

THE CONSUMER PROTECTION AND AN EXAMINATION OF THE LAW AND  
PRACTICE IN SOUTH SUDAN

CASE STUDY OF KONYOKONYO MARKET

BY

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### DECLARATION

I **AYUEN JOHN MARIAR** do hereby declare that this dissertation is my own work, except where due acknowledgement is made, and it has never been submitted or examined in any university or institution as an academic requirement for the award of a bachelor degree of laws.

SIGNED

A handwritten signature in blue ink, appearing to read 'Ayuen John Mariar', is written over a horizontal dotted line.

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### APPROVAL

The under-signed certifies that, he has read and hereby recommends for acceptance by Kampala International University, a dissertation entitled, "The consumer protection and an examination of the Law and practice in South Sudan," <sup>acase study longlongo market.</sup> in partial fulfillment of the requirements for the award of a bachelor of Laws degree of Kampala International university.



MR. WILLIAM TUMWINE

(Supervisor)

10th July 2012

Date.....

## **DEDICATION**

This research is dedicated to my parents; Mr. & Mrs. Abiei Alier for whose love, kindness, extreme tolerance, guidance, ideas and deep understanding has been invaluable at being at Kampala International University.

I also dedicate this research to my girlfriend, Amer Agany whose love and presence has encouraged me along in my studies, and our whole family for their love, support and constructive ideas which has been valuable in all times of my studies.

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Lastly but not least, I thank our entire family, my brothers and sisters, but most especially my mother and father who made sure I had all that I needed and for making sure that I get primary, secondary and university education.

Notwithstanding the input various individuals to this dissertation, I remain fully responsible for my mistakes that may be contained therein.

## **LIST OF ABBREVIATIONS**

|        |  |
|--------|--|
| SSCA   | South Sudan consumer Association               |
| NGO    | Non governmental organisation                  |
| SSCPC  | South Sudan Consumer protection Council        |
| SSCPSD | South Sudan Consumer Product Safety Department |
| FTC    | Free Trade Council                             |
| ADR    | Alternative Disputes Resolution                |
| ICT    | Information communication technology           |

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## **LIST OF STATUTES**

Transitional Constitution 2011 laws of South Sudan

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Contract Act 2008 laws of South Sudan

South Sudan National Bureau of Standard Act 2009 laws of South Sudan

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Republic v Tanganyika Trading Corporation of Tanganyika (1969) EA 314

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Tonkin v Victor Value Ltd (1963)1 WLR 339

Webb v Jackson Wyness Ltd (1948)2 ALLER 1054

Ward v Hobbs (1878) A.C 13

## **ABSTRACT**

Chapter one demonstrated the research problem; and this will help to convince the readers that the problems exist and that opportunities of consumer should be adjusted.

Chapter two involved the statutory protection of the consumer and why consumer protection is needed. It has discussed the various legislations on consumer protection and the justification for the laws. It will therefore lead to appreciation and understanding the research that has already been done in this area of interest.

Chapter three has discussed the changes of consumer protection including: early food labeling, food labeling at common law and food labeling in South Sudan. It has also discussed product liability, negligence and the manufacturer liability for defective goods.

Chapter four has involved enforcement of consumer rights in civil and criminal proceeding. It has also address the various redress fora available to the consumers.

Lastly chapter five dealt with the findings, conclusion, recommendations and general conclusion.

## CHAPTER ONE

### 1.0 Background of the study

A consumer in Africa in general and South Sudan in particular, is a neglected lot.<sup>1</sup> The dominance and obstinacies of a producer, trader or businessman is felt like a doctor piercing an injection in the body.<sup>2</sup> Even if lower prices from suppliers are passed on to consumers, the impact on the firms in the Konyokonyo market situations can be dominant.<sup>3</sup> Thus, the cost of items bought from the suppliers for example, raw materials components can have a significant impact on a consumer interests.<sup>4</sup> Very little foreign competition allowed the manufacturer to continue the production unscrupulously and without any innovation. Lack of consumer grievances redressary cells and accountability made the manufacturer finality and an end in itself.<sup>5</sup> For example in the South Sudan, consumers are not aware of their rights and this has made manufacturers to supply whatever they have produced without considering the interests therein.

Under the doctrine of Caveat Emptor,<sup>6</sup> the maxim of caveat emptor means "let the buyer beware." According to this doctrine, it is the duty of the buyer to be careful while purchasing goods of his requirement and, in the absence of any enquiry from the buyer, the seller is not bound to disclose every defect in goods of which he may be cognizant. This position is true in the South Sudan for instance, in March 2011;<sup>7</sup> certain goods were sold with fault by the supplier when he had presented those fifty sacks of wheat flour as first class which turned out to be

<sup>1</sup> [www.plosntds.com/spipog/.../journalpnt](http://www.plosntds.com/spipog/.../journalpnt) Saturday 7 January 2012

<sup>2</sup> [www.internationalcompetitionnetwork.org/uploaded/.../doc355.pdf](http://www.internationalcompetitionnetwork.org/uploaded/.../doc355.pdf) Saturday 7 January 2012

<sup>3</sup> [www.name.co.za/.../](http://www.name.co.za/.../) Saturday 7 January 2012

<sup>4</sup> [www.tutor2u.net/business/strategy/porter.fiveforces.htm](http://www.tutor2u.net/business/strategy/porter.fiveforces.htm) Saturday 7 January 2012

<sup>5</sup> [www.greenstone/.../nzd1/MwinyiKingi](http://www.greenstone/.../nzd1/MwinyiKingi) Saturday 7 January 2012

<sup>6</sup> Mercantile law by M.C Kuchhal 4<sup>th</sup> edition, 1994 at page 258

<sup>7</sup> Citizen newspaper 5 January 2012

different class of wheat. This position is therefore an indication that a consumer or buyer's rights are not being considered in South Sudan especially in the market places. Thus, in **Ward v Hobbs**,<sup>8</sup> court held that Caveat Emptor being the rule, the buyer could not claim damages from the seller.

Whenever our foreign members narrated the rights of a consumer on their soil, the instances seemed like a fairy tale heard in childhood.<sup>9</sup> The doctrine of caveat emptor namely "let the buyer beware" prevailed through several legislations to protect the consumers' rights which are not being observed by the suppliers. While these legislations were enacted to protect the consumers from unfair trade practices, nevertheless these legislations never proved adequate to promote consumer awareness and compensate them for their complaints. The consumer thus wants a full value for his money whether he purchases goods or hires services. This position is not being considered in the practice as values claimed by a consumer are not paid according to what had been claimed for.

### **1.1 Who is a consumer?**

A consumer is one who purchases goods or services for personal, family or household use, with no intention of resale, thus, a natural person who uses products for personal use rather than business purposes is a consumer.<sup>10</sup> Consumer includes any user of goods or services supplied by another, with the result that a person purchasing food for consumption would be acting as a consumer. However, for the purpose of consumer protection law, the term consumer has a narrower meaning which is based on the capacity in which the consumer and the supplier of the goods or services act.<sup>11</sup>

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<sup>8</sup> (1878)4 A.C 13

<sup>9</sup> <http://www.consciousnesswork.com/film review.htm> Wednesday, 9 May 2012

<sup>10</sup> Bryan A. Garner: Black law Dictionary of the English Language, 9<sup>th</sup> edition, 2004 at page 358

<sup>11</sup> David Oughton: Consumer Law, 2<sup>nd</sup> edition, 1998, pg 1 by Chris Willet

A consumer is any person who buys goods for consideration which, he pays or promises to pay or partly promises to pay or partly pays and partly promises to pay.<sup>12</sup> Consumer also includes a user of goods bought, other than the person who has paid the consideration for the same value of goods or services.<sup>13</sup>

A consumer or Buyer is defined as one who buys, uses, maintains and disposes of products and/or services and although, many may still be familiar with the doctrine of Caveat Emptor "Let the Buyer Beware" which is no longer the case with the advent of Consumer Protection law at Konyokonyo market.

Any person who hires or avails of any services for consideration or promise to be paid, and a beneficiary of such a person is also called a consumer. Thus, consumer means the final purchaser of goods or services and includes a person who purchases or offers to purchase technology, goods or services otherwise than for resale. Thus, a consumer includes a person who avails of both goods and services. For example: a user of electricity or telephone connection; a consumer in a restaurant; patients in a hospital availing medical treatment; a tourist going on a conducted tour etc are all consumers. In **Laxmi Engineering works v PSG Industrial Institute**<sup>14</sup>, it was stated that a person who buys goods and uses them himself or herself, exclusively for the purpose of earning his livelihood, by means of self employment is within the definition of a consumer.

However, a person who buys goods only for the purpose of resale or commercial purposes is not a consumer. For instance, Ajinka Co.Ltd purchases large quantities of thread for sewing machines for the mass production of cloth, which will generate huge profits. Ajinka Co. Ltd therefore is

<sup>12</sup> Longman Dictionary of the English Language, 1984

<sup>13</sup> David Oughton, Consumer Law, 2<sup>nd</sup> edition 1998, Pg 1. By Chris Willet

<sup>14</sup> ATR 1995 SC



not a consumer. In **Oswal Fine Arts v Modrass**<sup>15</sup> it was stated that a person obtaining goods for commercial purposes is not a consumer.

In short therefore, a consumer is any person who buys goods or services for personal consumption. For instances a home owner who buys saucepan for cooking and a twelve's years child who buys an ice-cream cone are both consumers. As a result, consideration may have been paid or promised, or partly paid and partly promised. A person may also buy the goods or may hire or avail the services under any system of deferred payment. Hence, buying of goods and hiring of services has to be necessary for a consideration. Thus, In **Municipal Council v Shambhu Yadar**,<sup>16</sup> it was held that payment of direct or indirect tax is not consideration paid for hiring of services.

A person claiming himself or herself as a consumer should first satisfy among others, three conditions namely; the service should have been rendered to him, the service should be hired by him or her and he or she should have paid considerations.<sup>17</sup> Under the Consumer Protection Act<sup>18</sup>

“**consumer**” means an individual who, otherwise than exclusively in the course of business:

- (a) Receives or has the right to receive goods or services from a supplier; or
- (b) Has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual;

A consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing. Thus, a consumer interests can be protected by promoting competition in the markets which directly and indirectly serve

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<sup>15</sup> Petition No. 1/88 of 1980

<sup>16</sup> 1992 CPJ64

<sup>17</sup> Section 2(d) Consumer Protection Act 1986 (India)

<sup>18</sup> Section 2 (a), (b) of the Consumer Protection Act 2011 (South Sudan)

consumers, consistent with economic efficiency, but this topic has been treated in competition laws of South Sudan.

The traditional view of a consumer or at least that given by the trust of modern consumer protection legislation is of an individual dealing with a commercial enterprise.<sup>19</sup> However, it is also the case that the term consumer encompasses a person who makes use of the services provided by public sector bodies or private monopolies subject to public control. Various statutes which purport to protect consumer interests contain relevant, but limited definitions. The effect of these definitions is that a person who acts in the course of a business must act or refrain from acting in particular manner detrimental to consumer interests. Likewise, if a person deals as a consumer, the supplier may be subject to certain obligation which would not otherwise be imposed or the consumer may have entitlements not conferred on others. The difficulty presented by these statutory definitions is that some emanate from statutes imposing criminal liability and others from the Acts concerned with civil liability. Despite the fact that statutes protect consumers in South Sudan, there is no proper means of imposing criminal and civil liabilities on the suppliers in South Sudan.

A consumer is one who buys goods from a supplier and uses them for personal consumption. For example; a person who has purchased one kilo of meat, one kilo of wheat flour, one kilo of beans, half bottle of an oil and a quarter of onion would be considered as a consumer because what he has bought all were for consumption and not for sale to any person in need at Konyokonyo market in Juba City.

## **1.2 Statement of the problem**

What has been found in South Sudan at konyokonyo market is that modern business practices have however raised two problems; the admission that exemption clauses modifying or negative

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<sup>19</sup> [www.hksharvardedu/nhm/notes2006/notes3.pdf/](http://www.hksharvardedu/nhm/notes2006/notes3.pdf/) books.google.co.ug:books Saturday 7 January 2012

the sellers common law or statutory liability and the enactment of legislation providing in the interest of health, hygiene or safety, requirements for the purity and composition, the labeling or the safety standards of particular types of goods. The methods of buying and selling in use in the last century were in many respects very different from those employed today in South Sudan. This is particularly true of the domestic retail at Konyokonyo Market where the advent of the supermarket and self service of the mail order business and sophisticated advertising techniques have produced almost revolutionary changes.

As a result the leisurely selection of an article is an "over the counter-transaction" and the possibility of examination of the goods ordered on delivery is in many instances no longer in harmony with modern business practices. For instance, differences in prices quotation bring wide discrepancies between a consumer and a supplier. This discrepancy has given rise to the demand for consumer protection in South Sudan.<sup>20</sup>

Molony report<sup>21</sup> states that consumer protection is an amorphous conception that cannot be defined. It consists of those instances where the law intervenes to improve safeguards in favour of purchases and hire organizations variously inspired, the effect of which is to procure fair and satisfying treatment for the domestic buyer at Konyokonyo market (Juba city) in South Sudan.

In spite of these legal provisions, there are still problems faced by consumers. Even where their goods are properly labeled, illiteracy and ignorance in South Sudan that makes the consumer unable to read. The labels are either in small print or in foreign languages thus difficult to understand.

At Konyokonyo market (Juba city) in South Sudan, some labels are also inadequate in the sense that they do not give a detailed explanation on the nature and side effects of the product. At

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<sup>20</sup> Citeseerx.ist.psu.edu/viewdoc/download Monday 9 January 2012/Citizen newspaper 28 December 2012

<sup>21</sup> Chairman: JT Molony Q.C. Final Report of the Committee on Consumer Protection, July 1962CMnd. pg. 21

times, the labels are also tempered with and the fact that the penalty for false or misleading labeling is lenient which has made consumers reluctant in enforcing their rights in South Sudan.<sup>22</sup>

### **1.3 General objectives**

The study objective was to find out if the legal framework on the protection of a consumer rights in South Sudan is adequate.

#### **1.3.1 Specific objectives**

- (a) The specific objective was to make an assessment of the legal framework on the protection of consumer law in South Sudan.
- (b) Examination of the effectiveness on the consumer protection rights.
- (c) Identification of the possible solutions to the shortcomings in the legal framework on the protection of consumer rights in South Sudan.

#### **1.3.2 Research Questions**

- a) What is the legal framework on the protection of consumer rights?
- b) What is the effectiveness of the legal framework on the protection of consumer rights in South Sudan at Konyokonyo market (Juba City)?
- c) What is the possible solution to the limitations in the legal framework on the protection of consumer rights South Sudan?

### **1.4 Justifications of the study**

- a) The research findings has assisted organizations especially the South Sudan Consumer protection Council to adopt more realistic approaches to consumer protection at Konyokonyo market (Juba city) in South Sudan.

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<sup>22</sup> <http://www.gsy.net/.../alba270b763231126-edb1172> Wednesday, 9 May 2012

- b) The results of the study can be useful for future researchers who might be interested in a related field. Thus, the researcher has directed the study in protection approaches and its relations to enforcement of consumer rights within Konyokonyo market.
- c) The result has contributed to the existing theories on consumer protection.
- d) The study was a source of great experience and a contribution to the academic career of the researcher which was an attempt to come up with the information which protects consumers' rights.

## **1.5 Methodology**

The research was a descriptive and analytical survey designed to show the extent to which consumers face challenges as a result of inadequate legal protection in South Sudan.

### **1.5.1 Area of study**

The study was conducted with the South Sudan Consumers Association (SSCA) which is a non-governmental organization (NGO) duly registered with the NGO board, ministry of Commerce, Trade and Industry. There are ten branches in the ten States of the South Sudan which are; Bortown, Juba, Rumbek, Malakal, Yei, Kapoeta, Wau, Yambio, Bentiu and Aweil town. Selected heads of departments including the Consumers Protection Department of trade was used as a source of information to the study.

### **1.5.2 Data collection methods**

Data collection came from two main sources; Primary and Secondary sources. Secondary sources included relevant documents and reports. Primary data was collected by reviewing available textbooks, law journals and literatures, publications in relation to the topic. The researcher had employed the interview or questionnaires and sampling technique to pick

information that is available from these reports. The internet information was used to acquire the necessary information.

### **1.5.3 Scope of the study**

The study was confined to protections of consumers at the Konyokonyo market as a case study because it was only confinement which helped the researcher to give more focus attention and comprehensive analysis of the data collected and at the same time provided information on a consumer rights.

Content scope dwells on consumer protection. The study also assessed the legal framework of South Sudan on the protection of consumer rights and the extent to which possible solutions to the shortcoming in the legal framework and protection of consumer rights could be obtained.

### **1.5.4 Limitations of the study**

The research was self-sponsored with limited resources of fund, therefore it was limited to only Konyokonyo market. It has also been noted that some of the suppliers and consumers were reluctant to answering questionnaires because of the fear of being victimised in case they give negative information's. The fact that the research was conducted using questionnaires and partially interviewing. Due to lack of English and Arabic in South Sudan, some respondents' sits on questionnaires failed to return and others ignored questions asked concerning the study at Konyokonyo market.

The period allowed for the research was inadequate as it was only one month. The researcher had limited chances of conducting sufficient research on all sources of the data such as the primary and secondary sources as required by research in general.

The conceptual framework shows that the organizational goals and consumer rights work in tandem. This can be achieved through educating consumers on their rights, responsibilities and

the environment through appropriate channels. With the help of a sound legal framework that enacts statutes to promote consumer protection in South Sudan which help in the business practice at konyokonyo market Juba city in South Sudan. This has facilitated the defense of consumer rights and welfare and undertakes all possible actions and initiatives for the protection and establishment of such rights by creating a forum where consumers and other interested groups can meet and discuss matters of mutual concern relating to consumers and socio-economic welfare.

Therefore gathering and disseminating information on consumer welfare, rights, responsibilities and to defend consumers rights by establishing close links between parties and individuals concerned with consumer protection at Konyokonyo market in South Sudan who shall include among others scientists, doctors, lawyers, legal methodologists, environmental experts, engineers and journalists.

### **1.6 Literature review**

The topic of consumer protection in South Sudan is one that has received little attention from Scholars.<sup>23</sup> In South Sudan, this topic has been subject to public debate without much literature accompanying such debate.<sup>24</sup>

Most South Sudanese authors have concentrated on the history of consumer protection, definitions and descriptions of the different kinds of protection that the consumers should be accorded. H. Musoke in his book<sup>25</sup> discussed how the consumer in liberalized economies like South Sudan lacks protection and what should be done to improve such situations in some markets especially Konyokonyo market.

<sup>23</sup> Copied From Mwinyi Kingi

<sup>24</sup> HD. Musokem. The Plight of Consumers in liberalized Economies, the Ugandan Experience. 1999

<sup>25</sup> H. Musoke in his Book, the Plight Consumers in Liberalised Economies 3<sup>rd</sup> edition 1989 by Francis wall

Gordon Brown in his book, *Business Law with SSCC applications*,<sup>26</sup> discusses warranties and product liability. He describes ways in which an express warranty is created. He also describes implied warranties. The book also discusses about product liability, negligence and strict liability. It also discusses the duty to warn and that sometimes a duty is placed upon manufacturers to warn consumers that harm may result from a product. Unsafe products may require a warning to inform the consumer of possible harm and if the warning is inadequate, consumers may be required to use the product at their own risk. Hence, Gordon emphasizes on consumers protection has not been sufficient at market places like Konyokonyo market, Juba City in South Sudan.

Henry R. Cheesman in his book, *the legal and regulatory environment, and e-commerce*<sup>27</sup> also discusses product liability and the doctrine of strict liability in tort when an article he places on the market to be used without inspection for defects prove to have a defect that causes injury to a human being.

David W. Oughton in his book, *Consumer Law and Property*<sup>28</sup> attempts to define who a consumer is and why he or she should be protected. He also discusses the various institutions of consumer protection which include the central government, local government and trade Associations. He also proceeds to discuss the consumer redress, including consumer advice and assistance. Thus, the book discusses product quality and statutory implied terms about quality and fitness.

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<sup>26</sup> Gordon Brown. *Business Law with SSCC Applications*. 10<sup>th</sup> edition, 2009 page 283 by K. Marks

<sup>27</sup> Henry R. Cheeseman. *The Legal and Regulatory Environment. E-commerce. International and Ethical Environment*. 3<sup>rd</sup> edition, 2004 pg. 149 by Prentice Hall

<sup>28</sup> David W. Oughton. *Consumer Law and Property*. 3<sup>rd</sup> edition, 1998 pg.1 by Chris Willet



D.J Bakibinga in his book, Law of contract<sup>29</sup>, discusses the various remedies for breach of contract and how a consumer can be compensated. The various remedies include damages, injunctions and specific performance. A consumer should be able to enforce his or her rights and where a contract is breached, he or she should be compensated adequately. This position has not been sufficient at Konyokonyo market.

There are times where the consumer has a right to reject the goods. This is discussed by P.S Atiyah in his book sale of goods,<sup>30</sup> It also discusses consequences of rejection, and when the consumer losses the right to reject the goods, for instance when the consumer has accepted the defective goods, those goods should remain in the consumer possession not the seller which has showed little rights of the consumers.

Bruce D. Fisher in his book the Law for Business,<sup>31</sup> attempted to define who a consumer and the argument against consumer protection. He also provided for sources of consumer protection law particularly common law protection of consumers. This position has not been in practice at the market places like Konyokonyo market, and those consumers rights are not being protected as it was emphasized by Bruce D.

A consumer protection of the law particularly common law is important as it was said by the authors, but the law they have recommended is not sufficient for current protection of the consumers as the situations at Konyokonyo market subject to change every day. Also, the product liability and the doctrine of strict liability emphasized by the author, Henry R. Cheesman is not being practiced against suppliers which made consumers suffered at Konyokonyo market (Juba City) in South Sudan.

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<sup>29</sup> D.J Bakibinga, Law of Contract, Fountain Publishers, 2001

<sup>30</sup> P.S Atiyah, Sale of Goods, 11<sup>th</sup> edition, 2005 by Hector Macqueen

<sup>31</sup> Bruce D. Fisher, Law for Business, 2<sup>nd</sup> edition, 2003 page 139 by N.J Adams

## 1.7 Conclusion

In conclusion therefore, as the background of the problem has already been established, the proceedings chapters analyze all the data collected, the study resolved all the issues that arose in the statement of the problem. Hence, a consumer indeed needs protection and the various legislations of South Sudan that attempt to provide this are discussed in details in the main body of the study.

As a result, a buyer would be advised to return to the principle of Caveat Emptor "let the buyer be beware" and adopt an alert and questioning attitude when making a purchase, rather than relying on the law to protect them if things should go wrong afterwards.

## CHAPTER TWO

### STATUTORY PROTECTION OF THE CONSUMER

#### 2.0 Introduction

Consumer protection is the process of defending consumer against unscrupulous practices by producers and sellers. Over time, statutory law in South Sudan has developed to provide consumers with a range of protections, although the best protection is the common sense of an individual consumer.

Consumer protection consists of laws and organizations designed to ensure the rights of consumers as well as fair trade competition and free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves.

Consumer protection is linked to the idea of "consumer rights" that consumers have various rights as consumers, and to the formation of consumer organizations, which help consumers make better choices in the marketplace and get help with consumer complaints at Konyokonyo market, Juba City in South Sudan.

Other organizations that promote consumer protection include government organizations and self-regulating business organizations such as consumer protection agencies and other organizations in South Sudan.

## **2.1 Various legislations on consumer protection**

The topic of consumer protection in South Sudan is one that has received little attention from academic Scholars. Though there are laws that deal with consumers' protection in South Sudan, it is still a subject of public concern with no much literature accompanying consumer protection. The laws which protect consumers in South Sudan are: Consumer Protection Act 2011 and various Acts as here mentioned below;

Transitional Constitution 2011 laws of South Sudan

Consumer Protection Act 2011 laws of South Sudan

Sale of Goods Act 2011 laws of South Sudan

Penal Code Act 2008 laws of South Sudan

Contract Act 2008 laws of South Sudan

South Sudan National Bureau of Standard Act 2009 laws of South Sudan

South Sudan Drug policy Act 2010 laws of South Sudan

Consumer protection laws are a form of government regulation which aims to protect the rights of consumers. For example, a government may require businesses to disclose detailed information about products particularly in areas where safety or public health is an issue, such as food, water and drugs.

## **2.2 Transitional Constitution 2011**

It is the supreme law of the Republic of South Sudan that provides protection to every citizen of the country including consumers' without any discrimination against any individual. Thus, a

consumer at Konyokonyo market is to be accorded full protection by the suppliers as prescribed by the laws of South Sudan.

Public health care, the law<sup>32</sup> provides protection to all consumers at all levels of South Sudan and that has promoted public health by: establishing, rehabilitating, and developing basic medical and diagnostic institutions for the health of consumers in South Sudan. In **Pfizer Corporation v Ministry of Health**,<sup>33</sup> it was held that the reference to “supplying” a medicinal product is inserted to extend the ambit of the prohibition to the acquisition of such a product under the National Health Service, such acquisition not constituting a sale. Thus, a consumer is being protected by the laws.

### 2.3 Consumer Protection Act 2011

The *Act*<sup>34</sup> was enacted to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of more reliable laws for settlement of consumer disputes and for matters connected therewith.

Consumer Protection Act Provides for liability for damage by defective products, the Trading Standards Department of local authority has powers to investigate complaints. Environmental Health Inspectors check on a range of premises including those where food is prepared. There are a number of bodies that have been set up to protect consumers. For example, the South Sudan Consumer Protection Council establishes a range of standards for products and processes. Products that comply with these standards are able to display the 'Kite mark' of the SSCPC, which is a mark of quality. Another well known body that protects consumers is The South Sudan Consumers' Association which produces the magazine that Consumers' Association like

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<sup>32</sup> Article 31 of the Transitional Constitution of 2011 (South Sudan)

<sup>33</sup> (1965) A.C 512

<sup>34</sup> The Consumer Protection Act 2011

SSCPC carried out tests on a range of products, and publishes the results showing best buys and value for money from a range of products.

Every product or service that was bought and sold must meet standards which include legal requirements such as those under the Sale of Goods Act, as well as those created by standardising bodies such as South Sudan National Bureau of standards. In **Tonkin v Victor Value Ltd**,<sup>35</sup> it was held that there are three ways in which a court may be able to fix a standard. In the first place, the appropriate standard may be that which is generally accepted in the trade and among analysts, in the second place, a court is entitled to, and must act upon, the evidence of a public analyst as to what a particular food ought to contain, both in terms of ingredients and percentages thereof.

### 2.3.1 Unfair and unjust transactions

The law<sup>36</sup> provides consumer right to fair and responsible marketing. It protects a consumer against unfair or unjust transactions and that a supplier shall not offer to supply any goods or services on terms that are manifestly unfair or unjust; or market any goods or services or administer any agreement for the supply of any goods or services in a manner that is manifestly unfair or unjust. The laws<sup>37</sup> are also designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves. In **Webb v Jackson Wyness Ltd**,<sup>38</sup> it was held that magistrates ought to have acted upon “overwhelming” evidence that was recognized by reputable manufacturers, a trade association and the Ministry of Food that non-brewed vinegar should contain at least four percent acetic acid. Hence, consumers’ protection has been little bit realised.

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<sup>35</sup> (1963) 1 WLR 339

<sup>36</sup> Section 5 (1) (a) (b) of the Consumer Protection Act 2011

<sup>37</sup> Sections 173, 174, 175, 176 of the Penal Code Act 2008

<sup>38</sup> (1948)2 ALLER 1054

### 2.3.2 False, misleading or deceptive representation

A Consumer is thus protected against false, misleading or deceptive representations and that a proposed consumer transaction between a supplier and a consumer in the marketing of any goods or services, the supplier must not by words or conduct directly or indirectly express or imply a false, misleading or deceptive representation concerning material fact to a consumer; or fail to disclose material fact if that failure amounts to a deception.<sup>39</sup> In **R. Resis**,<sup>40</sup> court held that offences are committed even though there was no particular or general intention to deceive an individual or the public at large.

Consumer is also protected by law<sup>41</sup> and that a supplier must not by words or conduct knowingly permit a consumer or prospective consumer to believe a false, misleading or deceptive state of facts; or fail to correct an apparent misapprehension on the part of a consumer. This law is therefore safeguarding consumers against suppliers' bad practices. The law<sup>42</sup> also provides for advertising and the duty of every supplier of goods 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. Abusive advertising, misleading price indications is also prohibited. In **Chidwick v Beer**,<sup>43</sup> it was held that even though a person may be totally uninterested in or uninfluenced by a false trade description applied to goods one has purchased, nevertheless the seller has committed an offence.

### 2.3.3 Consumer rights to safe, good quality goods

The law<sup>44</sup> provides consumer right to safe, good quality goods and that the consumer has a right to receive goods that are: reasonably suitable for the purpose for which they are generally intended; goods that are of quality, in good working order and free from defects; goods that will

<sup>39</sup> Section 6 (1) (a), (b) of the Consumer Protection Act 2011

<sup>40</sup> (1957) crim. L.R. 404

<sup>41</sup> Section 6 (1) (c), (b) of the Consumer Protection Act 2011

<sup>42</sup> Section 6 (3) (a), (b), (c) Ibid

<sup>43</sup> (1974) R.T.R 415

<sup>44</sup> Section 8 (1), (a), (b), (c) of the Consumer Protection Act 2011

be useable and durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply. Thus, law protects consumers by providing for guarantees and the liability of a supplier on a guarantee. Where the supplier of goods gives a guarantee to the consumer irrespective of how it was given, the supplier should therefore be liable to the consumer unless he expressly indicates otherwise to the consumer. Hence, this is an indication that consumer has been protected by laws in South Sudan as a whole. Thus, in **J. Miller Ltd v Battersea Borough Council**,<sup>45</sup> court held that food may be said to be unfit for human consumption if it is putrid, diseased or unwholesome in any other way.

#### 2.3.4 Consumer rights to demand quality service

The law<sup>46</sup> provides protection to a consumer in South Sudan and that where a supplier undertakes to perform any service for a consumer, the consumer has a right to; the timely performance and completion of the service, and timely notice of any unavoidable delay in the performance of the service, performance of the service in a manner and quality that persons are generally entitled to expect, and the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services. Consumers are being protected by the law. In **Hooper v Petrou**,<sup>47</sup> court held that any article commonly used for human consumption is intended for sale for human consumption if it is sold or offered.

The law provides measures for consumer redress and mechanisms. If this Act protection of consumer is observed, it will adequately protect the consumers, although more work need to be done because of the ever changing global economy. The technology has been improved everyday

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<sup>45</sup> (1956)1 Q.B 43

<sup>46</sup> Section 10 (1) (a), (b), (c) of the Consumer Protection Act 2011

<sup>47</sup> (1973) crim. L.R 298



and the law needs to evolve to accommodate the same. A consumer rights to have been redressed by the law<sup>48</sup> which prevents unfair trade practices and unscrupulous exploitation of consumers and that failure to perform service to the standards contemplated in the agreement, a consumer may require a supplier to either: remedy any defect in the quality of the services performed or goods supplied, or refund to consumer a reasonable portion of the price paid for the services performed and goods supplied.

Much more need to be worked on the Consumer Protection Act to make it more adequate and cover its shortcomings. It has left out important issues on consumer protection like consumer credit whereby consumers acquire goods on credit and pay for them later. They are not protected from harassment by the credit offering institutions.

## **2.4 Sale of Goods Act 2011**

This Act governs contracts made in South Sudan between a seller and a buyer at the time of agreement to enter into a contract and, when the property is to pass so that a contract is concluded between the parties to it.

### **2.4.1 Conditions and warranties**

The law<sup>49</sup> provides for some measures that will enable consumers to be protected. It addresses issues like the formation of a contract and how binding it is, what the formalities of the contract are, conditions and warranties, performance of the contract, actions for the breach of contract and remedies for the buyer who in most cases is the consumer. For example, where there is a contract for sale of goods by description, there is implied condition that the goods shall correspond with the description, and if the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample, if the goods do not correspond with description,

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<sup>48</sup> Section 10 (2) (a), (b) of the Consumer Protection Act 2011

<sup>49</sup> Section 16 of the Sale of Goods Act 2011

the seller is deemed to have breached the implied terms.<sup>50</sup> In *Beale v Taylor*,<sup>51</sup> the defendant advertised a car for sale as being a triumph herald 1200 and he believed this description to be correct, plaintiff answered the advertisement and later inspected the car and bought it, plaintiff later discovered that the car was made up of a rear of 1961 model of a triumph herald 1200 and a front of triumph herald 1948, The plaintiff sued for refund of the price and damages for breach of condition as to description. Court held that the plaintiff was entitled to the price and damages, and therefore is being protected by the laws.

Where the buyer, expressly or by implication, makes known<sup>52</sup> to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skills or judgment. The law<sup>53</sup> provides for implied conditions as to quality and fitness, there is an implied condition that the goods shall be reasonably fit for the purpose. This position has showed protection of consumers in South Sudan. In *Grant v Australian Knitting Mills*,<sup>54</sup> Grant bought a pair of long woolen underpants from a retailer, the pants contained excess sulphite and after wearing them, the consumer developed skin diseases and Court held that the retailers were in breach of conditions as to fitness for purpose since the appellant had made known to them the purpose for which the goods were required.

## 2.5 Contract Act 2008

This law protects consumers' and gives freedom of contract to the contracting parties and enforce only what the parties have agreed to be bound. It also lays down only the essentials of a valid contract and rights and obligations<sup>55</sup>, it would create between the parties in the absence of

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<sup>50</sup> Section 18 (1), (2) of the Sale of Goods Act 2011

<sup>51</sup> (1967) 1 WLR 1193

<sup>52</sup> Section 19 (6) of the Sale of Goods Act 2011

<sup>53</sup> Section 19 (4) (a) Ibid

<sup>54</sup> (1936) AC 85

<sup>55</sup> Section 64 (1), (2) of the Contract Act 2008

anything contrary to the agreement of parties in the contract. Thus, consumers are being protected by the laws of South Sudan.

### **2.5.1 Compensation for loss caused by breach of contract**

Consumer is protected by law<sup>56</sup> where there is a breach of contract by a supplier, and that the party who suffers the breach shall be entitled to receive from the party who breaches the contract. Compensation for any loss or damage caused to a consumer should be paid by a supplier as breach of contract resulted from the supplier act. Thus, this law is working on the consumer favour.

## **2.6 Penal Code Act 2008**

The purpose of this law is to provide for the penalties which govern the criminal acts of the suppliers that may be adjudicated upon by the courts of South Sudan in case of any breach of the consumers rights.

### **2.6.1 Adulteration of Produce**

Adulteration of produce means to falsify, deteriorate or change apparent bulk of the goods. Thus, the law<sup>57</sup> protects consumer against supplying adulterated produce contrary to the contract made by the parties. The law also makes it an offense if a supplier falsely stated that the quality he supplied is the right quantity and the goods are unfit for human consumption, and then he is liable on conviction to a fine not exceeding two thousand shillings or imprisonment for a period not exceeding three months or both.

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<sup>56</sup> Section 93 (i) of the Contract Act 2008

<sup>57</sup> Section 5 of the Penal Code Act 2008

### 2.6.2 Adulteration of drugs or medical preparation

The law<sup>58</sup> protects consumers against bad practices of the suppliers and that any person who adulterates any drug or medical preparation in such manner as to lessen the effectiveness or change the operation of such drug or medical operation, or to make it noxious, intending that it shall be sold or used for medical purpose is guilty of a misdemeanor.<sup>59</sup> Similarly, any person who sells or offers to sell food or drink which has been rendered noxious or is in a state unfit for consumption is guilty of misdemeanor. These laws are therefore protecting consumers in South Sudan. In **Republic v Tanganyika Trading Corporation of Tanganyika**,<sup>60</sup> the respondent was charged with three counts of selling food unfit for human consumption contrary to the Food and Drugs Ordinance. He was acquitted by the magistrates on ground that there had been on sale under the Ordinance.

### 2.6.3 Adulteration of food or drink intended for sale

The law<sup>61</sup> provides protection for consumers by prohibiting suppliers from supplying adulterant food and that whoever adulterates any article of food or drink so as to affect injuriously the quality intending to sell such article as food or drink without notice to the purchaser, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding six months or with a fine or both.

A quality control laboratory shall check on the quality of any salt imported or produced in South Sudan to ensure that the iodine content in the salt is of the level specified under the law<sup>62</sup> and all the soda characteristics conform to the relevant standards established by the law. In **Githomi v**

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<sup>58</sup> Section 182 Penal Code Act 2008

<sup>59</sup> Section 181 of *Ibid*

<sup>60</sup> (1969)EA314

<sup>61</sup> Section 178 (1) of the Penal Code Act 2008

<sup>62</sup> Section 187 of the Penal Code Act 2008

*Republic*,<sup>63</sup> the appellant was convicted for keeping for sale prepared without a label giving the name and the address of the packer.

#### **2.6.4 Weights and Measures**

The law<sup>64</sup> provides for and regulates the use of false weighing and measuring equipment. It also ensures that a consumer of goods should be given the right weights and measures of goods and to achieve this is by laying down detailed procedures of how weighing or measuring equipment is certain as fit for use in trade. The law<sup>65</sup> also makes it an offense to sell or expose for sale false weight and measure of goods. The remedy provided by this law<sup>66</sup> is compensation where the supplier is to compensate consumer for the right quantity that was paid to him. Consumer has a right to compensation for the quantity he had paid for which is an indication that laws which protect consumers have been there.

#### **2.7 South Sudan National Bureau of Standard Act 2009**

This law<sup>67</sup> provides that among other functions should enforce standards in the protection of the public against harmful ingredients, dangerous components, shoddy materials and poor performance. Although this law makes no specific reference to labels, the researcher would think that by enforcing standards, they should also address correct labeling of products at Konyokonyo market in Juba City.

The objectives of the various statutes as discussed above are more or less the same. For example the United Nations Guidelines<sup>68</sup> seeks to take into account the interests and needs of consumers in all countries, particularly those in developing countries like South Sudan. It recognizes that

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<sup>63</sup> (1973) EA 285

<sup>64</sup> Section 173 of the Penal Code Act 2008

<sup>65</sup> Section 174 Ibid

<sup>66</sup> Section 175 Ibid

<sup>67</sup> Section 3 (f) of the South Sudan National Bureau of Standard Act 2009

<sup>68</sup> United Nations Guidelines for Consumer Protection (as expanded 1999), Part H

consumers often face imbalances in economic terms, education levels and bargaining power. It also bears in mind that consumers should have a right to non hazardous products as well as the right to promote just, equitable and sustainable economic protection at Konyokonyo market, Juba City in South Sudan.

## **2.8 South Sudan Drug Policy Act 2010**

Under the law,<sup>69</sup> it is provided that no person entitled by virtue of being licensed to deal in a classified drug or restricted drug unless he or she is licensed to do so. Any person who fails to comply with this provision commits an offence. The regulations also provide that every container of classified or restricted drugs shall be labeled clearly and distinctly in the English language.<sup>70</sup> All this is aimed at protecting consumers in dealing with these drugs to prevent any hazards at Konyokonyo market in Juba City.

The law<sup>71</sup> also provides that no person shall keep, sell any classified drug unless it is contained in a container impervious to the drug and sufficiently strong to prevent leakage arising from the ordinary risks of handling and transport. The packages or bottles containing the drug should be plainly marked with the nature and amount of drug contained therein. However the compliance in South Sudan has been very low and everyday there are cases of counterfeit drugs impounded by the government.

The law<sup>72</sup> provides that an applicant shall be licensed to sell drugs if the applicant holds a certificate of suitability of premises issued by the registrar of national drug authority. The applicant should not previously been convicted of an offence involving wrongful or illegal dealing in supply or possession of drugs. It can be observed here that all the provisions discussed

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<sup>69</sup> South Sudan Drugs policy Act 2009

<sup>70</sup> Section 5 (1) (a) Ibid

<sup>71</sup> Section 5 (2) (b) Ibid

<sup>72</sup> Section 9 (2) Ibid

above are aimed at protecting consumers. The law that scattered in different statutes has managed to cover the loopholes that exist in consumer protection. Although it is not adequate, much more needs to be done for the interest of consumers at Konyokonyo market, Juba City in South Sudan.

## **2.9 Context of consumer protection in South Sudan**

In spite of the legal provisions that are protecting consumers in South Sudan, there are still problems facing consumers even where the goods are properly labeled. Illiteracy and ignorance that makes the consumer unable to read or because the labels are in small print or in foreign language that is not understood by the consumers. Majority of the consumers are ignorant in a way that they do not bother themselves to read the instructions or what is on the containers. They just believe in what they are told by other people rather than proving on their own which has encouraged food mislabeling.

Consumer protection is often regarded as modern phenomena typical of the 20<sup>th</sup> century, it is in fact the case that many of what we regard as statutes with an emphasis on consumer protection had their own in a much earlier age. For example, there have long been regulations in respect of essential items such as bread, meat, fuel. In particular there are early regulations in relation to prices and the provision of short measures. Whether these statutes should be properly regarded as consumer protection measures is doubtful, as much of the motivation for their enactment probably stemmed from a desire to protect honest traders from their dishonest competitors. As such, much of the earlier legislations can be regarded as being directed towards fair trading rather than consumer protection.

The laws that are protecting consumers in South Sudan are not being observed by the authorities in power because the country. South Sudan has become a dumping site of inferior items by the

rest of African and European countries. For example the types of food, drugs, building materials and all other types of food items being needed by the new nation are inferior to the extent that when food and drugs are used they caused problem to people. Food and drugs that are being transported to South Sudan are dangerous to the health of the people in the sense that they do not meet the expectations of people of South Sudan. As a result a consumer at Konyokonyo market use to order for the first class food or drugs and a supplier promised to have fulfilled it which turns out to be false promised. Thus, consumer protection policy is not being observed by the authorities concern.

The areas with the highest level of consumer detriment are those where it is more difficult to make informed choices. Purchases in these areas are made less frequently and are generally of a high value. Often, it is difficult to determine in advance what the buyer is getting for their money example is home improvements. Whilst consumers often have the opportunity of examining high value goods before purchase, merely discovering attributes of a product such as its appearance and finish may not be sufficient to assess its true quality, reliability and durability. These factors will become apparent with time by which time a buyer may have lost their right to rescind their contract and may only have a claim in damages together with their guarantee to rely on. New rules on consumer guarantees introduced by South Sudan Consumer Protection Council Directive 2010/25 are quite modest and the possibility of regulating after sales service considered by the green paper on Guarantees for Consumer Goods and After Sales Services has not been acted on to date.

The civil law of consumer protection was most markedly affected by developments in the 19<sup>th</sup> century, in particular the principles of freedom of contract and caveat emptor. In **Printing &**



**Numerical Registering Co. V Sampson**,<sup>73</sup> it was held that the period was characterized by a general unwillingness to interfere in business affairs. As a general rule, the parties to a contract were not obliged to volunteer information with the result that if a person wanted a warranty goods or services he purchased were of sound quality he could contract for this result pay accordingly.<sup>74</sup>

The principle of caveat emptor was consistent with the principles of freedom of contract and self reliance which were features of the 19<sup>th</sup> century. This approach may well have been justified at the time since few goods would have cost enough to warrant common law protection.<sup>75</sup> Accordingly, it was still possible to argue that a consumer or buyer at Konyokonyo market could afford to learn from his mistakes and that legislative intervention in favour of the consumer was unnecessary.

Many trade practices result in a general lack of information on the part of consumers with the results that the ability of the consumer to make prudent hoping decision is diminished.<sup>76</sup> Thus, modern advertising methods tend to misinform consumers rather than giving them correct information. In particular, it can be said that advertisements do not provide information and objective basis. The advertiser only tells the consumer what he wants to hear and other facts which might be relevant to a prudent shopping decision tend to be omitted. A further objection to advertising techniques was that they may encourage irrational purchase for example, it has been argued that consumer wants are artificially created by advertising methods at Konyokonyo market, Juba City in South Sudan.<sup>77</sup>

<sup>73</sup> (1875) LR 19 462 per Sir George Jessel

<sup>74</sup> Parkinson V Lee (1802) 2 East 314

<sup>75</sup> Atiya, the Rise and Fall of Freedom of Contract (1979) P. 179.

<sup>76</sup> Trebilcock (1971) 16 McGill L. j

<sup>77</sup> Galbraith, the Affluent, 4<sup>th</sup> edition, 1984.

Due to some difficulties in obtaining information, a consumer is not in a position of equal bargaining power with a supplier. Hence, a consumer at Konyokonyo market, Juba City does not have the ability to acquire the necessary information to be on the same level as the supplier with whom he deals.

As a result, most of the foods which are being transported from outside South Sudan such as Kenya, Uganda or East Africa in general are sometimes very hard for a consumer to understand the foreign language of that particular supplying country. Thus, South Sudan government is silent about those foods imported into the country while labeled in foreign languages which shows that consumers' rights are not yet totally solved to their expectations as per the laws enacted to protect them.

Some labels are also inadequate in the sense that they do not give a detailed explanation on the nature of the product and the side effects. At time, labels are tempered with and the fact that the penalty for false or misleading is too small which makes consumers reluctant in enforcing their rights against the suppliers.

## **2.10 Justifications of statutory protection of consumer**

The reason for a consumer protection is to ensure that consumers receive sufficient information to make "good" decisions and are dealt with fairly, to assure fair pricing of financial services, to protect consumers from fraud and misrepresentation, and to prevent invidious discrimination against individuals. In particular, this paper has examined closely the rationale for the South Sudan Consumer Protection Act 2011, because it might serve as a regulatory model at Konyokonyo market in Juba City.

The purpose of consumer protection laws is to protect their citizens from abuse in the context of business to consumer transactions. It is therefore unlikely that government of South Sudan has

endorsed a principle that would divest them from their ability to extend and enforce that protection. Any contrary approach would, furthermore, be inconsistent with the fundamental principle of equivalent protection set out in many areas of selling especially at Konyokonyo market, Juba City in South Sudan.

Framework on the Principles of Consumer Protection for consumer, if a government regulator cannot enforce the same principles in favour of a consumer that would apply distance selling, the consumer has lost equivalent protection. Indeed, from a broader public policy perspective, it has been acknowledged that using the vendor's location to determine choice of law could lead to a "race to the bottom," in that vendors has chosen to base their operations in the jurisdictions with the least restrictive requirements, and that governments in turn has tempted to minimize the exigencies associated with doing business in their jurisdiction in order to retain or attract trade operators.

Laws of South Sudan have been intended to protect consumers at Konyokonyo market as opposed to other traders are seen as comparatively a recent development. The early attempts at regulation could be said to be based on discouraging fraudulent or dangerous practices in South Sudan. Hence, consumers lack general knowledge of the products. There is also an unequal bargaining power between the consumer and the supplier of goods. An alternative argument in favour of consumer protection legislation is that it preserves community values such as fair dealing and honesty trading.

## **2.11 Conclusion**

The researcher concludes that, consumer regulation is useful for the second goal, but regulations specific to consumer goods or services are neither necessary nor desirable for the other goals at Konyokonyo market in Juba City.

Although there are laws protecting consumers in South Sudan, still there is no absolute effectiveness of the consumers' protection laws on the rights of consumers. To some extent, there is no observance of the consumer rights by the government authorities and other bodies charged with consumer protection. Thus, this has given suppliers chance of exploiting consumers in South Sudan. Hence, there is a need for more improvements to be done by the government and other relevant authorities and the suppliers are to comply with what is put in place by the government and relevant authorities in South Sudan.

## CHAPTER THREE

### CHANGES OF CONSUMER PROTECTION

#### 3.0 Introduction: Food labeling

The history of food label<sup>78</sup> is a very important history to understand. South Sudanese consumers have been conditioned to read food labels as a way to make better choice of products in the market. The provision of information through labeling is seen as highly vital in determining the adequacy of warning and whether the consumer could reasonably expect a substance to be present in a particular product. Consumers are always required to read through a label. Although in many cases due to illiteracy, consumers do not read or understand the labels. The important aspect of labels is that they should be reasonable and information should explain the function of the product.

Food labeling has gone through several stages of historical development.<sup>79</sup> Labeling regulation began with regulatory marks which served as a booster to the enforcement of adulteration laws and levying of duties and taxes. The principal problem of misbranding historically was the misrepresentation of weight. In the past, most foods were produced and consumed locally so that there was no widespread usage of food labels. Hence there was no need for extensive regulation of such food labels.

#### 3.1 Industrialisation of food production

The industrialisation<sup>80</sup> of food production in the 19<sup>th</sup> century made consumer more reliant on food labels as a key source of information in making purchases. Thus, trademarks provided a partial assurance of the quality to purchasers, but there was a clear need for regulation to prevent

<sup>78</sup> [www.allnaturalprevention.com/pages/food-labels.htm](http://www.allnaturalprevention.com/pages/food-labels.htm) Monday, 14 may 2012

<sup>79</sup> [www.ettquette.co.uk/articles/the-history-of-food-labeling](http://www.ettquette.co.uk/articles/the-history-of-food-labeling) Ibid

<sup>80</sup> Peter Wright: the law of consumer protection internet

misbranding and fraudulent labeling. Once anti-misbranding statutes were passed in the early 20<sup>th</sup> century, regulations began to realize the need for more comprehensive regulation including affirmative labeling requirements, were basic such as weights, the name of food and address of the manufacturer. However, with advance in nutrition science and the realization of the connection between food consumption and the long term diseases, affirmative labeling requirements included detailed information. At the moment, nutrition labeling has become so specific in some countries particularly in South Sudan that it is seen as a means to educate the public about nutrition.

### **3.2 Pre-industrial food distribution and the labeling**

People in the industrialised world and to a lesser extent the developing world live in the era when most of the foods consumed is brought to a level of some sort attached. However for the most of the man history where rapid transportation was absent as almost of the all food was made from fresh ingredients locally produced, locally purchased, locally consumed, people did not rely on any government inspection services or labeling to ensure the quality of the food they had consumed. Rather they identified food, trusted its quality by looking at it, feeling it, smelling it and poking at it.<sup>81</sup>

In many farming areas, consumers bought or battered flour directly from the mills and thus could see the first hand, whether it was produced in a satisfactory manner. If people got rice or sugar from a store, they could see the shopkeeper fill the bags right by their eyes so that they had a level of trust in what they were purchasing. Contrast with today pre-packaged goods which deprive the consumer of the opportunity to inspect their weight and quality. However, this is not to say that in the pre-industrial era, consumers had not found need for food labeling as a means of regulation for food.

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<sup>81</sup> [Gutenfreepassport.com/eating.../product-labeling](http://Gutenfreepassport.com/eating.../product-labeling) Monday 14 May, 2012

### 3.3 Early food labeling regulations

An interesting predecessor of food labeling existed in Roman times.<sup>82</sup> In the Roman Empire, the rules governing the sale of food were as complex and specific as a modern regulatory statute. The rule therefore prevents fraud by the vendor but generally relies on the principle of Caveat Emptor “let the buyer beware.”

According to Bliny Natural history,<sup>83</sup> observes that there were very straight forward systems of selling on the steps of city with the arrangement of bread as an indication of the quality of bread. In each step, a different grade of bread would be offered for sale, and the higher the step, the higher the grade of the bread thus the higher the price. This practice was formalized in the Theodosia Court of 438 AD which specifically required that bread to be sold publicly on the steps rather than secretly by the bread maker. Court mentioned coarse bread and fine bread and states that the transfer of bread from one step to another shall be prohibited and the office of prefect of Annona shall know the severest punishment to threaten them if they should permit such transfer to be made through the steps.

In medieval and early modern Europe,<sup>84</sup> many types of were identified by origin, grade and regulatory marks. In particular, medieval regulators used regulatory and liability marks with bakers to maintain the standard of quality in bread making and to prevent extortionist production of bread. Such regulation of standards was important to ensure both supports for the populace which depend on bread as the staple food and able to maintain effective tax base since bread was a major article of commerce. In England, the regulatory labeling of bread is traced back to 1203 when King John enacted the Assizes of bread that was an ordinance which regulated the given quality of food. In 1266, Assizes was codified by parliament and parliament enacted a statute of

<sup>82</sup> [www.livingstrong.com/article36138-food-history](http://www.livingstrong.com/article36138-food-history) Monday, 14 May 2012

<sup>83</sup> Natural history of 1949

<sup>84</sup> [Blog.fooducate.com/.../1862-2008](http://Blog.fooducate.com/.../1862-2008). Monday, 14 May 2012

Pillory and Mumbrel to provide punishment for violating of the Assizes of bread in United Kingdom markets.

### 3.4 Food labeling at common law

Branding was a common form of statutory regulation in England,<sup>85</sup> there was no cause of action for misbranding at common law and the very term misbranding was unknown. Nonetheless the concept of misbranding was prevalent at common law and there were many reputed instances where people sold merchandise falsely representing that it was something other than what it actually was. Extensive modern food labeling was therefore non-existent in the medieval England, false representation were instead usually made by verbal affirmation of use of false weights and measures. Standards of identity for food did not exist at common law, but standards of weights and measures did exist and they were well unknown all over the areas of selling in the England markets.

The Magna Carta in 1215<sup>86</sup> stated that there shall be one measure for wine through the United Kingdom and one measure of corn namely the Quarter of London, and the breadth of dyed clothes and of nussets within the list and shall be the same with weights as with measures in all markets in London.<sup>87</sup>

Almost all misbranding at common law was concerned with false weights and measures or with passing of inferior products for superior one. Misbranding was therefore characterised at common law as cheating. At common law, offences which affected individual merely in their capacity as private citizen were subject only to civil remedies for the damages sustained. Only offences which affected the public as a whole for example, false weighing scales found the offender subject of being indicated.

<sup>85</sup> [www.ag.ndsu.edu/foodent.../ppt/ins](http://www.ag.ndsu.edu/foodent.../ppt/ins) Monday 14 May 2012

<sup>86</sup> [www.registrarcorp.com/labeling](http://www.registrarcorp.com/labeling) rules Ibid

<sup>87</sup> David W. Oughton. Consumer Law and Property, 3<sup>rd</sup> edition, 1998 pg.1 by Chris Willet



### **3.5 Food labeling in South Sudan**

In South Sudan, there are laws which protect consumers as far as food labeling is concerned. Legislation establishing the rules regarding labeling to insure that labels are highly informative to the consumer. A few Acts can be cited that provide for and make an offence to falsely label food and drugs.

### **3.6 Penal Code Act 2008**

The law<sup>88</sup> provides that whoever adulterates any article of food or drink so as to affect injuriously the quality, substance or nature intending to sell such article without notice to the purchaser, commits an offence and upon conviction shall be sentenced to imprisonment for a term not exceeding six months or with a fine or with both. Thus, the law has showed little change on consumers' protection.

### **3.7 Consumer protection Act 2011**

This law<sup>89</sup> provides that supplier must not, by word or conduct:-directly or indirectly express or imply a false, misleading or deceptive representation concerning a material fact to a consumer or prospective consumer; use exaggeration, innuendo ambiguity as to a material fact or fail to disclose a material fact if that failure amount to a deception; knowingly permit a consumer or prospective consumer to believe a false, misleading or deceptive state of facts; or fail to correct an apparent misapprehension on the part of a consumer or prospective consumer, amounting to false, misleading or deceptive representation or permit or require any other person to do so on behalf of the supplier.

In spite of these legal provisions, there are still problems faced by consumers even where the goods are properly labeled, illiteracy and ignorance that make the consumer unable to read or

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<sup>88</sup> Section 178 (1) of the Penal Code Act 2008

<sup>89</sup> Section 6 (1) (a), (b), (c), (d) of the Consumer Protection Act 2011

because the labels are in small print or in foreign language that is not understood by the consumers.

The doctrine of caveat emptor "let the buyer beware" developed in English law from a general reluctance to intervene in contractual disputes and to imply terms into contracts which were not expressly stated. The common law approach placed the onus on buyer or consumer to look out for his own interests. The effect of this doctrine is arguably that, the buyer was at a disadvantage due to a lack of knowledge or expertise about what he was buying.<sup>90</sup> It is the inequality in economic power between the consumers and suppliers which has led to a change in policy over time.

The first Sale of Goods Act, codifying the common law position, appeared in statute books in 1893. At that time, any implied terms as to the quality of the goods in question were default rules that could be excluded from the contract if the parties agreed. This position changed in 1973 with the introduction of the Supply of Goods (Implied Terms) Act which made implied terms non-excludable. Excluding minimum guarantees of quality would have been viewed as grossly unfair, attracting concern about consumer inequality of bargaining power and potential exploitation by traders.<sup>91</sup>

Changes to the 1973 Act were consolidated into the Sale of Goods Act 1979, amended by the Sale of Goods Act 2011 to Consumers Protection Act 2011. It is now recognised that the trader is better placed than the consumer to know the quality of goods he is selling. In fact, the producer is arguably in an even better position but the law places the obligation on the seller so that the buyer does not have to seek out the producer and therefore has a more accessible remedy. Further, it is accepted that with greater diversity amongst product categories presenting a

<sup>90</sup> <http://www.dti.gov.uk/cpp/topics1/pdf1/strategy15> min at 10:30 am on Tuesday 15 May, 2012

<sup>91</sup> Howells et al: consumer law at page 148

"labyrinth of perplexing choices"<sup>92</sup> it has become increasingly difficult for a consumer to look after his own interests. The law therefore seeks to protect the consumer and to readdress the balance in bargaining power between the consumers and suppliers at Konyokonyo market, Juba City in South Sudan.

It was found in South Sudan that the burden has been placed on the Buyer to make extensive enquiries before purchasing goods has weakened, and some have commented that the burden has shifted to the Seller.<sup>93</sup> The principle of caveat emptor has, according to Lord Steyn, become the principle of caveat venditor. As a result, the development of the law over the past thirty years and in particular the introduction of the Misrepresentation Act 1967 and the Unfair Terms in Consumer Contract Regulations 1994 has made the doctrine of caveat emptor seem even less significant.<sup>94</sup>

Some statutory provisions would however appear to retain the principles of buyer awareness. For example, section 14(1) Sale of Goods Act 1979 (repeal law) provides that there is no implied term about the quality of fitness for purpose of goods, but this is subject to major changes set out in the new Act.

The new Act implies a condition into the contract that where the seller is acting in the course of business, the goods must be of satisfactory quality, as defined by law.<sup>95</sup> The law<sup>96</sup> states that goods must meet the standard that a reasonable person would regard as satisfactory, taking account of any description, the price and all other relevant circumstances. The law<sup>97</sup> also gives further consideration to the state and condition of the goods including their fitness for all

<sup>92</sup> Howells et al: book of consumer law at page 146

<sup>93</sup> [http://www.theregister.co.uk/2006/01/18/drm\\_consumer](http://www.theregister.co.uk/2006/01/18/drm_consumer) Tuesday 15 May. 2012

<sup>94</sup> Silberstein. S. Consumer Law, 4<sup>th</sup> Edition, 2004 at pg.48 by Thomson Sweet & Maxwell, London.

<sup>95</sup> Section 19 (1), (2), (3), (4), (a) of the Sale of Goods Act 2011

<sup>96</sup> Section 18 (1) Ibid

<sup>97</sup> Section 19 (4) (a), (b), (c), (d), (e) of the Consumer Protection Act 2011

purposes for which they are supplied, their appearance and finish, their freedom from minor defects, safety and durability.

The law imposes strict (as well as contractual) liability on the Seller so that irrespective of how careful the he is in checking his stock, if the goods are defective he is liable. The provisions above have been extended to cover even more transactions so that sales of goods made "in the course of business" now include all sales made in the course of business regardless of the purchase related to the usual trade of the buyer or whether it was an isolated event. However, arguably provisions<sup>98</sup> still leave the consumer open to exceptions which appear to contradict the principle that the seller has better knowledge of his product. Under this provision, a buyer who has had the opportunity to examine goods will not be able to rely on provisions relating to satisfactory quality as regards to defects the examination ought to have revealed. A buyer who misses an obvious defect could fall within this exception if he examines the goods before purchase and misses the defect.

The law<sup>99</sup> also fails to offer protection for private sales and purchases made, for example, at car boot sales; there is a consensus that where the Buyer chooses to take the risk of purchasing goods where the transaction is informal, they should bear the risk. The provisions can, however, apply to second hand goods, albeit in a limited capacity. In **Crowther v Shannon Motor Co**,<sup>100</sup> a car was purchased for £950 and driven 2,500 miles before the engine ceased up. The Court of Appeal held that the defect could not be reasonably anticipated for a car of this age and mileage, and there was a breach of merchantable quality. Under today's legislation, the car would fail on durability and satisfactory quality. This can be contrasted to **Bartlett v Sidney Marcus**,<sup>101</sup> in

<sup>98</sup> Sections 17, 18, 19 of the Consumer Protection Act 2011

<sup>99</sup> Section 26 (1) Ibid

<sup>100</sup> (1975)CA 23

<sup>101</sup> (1965) HCB 105

which the claimant purchased a second hand jaguar for £950, having been told that the clutch needed a small repair. When the car had done 300 miles, it required a completely new clutch costing £84. The car was held to be of merchantable quality as the defect was the kind that could be anticipated in a second hand car. In today's terms, it would be deemed of satisfactory quality under the law.<sup>102</sup> This has showed the limited application of the repealed law to second hand goods, age, price and the reasonable expectations of the buyer are taken into account by the new law which is an indication that there are changes of consumer protection at Konyokonyo market, Juba City in South Sudan.

The South Sudan Council of consumers' protection has taken a pro-consumer stance and the law is undergoing a constant program of reform and redevelopment. The Product Liability Directive 85/374/SSUCP which came into force on 1 May 2009 introduced increased protection for consumers through the Consumer Protection Act 2011 giving persons injured by defective products the right to sue for damages without having to prove the elements of negligence. However, despite extensive changes, it is argued that even more must be done to protect the consumer. The Office of Fair Trading estimate that the level of consumer detriment amounts to £8.3 billion per annum. This was considered to be an understatement as it only accounts for situations where the consumer has noticed the problem at Konyokonyo market, Juba City in South Sudan.

At Konyokonyo markets where consumers have no trouble in making informed choices, such as the retail clothing business, services offered go beyond what is required by government regulation. Consumers are given the option of returning goods even if they have simply changed their minds, an option that is not conferred on them by legislation, but by general practice in South Sudan.

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<sup>102</sup> Section 19 (3) of the Sale of Goods Act, 2011

However, the areas with the highest level of consumer detriment in South Sudan are those where it is more difficult to make informed choices. Purchases in these areas are made less frequently and are generally of a high value. Often, it is difficult to determine in advance what the consumer or buyer is getting for their money, example is the home improvement goods at Konyokonyo market, Juba City in South Sudan.

Whilst consumers often have the opportunity of examining high value goods before purchase, merely discovering attributes of a product such as its appearance and finish may not be sufficient to assess its true quality, reliability and durability.<sup>103</sup> These factors has become apparent with time by which time a buyer may have lost their right to rescind their contract and may only have a claim in damages together with their guarantee to rely on. New rules on consumer guarantees introduced by Product Liability Directive 85/374/SSUCP are quite modest and the possibility of regulating after sales service considered by the Citizen paper on Guarantees for Consumer Goods and After Sales Services has not been acted on to date especially at Konyokonyo market in South Sudan.

This situation was found in all other markets of Juba City in South Sudan which has been partially alleviated by more recent legislation. The law<sup>104</sup> provides that in deciding whether a reasonable time has elapsed, consideration must be given as to whether the buyer or consumer has had reasonable opportunity to examine the goods. The court has been prepared to accept that a buyer may need a longer period of time to discover defects. Further, the law<sup>105</sup> provides that by accepting a repair, the consumer has not necessarily accepted the goods which has showed little protection of consumers.

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<sup>103</sup> Twigg-Flesner, C: Consumer Product Guarantees, 3<sup>rd</sup> edition 2003 at pg. 4

<sup>104</sup> Section 41 of the Sale of Goods Act 2011(South Sudan)

<sup>105</sup> Section 42 (2) *ibid*

Further developments in consumer law include the introduction of provisions<sup>106</sup> which give a consumer the right to have the goods repaired or replaced where there is a breach of any statutory implied terms as to description, satisfactory quality or fitness for purpose, provided that this is not impossible or disproportionate to the original cost. If these two remedies are not taken, the buyer or consumer may elect to rescind the contract or opt for a partial reduction in the price, and these remedies apply to even the smallest breach, subject only to the acceptance doctrine of *Caveat Emptor*.

The burden of proof in relation to these remedies is more favourable to the Buyer, further demonstrating how the law attempts to readdress the balance of bargaining power. However, whilst statutory provisions appear increasingly comprehensive and are constantly under review, they are failing to keep pace with the advancement of new technology, for which it is relatively unclear how consumer law will apply. For example, there remains an ongoing debate as to whether software is to be treated as "goods" for the purpose of the Sale of Goods Act, although a distinction between off-the-shelf products which, it is suggested, are goods and customised programs is gradually emerging.

Despite blunders on consumer protection, online trading in South Sudan remains a gray area although consumers are offered additional protection by the Distance Selling Regulations 2008 which compensates for the fact that a buyer cannot inspect the product if purchasing via the net. The regulations provide a seven day cooling off period and a right to cancel in many circumstances, although this comes with a long list of exceptions. As a result, far more needs to be done to bring the law up to date with the advancing marketplace at Konyokonyo market, Juba City in South Sudan.

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<sup>106</sup> Sections 42 (6) (a) to 42 (6). (b) of the Sale of Goods Act 2011

### 3.8 Product liability

The doctrine of caveat emptor “let the buyer beware” governed the law of sales and lessees for century. The law recognized that, consumers and others purchasers of goods needed greater protection. Thus, Consumers can then sue to recover damages by breach of warranty. The law<sup>107</sup> gives consumer right to maintain an action against the seller for damages for the breach of warranty.

More to that, if a product defect causes injury to consumers or buyers, the injured party may be able to recover for his or her injuries under certain tort theories including negligence, misrepresentation and the modern theory of strict liability. In **Greenman v Yuba Power Products**,<sup>108</sup> it was held that a manufacturer is strictly liable in tort when he places on the market, knowing that it is to be used without inspection for defects, prove to have a defect that caused injury to a human being.

### 3.9 Justifications of changes in consumer protection and food labeling

The establishment in 2008 of the Consumer Protection Council and the adoption of national trade agreements pertaining to food regulation currently has a significant impact on domestic regulatory policies established by the South Sudan Food and Drug Administration. Then, there is South Sudan Department of marketing and other agencies responsible for protecting consumers and ensuring the safety of the food supply in the country, South Sudan especially at Konyokonyo market in Juba City.

The penalty is being enforced on the suppliers or those who are responsible for the supplied goods to South Sudan and took the form of either compensating the national consumers or foreign consumers whose exports to the nation are limited by the stricter standard or has

<sup>107</sup> Section 65 (1) (a). (b) of the Sale of Goods Act 2011

<sup>108</sup> 59 Cal.2d 57, 27 Cal.Rptr.697[1863]



permitted that consumer to the exact goods he has demanded from the supplier. Thus, there are additional trade restrictions on exports from the nation with the more protective health standard in South Sudan.

A national health standard has been improved and it was based on the principles which protect consumers at Konyokonyo market which has ensured that there are such measures which are more of trade restriction that required to achieve their appropriate level of protection, taking into account technical and economic feasibility.

The first and only body, the Consumer Protection Council has made a decision to food regulation which has led to numerous changes in food protection and labeling in South Sudan. In January 2011, the appellate body of Consumer protection Council has affirmed a Panel decision sustaining complaints by consumers.

South Sudan Consumer Protection Council ban on imported inferior goods and other food produced from cattle treated with growth hormones violated the South Sudan regulation standards. Opposition to their use arose after newspapers reported that suppliers were misusing the drugs and that consumption of hormone treated meat could interfere with the normal development of children. South Sudan consumer Protection Council has waged a vigorous campaign to prohibit the use of hormones.

Changes of consumer protection can be justified on the ground that there is need to identify the monopoly power of huge companies with their capacities to influence markets through advertising, consumer law therefore helps in limiting the consumers' ability to verify what is in their own interest. Food labeling has gone through several stages of historical development which has helped consumers to make better choice for their products at Konyokonyo market Juba City in South Sudan.

There has been an increasing need for consumer products manufacturers to find win-win solutions with their retail partners in order to better serve consumer and shopper needs. Since brands including retail brands act as a compass that directs consumers to the products they can rely on, now is the time for companies to make their brands even more trustworthy. With so many choices to be made, the challenge comes with deciding which brands to push forward now, and which ideas to hold back until later.

### **3.10 Conclusion**

In conclusion therefore, it has been noted that since selling Regulations were first formally codified in 1973, the law has developed through an extensive body of statutory and common law provisions, which have resulted in a complex and ambiguous system of consumer protection in South Sudan. It has been accepted that to progress the body of consumer protection law to meet today's marketplace, it will be necessary to simplify and unify the existing provisions. Advanced methods of selling and increased complexities in technology have made it increasingly easy for rogue traders to target and exploit innocent consumers.

Reform is required to meet rapidly advancing technology and selling practices. In the meantime, the buyer would be well advised to return to the principle of caveat emptor 'let the buyer beware' and adopt an alert and questioning attitude when making a purchase, rather than relying on the law to protect them if things should go wrong afterwards.

Moreover, the situations in South Sudan have little bit changed and that there are laws protecting consumers better than the previous laws of 1999 up to 2005 where consumers do not know their rights and how to proceed in case of any infringement by suppliers.

## CHAPTER FOUR

### ENFORCEMENT OF THE CONSUMERS RIGHT'S

#### 4.0 Introduction

Consumer rights Law encompasses a large body of laws enacted by the government to protect consumers by regulating business transactions and practices like; advertising, sales and business practices, product branding, fraud, sound banking and truth in lending, quality produce and meats, housing material and other product standards and all manner of other types of consumer transactions. Some states also regulate door to door sales and abusive collective practices in South Sudan.

The laws have been enacted on both the central government and states level. The South Sudan Consumer Protection Council was originally established to prevent unfair methods of competition in commerce at Konyokonyo market in Juba City, but after 2005 its scope grew to include consumer protection law oversight as well. South Sudan has established consumer protections Council, a body charged with responsibilities of protecting consumers' rights in all ten states of South Sudan.

There are various national Acts that address different aspects of consumer protection like Consumer Protection Act which regulates the consumer business with respect to consumer rights. As a result, the Fair goods Collection Practices were added to the Consumer Protection Act in 2011 to abolish abusive collection practices and give consumers a means to dispute inaccurate goods information. The law<sup>109</sup> deals with standards of product warranties both implied and express.

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<sup>109</sup> Section 9 (1). (a). (b) & (2) (a). (b) of the Consumer Protection Act 2011

The practice of consumer protection law includes pursuing law suits for consumers who have been the victims of unlawful business practices; such as identity of theft law suits, defending goods collection agencies and other companies of sellers when accused of violations of consumers' in South Sudan.

#### **4.1 Legal sources of consumer protection and rights enforcement**

The source of current South Sudan consumer protection lies under the law<sup>110</sup> establishing the South Sudan Consumer Protection Council which lays down basis for the protection of consumers in South Sudan. However, the law<sup>111</sup> only contains general competence of the Council or more precisely said the shared competence with the member states and means of South Sudan consumer protection and in no way refers to procedural aspects of consumer protection. Under the law,<sup>112</sup> there are provisions for example Directive 93/13/SSCP on unfair terms in consumer contracts "unfair contract terms directive" or directive 2005/29/SS concerning unfair business to consumer commercial practices in the internal markets like Konyokonyo market in Juba City.

The Fair Commercial Practices Directive 98/27SS/Regulation 2008/2009/SS, The law<sup>113</sup> provides that, in order to promote interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic safety of consumers, as well as promoting their right to information, education and to organize themselves in order to safeguard their interests.

A consumer protection interest has been taken into account in defining and implementing other Community policies and activities. As a result, The Community has the duty on enforcement of

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<sup>110</sup> Section 18 (a), (b), (c) of the Consumer Protection Act 2011

<sup>111</sup> Section 20 (a), (b), (c) Ibid

<sup>112</sup> Section 28 (1), (2), (3) Ibid

<sup>113</sup> Section 23 (a), (b), (c), (d), (e), (f) Ibid

consumer rights. The reason for this is quite simple, lack of competence. Procedural law is in the powers of the member states, with the exception of some aspects of judicial cooperation in civil or commercial matters stated under the law.<sup>114</sup> However, these provisions cannot be applied to consumer protection because they ruled the areas of civil and commercial judicial protection and even so have quite a restricted effect. Therefore, there is no exclusive power of the Community to regulate issues of enforcement of consumers' rights. And as a result, the options of consumers to virtually fight for their rights differ across South Sudan especially at konyokonyo market, Juba City in South Sudan.

The Consumer Protection Act provides the functioning of the South Sudan Consumer Protection Council. The law<sup>115</sup> establishes duty to take high level of consumer protection into account when proposing and implementing other South Sudan policies and activities on the protection of consumers' rights. It is obvious that provision of Section 13 of Consumer Protection Act is of quite a general character and its practical impact on consumer protection in practice or especially on the possibilities of judicial enforcement has been seen as an exaggeration. The wording of section 7 of the Consumer Protection Act is practically the same as that of section 8 of the Consumer Protection Act. As a result, It had left the main responsibility for consumer protection council which has contributed to the attainment of the objectives referred to in paragraph (h) through a measures adopted pursuant to section 13 in the context of the completion of the internal market measures which support supplement and monitor the policy pursued by the South Sudan States.

The Council had acted in accordance with the procedure referred to in section 21 and after consulting the Economic and Social Committee, adopted measures referred to in paragraph (a).

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<sup>114</sup> Section 7 (a), (b), (c), (d), (e) of the Consumer Protection Act 2011

<sup>115</sup> Section 13 (1) (a-n) Ibid

Measures adopted pursuant to paragraph (b) were not preventing any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Consumer Protection Act.

The Council has been notified by consumers on their rights as the law<sup>116</sup> provides measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Constitution<sup>117</sup> and in so far as necessary for the proper functioning of the internal market which includes; improving and simplifying the system for cross-border service of judicial and extrajudicial documents, cooperation in the taking of evidence, the recognition and enforcement of decisions in civil and commercial cases, decisions in extrajudicial cases; promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction; eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Exact wording of Article 155 of the Transitional Constitution of South Sudan reads: Consumer protection requirements shall be taken into account in defining and implementing other Council policies and activities. The law<sup>118</sup> provides that, in order to promote the interests of consumers and to ensure a high level of consumer protection, the council shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests. The Council has contributed to the attainment of the objectives of consumer protection through measures adopted pursuant to Article 155 in the context of the completion of the internal market;

<sup>116</sup> Section 24 (a), (b), (c) of the Consumer Protection Act 2011

<sup>117</sup> Article 155 (1), (2) (a), (b) of the Transitional Constitution 2011( South Sudan)

<sup>118</sup> Section 23 (a), (b), (c), (d), (e), (f) of the Consumer Protection Act 2011

measures which support supplement and monitor the policy pursued by the South Sudan States markets in Juba City.

The South Sudan Parliament and the Council had acted in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, which has adopted the measures of consumers' protection pursuant to protection of consumers' rights of health, safety and economic interests of consumers, as well as support of their right to information, education and right of associate to protect their interests at markets places as provided for under the law.<sup>119</sup> As far as Charter of fundamental rights is concerned, article 38 of the Transitional Constitution states that Union policies shall ensure a high level of consumer rights protection. However, this provision can in no way be interpreted as a right, but merely as a principle of South Sudan law and therefore as unable to establish basis for consumer rights enforcement.

#### **4.2 Consumer rights protection and enforcement of secondary law**

Various individuals have collective consumer rights stem from directives on consumer protection. However, as directives are unable to constitute direct effect, consumers had relied on provisions of national law which has not only grants them rights, but also sets means of their protection. Needless to say that only in cases of wrongful or late implementation consumers could rely directly on provisions of directives but even in that case more conditions, especially the requirement for a sufficiently clear provision establishing some kind of consumer rights, would have to be fulfilled. It was not too difficult to imagine a directive on consumer protection which contains such precisely defined rights that can be relied on even without an action from the member states.

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<sup>119</sup> Section 13 1 (a). (b). (e) of the Consumer Protection Act 2011

In my opinion, a good example is directive on general product safety which had obliged producers to place only safe products on the market while it was at the same time laid down quite precise description of a safety product. As such, provision of article 155 from maintaining or introducing more stringent protective measures, such measures has been compatible with the Consumer Protection Act. In **Pharmaceutical Manufacturer Co. v Novelty Manufacturer**,<sup>120</sup> it was held that there was no evidence in court to show that the defendant was passing off its products as the plaintiff.

The Council has been notified in 2008 on consumers' protection where the law provides that<sup>121</sup> Producers shall be obliged to place only safe products on the market, a product shall be deemed safe, as far as the aspects covered by the relevant national legislation are concerned, when, in the absence of specific Community provisions governing the safety of the product in question, it conforms to the specific rules of national law of South Sudan states in whose territory the product is marketed. Such rules are being drawn up in conformity with the Consumer Protection Act, and in particular laid down the health and safety requirements which the product must satisfy in order to be marketed. A product shall be presumed safe as far as the risks categories covered by relevant national standards are concerned when it conforms to voluntary national standards transporting South Sudan standards goods, the references of South Sudan Communities in accordance with the law.<sup>122</sup>

The South Sudan States have published the references of such national standards. In circumstances other than those referred to under the Consumer Protection Act, the conformity of a product to the general safety requirement has been assessed by taking into account the following elements in particular, where they exist. Voluntary national standards transporting

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<sup>120</sup> (2001)2 E.A 521

<sup>121</sup> Section 18 (1) (2) of the Sale of Goods Act 2011

<sup>122</sup> Section 7 (a), (b), (c), (d), (e) of the Consumer Protection Act 2011



relevant South Sudan standards other than those referred to under the Act, the standards drawn up in South Sudan States in which the product was marketed. Council has recommended setting guidelines on product safety assessment, product safety codes of good practice in force in the sector concerned, the state of the art and technology, reasonable consumer expectations concerning safety.

Conformity of a product with the criteria designed to ensure the general safety requirement, in particular had been seen as having direct effect, but one can bear in mind one of general principles of South Sudan law, that is that directives cannot impose obligations upon individuals. Consumers have relied directly on provisions of Community legislation as it has been the duty of the member states to implement directives properly and in time occur very often and actually considered consumers' rights.

Two pieces of secondary legislation<sup>123</sup> aim directly on the enforcement of consumer rights, Directive 98/27/SS on injunctions for the protection of consumer interests and Regulation 2008/2009/SS on cooperation between national authorities responsible for the enforcement of consumer laws. Consumer Protection Council regulation on both directive and regulation seek to protect collective consumer interests was therefore regarded as means of collective protection of consumer rights under the law.<sup>124</sup>

The aim of Directive 98/27/SS was according to the law,<sup>125</sup> which regulates and administers provisions of states relating to actions for an injunction in the sense of the same article in order to protect collective interests of consumers included in the directives. This aim has been reached by several steps. Each state designates courts or administrative bodies entitled to rule on proceedings which prohibit infringement and ensure that possible continuing effects of the

<sup>123</sup> Article 155 (1) (2) of the Transitional Constitution of 2011 & section 17 of the Consumer Protection Act 2011

<sup>124</sup> Section 18 (a), (b), (c) of the Consumer Protection Act 2011

<sup>125</sup> Article 155 (1), (2) of the Transitional Constitution of 2011

infringement had been eliminated and possibly ensure some kind of redress to the damaged goods of a party. Proceedings have been initiated by qualified entities that are organisations of consumer protection associations under the law<sup>126</sup> which entitles a consumer to bring an action before courts or administrative bodies.

As a result of the directive, a list of qualified entities entitled to defend consumers before courts all across the South Sudan has been created and published in the Official Journal. Ideally, in practice, the directive has led to more confident and informed consumers. Thus, whenever there occurs an infringement of rights of consumers protected by one of the directives in the annex or implemented quite naturally in the law of the member states to more proceedings across South Sudan.

Undoubtedly, the list of qualified entities published in the Official Journal helps consumers learned which bodies can defend their rights before courts, no matter where they are. On the other hand, the same problems which were causing insufficient level of consumer protection in the provisions mentioned in paragraphs (a) or (b), could not bar the competent authorities of the States from taking appropriate measures to impose restrictions on its being placed on the market or to require its withdrawal from the market or recall where there is evidence that, despite such conformity, it is dangerous.

Before the directive still persist especially in the field of cross-border infringements, qualified bodies had not use the chance to protect consumers' rights abroad. One of the main reasons were costs of proceedings and limited impact of the rulings of courts of one state in other states of South Sudan.

The South Sudan Council was informed in the report on the application of directive that the Office of Fair Trading was the only qualified body from all over the ten states of South Sudan

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<sup>126</sup> Section 26 (a). (b) of the Consumer Protection Act 2011

which filed several actions abroad. The impact of the directive is due to reasons stated above not as high as the Council rather optimistically expected. This state of affairs has been in my opinion continued as it is extremely difficult for consumers' organisations to participate in proceedings abroad, not only due to costs, but mainly due to insufficient knowledge of foreign different law. As the Council is incompetent in the field of civil procedural law<sup>127</sup> which would be problem in the future if not improve.

The only possible way to increase the activity of bodies on protection of collective consumer interests is to create a detailed information network which would provide consumers as well as consumers' organisations and associations with information on relevant national law. The second means of collective enforcement of consumer rights, the so called Consumer Protection Council regulation 2008/2009 hereinafter referred to as regulation aims at cooperation between national authorities responsible for the enforcement of consumer protection laws. A material rate of the regulation is to a great extent similar to the one of directive 98/27/SS. Similarly to the directive, the annex of the regulation lists directives and regulations on consumer protection which has been within the meaning of the regulation regarded as "laws on consumer protection," and thus subject to enforcement in accordance with the regulation.<sup>128</sup>

However, even though most of the directives are mentioned in the 98/27SS as well as in the regulation, the list is not identical which can cause troubles in case when a consumer association brings an action before court in one member state and such court cannot require cooperation from a court or public authority of a different member state because the case does not fall within the scope of the regulation.

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<sup>127</sup> Sections 18, 19, 20 21, 22 of the Consumer Protection Act 2011

<sup>128</sup> Section 36 (1) (2) Ibid

As a result, the directive and the regulation are not hundred percent linked together which leads to restricted application of one or another legal instrument. It is then a little surprising that the Council which is well aware of this fact is not going to propose an amendment of neither the directive nor the regulation. The report from the Council concerning the application of Directive 98/27/SS of the South Sudan Parliament and, the Council on injunctions for the protection of consumers' interests.

South Sudan Parliament and the Council on injunctions for the protection of consumers rights as far as practical functioning of the cooperation between public authorities is concerned, the regulation laid down conditions under which responsible authorities exchange information and realised enforcement measures if asked so by an authority from another member state. It had obliged states to cooperate not only with each other, but also with the Council in the field of mutual exchange of information.

As a result, a network of responsible bodies has been created and according to the Council, good mutual cooperation and assistance have developed, there were total of 317 requests for mutual assistance in 2008 and 384 requests in 2009. It was seems that the desired effect of the regulation enhancement of cooperation between responsible national authorities and thus stronger and better enforcement of consumer rights in the South Sudan before courts has been reached. The absence of a closer linkage to injunctions directive nevertheless prevents effective cooperation not only between public authorities themselves, but in a wider sense also between consumer associations and public authorities.

#### **4.3 Functions of Consumer Protection Council**

The Consumer Protection Council monitors and reports on developments on false and deceptive advertising, unfair trade practices and illegal marketing. These developments often includes

cases brought by private litigants, the National Trade Department and state attorneys general, as well as consumer class actions, competitor suits under the law,<sup>129</sup> and decisions by the Better Business Bureau's National Advertising Department which is an administrative agency responsible for the administration and enforcement of this law. Thus, Consumer Protection Council has been given responsibilities of protecting consumers' rights at markets places in South Sudan under the law.<sup>130</sup>

The Office of the Assistant Director General for Council Enforcement and Proceedings, including its Consumer Protection Council, monitors compliance with and investigates violations of the Department of Transportation's, Council economic, consumer protection, and civil rights requirements. The Office also provides legal review and support on consumer economic licensing matters. This office is therefore a representative of the body responsible for grades and standards of goods in South Sudan, and in case of any violations, it protects consumers rights in the country as provided for under the law.<sup>131</sup>

#### **4.4 Consumer Product Safety Department**

The South Sudan Consumer Product Safety Department is charged with responsibilities of protecting the public from unreasonable risks of serious injury or death from thousands of types of consumer products under the agency's jurisdiction. South Sudan has been committed to protect consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. South Sudan consumer product Safety Department's (SSCPSD) had worked to ensure safety of consumer products such as toys, cribs, power tools, cigarette lighters, and household chemicals contributed significantly to the 30 percent decline in the rate

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<sup>129</sup> Section 11 (2) of Consumer Protection Act 2011

<sup>130</sup> Section 11 (3) Ibid

<sup>131</sup> Section 12 (1) (c) Ibid

of deaths and injuries associated with consumer products over the past seven years of consumer protection under the law.<sup>132</sup>

Consumer protection laws are designed to ensure fair competition and the free flow of truthful information in the marketplace. The law<sup>133</sup> is designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves as provided for under the law.<sup>134</sup>

#### **4.5 Consumer rights and protection**

Consumer rights law that regulates the collection, dissemination, and use of consumer information, including consumer credit information along with the Fair Debt Collection Practice. It was originally passed in 2008 to 2011, and is enforced by the South Sudan Trade Council and private litigants. Consumer rights are protected for under the law<sup>135</sup> which has formed the base of consumer rights in South Sudan.

#### **4.6 Enforcement of rights by consumer**

A consumer can enforce any rights under a consumer transaction by; filing a suit in a court with jurisdiction over the matter, attempting to resolve any dispute with a supplier either directly or through alternative dispute resolution, or making a complaint to the Consumer Protection Council. Consumers' rights at Konyokonyo market, Juba City in South Sudan are therefore protected under the law.<sup>136</sup>

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<sup>132</sup> Consumer Protection Act 2011

<sup>133</sup> Section 6 (1) (a) Ibid

<sup>134</sup> Section 13 (1) (a), (b), (c), (d) Ibid

<sup>135</sup> Section 13 (1) (e), (k) Ibid

<sup>136</sup> Section 19 (a), (b), (c) Ibid

#### **4.6.1 Initiating a complaint to the Council**

A consumer can file a complaint with the Council in the prescribed manner and form, alleging that a supplier has acted in a manner inconsistent with the law, and the Council can on its own motion or on the request of a consumer protecting group registered and operating in South Sudan or on the request of another regulatory Council, directly initiate a complaint against a supplier. A consumer rights are realised by the law.<sup>137</sup>

#### **4.6.2 Investigations by the Council**

Upon initiating or receiving a complaint from a consumer, the Council can; issue a notice stopping any proceeding with the complaint to the complainant if the complaint appears to be frivolous or vexatious, or does not allege any facts which if true, would constitute grounds for a remedy, refer the complaint to a consumer association for the purpose of assisting the parties to resolve the dispute, refer the complaint to another regulatory body with jurisdiction over the matter for investigation, or direct an officer of the Council to investigate the complaint as quickly as practicable in any other case under the law.<sup>138</sup>

#### **4.6.3 Procedure for initiating, investigating and handling complaints**

The Minister can on the recommendation of the Council, file complaint to the Council by consumers, initiating complaints against suppliers by the Council and investigations by the Council as by regulations prescribed by the procedure under the law.<sup>139</sup> Thus, consumers' rights have been protected by law.

<sup>137</sup> Section 19 (1), (2) of the Consumer Protection Act 2011

<sup>138</sup> Section 20 (a), (b), (c), (d) Ibid

<sup>139</sup> Section 21 (a), (b), (c) Ibid

#### 4.7 Powers of Court to enforce consumer rights

In addition to any other order it may make, a court considering a matter under the law can; order a supplier to alter or discontinue any conduct that is inconsistent with the law, make any order specifically requested by a consumer; or order award of damages against a supplier for collective injury to all or a class of consumers generally, to be paid on any terms or conditions that the court considers just and equitable and suitable to achieve the purpose of the law. These powers of the court are provided under the law.<sup>140</sup>

##### 4.7.1 Consumer rights before the courts

The courts deal with judicial enforcement of consumer rights in South Sudan. Possibilities of individual as well as collective enforcement has been presented and examined with special regard to the directive on injunctions for the protection of consumer interests and the regulation on cooperation between national authorities responsible for the enforcement of consumer laws. The law<sup>141</sup> provides that any person may approach a court or the council alleging that a consumer rights has been infringed, impaired or threaten. In **Buckland v Watts**,<sup>142</sup> it was held that if a private individual successfully conducted his case in person he was not entitled to recover an amount of "cost," that is remuneration for expenditure of time and labour, but only his out of pocket expenses.

Thus, regulations by; the Consumer protection cooperation, Consumer protection Council, South Sudan Community, individual enforcement, collective enforcement and judiciary when dealing with enforcement of consumer rights in South Sudan, no matter whether the enforcement takes place before courts or by means of alternative dispute resolution, it is necessary to define rights which should be subject to enforcement. Generally, basic "catalogue" of consumer rights

<sup>140</sup> Section 22 (1) (a), (b), (c) of the Consumer Protection Act 2011

<sup>141</sup> Section 18 (1) (a), (b), (c), (d), (e) Ibid

<sup>142</sup> (1970) 1 Q.B 27



Includes right to protection of health and safety. International and South Sudanese judiciary and enforcement of law on economic interests, right to compensation of damage, right to information and education and right to representation (right to be heard). Consumer rights can be thus divided into two groups, one of them being economic rights of consumers, the other ones rights to protection of health and safety.<sup>143</sup>

#### 4.7.2 Consumer remedies

Laws protecting consumers' rights vary in the remedies they provide to consumers for violations. Thus, many national laws merely provide for public agencies to enforce consumer regulations by investigating and resolving consumer complaints at Konyokonyo market. For example, in the case of a false advertisement, a common remedy is the Fair Trade Council (FTC) ordered removal of the offensive advertisements from the media. In other circumstances, consumers may be entitled to money damages, costs, and attorneys' fees. These remedies has been effective in a case involving a breach of warranty depending on the amount of damages alleged, consumers in South Sudan bring their actions in small-claims courts, which tend to be speedier and less expensive than trial courts.

Alternative Dispute Resolution (ADR) is another option for consumers. Some states such as Central equatoria, Jonglei, Eastern equatoria and Unity state have passed consumer protection statutes that require some form of ADR usually Arbitration or mediation before a consumer can seek help from the courts. Finally, when a large number of consumers have been harmed in the same way as a result of the same practice, they could join in a Class Action, a single lawsuit in which one or more named representatives of the consumer group sue to redress the injuries sustained by all members of the group.

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<sup>143</sup> Section 12 (1) (h) of the Consumer Protection Act 2011

#### 4.8 Justifications of consumer rights enforcement

The benefits of laws, for consumers and businessmen have been recognized by the public policy trend in South Sudan. Both central and states government have encouraged the growth of laws protecting consumers rights, by modernizing a legal infrastructure created in an era of, and designed for paper transactions, brick and mortar storefronts, and itinerant or travelling salesmen. Public policy has also recognized dangers associated with Konyokonyo businesses and to consumers in particular, and there are commensurate initiatives to seek to modernize consumer protection laws.

One of the distinctive characteristics of laws protecting consumer rights is its borderless nature. Although orders and marketing transactions have been employed for some time, the laws are protecting consumers and this has exponentially increased the consumers' interest and has rights of cross-border transactions.

National trade law once largely preserve businesses have now come to the consumers' ability to market and sell products and services from a single site to an unlimited geographic market, and to do so at a low cost, was one of advantages flowing from distance trade between consumers and suppliers at konyokonyo market.

The authority to adjudicate and enforce disputes in this regard in turn has been subdivided into private and the public, consideration has been given to what *private law* rules applies to national consumer contracts, and what jurisdiction's courts has assert to determine consumer' rights and obligations. Second, consideration has been given to what jurisdiction's public regulatory authority has applied in relation to national business to consumer rights transactions and activity at Konyokonyo market.

When a consumer at the Konyokonyo market in South Sudan is victimized by a vendor in Uganda, South Sudan consumer protection authorities applied the norms, investigative and prosecutorial powers under the law<sup>144</sup> and these powers have been enforcement through courts of South Sudan.

Consumer protection authorities have made a particularly important role by ensuring fair business practice at Konyokonyo market in Juba, and in imbuing consumers with the sense that they can practice safe e-shopping. As stated by the South Sudan Bureau of Consumer Affairs that, "The successful enforcement of laws relating to trading practice and fraud is crucial to establishing a favourable environment in which consumers can do business in South Sudan at konyokonyo market."

The existing legislative framework relating to consumer protection consists of a host of national statutes. Nationally, the primary instrument relevant to consumer protection is the Consumer Protection Act, which prohibits misleading advertising and deceptive marketing practices, as well as regulating multi-level marketing plans, pyramid schemes, double pricing and other practices that are offensive to fair competition among businesses and to the interests of consumers.

In addition to the Penal Code Act, the law contains provisions which were designed to have effect of ensuring consumer protection from false advertising, fraud and similar practices. South Sudan has enacted such legislation as Sales of Goods Acts, Consumer Protection Acts to safeguard consumers' rights.

Many states of South Sudan have legislation dealing with consumer rights, as well as sector specific legislation including the areas of travel agencies that provide additional consumer protection. Legislation generally provides for both private law rights such as contractual

<sup>144</sup> Section 18 (a), (b), (c), (d), (e) of the Consumer Protection Act 2011

warranties, writing requirements, and rights of rescission as well as regulatory prohibitions of proscribed practices and commensurate regulatory investigative and enforcement powers. Enforcement of consumer rights is based on the “public law” and in particular jurisdictional issues that arise within South Sudan.

Effective enforcement of consumer rights in South Sudan has been constantly being slowed down by the fact that there is no Community legislation creating single framework of enforcement of consumer rights. Most directives on consumer protection define individual consumer rights and possibilities of their enforcement or redress, but the enforcement is then realised by means of national legislation. The same applies to the most famous Community instruments of enforcement of consumer rights, namely the directive on injunctions for the protection of consumer interests and the regulation on cooperation between national authorities responsible for the enforcement of consumer protection laws, the Regulation on protection consumer rights under the law.<sup>145</sup>

However, there is no definitive model of best practice in dispute resolution. The main options available are litigation, arbitration and mediation. Litigation is unlikely to be the preferred form of redress for individual consumer disputes, particularly where these involve relatively small amounts, due to its cost and the length of time it may take to bring a case to court at Juba City in South Sudan.

Arbitration is often preferred by regulators as a more suitable alternative. The procedure has been relaxed than a court, the process can be a lot quicker and the outcome is usually binding. However from a consumer perspective, there may still be disadvantages. Arbitration is an adversarial procedure and the onus is on the consumer to present their evidence and put their case on something that not all consumers may be able or willing to do. Typically also, there are

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<sup>145</sup> Section 36 (1) of the Consumer Protection Act 2011

costs involved which the consumer may find prohibitive. Mediation, which offers a negotiated solution to disputes without the rules, procedures and costs, may be a useful alternative way of resolving consumer complaints with an operator. As a result it tends to be non-binding, even if the consumer wins its case, a satisfactory outcome may still depend on the goodwill of the operator.

The South Sudan Consumer protection council has been examining the problems that consumers face in obtaining effective redress and has published in a citizen newspaper about consumer collective redress on 15 may, 2012. One problem identified was that where consumers who have small or scattered claims refrain from bringing an individual court action because the cost of bringing the action is likely to outweigh the amount of damages claimed. The Council has found ways seeking views on how best to facilitate redress where a large number of consumers have been harmed for example through overcharging through hidden charges, Overbilling, misleading advertising.

The aim of this research was to present and analyse means of enforcement of Consumer rights before courts in South Sudan. It has been proved that core problem which prevented effective enforcement of consumer rights is lack of competence of consumer protection council. Absenting powers in the field of civil procedural law together with shared competence in the field of consumer protection and resulting harmonisation of consumer acquit by directives, directly cause several phenomena which together made enforcement of consumer rights in the South Sudan difficult.

As a result, individual enforcement firstly lies entirely in the hands of member states of South Suadn which undoubtedly discourage consumers from one member state to sue elsewhere. Secondly, means of collective enforcement are insufficient because injunctions directive is not

completely linked with the Consumer Protection Council regulation and so far no amendments are on the prospect.

#### **4.9 Conclusion**

It is very important that consumer rights are observed to a smaller extent by the relevant authorities charged with the responsibilities of protecting consumers in at Konyokonyo market, Juba city in South Sudan.

It seems that the only way to improve the current state of affairs while maintaining powers where they are, is to create a public database of material as well as procedural legislation on consumer protection of all member states and hope that consumers and their associations will feel informed and confident enough to defend their rights all over South Sudan.

The authorities should take into account the needs and rights of consumers, and make sure that the statutes put in place remedy the imbalance faced by consumers in economic terms and bargaining power. Thus, consumers should have a right to non-hazardous products at Konyokonyo market, Juba City in South Sudan.

## CHAPTER FIVE

### FINDINGS, CONCLUSION, RECOMMENDATIONS AND GENERAL CONCLUSION

#### 5.0 Introduction

#### 5.1 Findings

The consumer products industry faces several key challenges. First, there is increasing volatility in the consumer industry in general, high variability in commodity prices, for example, as well as the rising pace of innovation and significant changes in consumers' aspirations and shopping behaviour. Second, there are the challenges brought about by a rapidly consolidating retail trade landscape.

South Sudan Consumer Protection Council has acknowledged the challenges that arise from modern communications systems which make it easy for rip-off merchants to target consumers. However, it is not just legislation that prevents such occurrences, suitable enforcement action needs to be put in place too. In particular, it has been noted that there are laws covering consumer transactions, and these are not being complied within South Sudan.

##### 5.1.1 Digital content

Advanced technologies allowing capabilities such as the use of digital content and the subsequent controversial use of root kit style DRM technology by Sony which installed itself on the user's PC and left them vulnerable to viruses have suggested that the industry is in dire need of regulation. Company or DRM technology prevents consumers playing DVDs, they have bought abroad or making compilations of materials they have purchased for their own use. This is said to undermine existing consumer rights under consumer protection and data protection laws. Consumers also face potential security risks to their equipment, limitations in legal use of products they have purchased, poor information when purchasing and unfair contract terms.

These problems highlight the need for further reform and for the introduction of provisions to ensure that the consumer is properly informed.

The trend towards technology has highlighted further weaknesses in consumer law. A huge number of retailers now trade online and it should therefore follow that adequate protection exists for the consumer choosing to shop that way. However, current legislation does little on consumer's rights.<sup>146</sup>

Powergen's blunder in 2000 demonstrates the inadequacy of statutory or legal protection of consumer rights, thousands of their customers' credit card details were published on the internet but those consumers were not entitled to any financial compensation unless they suffered from credit card fraud or other damages. Powergen incidentally offered £50 to each consumer for the "inconvenience."

There is however a difficulty in tightening statutory provisions, if minimum standards are pitched too high, this could restrict choice and be anti competitive. If they are pitched too low, they serve no purpose. The key focus should arguably therefore be on simplifying legislation and on ensuring that the consumer is able to make an informed choice. The law does not set out to protect rash consumers who make spur of the moment decisions and change their mind later. In contrast, the law does seek to ensure that the consumer's decision is not influenced by pressured selling techniques which thwart or prevented their ability to make an informed choice at Konyokonyo market.

Because of the dynamics of the business, entry is very easy and as a result there are a lot of value distortions specifically by those who briefly enter the market and entice clients by the different

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<sup>146</sup>Wearden.G:(2000)LawsProtectingConsumersOnline  
needrevisionhttp://news.zdnet.co.uk/internet/ecommerce/0,39  
020372.208-297.00.htmTuesday20miutes.may2012



discounts their agencies provide. The lack of authenticity in brand promise, plus the sheer volume of messaging, results in continually declining advertising. Therefore, the major challenge facing South Sudan advertising business is message clutter, conveying too many messages and brand propositions that don't make sense to the actual consumer experience.

### **5.1.2 Conclusion**

In conclusion, it has been noted that since competition is to benefit consumers, they must be able to exercise choice. The assumed regulatory best practice to date has been to focus on the consumers' detriment that arises where there are information asymmetries in favour of the suppliers. By ensuring consumers are well informed, the market will work effectively through increased competition between suppliers, both in terms of price, quality and choice of products on offer.

In short, the assumption is that competition when managed appropriately, can benefit consumers. In other words, when competition works well, regulation is not strictly needed. This approach is rooted in the traditional, neo-classical economic theory of "rational" consumer behavior, whereby consumers have a set of preferences. By exercising those preferences which are assumed to be stable and making rational choices, consumers are able to maximize both their own self-interest and wider consumer welfare.

From a consumer perspective, more competition may lead to a bombardment of marketing material, masquerading as information. This is especially the case where access to high-speed broadband connections makes them an advertising target easily accessible day and night. This may leave consumers feeling overwhelmed and struggling to differentiate between the choice of products and services on offer.

Consumers can suffer from information overload. If consumers become overloaded, or cannot rely on the truthfulness or accuracy of information, they may become paralyzed. Thus, they are reluctant to switch between services and/or suppliers for fear of making the wrong choice. Or they may choose service bundles and long-term contracts that they do not need. Or, they may be enticed by special offers like a free handset or modem, and later find themselves locked in to contracts that offer poor value for money. Overall consumers may be dissatisfied because they feel that they have failed in some way by not getting the best deal and/or the latest technology/service on offer.

In the 'always-on' environment, citizens and consumers may also be unaware of how to protect themselves and their families from harmful or offensive content. In some cases this may make them reluctant to engage fully in the on-line environment.

### **5.3 Recommendations**

The South Sudan Consumer Protection Council should publish a series of proposals to improve consumer protection for South Sudan businesses and broadband users. These should be designed to raise awareness of scams and miss-selling in the communications sector, backed by quicker and more targeted enforcement action when things go wrong. Thus, there should be a telecommunications sector to increase competition with scores of different providers competing for consumer business.

Other areas in desperate need of reform include legislation regulating the financial services market, which is relatively sparse. The Financial services consumer provider describe how consumers do very little shopping between financial providers, and that additional measures are needed to secure appropriate protection of a consumer. A gap in the supply of advice to low and middle income consumers need to be tackled by the financial services adviser. Consumers need

better and impartial advice which has to be a statutory entitlement if it is to protect them fully at Konyokonyo market.

Whilst practical proposals are to be considered, it is worth noting that the Consumer Protection Council has described the current legal framework as "complicated and fragmented."<sup>147</sup> This is because of the way consumer law has developed. New legislation as a result of the South Sudan directive on consumer protection needs to be integrated into current government of South Sudan so that the existing level of protection is not reduced. As a result, there are different rules for consumers and commercial sales although both share a similar set of implied terms. It should be envisaged that consumer confidence will be increased by a uniform set of fair rules that set minimum standards throughout South Sudan.

There should be an increasing need for consumer protection from manufacturers' products to find win-win solutions with their retail partners in order to better serve consumers and shopper needs. Since brands including retail brands act as a compass that directs consumers to the products they can rely on, now is the time for companies to make their brands even more trustworthy. With so many choices to be made, the challenge comes with deciding which brands to push forward now, and hold back until later.

The Consumer Protection Council should have special investigation teams on marketing expenditure throughout the entire value chain establishing consumer dialogue, improving the consumer touch points, refining actual product/service itself, improving the delivery infrastructure. This ensures that the brand promise is genuine, and directly relevant to the expectations of consumers in South Sudan.

There is a need to shift from sales orientation to market and consumer orientations where companies either develop a marketing program before launching a product or conduct research

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<sup>147</sup> Directive No.29 of 2010/2011SS

and produce a product specifically for the consumers all with the help of marketing and advertising agencies. Many of the marketing executives spoke to would agree that though marketing in essence is important, if consumers do not have a good product then marketing will never propel growth.<sup>148</sup>

Government must have a large measure of consistency, predictability and transparency. A key component in this regard is arriving at common understanding of the jurisdictional rules that will apply to the regulation and enforcement of consumer protection standards by the various governmental authorities and organisations.

Guidelines should also be established to help determine whether conduct would be reasonably regarded as having a foreseeable impact on a particular jurisdiction. This is because the starting premise should be that the laws of the consumer's jurisdiction apply to consumer transactions, subject to certain limits designed to recognize that it must be reasonable for the seller to know where the consumer is located and that allow a seller to "opt out" of conducting business in that jurisdiction.

### **5.3.1 Establishment of mutual assistance measures for extra-state enforcement**

Mutual cooperation mechanisms between regulatory agencies should be established to allow authorities to obtain Court orders promptly and cost effectively, including "cease and desist" orders and monetary orders. One option in this regard is to establish a system based on the South Sudan Consumer Protection Injunction Directive.<sup>149</sup> Under such a government, the authorities in the vendors' jurisdiction should be expected to take the lead in enforcement, either of their own initiative or at the request of another jurisdiction's authorities. Provision should be made, however, for authorities to be able to more readily obtain appropriate enforcement orders through

<sup>148</sup> Citizen newspaper on Thursday 5<sup>th</sup> January 2012

<sup>149</sup> Citizen newspaper on Saturday 7<sup>th</sup> January 2012

the courts of other states, where the authorities in the vendor's jurisdiction are unable or unwilling to act, or in cases of urgency. Such a mechanism could be limited to a defined, harmonized core set of consumer protection standards, continued and increased information sharing and investigatory assistance should be encouraged.

### **5.3.2 Organisation of consumer protection principles applicable to electronic commerce**

Ten states of South Sudan should continue to strive to organise their laws in relation to consumers' protection in electronic commerce, based on the strong foundation established by the Draft Internet Sales, organisation pattern drafted under the auspices of the Consumer Measures Committee E-Commerce, Working Group under the Agreement on Internal Trade.

### **5.3.3 Governing institutions**

Organisations such as the South Sudan Association should bring professionalism in the business. This organisation ought to accept an invitation from South Sudan Communications Department and South Sudan Broadcasting Corporation to Radio Juba should also join in on a discussion about how content, practice and the dynamics of advertising in South Sudan can be regulated to a certain degree.

As the market grows and as even more buyers come into the market, it is important that methods of regulating the business are established such that certain standards can be maintained. Fortunately, government interest in the business is coming at a time when the business itself should be woken up to the need to standardize. South Sudan Association should thus be a partner up with the government to set up an industrial foundation that will bring about structural attractiveness to the industry. Such changes should include financial controls, moderating capital flows into advertising agencies, and the supervision of executives to curb the high cases of bribery and corruption within the industry. There are players in the market who will not provide

service unless you give them something in return; this is a practice that will kill the industry in South Sudan.

#### **5.3.4 Consumer education**

In order to ensure that consumers' needs and expectations are met, regulators need to be confident that consumers are aware of their rights and have the right information to make rational choices. The key factors for consumers to consider are price, quality of service and the trade-off between the two. Information should be easy to understand, easy to access and easy to compare if consumers. The regulator's role is to ensure that the right information is available, that it is accurate and that it is reliable.

Price information, one of the key factors that continue to determine either the choice of provider or the decision to use an Internet service is price. This may be a value for money decision or simply a question of affordability. In order to compare prices, consumers need access to reliable, comparable information. However, although ICT providers may publish details of enticing price offers, they are naturally reluctant to publicize their competitors' offerings. Typical marketing campaigns should fanfare or display the benefits of replacing many individual bills for fixed line, mobile, Internet/broadband, and TV services with a combined tariff. At first glance this may appear to offer substantial savings. Enticing opening offers should disguise a package that costs more than the sum of the parts.

There should be a Framework which requires that consumers must have easy access to comparable price information, either free of charge or at a reasonable price. Consumers should also be told about any additional charges for their goods or service for example whether access to a free phone number will attract a charge and what they might expect to pay if they terminate their contract early. The format of the information and the way in which it is provided is for

individuals to decide. Individual regulators should therefore have the autonomy to adopt an approach they feel is best suited to consumers needs.

### **5.3.5 Providing consumers with redress**

There should be an access to a fair and transparent complaints process as an essential part of an effective consumer protection framework. Consumer complaints have an important role to play in regulation as they provide a useful barometer on consumer detriment and unfair practice.

There should be most ICT regulatory frameworks which include some requirement on operators to establish procedures for the handling of consumer complaints and to publish details of those procedures. The level of direct involvement of the regulator in dispute handling varies considerably. In South Sudan, the regulator, Consumer Protection Council should have a dedicated consumers service line with a short code number on which consumers can contact them about the quality of service, reliability and service performance of their service provider although for non-technical complaints, the complainant must contact the service provider first.

In South Sudan, the regulator, the Communication and Information Technology department in the Ministry of information and broadcasting should require service providers to establish a separate division to handle consumer complaints and approve the procedures that are put in place at Konyokonyo market.

### **5.3.6 Complaints handling**

Since it is a statutory requirement under the Universal Services Directive for South Sudan to ensure that transparent, simple, inexpensive and out of court procedures should be available for dealing with consumer disputes, and to ensure that such disputes are settled fairly and promptly.

The recent review of the South Sudan included measures for strengthening out of court dispute resolution by ensuring that independent dispute resolution bodies were used, and that procedures

conformed to a minimum set of principles, using either existing dispute resolution bodies or by creating new ones. Hence, there is a need for collective redress which benefits consumers in some circumstances. Thus, there is need to maintain an effective means of individual redress as is essential for consumer protection.

#### **5.4 General conclusion**

The goal of research on consumer protection is to place consumers, who are average citizens engaging in business deals such as buying goods or borrowing money, on an even par with companies or citizens who regularly engage in business.

Historically, consumer transactions, purchases of goods or services for personal, family, or household use were presumed fair because it was assumed that buyers and sellers bargained from equal positions. Starting in the 1960s, legislatures began to respond to complaints by consumer advocates that consumers were inherently disadvantaged, particularly when bargaining with large corporations and industries. Several types of agencies and statutes, both central government and states, have at the moment tried hard to protect consumers in South Sudan. Thus, a consumer protection has little bit changed when compare to the previous situations at Konyokonyo market, Juba City in South Sudan.

Despite the fact that there are laws protecting consumers, and the authorities who are charged with the responsibilities of enforcement of consumers' rights in South Sudan, still, protection of a consumer rights at Konyokonyo market (Juba City) has not been sufficient. Hence, violations of the consumers' rights were found to be ignorant of the law by the consumers and the suppliers at Konyokonyo market, Juba City in South Sudan.



### WORK PLAN

|   | Activities   | Weeks   | Days   |
|---|--|---------|--------|
| 1 | Completion of research dissertation  | 5 weeks |        |
| 2 | Designing and production of the data collection instruments that is questionnaires to address issues |         | 5 days |
| 3 | Issuing of the questionnaires to the respondents   |         | 3 days |
| 4 | Collection and re-issuing questionnaires   |         | 4 days |
| 5 | Data analysis  |         | 6 days |
| 6 | Proportional research dissertation report  | 3 weeks |        |

### BUDGET PLAN

Budget used for the study is done as in the table below

| Item/services                                    | Description               | Cost/unit (Ushs) | Unit     | Total  |
|--|---------------------------|------------------|----------|--------|
| Completion of research dissertation              | Typesetting and printing, | 55000            | 95 pages | 55000  |
|  | Photocopying,             | 50000            | 95 pages | 50000  |
|  | Binding of draft          | 40000            | 4 copies | 40000  |
| Designing questionnaires                         | Hiring computer charges   | 60000            | 1        | 60000  |
| Issuing of the questionnaires to the respondents | Transportation            | 70000            | 1        | 70000  |
| Collecting and re-issuing of the questionnaires  | Transportation            | 50000            | 1        | 50000  |
| Questionnaires                                   |                           |                  |          |        |
| Data analysis                                    | Research assist wages     | 40000            | 1        | 40000  |
| Preparation of research dissertation             | Typesetting,              | 35000            | 95       | 35000  |
|  | Photocopying,             | 40000            | 95       | 40000  |
|  | Binding                   | 10000            | 1 copy   | 10000  |
| Other personal needs                             | Lunch/breakfast           | 5000             | 30       | 150000 |
| Total  |                           | 600000           |          | 600000 |

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## APPENDIX

### **Appendix:** Letter to the respondents

Dear respondents,

I am a student of law at Kampala International University main campus. I have attached questionnaires as part of research study to be undertaken in partial fulfillment of my degree in law. I am thereafter to furnish with the necessary information.

The information you furnish will be held in strict confident and will only be used for the stated purpose. Please answer all questions accurately and honestly as possible. You don't need to reveal your identity.

Thanks

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Ayuen John Mariar', written over a horizontal line.

**AYUEN JOHN MARIAR**

## RESEARCH QUESTIONNAIRES

### Questions to the consumers

- 1 Is your level of protection adequate?
  - (a) High
  - (b) Average
  - (c) Low
- 2 how do you enforce your rights?
  - (a) Court
  - (b) Alternative Disputes resolution methods
  - (c) Parties agreement

### Questions to the suppliers

- 1 What are the laws protecting consumers at konyokonyo market?
  - (a) Transitional Constitution 2011
  - (b) Consumer Protection Act 2011
  - (c) Sale of Goods Act 2011
  - (d) Penal Code Act 2008
  - (e) Contract Act 2008
  - (f) South Sudan National bureau of Standards Act 2009
  - (g) Investment Act 2011
- 2 Is there any enforcement of such laws at konyokonyo market (Juba city) in South Sudan?
  - Yes
  - No

3 When did you join this konyokonyo market?

2010 and after

2008-2009

2006-2007

1997-1998

Before 1997

4 Have you ever been given information about consumer protection at konyokonyo market?

Yes

No

5 Have you ever conduct training to your other consumers?

Yes

No