sale, distribution and export. It also insists on strict labelling requirements for food and drugs.

The courts handle cases involving safety, compensation and redress.

D. Malawi*

1. Background

Since the mid-1980s, the Government of Malawi has been pursuing a policy of market liberalization characterized by tariff reductions and the elimination of quantitative restrictions to trade, as well as deregulation of domestic trade. The momentum of trade liberalization was reinforced with the production of the second Statement of Development Policies in 1987, and the introduction of the Industrial and Trade Policy Adjustment Project in 1988.

During the same period, the exchange rate regime became more active. The current account is now fully liberalized and the kwacha has been floated.

Likewise, almost all non-tariff barriers have been eliminated. For instance, all import licenses have been removed, except a few items on a negative list limited to health, safety and national security. Export licenses have been abolished for all but a few items, including maize, groundnuts and beans.

In domestic trade, prices of a number of products have been decontrolled. By April 1995, prices of all goods and services were decontrolled, except for spare parts and petroleum products.

The trade liberalization programme has, to some extent, achieved its goals of improved allocation of resources. However, with the phasing out of Government intervention in the economy and reliance on market forces, the Malawian consumer faces a new and uncertain economic environment. For example, the elimination of trade restriction through the liberalization programme and the proliferation of informal border trade along Malawi's borders in recent years has led to the importation of cheap and substandard goods. Import of expired goods, such as drugs, canned food, powdered milk and tyres, as well as relabelling and repacking of such goods, pose health and safety threats to the economy and the consumer.

2. The current situation in terms of consumer protection in Malawi

As to consumer protection, Malawi has no consumer protection laws per se but has several pieces of legislation that are aimed at protecting consumer welfare in some form or another. These include the Control of Goods Act, the Malawi Bureau of Standards Act, and the Weights and Measures Act.

The Control of Goods Act was enacted in 1968 to control the import and export of what the Government considers harmful or dangerous goods. The main responsibility for enforcing this piece of legislation lies with the Ministry of Commerce and Industry. With the introduction of the liberalization programme, the number of items affected by the Act are quite few. However, the Act suffers from several weaknesses, as follows:

(a) The fines attached to the various offenses in the Act are often so small that individuals and traders do not fear contravening the Act, simply because they can afford to pay any fine;

* Paper presented by Brian Mtyona.

(b) Lack of civic education among individuals and traders has made it difficult for them to interpret the difference between political pluralism and business malpractice.

The Malawi Bureau of Standards Act of 1972 established the Bureau to promote standardization in industry and commerce, test commodities and any materials or substance, whether locally manufactured or imported, with a view to determining whether such commodities comply with the laws relating to standards of quality. The Act also gave the Bureau powers of enforcement. However, the Act has several weaknesses, including a lack of personnel to enforce the Act and the fact that the Act gives the Bureau inadequate or limited powers of enforcement.

Another piece of legislation aimed at consumer protection is the Weights and Measures Act of 1959. The body responsible for the enforcement of this Act is the Assize Department in the Ministry of Commerce and Industry. The Act provides for the uniformity of measures of weight, length, capacity, area and volume. Worldwide changes in technology, however, have affected the field of legal metrology in such a way that the Act in its present form is inadequate.

Considering the Government's current policy of economic liberalization, the Control of Goods Act has become outdated, with very few goods currently still on the list. In addition, the Malawi Bureau Standards Act and the Weights and Measures Act are about to be revised to address their present inadequacies as outlined above, especially in the area of powers of enforcement.

3. Future prospects for strengthening consumer protection in the country

Apart from revising and providing for greater powers of enforcement of current legislation relating to consumer protection, Malawi is in the process of drafting competition policy legislation, which is expected to contain statutes related to consumer protection, covering such areas as false advertising, conditional selling, unfair credit and deceptive practices. This new legislation, in addition to the strengthening of existing legislation, will greatly assist in strengthening the protection of the consumer in Malawi.

4. Conclusion

In addition, 1995 saw the establishment of a non-governmental organization, the Consumers Association of Malawi. The formation of this Association is evidence of the growing prominence and importance that Malawi is attaching to the need to protect the consumer, especially in light of the liberalization of the economy.

In conclusion, it must be stated that while Malawi had no consumer protection legislation per se, there are laws that are geared towards protecting the welfare of the consumer. Apart from revising and strengthening existing laws relating to consumer protection, new pieces of legislation are being developed to better protect the consumer.

E. Senegal*

Following is an explanation of the policy pursued by the Government of Senegal in the area of defending and protecting the interests of consumers.

This policy is not new; in fact, it began to be formally applied well before the guidelines for consumer protection were adopted. For this reason, Senegal could not but welcome the guidelines and incorporate the aspects which it had not yet addressed into its legislation, which has steadily evolved in response to the requirements of a changing economic, social and commercial environment.

The duties which the State has assigned to its Department of Trade clearly reaffirm its decision to give priority to consumer protection in its policies. In this connection, article 4 of Decree No. 95-817 of 20 September 1995 stipulates that the Directorate of Internal Trade, under the authority of the Minister of Trade, is responsible for applying the State's trade policy, supervising markets and ensuring respect for the rules relating to prices, supply and consumer protection. The implementation of this consumer protection policy is supported by an appropriate legal framework and suitably adapted institutional structures.

1. Legal framework

A number of legislative and regulatory texts have been adopted to help protect the interests of the consumer in essential areas. The primary texts are:

(a) Act No. 66-48 of 27 May 1966 concerning the supervision of food products and the suppression of fraud;

(b) Decree No. 68-508 of 8 May 1968 setting the conditions for investigating and establishing violations of Act No. 66-48;

(c) The national hygiene code;

(d) Decree No. 60-415 of 23 November 1960 organizing the inspection of measuring instruments in the Republic of Senegal;

(e) Act No. 94-63 of 22 August 1994 on prices, competition and economic disputes;

(f) Decree No. 95-77 of 20 January 1995, as amended, implementing articles 44 and 64 of Act No. 94-68.

There are many other complementary texts which are too numerous to mention here.

Areas of intervention

There are three areas of intervention, as indicated below.

* Submitted by Mr. Mamour Niang.

(i) Quality

Quality control is aimed at guaranteeing that the products which consumers find on the market are healthy and marketable. It is carried out at three levels:

(a) Importation: All food products imported into Senegal must be authorized before they are offered for sale, after they have been declared marketable on the basis of analyses of samples conducted by the laboratory of the Fraud Service;

(b) Production: Food products may be produced for sale only after the administration has issued an authorization certifying the quality of the product;

(c) Distribution: Unannounced visits are made to points of sale and storage to ensure that commodities are still marketable.

Pharmaceuticals are also tested in the laboratory of the Directorate of Pharmacy before they are authorized for sale in Senegal.

Act No. 66-48 forbids the seller to deceive or attempt to deceive the consumer in any way with respect to the nature, substantial properties, composition and useful content of any merchandise, as well as to the type, origin, quality or identity of goods sold.

With respect to quality control, the Senegalese Standards Institute has built up a large bank of standards. Some of them are optional and others are mandatory.

It is important to stress that when there are no national standards as yet for an imported product, Senegalese legislation applies the standards of the exporting country.

(ii) Metrology

The supervision of measuring instruments is aimed at guaranteeing fairness in transactions. It ensures that the units used to measure size conform to those of the international system.

The various phases of supervision relate to:

(a) Study and testing of model measuring instruments with a view to their approval and authorization;

(b) Annual verification of the instruments currently in use;

(c) Monitoring, which consists of unannounced inspections of the users of measuring instruments and statistical monitoring of pre-packaging.

(iii) Prices and competition

Up to 1994, the State policy on prices involved the authoritarian setting or approval of the prices of so-called mass products or basic commodities. The State itself set prices at levels which it deemed to be proportionate to the purchasing power of the consumer. This policy was conceived in the light of the unequal balance of power between consumers and distributors in favour of the

latter, but also of the uncompetitive situation of the market, which was dominated by monopolies.

Act No. 94-63 of 22 August 1994 on prices, competition and economic disputes liberalized Senegal's price policy. The setting of prices through free competition has become the rule. From now on, the State will confine itself to defining the rules of the game and arbitrating among the various actors, namely, producers, distributors and consumers. However, it reserves the right to intervene if it detects any distortions arising from a manifestly unequal balance of power.

With respect to its arbitrating role, the State intends to refrain as far as possible from intervening to assist one of the parties. If this is to be the case, the different forces involved must be vigorous enough to avoid being easily overcome by the adversary and having to withdraw.

It appears that, if the rules of the game are respected and the State ensures that this situation continues, the consumer will benefit most, since this will necessarily lead to a continuous improvement in the quality-price ratio of the products and services offered by producers and distributors.

The rules established under Act No. 94-63 are indisputably geared to the interests of the consumer, and they apply exclusively to those professionally involved.

They cover information for consumers, the suppression of restrictive practices and the fixing of certain prices.

The Senegalese regulations focus on certain types of commercial information the provision of which is compulsory, namely:

- (a) Disclosure of pricing regulations;
- (b) Displaying price of goods offered for sale by marking, labelling, posting or any other appropriate means;
- (c) Marking the name and address of the manufacturer, the descriptive labelling of the product, the net weight and the manufacturing authorization number on containers or packaging by labelling or direct printing in French.

A draft text is in preparation and is designed, in particular, to supplement the information on the composition of the product, its date of manufacture and sell-by date, and so forth. With respect to restrictive practices, the following are prohibited by the Senegalese regulations:

- (a) Misleading advertising;
- (b) Tacit or express understandings, agreements or coalitions in any form that is intended to prevent, restrict or distort free competition;
- (c) Refusal to sell;
- (d) Misuse of market power;
- (e) Discriminatory sales practices;
- (f) Conditional sales.

With respect to price fixing, a number of goods and services, because they are still deemed to be of a strategic nature in the overall policy of the State, are not covered by the principle of price deregulation. These are energy products and pharmaceuticals, water, electricity, the telephone service and hospital and handling charges.

With respect to pharmaceuticals, Senegal has initiated a policy of keeping prices to a minimum by promoting the use of generic drugs and hospital packaging.

This policy of protecting the interests of the consumer is put into effect by institutional structures.

2. Institutional structures

(a) Traditional structures

(i) The Directorate of Internal Trade

This is the main structure responsible for ensuring the application of the regulations to protect the interests of the consumer. It is represented throughout the territory through its various national subdivisions, the regional and departmental services, thereby enabling consumers in the various localities to have the benefit of its assistance.

It also includes a reference laboratory. Its other tasks may be summarized as follows:

- (a) Ensuring adequate and regular supplies, in particular of consumer goods, to the public;
- (b) Defining and implementing measures to upgrade and improve distribution channels;
- (c) Ensuring free competition.

(ii) Other structures

In conjunction with the Directorate of Internal Trade, other structures carry out certain tasks which contribute to the protection and defence of consumer interests by addressing issues related to product quality, price reduction, the adjustment of consumption and the environment. These include:

- (a) The National Hygiene Service;
- (b) The Food Technology Institute;
- (c) The Senegalese Standards Institute;
- (d) The Directorates of Animal Husbandry, Fisheries, the Environment and Pharmacy.

(b) New structures

These are the two structures the creation of which is announced by Act No. 94-63.

(i) The commission on competition

The commission is similar to a court of special jurisdiction and is composed of magistrates and prominent individuals from civil society who are experienced in economics or in questions of competition and consumption.

The commission passes judgement on all cases relating to restrictive practices as defined in Act No. 94-63.

It is of undoubted value to consumers in that it enables their associations to refer cases to it without cost on the basis of a straightforward complaint, something that does not apply to civil and criminal courts.

The commission has the advantage of flexibility as compared with traditional courts.

(ii) Consumer councils

These are the national council and regional councils. They provide a very favourable framework for concerted action by consumer associations that wish to make their voice heard and to give advice and suggestions in connection with competition, consumption and prices. The national consumer council meets in regular session at least once every quarter and comprises, in addition to the consumer associations, representatives of professional associations and of the central Government.

In conclusion, it may be stated that Senegal has always made allowances, in its various policies, for the defence and protection of the interests of the consumer. However, the coherence and even the high level of sophistication of these strategies should not obscure the potential difficulties of implementation, which include the inadequate material resources available to the institutional structures, particularly the underequipment of some of our laboratories. That is why we are appealing to international cooperation in order to secure the funds necessary to resolve these problems. The main beneficiaries would be consumers.

In view of the prohibitive costs, it may be difficult to provide each country with a well-equipped laboratory. That being so, however, there is no reason why one should not envisage the specialization by each country in a particular subregion in specific types of analysis or, failing that, the creation of central subregional laboratories.

This would have to go hand in hand with the harmonization of the national quality-control legislation of the various countries. That should make it possible to establish a framework for subregional concerted action.

The national consumer associations should seize on the opportunities for collaboration and concerted action offered to them by the State in order to assist them to provide more effective consumer protection. To achieve that, it is important that they should improve their structure and organization, while at the same time avoiding fragmentation. They would thus be in a position to address the challenges facing them: credibility, representativeness and professionalism.

F. Tunisia*

1. Background

The idea of consumer protection in Tunisia dates back to the late nineteenth century - to 27 January 1897 to be exact: that is the date on which the Decree on Frauds and Falsifications in the Trade in Food Products was issued

That Decree laid the foundation for the consumption law, a law that has been continually updated from year to year. In fact, the Decree, often amended, gave rise to the decree of 10 October 1919 on the suppression of fraud in the trade in merchandise and the adulteration of foodstuffs or of agricultural or natural products.

Moreover, legal regulations governing the conditions for the manufacture, presentation, labelling and commercialization of products (milk, cheeses, wines, preserved goods etc.) were drawn up.

In order to keep the prices of certain basic products affordable to the consumer, a decree establishing a compensation fund was published on 28 June 1945.

In addition to this, the Decree on Price Controls, issued on 12 August 1943, regulates the modalities for setting and publishing prices.

2. Current legislation

Current legislation may be listed as follows:

- (a) Law No. 92-117 of 7/12/1992 on consumer protection;
- (b) Law No. 91-64 of 29/7/1991 on competition and prices;
- (c) Law No. 91-44 on the organization of distribution;
- (d) Law No. 94-86 of 23/7/1994 on distribution channels for agricultural and fish products;
- (e) Law No. 94-41 of 7/3/1994 on foreign trade;
- (f) Decree of 29/7/1909 on the verification and construction of weights and measures, and instruments for weighing and measuring.

3. Governmental action for the protection of the consumer

Government action includes:

- (a) The creation of the National Institute of Standards and Industrial Property (Law No. 82-66 of 6/8/1982 concerning standards and quality;
- (b) The designing of two national quality promotion plans: the first plan concerned quality management in business enterprises (1985-1989); the second

* Paper presented by Mohsen Laroui.

plan related to quality control of all products and services in both production enterprises and public services (1992-1996);

(c) The recognition of the Consumer Defence Organization as an organization in the national interest (Ministerial Order of 21/2/1989 of the Ministry of Home Affairs, Decree No. 318 of 8/2/1993);

(d) The creation of the National Consumer Production Council (Law No. 92-117 of 7/12/92) to give opinions and proposals for ensuring the safety of products, the provision of information and guidance to the consumer, the improvement of quality etc.;

(e) The creation in 1982 of a unit within the Ministry of Trade to resolve disputes between consumers and providers of goods and services;

(f) The creation of the Consumer Relations Service within the Directorate of Quality Control and Consumer Protection (Decree No. 91-1070 of 20/7/1991 establishing the jurisdiction of the Ministry of National Economy);

(g) The adoption of Law No. 94-70 of 20/6/1994 on the establishment of a national system for the accreditation of bodies that safeguard standards;

(h) The creation of the National Supply and Price Monitoring Board (Law No. 91-64 of 29/7/1991);

(i) The establishment of a general compensation fund based on a decree of 28 June 1945, Law No. 70-26 of 19/5/1970 on price-setting modalities, and various laws on finance.

4. Guidelines

(a) Physical safety

Guidelines in this area are as follows:

(a) Law No. 92-117 of 7/12/1992 on consumer protection has established a general safety requirement to which all products and services must conform: they must not harm the economic interests and health of the consumer;

(b) Officially ratified or registered national standards or - where these do not exist - international standards define safety requirements;

(c) Businesses are obliged to check the quality of their products and goods before marketing them;

(d) Businesses are obliged to provide the consumer with specific information, such as the uses, characteristics and specifications of the product and precautions to be taken with it;

(e) In the event of risk or hazard, the possibility exists of intervening administratively or in a regulatory manner to prohibit products, withdraw them from the market or submit them to specific conditions of distribution.

(b) Promotion and protection of the economic interests of the consumer

Guidelines in this area are as follows:

(a) Law No. 92-177, in particular section II of the law concerning fairness of economic transactions, penalizes fraud, adulteration of goods and the sale and distribution of spoilt, substandard or toxic products;

(b) Law No. 91-44 and Law No. 94-86 regulate distribution channels, specify the various intervening parties, and define the role of each operator in addition to defining fair trade practices;

(c) Law No. 91-64 lays down the general principle that the prices of goods, products and services shall be freely determined by competition. This measure falls within the framework of encouraging fair competition so as to provide consumers with the widest possible range of goods and services at the broadest variety of prices;

(d) Law No. 91-44 places distributors under the obligation to ensure consumers the necessary guarantees and after-sales services for products and merchandise;

(e) Law No. 91-64 deals with obligations to the consumer. Under this law, the entrepreneur must provide the consumer with information on prices and the specific conditions and modalities of sale by using all possible means, such as marking, displaying and labelling;

(f) Conventions (in such areas as dry cleaning and auto repairs) approved by ministerial order and concluded between the Ministry of Trade, the Tunisian Union of Industry, Trade and Artisanry, and the Consumer Defence Organization;

(g) The above-mentioned conventions govern the relations between the service providers and consumers, stipulating their obligations and rights;

(h) The 1909 Decree on Weights and Measures is currently being revised;

(i) In the area of promotion and sales practices:

(i) Law No. 92-117 prohibits misleading advertisements;

(ii) Law No. 91-64 prohibits dumping and regulates bonus offers. It also prohibits practices or agreements that inhibit competition, except in cases where the parties can prove that they will result in technical or economic progress and that the consumers will receive an equitable portion of the benefit derived from them;

(iii) Executive Order No. 74-20 of 24/10/1974 regulates lotteries and competitions.

(c) Standards regarding the safety and quality of consumer goods and services

With regard to quality and safety, many of the national standards (which are also largely inspired by international norms) have been ratified by ministerial order, which makes them mandatory. Moreover, registered standards, which are optional, are constantly being ratified.

Certification procedures include the application of national trademarks in accordance with the standards set by the National Institute of Standards and Industrial Property (Law No. 82-66 of 6/8/1982 concerning standards and quality).

A national system of accreditation of quality-monitoring bodies has been established (Law No. 94-70 of 20/6/1994).

(d) Distribution channels for essential consumer goods and services

Both Law No. 91-44 (relating to all products including essential ones) and Law No. 94-86 (distribution channels of fresh agricultural products) indicate the various operators and define their roles.

The supplying of basic goods (wheat, sugar, oil, etc.) to the country is also programmed and closely monitored by the services of the Ministry of Trade, and even other consumer goods are continually monitored.

(e) Measures enabling the consumer to obtain redress

The code of obligations and contracts (general law) compels the providers of goods and services to give consumers usage and unimpaired possession guarantees, and a guarantee covering defects in objects sold, as well as a procedure for compensation. Moreover, Law No. 92-117 (specific law) lays down the following principles:

(a) The supplier of any product must recognize the consumer's right to a guarantee, which is transferred with full rights in the event of any transfer of property;

(b) Any convention or contract which stipulates that there is no guarantee is null and void.

The relevant consumer relations service of the Ministry of Trade, as well as the Consumer Defence Organization, settles disputes amicably.

In the event that legislative dispositions or regulations are not respected, the indicated service is also empowered, in accordance with the existing regulations, to draw up official reports on the infractions for submission to the courts.

(f) Education and Training Programme

By means of radio and television advertisements, and distribution and dissemination of brochures consumers are educated and informed on their rights and obligations with regard to health, nutrition, disease prevention, the hazards linked to products, the labelling of products etc.

(g) Legal documents

Legal documents are under preparation on the following subjects:

(a) Selling on credit;

(b) Auctions, liquidations and clearance sales;

(c) Legal metrology;

(d) Door-to-door selling.

G. Uganda*

There is no single institutional set-up, developed policy or legislation that comprehensively provides for consumer protection in Uganda.

However, several laws are designed for consumer protection and are developed and implemented by the various line ministries on whom responsibility for the particular aspect of consumer protection falls.

The line ministries or government agencies concerned include:

- (a) The ministry responsible for health;
- (b) The ministry responsible for agriculture;
- (c) The ministry responsible for trade and industry;
- (d) The ministry responsible for housing and sanitation;
- (e) The ministry responsible for natural resources;
- (f) The ministry responsible for economic planning;
- (g) The Bureau of Statistics;
- (h) The Bureau of Standards;
- (i) The Weights and Measures Department;
- (j) Government parastatals and other agencies;
- (k) The Food and Nutrition Council.

There are also non-governmental organization and other civil social organizations, as established by law.

Legislation initiated and being implemented by these bodies include:

- (a) Dangerous Drugs Act (Cap. 2720);
- (b) Food and Drugs Act (Cap. 271);
- (c) Pharmacy and Poisons Act (Cap. 273);
- (d) Public Health Act (Cap. 269);
- (e) Sale of Goods Act (Cap. 79);
- (f) Weights and Measures Act (Cap. 101);
- (g) Statistics Bill, 1996;
- (h) Uganda Export Promotion Board Statute (No. 2 of 1995);
- (i) External Trade Act;

* Paper presented by Jane A. Anywar.

- (j) National Environment Statute (No. 4 of 1995);
- (k) National Water and Sewerage Corporation Statute (No. 8 of 1995);
- (l) Water Statute (No. 9 of 1995);
- (m) National Drug Policy and Authority Statute (No. 13 of 1993);
- (n) Food and Nutrition Bill;
- (o) Common Law of England.

Most of the above principal laws are supported by subsidiary laws, such as:

- (a) National Drug Policy and Authority (Issue of licenses) Regulations (No. 4 of 1995);
- (b) National Drug Policy and Authority (Certificate of Suitability of Premises and Regulations);
- (c) External Trade (Prohibition of Import of Certain Goods) Order (No. 5 of 1995);
- (d) Legal Notice No. 1 of 1995, i.e. Declaration of Compulsory National Standards Notice;
- (e) Agricultural Chemicals (Registration and Control) Regulations (No. 85 of 1993);
- (f) The Uganda National Bureau of Standards (Certification) Regulations (No. 349 of 1995).

A review of the above legislation and the organs implementing them shows that:

- (a) Legislation is outdated or outmoded;
- (b) Legislation is sectoral in nature and addresses sectoral concerns;
- (c) Legislation lacks effective sanctions to deter infringement;
- (d) Legislation does not provide sufficient mechanisms for coordination, monitoring and supervision, especially among the different sectors;
- (e) Legislation is not comprehensive enough;
- (f) Participation in development of policies and legislation, given the Government's budget and other constraints, is limited to consumers, i.e., policy makers. Neither in the Constitution nor in any other legislation is the concept of consumer protection clearly highlighted or used as the basis for legislation.

There are also problems encountered in the implementation or enforcement of the law. These include:

- (a) Lack of effective penal provisions or lack of enforcement where the penal provisions exist;

- (b) Lack of adequate or modern equipments or instruments;
- (c) Inadequate resources and logistics;
- (d) Lack of or inadequacy of enforcement mechanisms;
- (e) Lack of training facilities;
- (f) Shortage of technical manpower;
- (g) Conflict of interest between the various organs of government, overlapping of responsibilities and the struggle for power;
- (h) Ignorance, poverty and scarcity of goods negatively affect the enforcement of consumer rights.

The following issues therefore arise:

- (a) The place of consumer protection legislation in the existing or proposed legislation;
- (b) The internalization of the consumer protection concept in existing legal system, especially in the Constitution;
- (c) The establishment of a strong and effective link between the Government and government-supported organs or agencies, and the various civil society organizations and non-governmental organizations engaged in consumer protection activities;
- (d) The creation of awareness and provision of educational facilities to most citizens to an acceptable standard.

It is only when the above issues are effectively resolved that:

- (a) An effective institutional structure for consumer protection can be established;
- (b) National and comprehensive consumer protection activities can be effectively designed;
- (c) The Guidelines for Consumer Protection can be effectively adopted and utilized;
- (d) Future steps can be taken, including a critical analysis of the Guidelines, in order to meet the requirement of the consumers to be protected.

H. Zimbabwe*

1. Introduction

With the unfolding of the Economic Adjustment Programme (ESAP), a lot of price control measures have been phased out. This brought to an end the situation where the Government continued to be involved in price-setting. The move has been consistent with ESAP. It has also benefited local industry, and has exposed the economy to foreign competition, ensuring that market forces result in competitive pricing of decontrolled products, thereby creating a competitive environment.

However, the move has on the other hand created problems for the consumer. It has in some areas resulted in the exploitation of the consumer by unscrupulous people aiming at maximizing profits at the expense of the consumer. Much of the unfair business practices is in the areas of purchases of goods and services. Very often people have come across such notices as "goods for repair are left at owner's risk" or "no refunds of purchased items". As a result of unfair trading practices, various complaints from consumers have come to the Ministry of Industry and Commerce, either directly or indirectly through the Consumer Council of Zimbabwe, the latter being a consumer watchdog in the country.

2. Existing consumer legislation

Various consumer legislation is still in place under various ministries, but of particular concern is legislation administered by the Ministry of Industry and Commerce, since it is a key institution for the welfare of the consumers as a whole. The ministry also plays a critical role in the implementation of ESAP, and as a result is directly concerned with the effects of the Programme on the consumer. When deregulation of prices took place, various regulations pertaining to the consumer were left in place to cushion the consumer from unfair business practices, as described below.

(a) Control of Goods (price control) regulations 1989 - Statutory Instrument 153B of 1989

Several sections of this piece of legislation are still in place, such as section 38 (2), which notes that notwithstanding subsection (1), no person who sells any commodity under a hire-purchase agreement shall be guilty of an offence by reason only of the fact that the purchase price of any commodity as defined in the Hire-Purchase Act (chapter 284), exceeds the price at which any commodity may be sold in terms of an order by an amount not exceeding the rate fixed by the Minister responsible for finance in terms of section 27 of that Act.

(b) Control of Goods (distribution and disposal of commodities regulations 1982 - Statutory Instrument 556A of 1982

The Statutory Instrument empowers the Minister of Industry and Commerce, whenever necessary, to make orders to control the distribution, disposal, purchase and sale of scheduled commodity. Such orders may provide for the prevention of hoarding, rationing, controlling, regulating or restricting the quantity of commodities, and controlling and regulating the manner in which the

* Paper presented by Mike Chivhanganye.

scheduled commodities may be sold or displayed, stored or offered for sale or distributed by any dealer or manufacturer.

(c) Control of Goods (distribution and disposal of commodities (prevention of hoarding) - Order 1982

Besides preventing hoarding, this Statutory Instrument also makes it mandatory for dealers to display clearly visible to their customer part of the stock of the specified scheduled commodities.

(d) Control of Goods (distribution of beef) regulations 1993 - Statutory Instrument 12 of 1993

This piece of legislation centres on restrictions on the sale and distribution of beef: no persons are allowed to distribute beef carcasses which are ungraded and do not bear the trade mark of the Cold Storage Commission or of a registered private abattoir. There are arrangements for this legislation to be administered by the Ministry of Agriculture to ensure effective administration.

(e) Standardization of Soap Act (Chapter 295 promulgated 29 November 1957)

The Act regulates the chemical composition of soap in its manufactured state, i.e., legislated amounts of alkalis, fat, acids etc.

(f) Control of Goods (Display of prices) - Order 1980

The legislation deals with the display and advertisement of prices by retail dealers, such as by making it mandatory to label prices of commodities.

(g) Hire-Purchase Act (Chapter 284)

The Act makes provisions for the regulation of hire-purchase agreements and certain instalments, sales and for other purposes incidental to the foregoing.

(h) Consumer Contracts Act 1984

The Consumer Contracts Act is to provide relief to parties to consumer contracts where the contract is unfair or contains unfair provisions, or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair.

It therefore ensures that:

(a) There is no oppression on the consumer, meaning that one-sided contracts are a thing of the past;

(b) Consumer redress can be facilitated through courts of law.

(i) Social Dimension Fund

The Government introduced the Social Dimension Fund, aimed at the less privileged in the country. The fund is aimed at ensuring that the poorer sections of society get essential products and certain services otherwise difficult to get under economic hardships.

3. Legislation that is still in the pipeline

Currently, the Ministry of Industry and Commerce is studying and reviewing existing consumer legislation with the view to updating and improving it in line with ongoing economic reforms. The Trade Measures department has already held a conference to discuss various amendments to the Trade Measures Act aimed at ensuring consumer protection.

The Competition Bill, when it becomes Law, will, among other things, promote and maintain competition in the economy, prevent restrictive business practices and monopoly situations, and regulate mergers and prohibit unfair trade practices. It will also promote the interests of consumers, purchasers and other users of commodities and services in Zimbabwe in respect of prices, quality and the variety of such commodities and services.

4. Institutional structures for consumer protection in Zimbabwe

(a) The Consumer Council of Zimbabwe

The Consumer Council, among other issues, has put in place a Patient's Charter to educate the general public about their right to improved medical care. The Consumer council is vigorously lobbying to have the Product Liability Act, the Group Proceedings Act and the Sale of Articles Act enacted into law.

(b) The Standard Association of Zimbabwe

This body does tremendous work in quality approval and the certification of products to international standards.

(c) Ministry of Health and Child Welfare

The Ministry ensures that drugs manufactured and those imported into the country meet international standards. The Ministry, together with the Consumer Council of Zimbabwe, as mentioned above, have come up with a Patient's Charter aimed at improving relations between medical staff and patients. The main thrust of the charter is to ensure that improved understanding is encouraged between users and health professional staff.

(d) The Ministry of Legal and Parliamentary Affairs

The above Ministry plays an important role in putting the necessary legislation in place and enforcing it. Currently, the Competition Bill, which touches on some major consumer issues, is being debated in Parliament.

(e) Ministry of Environment and Tourism

The Ministry is currently involved in rectifying the ecological mishaps at Lake Chivero, where fish consumerables are dying due to pollution. The Ministry ensures that environmental edibles are fit for human consumption.

(f) Government analyst laboratories

The laboratories assist various institutions and individuals in testing safety of products before consumption.

The above analysis demonstrates that Zimbabwe has a host of institutional bodies to ensure that consumers get a quality product.

If one closely examines existing consumer legislation and legislation in the pipeline, one would notice that Zimbabwe has gone a long way in its observance of the Guidelines for Consumer Protection, which intend to address the following:

- (a) Protecting consumers from hazards to their health and safety;
- (b) Promoting and protecting the economic interests of consumers, ensuring that the latter get value for money;
- (c) Availability of adequate information to enable them to make informed choices according to the individual wishes and needs;
- (d) Consumer education;
- (e) Availability of consumer redress;
- (f) Freedom to form groups that represent consumers and the establishment of the forum and ability to express views in the decision-making process affecting them.

The Government has had as its priority the promotion and protection of the economic interests of the consumer and ensuring that they get value for money despite the country's economic adjustment programme. By having new legislation in the pipeline, the Government has demonstrated its commitment to this priority.

Part Three

MODEL LAW FOR CONSUMER PROTECTION IN AFRICA

V. MODEL LAW FOR CONSUMER PROTECTION IN AFRICA

A. Introduction

The need for a comprehensive or framework Model Law for Consumer Protection in Africa cannot be overemphasized. There have been a number of developments in Africa and internationally that require regulation to ensure the protection of consumers. Progressive economic liberalization and deregulation have changed the scenario for consumers. Much has also changed in the field of technology: new technologies or new applications of existing technologies in such areas as biotechnology, pharmaceuticals, electronics, new materials, telecommunications, broadcasting and computing have influenced cultures, consumers tastes and lifestyles. The growth of advanced technology has facilitated sophisticated and complex services and goods in an environment in which the regulation and the articulation of consumer interests in technology and services sectors, in particular in African States, need to be established or strengthened. Moreover, subregional and regional integration and cooperation have mainly focused on trade, investment and development, and consumer protection has been compromised.

The Model Law for Consumer Protection in Africa has been drafted to assist African States, consumer groups and experts in their work of protecting consumer rights through legislation, legal intervention and activism. It takes into account the diversity that exists among the African States, as a result of which some States have relevant legislation on consumer protection, while in other States legislation - where it exists - is either incidental to consumer protection or is scattered/found/included in a number of statutes or decisions. Other elements of diversity are related to differentials in economic development; stages in the process of progressive liberalization, privatization and private-sector development; degrees of intervention and consumer activism; and differences in the underlying constitutional and legal systems.

The Model Law contains a set of legal principles to guide consumer legislation, intervention and activism in African countries. The Model Law is expressed in sample legislative language and format to facilitate implementation.

Among the main features of the Model Law, the following are significant: an interpretation clause (article 2); a declaration of substantive and procedural consumers rights (article 3); consumer protection in transactions involving technology transfer and services that is weaker than protection in sale of goods transactions in many States (article 4); standard-setting and implementation in the field of environmental health and physical safety (article 5); strengthening the consumer movement (part 6); and administrative and judicial procedures for consumer redress (part 7). There are also efforts to facilitate the development of equitable and sustainable partnerships among international agencies, Governments, industry and consumer groups.

The interpretation clause facilitates understanding and definition of terms in the process of negotiating, concluding, construing and enforcing or implementing consumers contracts. Although these terms do not have universally acceptable meanings, some consensus has been developing in the early to mid-1990s. Moreover, the interpretation clause would promote the African consumer movement by helping build consensus on the core consumer concerns. The definitions included in the law may vary in accordance with countries policies, taking into consideration that the effect of such variation should not affect the spirit of the law to protect consumers.

Regarding the declaration of consumer rights, article 3 is not exhaustive. In fact, the various articles, as well as the annexes, are instrumental to setting the scope of consumer rights. For example, standard-setting and implementation, whether in the field of environmental health and physical safety or any other field, may be read as a crucial aspect of or a footnote to consumer rights. Often, standard-setting is a preventive - as contrasted with a remedial - approach to consumer protection.

The Model Law establishes or strengthens a number of procedural and institutional structures and mechanisms for promoting consumer rights, including an autonomous consumer movement to promote initiatives by civil society; small claims courts, which are to be procedurally, financially and geographically accessible; and arbitration committees. There are also tribunals to deal with unfair trade practices and restrictive or harmful trade practices, including the regulation of monopoly undertakings and anti-competitive practices.

Some aspects of these avenues for redress have been placed in annexes 1-4 so that pertinent issues may be dealt with in detail. In fact, the main Model Law should be regarded as the broad legislation framework that should have an impact on various existing laws touching on consumer protection. The annexes, on the other hand, may be regarded as statutes regulating specific areas of consumers' concern. The annexes, which constitute a variant of secondary or subsidiary legislation under national systems, facilitate the amendment and adjustment of the law. This is particularly useful, since a number of law reforms would be constantly required to keep the law abreast of technological, environmental, social, economic and cultural dynamics.

Finally, the Model Law has been drawn from original formulations as well as sample language that has been adapted from consumer laws of other regions and a number of African countries.

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C. Model Law for Consumer Protection in Africa

Part 1. Preliminary

Preamble

Noting that legislation governing the creation and implementation of consumer contracts have been enforced in Africa from pre-independence days,

Observing further that the rules of civil, commercial and even penal law have been imposed and applied to complement indigenous African customs, practices, usages and institutions pertaining to consumer issues,

Noting further that after independence, the said imposed rules and regulations governing consumer contracts have been maintained in the national legislation of most of post-independent African countries,

Whereas the application of the said rules and regulations in African societies have met with mixed fortunes because of lack of political will, low educational levels, and other constraints related to incorporation and integration of African economies into a global market economy,

Whereas increased reform policies of economic liberalization, deregulation and private-sector development pursued by international trade and financial institutions, such as the structural adjustment programmes of the International Monetary Fund and the World Bank, have adverse consequences on consumer welfare in Africa,

Whereas the growth of foreign direct investment, trade, and regional and subregional economic integration and cooperation have led to such practices as agreements between competitors, cartels, consortia, inefficient mergers and acquisitions, price-fixing, market-sharing, lack of attention to standards, including those on safety, and other practices that are inimical to consumer welfare,

Whereas the development of liberalization of financial services, such as banking, credit, pensions and health insurance, have compromised consumers access to these services and hence the need to protect consumers welfare in these transactions,

Whereas the majority of consumers in Africa are vulnerable and disadvantaged due to such factors as gender, age, poverty, illiteracy, physical and mental stability, lack of organization or rural/urban disparity,

Whereas these vulnerabilities deprive most consumers of access to affordable, decent and safe technology, goods or services in the fields of basic or essential needs, such amenities and facilities as health, food, energy, housing, finance and banking, transport and communications, and redress through representations in judicial and regulatory bodies, among others,

Whereas sustainable consumption and equity require that all consumers in Africa should have access to basic or essential technology, goods and services,

Whereas developments in technology, especially in biotechnology, pharmaceuticals, new materials, electronics, telecommunications, computing and broadcasting, have enhanced productivity, opportunities for greater

productivity, environmental management, resource utilization, communication, commerce, national development and consumers protection,

Whereas some of the said technological developments are applied to compromise consumer welfare due to problems of sophistication and complexity of technology, goods and services in such areas as data security, intellectual property rights, control of offensive materials and the cultural impact of such materials,

Recalling that the United Nations and the Consumers International Regional Office for Africa have passed various resolutions to enhance consumers protection, particularly through the Guidelines for Consumer Protection adopted by the United Nations General Assembly in its resolution 39/248 of 9 April 1985, the resolutions adopted by the Consumers International Regional Office for Africa at Dakar, Senegal, in 1992 and at Kadoma, Zimbabwe, in the same year,

Calling upon the Governments of African States in conjunction with the consumers organizations and suppliers of technology, goods and services to develop equitable and sustainable partnerships to immediately adopt the necessary measures to implement the Guidelines for Consumer Protection, the extensions thereof and other policy, legal and administrative measures to ensure the protection of the consumers,

Noting that the Guidelines for Consumer Protection and above-mentioned Consumer International resolutions are important in promoting consumer welfare, and require greater moral, political and legal force to compel or found consumer protection and redress,

And further noting that most Governments have adopted the Guidelines for Consumers Protection, which set out the minimum standards for consumers protection,

Recognizing that the Guidelines for Consumer Protection have not been effectively implemented, to the detriment of consumers,

Confirming the increasing impoverishment of consumers in Africa due to social, political, economic and natural calamities and constraints,

Noting that in spite of the foregoing and related measures, consumers in Africa still labour under insufficient and inadequate protection,

Determined to take a firm stand in the interests of and in support for the consumers' efforts to improve their situation;

Expecting the Governments of African States to actively develop effective policy, legal and administrative measures to protect and safeguard the rights, liberties, freedoms, entitlements, interests and welfare of consumers,

Noting further that cooperation and coordination at the policy, legal and administrative levels is necessary in the national, subregional, regional and international domains to foster consumer protection by monitoring and evaluating compliance with the existing legislation, as well as the said Guidelines for Consumer Protection and the said Consumer International resolutions,

Emphasizing further the need to ensure the enforcement and implementation of consumer rights, interests, liberties, freedoms, entitlements and welfare by establishing and strengthening measures for the redress of consumer grievances

and disputes through small claims courts, standards bureaux and relevant regulatory, administrative and judicial tribunals,

Further emphasizing the urgent need to enact legislation, as a matter of public policy, to regulate and facilitate the protection of consumers against unfair, restrictive, harmful and abusive contract terms and trade or business practices,

Concluding that there is therefore an urgent need to develop a Model Law for Consumer Protection in African States on the basis of principles drawn from the Guidelines for Consumer Protection, the extension thereof, existing laws throughout the world, as well as judicial and other experiences of African countries.

Now be it enacted as follows:

Part 2. Application of law and interpretation

1. Citation and application of law

- (a) This Law may be cited as the Model Law for Consumer Protection in Africa.
- (b) This Law shall apply to all consumer transactions involving the provision, supply, distribution, sale or exchange of technology, goods, and services, including but not limited to health and pharmaceuticals, food, water, housing and shelter, education, financial and banking services, transport and communications.

2. Interpretation of terms

In this Law, unless the subject or context otherwise requires:

"abusive clause" includes a clause which is or appears imposed on the consumers by a supplier or provider who has economic power over the consumers which gives the former an unfair, unconscionable, or excessive advantage over the latter;

"Africa" means the country in which this Law or any law, rules or regulations made hereunder are to be implemented entirely or partially;

"business records" includes:

- (a) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, and other instruments; and
- (b) any information recorded or stored by means of any pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

"competent authority" means any authority, person or persons, institution or tribunal established under this Law or under an agreement by an industry or trade association which has competence on matters touching or concerning consumers rights, freedoms, liberties, entitlements, welfare or interests.

"Consumers" includes any person who:

- (a) purchases or offers to purchase technology, goods, or services otherwise than for resale; but does not include a person who purchases any technology, goods or services for the purpose of using them in the production, manufacture or provision of any other technology, goods or services for sale;
- (b) receives or uses any technology, goods or services for which consideration has been paid or promised or partly paid and partly promised, or under any system of deferred payment. For the avoidance of doubt such person includes any user of such technology, good or service other than the person who buys or pays for the same when such use is made with the approval or acquiescence of the purchaser or;
- (c) hires or avails himself or herself of any technology, goods or services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such technology, good or service other than the person who hires or avails himself or herself of the same when such technology, good or service is availed of with the approval or acquiescence of the hirer.

"Consumers dispute" means a dispute where the person against whom a complaint has been made denies or disputes the allegations contained in the complaint or having accepted the allegations, refuses, declines or fails to compensate any loss or injury suffered by the complainant to the satisfaction of the complainant;

"Council" means the Council established under Article 28 of this Law to foster consumers rights, liberties, freedoms, entitlements, interests and welfare;

"customer" means a person who purchases receives or uses technology, goods or services from another person;

"defect" includes any fault, imperfection or shortcoming in quality, quantity, weight, volume, content, composition, potency, purity or other standard which is required to be attained or maintained by or under any law for the time being in force or under any law for the time being in force or under any contract expressed or implied; or any standard which is claimed by the trader, supplier or provider in any manner whatsoever in relation to any goods;

"deficiency" includes any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, shelf life, efficiency, design, construction or packaging or other standard which is required to be attained or maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any technology or service;

"distribution" includes any act by which technology, goods or services are sold or supplied by one person to another person;

"distributor" means a person who engages regularly in distribution or who participates in some act or set of acts of distribution which is the subject of a consumers dispute or an action under this Law;

"downstream processor" means a manufacturer who adds value to goods supplied or manufactured by another person;

"fair market price" means a price at which the market for technology, goods or services clears with sufficient competition without the occurrence of shortages or build-up of excess inventories;

"Gazette" means the Government publication in which notices, appointments, announcement or any other matter required to be published in the "Gazette" is published under this Law;

"goods" include all tangible items or articles acquired or used by a consumer;

"intermediate goods" means goods used as inputs in manufacturing or downstream processing;

"in writing" means written or produced by any substitute for writing or partly written and partly so produced;

"manufacture" or "manufacturing" includes any artificial process which transforms goods in order to add value to them for the purpose of resale; and includes any operation of packing or repacking not linked to another form of transformation within a single enterprise;

"manufacturer" means a person who:

- (a) makes or manufactures any goods or parts thereof; or
- (b) does not make or manufacture any goods but assembles or fabricates parts thereof made or manufactured by others and claims the end products to be goods manufactured by himself or herself or
- (c) puts or causes to be put his or her own mark on any goods made or manufactured by any other manufacturer;

"Minister" means the Minister for the time being responsible for consumers affairs or any other minister or competent authority who may be assigned any function under this Law;

"NGO" means a non-governmental organization, voluntary or popular association formed or established under any law or in a manner consistent with the appropriate laws whether such association is registered or not;

"monopoly undertaking" means a dominant undertaking, or an undertaking which, together with not more than two other independent undertakings:

- (a) produces, provides, supplies, distributes or otherwise controls not less than one half of the total goods of any description that are produced, supplied or distributed in Africa or any substantial part thereof; or
- (b) provides or otherwise controls not less than one half of the services that are rendered, or not less than one half of the technology that is supplied, in Africa or any substantial part thereof;

"person" shall have the meaning ascribed to it under paragraph 2 hereof;

"prescribed" means prescribed by rules or regulations made by the competent authority under this Law or under an appropriate law;

"price", in relation to the transfer, supply, provision or sale of technology, goods, or services, includes every valuable consideration whether direct or indirect, and includes any consideration which in effect relates to the transfer, supply, provision, or sale of the technology, goods or services, although ostensibly relating to any other matter or thing;

"reasonable unit cost" means the average total cost of producing or supplying technology, goods or services at the producer's or supplier's normal scale of output, with all productive factors being remunerated at fair market rates;

"Restrictive Trade Practices Tribunal" means the Tribunal established under article 34 or pursuant to any provisions of this Law;

"retail trade" means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing; and includes any act or set of acts of sale to consumers which is the subject of a consumer's dispute or an action under this Law;

"retailer" means a person regularly engaged in retail trade, or who participates in some act or set of acts of retail trade which is the subject of a consumer's dispute or an action under this Law;

"restrictive trade practice" includes any trade practice which requires a consumer to buy, hire or avail himself or herself of any technology, good or service as a condition precedent for buying, hiring or availing of himself or herself of any other technology, good or service;

"sale" includes a sale, an agreement to sell or offer for sale and an "offer for sale" shall be deemed to include the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification whatsoever by which willingness to enter into any transaction for sale is expressed;

"service" includes service of any description which is made available to potential users and includes the provision of facilities in connection with banking, finance, insurance, transport, communication, processing, supply of electricity, supply of water and other public utilities, boarding and lodging, housing, construction, entertainment, amusement or the purveying of news or other information. It includes the sale of goods, where the goods are sold in conjunction with the rendering of a service and does not include the rendering of any service free of charge or under a contract of personal service. Provided that social and other services provided by the State shall not be regarded as free services;

"supplier", in relation to a service or technology, includes a person who performs a service or transfers technology and a person who arranges the performance of a service or the transfer of technology; and in relation to technology, goods or services means a person who sells or supplies goods or services to another person;

"technology", "technology transaction" or "technology transfer" includes, mutatis mutandis, systematic knowledge or a transaction involving the transfer of systematic knowledge for the manufacture of a product, for the application of

a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods;

"trade transaction" means a body of persons (whether incorporated or not) which is formed for the purposes of furthering the trade interests of its members or of persons represented by its members;

"trader" in relation to any technology, good or service means any person who sells or distributes, supplies or provides any technology, good or service for sale and includes the manufacturer thereof, and where goods are sold or distributed in package form includes the packer thereof;

"trade practice" means any practice related to the carrying on of any trade; and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply or price, in the course of trade, of any property, whether real or personal, or of any technology or services;

"Tribunal" means the Restrictive Trade Practices Tribunal;

"unfair trade practice" means a trade or business practice which for the purpose of promoting the sale, use, supply or provision of any technology, good or service adopts any unfair method or unfair or deceptive practice including the practice of making any statement whether orally or in writing or by visible representation which:

- (a) falsely represents that the technology, good or service is of a particular standard, quality, quantity, grade, durability, composition, style or model;
- (b) falsely represents that the services are of a particular standard, quality or grade;
- (c) falsely represents that any re-built, second-hand, renovated, reconditioned or old goods are new or unused goods;
- (d) represents that any technology, good, or service has sponsorship, approval, performance characteristics, accessories, peripherals, uses or benefits which such technology, good, or service does not have;
- (e) represents that the seller, provider or supplier has a sponsorship or approval, affiliation, intellectual property, license or franchise which such seller, provider or supplier does not have;
- (f) makes a false or misleading representation concerning the need for or the usefulness or utility of any technology, good or service;
- (g) gives to the public any assurance, warranty or guarantee of the performance, efficiency, efficacy or length of life of a product or of any technology, good or service that is not based on an adequate or a proper test thereof. Provided that where a defence is raised to the effect that such assurance, warranty or guarantee is based on an adequate or a proper test, the burden of proving such defence shall lie on the person raising such defence;
- (h) makes to the public a representation in a form that purports to be:

- (i) a warranty or guarantee of a product or of any technology, good or service; or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue the supply of a technology or a service until it has achieved a specific result. If such purported warranty, guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (iii) materially misleads the public concerning the price at which a product or like products, technology, goods or services have been or are ordinarily sold or provided. For the purpose of this provision, a representation as to price shall be deemed to refer to the price at which the product, technology, good, or service has been sold by sellers or provided by suppliers generally in the relevant market;
- (iv) gives rise to misleading facts or facts disparaging the technology, good, service or trade of another person;

"wholesale trade" means a form of distribution by which goods are customarily sold for the purpose of resale or as inputs in manufacturing; and includes any act or set of acts of sale for either of those purposes which is the subject of a consumers dispute or an action under this Law;

"wholesaler" means a person regularly engaged in wholesale trade, or who participates in some act or set of acts of wholesale trade, which is the subject of a consumers dispute or an action under this Law;

"year" means calendar year or fiscal year as stipulated under an Act of Parliament;

Words importing the masculine gender only shall refer to or include the feminine gender of things and vice versa;

Words importing persons shall include natural persons, corporations, firms, associations, cooperatives, organizations or other juridical persons whether the same are registered or not and whether they are private, public or voluntary;

Reference to any provision of the Law shall, if not inconsistent with the subject or context, bear the same meanings in this Law.

Part 3. Principles of consumer protection

3. Consumer rights

Consumers should be entitled to:

- (a) the protection of their lives, health and safety in the consumption of technology goods or services;
- (b) the basic or essential needs and other needs, amenities and facilities identified in, among others, the Guidelines for Consumer Protection adopted by the United Nations General Assembly in its resolution 39/248 of 9 April 1985; the extension to the United Nations Guidelines

of 1995; and the resolutions of the Consumers International Regional Office for Africa. The foregoing needs, amenities, facilities, rights, freedoms, entitlements and interests include but are not limited to the following areas: health, food, water, housing and shelter, education, energy, transport, communications and any other matter mentioned under this Law;

- (c) true, sufficient, clear and timely consumers education including information on technology, goods, and services offered in the market, as well as on prices, characteristics quality and risks that might be involved in the consumption thereof;
- (d) fair, non-discriminatory treatment by suppliers of goods and services;
- (e) full, timely and proper compensation for damages suffered by consumers which, pursuant to the provisions of this Law or other special or general contractual regulations, are attributable to suppliers or providers;
- (f) the freedom and right to associate and join or form consumers unions or associations;
- (g) have access to the appropriate competent authorities and judicial bodies for the protection of their legitimate interests through a brief, unrestricted procedure which shall be at reasonable cost;
- (h) any other rights, freedoms, entitlements, and interests incidental to or which would facilitate the enjoyment of the foregoing rights.

4. General rule of interpretation

- (1) This Law shall be interpreted, construed and implemented to ensure consumers protection in trade, business, commercial and economic transactions.
- (2) Parliament shall enact or authorize the formulation of laws, rules and regulations to emphasize the fact that a consumer is a natural or juristic person who buys or is the final beneficiary of a right or interest in technology, goods or services, activities or operations. Protection shall be provided to the consumers irrespective of the status, nature or condition of the consumers. Provided that poor, female, young, unorganized, weak, disabled or other disadvantaged consumers may be provided greater protection.
- (3) In construing, enforcing and implementing consumers contracts, regard shall be had to the Guidelines for Consumer Protection and any amendments thereof or additions thereto.

5. The State and consumer needs

- (1) This Law and any other law enacted pursuant thereto shall be interpreted, construed and implemented to emphasize that satisfaction of social, economic, technological, environmental and cultural needs of consumers is a paramount responsibility of the State.
- (2) The State shall in its policies, laws and administrative measures ensure that consumers draw maximum advantage from the national

economic, environmental, cultural, social and other resources. It shall guarantee access to basic or essential needs and where appropriate prescribe minimum standards and fix price ceilings.

- (3) The State shall facilitate the formation and operation of consumers groups and associations for the promotion and protection of consumers rights. It shall provide or facilitate the provision of the requisite infrastructural, financial and logistical support for the operation of such groups and associations.
- (4) It shall be the duty of the State to take all the necessary steps for the faithful compliance with the provisions of this Law as well as to ensure the protection and promotion of the rights of consumers.
- (5) The State shall make available the legal and material means, as well as the necessary resources for the creation and foundation of consumer associations within its national territory.
- (6) In the event that the State, in compliance with the provisions of this Law, imposes fines, forfeiture or other penalties or monetary charges on suppliers, the proceeds thereof shall be allocated to a Consumers Fines Fund which shall be devoted to financing the National Consumers Council established under article 28; consumers associations; and the promotion of consumers rights.

6. Beneficial interpretation

- (1) Consumers contracts or agreements shall be construed in favour of and for the benefit of consumers. Abusive, unfair, restrictive, harmful, or anti-competitive trade or business practices, or contract terms or clauses shall be closely regulated and controlled and where appropriate forbidden in all the contracts and transactions to which this Law applies.
- (2) Contractual clauses or stipulations shall be null and void and have no effect whatsoever where they purport to or in fact:
 - (a) exempt, exclude, reduce or limit the responsibility or liability of providers or suppliers for defects, deficiency, or inadequacy of any nature of the technology or good supplied or the service rendered;
 - (b) imply a waiver of the rights, freedoms or liberties vested in the consumers pursuant to this Law or where they purport to or in fact limit the exercise thereof; or
 - (c) place, shift or reverse the burden of proof against the consumers for defects, deficiencies or inadequacies which are not immediately apparent to the consumers; or
 - (d) impose the compulsory referral to arbitration pursuant to a unilateral arbitration clause;
 - (e) authorize the provider or supplier to unilaterally cancel, repudiate or rescind the contract except where this power is vested in the provider or supplier in the case of postal or sample sales; or

- (f) create contractual terms or conditions which are unfair, unconscionable, inequitable, oppressive or unreasonable to the consumers or are actuated by bad faith.
- (3) Parliament shall enact new legislation or amend existing laws to regulate unfair contract terms and unfair or restrictive trade practices with a view to enabling consumers to obtain redress expeditiously.

Part 4. Economic and technological protection

7. Standard form contracts

- (1) Standard form agreements, otherwise referred to as accession, framework or unilateral agreements, or contracts of adhesion, shall be understood to include agreements, contracts, arrangements or compromises whose terms have been approved by the appropriate industry or trade association established solely by the supplier of the technology, good or service without the consumers being able to object or materially negotiate or amend the contents thereof upon contracting.
- (2) Standard form agreements shall be controlled and regulated by appropriate State agencies and competent authorities to ensure adequate consumers protection.
- (3) (a) Any standard form, accession, framework or unilateral agreement or contract of adhesion submitted in forms, in series or in any other similar form shall be drafted in the official language in characters readable at single sight by any normal sighted person.
(b) The same shall have a written and/or verbal translation into the national and/or local language, and shall be read and explained to illiterate, blind, mute and similarly disabled consumers in a language they understand.
- (4) Such agreements or contracts shall be drafted in terms which are clear and understandable to the consumers and may not contain references to contracts, rules, practices, texts or documents which, not being within public or common knowledge, are not made available to the consumers prior to or upon the execution of the agreement or contract.
- (5) Parties to an agreement or contract shall be entitled to receive and keep a copy of the texts or documents containing or evidencing the transaction.

8. Restrictive trade practices

- (1) Parliament shall enact legislation to control, regulate and, where appropriate, prohibit harmful, unfair or restrictive trade or business practices.
- (2) Restrictive trade practices which may adversely affect consumers welfare or the trade or development of the State shall be unlawful and shall be prevented, eliminated, controlled or penalized by a competent authority/ies which shall be established under articles 34 and 36 of

this Law to deal with unfair or restrictive trade practices including but not limited to monopoly undertakings and unfair competition.

- (3) The competent authorities aforementioned shall facilitate the attainment of efficiency in development, trade and consumers transactions and activities by ensuring:
- (a) the control over the growth and exercise of economic power and/or the concentration of capital or technology through inefficient mergers, acquisitions, takeovers, cartels, consortia, or combinations;
 - (b) the creation, encouragement and protection of competition in so far as it is in the public and consumers interest and the discouragement of practices which unduly restrain or are likely to restrain competition and/or to compromise consumer rights;
 - (c) that practices by a business or trade which limit or are likely to limit the market access of a competitor are discouraged and penalized;
 - (d) that anti-competitive, unfair and other inequitable or restrictive business or trade practices such as agreements between competitor, price fixing, market sharing, misleading or unfair or abusive advertising which disparage the reputation or trade of competitors, and other practices which result or are likely to result in adverse effects on the consumers, are controlled, regulated or prohibited and penalized.

9. Right of retraction

- (1) Consumers shall always have the right of retraction within a reasonable period but not less than seven days from the signature or execution of the contract or the reception of the technology, good or service when the contract has been entered into at the initiative of the supplier or seller or its employees, officers, servants or agents at a place other than the ordinary business premises of the supplier or seller or the supplier's or seller's representative in interest. In computing the grace period the day on which the agreement was entered into, weekends, and public holidays shall be excluded.
- (2) Where the consumer exercises this right in due time he or she shall be entitled to have the consideration returned subject to corresponding reasonable adjustments which shall be agreed upon by the parties.

10. Financial and banking services

- (1) Parliament shall enact or amend appropriate legislation and regulations to promote adequate consumer protection by ensuring the observance of consumer rights and interests provided therein.
- (2) Consumers shall have access to banking and financial services including but not limited to opening and operating accounts, securing loans, mortgages, charges, insurance, health insurance cover, pension and other services at affordable or lowest possible rates, having regard to the status and circumstances of vulnerable persons such as

women, children, the aged, the poor, the disabled, rural dwellers and other disadvantaged consumers.

- (3) (a) The terms of the contracts referred to herein shall be favourable to vulnerable consumers in terms of scope of insurance; minimal interest rates on mortgages and charges; minimal contribution to pension funds and health insurance schemes; reasonable repayment schedules; and quality of, and courtesy, hospitality and efficiency in, the provision of services, among others.
- (b) Such terms shall be concessionary and shall be more favourable than the terms available in the open market.
- (c) Small creditors, insurance policy holders and mortgagees shall be charged lower interest rates and have longer repayment periods than the prevailing market rates. Small investors and shareholders shall be protected through favourable share options, voting procedures and decision-making processes.
- (4) This Law shall be implemented to ensure that genuine competition exists among institutions, corporations and persons offering financial services.
- (5) (a) Unfair contract terms and unfair business practices in banking and financial services shall be prohibited and subjected to severe monitoring by the competent authorities such as the Central or Reserve Bank.
- (b) Severe penalties, including imprisonment, fines or deregistration, shall be enforced, as appropriate.
- (6) Contracts governing financial transactions shall be interpreted, implemented and enforced in a manner consistent with the laws governing or regulating financial transactions, the instrument embodying the contract between the parties, and in good faith.
- (7) (a) Appropriate institutional and administrative measures shall be established and strengthened to monitor and enforce the law governing financial services.
- (b) Such institutions shall include competent authorities, councils on loans and credit, pension funds, general insurance, health insurance, mortgages, and other financial services.
- (8) (a) The provision of financial and banking services and the provision of loans and credit to the consumers shall be in the form of a written and signed contract and each party shall keep a copy thereof.
- (b) The depositing of a share or funds shall entitle a consumer to an official receipt from the bank or financial institution.
- (c) The receipt shall show the amount deposited, the date of deposit, the debit, the interest accrued and explanations or reasons for the foregoing.

11. Consumer credit contracts

In cases involving the supply or sale of technology, goods or services that include the grant of consumers credits, the supplier or provider of the technology, goods or services shall be obliged to inform the consumer of and advise him or her in writing about the following matters in advance:

- (a) the cash price of the technology, goods or services involved;
- (b) the amount of interest, the annual or periodic rate at which the same is computed as well as the interest rate in arrears;
- (c) the number of instalments payable as well as the frequency or periodicity thereof;
- (d) the total amount payable for such technology, good or service. Provided that the said total amount shall not be higher than the sum of the cash price and the interest.

12. Imported and resold technology and commodities

- (1) Where the goods sold to consumers are defective, second-hand, reconditioned or restored, such fact shall be indicated clearly and remarkably, the same being evidenced in the appropriate invoices, receipts, vouchers or business records.
- (2) The manufacturers or importers of technology or goods shall ensure the regular supply and provision of components, spare parts, accessories, paraphernalia, peripherals, and technical and maintenance services having regard to the period in which the same were developed, manufactured, assembled, or distributed.
- (3) The obligations under this article shall subsist for a reasonable period of time after the execution of the contract and shall have regard to the duration or subsistence for the contract.

13. Discriminatory practices

- (1) Unless the consumer is excluded by a legal requirement regarding, for instance, the preservation of public order or security or any other ground justifiable under international law on derogation from constitutional and human rights, he or she shall not be denied the opportunity of acquiring a technology, good or service.
- (2) The acquisition of a technology, good or service by a consumer shall not be unilaterally, unreasonably, or inequitably made subject to his or her acquiring or purchasing another technology, goods or services. Nor shall the technology, good or service be supplied or sold at a price other than the pre-agreed, pre-announced, or, where applicable, the fixed price.
- (3) For the purpose of this article, the existence of a technology, good or service shall be assumed by the mere fact that its availability has been announced in shop window, showcases, print or electronic media, posters or by other means meant for private or public consumption or notice.

- (4) Any discrimination against consumption, purchase or acquisition of a technology, good or service shall be unconstitutional, illegal, null and void.
- (5) Discrimination shall be understood as the unreasonable, inequitable, unjustified or arbitrary refusal or failure to supply or provide a technology, goods or services as well as the supply, provision or rendering of a technology, goods or services in an inefficient, inadequate, irregular, defective, dilatory, deficient, or discourteous fashion unless such conduct is duly justified by an act of God or events of force majeure.

14. Standards and support services

- (1) (a) The seller, supplier, or provider of a technology, goods or services shall supply or deliver a product, technology, goods or services which shall offer the service or satisfaction legitimately expected by the consumer.
- (b) Such technology, goods or services shall meet the minimum requirements such as durability, usefulness and viability.
- (c) The seller, supplier or provider shall also give the consumers a manual, receipt or any other document showing the technical characteristics; application of the product or technology; safety precautions relating to the use of the technology, goods or services; the mode of operation or use thereof; the price; and the guarantee period which shall be sufficiently long but not less than six months.
- (d) The receipt or document aforementioned shall be exempt from all stamp duties.
- (2) (a) In transactions concerning products for long use, maintenance and after sale services shall compulsorily be provided to the consumers.
- (b) The activities associated with the transaction shall firstly be submitted to a competent authority established under an Act of Parliament. Such authority shall not authorize any transaction until after verifying that the supplier can offer after sale services.

15. Consumer information on standards

- (1) (a) Every supplier or provider of a technology, goods or services shall provide consumers with true, sufficient, clear and timely information on goods and services offered to enable consumers to make proper and reasonable choices.
- (b) The labelling of all products shall be legible and where applicable in bold letters.
- (c) The contents, the name and address of the manufacturer, assembler or packager and the expiry date shall be written visibly in capital letters or in distinct characters.

- (d) The sale of food products which are not packaged shall be controlled, regulated and where appropriate prohibited.
- (2) (a) Suppliers or providers of technology, goods, or services shall provide consumers with a contract, receipt, ticket, invoice, business record or any other document that embodies or evidences the transaction unless this requirement is expressly excluded by law.
- (b) In the event that technology, goods or services are not delivered, supplied or performed upon the execution of the transaction or upon the sale, the contract, receipt, ticket, invoice, business record or document shall indicate the date and place where delivery, supply or performance is to take place and the consequences of any failure or delay.
- (c) In the supply of services or technology the contract, receipt, ticket or invoice shall indicate the material components, spare parts, accessories, paraphernalia or peripherals to be used; the price thereof; the cost of manpower or labour; as well as the terms under which the supplier undertakes to provide such technology or services.
- (3) (a) The price of any technology, goods or services shall include the consideration therefore or the cash price as well as any duty, tax, charge, fees or levy the consumer is liable to pay.
- (b) The price of any technology, goods or services shall be indicated clearly and unmistakably in local currency and in any other currency and shall be exhibited to the public unless an express exemption applies under any law.
- (4) The particulars shown in the goods or their labels, packages or in advertisements and any information or announcements relating to the supply of a technology, goods or services shall be expressed in official, national or local and any other understandable language; in the local currency, and in generally acceptable international, national or local measuring units.
- (5) (a) The terms "guarantee" or "warranty" or any other equivalent term, shall only be used to indicate the extent of the warranty, as well as the conditions, manner, duration, and place in which they can be enforced by the consumers.
- (b) The terms of such guarantee or warranty shall be clear and accurate. It shall indicate its extent, duration, and description of individuals or bodies corporate or establishments which have issued the same, and the manner of enforcing the same.

16. Regulation of advertising

- (1) Advertisements shall conform to the rules of decency, sincerity and truth and shall not exploit superstition, ignorance or fear. They shall be distinct whatever form they take.

- (2) Any false or misleading offer, promotion or advertising of technology, goods, activities or services shall be prosecuted and punished as fraud.
- (3) False or misleading advertising shall be understood to include any type of business information or communication using text, dialogue, sounds, images or descriptions which can directly or indirectly, expressly or by omission, lead consumers to mistake, misunderstand, or confuse:
 - (a) the geographic, business or other origin of the offered goods or the place for the rendering of service agreed upon or the technology used; or
 - (b) the components or ingredients of the goods offered, or the percentages of the same used therein; or
 - (c) the benefits or repercussions of the use or hiring such technology, goods or service; or
 - (d) the basic characteristics of the good to be sold or the technology to be supplied or the service to be rendered, such as size, quantity, quality, usefulness, durability or any other standard deemed reasonable and indispensable in a normal dealing relating to such technology goods or services; or
 - (e) the date of manufacture or useful life of the technology or goods where such facts are indicated; or
 - (f) the terms of the warranties as offered; or
 - (g) the official or private, domestic or foreign recognitions, approvals or distinctions or licenses, such as patents, trademarks, medals, awards, prizes or diplomas; or
 - (h) the price of the offered goods or services; the terms of payment; and the cost of the credit; or
 - (i) any other particular material to the transaction involving the technology, goods or services.
- (4) Abusive advertising shall be prohibited and shall, for all legal purposes, be understood to be abusive or unfair or discriminatory advertising if it incites or is likely to incite violence; exploits fear; profits from the lack of maturity of children; infringes environmental values or is capable of leading consumers to behave in a manner detrimental or hazardous to their health or safety.
- (5)
 - (a) In the case of promotional services, sales or special offers, there shall be indicated in the respective advertisement the duration thereof or, as the case may be, the nature or volume of the technology, goods or services offered, as well as the general conditions, warranties and terms of the proposed business.
 - (b) When no term is fixed, nor the nature or volume of the technology, goods or services determined, the sale, promotion or

offer shall be understood to extend for a term of thirty days from the time of the last announcement.

- (c) The supplier of technology, goods or services may, however, be exempted from this obligation where he or she promptly indicates the end of such promotions, sales or special offers in a noticeable way and through the same advertising media used to announce them.
- (6) (a) If the supplier of technology, goods or services in a promotion, sale or special offer should fail to comply with the advertisement, consumers may elect:
 - (i) to require the compulsory compliance with the obligation of the supplier, according to the general law of contract; or
 - (ii) to accept another technology or goods or the rendering of an equivalent service; or
 - (iii) to cancel the contract if there has been an advance payment by a consumer.
- (b) In all these cases a consumer shall be entitled to claim compensation at the expense of the offeror, or advertiser which compensation shall in no event be less than the balance between the price of the technology, goods or services under promotion or sale and its regular or ordinary price.
- (7) Where the statements made in an advertising message are considered false or misleading to consumers, the competent authority shall order an amendment of the content. Such amendment shall be announced at the expense of the advertiser through the same media used to disseminate the offensive or infringing message.
- (8) (a) In any disputes that might arise as a result of the provisions of this article, the advertiser shall bear the burden of proving the truth of the statements contained in the advertising material.
- (b) For the purpose of this Law, the term "advertiser" shall include the supplier of technology, goods or services who has commissioned the publication of an advertising message.

17. Distribution facilities

- (1) Efficient distribution of essential technology, goods and services shall be facilitated or effected by competent authorities established under this Law as well as by other competent authorities of the State through appropriate regulatory and administrative measures which ensure the development and efficient operation of infrastructure such as railways, roads, airways, postal and telecommunication systems and waterways.
- (2) Competent authorities shall provide incentives and assistance for the development of adequate storage, distribution, wholesale and retail facilities particularly in rural areas, slum settlements, remote

regions, arid and semi-arid regions, and other disadvantaged or less accessible areas.

- (3) Competent authorities shall develop and/or maintain adequate standards, provisions and appropriate regulatory systems to ensure the quality and appropriate use of pharmaceuticals through integrated national drug policies which shall address, among others, procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information.
- (4) Competent authorities shall provide incentives for consumers self-help in the distribution of technology, goods or services through such means as consumers cooperatives and related trading activities. The private sector shall be provided with incentives to invest in distribution facilities particularly in the disadvantaged areas aforementioned.

18. Supplier's criminal and civil liability

- (1) Suppliers of technology, goods or services, regardless of their legal status, shall be subject to legal and administrative liability for their own conduct and for the conduct of their assistants or persons whom they have suffered to play an immaterial role in the supply of technology, goods or services whether there is any labour relationship between the former and the latter; whether such relationship is permanent or temporary; or whether the injury or loss arising from the contact is foreseeable or not.
- (2) Suppliers shall be criminally liable only in the cases expressly stipulated under this Law or under the applicable provisions of the penal or criminal laws.
- (3) Producers, importers, dealers, suppliers and all persons involved in the distribution chain shall be jointly liable under civil law, for indemnities deriving from injury or loss caused by the technology or goods supplied or services rendered.
- (4) Civil liability shall be objective and shall not depend upon the extent of diligence or negligence of any party.

19. Cancellation and variation of contract

- (1) Consumers may elect to request the cancellation of the agreement or the reduction of the price, without prejudice to being indemnified for injury or loss, when the technology, good or service subject to the contract has concealed faults, defects or deficiencies that make it unfit or diminish its quality and usefulness below the standards normally expected from it to such extent that, if previously know to the consumer, he or she would have refrained from purchasing the same or would have paid a lower price for it.
- (2) Consumers shall be entitled, in addition to indemnity for consequential injury or loss to the free replacement of the technology, repair of the goods, adjustment of the technology, or free rendering of the service for a reasonable term and, when such is not possible, to its replacement or to the return of the amount paid in the following events:

- (a) when the technology, goods or services subject to compulsory standards regarding quality or efficiency do not comply with the proper specifications; or
 - (b) when the materials, elements, substances or ingredients forming or constituting the technology, goods or services do not correspond with the alleged specifications; or
 - (c) when the legal standards of fineness of jewelry or gold work is lower than that allegedly present; or
 - (d) when a technology, goods or services has been purchased under a given warranty and, within the effective term thereof, the deficiency or poor quality or lack of the property covered by the warranty becomes evident unless the technology, goods or service has been subjected to ordinary or normal use, application or consumption according to the circumstances and nature thereof; or
 - (e) when the supplier and the consumer have agreed that the technology, goods or services subject to the agreement should meet certain specifications and the same are not complied with.
- (3) Consumers shall be entitled to the replacement of the goods or, as the case may be, to the return of the money paid in excess for the same in the following events:
- (a) when after considering the permitted tolerance ranges, the net contents of goods are lower than expected or the amount is lower than what is indicated in the packing or container; or
 - (b) when the instrument used to measure the contents, quantity, volume or any other standard has been used to the detriment of the consumers or beyond the tolerance ranges permitted in this type of measurement.

20. Supplier's joint and several liability

- (1) The actions provided for under article 19 may be brought against any constituent of the distribution chain which sold such technology, goods, or services including but not limited to the manufacturer, wholesaler, retailer, supplier, or provider, all of whom shall be jointly liable.
- (2) Any delay in compliance with the obligations of the supplier of technology, goods or services shall entitle the consumers to cancel the contract without prejudice to the indemnities that may be applicable.
- (3) The actions provided for under articles 18, 19 and 20 shall, unless otherwise provided, be exercised within the term of one year from the date on which the technology is transferred or acquired or the good is received or the rendering of the service is finished.
- (4) (a) When goods under repair show defects related to the service rendered and attributable to the supplier of the service, the consumers shall be entitled, within sixty days from the reception of the goods or the discover of the defect, whichever is the

latter, to have it repaired without additional cost in the shortest possible time and in any event within 14 days. This provision shall not prejudice the consumers' rights to the proper indemnity for damages.

(b) If a warranty has been given for a term longer than the said sixty days, the longer of the two durations shall apply.

- (5) When the goods or item under service for fitness, repair, cleaning or otherwise suffers such detriment as to diminish its value or render it wholly or partly unfit for the ordinary or normal use it is intended for, the service supplier shall indemnify the consumers for the injury or loss suffered.

21. Implied contract terms

- (1) In the service or technology transfer contract, the purpose of which is the repair of any type of goods, there shall be an implied or implicit obligation on the part of the service or technology supplier to use at his or her expense new spare parts, accessories, paraphernalia, or peripherals fit for the good involved without prejudice to the freedom of the parties to expressly agree otherwise.
- (2) Non-compliance with the foregoing provision shall give rise to penalties and indemnities including the compulsion of the service or technology supplier to substitute, without extra charge, the components, spare parts, paraphernalia, accessories or peripherals involved therein.

Part 5. Physical safety and environmental health

22. General environmental health

- (1) Competent authorities, consumers groups or associations and individuals shall ensure the protection, management, conservation and sustainable utilization of the environment and environmental resources through the formulation and implementation of laws, regulations and policies to facilitate the enjoyment by consumers of rights and facilities associated with a clean and healthy environment.
- (2) Parliament, the appropriate competent authorities and consumers groups shall establish or strengthen appropriate institutional frameworks to ensure that the status of the environment in areas such as hazardous waste and toxic waste and garbage management, collection and disposal; sewage treatment; and water management do not compromise consumers rights and interests protected under this Law.
- (3) The competent authorities and such institutions as aforesaid shall act in consultation with Consumers organizations and individuals working on consumers protection

23. Physical safety from hazards

- (1) Competent authorities shall, having regard to new and complex hazards associated with advances in technology and the adverse effect of the same on vulnerable consumers, implement existing legislation or

formulate new regulations which shall set, develop and adopt basic standards:

- (a) by which all technology, goods and services, whether locally produced or imported, are to be examined, tested or measured;
 - (b) to ensure, through adequate and effective monitoring mechanisms, that both domestic and imported technology, goods, and services are fit for local use and consumption;
 - (c) to ensure compliance with international environment, health and related standards regarding restrictions on imported technology, goods or services received whether by way of trade, investment, aid or otherwise.
- (2) Competent authorities charged with the responsibility of enforcing standards shall cooperate with subregional, regional and international bodies to develop, enforce and monitor standards to protect consumers against harmful technology, goods and services whether the same are procured locally or from abroad.
- (3) Persons who violate national standards shall be liable to prosecution and shall suffer severe penalties as provided under this Law or under any other law.
- (4) Compulsory standards and specifications shall be established and enforced where the health and safety of consumers is at risk, or where the environment may be adversely or detrimentally affected. Such standards shall reflect and be consistent with international standards.
- (5) (a) Competent authorities responsible for enforcing standards shall have the power to remove unsafe technology or commodities from shelves or the market and develop and adopt appropriate policies. Such policies shall be formulated to ensure that, where a technology, goods or service is found to be severely or materially defective or deficient and/or to constitute a substantial and severe hazard even when properly used, manufacturers, suppliers, distributors or providers are obliged to recall, replace, modify or substitute the same.
- (b) Where such recall, replacement, modification or substitution cannot be done within a reasonable time, consumers shall be adequately compensated or indemnified by the supplier or from any fund which may be established by the State or a trade association.
- (6) (a) Internationally accepted or acceptable specifications and standards shall be compulsory in respect of technology, goods or services which include basic or essential needs, and in other consumers goods, technology, and services.
- (7) Standards which shall be formulated and implemented under this Part shall include:
- (a) standards in foodstuffs shall comply with the standards issued under the Codex Alimentarius of the Food and Agriculture

Organization of the United Nations and the World Health Organization and shall cover chemical and biological safety and labelling;

- (b) standards for pharmaceuticals and drugs shall require the labelling and sale of the same in a manner which ensures that their generic names are indicated beside their trade or brand names. Such standards shall require indications as to composition, content, ingredients, application, side effects, date of manufacture or packaging, and expiry date;
 - (c) firearms shall be manufactured and tested in order to comply with the standards laid down by the Permanent International Commission for the Proofing of Portable Firearms;
 - (d) standards in residential, business and other buildings or premises shall include standards for ventilation, sewage, electrical wiring and plumbing to ensure the construction of healthy, habitable and safe buildings;
 - (e) standards shall be established to implement the stipulations of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, and the Montreal Protocol on Substances that Deplete the Ozone Layer, as well as other relevant treaties, conventions and agreements;
 - (f) standards shall be formulated in order to protect the safety of consumers against chemicals including dangerous materials, pesticides, disinfectants, unsafe cosmetics and fertilizers.
- (8) (a) Parliament shall establish a competent authority to formulate, monitor or strengthen national policies consistent with goals and targets which would improve the supply, distribution and quality of water for drinking, cooking, washing and other purposes. Besides, such authority or agency shall:
- (i) furnish quality guidelines in respect of water used for food, agriculture, recreation, industry and the protection of the aquatic environment;
 - (ii) furnish information as to the expected effects in the event that less than ideal water quality is provided;
 - (iii) supply information to consumers as to the safety of a water supply; and
 - (iv) supply information as to the corrosivity and/or scaling properties of water and its expected effect on the life and efficiency of domestic appliances.
- (b) Manufacturers, exporters, importers, distributors, wholesalers and retailers shall ensure that technology, goods, or services, while in their care, are not rendered unsafe through improper handling and/or storage. Transgressions shall be severely penalized.

- (c) Manufacturers, providers, distributors or suppliers shall be compelled to instruct consumers in the proper use of technology, goods or services, and to inform them of the risks involved having regard to the intended or reasonable foreseeable use. Vital safety information shall be conveyed to consumers by internationally, nationally or locally accepted or understandable symbols.
- (9) (a) The competent authorities shall ensure that manufacturers or distributors, once they become aware of unforeseen hazards after any technology, good or service is placed on the market, notify the competent authority and inform consumers about the existence of such hazards or risks.
- (b) Notice to consumers shall be at the expense of the provider or supplier and shall be given wide coverage in the media.
- (c) The competent authorities established under this Law or any other law shall take all necessary steps for the full, timely and complete warning of consumers about the existence of such hazards or risks as well as of appropriate remedial measures.
- (10) Parliament or any other competent authority shall allocate funds and resources to ensure the availability of facilities to test and certify the safety, quality and performance of essential consumers technology, goods and services.
- (11) The mere fact that the seller, supplier, provider or distributor has complied with the provisions of any appropriate law shall not exempt him or her from any liability that he or she may have incurred for the damage actually caused by the technology, good or service.

24. Warnings about harmful technology and commodities

- (1) The producer or supplier of consumers goods which are harmful or hazardous to human health or the environment shall incorporate into the same or into the annexed instructions easily noticeable warning so that they may be used under the highest possible safety conditions.
- (2) The same information and clearly visible and prominent warnings shall be provided by the supplier of dangerous technology, goods or services. This shall not prejudice his or her obligation to take the corresponding safety measures or to conduct his or her activities with due diligence and care as may be required pursuant to the applicable law.
- (3) Any producer or supplier of consumers goods who, after the introduction of technology, goods or services into the market realizes the existence of unforeseen health hazards or risks, shall communicate as soon as possible to the competent authority and inform consumers of the existence of such hazards or risks.
- (4) Notices to consumers shall be at the expense of the supplier of the technology, goods or services involved and shall be given through the most appropriate media so as to ensure full and timely information about the risk that such technology, goods or services might cause to the consumers.

- (5) The foregoing provisions shall not exempt the suppliers from their responsibility for the damage actually caused by the technology, goods or services itself.

25. Remedies for harmful technology and commodities

- (1) The competent authority shall take all necessary steps for the full, timely and faithful compliance with the obligations set forth in article 24.
- (2) In the event of verifying that a Consumers technology, goods or services has a material defect or deficiency or constitutes a material hazard or risk, even under proper use, the supplier thereof shall, without prejudice to the liabilities that may have arisen, withdraw the same from the market and substitute or replace the same at his or her own expense.
- (3) Where a supplier or provider fails to proceed according to the foregoing provision he or she shall, within a reasonable term, return to the consumers the consideration paid for the technology, goods or service. The consumers shall surrender the technology, goods or services as well as its packing or other means of proving that the consumers purchased or lawfully availed himself or herself of the same.
- (4) If by any reasonable means the hazard of toxicity of a technology, goods or services is proven to reach levels considered harmful or dangerous to public health, the competent authority shall cause the immediate withdrawal of that technology, goods or services from the market and shall ban the circulation thereof.
- (5) The damage caused by the technology, goods or services shall be at the expense of the producer or supplier, provided that any fund or remedy provided by the State, trade association or consumers associations may also be applied for the consumer's benefit.

26. No permit for harmful technology or commodities

- (1) The patents, trade marks, copyrights, service marks, authorizations, licenses of other documents or permits granted by the State to producers or providers of goods, technology or services for the research, development or marketing of technology, goods or services that may be harmful or hazardous to public health shall, in no event, exempt such producers from liability for the damage actually caused to the consumers and which, according to the provisions of this law or any other law are attributable to the producers, suppliers, importers, or distributors or other participants in the distribution chain of such harmful goods.
- (2) The foregoing provision shall not prejudice the rights vested in any participant in the distribution chain of the harmful or hazardous technology, goods or services to require reimbursement for the indemnities already paid for from the party who actually and legally becomes liable for the harmful effects of such technology, good or service.

Part 6. Consumer education and participation

27. Consumer associations and decision-making

- (1) Consumers shall have the right and freedom to form voluntary, autonomous and independent consumers associations or organizations. They shall participate in formal and informal State and other decision-making structures individually or collectively through representation in governmental and quasi-governmental administrative and policy-making bodies, amongst others.
- (2) In order to realize or participate in the promotion and defence of the rights provided for under this Law, the consumers associations shall:
 - (a) be entirely uninterested in the promotion of partisan trade or partisan political concerns;
 - (b) be a not-for-profit association;
 - (c) not accept commercial advertisements in their publications; and
 - (d) not permit commercial exploitation of the information and advice given to consumers.
- (3) It shall be the purpose of consumers associations, among others:
 - (a) to promote and protect consumers rights and interests;
 - (b) to represent the individual or collective interests of consumers before judicial or administrative authorities by pursuing appropriate actions, remedies, formalities or things;
 - (c) to represent the interests of consumers before the State or public and private sector providers or suppliers;
 - (d) to collect, process and disseminate objective information on the goods and services which exist in the market;
 - (e) to conduct consumers training and education programmes;
 - (f) to do anything crucial for or incidental to the promotion and protection of consumers rights and interests.
- (4) "Consumers Association", in the context of this article, means any organization constituted by consumers whether acting as individuals or groups and whether such groups are incorporated or not regardless of any economic, trade or political interest, whose purpose is to guarantee or facilitate the protection and defence of consumers and promote consumers information, education, representation and the respect for consumers rights.

28. National Consumers Council

- (1) There shall be established a National Consumers Council.

- (2) Parliament or the competent authority shall ensure sufficient funding by the State of the National Consumers Council. Paragraph 3 hereof shall be a guide on appropriate funding or financial mechanisms.
- (3) The National Consumers Council shall, among others:
- (a) coordinate consumers activities and nominate consumers representatives to represent consumers in the decision-making processes affecting consumers;
 - (b) carry out, promote or participate in consumers education programmes and activities;
 - (c) disseminate consumers information;
 - (d) conduct or commission research on consumer issues with a view to proposing measures to address the issues;
 - (e) provide advice to consumers on their rights and responsibilities under the appropriate laws;
 - (f) create or facilitate the establishment of conflict resolution mechanisms on consumers issues;
 - (g) formulate and submit to the Minister policy and legislative proposals in the interest of consumers;
 - (h) consider and examine and, where necessary, advise the Minister on the codification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to, this Law;
 - (i) investigate any complaint received regarding consumers protection and, where appropriate, refer the complaint to the appropriate competent authority and ensure that action is taken or petition so that action may be taken by the competent authority to whom the complaint has been referred;
 - (j) make available to consumers general information affecting the interests of consumers;
 - (k) encourage the development of organizations and associations established for the purpose of furthering the interests of consumers and to liaise and consult with them on the development of appropriate consumer policies;
 - (l) liaise with consumer organizations, competent authorities on consumer affairs and consumer protection groups locally and abroad to exchange information on consumer issues with such bodies;
 - (m) do anything or all things that are necessary, expedient or convenient for or in connection with the performance of its functions.
- (3) The National Consumers Council shall be an autonomous body funded from the Consumers Fines Fund established under article 5 and any other

appropriate funding or financial mechanism. It shall have an independent governing body nominated by voluntary consumers associations, not more than one in ten of whom shall be a representative of the Government. It shall have the power to appoint, reward, discipline and dismiss its staff, employees, servants, officers or other personnel.

- (4) The National Consumers Council shall report annually to Parliament. Provided that the nature and content of such report shall be determined by the first board of governors in consultation with the Minister.
- (5) The National Consumers Council shall operate through branches at the local, divisional, district, prefectural and provincial levels. Such branches shall, mutatis mutandis, exercise the same functions and powers as the National Consumers Council.
- (6) Parliament shall enact legislation to ensure that consumers are represented in local, national, regional and international governmental and quasi-governmental bodies. The consumers representatives shall act in consultation with and be responsible, answerable and accountable to voluntary consumers associations.
- (7) All consumers organizations shall endeavour to implement and enforce the provisions of this Law for the benefit of, among others, disadvantaged or vulnerable persons or groups such as women, the aged, children, the disabled, the poor, and residents or dwellers of slums or remote, arid or rural areas.

29. Participatory consumer education and information

- (1) The central and local government as well as private and voluntary educational institutions shall incorporate consumers education as an integral part of the basic curriculum of the formal and informal educational system.
- (2) The foregoing competent authorities, agencies and institutions shall promote and support the dissemination of consumers education and information in conjunction with local consumers associations and appropriate non-governmental organizations. This shall include:
 - (a) supporting activities for training and informing consumers both at formal and informal levels;
 - (b) allowing or enabling consumers groups to disseminate or broadcast information on consumers issues;
 - (c) supporting the mass media in publishing, broadcasting and disseminating consumers information and providing the same with the necessary skills, funds, equipment and facilities;
 - (d) facilitating the development and dissemination of special programmes for the benefit of the illiterate, physically and mentally disabled and disadvantaged groups.
- (3) Consumers education and information programmes shall deal with the matters covered under this Law, including but not limited to:

- (a) health;
- (b) nutrition and the prevention of water-borne and food-borne diseases and food adulteration;
- (c) product safety and hazards;
- (d) product labelling;
- (e) information on weights and measures, prices and quality; availability of basic necessities; and environmental pollution;
- (f) relevant consumers legislation and law on how to obtain redress, and agencies and associations dealing with consumers protection.

Part 7. Measures for consumer redress

30. Representative or class action

- (1) The defence of consumers rights under this Law shall be exercised or conducted through individual or collective litigation.
- (2) Litigation shall be conducted collectively when diffuse or collective interests or rights are involved:
 - (a) for the purposes of this Law, "diffuse interests" mean supra-individual rights or interests having an indivisible nature to which undetermined individuals are entitled. Such individuals shall be linked by factual circumstances the separation or severance of which would occasion injustice;
 - (b) for the purposes of this Law, "collective interests" mean those supra-individual interests having an indivisible nature vested in a group, category or class of individuals linked among themselves or linked with the opposing party on the basis of juridical relationships.
- (3) Consumers associations created pursuant to the provisions of this Law shall be lawfully entitled to act in judicial or administrative tribunals in the collective defence of the rights that this Law vests in consumers. They may represent consumers in administrative or judicial tribunals.
- (4) Competent authorities and State organizations and agencies whether centralized or decentralized created pursuant to this Law or any other law and entitled thereunder to act in the defence of collective consumer rights shall not be prejudiced by the provisions of paragraph (3).
- (5) The decisions rendered in collective procedures shall have a general effect and enure to all consumers except where any such decision is dismissed for want of proof in which event any other consumers having an interest in the matter may bring a new consumers dispute or action on the basis of facts and claims arising from the same transaction.

- (6) In all representative, class, group, individual or collective proceedings brought pursuant to the application of this Law the burden of proof shall be reversed in favour of the party who litigates on behalf of the rights herein contained.
- (7) Parliament shall enact new laws or amend existing laws to provide for the right of consumers to seek redress through collective, class, group or representative actions.

31. Processes under this Law and other laws

- (1) For the avoidance of doubt, this Law shall be regarded as complementary to the process of ensuring and enhancing consumers protection through existing commercial, civil and criminal laws regulating or touching on consumer protection.
- (2) Competent authorities and law enforcement agencies shall facilitate the implementation of the existing common law, statutory law and other laws regulating or touching on consumers protection.

32. Small claims court

- (1) Small Claims Courts are hereby established. They shall have the jurisdiction and characteristics which shall include those named herein. They shall:
 - (a) be available and accessible to all consumers in order to provide simple, speedy, inexpensive and understandable justice;
 - (b) be complementary to the regular court system;
 - (c) have the power to order the alteration, modification, reform, rescission or reformulation of consumers contracts and transactions;
 - (d) operate under monetary ceiling which shall be stipulated under this Law and which shall in any event be high enough so that most cases which cannot be economically brought to the regular or ordinary courts may be taken to the Small Claims Courts; and
 - (e) have evening and Saturday sessions to facilitate access as well as to ensure expeditious determination of matters.
- (2)
 - (a) There shall be such consumers claims courts or Small Claims Courts at the divisional, local, district, prefectural, provincial or national level as may be prescribed under an Act of Parliament. Such courts shall be as widely distributed as possible.
 - (b) The geographical, monetary and other jurisdiction of the courts, including any review or appeal proceedings shall be stipulated by or under an Act of Parliament.
 - (c) The conferment of jurisdiction shall be guided by the need to expedite the redress of small consumers claims in the most efficient, most convenient and in the least expensive manner.

- (3) (a) Simple forms of pleadings shall be provided and the complaint shall be the only or main pleading required. Service shall be provided by the clerk of the Small Claims Courts through certified, personally delivered, or registered mail.
- (b) The Small Claims Courts shall not be required to adhere to the strict rules of evidence or procedure in small claims cases, except that it shall adhere to rules relating to privileged information. Small Claims Courts shall be governed by principles which ensure expeditious, efficient and affordable justice and shall not pay undue regard to technicalities of evidence or procedure.
- (c) The Small Claims Courts shall award a default judgment only after inquiring into the effectiveness of service and the underlying facts and circumstances.
- (d) Small Claims Courts shall deliver their decisions in an expeditious manner and within a reasonable period.
- (e) There shall be no legal representation in Small Claims Courts save where lawyers appear as parties or where it would constitute a serious affront to constitutional liberties and rights to exclude such representation.
- (4) (a) Presiding Officers of Small Claims Courts shall be appointed from persons who have appropriate qualifications or experience in consumers affairs and in expeditious delivery of redress.
- (b) Small Claims Courts may be presided over by magistrates or other sufficiently qualified persons. Court personnel and especially the clerks shall assist parties in drafting complaints and preparing and presenting cases.
- (5) (a) Court fees or other fees payable to institute or prosecute complaints for small claims shall be waived, kept low or otherwise affordable to small claimants.
- (b) Effective and inexpensive assistance in execution shall be available from clerks and other court officials to every party who obtains a judgment in the Small Claims Courts.
- (6) (a) Small Claims Courts shall keep accurate and thorough records of all cases which come before them. The Presiding Officer shall keep or cause such records to be kept.
- (b) The presence, functions and operations of Small Claims Courts shall be widely and systematically published in the Gazette as well as in other appropriate media.
- (7) The exercise of jurisdiction by the Arbitration Committees, the Small Claims Court or the Tribunal shall not oust the jurisdiction of the regular, normal or ordinary commercial and criminal courts which may try all the cases constituting an infringement of the commercial or penal law.

Provided that in matters instituted in the Small Claims Courts no ordinary court shall order payment of damages or interest unless this has been ordered by the Small Claims Courts established hereunder.

- (8) The decisions of the Small Claims Court shall be final and shall not be the subject of appeal. Provided that a right of review shall lie on any of the following grounds:

- (i) absence of jurisdiction by the Small Claims Court; or
- (ii) interest in the cause, bias, malice or corruption on the part of the Presiding Officer; or
- (iii) gross irregularity with regard to the proceedings.

- (9) Parliament shall allocate funds for the establishment and maintenance of effective Small Claims Courts.

33. Arbitration committees

- (1) There shall be established by agreement of the parties Arbitration Committees in enterprises exercising social welfare missions; in markets and super-market. These shall be located in every village, township or locality as appropriate.
- (2)
 - (a) Arbitration Committees shall be presided over by persons who have knowledge and experience in consumers matters and/or are well known for moral uprightness, integrity and competence.
 - (b) The Arbitration Committees shall also comprise persons nominated by consumers, industry, business or professional associations.
 - (c) The Arbitration Committee shall enquire into the circumstances surrounding Consumers disputes.
- (3) The Arbitrators shall sit on the Committees on a voluntary basis. Legislation which may be enacted to establish an environment for the operation of Arbitration Committees and consumer and trade associations shall encourage the resolution of disputes by negotiation, mediation and arbitration.

34. Restrictive Trade Practices Tribunal

- (1) A Restrictive Trade Practices Tribunal is hereby established.
- (2) The functions of the Tribunal shall include but shall not be limited to the jurisdiction:
 - (a) to liaise with ministries, departments, and other agencies of Government, providers and suppliers, and consumers and trade associations on matters relating to consumers protection policy and legislation;
 - (b) to receive and consider complaints from consumers on matters relating to the supply and provision of technology, goods and services;

- (c) to liaise with business, commercial, industrial, trade and professional bodies and associations in order to establish codes of practice and to regulate the activities of their members in their dealings with consumers with a view to bolstering consumers welfare;
- (d) to provide information and generally facilitate the representation of consumers in court proceedings and in administrative tribunals where consumers interests are likely to be affected;
- (e) to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Law or any other law.

Part 8. Remedies and sanctions

35. Remedies and sanctions

- (1) The judicial authorities and competent authorities established herein shall have and exercise the penal and remedial powers provided under this Law.
- (2) Sanctions, penalties, or remedies which shall enure to consumers shall include the cancellation, rescission or revision of a contract or some of its clauses; the obligation to pay damages and interest; as well as the obligation to pay fines.
- (3) The Arbitration Committees, Small Claims Courts and the Tribunal may, pursuant to the relevant law, order the destruction or prohibition of offensive technology, goods or services or decide upon the prohibition of the sale or supply of technology, goods or services or decree the withdrawal of the same from the market within a period which shall not exceed one week.
- (4) Any person who contravenes any provision of this Law for which no penalty is provided shall be guilty of an offence and liable to a fine of not exceeding one thousand US dollars or a term of imprisonment for six months or to both such fine and imprisonment.
- (5) For the avoidance of doubt, the Arbitration Committee, the Small Claims Courts or the Tribunal may, at the Consumers' request, order the replacement of the technology, goods or services, refund of the contract price, or the consideration paid in excess of the contract price.
- (6) The appropriate competent authority shall fix the period within which the replacement or the refund aforesaid shall be made, which period shall not exceed one month.
- (7) The exercise of criminal or quasi-criminal powers by the Arbitration Committees, the Small Claims Courts or the Tribunal shall not oust the jurisdiction of the normal or ordinary commercial and criminal courts which may try all the cases constituting the contravention or infringement of the penal law.

Provided that in cases instituted in Small Claims Courts no ordinary court shall order payment of damages or interest unless this has been ordered by the Small Claims Courts established hereunder.

Part 9. Rule-making powers

36. Rules and regulations

- (1) Parliament, the President, the Minister, or any other competent authority shall, subject to the requisite consultation or procedure, make, amend, or modify rules or regulations providing for all or any of the purposes, whether general or to meet particular cases, that may be necessary or convenient for the administration of this Law or that may be necessary or expedient for carrying out the objects or purposes of this Law.
- (2) Without prejudice to the generality of paragraph (1) such rules or regulations shall be made to provide for the establishment, operation or regulation of matters including but not limited to the following:
 - (a) unfair contract terms;
 - (b) restrictive trade practices;
 - (c) local and national consumers organizations including a National Consumers Council;
 - (d) small claims courts;
 - (e) negotiation, mediation and arbitral and administrative procedures including Arbitration Committees and the office of an Ombudsman;
 - (f) health and medical services including environmental and physical safety;
 - (g) housing, human settlements and shelter;
 - (h) financial and banking services;
 - (i) education and training services;
 - (j) distribution facilities to facilitate Consumers access to basic needs including but not limited to food, drugs, energy, pesticides, chemicals and water;
 - (k) consumers information and advertising; and
 - (l) transport and communications.

D. Annexes to the Model Law

Annex 1. Unfair contract terms rules

(under articles 6 and 36)

Arrangement of sections

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Rules to provide relief to parties to consumers contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair; and to provide for matters connected therewith or incidental thereto.

Enacted by or under the authority of the Parliament of Africa.

1. Short title

These Rules may be cited as the Consumers Contracts Rules, 1996.

2. Interpretation

In these Rules:

"Africa" means the country in which the Law or these Rules are to be implemented entirely or partially;

"Consumers Contract" means a contract for the sale or supply or provision of technology, goods or services, in which the seller or supplier or provider is dealing in the course of business and the purchaser or user is not, but does not include:

(a) a contract for the sale, letting or hire of immovable property; or

(b) a contract of employment;

"Court" includes the ordinary civil, commercial or penal laws established under an Act of Parliament or Small Claims Courts established under the Law and the Ordinary Civil, commercial or penal laws established under an Act of Parliament;

"Gazette" has the same meaning ascribed thereto in the Law;

"The Law" means the Model Law for Consumers Protection in Africa;

"Minister" means the Minister responsible for consumers affairs or any other Minister to whom Parliament or the President may, from time to time, assign the administration of these Rules;

"Scheduled Provision" means a contractual provision specified in the Schedule to these Rules.

3. Application of rules

Subject to paragraph (b) of subsection (3) of section 4, these Rules shall apply in relation to Consumers contracts whether concluded before, on or after the date of commencement of these Rules:

Provided that these Rules shall not apply in relation to a Consumers contract concluded before the date of commencement of these Rules where performance under the contract has been completed in accordance with the contract by all the parties thereto.

4. Relief against unfair consumer contracts

(1) Subject to subsection (3), if a court is satisfied:

- (a) in accordance with section 5, that any Consumers contract is unfair; or
- (b) in accordance with section 6, that any actual or reasonably anticipated exercise or non-exercise of a power, right or discretion under a Consumers contract is or would be unfair; or
- (c) that any Consumers contract contains a scheduled provision;

The court may make an order granting any one or more of the following forms of relief:

- (i) cancelling the whole or any part of the Consumers contract; or
- (ii) varying the Consumers contract; or
- (iii) enforcing part only of the Consumers contract; or
- (iv) declaring the Consumers contract to be enforceable for a particular purpose only; or
- (v) ordering restitution or awarding compensation to a party or reducing any amount payable under the Consumers contract; or
- (vi) annulling the exercise of any power, right or discretion under the Consumers contract or directing that any such power should be exercised in a particular way; and any such order may be made subject to such conditions as the court may fix.

(2) A court may grant relief under this section:

- (a) either on an application made to it for such relief, or in the course of proceedings where any other relief is sought; and
- (b) subject to subsection (3), either on its own initiative or at the instance of a party to the proceedings concerned.

(3) A court shall not grant relief under this section:

- (a) on its own initiative, if the party in whose favour the relief might be granted has waived his or her rights under these Rules at any stage in the proceedings;
- (b) solely on the ground that a Consumers contract contains a scheduled provision:
 - (i) if the contract was concluded before the provision concerned became a scheduled provision; or
 - (ii) if the court, having regard to the factors set out in section 5, is satisfied that in all the circumstances the Consumers contract is fair despite containing the scheduled provision; or

- (c) if the claim for relief has become prescribed and the party against whom the relief might be granted invokes prescription.

5. When consumer contract is unfair

- (1) A court may find a Consumers contract to be unfair for the purposes of these Rules:
 - (a) if the Consumers contract as a whole results in an unreasonably unequal exchange of values or benefits; or
 - (b) if the Consumers contract is unreasonably oppressive in all the circumstances; or
 - (c) if the Consumers contract imposes obligations or liabilities on a party which are not reasonably necessary to protect the interests of any other party; or
 - (d) if the Consumers contract includes or limits the obligations or liabilities of a party to an extent that is not reasonably necessary to protect his or her interests; or
 - (e) if the Consumers contract is contrary to commonly accepted standards of fair dealing; or
 - (f) in the case of a written Consumers contract, if the contract is expressed in language not readily understood by a party.
- (2) A court shall not find a Consumers contract to be unfair for the purposes of these Rules solely because:
 - (a) it imposes onerous obligations on a party; or
 - (b) it does not result in substantial or real benefit to a party; or
 - (c) a party may have been able to conclude a similar contract with another person on more favourable terms or conditions.
- (3) In determining whether or not a Consumers contract is unfair for the purposes of these Rules, a court shall have regard to the interests of both parties and, in particular, shall take into account, where appropriate, any prices, charges, costs or other expenses that might reasonably be expected to have been incurred if the contract had been concluded on terms and conditions other than those on which it was concluded.

6. Unfair exercise or non-exercise of power

- (1) A court may find the actual or anticipated exercise or non-exercise of a power, right or discretion under a Consumers contract to be unfair for the purposes of these Rules if:
 - (a) in all circumstances the result of such exercise or non-exercise is or would be unreasonably oppressive to the party affected by it; or
 - (b) such exercise or non-exercise is not or would not be reasonably necessary to protect the interests of any party; or

- (c) such exercise or non-exercise is or would be contrary to commonly accepted standards of fair dealing.
- (2) A court shall not find the actual or anticipated exercise or non-exercise of a power, right or discretion under a Consumers contract to be unfair for the purposes of these Rules solely because a party affected thereby suffers or may suffer a penalty or forfeiture or a loss or diminution of any right or benefit under the contract.
- (3) In determining whether or not the actual or anticipated exercise or non-exercise of a power, right or discretion under a Consumers contract is unfair for the purposes of these Rules, a court shall have regard to the interests of both parties and, in particular, shall take into account, where appropriate, any precautions that might reasonably be expected to have been taken to protect the interests of the parties if the contract had been concluded on terms and conditions other than those on which it was concluded.

7. Amendment of schedule

- (1) Subject to subsection (2), the Minister may, by statutory instrument, after consultation with:
- (a) the National Consumers Council; and
 - (b) the Confederation or Chamber of Industries; and
 - (c) the National Chamber of Commerce; and
 - (d) such other associations or organizations representing Consumers, manufacturers, dealers or suppliers of technology, goods or services as the Minister considers appropriate; amend the Schedule by deleting or amending any provision contained therein or adding any provision thereto.
- (2) Before amending the Schedule in terms of subsection (1), the Minister shall give not less than thirty days' notice in the Gazette of his or her intention to do so inviting interested persons to make representations to him or her in writing concerning the proposal, and shall give due consideration to any representations so made.

8. No waiver of protection of rules

Subject to paragraph (a) of subsection (3) of section 4, no agreement to waive any right, freedom or interest conferred by these Rules shall be of any effect.

9. Derogation from other laws

Nothing in these Rules shall derogate from rights, freedoms or interests which any person may have to relief under the Law or any other law in respect of any contract.

SCHEDULE (under sections 2 and 7)

Schedule provisions

The following shall be Scheduled Provisions for the purposes of these Rules:

1. Any provision whereby the seller or supplier or provider of technology, goods or services other than used goods or services, excludes or limits his liability for latent defects in the goods or latent deficiency in the technology or services.
2. Any provision whereby the seller or supplier or provider of technology, goods or services excludes or limits the liability which he or she would otherwise incur under any law for loss or damage caused by his or her negligence.
3. Any provision whereby the seller or supplier or provider of technology, goods or services excludes or limits his or her liability unless a claim is brought against him or her within a period which is shorter than would otherwise be permitted under any law regulating such claims.
4. Any provision whereby the seller or supplier of technology, goods or services excludes or limits his or her liability in the event that the technology, goods or services do not conform to any description or sample or demonstration given in respect of the technology, goods or services.
5. Any provision which denies or limits the right of the Consumers or purchaser of any technology, goods or services to require the seller, supplier or provider:
 - (a) to reimburse the purchaser for the whole of the price or amount paid in respect of the technology, goods or services; or
 - (b) to replace or substitute the technology, goods or services; or
 - (c) to repair or modify or adjust the technology, goods or services at the expense of the seller, supplier or provider; or
 - (d) to reduce the price or amount payable in respect of the technology, goods or services;in the event that the technology, goods and services are not supplied or provided in conformity with the Consumers contract or are not fit for the purpose for which they are sold or supplied.
6. Any provision imposing a burden of proof of any matter on the purchaser or user of any technology, goods or services, where the burden would otherwise lie on another party to the contract.

Annex 2. Small claims courts rules

(under articles 32 and 36)

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Rules to establish small claims courts for the adjudication of small civil claims; to make provision for the jurisdiction, powers and procedure of small claims courts and for the making of rules in connection therewith; and to provide for matters incidental to or connected with the foregoing.

Enacted by or under the authority of the Parliament of Africa.

Part I. Preliminary

1. Short title

These Rules may be cited as the Small Claims Courts Rules, 1996.

2. Interpretation

In these Rules:

"Africa" means the country in which the Law or these Rules are to be implemented entirely or partially;

"competent Authority" has, mutatis mutandis the meaning ascribed thereto in the Law;

"division" means a district, province, prefecture or any other sub-division of the State for which a Small Claims Court or any other court has been created;

"the Law" means the Model Law for Consumers Protection in Africa;

"Minister" means the Minister responsible for justice or legal affairs; the Attorney General or any other Minister or competent authority to whom Parliament or the Head of State or Government may, from time to time, assign the administration of these Rules;

"Presiding Officer" means a presiding officer referred to in subsection (1) of section 7;

"Public Service Commission" includes the Judicial Service Commission or any other competent authority to whom the role of the Public Service Commission herein may be assigned;

"rules of court" means rules of court made in terms of section 31;

"Small Claims Court" means a small claims court established or designated under Articles 32 and 36 of the Law and section 3 and hereof.

Part II. Establishment and nature of small claims courts

3. Establishment of small claims courts

(1) The Minister may, by statutory instrument:

- (a) establish a Small Claims Court for any district, province, prefecture or other division; or

(b) designate a magistrates court for any district, province or prefecture or other division to be a Small Claims Court for that division.

- (2) Where the Minister has established or designated a Small Claims Courts in terms of subsection (1), he shall, by statutory instrument published in the Gazette specify places within the division concerned where the Small Claims Court may sit.

4. Nature and jurisdiction of small claims courts

- (1) Subject to subsection (2), a Small Claims Court shall not be a court of record.
- (2) Every Presiding Officer shall:
- (a) record or cause to be recorded, and shall sign, every judgment or order of court made or given by him or her; and
 - (b) keep such other records relating to the proceedings of his or her court as may be required under the rules of court.
- (3) The process of every Small Claims Court shall have force throughout the country unless specified under an Act of Parliament.

5. Small claims courts open to public

Subject to the provisions of any law in force, the proceedings of every Small Claims Court shall be open to the public.

6. Appearance and joinder of actions

- (1) Only a natural person may institute proceedings in a Small Claims Court and a corporate body or association of persons may be a party to proceedings therein only as defendant or respondent:

provided that a corporate body or association of persons that is a defendant or respondent in any proceedings in a Small Claims Court may bring a counterclaim against the person who instituted the proceedings.

- (2) A party to any proceedings in a Small Claims Court shall appear in person and shall not be represented or assisted by any other person:

Provided that:

- (i) a minor or any other person under a legal disability may be represented by his guardian or legal representative;
 - (ii) a corporate body or association of persons may be represented by a director, member or employee.
- (3) Any number of persons each of whom has a separate claim against the same defendant may join as plaintiffs in one action if the right of each to relief depends upon the determination of some question of law or fact which, if separate actions were instituted, would arise in each action:

Provided that if such a joint action is instituted the defendant may apply to the court that separate trials be held, and the court may in its discretion make such order as it may deem just, equitable and expedient.

- (4) In a joint action judgment may be granted for one or more of the plaintiffs.
- (5) Two or more defendants may be sued in the alternative or both in the alternative and jointly in one action if the plaintiff alleges that he or she is uncertain which of the defendants is in law liable for his or her claim:

Provided that on application by one or more of the defendants the court may in its discretion order that separate trials be held, or make such other order as it may deem just, equitable or expedient.

Part III. Officers of small claims courts

7. Presiding officers

- (1) A Small Claims Court shall be presided over by a Presiding Officer, who shall be:
 - (a) a person appointed, subject to this section, by the Minister, in the case of a Small Claims Court established in terms of paragraph (a) of subsection (1) of section 3; or
 - (b) a magistrate for the division concerned or a person appointed, subject to this section, by the Minister, in the case of a magistrates court which has been designated as a Small Claims Court in terms of paragraph (b) of subsection (1) of section 3.
- (2) No person shall be qualified to be appointed as a Presiding Officer unless he or she is qualified:
 - (a) to be appointed a magistrate in Africa; or
 - (b) to be admitted to practice as a legal practitioner in Africa; and has, for a period of not less than three years prior to his or her appointment, occupied the post of magistrate or practised as a legal practitioner in Africa.
- (3) A Presiding Officer who is not a magistrate shall hold office for such period, not exceeding three years, and on such terms and conditions as the Minister may fix and shall be eligible for reappointment.
- (4) A Presiding Officer who is not a magistrate shall be entitled to such remuneration and such allowances as the Minister, upon approval of Parliament or after consultation with the Minister responsible for finance, may fix.
- (5) A Presiding Officer who is not a magistrate may, by notice in writing to the Minister, resign his office at any time.

- (6) The Minister may withdraw the appointment of a Presiding Officer, other than a magistrate, at any time.

8. Other officers

- (1) Subject to subsection (2), the Public Service Commission may, at the request of the Minister, appoint any member of the Public Service to be:
- (a) a clerk of a Small Claims Court; or
 - (b) a legal assistant in a Small Claims Court.
- (2) The clerk of a magistrates court that has been designated as a Small Claims Court shall be the clerk of the small claims court.
- (3) The messenger of the magistrates court appointed for the division for which a Small Claims Court has been established shall act as a messenger for that court.
- (4) Officers of Small Claims Courts referred to in this section shall perform such functions as may be assigned to them under these Rules or in the rules of court.

Part IV. Jurisdiction of small claims courts

9. Area of jurisdiction and transfer of actions

- (1) The area of jurisdiction of a Small Claims Court shall be the division for which it is established.
- (2) An action may, with the consent of all the parties or upon the application of one of the parties who satisfies the court that the hearing of the action in that court may result in undue expense or inconvenience to him, be transferred by the court to any other court, and in such a case the latter court shall, notwithstanding anything to the contrary in these Rules contained, have jurisdiction to hear that action.

10. Jurisdiction in respect of persons and causes of action

- (1) Subject to these Rules, a Small Claims Court shall have jurisdiction in respect of:
- (a) any person who resides or carries on business or is employed within the division;
 - (b) any person in respect of any cause of action that arose wholly within the division;
 - (c) any person, whether or not he or she resides, carries on business or is employed within the division, if he or she appears before the court and does not object to its jurisdiction;
 - (d) any person in respect of any proceedings incidental to any action instituted in the court by that person.

- (2) A Small Claims Court shall not have jurisdiction in respect of any proceedings to which the State or the Head of State or Government or his or her Deputy or Vice of any Minister, Assistant or Deputy Minister, officer or employee of the State is a party in his or her official capacity.

11. Limits of jurisdiction regarding causes of action

- (1) Subject to these Rules, a Small Claims Court shall have jurisdiction in respect of:
- (a) proceedings for the delivery of movable property not exceeding the equivalent of two thousand US dollars in value;
 - (b) proceedings for arrears of rental not exceeding the equivalent of two hundred and fifty US dollars in respect of any premises within the division for which the court is established;
 - (c) proceeding for ejectment against the occupier of any premises situated within the division for which the court has established, where the right of occupation does not exceed the equivalent of two hundred and fifty US dollars a month;
 - (d) proceedings based on a cheque or a signed acknowledgment of debt, where the claim does not exceed the equivalent of one thousand US dollars;
 - (e) proceedings not mentioned in paragraphs (a), (b), (c) or (d), where the claim or the value of the matter in dispute does not exceed the equivalent of one thousand US dollars;
 - (f) counterclaims not exceeding the equivalent of 1,000 United States dollars in respect of any proceedings mentioned in paragraphs (a), (b), (c), (d) or (e).
- (2) In determining whether a claim falls within the jurisdiction of a Small Claims Court, no claim for interest or for costs shall be taken into account.
- (3) The Minister may, by notice in the Gazette and after consultation with the Chief Justice, amend paragraphs (a) to (f) of subsection (1) by the alteration of any amount specified therein:

Provided that no such amendment shall apply to proceedings instituted before the date of commencement of the amendment.

12. Lack of jurisdiction

A Small Claims Court shall not have jurisdiction in respect of:

- (a) any case where the claim is made under customary law;
- (b) claims for divorce, custody or maintenance, other than arrears maintenance;
- (c) cases involving the validity or interpretation of a will; or

- (d) cases in which damages are sought for:
 - (i) defamation; or
 - (ii) malicious prosecution or wrongful imprisonment or arrest; or
 - (iii) adultery, seduction or breach of promise to marry; or
- (e) any case in which an interdict is sought.

13. Abandonment of claim

- (1) In order to bring a claim or counterclaim within the jurisdiction of a Small Claims Court a party may expressly, in his or her summons or counterclaim, abandon a part of the claim or counterclaim.
- (2) Where a part of a claim or counterclaim is abandoned for the purposes of subsection (1), it shall be finally extinguished:

Provided that, if judgment is given for only part of the claim the abandonment shall be deemed first to take effect on that part of the claim which is not upheld.

14. Deduction of admitted debt

In order to bring a claim or counterclaim within the jurisdiction of a Small Claims Court, a party may expressly, in his or her summons or counterclaim, deduct any amount, whether liquidated or unliquidated, which he or she admits he or she owes to the other party.

15. Split claims and cumulative jurisdiction

- (1) A claim exceeding the jurisdiction of a Small Claims Court shall not be split with the object of recovering it in more than one action in a Small Claims Court, if the parties to those actions and the point at issue in those actions would be substantially the same.
- (2) If two or more claims, each based upon a different cause of action, are combined in one summons, a court shall have the same jurisdiction to adjudicate upon each claim as it would have had if each claim had formed the sole object of a separate action.

16. No jurisdiction by consent

A Small Claims Court shall not have jurisdiction to hear an action which is beyond its jurisdiction merely by virtue of the consent of the parties.

17. Stoppage of proceedings

- (1) If a Presiding Officer is of the opinion that a case before him or her contains difficult or complex questions of law or fact that cannot fairly, equitably or properly be determined by him or her, he or she may at any stage stop the proceedings.
- (2) Where proceedings have been stopped in terms of subsection (1) any party concerned may begin fresh proceedings in another competent court.

18. No exclusion of jurisdiction by agreement

Any provision in any agreement to the effect that a Small Claims Court shall not have jurisdiction in the event of a dispute shall be of no force or effect:

Provided that a provision to the effect that any dispute shall be resolved by negotiation, mediation or arbitration shall be valid if it provides for negotiation, mediation or arbitration as conditions precedent to resort to Small Claims Court or if it provides for the concurrent or simultaneous pursuit of negotiation, mediation and arbitration, on the one hand, and litigation, on the other.

Part V. Procedure and evidence in small claims courts

19. Procedure and amendment of pleadings

- (1) A Small Claims Court shall not be bound by the strict rules of evidence or procedure, and the court may ascertain any relevant fact by any means which the Presiding Officer thinks fit and which is not unfair, inequitable or unjust to either party.
- (2) Evidence may be adduced orally or in writing or both orally and in writing in any proceedings in a Small Claims Court, at the discretion of the presiding officer.
- (3) The parties to any proceedings in a Small Claims Court shall be entitled to question or cross-examine each other or any witness, but the Presiding Officer may terminate any such questioning or cross-examination if he or she considers it to be unfair, inequitable, oppressive, unduly prolonged or unnecessary.
- (4) It shall be the responsibility of the Presiding Officer to ascertain the facts in any proceedings in a Small Claims Court, and for that purpose he or she may:
 - (a) call any party or person to give evidence; and
 - (b) question or cross-examine any party or witness; and
 - (c) put any question to a party or witness which is suggested to him or her by any party.
- (5) A court may at any time before judgment amend any summons or pleading or other document in connection with a case:

Provided that no amendment shall be made if any party other than the party applying for the amendment may be prejudiced thereby in his or her case.

- (6) The amendment may be made upon such conditions as the court may deem reasonable.
- (7) In documents before the court the name of any person or place as commonly known may be employed, and the court may, on application, at any time before or after judgment substitute the correct name for that name.

20. Evidence

A party in an action before a Small Claims Court may call one or more witnesses to prove his or her claim, defence or counterclaim, as the case may be, but the Presiding Officer shall have a discretion to order that no further evidence may be adduced on any matter which he or she considers has been sufficiently established.

21. Sworn evidence

- (1) Evidence before a Small Claims Court shall be given on oath but the Presiding Officer may permit a witness to give a solemn affirmation to speak the truth where the witness declines, for good reason, to take the oath.
- (2) Where necessary, evidence may be given through an interpreter who shall be duly sworn in accordance with the rules of court.

22. Institution of actions

- (1) In order to commence an action in a Small Claims Court the plaintiff shall first deliver, personally, by agent or by registered post, a letter of demand to the defendant setting out his or her claim and requiring the defendant to satisfy it within fourteen days, failing which action will be commenced in the court to enforce the claim.
- (2) If the defendant fails to satisfy the plaintiff's claim within fourteen days of the delivery of the letter of demand the plaintiff may request the clerk of the Small Claims Court to issue out a summons to the defendant.
- (3) If the clerk of the Small Claims Court is satisfied that the plaintiff has duly delivered a letter of demand in terms of subsection (1) and that the plaintiff's claim has not been satisfied within fourteen days of its delivery, the clerk may issue out a summons in the prescribed form to the plaintiff.
- (4) The summons shall specify the claim and the date on which, and place at which, the defendant is required to attend the small claims court for the determination of the claim.
- (5) The summons may be served by the plaintiff on the defendant personally or the plaintiff may, on tendering the prescribed fee, request the messenger of the court to serve it.
- (6) After receiving a summons and before the date for the determination of the claim the defendant:
 - (a) may, if he or she wishes, lodge with the clerk of the Small Claims Court two copies of a written statement setting out any defence he or she has to the claim; and
 - (b) shall, if he or she has any counterclaim, lodge with the clerk of the court two copies of a notice setting out his or her counterclaim.

- (7) The clerk of the court shall deliver to the plaintiff a copy of the statement of defence or notice of counterclaim as soon as possible after it has been lodged with him or her by the defendant.
- (8) The legal assistant attached to the Small Claims Court shall on request assist the plaintiff and the defendant in the preparation of letters of demand, summonses, statements of defence and notices of counterclaim.

23. Satisfaction of claims

- (1) The defendant may, at any time before the date fixed for the hearing of an action in a Small Claims Court, satisfy or offer to satisfy the plaintiff's claim in whole or in part.
- (2) If the defendant satisfies the plaintiff's claim or if the plaintiff accepts his or her offer to do so, the plaintiff shall withdraw his or her action in the Small Claims Court by notifying the clerk of the court.
- (3) The plaintiff may, whether or not the defendant has satisfied his or her claim, withdraw his or her action at any time.

Part VI. Judgment and costs

24. Judgment

A Small Claims Court may, after determining an action:

- (a) give judgment for the plaintiff for the whole or so much of his or her claim as has been proved;
- (b) give judgment for the defendant in respect of his or her defence or for the whole or so much of his or her counterclaim as has been proved;
- (c) dismiss the action if the Presiding Officer is of the opinion that the claim of neither party has been established in whole or in part;
- (d) subject to section 27, make an order as to costs.

25. Judgment by default or by consent

- (1) If a defendant upon whom a summons has been served:
 - (a) admits the claim and consents to judgment; or
 - (b) fails to appear before the Small Claims Court when required to do so;
 - (1) the Small Claims Court may, if the Presiding Officer is satisfied after inquiry that the plaintiff's claim is established, give judgment for the plaintiff;
 - (2) if a plaintiff fails to appear before a Small Claims Court when required to do so, the court may dismiss the

plaintiff's claim and, if satisfied after inquiry that the defendant's defence or counterclaim, if any, has been established, give judgment for the defendant.

26. Rescission, variation and correction of judgments

The court may, for good cause shown:

- (a) rescind or vary any judgment granted by it in the absence of any party;
- (b) rescind or vary any judgment obtained by fraud or due to a mistake;
- (c) correct any patent errors in any judgment.

27. Costs

- (1) A Small Claims Court may, where it considers it just and fair to do so, award costs to either party.
- (2) Costs shall only include:
 - (a) the prescribed fee for the issue of the summons; and
 - (b) the fees and reasonable expenses of the messenger.

Part VII. Execution of judgment

28. Orders of small claims courts

- (1) After a Small Claims Court has given judgment against a party it may, in camera, inquire into the ability of that party to satisfy the judgment without delay and may:
 - (a) order that the judgment debt be satisfied forthwith or by such future date as the court may specify;
 - (b) order that the judgment be paid in such instalments as the court may specify;
 - (c) make such other order as the court considers just and fair to the parties in the circumstances.
- (2) The party in whose favour judgment has been given may attend any inquiry in terms of subsection (1), and section 19 shall apply, mutatis mutandis, in relation to the inquiry.
- (3) Money payable in terms of a judgment or order of a court shall be paid by the judgment debtor directly to the judgment creditor.
- (4) If no order has been made in terms of section 28(1) the judgment debtor may within 10 days after the court has granted judgment for the plaintiff of a sum of money make a written offer to the judgment creditor to pay the judgment debt and costs in specified instalments or otherwise and if such an offer is accepted by the judgment creditor the clerk of the court shall, at the written request of the judgment

creditor, accompanied by the offer, order the judgment debtor to pay the judgment debt and costs in accordance with his or her offer, and such an order shall be deemed to be an order of the court in terms of section 28.

29. Enforcement of judgment

- (1) If a judgment debtor fails to satisfy the judgment of a Small Claims Court within the period specified by the court, the judgment creditor may apply to the clerk of the court for the issue of a writ of execution.
- (2) The judgment creditor may, on payment of the prescribed messenger's fee, require the messenger of a Small Claims Court to serve and enforce the writ of execution issued in terms of subsection (1), and in such event the procedure for attachment and sale in execution which applies in magistrates courts, including the provisions relating to the exemption of property from execution shall apply, mutatis mutandis, in relation to the attachment and sale of property in execution of the writ of execution.
- (3) The clerk of the court shall, upon the written application of the judgment creditor accompanied by an affidavit specifying the amount and the costs still owing under the judgment or order and how that amount is arrived at, transmit that affidavit, together with a certified copy of that judgment or order reflecting the nature of the cause of action, to the Presiding Officer of any Small Claims Court or the clerk of the magistrate's court of the division in which the judgment debtor resides, carries on business or is employed, or if the judgment debtor is a juristic person, of the division in which its registered office or main place of business is situated.
- (4) Upon receipt of the document referred to in subsection (3) the Presiding Officer shall cause to be recorded, or the clerk of the magistrate's court concerned shall record the details of the judgment or order concerned and the amount owing mentioned in the affidavit in his or her register.
- (5) Any person against whom a court has granted judgment or made any order and who has not satisfied in full that judgment or order, and paid all costs for which he or she is liable in connection therewith, shall, if he or she has changed his or her place of residence, business or employment, within 14 days from the date of every such change notify the judgment creditor fully and correctly in writing of his or her new place of residence, business or employment.
- (6) Any person who:
 - (a) obstructs a messenger or deputy messenger of the court in the execution of his or her duties under these Rules;
 - (b) fails to give notice of change of address in terms of subsection (5);

shall be guilty of an offence and liable upon conviction to a fine not exceeding the equivalent of five hundred United States dollars or to

imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

Part VIII. General

30. Finality of judgment

- (1) A judgment of a Small Claims Court shall be final and no appeal shall lie from it, but any party may bring the proceedings on review before the High Court or Supreme Court on any grounds on which the High Court or Supreme Court may review the proceedings of judicial tribunals.
- (2) The grounds for review referred to in subsection (1) shall be:
 - (a) absence of jurisdiction on the part of the court; or
 - (b) interest in the cause, bias, malice or corruption on the part of the Presiding Officer; or
 - (c) gross irregularity with regard to the proceedings.

31. Rules of small claim courts

- (1) The Minister may, by statutory instrument, make rules of court regulating the practice and procedure of small claims courts.
- (2) Rules made in terms of subsection (1) may provide for:
 - (a) the form of the process of Small Claims Courts, including letters of demand;
 - (b) the duties of officers of Small Claims Courts;
 - (c) the methods by which corporate and unincorporated bodies may be cited and represented in proceedings before the Small Claims Courts;
 - (d) the power of Small Claims Courts to condone non-compliance with the rules;
 - (e) the method of service of process of small claims courts and the proof required of such service;
 - (f) the fees payable in respect of the issue of process of small claims courts.

32. Contempt of small claims courts

- (1) If any person wilfully insults a Small Claims Court or any member thereof during any sitting of the Small Claims Court or wilfully interrupts the proceedings of the Small Claims Court or otherwise wilfully disturbs the peace or order of such proceedings the Presiding Officer may order that person to be removed and detained in custody as if he or she were a prisoner awaiting trial until the rising of the Small Claims Court, and the Presiding Officer may, by warrant under his or her hand, commit him or her to prison for any period not

exceeding three months or may impose a fine not exceeding the equivalent of two thousand US dollars.

- (2) If any person wilfully disobeys or neglects to comply with any order of a Presiding Officer issued under the powers conferred upon him or her by this Act, such Presiding Officer may impose upon such person a fine not exceeding the equivalent of two thousand US dollars or by warrant under his or her hand commit such person to prison for any period not exceeding six months or impose both such fine and such imprisonment.
- (3) Where a Presiding Officer has imposed any penalty in terms of subsection (1), he or she shall forthwith submit to a judge of the High Court or the Supreme Court a written statement setting out the reasons for his or her action, and shall cause the person upon whom he or she imposed the penalty to be given a copy of the statement.
- (4) A judge of the High Court or Supreme Court to whom a statement is submitted in terms of subsection (3) shall review the matter and may take such measures as he or she thinks necessary to rectify any defect in the proceedings concerned.

33. Other courts to have parallel jurisdiction

Nothing in these Rules shall be construed as depriving any other court of its jurisdiction to hear and determine any matter which, by these Rules, is declared to be within the jurisdiction of a Small Claims Court.

Annex 3. National consumers council rules

(under articles 28 and 36)

Arrangement of sections

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Rules to provide for the establishment, funding and operation of the National Consumers Council; for the protection of the Consumers through Consumers solidarity and the mobilization of Consumers groups and individual consumers; and for purposes connected therewith and incidental thereto.

Enacted by or under the authority of the Parliament of Africa.

1. Short title

These Rules may be cited as the National Consumers Council Rules, 1996.

2. Establishment of a national consumers council

- (1) The National Consumers Council is hereby established.
- (2) The Council shall be a body corporate capable of acquiring and holding property as well as suing or being sued in its corporate name. The Council shall have perpetual succession.

3. Objects and functions of the council

- (1) The central function of the National Consumers Council shall be to implement the letter and spirit of its mandate, as indicated under article 28 of the Law. It shall generally initiate and formulate policy options in the areas of consumers affairs stipulated in the Law and shall present such option to the relevant consumers organizations and to any national, provincial, prefectural, local or divisional competent authority.
- (2) The Council shall facilitate the creation of an environment conducive to the welfare and development of all consumers to the highest international standards. In pursuance of its object it shall work towards satisfying the following specific objectives:
 - (a) ensuring that every consumer in Africa, irrespective of economic status, geographical location, disability, gender or any other distinguishing factor has access to consumers education and information;
 - (b) ensuring that every consumer in Africa, irrespective of economic status, geographical location, disability, gender or any other distinguishing factor has adequate consumer protection through the basic internationally acknowledged consumers rights;
 - (c) ensuring that consumers in Africa are adequately represented in all decision-making bodies affecting the welfare and rights of the consumers.
- (3) In order to enhance the foregoing specific objectives, the Council shall address and facilitate the coordination and networking among organizations and individuals working on Consumers protection.
- (4) The rights indicated in section 3 (2) (b) shall include but shall not be limited to satisfaction of basic needs, physical and other safety; the ability to choose; the right to be heard; the right to redress; the right to consumers education; and the right to benefit from

technology, goods, services and amenities associated with a healthy environment.

- (5) The Council shall open and operate a bank account in its corporate name to facilitate the implementation of its objects.

4. Participation in the council

- (1) The governing body of the Council shall consist of members nominated by voluntary consumers organizations with not more than one representative from Government.
- (2) The Minister shall appoint the persons nominated by the voluntary consumers organizations.

5. Secretariat

- (1) There shall be a Secretariat of the Council consisting of the Chairperson and the staff.
- (2) The Chairperson shall be elected by the members of the Council. He or she shall be engaged on a full-time basis.
- (3) The Chairperson shall be appointed on the basis of knowledge and experience on consumers rights and interest.
- (4) The Chairperson shall have and exercise control over the staff. He or she shall appoint senior staff members in consultation with the Management Committee and may appoint junior cadres without such consultation.

6. Management committee

- (1) The persons appointed by the Minister under subsection (2) of section 4 shall elect a Management Committee.
- (2) The appointments aforesaid shall have due regard for the need for proportionate representation of the various Consumers interests, including women's interests and those of the disabled.
- (3) The appointees hereunder shall serve on a part-time and voluntary basis. They may, however, be paid such remuneration as the Annual General Meeting of the Council may determine.
- (4) The management and policy Council shall be vested in the Management Committee which shall be empowered to exercise all the rights and powers and perform the duties and functions of the Council.
- (5) The Management Committee shall, under section 10, hereof have the power to delegate any of its functions to any member thereof or to any subcommittees in a manner consistent with the law and these Rules.
- (6) The quorum of the Council shall be fifty percent of the total number of members plus one.

7. Exercise of powers of committee

- (1) The objects of the Council shall be carried out under the control and supervision of the Management Committee in such a manner as it may consider necessary and proper in accordance with the Law and these Rules.
- (2) The Management Committee shall have the power to formulate and enforce rules, regulations and by-laws within the ambit of these Rules governing the activities and functions of the National Consumers Council.
- (3) Any decisions by the Management Committee shall be made by a majority of those present at any duly constituted meeting. Each member present at the meeting shall have a vote and in the event of equality the Chairperson shall have a casting vote in addition to his or her deliberative vote.
- (4) The Management Committee shall meet at least once every month. At least seven days' notice of any such meeting shall be given by the Secretary to all members of such Committee which notice shall state the business to be transacted provided that shorter notice may be given in matters of extreme urgency which shorter notice may be condoned and ratified by the Council.

8. Subcommittees of committee

- (1) The Management Committee may constitute such Subcommittees as may be necessary for:
 - (a) the transaction of any of its business; or
 - (b) investigation and reporting on any matter coming within the scope of its work.
- (2) Any Subcommittee may supervise the administration and generally carry out that section of its work delegated to it by the Management Committee. In doing so it may:
 - (a) incur only such expenditure as shall have been approved by the Management Committee; and
 - (b) be governed by any procedural rules drawn by the Management Committee or by itself if the same are confirmed or ratified by the Management Committee.
- (3) The members of any Subcommittee may include persons co-opted and/or appointed by the Management Committee and may not necessarily be members of the Management Committee. The co-optation shall be for the need to incorporate persons with expertise, knowledge, experience, or any other qualifications which are useful to the Council.
- (4) The Management Committee may terminate the existence of any Subcommittee on completion of its function or at any other stage of its existence if in the opinion of the Committee such termination is desirable.

9. General meetings of the council

- (1) The Annual General Meetings of the Council shall be held as soon as possible after the close of the financial year. Notice of such meetings shall be posted to the member organizations at their registered address at least fourteen days before the date of the meeting. Such notices shall incorporate the agenda, the venue and date of the meeting.
- (2) The Chairperson shall preside at such meetings. If he or she is not present the Vice-Chairperson shall preside. In the absence of both, the meeting shall elect a Chairperson for the purposes of the meeting only.
- (3) The business which shall be transacted at an Annual General Meeting shall include but shall not be limited to the following:
 - (a) presentation of annual report and audited financial statement;
 - (b) election of Chairperson and Vice-Chairperson; and
 - (c) appointment of Management Committee.

10. Special general meetings

A Special General Meeting shall be called by the Chairperson on the instructions of and in consultation with the Management Committee.

11. Quorum and voting process

- (1) One in three of the members of the Council shall constitute a quorum.
- (2) At all General Meetings consumers representation present shall have one vote and no more provided that the presiding Chairperson shall in case of equality of votes have a casting vote in addition to a deliberative vote.

12. Finance

- (1) The Council may receive, solicit or accept funds from any or all of the following sources:
 - (a) contributions from consumers;
 - (b) grants from the Common Fines Fund established under Article 5 of the Law;
 - (c) income, rents and other sources of revenue from its investments;
 - (d) donations from foundations, trusts, associations and organizations whose mandates and objects are not inconsistent with those of the Council;
 - (e) any other sources which the Council may from time to time approve.

Provided that such objects, operation or management of the said sources and the mode of solicitation, acceptance or receipt of the funds or donations shall not be in contravention of the Law or these Rules.

- (2) The Management Committee may constitute a Finance Subcommittee.
- (3) The duties of the Finance Subcommittee shall be to prepare or cause to be prepared the estimates of revenue and expenditure; to report to and advise the Management Committee on the requirements of the Council; to solicit and collect subscriptions and donations; and arrange for the collection of funds; and generally to act on all matters of finance in the interest of the Council.

13. Property of the council

- (1) All property, movable or immovable, belonging to the Council or to which it is or may become entitled shall be vested in the name of the Council.
- (2) The said property shall be managed and administered to ensure the realization and implementation of the objects of the Council.
- (3) Membership of the Council shall not give any member any proprietary right, title or claim to, or any interest in any of the property or assets of the Council.

Provided that members shall be entitled to the payment of reimbursement of reasonable out-of-pocket expenses incurred in the implementation of the objects of the Council.

- (4) A member shall not incur any personal financial liability in respect of any claims brought against the Council by the mere fact that he or she is such a member. Members shall be indemnified and compensated for any reasonable expenses which the member has reasonably, legitimately and justifiably incurred in prosecution or defending a claim, suit or action in the interests of the Council.

14. Financial year

The financial year of the Council shall be from 1 January to 31 December or between such dates as the Council may at its first General Meeting determine.

15. Common seal

- (1) The Council shall keep and maintain a common seal.
- (2) The custody and mode of use as well as the persons authorized to use the Seal shall be determined by the first General Meeting of the Council on the recommendation of the Management Committee.

16. Dissolution

- (1) The Council may be dissolved at any time by a resolution passed by a majority of two thirds of the votes of the members present in person at a meeting duly convened for the purpose.

- (2) Proposals for the dissolution of the Council shall be discussed with the Minister for the time being responsible for matters addressed by those Rules. Such proposals shall be published in the Gazette, and in such a manner as the Council in a General Meeting may determine.
- (3) On the dissolution of the Council for any reason under these Rules or under any other law the property and other assets of the Council shall be disposed of by being given to any institution or organization whose objects are not inconsistent with those of the Council.

17. Rule-making powers

- (1) The Council in a General Meeting shall make rules, by-laws or regulations for the better carrying out of the provisions of these Rules.
- (2) Such rules, by-laws or regulations shall not contravene the law, any other law or these Rules.
- (3) The rules, by-laws or regulations aforesaid shall be published in the Gazette and in such a manner or medium as the Council may determine to ensure that the same are widely published.

18. Amendment of rules

- (1) These Rules or any part thereof may only be altered, modified, rescinded, amended or added to by a two-thirds majority of the members present at any General Meeting. Provided that written notice of any proposed alteration, modification, rescission, amendment or addition shall be given to such members in the manner prescribed herein not less than 14 days before the meeting at which such proposal is to be considered.
- (2) The proposed amendments shall be discussed with the Minister responsible for the administration of matters addressed by these Rules. Such proposed amendments shall be published in the Gazette and in such a manner as the Council in a General Meeting may determine.

Annex 4. Restrictive trade practices rules

(under articles 6, 8, 34 and 36)

Arrangement of sections

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Rules to provide for the protection of consumers through prohibition, regulation and investigation of restrictive, harmful, unfair or abusive trade or business practices in particular cases and in general; and for that purpose to establish an office for the investigation of restrictive trade practices and a Consumers Protection Tribunal; and to provide for matters connected therewith and incidental thereto.

Enacted by or under the authority of the Parliament of Africa.

1. Short title

These Rules may be cited as the Restrictive Trade Practices Rules, 1996.

2. Interpretation

In these Rules, unless the context otherwise indicates or requires:

"Africa" means the country in which the Law or these Rules are to be implemented entirely or partially;

"arrangement" means an arrangement or undertaking negotiated by the Office as contemplated in Section 11;

"business" means any business undertaking or person:

- (a) who offers, supplies or makes available any technology, goods or services; or
- (b) who solicits or to whom is supplied or made available, any investment;

"Attorney-General" includes the Attorney-General, Minister for constitutional or legal affairs, any other Government official or State competent authority to whom the exercise of the powers and performance of the duties of the Attorney-General under these Rules have been assigned;

"business practice" or "trade practice" includes, without prejudice to the meaning ascribed to the term "trade practice" under the Law:

- (a) any agreement, arrangement or undertaking, whether legally enforceable or not, between two or more persons;
- (b) any scheme, practice, or method of trading, including any method of marketing or distribution;
- (c) any advertising or type of advertising;
- (d) any act or omission on the part of any person, whether acting independently or in concert with any other person;
- (e) any situation arising out of the activities of any person or class or group of persons, but does not include a restrictive practice, acquisition or monopoly situation exempted from the provisions of the law or these Rules or under any Law.

"business records" includes:

- (a) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files, instructions to employees, and other instruments; and
- (b) any information recorded or stored by means of any pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

"commodity" means

- (a) any property, whether corporeal or incorporeal and whether movable or immovable, and includes any make or brand of commodity;
- (b) any service, whether personal, professional, or otherwise and includes any storage, transportation, insurance or banking service;

"competent authority" means, without prejudice to the meaning ascribed thereto under the Law, a person or persons, agency or institution vested with powers under or which exercised powers regulated under these Rules;

"Consumers" means, without prejudice to the meaning ascribed thereto under the law, any person:

- (a) to whom any commodity is offered, supplied or made available;
- (b) from whom is solicited, or who supplies or makes available, any investment;

"Director" means the Director of the Office, appointed under section (4) (1) (a);

"division" means a division, district, province, prefecture or any other subdivision of Africa for which a competent authority has been established under these Rules;

"harmful business practice", "abusive business practice", "restrictive business practice" or "restrictive trade practice" means any business practice which, directly or indirectly, has or is likely to have the effect of unreasonably prejudicing or deceiving any consumers;

"investigating officer" means an investigating officer appointed under section 9(1) or deemed in terms of section 9(2) to have been so appointed;

"investigation" means an investigation by the Office in terms of these Rules into any alleged restrictive or harmful trade practice;

"investment" means any money or other property, or any facility, intended for use in connection with any venture or scheme for the acquisition of gain, or purported to be so intended;

"Minister", or "Ministry" means, without prejudice to the meaning ascribed to that term under the Law, the Minister or Ministry for the time being responsible for finance, commerce, industry, consumers affairs, economic affairs, which has been assigned the responsibility of administering these rules

or any other Minister or Ministry which Parliament or the President may assign the administration of these Rules;

"Office" means the Office for the Investigation of Restrictive Trade Practices established by section 3;

"prescribed" means a regulation made under section 29;

"Restrictive trade practice" has the meaning ascribed to;

"harmful trade practice" hereunder;

"Tribunal" means the Consumers Protection Tribunal established by section 13 for the division concerned;

"this Act" includes the regulations.

3. Office for investigating restrictive trade practices

- (1) There is hereby established, an office called the Office for the Investigation of Restrictive Trade Practices.
- (2) The functions of the Office shall be performed under the guidance of the Director of the Office.

4. Director and staff of office

- (1) Subject to the laws governing the public service, the responsible Minister:
 - (a) shall appoint a person who is knowledgeable and experienced in, among others, consumers, business, commercial, economic and related matters as Director of the Office;
 - (b) may from time to time appoint an acting Director of the Office to discharge the duties of the Director whenever the Director is for any reason unable to perform those duties or while the appointment of a person as Director is pending;
 - (c) may appoint one or more persons to assist with the performance of the functions of the Office, subject to the control and directions of the Director.
- (2) The Director of the Office may, in the performance of his or her functions seek the services of any person, not being an employee of the Office, for the purposes of any investigation.
- (3) A person contemplated in subsection (2) shall be paid such remuneration, allowances and expenses as the Director of the Office, with the concurrence of the Minister, may determine.

5. Functions of the office:

- (1) The Office shall
 - (a) receive and investigate complaints of alleged restrictive trade practices which have been lodged with the Office as contemplated

in section 6, and dispose of such complaints in the manner prescribed under these Rules;

- (b) perform the other functions assigned to it under these Rules.
- (2) (a) The Office shall as soon as practicable after 31 December in each year submit to the responsible Minister a report on its functions during the year ending on that date.
- (b) The responsible Minister shall lay a copy of the annual report submitted in terms of subsection (1) in Parliament within 14 days after its receipt if Parliament is then sitting or, if the Parliament is not then sitting, within 14 days after the commencement of its next ensuing ordinary sitting.

6. Lodging complaints with office

- (1) Any person aggrieved by an alleged restrictive trade practice or any other interested person may lodge a complaint regarding the matter in question with the Office, into writing or otherwise.
- (2) A complaint contemplated in subsection (1) which is made other than in writing shall be reduced to writing by the Office.

7. Investigations by office

- (1) The Office may, whether or not a complaint has been lodged under section 6, institute such investigation as may be necessary into:
 - (a) any restrictive or harmful trade practice which there is reason to suspect exists or may come into existence;
 - (b) any trade practice or type of trade practice, whether or not it is a restrictive or harmful trade practice, which there is reason to suspect is commonly applied for the purposes of or in connection with the creation or maintenance of restrictive trade practices.
- (2) If the responsible Minister refers a matter contemplated in subsection (1) to the Office, the Office shall conduct an investigation into that matter.
- (3) The Office may by notice in the Gazette make known any investigation which it is conducting, and that any person may within a period specified in the notice make written representations regarding the investigation to the Office.
- (4) The Office may, for the purposes of an investigation, have regard to any investigation, finding or measure by any committee or competent authority established under any law.

8. Interrogation of persons

- (1) For the purposes of an investigation under these Rules, the Director of the Office or a person in the service of the Office designated by the Director may:

- (a) summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any book, document, business records, or other object relating to that subject, to appear before a person in the service of the Office at a time and place specified in the summons, to be questioned or to produce that book, document or other object;
 - (b) question that person, under oath or affirmation administered by the Director or another person in the service of the Office, and examine or retain for further information or for safe custody such a book, document, business records or other object.
- (2) A summons referred to in subsection (1) shall:
- (a) be in the prescribed form;
 - (b) contain particulars of the matter in connection with which the person concerned is required to appear;
 - (c) be signed by the Director of the Office or another person in the service of the Office authorized by the Director;
 - (d) be served in the prescribed manner.
- (3) A person appearing by virtue of subsection (1)
- (a) may be assisted at the examination by any person of his or her choice;
 - (b) shall be entitled to the prescribed witness fees.
- (4) Any person who has been summoned to appear in terms of this section and who, having been sworn or having made an affirmation, gives false evidence knowing that evidence to be false or not knowing having reason to believe it to be true, shall be guilty of an offence.
- (5) The provisions of subsection (1) shall not be construed as compelling any person to make a confession or admission or to produce a book, document or other object which could be used in evidence against him or her in a court of law or in proceedings before the Tribunal in terms of these Rules.

9. Investigating officers

- (1) The Director of the Office may appoint persons in the service of the Office or any other suitable persons as investigating officers.
- (2) The Director shall be deemed to have been appointed as an investigating officer under subsection (1).
- (3) An investigating officer who is not in the full-time service of the State shall be appointed on such conditions and at such remuneration as the responsible Minister may determine.
- (4) An investigating officer shall be provided with a certificate of appointment signed by or on behalf of the Director and in which it is

stated that he or she is an investigating officer appointed in terms of these Rules.

- (5) An investigating officer shall, when performing any function under these Rules, have his or her certificate of appointment in his or her possession.

10. Search and seizure

- (1) In order to obtain any information required by the Office in relation to an investigation, an investigating officer may, subject to the provisions of this section, enter any premises in which any book, document, business record or other object connected with a restrictive trade practice is or is suspected to be, and may:
 - (a) inspect or search those premises, and there make such inquiries as may be necessary for the purpose of obtaining any such information;
 - (b) examine any object found on or in the premises which has or might have a bearing on the investigation in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
 - (c) make copies of or extracts from any book or document found on or in the premises which has or might have a bearing on the investigation in question, and request from any person who is suspected of having the necessary information, an explanation of any entry therein;
 - (d) seize, against the issue of a receipt, anything on or in the premises which has or might have a bearing on the investigation in question, or if the investigating officer wishes to retain it for further examination or for safe custody.
- (2) An investigating officer shall enter premises and exercise any power contemplated in subsection (1) only by virtue of a search warrant issued by the Tribunal, and if it appears to the Tribunal from information given to the Tribunal on oath or solemn affirmation that there are reasonable grounds to suspect:
 - (a) that a restrictive trade practice exists or may come into existence; and
 - (b) that a book, document or other object which may afford evidence of the existence or intended existence of that restrictive or harmful trade practice is on or in those premises.
- (3) A search warrant issued under subsection (2) shall:
 - (a) authorize an investigating officer to enter the premises identified in the warrant for the purpose of exercising any power contemplated in subsection (1);
 - (b) shall be executed by day, unless the Tribunal authorizes the execution thereof by night;

- (c) shall be in force until it is executed, or cancelled by the Tribunal, or a period of one month from the day of its issue expires, whichever occurs first.
- (4) An investigating officer executing a search warrant under this section shall, after such execution, upon demand by any person whose rights in respect of any search or objects seized under the warrant have been affected:
 - (a) show that person his or her certificate of appointment;
 - (b) hand to him or her a copy of the warrant.
- (5) A person from whose possession or charge a book or document has been taken under this section shall, as long as it is in the possession or charge of the investigating officer concerned or of the Office, be allowed on request to make copies thereof or to take extracts therefrom at any reasonable time at his or her own expense and under the supervision of that investigating officer or a person in the service of the Office.
- (6) An investigating officer may, without a warrant, enter any premises in order to perform the acts referred to in subsection (1), if the person who is competent to do so consents in writing to such entry and the performance of those acts.
- (7) A person shall be guilty of an offence who:
 - (a) obstructs or hinders an investigating officer in the performance of his or her functions under subsection (1);
 - (b) when asked in term of subsection (1) for information or an explanation relating to a matter within his or her knowledge, gives information or an explanation which is false or misleading, knowing it to be false or misleading.
- (8) The provisions of subsection (1) shall not be construed as compelling any person to make a confession or admission or to produce a book document or other object which could be used in evidence against him or her in a court of law or in proceedings before the Tribunal as stipulated under these Rules.

11. Negotiation to discontinue restrictive trade practice

- (1) The Office may negotiate and conclude, with the business and any other person concerned, an arrangement for the discontinuance or avoidance of a restrictive or harmful trade or business practice which exists or may come into existence and which is the subject of an investigation.
- (2) An arrangement:
 - (a) may be concluded at any time before the initiation of proceedings before the Tribunal as contemplated in section 17, but before the making of a final order by the Tribunal;
 - (b) shall be subject to confirmation by the Tribunal in accordance with the provisions of section 19.

12. Instituting proceedings after investigation

- (1) Upon the completion of an investigation, the Director of the Office:
 - (a) shall furnish the responsible Minister with a report on the findings of such investigation; and
 - (b) may institute proceedings in the Tribunal:
 - (i) against the business or other persons alleged to be responsible for the existence or intended existence of the restrictive or harmful trade practice in question;
 - (ii) generally, and whether or not proceedings have also been instituted against any particular business or other person under subparagraph (i), with a view to the prohibition of any business practice or type of business or trade practice, whether or not it is a restrictive or harmful business or trade practice, which is commonly applied for the purposes of or in connection with the creation or maintenance of restrictive or harmful business practices.
- (2) The Director shall if he or she at any time during or after the completion of an investigation suspects that the facts disclose the commission of an offence by any person, notify the Attorney-General accordingly.

13. Establishment of a consumers protection tribunal

- (1) The responsible Minister shall, by notice in the Gazette, establish one or more consumers protection tribunals for any division provided that there shall be a National Consumers Protection Tribunal.
- (2) A Tribunal shall be established for a division defined in such notice.
- (3) The responsible Minister may in like manner:
 - (a) vary the extent or boundaries of any such division;
 - (b) withdraw such a notice and abolish any such Tribunal.
- (4) The seat or seats of a Tribunal shall be at such place or places as the responsible Minister may from time to time determine in general or in relation to particular proceedings.

14. Composition of tribunal

- (1) The Tribunal shall consist of seven persons appointed by the responsible Minister namely:
 - (a) a chairperson who shall be:
 - (i) a retired judge of the Supreme or High Court; or
 - (ii) an attorney, advocate, retired magistrate or lecturer in law at a university, with not less than seven years cumulative experience in one or more such capacities;

- (b) two or four additional members appointed by virtue of their having appropriate knowledge and experience, and of whom:
 - (i) half shall be representative of consumers interest or associations;
 - (ii) half shall be representative of business or trade interests;
 - (c) the composition of the Tribunal shall have regard for the need for gender equity and the effective representation of women in consumers protection agencies.
- (2) The responsible Minister may appoint an alternate member for every member of the Tribunal. The quorum of the Tribunal shall be 5 or such number as the Minister may by regulation determine.
 - (3) To enable the responsible Minister to make the appointments contemplated in subsections (1) and (2), the responsible Minister shall cause a notice to be published in the Gazette inviting interested persons to submit within a specified period, which shall not be shorter than one month after such publication, nominations for such appointments.
 - (4) A member and alternate member of the Tribunal shall, before assuming office, make and subscribe an oath or solemn affirmation in the prescribed form before the responsible Minister.
 - (5) A Minister and alternate member of the Tribunal shall be paid such remuneration and allowances as the responsible Minister may determine, and different remuneration and allowances may be determined in respect of different members and alternate members.

15. Persons disqualified from membership of tribunal

No person shall be appointed or remain a member or alternate member of the Tribunal if such person is:

- (a) a public servant; or
- (b) a member of Parliament, or local authority, or any council, commission or house of traditional leaders established under the Constitution.

16. Functions, powers and duties of tribunal

- (1) The Tribunal shall:
 - (a) hear, consider and make a decision on any matter which is brought to the Tribunal by virtue of proceedings instituted as contemplated in section 12 (1) (b);
 - (b) where applicable exercise the powers and perform the administrative work incidental to the functions of the Tribunal;
 - (c) appoint such other person to assist the clerk of the Tribunal as may be deemed necessary.

17. Proceedings of tribunal

- (1) Proceedings before the Tribunal shall, except as contemplated in section 12 (1) (b) (ii) or for the purposes of section 19, be initiated by summons in the prescribed form which shall be served on the business and other persons concerned in the prescribed manner.
- (2) All proceedings of the Tribunal shall, subject to the provisions of subsection (2), be open to the public.
- (3) The Tribunal may direct that the public or any class thereof may not attend any proceedings of the Tribunal or any portion thereof, if this is justified in the interests of:
 - (a) the conduct of the proceedings or the consideration of the matter in question; or
 - (b) the protection of the privacy of any business alleged to be involved in the restrictive or harmful business practice in question or of the confidentiality of any information relating to that business.
- (4) Proceedings before the Tribunal shall be prosecuted by the Office, who may be represented or assisted by an advocate or attorney or any other person.
- (5) The business concerned may appear in person or be represented by an advocate, attorney or any other person.
- (6) A decision of the majority of members of the Tribunal shall, subject to the provisions of subsection (7), be the decision of the Tribunal.
- (7) Any question of law arising for decision before the Tribunal, and any question as to whether or not a matter is a question of law, shall be decided by the Chairperson of the Tribunal, and the other members of the Tribunal shall have no voice in such decision.

18. Summoning of witnesses and production of documents

- (1) For the purpose of ascertaining any matter relating to proceedings before the Tribunal, the Tribunal may:
 - (a) by summons addressed to any person in the prescribed form under the hand of the clerk to the Tribunal, and delivered in the prescribed manner, require such person to appear before the Tribunal at a time and place specified in such summons, to make a statement and to produce any book, document, business record, or object in the possession or custody or under the control of any such person and which may be reasonably necessary, material and relevant in connection with those proceedings;
 - (b) require such person to take an oath or make an affirmation;
 - (c) question such person and examine any book, document or object which he or she has been required to produce.

- (2) In connection with the giving of any evidence or the production of any book, document or object before the Tribunal, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book, document or object in a superior court shall apply.
- (3) A person shall commit an offence who, having been summoned in terms of this section:
 - (a) fails without sufficient cause to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the proceedings or until he or she has been excused by the Tribunal from further attendance;
 - (b) refuses to take the oath or make an affirmation;
 - (c) refuses to answer or to answer fully and satisfactorily to the best of his or her knowledge and belief, any question lawfully put to him or her;
 - (d) fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was required to produce;
 - (e) makes a false statement before the Tribunal knowing such statement to be false or having no reason to believe it to be true.
- (4) A person who has been summoned to attend proceedings of the Tribunal as a witness or who has given evidence before the Tribunal shall be entitled to the prescribed witness fee.

19. Urgent temporary orders prohibiting restrictive trade practices

- (1) The Tribunal may, if it is satisfied from information placed before it by the office that circumstances relating to a particular matter which is the subject of investigation render that matter urgent in that irreparable prejudice would be caused if the matter were only to be dealt with by the Tribunal at proceedings in due course, issue a temporary order:
 - (a) prohibiting any person mentioned in the order from performing any act connected with the restrictive or harmful business or trade practice in question;
 - (b) attaching any money or other property, whether movable or immovable, which is related to the investigation and which is held by any person mentioned in the notice, or of a customer, debtor or creditor of any such person;
 - (c) authorizing an investigating officer or person in the service of the Office to take any action specified in the order that may be necessary to stay or prevent the restrictive or harmful business practice in question.

(2) A temporary order contemplated in subsection (1):

- (a) may be amended or withdrawn by the Tribunal on application by the Office or by a business or other person affected thereby on good cause shown;
- (b) shall, unless it is withdrawn, remain in force until the final determination by the Tribunal of the matter at proceedings in due course..

(3) An order in terms of subsection (1) and any amendment or withdrawal thereof under subsection (2) (a), shall be made known by notice in the Gazette.

20. Confirmation of arrangements negotiated by office

- (1) The Office shall apply to the Tribunal for confirmation of an arrangement concluded by it as contemplated in section 11.
- (2) The Tribunal may, after the business concerned and any other party to the arrangement has been given an opportunity to be heard, issue an order:
 - (a) confirming the arrangements without modification or with such modifications, if any, as may be agreed to by the business or other party concerned, and either unconditionally or subject to such conditions as may be agreed to by such business or party and as the Tribunal may on the application of the Office deem fit; or
 - (b) setting aside the arrangements, if it is satisfied that the arrangement will not ensure the discontinuance or avoidance of the restrictive harmful trade or business practice in question.

21. Order by tribunal prohibiting restrictive trade practice

- (1) If the Tribunal is satisfied that a restrictive or harmful business practice exists or may come into existence, and has not confirmed an arrangement as contemplated in section 20 (2) (a), the Tribunal may issue such order as may be necessary to ensure the discontinuance or prevention of the restrictive or harmful business or trade practice in question by the business concerned, and such order may, without prejudice to the generality of the foregoing, direct:
 - (a) any person concerned in the restrictive or harmful trade or business practice to take such action, including steps for the dissolution of any body, corporate or unincorporated, or the severance of any connection or form of association between two or more persons;
 - (b) any person who is or was party to an agreement, understanding or omission, or who uses or has used any advertising or type of advertising, or applies or has applied a scheme, practice or method of trading, including any method of marketing or distribution, or commits or has committed an act, or brings or has brought about a situation, or has or had any interest in a business or type of business or derives or derived any income from a business or type of business which is connected with the

said restrictive or harmful business practice of the business concerned and which may be specified in the notice to:

- (i) terminate or cease to be a party to that agreement, arrangements, understanding or omission;
 - (ii) refrain from using that advertisement, advertising or type of advertising;
 - (iii) refrain from applying that scheme, practice or method of trading;
 - (iv) cease to commit that act or to bring about that situation;
 - (v) cease to have any interest in that business or type of business or to derive any income therefrom;
 - (vi) refrain from at any time:
 - (aa) becoming a party to any agreement, arrangement, understanding or omission;
 - (bb) using any type of advertising;
 - (cc) applying any scheme, practice or method of trading; or
 - (dd) committing any act or bringing about any situation, of a nature specified in the order and which the Tribunal is satisfied is likely to be applied for the purposes of or in connection with the creation or maintenance of the restrictive or harmful or trade business practice;
 - (vii) refrain from at any time obtaining any interest in or deriving any income from a business or type of business specified in the order;
 - (c) if money was accepted from consumers and it is considered necessary by the Tribunal to limit or prevent financial losses by those consumers, appoint a curator to exercise the powers and perform the functions and duties contemplated in section 21.
- (2) An order of the Tribunal in terms of subsection (1) shall be made known by notice in the Gazette.

22. Functions of curator appointed by tribunal

- (1) A Curator appointed as contemplated in section 21 (c) shall, subject to the provisions of this section, realize the assets of the business or other person involved in the restrictive or harmful business practice in question and distribute them among the consumers concerned and take control of and manage the whole or any part of the business of such business or person.
- (2) The powers and duties of the Curator shall be determined by the Tribunal, which may give directions:

- (a) regarding any security which the Curator shall furnish for the proper performance of his or her duties; and
 - (b) concerning the performance by such Curator of his or her duties and functions, or the management of the affairs of the business or other person concerned, or any other matter incidental thereto, as may be deemed necessary.
- (3) A curator who is not in the employ of the State shall out of the funds of the business or person involved in the restrictive or harmful business practice in respect of the services rendered by him or her, be paid such remuneration as the responsible Minister may in consultation with the Chairperson of the Tribunal and the Curator determine: provided that if the funds of the business or person involved in the restrictive or harmful trade business practice appear to be insufficient to compensate adequately the Curator, the Curator shall in respect of the services rendered by him or her be paid such remuneration and allowances as the responsible Minister may determine.
- (4) The Tribunal may empower the Curator, subject to any condition which the Tribunal may impose, to:
- (a) suspend or restrict, as from the date of his or her appointment as Curator or any subsequent date, the right of creditors of the business or other person involved in the restrictive or harmful trade or business practice to claim or receive any money owing to them by that person;
 - (b) make payments, transfer property or take steps for the transport of property to any creditor or creditors of the business or other person involved in the restrictive or harmful trade or business practice at such time, in such order and in such manner as the Curator may deem fit;
 - (c) cancel any agreement between the business or other person involved in the harmful business practice and any other party: provided that where the agreement so cancelled is a lease of movable or immovable property entered into by the business or other person involved in the restrictive or harmful business practice prior to the appointment of a Curator, a claim for damages, in respect of such cancellation may be instituted against that business or person;
 - (d) enter into agreements on behalf of the business or other person involved in the restrictive or harmful trade or business practice;
 - (e) convene from time to time, in such manner as he or she may deem fit, a meeting of creditors of the business or other person involved in the restrictive or harmful trade or business practice, for the purpose of establishing the nature and extent of the indebtedness of that business or person to such creditors and for consultation with such creditors in so far as the Curator deems it necessary;
 - (f) negotiate with any creditor of the business or other person involved in the restrictive or harmful business practice with a

view to the final settlement of the affairs of such creditor with that business or person;

- (g) make and carry out, in the course of the management by the Curator of the affairs of the business or other person involved in the restrictive or harmful business practice, any decision which would have been required to be made by way of a special resolution under any law;
- (h) dispose by public auction, tender or negotiation, of any asset of the person involved in the restrictive or harmful business trade or practice, including:
 - (i) any advance or loan; or
 - (ii) any asset approval for the disposal of which is necessary.
- (5) The Tribunal may at any time amend or withdraw any power granted or duty imposed under subsection (4).
- (6) At the appointment of a Curator:
 - (a) the management of the business or affairs of the business or other person involved in the restrictive or harmful trade or business practice shall vest in the Curator, subject to the supervision of the Tribunal, and any other person vested with the management of the affairs of that person shall be divested thereof; and
 - (b) the Curator shall recover and take possession of all the assets of the person involved in the restrictive or harmful business practice.
- (7) While such business or person is under curatorship:
 - (a) all actions and legal proceedings and the execution of all writs, summonses and other legal process against that business or person shall, subject to the provisions of subsection (4) (c), be stayed and not be instituted or proceeded with, without the leave of the Tribunal; and
 - (b) the operation of set-off in respect of any amount owing by a creditor to the person shall be suspended.
- (8) A Curator shall act in the best interests of the clients, debtors and creditors of the business or person placed under curatorship.
- (9) When an order whereby a Curator is appointed is made under section 22 (1) (d), all proceedings in connection with the winding up of a company or any body corporate which may be pending in a court of law and in respect of which a liquidator has been appointed, shall be suspended until the appointment of a Curator, and any attachment or execution put in force against the estate or assets of that company or body corporate shall be void.
- (10) No steps under any law, for the conclusion of a compromise, arrangement or composition between a company or body corporate in

respect of which a Curator has been appointed in terms of this subsection and its creditors shall be taken and any such steps already commenced with shall not be proceeded with and the costs in connection with such proceedings or steps already commenced with shall, unless the court concerned orders otherwise, be deemed to be part of the costs of the winding up of that company or body corporate.

- (11) The Curator shall report to the Chairperson on his or her administration of the affairs of the business or other person involved in the restrictive or harmful trade or business practice, and shall at the request of the Tribunal provide any other information set out in that request.
- (12) The Curator shall keep proper records of the steps taken by him or her in the performance of his or her functions and of the reasons why such steps were taken.

23. Notice to competent authorities elsewhere of restrictive trade practice

The Director of the Office shall, if there is reason to suspect that a restrictive or harmful trade or business practice which is or was the subject of an investigation by the Office exists or may come into existence elsewhere in Africa than in the division, furnish any competent authority with a national mandate or in the division concerned, with particulars of the business practice in question and any relevant information relating thereto which became known in the course of investigations by the Office or of proceedings before the Tribunal.

24. Confidentiality

No investigating officer, person in the service of the Office, member of the Tribunal, or person contemplated in section 16 (2) shall disclose any information acquired by him or her in the exercise or performance of any powers, functions or duties under these Rules, except:

- (a) insofar as may be necessary for the purpose of the due and proper exercise or performance of any power, function or duty under these Rules; or
- (b) on the order of a court of law.

25. Offences related to prohibited trade practice

Any person who contravenes or fails to comply with an order of the Tribunal which has been made known by notice in the Gazette shall be guilty of an offence.

26. Penalties

Any person who is guilty of an offence in terms of these Rules shall on conviction be liable, in the case of an offence referred to in:

- (a) section 25, to a fine not exceeding the equivalent of 50,000 United States dollars or imprisonment of a period not exceeding five years or to both that fine and that imprisonment;

- (b) any other provision of these Rules, to a fine or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

27. Rules bind the State

These Rules shall bind the State, except insofar as criminal liability is concerned.

28. Civil remedies not excluded

No provision of these Rules shall be construed as depriving any person of any civil remedy under any law.

29. Regulations

- (1) The responsible Minister may, after consultation with the Chairperson of the Tribunal, make regulations relating to:
 - (a) any matter of procedure or form which may be necessary or expedient to prescribe for the purposes of these Rules;
 - (b) the practice and proceedings of the Tribunal;
 - (c) the fees payable to witnesses before the office and the Tribunal;
 - (d) any matter which in terms of these Rules is required or permitted to be prescribed;
 - (e) in general, any matter which is considered necessary or expedient to be prescribed for achieving the objectives of these Rules.
- (2) The responsible Minister shall, not less than one month before any regulation is made, cause the text of such regulation to be published in the Gazette together with a notice declaring his or her intention to make that regulation, and inviting interested persons to furnish any comments thereon or any representations which they may wish to make in regard thereto.
- (3) The provisions of subsection (2) shall not apply in respect of any regulation which, after the provisions of that subsection have been complied with, has been amended by the responsible Minister after consultation with the Chairperson of the Tribunal in consequence of comments or representations received by the Board in pursuance of such compliance.

Part Four

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Annex I

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Annex II

PROGRAMME OF WORK

Sunday, 28 April 1996

Regional meeting

8.30 a.m. - 9.00 a.m.	Memorial
9.00 a.m. - 10.00 a.m.	Welcome Purpose of regional meeting The Africa region: development of the consumer movement
10.30 a.m. - 1.00 p.m.	Country reports by member consumer organizations
2.30 p.m. - 3.00 p.m.	Meeting with Consumers International executives and directors
3.00 p.m. - 5.00 p.m.	Consumers International Regional Offices for Africa plans

Monday, 29 April 1996

8.30 a.m. - 8.45 a.m.	Welcome
8.45 a.m. - 10.00 a.m.	Ten years of the United Nations Guidelines for Consumer Protection
10.15 a.m. - 11.30 a.m.	Keynote session: the consumer movement and development in Africa
11.30 a.m. - 12.30 p.m.	Official opening
2.00 p.m. - 5.30 p.m.	<u>Plenary 1</u> Government perspectives Consumers International government affiliates Government country reports (Zimbabwe, Malawi, Senegal) Government country reports (Ghana, Tunisia, Egypt)
6.00 p.m. - 7.30 p.m.	Official reception

Tuesday, 30 April 1996

8.30 a.m. - 10.00 a.m.	<u>Plenary 1</u> (continued) Government country reports (Cameroon, Uganda)
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10.30 a.m. - 12.00 n.

Plenary 2

Link between the United Nations Guidelines for Consumer Protection and the Model Law for Consumer Protection in Africa

12.00 p.m. - 1.00 p.m.

Plenary 3

State of consumer protection and legislation in Africa

2.30 p.m. - 4.30 p.m.

Workshops

I. Physical safety and standards

II. Economic interests

III. Distribution facilities

7.00 p.m.

Cultural night at Chapungu Village

Wednesday, 1 May 1996

8.30 a.m. - 10.30 a.m.

Workshops (continued)

IV. Redress

V. Education and public awareness

VI. New areas

11.00 a.m. - 1.00 p.m.

Presentation of the Model Law for Consumer Protection in Africa

2.30 p.m. - 4.00 p.m.

Plenary 4

Extension of the United Nations Guidelines for Consumer Protection

6.00 p.m.

Mayor's reception

Thursday, 2 May 1996

8.30 a.m. - 5.00 p.m.

Plenary 5

Role of regional and subregional bodies

Role of the European Union in promoting consumer protection in developing countries

Launch of the Model Law for Consumer Protection in Africa

Closing Ceremony

