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A STUDY REPORT ON SELECTED TRADE LAWS - CONSUMER PROTECTION LAW

FOREWORD

The Government of Uganda, basing on the findings of the Commercial Justice Reform Programme (CJRP) baseline study and in consultation with stakeholders developed a four year detailed strategy for the reform of the commercial justice system. The strategy focused on four essential areas; the commercial courts, the commercial registries, the legal profession, the commercial regulatory environment and commercial laws.

In furtherance of the programme, the Uganda Law Reform Commission (ULRC) with the support of the Justice, Law and Order Sector (JLOS) proposed to reform key selected commercial laws that affect the basic operating environment of businesses to promote private sector business operations.

It should be noted that the commercial justice system in Uganda has fared badly because commercial life has been encumbered for several decades. This has caused inadequacy in Government delivery and led to the slow development of the private sector.

The commission, having appreciated the fact that law cannot be adequately reformed without appreciating the political, cultural and socio-economic context in which it operates and as a measure towards operationalising the people’s constitutional right to participate in the law making process carried out wide consultations with the relevant stakeholders and individuals with a wide range of expertise on policy and business issues. As a result of these involving endeavours, many Bills have been made.

The commission appreciates the responses from the participation of all stakeholders and is indeed confident that the recommendations contained in this report and Bill will, due to the fact that the public have had an input, be easily enforceable in our society.

The commission acknowledges with special appreciation the work of the consultants, Barugahare & Co. Advocates and the financial support given through the Justice Law and Order Sector.

Professor Joseph M.N. Kakooza,
Chairman, Uganda Law Reform Commission.
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ACRONYMS.

AEZ Agro Export Zone.
CIF Cost Insurance and Freight.
COMESA Common Market for Eastern and Southern Africa.
DEEC Duty Exemption Entitlement Certificate.
DEPB Duty Entitlement Passbook Scheme.
DES Duty Exemption Scheme.
DFRC Duty Free Replenishment Certificate.
DRS Duty Remission Scheme.
DTA Domestic Tariff Area.
EHTP Electronics Hardware Technology Park Scheme.
EOS Export Oriented Scheme.
EOU Export Oriented Unit.
EPZs Export Processing Zones.
FDI Foreign Direct Investment.
FOB Free on Board.
FTZ Free Trade Zones.
IPs Industrial Parks.
LOI Letter of Intent.
LOP Letter of Permission.
MEP Minimum Export Price.
MSE Medium-sized Enterprises.
MUB Manufacturing Under Bond.
NFE Net Foreign Exchange.
NFEP Net Foreign Exchange as Percentage of Exports.
NMDC Namanve Management and Development Company.
NRM National Resistance Movement.
RCMC Registration-cum-Membership Certificate.
SEZ Special Economic Zones.
STPs Software Technology Parks.
TEP Tourism and Entertainment Parks.
TP Technology Parks.
UIA Uganda Investment Authority.
WTO World Trade Organisation.
ZAFREZA Zanzibar Free Economic Zone Authority.
Establishment of the Uganda Law Reform Commission.

The Uganda Law Reform Commission was established in 1990 by the Uganda Law Reform Commission Act, Cap. 25. Prior to this enactment, law reform was the responsibility of the department of law reform and law revision of the Ministry of Justice, which had been set up in 1975. In 1995, with the promulgation of the Constitution, the commission became a constitutional commission by virtue of article 248 of the Constitution.

Composition of the commission.

Under section 3 of the Uganda Law Reform Commission Act, Cap. 25, the commission consists of a chairman and six other commissioners, all of whom are appointed by the President on the advice of the Attorney General.

The chairperson and four of the commissioners are lawyers who are retired or sitting judges of the Court of Appeal or High Court of Uganda; or are lawyers qualified to be appointed as judges of the Court of Appeal or High Court of Uganda; or are senior practising lawyers or senior teachers of law at a university or similar institution of law in Uganda. The remaining two commissioners, as set out by section 4(2), are non-lawyers but persons who have distinguished themselves in disciplines relevant to the functions of the commission.

Additionally, section 12 empowers the Attorney General, on the advice of the commission, to appoint experts or consultants in any specific aspect of law reform undertaken by the commission.

The commission is serviced by a secretariat composed of an executive secretary and other staff. The commission has three departments which are: the law reform department, the law revision department, and the department of finance and administration. The staff of the commission consists of lawyers and non-lawyers appointed by the Attorney General from among persons who are either public or non-public officers.
Functions of the commission.

The main function of the commission as set out under section 10 of the Uganda Law Reform Commission Act, Cap. 25 is to study and keep under constant review the Acts and other laws of Uganda with the view to making recommendations for their systematic improvement, development, modernisation and reform with particular emphasis on-

(a) the elimination of anomalies in the law, the repeal of obsolete and unnecessary laws and the simplification and translation of the law;

(b) the reflection in the laws of Uganda of the customs, values and norms of society in Uganda as well as concepts consistent with the United Nations Charter for Human Rights and the Charter of Human and Peoples’ Rights of the African Union;

(c) the development of new areas in the law by making the laws responsive to the changing needs of the society in Uganda;

(d) the adoption of new or more effective methods or both for the administration of the law and dispensation of justice; and

(e) the integration and unification of the laws of Uganda.

Powers of the commission.

In the performance of its functions, the commission may-

(a) receive, review and consider any proposals for the reform of the law which may be referred to it by any person or authority;

(b) prepare and submit to the Attorney General, from time to time, for approval, programmes for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform; and those programmes shall include an estimate of the finances and other resources that will be required to carry out any such studies and the period of time that would be required for the completion of the studies;
undertake, pursuant to any such recommendations approved by the Attorney General, the formulation of draft bills or other instruments for consideration by the Government and Parliament;

(d) initiate and carry out, or, with the approval of the Attorney General, direct initiation and research necessary for the improvement and modernisation of the law;

(e) provide, at the instance of the Government, to Government ministries and departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law;

(f) encourage and promote public participation in the process of lawmaking and educate and sensitise the public on lawmaking through seminars, publications and the mass media; and

(g) appoint or empanel committees, in consultation with the Attorney General, from among members of the commission, or from among persons outside the commission, to study and make recommendations to the commission on any aspect of the law referred to the committees by the commission.

Profile of the commission.

Vision.

The vision of the commission is to promote, in Uganda, a legal system with just and up-to-date laws, easily accessible to all.

Mission statement.

To contribute to sustainable development, an equitable and just legal system through revision, harmonisation, development and reform of the law.

Values of the commission.

The commission-

(a) seeks to be impartial at all times in all its dealings with clients,
(b) endeavours to operate with integrity and in a professional way,
(c) is committed to equity and pragmatic diversity in the workplace,
(d) respects and values the contribution of the people, and
(e) endeavours to communicate consistently and effectively with our
stakeholders in all its projects.

Slogan

“Law reform for good governance and sustainable development”.

Justification for legal reform.

The Ugandan society, like all societies, is in a constant state of change caused by political, social and economic factors yet there have been few changes in the law since the inception of English law in Uganda in 1902. In addition, there are emerging cultural patterns and gender relations, new Government policies such as decentralisation, privatisation, economic liberalisation, poverty eradication, private sector development and the modernisation of agriculture. However, there have been few changes in the law, yet the law, at any given time, has to effectively respond to social changes and to the aspirations of the people. There is need for extensive research including the need for wide consultations with stakeholders when proposing reforms in any area of the law.

Current members of the Uganda Law Reform Commission.
1. Professor Joseph Moll Nnume Kakooza.

Professor Kakooza is a holder of the degrees of B.C.L. and LL.B. of the National University of Ireland, Dublin; LL.M. (Harvard); M.Litt. and a Postgraduate Diploma in Anthropology of the University of Oxford; Certificate in International Relations, of the University of Oslo; Barrister-at-Law, of the Inner Temple, London and Advocate of the High Court, Uganda.

Professor Kakooza served as a lecturer at the Faculty of Law, University College, Dar-es-Salaam, as a senior lecturer and founding head (later twice dean) and finally Professor of Law at Makerere University. He has been a visiting scholar at Harvard Law School; guest lecturer at the college of criminal
justice, Northeastern University Boston and visiting professor, College of Law, University of Florida. He is currently teaching law at Kampala International University and medical jurisprudence in the Faculty of Medicine, Makerere University, part-time. He is widely published, particularly in criminal justice and family law and he is a member of many professional organisations. He is listed in the international publication of *WHO IS WHO in Education* and was given the award of *MAN OF THE YEAR, 2003*, by the American Biographical Institute, Inc.

Professor Kakooza has, among other spells of public service, served as Ag. Judge of the High Court of Uganda, Ag. Solicitor General, President of Uganda Industrial Court; and commissioner of law reform. He was acting chairman of the commission from 2000 to 2002 when he became its chairman.

He has been in charge of the Domestic Relations Law Project and Labour Laws Project. He is currently in charge of the Intellectual Property Law Project, the Reform of the Accountants Act Project, the Living Law Journal Project, the Sentencing Legislation Reform Project and Community Law Reform Programme.

2. **Ms. Percy Night Tuhaise.**

Ms. Tuhaise is a holder of the degrees of LL.B and LL.M of Makerere University, Kampala; a Postgraduate Diploma in Legal Practice of the Law Development Centre, Kampala. She also holds various certificates in human rights teaching and research (Ottawa Canada 1991), (Strasbourg, France, 1995). She is the deputy director and a principal lecturer of the Law Development Centre, Kampala. She is also an advocate of the High Court of Uganda. Ms Tuhaise was appointed a part-time commissioner in 1995. She assisted commissioner Kibuka in the Rape and Defilement Project. She has been in charge of the Business Associations cluster of the Commercial Law Project and Succession Law Project, and is currently in charge of the Codification of the Contracts Law Project under the Commercial Law Project II and Simplification of the Penal Code Act Project. She is also a member of the editorial board for law revision.
3. **Mr John Mary Mugisha.**

Mr. Mugisha holds the degree of LL.B of Makerere University and a Postgraduate Diploma in legal practice, LDC. He was appointed a part-time commissioner in 1999. He is a principal lecturer at the Law Development Centre, Kampala and an advocate of the High Court of Uganda. Mr. Mugisha is a former President of Uganda Law Society; Vice President of the East African Law Society; lead counsel for the Constitutional Review Commission; and deputy secretary general in charge of Eastern Africa, International Bar Association (IBA). He is also a member of the Law Council representing the Uganda Law Society. Mr. Mugisha has been the commissioner in charge of Secured Transactions and Fair Trade Clusters of the Commercial Law Reform Project. He is currently in charge of subsidies and countervailing measures, under the Commercial Law Reform Project II and Trial Procedures Reform Project under the Criminal Law Reform Project I.

4. **Dr. Lillian Tibatemwa-Ekirikubinza.**

Dr. Tibatemwa-Ekirikubinza is a holder of a PhD in law from the University of Copenhagen, Denmark; an LLM in Commercial Law from the University of Bristol, UK; an LL.B (Hons) degree from Makerere University and a Postgraduate Diploma in Legal Practice from the Law Development Centre, Kampala. She was the deputy dean of the Faculty of Law, Makerere University and is currently the Deputy Vice Chancellor in charge of academic affairs at Makerere University and a part time commissioner of the commission since 1999.


Apart from being a commissioner of the Uganda Law Reform Commission where she has been in charge of various projects namely: the Insolvency Cluster of the Commercial Law Reform Project I, the Domestic Violence Project, the E-Commerce, Computer Crime and E-Evidence Project under the Commercial Law Reform Project II. Dr Tibatemwa-Ekirikubinza has also held other positions of responsibility among which are: board member of the Uganda
National Bureau of Standards, member of the academic board of Makerere University Business School, Nakawa and a complimentary member of the British Institute of International and Comparative Law.

**Former members of the Uganda Law Reform Commission.**

1. **Justice Sir Harold G. Platt.**

Justice Sir Harold Platt is a holder of MA of Oxford University after his first degree in India. He retired but was actively involved in various aspects of the legal field. He served in various capacities in East Africa including: Chairman Uganda Law Reform Commission 1994-2000, where he was in charge of the Commercial Law Project among others; judge of the Supreme Court of Uganda 1989-1994, judge of the High Court and Court of Appeal Kenya 1968-1989; Government service, provincial magistrate Tanzania 1962-1972, colonial legal service Tanganyika 1954-1962 and in legal practice 1951-1954. Justice Sir Harold Platt was called to the Bar in 1952 after serving in the royal air force from 1942-1947.

2. **Professor Eric Paul Kibuka.**

Professor Kibuka holds a B.A and PhD of Makerere University. He was a director of the United Nations African Institute for the Prevention of Crime and Treatment of Offenders, Kampala. He was appointed a part-time commissioner in 1995. He is a retired lecturer of sociology at Makerere University. Professor Kibuka was in charge of the Rape and Defilement Law Project. He was also in charge of the Decriminalisation of Petty Offences Project as well as the Contracts Law Project.

3. **Ms. Hilda A. Tanga.**

Ms. Tanga is a holder of a B.A degree in education and a postgraduate diploma in Human Resources Management. She has been a graduate teacher at Kololo S.S.S; lecturer in business communication at the National College of Business Studies; Ag. registrar and deputy academic registrar at the Uganda Polytechnic Kyambogo. Ms. Tanga has also been an adhoc consultant with Management
Training and Advisory Centre (MTAC) on management and training of trainers. She is currently an examiner with the Uganda National Examinations Board (UNEB) and National Business Examinations Council (Nakawa).

4. **Ms. Filda Mary Lanyero Ojok.**

Ms. Mary Lanyero was a senior lecturer and dean of the Faculty of Arts, Institute of Teacher Education, Kyambogo. She is also involved with various non-governmental organisations in various capacities. Ms. Lanyero holds certificates from the American Studies Winter Institute, USA. She holds a masters degree in international relations, Carleton University Ottawa, Canada and a B.A of Makerere University majoring in history and literature in English. Ms. Lanyero was a teaching assistant, University of Carleton, Ottawa Canada.

5. **Mr. Francis Butagira.**

Mr. Butagira was appointed commissioner on 22nd January 1996. He holds the degrees of LL.B Makerere University and LL.M (Harvard). He is an advocate of the High Court of Uganda and former principal lecturer at the Law Development Centre.

6. **Mr. Richard Aboku Eryenyu.**

The late Richard Aboku Eryenyu served as commissioner from 19th January 1996 until his death on 7th April 1999. He was an LL.B graduate of Makerere University and a chief magistrate.
EXECUTIVE SUMMARY.

1. Background.

The Uganda Law Reform Commission has undertaken a major review of commercial laws. Funded by the Justice Law and Order Sector of the Ministry of Justice and Constitutional Affairs, the Commission has commissioned studies of which this study forms a part, with a view of reviewing existing laws and drafting new ones. The overall objective is to improve the country’s commercial laws so as to improve the environment that will attract foreign investment into the country. A team of consultants was contracted to undertake preparation of and finalisation of background papers, reports and draft Bills to cover a review of policies and laws governing fair trade laws. These were Competition law, Consumer protection, Anti-dumping (and Countervailing Duties), Special Economic Zones, Sale of goods and Trade Licensing law.

To enhance the national and international competitiveness of Uganda’s products and services, it is necessary to continue restructuring and improving commercial law flexibly to reflect social and economic changes. This process of reform is global and even developed countries and in Africa, industrially advanced countries such as South Africa have already largely reformed their commercial laws to improve their international competitiveness.

This study was undertaken as part of that process of reform to modernise Uganda’s laws, some of which like the law on Sale of Goods have remained virtually unchanged since they were introduced in the late 19th Century by the colonial Government. It was also increasingly apparent that Uganda lacks laws to deal with new commercial needs especially those related to global competition. It was to meet this need that the consultants were requested to examine the need for laws such as those relating to competition, consumer protection, anti-dumping and subsidies and special processing zones.

2. Objectives of the study.

The objectives of the study were to-

(a) examine, investigate and suggest reforms to the laws relating to consumer protection;
(b) participate in the preparation of and finalisation of background papers to cover a review of the relevant existing laws that have a bearing on identified laws as well as proposals from various ministries and organisations including where they exist, draft Bills;

(c) preview the above in line with international and regional commitments and undertake a comparative analysis of laws and policies of other jurisdictions including countries whose economies are under transition;

(d) identify out modelled consumer protection provisions and modify them so that they facilitate modern business enterprises operating in a liberal environment;

(e) prepare a working paper on the proposed laws;

(f) prepare for and guide the consultative meetings with taskforce members;

(g) participate in the consultation workshop;

(h) propose recommendations;

(i) in consultation with draft persons, prepare a draft Bill or amendment Bills;

(j) prepare a final report incorporating all the work done under the study; and

(k) carry out any other relevant tasks as may be required by the commission.

The objectives were to be carried out while bearing in mind other national objectives such as poverty eradication, the competitiveness of business entities, an attractive regime for overseas businesses, a proper balance of interest for all those concerned, cost effective, fair regulation and the promotion of consistency, predictability and transparency for business entities especially companies.
3. Methodology.

3.1 The taskforce.

The Commission identified persons from relevant Government departments, the private sector, academic community and individuals with a range of expertise and with access to the relevant networks of other experts to constitute a task force.

They were chosen from the following institutions-

(a) Deregulation project Ministry of Finance;
(b) Judiciary- Commercial Court;
(c) Ministry of Energy and Mineral Development;
(d) Ministry of Finance, Planning and Economic Development;
(e) Ministry of Foreign Affairs;
(f) Ministry of Justice and Constitutional Affairs;
(g) Ministry of Tourism Trade and Industry;
(h) Peat Marwick, KPMG;
(i) Private Sector Foundation;
(j) Uganda Clearing and Forwarding Agency;
(k) Uganda Consumer Protection Association;
(l) Uganda Investment Authority;
(m) Uganda Law Society;
(n) Uganda Manufacturers Association;
(o) Uganda National Bureau of Standards;
(p) Uganda National Chamber of Commerce and Industry;
(q) Uganda Revenue Authority; and
(r) USAID Private Sector Capacity Building.
The commission proposed the following terms of reference for the task force—

(a) to assist in identifying issues relevant to the stakeholders in the cluster;
(b) to comment on the review of the existing law and study proposals from various Ministries and organisations done by the consultants;
(c) to present the views of the different sectors they represent on the proposed laws;
(d) to participate in deliberations and reach consensus on the working papers and draft Bills;
(e) to discuss the proposals and recommendations to be presented at the consultative workshop;
(f) to participate in the consultative workshop; and
(g) to discuss the final report within a timetable to be agreed upon.

3.2 Consultants.

The commission contracted a team of consultants, Barugahare and Co. Advocates to undertake the study. It was carried out in Kampala though basing on findings from stakeholders nationwide. Among the national representatives of stakeholders interviewed and whose reports the consultant considered were—

(a) Deregulation Project in the Ministry of Finance, Planning and Economic Development;
(b) Ministry of Energy and Natural Resources;
(c) Ministry of Foreign Affairs;
(d) Ministry of Trade and Industry;
(e) Private Sector Foundation;
(f) Uganda Consumer Protection Association
(g) Uganda Law Reform Commission; and
(h) Uganda Manufacturers Association.
Consultative meetings were held with the above stakeholders and others mentioned in 3.2 during the study with the main aim of establishing existing facts and consensus on the way forward. These stakeholders formed a taskforce that made proposals for the consultants to consider and then reviewed the consultant’s recommendations.

Focus group discussions were held under the auspices of the commission. The discussions involved key policy makers and interested parties from Government and non-governmental organisations. Officials from relevant Government departments presented position papers or official positions where relevant.

Literature review was conducted by the consultant on the existing statutory law, international and regional instruments ratified by Uganda, case law, comparative studies from other jurisdictions as well as local research.

Finally, a three-day residential stakeholder workshop was held to discuss the findings of the study and seek views on the draft recommendations.

4. STUDY RECOMMENDATIONS.

4.1 Recommendations.

There is at present no legislation in Uganda which deals specifically with consumer protection. There is, however, legislation which deals with certain aspects of consumer protection. Examples of these are certain provisions of:

1. The Sale of Goods Act dealing with the quality of goods (Ss.13 to 16);
2. The Customs Management Act (incorporating the E.A. Customs and Transfer Management Act Cap.27, Laws of the E.A. Community); dealing with prohibited or restricted imports (ss.14-16);
3. pre-shipment inspection (S.28(5),(6));
4. smuggling and dumping (ss.128-139) and
5. The Uganda National Bureau of Standards Act, Cap. 327 – relating to the quality of goods imported into the country. Other legislation such as the Financial Institutions Act, Cap. .54 Bank of Uganda Act, Cap. 51 and the Insurance Act, Cap. 213 regulate banking and insurance activities and have a bearing on consumer protection.
(a) **Definition and purpose.**

Consumer protection measures aim at equipping consumers with knowledge about products and services they buy so that they can make informed decisions about their purchases. Consequently, any consumer protection legislation should assist consumers to avoid deceptive or unfair trade practices in trade and commerce in Uganda. In this vein such legislation is expected to guide sellers on how to conduct their business; and provide information to consumers on the goods and services they are buying and remedies to consumers who are injured by unfair or deceptive practices (Reid & Priest (1998) p.1).

Reid & Priest (1998) have proposed the promulgation of a Consumer Protection Act whose objective is to provide sufficient breadth in its application in order to curtail innovative business fraud schemes that could occur in the future. Nevertheless, it is restricted to the prohibition of fraudulent and deceptive practices and does not regulate the quality of goods of the prices charged for them. The public concerns about substandard goods which are excessively priced, are more appropriately dealt with under consumer product safety legislation while the quality of products is governed by the Sale of Goods Act. Prices of consumer goods are regulated by the market and healthy competition. Nevertheless, the proposed Consumer Protection Act (CPA) prohibits unfair competition by banning fraud and deception which forestall consumers from access to adequate and accurate information about the products they buy.

The proposed CPA deals broadly with six (6) aspects that are considered below briefly in comparison with the Uganda Consumers Protection Association (UCPA) proposed bill.

(b) **Implementation of the Act.**

It is proposed that a commission be set up consisting of five members, two from the Uganda National Bureau of Standards, two from the Uganda Consumer Protection Association and a member from the Uganda National Chamber of Commerce and Industry. Such membership is expected to provide both standard expertise while catering for con-
sumer interest (Reid & Priest (1998) pp.2-3, 31). This proposal contrasts with the UCPA’s proposal for a Uganda Protection Council consisting of 19 members (clause 9(3) of the draft UCPA Bill 1999).

(b) (i) Concepts of unfair practice, deceptive practice relative to consumer.

Underlying the proposed CPA is the need to combat unfair practice, deceptive practice with a view to protecting the consumer. A central feature of this effort is to gauge whether an unfair practice inflicts substantial injury to consumers. To balance this, it is necessary to consider whether the practice is not outweighed by any countervailing considerations and that it could not have been reasonably avoided. The standard for gauging whether a practice is deceptive is whether it tends to or is capable of deceiving the consumer who is the final purchaser of a good or service (Reid & Priest (1998), p.3).

This conceptual approach is captured in Clauses 11 to 21 of the CPA. Clause 11 prohibits bait or false advertisement while clause 12 prevents misleading advertisement as to the grade, quality or characteristics of a product or alternatively advertises a false product with a view to inducing the customer to buy another product. Similarly, a seller is prohibited from discouraging a buyer of an advertised product or service as part of a bait or trick to sell to him or her another product (clause 13). Furthermore, following a sale the seller is prohibited from prejudicing the sale with a view to selling to the buyer another product or service. Examples of such prejudice include accepting a deposit for the advertised product and then switching the buyer to a higher priced product or service or failing to deliver the advertised product within a reasonable time or making a refund (Clause 14). Dealers are also prevented from engaging in defective advertising through incomplete representations about goods or services (Clause 15).

The advertisement of reconditioned goods as new is also prohibited with a requirement that the seller shall clearly indicate that such goods are being sold “as is” (Clause 16). Door to door sales are also closely regulated in terms of their nature and the importance of the buyer’s right to cancel the sale supported by a receipt and a form bearing “a notice of right to cancel” (Clauses 17 and 18). The aim is to prevent high pressure sales with a view to
allowing the buyer a “cooling off” period to reflect on the transaction. Pyramid schemes in which, under the guise of selling a product, one is actually being sold a membership in the pyramid are prohibited (Clause 19).

Finally, the proposed CPA creates an offence in respect of a seller who gives misleading price indications by making the consumer to believe that the price of certain goods or services is less than the actual price. This occurs when full facts about the value of the goods or services are not given to the consumer (Clause 21).

By way of comparison, the draft UCPA Bill, 1999 addresses the issue of advertising in the context of the need to provide accurate information by the supplier (Clauses 31 and 32) controlling promotional advertisement (clause 34), prohibiting abusive advertisement (Clause 33) and providing for compensation for a consumer adversely affected by abusive advertisement

(b) (ii) Exempted practices and entities.

The proposal by Reid and Priest excludes certain practices and entities from the application of the proposed CPA (Reid & Priest pp 3-4, 30). These are-
(i) the sale or rental of real estate, banking, utilities or the sale of insurance;
(ii) the owner or publisher of a publication or printed matter in which any advertisement appears;
(iii) the owner or operator of a television or radio station which disseminates the advertisement.

The rationale for this is that such activities and entities are regulated by other legislation including the Financial Institutions Act, Cap. 54; Bank of Uganda Act, Cap. 5; Insurance Act, Cap. 213; Electricity Act, Uganda Communications Act, Cap. 106; Land Act, Cap. 227 and Registration of Titles Act, Cap. 230.

In contrast the draft UCPA Bill intends to regulate financial transactions including general insurance, heath insurance, hire purchase, mortgages, etc
(Clause 21) as well as consumer credit contracts primarily involving the supply or sale of goods, services or technology (Clauses 21-30, pp 17-20).

The draft UCPA Bill also addresses issues of unfair contracts (Clauses 19 and 20, pp.16-17) that as already observed should perhaps be the subject of separate legislation in line with trends in other jurisdiction. Reid & Priest’s proposal also deals with this aspect (Clause 22, pp 10-11, 38).

(b) (iii) Enforcement.
Reid & Priest’s proposed CPA stipulates a fine of up to shillings 1 million or imprisonment of up to six months or both for violating provisions of the proposed law (Clause 23(1)). In addition the Court may order the person to pay:

(i) compensatory damages;
(ii) advocate’s fees; or
(iii) any other damages deemed fit by the Court (Clause 23(2)).

The consumer is also permitted to retract, within seven days from the signature of a contract or the receipt of the good or service, when the contract has been entered into outside the supplier’s place of business especially through telephone or at the consumer’s domicile (clause 23(3)).

The draft UCPA Bill 1999 provides for representative or class actions to enforce consumer rights (Clause 37 and the setting up of Small Claims Courts (Clauses 39-42, pp.23-26)). The Reid & Priest’s proposed CPA envisages enforcement through the commission.

(b) (iv) Guarantees.

Following a request by the commission, Reid & Priest included a provision on guarantees in the draft CPA (Clause 22(2)) to the effect that the use of the terms “guarantee”, “guaranteed” or “warranted” or “warranty” should only be used to indicate the extent of the warranty or guarantee as well as the conditions, manner, term and place in which they can be made effective by the consumer. In addition, the terms of the warranty or guarantee should be clear and accurate as to duration, conditions and description of persons issuing the same (Clause 22(3)).
(b) (v) Definitions.

Reid & Priest’s proposed CPA defines advertising; bait advertising, consumer, deceptive advertising and door-to-door sale, price, pyramid sale and seller. (Clause 3) The draft UCPA Bill 1999 is wider ranging in its choice of definitions; which inter-alia define aspects such as “appropriate laboratory, business records, consumer contract, defect, trade practice, service”, etc.

(c) Type of legislation.

The approach in Reid & Priest’s proposed CPA is preferable to that of the UCPA. The draft UCPA Bill is rather amorphous and unfocused particularly with respect to its range of coverage which includes supply and sale of goods, unfair contract terms and regulation of entities already covered in other legislation. The drafting of the UCPA Bill also requires tightening up; clauses 3 to 8 which deal with consumer rights, responsibility of Government, supplier or trader, consumer and beneficial interpretation are perhaps more appropriate in a constitutional context rather than legislation meant to address a particular problem.
CHAPTER 1

THE FAIR TRADE LAWS CLUSTER

1.1 Background.

Government has committed itself to revising the commercial laws of the Republic of Uganda in order to support private sector development and encourage private investment.

Government through the Uganda Law Reform Commission (ULRC) has embarked on the implementation of the Commercial Justice Reform Programme (CJRP). The CJRP is a component of a Sector Wide Programme that brings together all institutions within the Justice Law and Order sector aimed at improving institutional efficiency and service delivery. This programme is generally intended to fit in the Government’s macro planning framework for poverty eradication. Its implementation is guided by Government’s avowed policies including those on economic liberalisation and privatisation.

Under the CJRP, Government aims at putting in place legal and policy measures that ensure that the private sector operates efficiently and within an environment in which both commercial transactions and commercial justice are respected. This is because Government recognises that the ability to enforce contracts is a fundamental requirement for private sector development. One of the components of the CJRP is the reform and modernisation of commercial laws including those that govern companies, cooperatives, joint ventures as well as partnerships.

Commercial law reforms begun in 1996 as a sub-component under the legal sector component of the Uganda Institutional Capacity Building Project. The project engaged an American Consultancy firm, Reid and Priest based in the USA who reviewed the laws under their terms of reference including Competition law and policy, Sale of Goods and Supply of Services, Consumer Protection, Anti-dumping and reform of licensing procedures and produced reports and proposed amendments to the laws where they deemed it appropriate. Draft Bills were also produced.
Much as the consultants did significant work, the commission was of the view that further consultations with stakeholders on the proposed laws and policy formulation as well as completing the background papers to the laws were necessary.

The commission accessed funding from the Justice Law and Order Sector of the Ministry of Justice and Constitutional Affairs in January 2001 to complete the reform of commercial laws. Before this, a working group under the sector identified priority areas of the law for reform. These included the fair trade laws, under the fair trade cluster including competition law, sale of goods, consumer protection, trade licensing, anti-dumping and finally special economic zones.

Consumer protection laws play a very important role in laying down and enforcing rights of consumers. Laws on consumer protection prohibit unfair or misleading trade practices such as use of false weighing or measuring equipment, deceptive advertising, etc. They also set standards for the quality, safety and reliability of many goods so that failure to comply with these standards can result in legal action against the seller. Presently there are a number of legislations that have provision for consumer protection. These include the Weights and Measures Act, Cap. 103; the Public Health Act, Cap. 281; the Food and Drugs Act, Cap. 278 and the National Drug Policy and Authority Act, Cap. 206. The aim of the introduction of a consumer protection law is to have a comprehensive Act that covers consumer protection only.

The key objective of reform of fair trade laws is to have modern laws supporting a competitive economy in a coherent and accessible form, providing maximum freedom for participants to perform their proper functions but recognizing the case for high standards and ensuring appropriate protection for all parties. Account needs to be taken of current changes particularly globalisation, harmonization of laws in the region, modern patterns of regulation and ownership, changing assets structures and the importance of small and closely held businesses.
1.2 Objectives for introducing a consumer protection law.

1.2.1 Modern law.

“Modern law” means law well fitted to meet current and foreseeable future needs. A new era has arrived. Time has run out for businesses that supply poor quality products and those which come together to fix prices or rig markets or take unfair advantage of a dominant market position. There is now a shift from protection of industries to prevention of injury to the industry. To create an industrial economy that can stand the test of international competitiveness, a framework for the establishment of local industries, with the backing of foreign investment has to be introduced. Economic efficiencies are now the prime objects of trade laws and not the vague promotion of public interest as was before.

1.2.2 Law for a competitive economy.

This is the predominant objective. The commission aims at pursuing policies to facilitate productive and creative activity in the economy in the most competitive and efficient way possible for the benefit of everyone, that is by maximizing output and contribution to prosperity at minimum cost rather than simply efficiency in the popular cost. This entails freedom for managers and others controlling companies, cooperatives, joint ventures and partnerships, ensuring that to maximize wealth and welfare they are enabled to maximize their proper function in managing resources. It is not for the law to substitute for business judgments involved but to provide optimal conditions for their proper exercise. The commission recognises for example that the limited company form has proved over the last 150 years an outstandingly successful, means for organizing productive activity, deploying and protecting investment and allocating risks. It is critically important that the success should be preserved and indeed enhanced in the modern context; there is clearly room for improvement.
1.2.3 Opening up of the economy.

New approaches have been introduced to enable the country to achieve a more competitive economy. Some of these are liberalisation, prevention of injury rather than protectionism of industry and deregulation. Government is committed to putting in place a policy and regulatory environment that supports the operations of a modern competitive private sector. This means delivering changes that reduce time and money that businesses spend on regulatory activity and that give businesses maximum flexibility to take advantage of competitive opportunities.

Government’s purpose of doing this is to improve the potential of Uganda business to prosper and grow so that they can deliver more jobs and higher standards of living to Ugandans. The reforms will open the Ugandan economy to competitive international levels in terms of skilled manpower and information technology.

1.2.4 Freedom and abuse.

This does not mean that the law should merely facilitate and secure freedom for management and controllers of business entities. There is a trade off between freedom and abuse and between freedom and efficiency. Abuse damages efficiency and the credibility of business and of productive system. The commission seeks to ensure that appropriate high standards of conduct are maintained. Such standards are important components in promoting competitiveness and efficiency. They give rise to demands on management which must be recognised both internally from shareholders, partners and externally, ensuring that business activity responds also, to the maximum extent it efficiently can, to wider economic, environmental and social needs.

Consideration has to be given to the fact that specialised legislation such as employment laws, health and safety laws, consumer protection and environmental laws etc have a bearing on the relations between members or partners, creditors and directors. The law should have a place in securing business entities are operated in a way that wide ranges of interests are met.
1.2.5 **Comprehensive and coherent reform.**

The purpose of reform is to produce a coherent framework through a comprehensive reform process. Comprehensive reform is in fact essential to produce a competitive and efficient outcome. The present laws have many strengths and benefits but fail in terms of responsiveness to the shape of modern businesses and in the accessibility of the language in which they are expressed relevant provisions sometimes being hard to find and understand and expensive to administer. Anti-abuse provisions may take the form of an unduly wide prohibition, sometimes introduced for broad or now superceded reasons, overlaid with complex exemptions, to which are attached a further layer of conditions and safeguards. The purpose may be reasonably clear in theory but may bear little relationship to modern commercial reality particularly in the context of the wide range of purposes to which the law is put. Under the company law provisions for example, elaborate prescriptive structures such as the capital maintenance doctrine, have built up on the back of theories which may now have only limited relevance.

1.3 **Justification for change.**

These problems are exacerbated by more general changes. Today’s markets and businesses are characterized by the following key trends.

1.3.1 **Globalisation.**

Uganda’s economy is less insulated from wider influences. The increasing openness of regional and international trading relationships reinforces the need for a low cost, speedy and efficient method of organisation of commercial activity, attractive to foreign undertakings and providing an optimal infrastructure for indigenous ones. The increasing international mobility of business and capital and the ability of firms to operate internationally, without local incorporation, also raises the need to review systems for regulating overseas businesses operating within Uganda.
1.3.2 Regional cooperation.

Uganda’s membership in the East African Community (EAC) and the Common Market for East and Southern Africa (COMESA) has two relevant consequences. First, the increasing openness of Ugandan markets and that of its partners is part of the globalisation process. Secondly, Uganda has become party to the EAC legal harmonisation programme which is part of the single market enterprise.

1.3.3 Information technologies.

Competition law for instance depends on, and in ultimate output very largely consists of, the accumulation and communication of information. The new systems for electronic communication and information management have the potential to transform the processes and the substantive relationships involved. The trend is now towards paperless transactions.

1.3.4 The modern asset mix.

The pattern of productive activity in many sectors of the economy is shifting to become increasingly human resource and knowledge based. Assets structures are changing and becoming increasingly “soft” in the sense that a significant proportion of the value or capacity of the business is to be found in intangibles rather than in tangible assets such as buildings and machinery. The skills of the work force are particularly important labour now being a resource which requires specific training, development and mutual commitment.

More recently developed forms of intangibles such as marketing and other reputational activity can create an ethos and brand image which confers competitive advantage. Global brands are major assets which can change hands at very high prices. In some sectors regulatory expertise or international experience may be a key hard won advantage. Even businesses with a high fixed and tangible asset component depend on effective deployment of such “soft” assets. The Ugandan law as it is now fails to capture such assets, to enable assessment by investors and others, or to ensure accountability of management for stewardship. Traditional reporting requirements focus on historic experience and tangible assets and not prospective opportunities risks, human and intellectual investment.
1.4 Guiding principles.

1.4.1 Government policies.

1.4.1 (i) Economic liberalisation.

The liberalisation of especially commodity marketing, export trade and foreign exchange has resulted in competitiveness which has been associated with efficiency in the marketing systems, improved farm level prices and generally increased incentives for farmers and the investing population to increase production and improve on service delivery. On the export trade side, international trade especially in agro-produce has increased while the industrial sector has registered tremendous increases in agro-based industrial establishments. However the limitations of liberalisation are largely due to lack of proper implementation arrangements and less to do with the policy itself.

1.4.1 (ii) Privatisation.

The divestiture of public enterprises has resulted in increased efficiency in the area of investment and marketing of produce. The Public Enterprise Reform and Divestiture Act, Cap. 98 provides for the implementation of Government policy of privatisation of public enterprises. It provides for the reform and divestiture of public enterprises and it establishes a committee to implement the law and policy on privatisation.

Under the PERD Act, public enterprises are categorised into five classes. Class I covers Public Enterprises in which Government is to retain 100% shares. Class II has Public Enterprises in which Government is required to retain the majority shares. Class III has Public Enterprises in which Government is to retain minority shares. Government is to fully divest from those Public Enterprises in Class IV while those in Class V are to be liquidated.

The Act provides for the subscription for and acquisition of shares in a public enterprise in which the State is required to hold shares as well as for the registration of public enterprises as public companies outside the rubric of the Companies Act. In this connection, this law states that in the divestiture of public enterprises, the Companies Act is subject to the PERD Act and that in the event of a conflict, the PERD Act prevails.
1.4.1 (iii) Poverty Eradication Action Plan (PEAP).

This has been the over riding Government policy since 1997. It is linked to a long term vision to reduce absolute poverty to less than 10% by 2017. The PEAP provides the strategic framework that guides the preparation of the Medium Term Expenditure Framework (MTEF) and the annual budget. The PEAP which was prepared in close consultation with the civil society is based upon in-depth studies of the nature of poverty and the way poor people themselves perceive it.

The PEAP has four pillars, linked to four overarching goals-
Goal 1: Rapid and sustaining economic growth and structural transformation,
Goal 2: Governance and security,
Goal 3: Increased ability of the poor to raise their incomes, and
Goal 4: Enhanced quality of life of the poor.

All other sector and non-sector policies are designed to contribute to structural transformation of the population particularly the rural poor who constitute the bulk of the population and who are the most affected by abject poverty. As a strategy for implementing the policy, Government has transformed the policy statements into a comprehensive and holistic plan- the Poverty Eradication Action Plan (PEAP).

1.4.1 (iv) Plan for Modernisation of Agriculture (PMA).

Cognisant of the fact that the agricultural sector is the major source of livelihood for the peoples of Uganda, Government has enlisted the structural transformation of the agricultural sector as a major strategy for eradicating poverty. The Plan for Modernisation of Agriculture has been designed as a comprehensive and holistic strategic framework for eradicating rural and urban poverty through structural transformation of agriculture. PMA aims at addressing poverty through complementary, sustainable and relevant interventions that are location specific and inclusive in targeting and mindful of pressures on all members of the household.

Within the framework of PEAP, the PMA has four objectives: to increase incomes and quality of life of the poor through increased productivity, to
improve household food security through the market, to increase farm and non-farm employment through secondary processing and services and to promote sustainable use and management of natural resources.

1.4.1 (v) Investment policy.

Government has put in place a favourable policy for attracting both domestic and foreign investment. This has been through attractive tax regimes, etc.

1.4.1 (vi) Decentralisation.

Decentralisation of public service delivery was intended to bring services close to service delivery points. Services relating to the agricultural sector include provision of extension services, decentralization of agricultural research, revenue collection and utilization and development of rural infrastructure such as feeder roads, markets and telecommunication systems, among others.

1.4.1 (vii) Gender policy and action plan for women.

Government has, since 1986, pursued a deliberate policy of mainstreaming gender issues in all development programmes. This has been implemented through affirmative action in governance, education and other areas. In the trade and agricultural sectors, however, the gender imbalances still remain, yet the women constitute the majority of agricultural producers in the country.

The National Gender Policy 1997, in line with the Constitution and the Local Governments Act, provide a policy framework for addressing the gender imbalances that arise from unequal opportunities and access to control over productive resources. The national action plan on women details the various issues to be addressed to improve the economic and social status of women and youth and the strategies for addressing them. Key issues consistent with PMA include improving household nutrition, food security and household income; developing entrepreneurial capacity of women and encouraging women to establish small and medium enterprises (SMEs) as well as large scale business units; encouraging women to own or co-own property, join cooperative groups; reducing the workload of women; and supporting the introduction and use of energy and labour saving technologies.
1.4.1 (viii) Local Government Development Programme (LGDP).

This is a medium to long-term multi-objective development framework for the institutional development of local governments. It will provide a system through which service delivery at local level will be implemented. The PMA grant to districts and subcounty levels will be channelled through the LGDP. However, there are likely to be complications in accountability as the local governments are under the local government accounting system while some PMA resources may require compliance with specific donor or Government accounting regulations which may differ in some respects.

1.4.1 (ix) Medium-Term Expenditure Framework (MTEF).

This provides a budgetary framework in which all publicly funded programmes have to be implemented. The MTEF imposes budget ceiling in the medium term (3 years) and the particular sectors have to plan and implement their programmes within that arrangement. Whilst it imposes constraints, the MTEF compels sectors to rationally plan for resources, by setting priorities and making realistic budget milestones.

1.4.1 (x) Medium Term Competitiveness Strategy (MTCS).

The private sector has a central and significant role to play in the commercialisation of the agricultural sector. The MTCS is intended to provide a strategic framework for creating an enabling environment for the private sector to fully participate in agricultural production, processing and marketing. It is aimed at putting in place, mechanisms that attract and increase private investment and saving and increase competitiveness of Uganda’s private entrepreneurs in regional and international markets. The priority actions, consistent with the PMA, are summarized thus-

(a) expanding infrastructure and utilities which will result in reduced production costs, increased access to markets and improved quality of services;

(b) strengthening the financial sector (commercial and development banks, micro-finance institutions (MFIs)) and improving access to financial services;
(c) improving efficiency and effectiveness in the delivery of public services (extension, justice, road maintenance, revenue collection and utilization);

(d) strengthening regulatory services for environmental management, quality control in industry and business, etc.);

(e) developing human capital in local and central Government, NGOs and private sector in areas of production, business management and governance; and

(f) removing impediments to export sector growth.

1.4.1 (xi) Land policy and land use policy.

Government is in the process of putting in place a comprehensive land policy and integrated land use policy to operationalise the Land Act, Cap. 227. The implications for the current land policy proposals for the implementation of the PMA, will be critically examined and appropriate recommendations made. However, the consultants shall be restrictive on particular key legal and policy issues that relate to the production, processing and marketing of agricultural produce (crop, livestock, tree products) as raised in the PMA. The team intends to work closely with consulting team specifically dealing with the land sector issues.

1.4.1 (xii) The Land Sector Strategic Plan (LSSP).

The LSSP is aimed at providing the long-term implementation framework for the Land Act. Its strategy is to improve the livelihoods of the poor through more effective use and management of land resources. The policy and legal issues include more equitable distribution of land access and ownership and greater tenure security for vulnerable groups (women, squatters, orphans). Special categories will include pastoralists, those who depend on forest resources and others who lease community, state or other land including forests, wildlife reserves and rangelands.
The strategic objectives of the LSSP are-

(a) to create pro-poor policies and legislation for the land sector;
(b) to allocate land resources to more productive uses and users
(c) to ensure a more equitable distribution of land access and ownership and greater tenure security for vulnerable groups (women, squatters, orphans, widows, landless)
(d) to create and disseminate information on land use and land rights
(e) to establish more effective institutions and systems for delivery of land services (resolution of disputes, surveying and mapping,)
(f) to mobilize public and private sector resources for development of the land sector

**1.4.1 (xiii) Population policy.**

There is an inextricable link between population and the attainment of poverty eradication goals outlined in the PMA. The growth rate of population and demographic characteristics of a country’s population have implications for availability and management of resources (land, water,) and impose varying constraints on public services delivery systems (for example education, health, water and sanitation, etc). For instance, there is high positive correlation between population density and land fragmentation as evidenced in Kigezi, Bugisu and parts of the Lake Victoria basin.

The National Population Policy 1995, outlines Government strategies for attaining a well balanced population growth by, among others, improving nutrition, educating the girl child and making reproductive health services available and affordable to the poor. The policy recognizes a need for multi-disciplinary approach to population development and has enlisted inter-sectoral approaches to implementation, involving agriculture, labour, environment and education sectors.

This relates to the sustainable use of natural resources, so as to preserve the quality of the environment. It also seeks mechanisms that promote environmentally sound commercial and industrial establishments as well as in other areas such as education and population.

The National Environment Action Plan (NEAP) that was formulated in 1995 to operationalise the policy is overdue for review as provided for in the policy, having been in place for five years.

1.4.1 (xiv) Needs, consequences and facts.

If the review is to achieve efficient outcomes, then it must avoid the piecemeal, issue driven and self-referential approach. It should be driven by factual research into the mismatch between existing rules and practices and by commercial needs and by a fact based economic assessment of the likely consequences of the various options. The cost of reform is in itself an important factor which may well rule out proposals which look attractive in the abstract. It is therefore better to ensure that people with a range of expertise and with access to relevant networks of other experts and thus with access to empirical material, participate in appropriate working groups.

1.4.1 (xv) International competitiveness and comparative approach.

Wide ranges of company law reform projects have been conducted in recent years in the Common Wealth, North America and Continental Europe. It is therefore essential to learn all that we can from these initiatives. The commission has been fortunate to have experts in foreign systems working on this project. However care must be taken to avoid unthinking adoption of ideas which depend for their effectiveness on the environment in which they have been developed. Alot can also be learnt from the failures of other jurisdictions.

1.4.1 (xvi) Regional cooperation.

Uganda’s membership in the East African Community entails the work to bear in mind the need for harmonization of the laws in the East African Region.
Chapter 2

Consumer Protection Legislation.

2.1 Introduction.

Consumer protection refers to the protection afforded to a consumer not only against fraud and dishonesty in commercial dealings but also oppressive bargains and qualitatively deficient goods and services. Consumer protection is an ancient law, yet little has been done in this regard in this country. Regulatory systems and machinery does exist but this is unsophisticated, incomplete and insufficient. This leads to confusion and places consumers in weaker positions than those with whom they deal, depriving them of their money’s worth and product value. Consumer protection laws play a very important role in laying down and enforcing rights of consumers. Laws on consumer protection prohibit unfair or misleading trade practices such as use of false weighing or measuring equipment, mislabelling, etc. They also set standards for the quality, safety and reliability of many goods so that failure to comply with those standards can result in legal action against the seller.

2.2 Consumer protection in Uganda.

There is at present no legislation in Uganda which deals specifically with consumer protection. There are, however, legislations, that deal with certain aspects of consumer protection. Examples of these are the Sale of Goods Act, dealing with the quality of goods, the Customs Management Act, (incorporating the East African Customs and Transfer Management Act, Cap.27, Laws of the East African Community); dealing with prohibited or restricted imports, the Weights and Measures Act, Cap. 103 as amended regulating weighing and measuring, pre-shipment inspection (CMA.s.27(5) and(6)), Adulteration of Produce Act, Cap. 27 ensuring produce of good quality products that are free of defects, National Drug Policy and Authority Act, Cap. 206 regulating consumption of drugs, Food and Drugs Act, Cap. 278 regulating the prevention of adulteration of food and drugs, Public Health Act, Cap. 281 regulating the security and maintenance of health; and the Uganda National Bureau of Standards Act, Cap. 327 – relating to the quality of goods imported into the country.
2.3 Contract Act, Cap. 73

The Contract Act is not a law of contract specific to Uganda but only states that the English common law will apply to Uganda subject to modifications to make it locally suitable. Up to date, the Contract Act has not been amended or updated to suit local circumstances or to incorporate developments in the law of contract generally or consumer protection in particular. This means that where a consumer is cheated and he or she takes the matter to court, the Ugandan courts will use the English common law relating to contracts but simply modify it to suit the particular case.

It is important to note that the United Kingdom has since enacted a number of laws to protect its consumers. These include the Unfair Contracts Act and the Consumer Protection Act. There is therefore a need to enact a new contract Act to cater for the numerous problems that Ugandan consumers encounter on the market each day.

2.4 The Sale of Goods Act, Cap. 82

Similar to the Contract Act, the Sale of Goods Act provides for basic principles of general contract law and focuses on transactions involving the sale of goods. The Sale of Goods Act addresses the unequal status among parties to contracts by enacting exceptions to the general rule of freedom of contract. Under the doctrine of caveat emptor (buyer beware), it cautions consumers to rely on their own resources and devices when contracting. Under the Act, there is also an implied condition that the goods will be fit for the purpose for which they are purchased “where the buyer makes known to the seller the particular purpose for which the goods are required”. Another implied condition is that the goods will be merchantable or commercially viable.

The Act has a number of weaknesses. For example section 54 permits parties to contract out of the provisions of the Act by stipulating that “where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.” In practice, most vendors and suppliers make
consumers accept the exclusion or limitation of the protective provisions embodied in the Act.

Section 5 of the Sale of Goods Act requires that a contract for the sale of goods of the value of two hundred shillings or more has to be in writing if it is to be enforceable. This provision is also very limiting first, because in Uganda today, two hundred shillings does not buy anything of value. Secondly, most of the contracts for sale of goods in Uganda are not in writing. Therefore, a consumer who buys defective goods may fail to enforce the breach in a court of law because the contract of sale was not in writing.

2.5 The Weights and Measures Act, Cap. 103.

The main function of this Act is to provide for and to regulate the use of weighing and measuring equipment. It seeks to ensure that a consumer of goods should be given the right quantity of goods and to achieve this by laying down detailed procedures of how weighing or measuring equipment is certified as fit for use in trade. The Act also makes it an offence to sell or expose for sale under weight goods.

The commission has noted that one general weakness about the Weights and Measures Act as amended is its heavy reliance on penal sanctions to enforce compliance. Moreover the offences created throughout the Act attract very paltry fines ranging between five hundred shillings and two thousand shillings. These fines have never been revised upwards. A consumer who has bought underweight goods as a result of a trader using false equipment is not interested in seeing the trader going to jail. A consumer’s need is just to get compensated or to be given the right quantity of goods that he or she had paid for. This Act should be amended so as to provide for more up to date ways of appeasing a cheated consumer, for example compensation or being given the right amount of goods.

2.6 The Uganda National Bureau of Standards Act, Cap. 327.

This Act establishes the Uganda National Bureau of Standards (UNBS). The main functions of UNBS are to formulate, determine, modify, endorse and enforce standards for commodities and codes of practice. Other functions of
UNBS which are of specific relevance to consumer protection are to enforce standards in protection of the public against harmful ingredients, dangerous components and shoddy material; to provide for testing of locally manufactured or imported commodities to determine whether such commodities conform to the standard specifications.

The commission recognises the fact that the Act does not have clear avenues for redress of consumer complaints. For instance, there is no provision in the Act that boldly states that the UNBS may receive complaints from the consuming public in case a consumer is cheated or has bought substandard products.

2.7 National Drug Policy and Authority Act, Cap. 206.

This is the basic law regulating drug use in the country. Regulation of the consumption of drugs is very important because there is no person who can do without drugs. Besides, drugs, if not used properly, can lead to devastating consequences. Under the Act, National Drug Authority is established to regulate importation, exportation and sale of pharmaceuticals in Uganda and to approve the National List of Essential Drugs.

2.8 Control of drug supply.

Under the National Drug Authority Act, no person will import or sell any drug unless it appears on the National Drug Formulary. The National Drug Authority Act is a recent legislation that has generally gone a long way in ensuring that drug users or consumers are protected. Some of the main challenges to the National Drug Authority Act relate to its implementation or enforcement. One of the most glaring lacunae in the Act however is the lack of regulation of herbal medicines.

A large number of consumers in Uganda use herbal medicines. It has been discovered that some herbalists mix herbs with conventional drugs to treat some ailments, for example, some of them mix herbs with anti-malaria drugs such as chloroquine and the concoction is used to treat malaria. This poses a serious health risk to the consumer. These practices however continue unabated and are not investigated mainly because the National Drug Authority Act does not provide any mechanism for regulating herbal medicines and their use.
2.9 Food and Drugs Act.

This Act makes provision for the prevention of adulteration of food and drugs. The Act prohibits the sale for human consumption food or drugs rendered injurious to health. Any person found selling adulterated food or drugs commits an offence and is liable on conviction to a fine of two thousand shillings or imprisonment not exceeding three months. The Act makes it an offence for any person to display food with a label that falsely describes the food or is calculated to mislead as to its nature, substance or quality. The Act establishes a Food Hygiene Advisory Committee with a Chairperson and members appointed by the Minister. However, the Act does not clearly spell out the functions of this committee but merely says that the Minister may from time to time refer to the committee for consideration and advice on any questions relating to the Act as it applies to food.

Like the Weights and Measures Act, this Act has good provisions which if implemented, would curb the sale of adulterated food and drinks. However, the Act also lacks effective provisions that would ensure compliance and also relies on penal sanctions to enforce compliance and these are very low. The Food Hygiene Advisory Committee established under the Act is not active. Perhaps this committee was active, it would have innovated better methods of food hygiene and also halted sale of expired and adulterated food on the market. Some of the major challenges to enforcing the Food and Drugs Act are poverty, lack of informed consumers, lack of adequate administration and enforcement, etc. In a situation where the majority of consumers are very poor, what matters to the majority of the consumers is availability of food as opposed to the quality of food.

2.10 The Public Health Act.

The Public Health Act is intended to make provision for securing and maintaining health. It covers a wide range of public health and consumer matters such as sanitation, housing, prevention of infectious diseases, protection of foodstuffs, public water supplies, meat, milk and food articles.

2.11 The judicial system.
The courts have an important role to play in providing remedial or reactive protection to consumers and can also provide preventive or proactive protection where, for instance, an injunction is granted to restrain an impending infringement of consumer’s rights. The courts are often institutions of last resort after such remedies as negotiation, reconciliation, mediation, or arbitration between consumers and suppliers or providers have failed or when administrative tribunals fail to provide relief.

The commission has noted that the lower courts are more accessible in terms of geographical access, are less costly in terms of filing fees and representation and are relatively faster in dispensing of cases than in the higher courts.

Consumer protection in the judicial process is also compromised by the scarcity of a clear and comprehensive regime of substantive law as well as by technical, procedural and evidentiary rules which also makes it difficult for consumers to represent their own interests. Since the majority of consumers may be illiterate in law, some degree of strict liability should be imposed on sellers.

2.12 Conclusion.

From the above analysis one can conclude that there is an urgent need to enact a consumer protection law that boldly lays down the rights of consumers, the obligations of the suppliers and the remedies open to aggrieved consumers. There is also urgent need for the establishment of small claims courts or tribunals to quickly handle consumer complaints.

2.13 Literature review.

In the course of formulating proposals for the introduction of consumer protection legislation, the commission reviewed the following literature and legislation-

(a) Consumer Protection Act, 1987 (UK);

(b) Consumer Protection Law of Mongolia, 1991;
A perusal of these documents has resulted in the following assessment based on the aspects of consumer protection law addressed in these documents and the need for material for the drafting of a consumer protection bill.

2.14 Purpose.

Reid & Priest have proposed the promulgation of a Consumer Protection Act whose objective is to provide sufficient breadth in its application in order to curtail innovative business fraud schemes that could occur in the future. Nevertheless, it is restricted to the prohibition of fraudulent and deceptive practices and does not regulate the quality of goods or the prices charged for them. The public concern about substandard goods that are also excessively priced, are more appropriately dealt with under Consumer Product Safety legislation while the quality of products is governed by the SGA. Prices of consumer goods are regulated by the market and healthy competition. Nevertheless, the proposed Consumer Protection Bill prohibits unfair competition by banning fraud and deception which forestall consumers from access to adequate and accurate information about the products they buy.

2.15 Definitions.

Reid & Priest’s proposed Consumer Protection Bill defines advertising; bait advertising, consumer, deceptive advertising and door-to-door sale, price, pyramid sale and seller. The draft UCPA Bill, 1999 is more wide ranging in its choice of definitions; which inter alia define aspects such as “appropriate
laboratory, business records, consumer contract, defect, trade practice, service”, etc. The controversy over the definition of a “consumer” is resolved by adopting the UCPA’s comprehensive definition.

2.16 Enforcement.

Reid & Priest’s Proposed Consumer Protection Bill stipulates a fine of up to shs 1 million or imprisonment of up to six months or both for violating provisions of the proposed law. In addition, the court may order the person to pay compensatory damages, Advocate’s fees and any other damages deemed fit by the court.

The consumer is also permitted to retract from the contract within seven days from the signature of a contract or the receipt of the good or service if the contract has been entered into outside the supplier’s place of business especially through telephone or at the consumer’s domicile. The Reid & Priest’s proposed Consumer Protection Bill envisages enforcement by a consumer protection council.

The draft UCPA Bill provides for representative or class actions to enforce consumer rights. While penalties should not be so high that they prohibit trade they should be high enough to prevent arbitrary disregard of the law.

Recommendation 1.

The Consumer Protection Act should be promulgated from the provisions of the Consumer Protection Bill as proposed by Reid and Priest and provisions derived from the UCPA Bill, 1999.

2.17 Analysis of the provisions of the law on consumer protection.

2.17.1 Definition and purpose.

The commission recognises that the aim of consumer protection is to equip consumers with knowledge about products and services they buy, so that they can make informed decisions about their purchases and where such decisions cannot be made, to ensure that the goods conform to some reasonable safety
requirements. Consequently, any consumer protection legislation should establish reasonable safety requirements on the suppliers of goods and at the same time assist consumers to avoid deceptive or unfair trade and commercial practices in Uganda.

This may seem like an unnecessarily heavy burden to place on the suppliers of goods in addition to those burdens already placed upon them by legislation like the Sale of Goods Act and other legislation mentioned above, however this can be defended by pointing out that suppliers of goods are in many cases armed with better technical knowledge than the consumer. Placing a check on the supplier means that there is a higher level of quality of the goods in the market for the customer to choose from.

In this vein, such legislation is expected to guide sellers on how to conduct their businesses; information to consumers on the goods and services they are buying and remedies to consumers who are injured by unfair or deceptive practices.

In summary, the Consumer Protection Act will protect the following rights of the consumer;

(a) The right to be protected against marketing of goods and services which are hazardous to life and property;
(b) The right to be informed about the quality, quantity, potency, purity, standards and price of goods and services;
(c) The right to be assured, whenever needed of access to an authority of goods and services at competitive prices;
(d) The right to be heard and to be assured that the consumer’s interests will receive due consideration at appropriate forums; and
(e) The right to seek redress against unfair trade practices or unscrupulous exploitation.

The effect of the proposed Consumer Protection Bill would be in addition to and not in derogation of the provisions of any other law.
2.17.2 Application.

It is the commission’s proposal to limit the application of the Act and exclude sale or rental of real estate, banking, utilities, sale of insurance, publications or broadcasts. These are excluded because they are covered in other laws such as the Financial Institutions Act and the Communications Act. It is envisaged that these other laws offer adequate protection to consumers in those fields. To ensure protection to the consumer, the proposed law should cover areas that are not addressed by any other laws in Uganda. The taskforce observed that drafting provisions in the proposed Consumer Protection Act that are similar to other existent laws would create confusion. Where the other laws are silent, the Act would apply.

In contrast, the draft UCPA Bill, 1999 intends to regulate financial transactions including general insurance, heath insurance, hire purchase, mortgages, etc as well as consumer credit contracts primarily involving the supply or sale of goods, services or technology. The draft UCPA Bill also addresses issues of unfair contracts which should perhaps be the subject of separate legislation in line with trends in other jurisdictions.

Recommendation 2.

(a) The Act shall apply, except where the law applicable is inconsistent with the Act on the provisions relating to –

(i) the sale or rental of real estate, banking, utilities or the sale of insurance;

(ii) the owner or publisher of a publication or printed matter in which an advertisement appears; or

(iii) the owner or operator of a television or radio station which disseminates the advertisement.

2.17.3 Definition of consumer.

The interpretation section provides definitions of key words and phrases in the Act. The commission reviewed definitions from Consumer Protection Acts of other countries and the model law on consumer protection of Africa.
The definitions proposed to be included in the Act by the commission were adopted by the taskforce without much deliberation. However regarding the definition of “consumer”, the taskforce members wanted to know who a ‘consumer’ was. This was important because the consumer is the person who is protected under this Act. Some members of the taskforce wanted the proposed law to cover all kinds of consumers – consumers of raw materials; intermediate products (industrial) users; and of end products. It was argued that these were all consumers who should be protected under the Act. To protect only one kind of consumer would not be fair.

The commission however advised that the Act could not protect all kinds of consumers. Its emphasis was only aimed at the final consumers of products and services. To widen the scope of the Act to include the intermediate consumers (those who use products to produce the final product) may not be enforceable. The taskforce agreed that the proposed draft Consumer Protection Bill should only apply to the end user. The intermediate and other consumers to be protected under the provisions of the Sale of Goods Act such as sale by description.

Recommendation 3.

A consumer means the final purchaser of a good or service.

2.17.4 Administration of the Act.

The draft UCPA Bill contained provisions for the establishment of a council to administer the Act. The council would consist of persons from various sectoral organisations such as the Uganda National Bureau of Standards and the Ministry of Trade. The functions of the council would be-

(a) to formulate and submit to the Minister policy and legislative proposals in the interest of consumers, consider and examine and where necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to this Act;

(b) to create or facilitate the establishment of conflict resolution mechanisms on consumer issues, investigate any complaint received
regarding consumer protection and where appropriate, refer the complaint to the appropriate competent authority to which the complaint has been referred;

(c) to carry out, promote or participate in consumer education programs and activities, disseminate consumer issues with a view to proposing measures to address the issues, provide advice to consumers on their rights and responsibilities under appropriate laws, make available to consumers general information affecting the interests of consumers;

(d) to co-ordinate consumer protection activities;

(e) to establish and approve rules and procedures for financial and administrative matters and terms and conditions of service of staff; and

(f) to perform any other functions as are conferred upon the Council by this Act or as may be necessary for the proper carrying out of the purposes of this Act.

The taskforce agreed with the proposal to establish a council to administer the Act. However, the commission is of the view that the council is not necessary because Government institutions and private organisations in existence could perform its functions. Furthermore, the establishment of a council would mean Government resources (which are already limited) will be needed to fund its running. The commission also noted that the Act provides for measures for consumer redress that provide for the defence, promotion and enforcement of consumer rights under the Act. Therefore, there is no need to have a council established under the Act.

**Recommendation 4.**

A consumer protection council shall not be established to administer the Act.

**2.17.5 General safety requirement.**

The commission proposes to establish a general safety requirement with which the suppliers of consumer goods would have to comply. This safety requirement or rather general duty is adopted from the United Kingdom’s Consumer Protection Act, section 9. This is a “catchall requirement” that is intended to
account for future innovations that are geared towards evasion of the operation of this bill. Hence it would be an offence if a person supplied any good or service which failed to comply with the general safety requirement. The offence also includes persons who offer or agree to supply such goods; or expose or possess any such goods for sale. The general safety requirement will also respond to newly discovered hazards. The section is intended to apply to “first suppliers” but retailers will be liable whether they knew or had reason to believe that goods failed to comply with the general safety requirement. The section does not apply to goods supplied for re-export nor to second hand goods.

**Recommendation 5.**

A provision on the general safety requirement should be included in the Consumer Protection Act. Consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances including-

(a) the manner in which and the purposes for which, the goods are being or would be marketed, the getup of the goods, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;

(b) any standards of safety published by any person either for goods of a description which applies to the goods in question or for matters relating to goods of that description; or

(c) the existence of any means by which it would have been reasonable (taking into account the cost, likelihood and extent of any improvement) for the goods to have been made safer.

2.17.6 Restrictions on advertising and other related practices.

Underlying the Proposed Consumer Protection Bill is the need to combat unfair or deceptive trade practices with a view to protecting the consumer. A central feature of this effort is to gauge whether an unfair practice inflicts or
is likely to inflict, substantial injury to consumers. To balance this, it is necessary to consider whether the practice is not outweighed by any countervailing considerations and that it could not have been reasonably avoided. The standard for gauging whether a practice is deceptive, according to Reid & Priest is whether it tends to or is capable of deceiving the consumer who is the final purchaser of a good or service.

The proposed sections if implemented will specifically prohibit unfair trade practices. Trade practices are practices which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopt any unfair method or deceptive practice including any of the following practices.

The practice of making any statement whether orally or in writing or by visible representation which-

(a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(b) falsely represents that the services are of a particular standard, quality or grade;

(c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(f) makes a false or misleading representation concerning the need for, or the usefulness of any goods or services; and

(g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on any adequate or proper test thereof.

The commission noted that in some jurisdictions where consumer protection legislation has been implemented, various practices have been developed in
an attempt to avoid the operation of the Act. The Consumer Protection Act specifically prohibits these activities. They include-

Pyramid schemes: These are sales in which, under the guise of selling a product, one is actually being sold a membership in the pyramid in addition to the product. The reason for prohibiting this particular practice is that it is almost impossible to expect the member of the pyramid to be sure of any representations that are made in connection with the product, in addition to this the original supplier of the product increases his or her remoteness from any liability for negligence under tort or under the consumer protection legislation for any representations made to encourage a customer to purchase the goods in question.

Bait Advertising: This refers to a situation whereby one product is advertised when in actual fact another is being sold. This means that it is not possible for the authorities to keep track of the quality of the product that is actually being sold or even whether it is legal. An example would be a restaurant advertised as an internet café. In this case it would be difficult for health inspectors to ensure that health and sanitation requirements are maintained in the production of the food sold in such a restaurant.

**Recommendation 6.**

(a) A person shall not publish an advertisement containing an offer to sell a product unless that offer is genuine and bonafide efforts have been made by that person to sell the advertised product.

(b) It is the duty of every supplier of goods, technology or services to provide consumers with true, adequate, clear and prompt information on the goods and services offered, so that they can make a better and informed choice.

(c) A person shall not, in an advertisement, use a statement or other representation which creates a false impression as to the grade, quality, make, value, currency of model, size, colour, usability or origin of the product offered; or represent the product in such a manner that on the
disclosure of the true facts, the buyer may be switched from the advertised product to another.

(d) Abusive advertising is prohibited.

(e) A seller shall not discourage a prospective buyer of an advertised product or service as part of a bait scheme to sell another product or service.

(f) A seller shall not, in the event of a sale of an advertised product or service, prejudice a sale with the aim of selling another product or service.

(g) A person shall not, in the conduct of any business, trade or commerce or in the furnishing of any service engage in deceptive advertising.

(h) A person selling any goods shall not represent in any way expressly or impliedly that the goods which that person is selling are new when they are used, reconditioned or being sold “as is”.

(i) A person shall not engage in a pyramid sale.

(j) Where a seller sells a product through bait advertising, the consumer may return that product to the seller and claim a refund.

(k) A person shall be guilty of an offence if, in the course of any of his or her business, he or she gives (by any means whatever) to any consumers an indication which is misleading as to the price at which any goods or services are available (whether generally or from a particular person).

2.17.7 Guarantees.

Practically, all manufactured goods reach the ultimate consumer with guarantees. It is a common practice for the purchaser of consumer goods to
be supplied with a printed document (guarantee) by the retailer from whom he or she buys the goods. The manufacturer issues this document. The guarantees perform promotional functions for the manufacturers in addition to acting as a system of quality control whereby information can be obtained about the performance of the product.

The typical guarantee contains undertakings by the manufacturer as to defects in the goods sold. Minor defects that do not of themselves make the goods unmerchantable may also be covered by the guarantee. The manufacturer undertakes to repair or replace defective parts or equipment free of charge during a specified time. Frequently, the buyer will be required to dispatch the defective goods or parts at his or her own cost for repair or replacement.

The advantage of a guarantee is that it gives a remedy without the formality of establishing a legal claim. The guarantee is usually expressed to be without prejudice to the statutory implied conditions and warranties, because it would be an offence if the guarantee gave the impression that it superseded the statutory rights of the buyer.

However, guarantees do not afford sufficient protection to a consumer because they take away some rights. Almost invariably the guarantee excludes all liability for consequential damage. This reduces the manufacturers’ liability because if the product is defective, the manufacturer will not pay for the loss or damage which the consumer attains but only replace the defective parts or equipment within the time specified under the guarantee. If the time has elapsed, the buyer will not have a remedy. Guarantees may also purport to make the manufacturer the sole judge in dispute with a consumer. In such case, a manufacturer may say that there is nothing wrong with the product. Retailers are also able to avoid their legal responsibility, since a remedy of repair or replacement is only available against the manufacturer. Lastly all a consumer is entitled to are the rights availed under the guarantee.

Recommendation 7.

Provisions on guarantees will be included in the consumer protection Act.

2.18.8 Measures and mechanisms for consumer redress.
The commission noted that one of the recurring problems was lack of consumer redress mechanisms. The judicial process under the current law was seen as expensive, slow and subject to many legal technicalities. A consumer who wanted redress for a wrong has to go through the present litigation system in Uganda that is often accused of stifling quick and efficient court process. Most aggrieved consumers give up enforcing their claims because of the slow and expensive process in Ugandan courts.

The commission proposes that the best remedy would be to create an alternate avenue for consumer to seek redress without entering into the mainstream judicial system of the country. Consumer related cases would first be brought to a form of court called the small claims courts. The commission is well aware that the commercial division of the high court is now operational. However the small claims courts are meant to handle consumer-related matters - faster and cheaply. They would not operate like the main judicial system of Uganda. The establishment of small claims courts would provide cost effective and speedy remedies to aggrieved consumers. There should be no overlap or conflict in the role of the small claims court with the commercial court.

The small claims courts should follow a simple and informal procedure. Emphasis should be placed on the realisation of expeditious, efficient and affordable justice. Lawyers ought to be excluded however, though representation might make the process adversarial and expensive, legal representation is a natural right provided for by the constitution. Consumer organisations will be allowed to take legal action on behalf of consumers. The court fees should be reasonable and minimal and possibly in the case of poor consumers, waived. The decision of the small claims courts should be final to make the process faster, easier, affordable, certain, definitive and decisive. However, these courts should only complement the ordinary court system and not replace the latter. Regulations under which the monetary ceilings are stipulated for the small claims courts to operate will have to be provided in the Act.

The commission recognises that the intention of establishing small claims courts in every district was to bring access to justice closer to every consumer all over the country. However, whether it would be practically possible to establish
such courts in every district in terms of manpower and finances is an area that needs further investigation.

The commission considered two issues on presiding over small claims courts. Firstly who presides over the small claims courts and secondly who appoints the presiding officers. On appointment, two options were proposed. One to use the existing judicial structure and secondly, to allow the district councils to appoint presiding officers. No consensus was reached by the taskforce and it was agreed that further discussions with the relevant authorities would have to be undertaken on the issue. On the presiding officer – the commission noted that with the Family and Children Court, the presiding officer is a Grade II Magistrate. The commission recommends that the Chief Justice could designate a Magistrate Grade to preside for example Chief Magistrate or Magistrate Grade I.

2.17.9 Remedies.

Any law is only as useful to the public as the remedies it offers to the public. Hence it is important to specify certain remedies that will be available to the aggrieved consumer so that it is certain what course of conduct is to be pursued after a breach of the Consumer Protection Bill Act is established. The following remedies have been proposed as directions that the court or commission may direct the opposite party to carry out either as a single action or together with another action to-

(a) remove the defect pointed out by the customer, or an investigation or examination carried out by an appropriate laboratory from the goods in question;

(b) replace the goods with new goods of similar description which shall be free of any defect as described above;

(c) return to the complainant the price or as the case may be the charges paid by the complainant;
(d) pay such amount as may be awarded by the court or council as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party

(e) remove the defects or deficiencies in the services in question;

(f) discontinue the unfair trade practice in question or restrictive trade practice or not to repeat it;

(g) discontinue the offers of hazardous goods for sale;

(h) withdraw the hazardous goods from the market; or

(i) to provide adequate costs to parties.

**Recommendation 8.**

(a) The defence, promotion, enforcement of consumer rights under this Act shall be exercised or conducted through individual or collective, mediation, negotiation, arbitration or litigation.

(b) Consumer associations created under any law being in force in Uganda and pursuant to the provisions of this Act, shall be entitled to represent interested parties in the defence of rights that this Act vests in consumers; and may represent the consumers in court.

(c) For the avoidance of doubt, this Act shall be regarded as complementary to the process of ensuring and enhancing consumer protection through existing commercial, civil and criminal laws regulating or concerning consumer protection.

(d) There shall be established, for each district a court to be known as a small claims court.
(e) Court fees or other fees payable to institute or prosecute consumer complaints shall be waived or otherwise kept affordable to claimants.

(f) The monetary jurisdiction of the court and proceedings of the court shall be determined by the Minister.

(g) Court fees or other fees payable to institute or prosecute consumer complaints shall be waived or otherwise kept affordable to claimants.

(h) The court shall have and exercise the penal and remedial powers provided for under this Act or any other law.
ANNEX 1
THE CONSUMER PROTECTION BILL, 2004
Arrangement of Clauses.

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1. Commencement.
2. Application.
3. Interpretation.

PART II - GENERAL SAFETY REQUIREMENT.


PART II - ADVERTISING.

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SCHEDULE.
Currency point.
THE CONSUMER PROTECTION BILL, 2004

A Bill for an Act

ENT ITLED


An Act to provide for consumer’s rights against fraudulent and deceptive practices by sellers and suppliers of goods and services, to promote ethical standards in relation thereto and to establish small claims court and other matters connected to, or incidental with the above.

PART I - PRELIMINARY.

1. Commencement.

This Act shall come into force on such a date as the Minister shall by statutory instrument appoint.

2. Application.

(1) This Act applies, except where the applicable law is inconsistent with this Act, to the provisions relating to -
   (a) the sale or rental of real estate, banking, utilities or the sale of insurance;
   (b) the owner or publisher of a publication or printed matter in which an advertisement appears; or
   (c) the owner or operator of a television or radio station which disseminates the advertisement.

(2) Notwithstanding the provisions of subsection (1), this Act applies to any other business or individual engaged in the sale or repair of goods and supply of services to consumers not enumerated in subsection (1).
3. Interpretation.

In this Act, unless the context otherwise requires-

“advertiser” includes the supplier of technology, goods or services who has commissioned the publication of an advertising message;

“advertising” means any form of public notice, including labelling which is an attempt to induce, directly or indirectly, any person to purchase or acquire an interest in a good or service;

“an offer to sale” includes 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;

“appropriate laboratory” means a laboratory recognised by Government and includes any such laboratory established under any law for the time being in force to determine whether goods suffer from any defect;

“bait advertising” means an offer to sell a product or service which the seller does not intend or want to sell to the consumer. The purpose of the product or service is to establish contact with the consumer in order to switch the consumer from buying the advertised good or service, in order to sell something else at a higher price or on a more beneficial basis to the seller;

“business records” includes-

(a) accounts, balance sheets, vouchers, minutes of meetings, contracts, files, instructions to employees and other instruments; and

(b) any information recorded or stored by means of a pen, typewriter, computer or other device whatsoever and any material subsequently derived from information so recorded;

“collective interest” means supra-individual rights or interests having an advisable nature to which undetermined individuals are entitled;

“complaint” means any allegation in writing made by a complainant that-
(a) as result of any unfair trade practice adopted by a trader, the complainant has suffered loss or damage;

(b) the goods or technology mentioned in the complaint suffer from one or more defects; or

(c) the services mentioned in the complaint suffer from deficiency in any respect;

“consumer” means the final purchaser of a good or service and includes a 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 or manufacture of any other technology, goods, services or articles for sale;

(b) receives or uses any technology, goods or service for which consideration has been fully paid or partly paid or promised or partly promised, under any system of deferred payment and such person includes any user of such technology, goods or service other than the person who buys or pays for the same when such is made with the approval or acquiescence of the purchaser; or

(c) hires or avails himself or herself of any technology, goods or service for a consideration which has been fully paid or partly paid or promised or partly promised, under any system of deferred payment and includes any beneficiary of technology, good or service other than the person who hires or avails himself or herself of the same when the technology, good or service is availed with the approval or acquiescence of the hirer;

“consumer dispute” means a dispute where the person or business against whom or which a complaint has been made;

“currency point” means the value of currency point specified in the Schedule;
“deceptive advertising” means advertising which is misleading in any material aspect;

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under this Act or any other law in relation to any goods;

“deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by this Act 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 service;

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

“distributor” means any person in the supply chain whose activity does not affect the safety properties of a product;

“door to door sale” means a sale, lease or hire of a consumer good or service in which the seller solicits the sale and the buyer’s agreement to buy is made at the place of transaction;

“goods” means goods as defined in the Sale of Goods Act;

“guarantee” means any document, notice or other written statement, howsoever described, supplied by a manufacturer or other supplier other than a retailer, in connection with the supply of any goods and indicating that the manufacturer or other supplier will service, or otherwise deal with the goods following purchase;

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

“manufacture” or “manufacturing” includes any process which transforms goods in order to add value to them for purpose of resale; and includes any operation of packaging or repackaging not linked to another form of transformation within a single enterprise;

“manufacturer” means a person who-

(a) manufactures the product or a component part of the product;
(b) places a raw material or a natural product on the market;
(c) presents himself or herself as the manufacturer by affixing to the product his or her name, trade mark or other distinctive mark; or
(d) reconditions the product;

“Minister” means the Minister responsible for trade and industry;

“price” in relation to the transfer, supply, provision or sale of technology, goods or services includes every valuable consideration whether direct or indirect;

“pyramid sale” means a sale where, in the guise of selling a good or service, the item being sold is the right to sell the product or service and whereby the seller makes a profit not through the sale of the product but through the number of individuals whom that person encourages to buy the product or service;

“retail trade” means a form of distribution by which goods are customarily sold to consumers rather than for the purpose of resale or manufacturing;

“sale” includes a sale, an agreement to sell or an offer for sale;

“seller” means a person regularly engaged in retail trade or who participates in some act or set of acts of retail;

“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, goods or services and does not extend to the transactions involving the mere sale or mere lease of goods;

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

“trade practice” means any practice related to the carrying on of any trade; 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 of any property, whether real or personal, or of any technology or service;

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

(a) represents that the technology, good or service is of a particular standard, quality, grade, durability, composition, style or model;

(b) represents that the services are of particular standard, quality or grade;

(c) represents that any re-built, second hand, renovated, reconditioned or old goods are new or unused goods; or

(d) represents that any technology, good, or service has sponsorship, approval, performance characteristics, accessories, peripherals, uses or benefits;

“wholesale” 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 consumer dispute or an action under this Act;

“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 consumer dispute or an action under this Act.
PART II - GENERAL SAFETY REQUIREMENT.


(1) A person shall be guilty of an offence if he or she-
(a) supplies any consumer goods which fail to comply with the general safety requirement;
(b) offers or agrees to supply any such goods; or
(c) exposes or possesses any such goods for supply.

(2) For the purposes of this section, consumer goods fail to comply with the general safety requirement if they are not reasonably safe having regard to all the circumstances, including-
(a) the manner in which, and the purposes for which, the goods are being or would be marketed, the getup of the goods, the use of any mark in relation to the goods and any instructions or warnings which are given or would be given with respect to the keeping, use or consumption of the goods;
(b) any standards of safety published by any person either for goods of a description which applies to the goods in question or for matters relating to goods of that description; and
(c) the existence of any means by which it would have been reasonable, taking into account the cost, likelihood and extent of any improvement, for the goods to have been made safer.

(3) For the purposes of this section, consumer goods shall not be regarded as failing to comply with the general safety requirement in respect of –
(a) anything which is shown to be attributable to compliance imposed by or under any enactment;
(b) any failure to do more in relation to any matter than is required by-
   (i) any safety regulations imposing requirements with respect to that matter;
(ii) any provision of any enactment or subordinate legislation imposing such requirements with respect to that matter as are designated for the purposes of this subsection by any such regulations.

(4) In any proceedings against any person for an offence under this section in respect of any goods, it shall be a defence for that person to show-

(a) that the following conditions are satisfied, that is to say-

(i) that he or she supplied the goods, offered or agreed to supply them or as the case may be, exposed or possessed them for supply in the course of carrying on a retail business; and

(ii) that at the time he or she supplied the goods or offered or agreed to supply them or exposed or possessed them for supply, he or she neither knew nor had reasonable grounds for believing that the goods failed to comply with the general safety requirement; or

(b) that the terms on which he or she supplied the goods, offered or agreed to supply them or, in the case of goods which he or she exposed or possessed for supply, the terms on which he or she intended to supply them-

(i) indicated that the goods were not supplied or to be supplied as new goods; and

(ii) provided for, or contemplated, the acquisition of an interest in the goods by the persons supplied or to be supplied.

(5) For the purposes of subsection (4)(b) above, goods are supplied in the course of carrying on a retail business if, whether or not they are themselves acquired for a person’s private use or consumption, they are supplied in the course of carrying on a business of making a supply of consumer goods available to persons who generally acquire them for private use or consumption.
(6) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding five thousand currency points or both.

(7) In this section, “consumer goods” means any goods which are ordinarily intended for private use or consumption, not being-

(a) growing crops or things comprised in land by virtue of being attached to it;

(b) water, animal feed and fertilizer; or

(c) controlled drugs or licensed medicinal products as regulated by the National Drug Authority.

PART III - ADVERTISING.

5. **Bait advertising.**

A person shall not publish an advertisement containing an offer to sell a product unless that offer is a genuine or bonafide efforts taken by that person to sell the advertised product.

6. **Supplier to provide true information.**

It is the duty of every supplier of goods, technology or services to provide consumers with true, adequate, clear and prompt information on the goods and services offered, so that they can make a better and informed choice.

7. **False statement as to clause.**

(1) A person shall not, in an advertisement, use a statement or other representation which -

(a) creates a false impression as to the grade, quality, make, value, currency of model, size, colour, usability or origin of the product offered; or

(b) represents the product in such a manner that on the disclosure of the true facts, the buyer may be switched from the advertised product to another.
(2) If the advertisement under this section is secured by the seller’s deception, this section shall be violated notwithstanding that the true facts about the product were made known to the buyer.

8. **Abusive advertising prohibited.**

(1) Abusive advertising is prohibited.

(2) An advertisement shall, for all 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.

(3) Where abusive advertising results in loss to the consumer, the 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 or costs of replacement or repair.

(4) Where the statements made in an advertising message are considered false or misleading to consumers, the respective regulatory body shall order an amendment of the content and such amendment shall be announced at the expense of the advertiser through the same media used to disseminate the offensive of infringing message.

9. **Discouragement.**

(1) A seller shall not discourage a prospective buyer of an advertised product or service as part of a bait scheme to sell another product or service.

(2) The following are acts or practices considered in determining whether a seller has made a bonafide offer or a bait scheme to sell another product or service-
(a) refusal to show, demonstrate or sell the product offered in accordance with the terms of the offer;

(b) the disparagement of the advertised product or of the guarantee, credit terms, availability of service, repairs of parts, or in any respect in connection with the product of service;

(c) failure to have the product available in sufficient quantities to meet reasonably anticipated demands, at all stores of the product advertised, unless the advertisement clearly discloses that the supply is limited or only available at specific locations;

(d) refusal to take an order for the advertised product to be delivered within a specified period;

(e) showing or demonstrating a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement; or

(f) penalizing or rewarding a sales person in order to discourage that person from selling the advertised product or service.

10. **Switch after sale.**

(1) A seller shall not, in the event of a sale of an advertised product or service, prejudice a sale with the aim of selling another product or service.

(2) The following practices on the part of the seller are considered in determining whether a sale is in good faith or whether it is a ploy to sell another product or service and after switching the buyer to a higher priced product or service -

(a) accepting a deposit for the advertised product or service and thereafter switching the buyer to a higher priced product or service;

(b) failing to make delivery of the advertised product within a reasonable time or make a refund;
(c) disparaging the advertised product or service by words or acts or disparaging the guarantee, credit terms, availability of service, repairs or parts, or in any respect, in connection with the product or service;

(d) delivering a product or service that is defective, unusable or impractical for the purpose represent or implied in the advertisement.

11. Deceptive advertising.

(1) A person shall not, in the conduct of any business, trade or commerce or in the furnishing of any service engage in deceptive advertising.

(2) In determining whether a particular conduct amounts to deceptive advertising the following factors shall be considered -

(a) any representations made by the advertisement including statements, words or any depiction; and

(b) the extent to which the advertisement fails to reveal material facts about the goods or service to which the advertisement relates.


(1) A person selling any goods shall not represent in any way expressly or impliedly that the goods which that person is selling are new when they are used, reconditioned or being sold “as is”.

(2) Where a product is being sold “as is” the seller shall convey that fact to the consumer.

13. Duration of advertisement in necessary promotional sales etc.

(1) 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, guarantee and terms of the proposed business.

(2) 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 maximum term of thirty days from the time of the last announcement.

(3) If the supplier of technology, goods or services in promotion, sale or special offer fails to comply with the advertisement, consumers may elect:

(a) to require the compulsory compliance with obligations of the supplier, according to the general law of contract;
(b) to accept another technology or goods or the rendering of an equivalent service;
(c) to cancel the contract if there has been an advance payment by a consumer.

14. Door to door sale.

A sale is not a door to door sale if that sale,

(a) is made pursuant to prior negotiations in the course of the buyer’s visit to a retail business having a fixed permanent address;
(b) is made pursuant to a sale made entirely by mail or over the telephone without any other contact, between the buyer and the sellers or prior to the delivery of the goods or the performance of the services;
(c) is made pursuant to a sale in which the buyer has requested that the seller or the seller’s agent visit the buyer’s premises to repair or perform maintenance on the buyer’s property; and in the course of the visit the seller or the seller’s agent sells additional goods or services; or
(d) involves the sale or rental of real property or the sale of insurance.
15. **Door to door deceptive practises.**

(1) It shall be a deceptive trade practice on the part of a seller where the seller, in a door to door sale,

(a) fails to advise the buyer that the buyer may cancel the sale within three working days of the sale;

(b) fails to furnish the buyer with a receipt or copy of any contract pertaining to such sale at the time of its execution with a statement that the buyer has the right to cancel the sale within three working days; or

(c) fails to provide the buyer, at the time when the buyer agrees to buy the goods, a form entitled “notice of right to cancel” or its equivalent.

(2) The form under paragraph (c) of subsection (1) shall state that -

(a) the buyer has the right to cancel the sale within three working days of the sale;

(b) any payments made by the buyer shall be refunded within ten working days of the cancellation of the sale; and

(c) upon cancellation, the buyer shall avail the seller, in substantially the same condition as received, any goods delivered to the buyer under the contract.

16. **Pyramid sales.**

(1) A person shall not engage in a pyramid sale.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction be liable to a fine not exceeding five currency points or to imprisonment for a term not exceeding two months.

17. **Mandatory return.**

(1) Where a seller sells a product through bait advertising, the consumer may return that product to the seller and claim a refund.
(2) Where a seller represents that the product being sold is a new product when that product is actually used or reconditioned, the consumer may return that product to the seller and claim a refund.

(3) Where a seller sells a product through deceptive advertising, the consumer may return the product to the seller and claim a refund.

(4) Where a consumer returns a product under subsections (1), (2) and (3), the seller shall accept the returned product and make a refund to the consumer within fourteen days of the date upon which the product is returned.

18. Misleading price indications.

(1) Subject to the provisions of this section, a person shall be guilty of an offence if, in the course of any of his or her business, he or she gives, by any means whatever to any consumers an indication which is misleading as to the price at which any goods or services are available (whether generally or from a particular person).

(2) Subject to the provisions of subsection (1), a person shall be guilty of an offence if -

(a) in the course of any of his or her business, he or she has given an indication to any consumers which, after it was given, has become misleading; as specified in subsection (1) above; and

(b) some or all of those consumers might reasonably be expected to rely on the indication at a time after it has become misleading;

he or she fails to take all such steps as are reasonable to prevent those consumers from relying on the indications.

(3) For the purposes of this section, it shall be immaterial -

(a) whether the person who gives or gave the indication is or was acting on his or her own behalf or on behalf of another;
(b) whether or not that person is the person, or included among the persons, from whom the goods, or services, are available; or

(c) whether the indication is or has become misleading in relating to all the consumers to whom it is or was given or only in relation to some of them.

(4) A person guilty of an offence under subsection (1) or (2) shall be liable on conviction to a fine of fifty currency points.

(5) An indication given to any consumer is misleading as to a price if what is conveyed by the indication, or what that consumer might reasonably be expected to infer from the indication or any omission from it, includes any of the following-

(a) that the price is less than what it is;

(b) that the applicability of the price does not depend on facts or circumstances on which its applicability depends;

(c) that the price covers matters in respect of which an additional charge is made;

(d) that a person who has no such expectation -

(i) expects the price to be increased or reduced (whether or not at a particular time or by a particular amount); or

(ii) expects the price, or the price as increased or reduced, to be maintained (whether or not for a particular period); or

(e) that the facts or circumstances by reference to which the consumer might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they are.

(6) An indication given to any consumer is misleading as to a method of determining a price if what is conveyed by the indication, or what the consumer might reasonably be expected to infer from the indication or any omission from it, includes any of the following, that is to say -
(a) that the method is not what it is;
(b) that the applicability of the method does not depend on facts or circumstances on which its applicability depends;
(d) that the method takes into account matters in respect of which an additional charge will be made;
(e) that a person who in fact has no such expectation -
   (i) expects the method to be altered (whether or not at a particular time or in a particular respect); or
   (ii) expects the method, or that method as altered, to remain unaltered (whether or not for a particular period); or
(f) that the facts or circumstances by reference to which the consumers might reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they are.

A comparison is a relevant comparison in relation to a price or method of determining price if it is made between that price or that method, or any price which has been or may be determined by that method and

(a) any price or value which is stated or implied to be, to have been or to be likely to be attributed or attributable to the goods, services, accommodation or facilities in question or to any other goods, services, accommodation or facilities; or
(b) any method, or other method which is stated or implied to be, to have been or to be likely to be applied or applicable for the determination of the price or value of the goods, services, accommodation or facilities in question or of the price of value of any other goods, services, accommodation or facilities.

19. Contractual clauses.

Contractual clauses or stipulations shall be void and have no effect whatsoever when they:
(a) exempt, reduce or limit the responsibility of suppliers for defects of any nature of the goods supplied or services rendered;

(b) imply a waiver of the rights vested in consumers pursuant to this law or somehow limit the exercise thereof;

(c) revert the burden of proof against consumers;

(d) impose the compulsory referral to arbitration;

(e) make it possible for the supplier to change, unilaterally, the price and other contractual conditions;

(f) authorise the supplier to unilaterally cancel the agreement except where this power is vested in the consumer for the case of postal or sample sales; and

(g) any other clauses or stipulations that create unfair contractual conditions or unreasonably burdensome to consumers, or otherwise be contrary to good faith and public order.

PART IV – GUARANTEES.


(1) A guarantee shall -

(a) be clearly legible and shall refer only to specific goods or to one category of goods;

(b) state clearly the name and address of the person supplying the guarantee;

(c) state clearly the duration of the guarantee from the date of purchase but different periods may be stated for different components of any goods;

(d) state clearly the procedure for presenting a claim under the guarantee which procedure shall not be more difficult than ordinary or normal commercial procedure; and
state clearly what the manufacturer or other supplier undertakes to do in relation to the goods and what charges if any, including the cost of carriage, the buyer must meet in relation to such undertakings.

(2) It shall be an offence for the manufacturer or other supplier of goods, to give in connection with the goods, a guarantee which fails to comply with this section.

21. Liability of the seller on a guarantee.

(1) Where the seller of goods gives a guarantee to the buyer, irrespective of when or how it is given, the seller shall be liable to the buyer for the observance of the terms of the guarantee as if he or she were the guarantor, unless he or she expressly indicates the contrary to the buyer at the time of giving the guarantee.

(2) Where, however, the seller, being a retailer, gives the buyer his or her own written undertaking that he or she will service, repair or otherwise deal with the goods following the purchase, it shall be presumed, unless the contrary is proved that he or she has not made himself or herself liable to the buyer under the guarantee so given.

22. Rights under a guarantee.

(1) Sections 18 and 19 shall apply to any undertaking as they apply to a guarantee.

(2) The liability of a seller to a buyer under this section is without prejudice to the rights conferred on the buyer under section 18 (2).

23. Rights under guarantee not to exclude other laws.

Rights under a guarantee shall not in any way exclude or limit the buyer at common law or pursuant to any Act and any provision in a guarantee which imposes obligations on the buyer that are additional to his or her obligations under the contract shall be void.
24. Guarantor not to be sole authority.

A provision in a guarantee which purports to make the guarantor or any person acting on his or her behalf the sole authority to decide whether the buyer is entitled to present a claim by means other than those provided under this Act shall be void.

25. Buyer’s right to claim against a manufacturer or supplier.

(1) The buyer of goods may maintain an action against a manufacturer or other supplier who fails to observe any of the terms of the guarantee as if that manufacturer or supplier had sold the goods to the buyer and had committed a breach of warranty.

(2) The court may order the manufacturer or supplier to take such action as may be necessary to observe the terms of the guarantee, or to pay damages to the buyer and in this subsection “buyer” includes all persons who acquire title to the goods within the duration of the guarantee and, where goods are imported and “manufacturer” includes the importer.

26. Court may grant opportunity to guarantor to perform.

In any case in which a guarantor is liable to an owner in damages, the court may at its discretion and on such terms as the court may deem just afford the guarantor the opportunity of performing these obligations under the guarantee to the satisfaction of the court within a time to be limited by the court.

PART V - MEASURES FOR CONSUMER REDRESS AND MECHANISMS.

27. Representative or class actions.

(1) The defence, promotion, enforcement of consumer rights under this Act shall be exercised or conducted through individual or collective, mediation, negotiation, arbitration or litigation.
(2) Mediation, negotiation, arbitration or litigation may be conducted collectively when collective interests or rights are involved.

(3) Consumer associations created under any law being in force in Uganda and pursuant to the provisions of this Act, shall be entitled to represent interested parties in the defence of rights that this Act vests in consumers; and may represent the consumers in court.

(4) The decisions rendered in collective procedures shall have general effect and accrue to all consumers except where any such decision is dismissed for want of proof in which event any other consumer having an interest in the matter may bring a new consumer dispute or action on the basis of facts and claims arising from the same transaction.

28. Process under the Act and other laws.

For the avoidance of doubt, this Act shall be regarded as complementary to the process of ensuring and enhancing consumer protection through existing commercial, civil and criminal laws regulating or touching on consumer protection.

29. Establishment of small claims courts.

There shall be established, for each district a court to be known as a small claims court which shall have the following characteristics:

(a) be accessible to consumers in order to provide simple, speedy and inexpensive justice;

(b) be complementary to regular court system;

(c) have evening and Saturday sessions to facilitate access as well as to ensure expeditions determination of matters.

30. Jurisdiction of the court.

(1) The court shall have the following powers -
(a) to order alteration, modification, reform, rescission or reformulation of standard consumer contracts and other transactions;

(b) to order performance of obligations under a guarantee; or

(c) to handle all matters referred to it under this Act;

(2) The monetary jurisdiction of the court and proceeding of the court shall be determined by the Minister.

31. Persons who may preside over the small claims courts.

(1) The presiding officers of small claims courts shall be appointed from persons who have appropriate qualifications or experience in consumer affairs and expeditious delivery or redress.

(2) Court fees or other fees payable to institute or prosecute consumer complaints shall be waived or otherwise kept affordable to claimants.

(3) Effective and inexpensive assistance in execution shall be available from clerks and other court officials to every party who obtains a judgement in the small claims court.

(4) A court shall keep accurate and thorough records of all cases which come before them and the presiding officer.

32. Jurisdiction of ordinary courts not ousted.

(1) The exercise of jurisdiction by the court shall not oust the jurisdiction of the courts which may try all the cases constituting an infringement of the commercial or penal law.

(2) Parliament shall allocate funds for the establishment and maintenance of effective small claims courts.
33. **Remedies and sanctions.**

(1) The court shall have and exercise the penal and remedial powers provided under this Act or any other law.

(2) Sanctions, penalties, or remedies they are authorised in this Act or any other law to exercise and accrue to consumers shall include the cancellation, rescission or revision of a contract or its clauses; the obligation to pay damages and interest; as well as the obligation to pay fines.

(3) The small claims courts or other courts may 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 order the withdrawal of the same from the market within a specified period.

(4) A person who contravenes any of the provisions of this Act for which no penalty is provided commits an offence and is liable on conviction to a fine not exceeding eighty currency points or a term of imprisonment for six months or both.

(5) For the avoidance of doubt the small claims courts or other courts may, at the consumer’s request order the repair or replacement of the technology, goods, or services, refund of the contract price, or the consideration paid in excess of the contract price.

(6) A court convicting a person under subsection (1) may, in addition to a sentence imposed under that subsection, order that person to pay -

   (a) compensatory damages;
   (b) advocate’s fees; or
   (c) any other damages the court may deem fit.

(7) In addition to the remedies provided for in subsections (1) and (2), a consumer shall have the right of retraction within seven days from the signature of the contract or the receipt of the good or service, when the contract shall have been entered into outside of the supplier’s
place of business particularly if the agreement has been entered into through the telephone or at the domicile of the consumer. If such right is exercised in due time, a consumer shall be entitled to have the consideration returned with the corresponding adjustments.

34. Regulations.

(1) The Minister may, in consultation with the Chief Justice and the council, by statutory instrument make regulations generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister shall:

(a) prescribed the procedure to be followed in making complaints to the court;

(b) prescribe the monetary jurisdiction for matters which may be tried by the court; and

(c) prescribe the fees to be paid to the court.

S C H E D U L E.

One currency point shall be equivalent to twenty thousand shillings.
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