

Reconciling Statutory Protections and Constitutional Rights in Zambian Consumer Law: A Doctrinal and Normative Critique of Regulatory Gaps and Judicial Responses

Alex Chola Kafwambulula, DBA¹, Austin Mwangi, PhD²

¹PhD Candidate, University of Zambia, Institute of Distance Education, Lusaka, Zambia

²Lecturer, The University of Zambia, Graduate School of Business, Lusaka, Zambia

* Corresponding

African Journal of Commercial Studies, 2025, 6(2), 220-234

DOI Link: <https://doi.org/10.59413/ajocs/v6.i2.22>

Abstract

This article interrogates the doctrinal and normative coherence between statutory consumer protection mechanisms and the broader constitutional rights enshrined in Zambia's legal order. It critically examines the extent to which the constitutional framework supports, limits, or remains indifferent to evolving consumer protection regimes. Using a doctrinal legal research methodology complemented by comparative normative analysis, the study evaluates primary sources of Zambian law, particularly the Constitution of Zambia (Amendment) Act No. 2 of 2016, and core statutory instruments such as the Competition and Consumer Protection Act No. 24 of 2010. It draws upon judicial decisions and scholarly commentaries to assess how courts have interpreted constitutional guarantees in the context of consumer rights disputes. The article reveals that despite significant legislative strides, Zambia's consumer law regime remains partially insulated from the normative force of constitutional supremacy, often resulting in fragmented enforcement and inconsistencies in legal reasoning. This analysis contributes to the discourse on aligning statutory regimes with constitutional imperatives and calls for deliberate judicial activism, harmonisation of laws, and constitutional entrenchment of socio-economic rights to secure substantive consumer justice.

Keywords: constitutional rights, consumer protection, Zambia, judicial interpretation, statutory law, socio-economic rights, legal harmonization

Article Info

Volume 6, Issue 2

Publication history:

Accepted on 24 April 2025;

Published: 30 April 2025

Article DOI:

10.59413/ajocs/v6.i2.22

1. Introduction

The constitutionalisation of socio-economic rights, including consumer protection, has become a normative aspiration across various jurisdictions seeking to elevate economic justice to the realm of fundamental rights. In Zambia, however, the interface between constitutional law and statutory consumer protection remains largely under-theorised and judicially underdeveloped. This article explores this interface by interrogating whether, and to what extent, constitutional norms meaningfully inform, reinforce, or complicate the enforcement of consumer protection laws.

The constitutional landscape in Zambia, especially following the enactment of the Constitution of Zambia (Amendment) Act No. 2 of 2016, reveals a hybrid structure where the Bill of Rights excludes explicit socio-economic entitlements, leaving consumer rights to the domain of statutory interpretation. While the Competition and Consumer Protection Act No. 24 of 2010 provides the principal statutory framework for consumer rights, its normative integration with constitutional guarantees of equality, access to justice, and human dignity remains ambiguous.

This disjuncture is compounded by judicial conservatism, which often refrains from expansive constitutional interpretation in favour of narrowly framed statutory analysis. The courts, while acknowledging consumer vulnerabilities, have rarely invoked constitutional principles as interpretive tools to advance consumer interests. The jurisprudential consequence is a consumer law regime that operates in a quasi-constitutional vacuum, susceptible to legal fragmentation and weak enforcement. This article argues for a more robust constitutional underpinning of consumer protection, grounded in purposive statutory construction and anchored in rights-based reasoning.

2. Consumer protection rights: A global perspective

In this section, a global perspective of consumer protection legislation is provided focusing on national legislation of selected developed and developing economies.

2.1. Consumer protection rights in the United States

In the United States, consumer protection laws are designed to protect purchasers of goods and services (consumers) from defective products, deceptive, and fraudulent business practices. The primary (but not the only) consumer protection agency at the federal level is the Federal Trade Commission (FTC), which was established in 1914. The FTC, which has a Bureau of Consumer Protection, works to stop unfair, deceptive, and fraudulent business practices by collecting consumer reports and conducting investigations, prosecuting companies and individuals who violate the law, making rules to maintain a fair marketplace, and educating consumers and businesses about their rights and responsibilities. The FTC works alone and in partnership with other federal agencies to enforce the various consumer protection laws (Waller *et al.*, 2011). The overall goal of the FTC is to provide consumers with a marketplace that is free of deception and that offers the highest quality products at competitive prices. The FTC has two main goals: (i) to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace; and (ii) to maintain competition by preventing anti-competitive business practices (Waller *et al.*, 2011).

In principle, the FTC's consumer protection authority comes primarily from Section 5(a) of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." Other federal agencies also play an important role in protecting American consumers, including the U.S. Consumer Product Safety Commission (CPSC). The CPSC is a federal regulatory agency whose mission is to reduce injuries or deaths caused by consumer products.¹ However, the CPSC does not have jurisdiction over all consumer products.²

Additionally, the CFPB is responsible for:

- Conduct financial education programs;
- Collect, investigate and respond to consumer complaints;
- Collect, research, monitor and publish information related to the operation of the markets for consumer financial products and services in order to identify risks to consumers and the proper functioning of such markets;
- Monitor insured persons' compliance with federal consumer financial laws and
- Issues rules, orders, and guidance to implement federal consumer financial laws.³

In short, the bureau is responsible for regulating "consumer financial products or services provided under the federal consumer financial laws."⁴ Furthermore, the Bureau is required to coordinate its enforcement activities with the Federal Trade Commission. In this regard, the two agencies can take joint or separate actions against entities that violate any consumer financial protection law (Waller *et al.*, 2011).

2.2. Consumer protection rights in the United Kingdom

The UK has a long history of protecting consumer rights. For many years, before the EU took action, UK consumers relied on laws that protected buyers of goods and services and prohibited unfair contract terms. However, the majority of consumer rights for UK consumers can now be found in the Consumer Rights Act 2015. This Act came into force on 1 October 2015 and consolidated and clarified the various consumer protection legislation that existed in the UK.⁵ Before the new Consumer Law Act 2015 came into force, there were 12 separate pieces of legislation covering consumer rights in the UK and around 60 pieces of legislation providing for the investigative powers of consumer enforcement officers. This was the result of a gradual development of UK consumer law over a period of 30 years. While this old system provided a high level of consumer protection, it was criticised as being overly complex, fragmented and, in some places, unclear. The law also failed to keep pace with technological change. In addition, there were overlaps and inconsistencies between existing EU and UK legislation.

Prior to the Act coming into force, the law on unfair terms was contained in two separate pieces of legislation, the Unfair

¹<http://www.cpsc.gov/>.

²Waller, Spencer Weber, Jillian G. Brady, RJ Acosta, Jennifer Fair, and Jacob Morse. "Consumer Protection in the United States: An Overview." *Journal of European Consumer Law* (2011).

³Same as above

⁴Same as above

⁵<https://iclg.com/practice-areas/consumer-protection-laws-and-regulations/united-kingdom>

Contract Terms Act 1977 (UCTA) and⁶and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR).⁷Under the Uniform Contract Act of 1977, some contract terms are automatically non-binding, while others are subject to a reasonableness test.⁸The UTCCR allows consumers to challenge most unnegotiated contract terms as unfair. The problem is that the 1977 UCTA and the UTCCR have inconsistent and overlapping provisions, creating uncertainty for consumers and businesses.⁹These inconsistencies led to the enactment of the CRA in 2015.

One of the most laudable advances in the UK consumer protection system is the preventive controls against unfair contract terms.¹⁰The Consumer Liability Code builds on EU consumer law principles and sets out a coherent consumer protection framework for all types of contracts for the supply of consumer goods, services and digital content.¹¹Specifically, CRA 2015 aims to:

- Bringing together in one place key consumer rights covering consumer contracts for goods, digital content and services (Part 1);
- Reform and strengthen the law on unfair terms in consumer contracts (Part II);
- consolidate and simplify the powers of enforcement officers set out in Schedule 5 to investigate possible breaches of consumer law and clarify that certain enforcement officers (Trading Standards) can work across local authority boundaries (Part 3);
- giving civil courts and public enforcement agencies greater flexibility to take the most appropriate action for consumers when dealing with breaches or potential breaches of consumer law (Section 3); and
- Providing consumers and small and medium-sized enterprises (SMEs) with a more accessible route to challenge anti-competitive behaviour through the Competition Appeal Tribunal (CAT) (Section 3).¹²

Organisations such as the Citizens Advice Bureau, Trading Standards, the Competition and Markets Authority (CMA) and the UK federal government work to ensure consumers know their rights.¹³Trading Standards is responsible for preventing unfair trading practices, such as advertising, promotions and sales practices, while the Competition and Markets Authority is responsible for enforcing unfair terms, such as unfair ticketing terms and conditions.¹⁴

Under the CRA 2015, UK consumers now have a statutory right to return defective goods purchased online and in-store for a full refund within a specified period, and they have similar redress rights (repeat performance, repair or refund) in relation to service contracts and purchases of digital content such as music, games and apps. The CRA 2015 sets out a simple, modern framework for consumer rights designed to increase consumer confidence and simplify enforcement.¹⁵Although the Consumer Rights Act 2015 extends to Wales, Scotland, Northern Ireland and England, parts of the Consumer Rights Act 2015 contain separate provisions for Scotland. Since the Consumer Rights Act 2015 came into force, consumers across the UK have the following legal consumer rights: (i) the right to get what you paid for; (ii) the right to have a defect fixed free of charge or to get a refund or replacement; (iii) the right to require digital content to be fit for purpose; and (iv) the right to require services to be provided within a reasonable time and with reasonable care and skill.¹⁶In addition, UK consumers benefit from simplified enforcement powers, making it easier for them to take action against unscrupulous traders.

Other main sources of consumer protection and consumer rights in the UK include:

- The Consumer Protection Unfair Trading Regulations 2008 (CPRs) impose obligations on businesses not to engage in unfair trading and prohibit misleading and aggressive conduct. These CPRs set out a ‘blacklist’ of conduct that is deemed unfair and is prohibited in all circumstances.¹⁷
- The Consumer Contracts Regulations 2013 set out various information and other requirements that businesses must provide when selling products to consumers;
- Consumer health and safety protections set out in the Consumer Protection Act 1987 and the General Product Safety Regulations (GPSR) 2005.¹⁸

The Consumer Protection Act 2015, together with the associated legislation, has created a significantly simplified system of consumer law. For example, under the Consumer Protection Unfair Trading Regulations 2008, which came into force on 26 May 2008, businesses must deal fairly and honestly with consumers. The regulations contain comprehensive prohibitions against unfair commercial practices by businesses in all sectors towards consumers. They protect consumers from unfair or misleading trading practices and prohibit misleading omissions and aggressive sales techniques. The regulations apply

⁶<https://researchbriefings.files.parliament.uk/documents/SN06588/SN06588.pdf>

⁷Unfair Terms in Consumer Contracts Regulations 1999

⁸<https://researchbriefings.files.parliament.uk/documents/SN06588/SN06588.pdf>

⁹<https://researchbriefings.files.parliament.uk/documents/SN06588/SN06588.pdf>

¹⁰Colin, Scott. “Enforcing Consumer Protection Law.” *Handbook of International Consumer Law*, 2nd ed., pp. 466-490. Edward Elgar Publishing, 2018.

¹¹<https://assets.publishing.service.gov.uk/media/5b17ee2ae5274a18fc321c02/9.pdf>

¹²<https://researchbriefings.files.parliament.uk/documents/SN06588/SN06588.pdf>

¹³Same as above

¹⁴Same as above

¹⁵<https://researchbriefings.files.parliament.uk/documents/SN06588/SN06588.pdf>

¹⁶Consumer Rights Act 2015

¹⁷Same as above

¹⁸Consumer Rights Act 2015

before, during and after a consumer contract is concluded and consumers are entitled to seek redress if they are breached.

2.3. Consumer protection rights in Australia

Australia like other developed economies has a wide-reaching consumer protection law made up of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act of 2010* (Cth) and an active regulator, the Australian Competition and Consumer Commission (ACCC).¹⁹ The ACCC is active in litigating contraventions of the Australian Consumer Law, for which it can seek orders, including for compensation²⁰ and civil pecuniary penalties.²¹ In Australia, consumers also have access to small claims courts or tribunals (Paterson, 2024). There are also ombudsman dispute resolution services in some fields, including telecommunications, energy, and financial services.²² These are important avenues for Australian consumers to obtain recognition of their rights. As noted by Paterson (2024), the Australian Consumer Law contains an unfair contract terms regime in Part 2 and 3, modelled on the UK's UTCCRs of 1999.

2.4. Consumer protection rights in India

The development of consumer protection law in India can be traced back to the Consumer Protection Act, 1986, which was a milestone in the field of Indian law. In India, the Consumer Protection Act, 1986 (CPA) was a benevolent legislation that was enacted to protect consumers at large from exploitation. The Act was a panacea for consumers across the country and has become the most important legislation enacted in the country in recent years (Kumari, 2023). It has become a tool that enables people to resolve disputes at a low cost (Parida, 2022). The Act introduced the concept of consumer rights and established consumer tribunals at the regional, state and national levels. However, with the rise of e-commerce and digital transactions, it became clear that the CPA, 1986 was not enough to address the complexities of the modern marketplaces. Hence, the CPA 2019 was passed by the Indian Parliament to replace the CPA 1986.²³ This new law seeks to strengthen consumer behavior against unethical company activities and advance honest competition in the Indian's marketplace. Through the CPA of 2019, the Central Consumer Protection Agency (CCPA) is empowered by the legislation to look into complaints and take legal action against companies that engage in unfair business practices.²⁴ The Act provides a broader definition of UTPs, including false advertising and misleading promotional statements, and gives CCPA the power to take action against such practices (Kapoor, 2023).

While the Act has such rights, the implementation process is the primary source of the issue (Parida, 2022). The Act does not give the government the power to prosecute anyone found guilty of breaking the law, to take action against unfair trade practices, or to take other actions that compromise someone's rights of consumer. Only through a legal procedure before the State or District Consumer Redressal Forums are criminal actions possible. Regrettably, administrative problems haunt these forums just as they do our court system. For instance, the National Consumer Disputes Redressal Commission handles appeals and initial complaints with a two- or three-years lag. This implies that consumers must endure suffering for an average of five years until their concerns are resolved (Kuamri, 2023). However, the remedies that are available to consumers when successful after being heard include:

- Removing faults: The authority may issue an order to remove product faults if the customer discovers the product to be defective after using it properly and completing a test.
- Replacing merchandise through reimbursement of the amount the customer spent to purchase the item.
- Discontinuance of Unfair/ Restrictive Trade Practice–The authority may order the immediate cessation of any unfair trade practices in the market upon receipt of a complaint from a consumer, as well as the imposition of a trade practice ban.
 - Ceasing the selling of dangerous products
 - Elimination of dangerous product.

Although India has a robust legal framework for consumer protection, several challenges remain in the enforcement and effectiveness of consumer protection laws. One of the major challenges is the lack of awareness among consumers about their rights and available redress mechanisms (Reddy & Das, 2020). Another major challenge is the digital marketplace, where the rapid growth of e-commerce has led to an increase in cases of fraud, counterfeit products, and data privacy issues (Kumar & Bhardwaj, 2019). The existing legal framework has struggled to keep pace with these developments, leading to gaps in protection (Verma, 2022).

2.5. Consumer protection rights in Nigeria

Consumer protection law in Nigeria is primarily governed by the Federal Competition and Consumer Protection Act

¹⁹Paterson, Jeannie Marie. "Consumer Protection Law in Australia." *Journal of European Consumer and Market Law* 13, no. 4 (2024).

²⁰Competition and Consumer Act 2010 (Cth).

²¹ Ibid

²² Paterson, Jeannie Marie. "The Australian unfair contract terms law: The rise of substantive unfairness as a ground for review of standard form consumer contracts." *Melbourne University Law Review* 33, no. 3 (2009): 934-956.

²³ Rani, Hemlata. "A CRITICAL ANALYSIS: THE CONSUMER PROTECTION ACT, 2019." *VIDHIGYA: The Journal of Legal Awareness* 18 (2023).

²⁴ Shweta. "Role of the Consumer Protection Act in Protecting the Rights of Consumer." *Issue 6 Indian JL & Legal Rsch.* 4 (2022): 1.

(FCCPA), 2018, which repealed the Consumer Protection Act, Chapter 25 of the Laws of the Federation of Nigeria, 2014 (Adetoro, 2021). The FCCPA established the Federal Competition and Consumer Protection Commission (FCCPC) and the Competition and Consumer Protection Tribunal to promote fair, efficient and competitive markets in the Nigerian economy.²⁵ This lack of protection is one of the issues that Nigeria's first comprehensive consumer protection law, the Federal Competition and Consumer Protection Act of 2018 (FCCPA 2018), seeks to address.²⁶

The FCCPA 2018 was a long overdue intervention in the Nigerian market. The Act came into force in 2019 and is the country's first comprehensive consumer protection framework. The previous framework was the Consumer Protection Commission Act 1991 (CPCA 1991), which established the Consumer Protection Commission (CPC) to administer consumer protection in Nigeria. One of the shortcomings of the CPCA 1991 was that it did not contain specific consumer protection rules; but it delegated the power to make consumer protection laws to the Chinese Communist Party, which, in its thirty-plus years of existence, has not really exercised this delegated legislative power, but has only made some recommendations on how consumers can protect themselves.¹⁸¹ The recommendations had no legal force and were blatantly ignored by sellers.

After the promulgation of the 2018 FCCPA, it was well received by the academic community, who unanimously agreed that the bill was a major upgrade to Nigeria's 1991 CPCA and consumer protection laws before the promulgation of the FCCPA. The 2018 FCCPA combines competition and consumer protection statutes, with sections XV and XVI covering consumer protection provisions. It repealed the 1991 CPCA and established the Federal Competition and Consumer Protection Commission (FCCPC), an agency with both enforcement and legislative powers. The consumer protection provisions of the FCCPA 2018 were ported from the South African Consumer Protection Act No. 68 of 2008 with selective deletions. One of the provisions omitted from the SA-CPA 2008 was the electronic consumer protection provisions.

However, the FCCPA does not explicitly cover e-commerce or consumer privacy and personal data protection in detail. The Nigeria Data Protection Regulations (NDPR) of 2019, while addressing personal data protection, are considered too general to provide consumers with much-needed privacy protection when dealing with businesses. Adekeye (2020) noted that the problem of unreasonable and unfair terms is prevalent in the Nigerian economy. Apart from the cost, delays and procrastination in the judicial system is another factor contributing to the judicial crisis in Nigeria. The Nigerian judicial system is too cumbersome, slow and bureaucratic, and therefore not suitable or effective in providing redress to consumers. Consumers who seek redress in court strive to obtain it promptly. The average time it takes for a civil case in Nigeria to be finally resolved is fifteen years, including appeals, delays increase costs, particularly in terms of the time and effort expended in these lengthy trials, legal representation fees, etc. Another reason for the delay is the abuse of court procedures by Nigerian lawyers. Sellers know that consumers have limited resources and cannot afford long trials.

There is a growing recognition of the need to include privacy and personal data protection in the ambit of Nigerian consumer rights in line with the revised United Nations Consumer Privacy Act. This will require amending existing laws or enacting new laws to provide consumers with a personal data protection regime. In addition, Nigeria's transition to a cashless economy has highlighted the need to strengthen consumer protection against cybercrime, as the existing regulatory framework is not sufficient to protect bank consumers from cyber threats.²⁷ The FCCPA 2018 is the main consumer protection framework in Nigeria and the focus of this paper. The Act has been hailed as a much-needed intervention in the Nigerian market. Prior to the enactment of the Act, consumer protection in Nigeria was achieved through a mixture of principles of contract law (controlling exemption clauses, the rule of misrepresentation, implied terms, etc.), tort law (particularly negligence) and a host of legislation and regulations.

Similar provisions for the protection of consumers in the aviation industry are also contained in the Nigerian Civil Aviation Regulations. This regulatory approach is common across several other industry-specific frameworks in the national legal environment. This fragmented approach to consumer protection has reduced the effectiveness of the consumer protection framework, led to numerous situations of conflict of laws, and created a high level of legal uncertainty. Nigerian consumers are confused and unclear about the level and type of protection afforded to them under the law. This leads to increased transaction costs, distrust and reluctance to accept new purchasing media, including e-commerce. When the protection costs borne by consumers (the costs of understanding these cumbersome regulations, resolving uncertainties, legal representation, etc.) are too high, the effectiveness of the consumer protection framework is hindered.

Specific sector regulators have introduced frameworks to protect consumers in their respective sectors. For example, the Central Bank of Nigeria's 2016 Consumer Protection Framework and the Nigeria Communications Act 2003 contains several mechanisms to protect consumers in the banking industry. The Nigeria Communications Commission's Consumer Code of Conduct Regulations also introduced specific provisions for protection.

Overall, despite the progress made in consumer protection in Nigeria, there is still room for improvement, especially in the areas of privacy, personal data protection and consumer education to enable consumers to protect their rights. The Consumer Protection Act includes six consumer rights, namely: (1) the right to security, (2) the right to choose, (3) the right to be informed, (4) the right to be heard, (5) the right to seek redress and (6) the right to consumer education.²⁸

²⁵Same as above

²⁶ Adekeye, Ifedayo. "Examining The Effectiveness Of The Federal Competition And Consumer Protection Act Of 2018 In Protecting Electronic Consumers In Nigeria." PhD diss., University of Portsmouth, 2024.

²⁷Same as above

²⁸ ibid

2.6. Consumer protection rights in South Africa

Prior to the implementation of the Consumer Protection Act (CPA), the consumer protection landscape in South Africa was characterised by a series of fragmented laws which sought to regulate various aspects of consumer protection.²⁹ South Africa's consumer protection system first emerged in 1942, when Section 36 of the South African Hire Purchase Act 1942 was enacted.³⁰ However, South Africa has recently passed three far-reaching consumer protection Acts, namely the Electronic Communications and Transactions Act (ECTA), the Consumer Protection Act (CPA) and the National Credit Act (NCA).³¹

Of the three pieces of legislation, the main legislation protecting consumer rights in South Africa is the Consumer Protection Act, which came into force in October 2010. This is a comprehensive piece of legislation that has introduced substantial consumer protections across South Africa. This legislation follows the introduction of the National Credit Act, which also promoted extensive consumer protections and came into full force on 1 June 2007. While both pieces of legislation have been welcomed for the consumer protections they have introduced, they also impose significant compliance and other burdens on providers of products and services. The purpose of the Act is to protect South African consumers from unfair trade practices and to promote consumer awareness and confidence through a legal framework that also provides for a system of consumer redress.³² The Act covers all aspects of fundamental consumer rights, including consumers' rights to equality, privacy, choice, disclosure of information, fair and responsible marketing, fair and honest dealings, just and reasonable terms and conditions, fair value, good quality and safety, and the right to hold suppliers accountable.

The Act provides a broad framework for consumer protection and is designed to develop, strengthen and protect the rights of consumers and to eliminate unethical suppliers and unfair business practices.³³ In other words, the purpose of the Act is to prohibit or control unfair business practices, but it does not contain a list of practices that may be considered unfair. It is an enabling Act, not a prescriptive Act, and the Act itself does not prohibit anything. The Act empowers the Consumer Affairs Commission (CAFSCOM) to investigate business practices and report to the Minister.

The Commission is a statutory body under the Department of Trade and Industry. Its members are not employed full-time by the state but are appointed based on their expertise or experience in consumer protection, economics, industry, commerce or law. The Commission can investigate any business practice and make recommendations to the Minister if it finds that a business practice is unfair. If the Minister accepts the recommendations, he will publish a notice in the Government Gazette declaring the business practice unfair and directing the parties and/or businesses not to adopt those practices.

There is no doubt that the Act allows for drastic measures and is a powerful tool that can be used to alleviate at least some of the many consumer problems facing South Africa today.³⁴ Unfortunately, the Commission is under-resourced and lacks the capacity to be truly effective. A major shortcoming of the Act, particularly from a consumer perspective, is that CAFSCOM has no power to order remedies. The role of the Commission is to make recommendations to the Minister, who can declare a practice unlawful once its investigations are complete. It is then up to the South African Police Service and the Prosecution Service to follow up on any breaches of the Minister's orders.

Both of these agencies are busy dealing with other criminal cases, so consumer issues do not receive the necessary attention. There is also an attitude that consumer issues are not important. In *S v Pepsi-Cola (Pty) Ltd*,³⁵ for example, in a case involving marketing techniques that allegedly breached the then existing Gambling Act, Van den Heever J made the following observations:

"I admit to being somewhat surprised when I read these newspapers that, given the serious crime statistics in the Western Cape, where people read about robberies, rapes and murders rife on trains, in parks and on beaches every day, the South African Police Service would spare an officer to investigate a complaint of this nature."

A major innovation of the new legislation is the power given to the National Consumer Court to impose administrative penalties on companies that engage in prohibited practices.³⁶ These fines are similar to those imposed by the Competition Tribunal and can be up to 10% of a business's annual turnover. Unfortunately, the issue of consumer compensation will remain a concern for consumers as the Competition Tribunal does not have the power to order compensation. Under the law, only the civil courts have this power. However, a compensation award may form part of a consent order, which can then be confirmed by the Competition Tribunal. This will have the force of a High Court order.³⁷ Under Article 4(2), an

²⁹Scott, Tshepiso. "The Realization of Rights in the Consumer Protection Act No. 68 of 2008." Unpublished JD Thesis. University of South Africa (2018).

³⁰Dlamini, Eugene Majahemphini. "Consumer Protection in Swaziland: A Comparative Analysis of South African and English Law." PhD thesis, 2012.

³¹Neels, Jan L. "Consumer Protection Legislation and Private International Law." *Obiter* 31, no. 1 (2010): 122-133.

³²SACPA. (2010). Consumer Protection Act 2008. Government Gazette, 526(31286). 3e186.

³³Consumer Protection Law

³⁴The Act was heavily criticised by the Law Review Project precisely because it did not clearly define what constituted an unfair business practice. In *Janse Van Rensburg NO v Minister of Trade and Industry 2001 1 SA 29 CC* it was argued that the overly broad definition of "harmful business practice" in the Act was unconstitutional because it created uncertainty.

³⁵1985 3 SA 141(C).

³⁶Section 151 of the National Credit Act; and section 74(b) of the Consumer Protection Act.

³⁷See National Credit Act, ss. 150 and 164

arbitral tribunal or court has an obligation to develop the common law in order to improve the realization and enjoyment of consumer rights in general and of the rights of vulnerable consumers in particular.

Due to the lack of protection under the general principles of common law, Section 68 of the Consumer Protection Act 2008 was enacted to promote fair business practices and protect consumers from unreasonable, unfair, unconscionable, unjust and other unfair trade practices and deceptive, misleading and unfair or deceptive practices (Burger, 2017). According to Burger (2017), the main purpose of the CPA is obviously to protect the interests of all consumers and to ensure that consumers who are abused or exploited in the market have access to accessible, transparent and effective remedies. However, the CPA does not provide a general definition of the concept of “fundamental consumer rights”, although it mentions in the preamble to “Internationally Recognized Consumer Rights”.³⁸ The Consumer Protection Act introduced a new consumer protection regime, which is the main overarching legislation in the field of consumer protection and regulates most consumer-related matters. However, an important question to consider is whether the realization of consumer rights has become more tangible for ordinary consumers under the Consumer Protection Act.³⁹

South Africa's consumer rights legal framework has several measures: (i) improving consumers' access to information and the quality of information so that consumers can make informed choices and decisions based on their personal wishes and needs; (ii) protecting consumers from harm; (iii) promoting and providing consumer education;⁴⁰(iv) Promote the freedom of consumers to associate and form groups to advocate and promote their common good; (v) promote consumer participation in the market decision-making process; and (vi) promote the interests of consumers.⁴¹

Under South African common law, consumers have two avenues of redress, namely contract and tort.⁴²If there is an agreement between the parties, the contract approach can be adopted; if there is no basic contract between the parties, the tort approach can be adopted.⁴³ It is therefore clear that the common law provides little or no protection to consumers against goods or services of substandard quality, unfair contract terms, unfair promotions, unfair market discrimination and some other fundamental rights provided for in the Consumer Protection Act.⁴⁴It is also clear from the common law system that it is built on the premise of equal bargaining power in business-to-consumer transactions, a premise that, according to Scott, is clearly flawed in today's context.⁴⁵ In addition to the CPA, Chapter 7 of the ECTA contains certain consumer protections for South African consumers.⁴⁶

In summary, the field of consumer protection in South Africa has made great progress since the introduction of the Consumer Protection Act. The Consumer Protection Act attempts to simplify the enforcement provisions related to consumer protection laws. The Consumer Protection Act incorporates and establishes various consumer protection agencies in an attempt to provide consumers with effective avenues for redress. However, it is clear from the above discussion that some challenges must be addressed in order to ensure that consumers have better access to redress.

2.7. Consumer protection rights in Kenya

Section 46 of the Kenyan Constitution, 2010, is an important step towards achieving the goal of consumer protection, both from an economic and social perspective. The provision provides that consumers have the right to goods and services of reasonable quality, the right to information necessary to fully benefit from goods and services, the right to protection of their health, safety and economic interests, and the right to compensation for loss or injury caused by defects in goods and services. The enabling regulations contemplated by Section 46(2) of the Consumer Protection Act (No. 46 of 2012, Laws of Kenya).

Article 46 of the Kenyan Constitution introduces consumer rights and requires Parliament to enact legislation to protect consumer rights and provide for fair, honest and decent advertising. In addition, Article 46 explicitly states that both public and private entities must comply with consumer rights. The consumer rights guaranteed by the Constitution can be summarized into four major issues (Makau, 2022).

- Consumers have the right to obtain goods and services of reasonable quality.
- Consumers have the right to obtain the information necessary to fully benefit from goods and services.
- Consumers have the right to protect their health, safety and economic interests.
- Consumers have the right to receive compensation for loss or damage caused by defects in goods or services.

After the Constitution was enacted, Parliament enacted legislation that enabled Article 46. This is the Competition Act No. 12 of 2010 (as amended in 2016). In order to effectively discharge this responsibility, the Act was amended in 2016 to add Article 70(A), which gives the agency the power to not only initiate investigations into consumer violations on its own

³⁸Burger, Geraldine. “Unfair Commercial Practices under the Consumer Protection Act No. 68 of 2008.” Masters Thesis, University of Pretoria (South Africa), 2017.

³⁹Same as above

⁴⁰Barnard, Jacolien. “Consumer Rights of Older Adults as Vulnerable Consumers in South Africa: Some Comparative Aspects of Section 68 of the Consumer Protection Act 2008.” *International Journal of Consumer Research* 39, No. 3 (2015): 223-229.

⁴¹Van Eeden, Evert Phillips and Jacolin Barnard. *Consumer Protection Law in South Africa*. LexisNexis, 2017.

⁴²Same as above

⁴³Same as above

⁴⁴Colin, Scott. “Enforcing Consumer Protection Law.” *Handbook of International Consumer Law*, 2nd ed., pp. 466-490. Edward Elgar Publishing, 2018.

⁴⁵Same as above

⁴⁶Neels, Jan L. “Consumer Protection Legislation and Private International Law.” *Obiter* 31, no. 1 (2010): 122-133.

initiative, but also to impose administrative remedies. In addition, the legislation was enacted to promote and maintain competition in the national economy and to provide for the establishment, powers and functions of the Competition Authority and the Competition Tribunal. The Competition Authority has broad powers to enforce consumer protection measures and sanction businesses that violate the provisions of the Act.

Prior to 2010, there was no law specifically dealing with consumer protection. Various pieces of legislation covered the legal content in this area.⁴⁷ These laws include the Trade Descriptions Act, Chapter 505 of the Laws of Kenya, the Standards Act, Chapter 496 of the Laws of Kenya, the Weights and Measures Act, Chapter 513 of the Laws of Kenya, the Restrictive Trade Practices, Monopolies and Price Control Act (now the Competition Act), the Food, Drugs and Chemical Substances Act, Chapter 254 of the Laws of Kenya, the Pharmacies and Poisons Act, Chapter 244 of the Laws of Kenya, the Public Health Act, Chapter 242 of the Laws of Kenya, the Fertilizers and Animal Food Act, Chapter 345 of the Laws of Kenya, and private law measures in contract and tort. However, these laws are not very effective in protecting consumer rights as there is no provision for private actions by private citizens. They outline criminal offences and make offenders subject to criminal prosecution.

However, CPA Act No. 46 of 2012 does not provide any definition of unfair trade, but its preamble states that it is an Act of Parliament for the protection of consumers, against unfair trade practices in consumer transactions, and to provide for matters connected therewith and incidental thereto.

2.8. Consumer Protection Rights in Zambia

As the Zambian economy shifted from a state-controlled economy to a free market economy, the government needed to effectively regulate the economy to promote fair competition and consumer protection. To meet this need, the government established the Competition and Consumer Protection Commission (CCPC), a statutory body with a unique dual mandate to protect the competition process in the Zambian economy and protect consumers. The CCPC was established in 1997 as the Zambia Competition Commission (ZCC). In 2010, a new Act, the Competition and Consumer Protection Act (CCPA) No. 24, was enacted, repealing the old Act and subsequently renamed the Competition and Consumer Protection Commission (CCPC).

Since the early 1990s, when the Zambian economy was transitioning from a state-controlled economy to a free market economy, there has been a need to enact legislation that adequately and effectively regulates existing business practices to achieve fair competition and adequate consumer protection in a market structure. In 1994, the Government recognised the need for national legislation to establish and maintain a market structure that encourages behaviour that prevents anti-competitive behaviour, ensures that markets operate efficiently and protects the welfare and interests of consumers.³ This ultimately led to the enactment of the now repealed Competition and Fair Trading Act, Chapter 417, which established the Zambia Competition Commission (ZCC), now known as the Competition and Consumer Protection Commission (CCPC), largely as a result of the conditions imposed on Zambia by the International Monetary Fund (IMF) and the World Bank.

Consumer protection law in Zambia gained recognition when the colonial government began to provide some form of protection to consumers through the enactment of statutes such as the Pharmacies and Poisons Ordinance (1941) and the Weights and Measures Ordinance (1960). Prior to this, commercial activity and trade in Northern Rhodesia was still minimal, so there was no need to provide consumer protection. After independence, Parliament continued to provide protection through the enactment of the Food and Drugs Act and Zambia Bureau of Standards Act. Consumer protection also made progress in 1977 when the Consumer Protection Association of Zambia was established as a voluntary organization aimed at protecting consumers. The Zambian government has made attempts at ensuring that consumer rights are incorporated in consumer legislation. In 2010, the government responded to modern prevailing business practices by passing a new Act, the Competition and Consumer Protection Act, which repealed and replaced the Competition and Fair-Trading Act 1994. In Zambia, there are two main pieces of legislation that have been passed to protect consumers and these are:

- The Competition and Consumer Protection Act (CCPA) of 2010 and
- The Zambia Compulsory Standards Agency (ZCSA) is a government agency responsible for the development, implementation, and enforcement of compulsory standards in Zambia.

The Competition and Consumer Protection Act

The CCPA No. 24 of 2010 is the main legislation intended to protect the large body of consumer from unfair trading. The consumer rights are contained in Part VII of the CCPA is entitled 'Consumer Protection'. With the enactment of this law, the establishment of central consumer protection council is seen as one of the avenues to seek redress. This Act is believed to provide cheap, speedy and simple redressal to consumers on behalf of the numerous consumers who might have similar interests. The Act enriches only four rights to the consumers which are: (1) Right to Safety, (2) Right of Choice, (3) Right to be Informed and (5) Right to seek Redressal. However, the Rights to be Heard and to rights to consumer education are not expressed.

Section 52(1) of the Act provides that the right to safety requires that a person or business shall not sell any goods to

⁴⁷Oraro, "Consumer Protection Law in Kenya", 20 November 2015, retrieved from <<http://www.oraro.co.ke/article/consumer-protection-law-in-kenya/>>, accessed 16 October 2024.

consumers unless the goods comply with the mandatory safety standards established for that category of goods by the Zambia Bureau of Standards or any other relevant competent authority. There are several other laws that partially deal with food-related safety issues, such as the Food and Drugs Act CAP 303 and the Public Health Act CAP 295 under the laws of Zambia.

Right to Information Section 47 of the Competition and Consumer Protection Act prohibits many forms of false or misleading representations, such as as to the standard, value, quality, worth, composition, make or model, history or previous use of goods and services; the price, availability or availability of any good or service; the location or origin of the goods; the demand for any good or service; the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; that the goods are new but are not actually new; or that any goods have any sponsorship, endorsement, affiliation, performance feature, accessory, use or benefit that they do not have.

Section 45(c) of the Competition and Consumer Protection Act prohibits a person or business from exerting pressure on a consumer by means of harassment or coercion in such a way that the consumer's purchasing decision is distorted or is likely to be distorted. Exercising pressure on a consumer by means of harassment or coercion in such a way that the consumer's purchasing decision is distorted by unfair trade practices and incurs a penalty.

The right to redress under section 54 of the Competition and Consumer Protection Act provides that consumers who believe they have been treated unfairly may lodge a complaint with the Competition and Consumer Protection Commission, which has a Consumer Complaints Unit responsible for resolving consumer complaints and is obliged by law to deal with any complaint. While the Act provides consumers with such rights, the implementation process, especially through the courts, is a major source of problems. There is no clear mechanism for consumers to make their case heard. This means consumers have to endure the pain of taking their issues to court, and there is no clear remedy for consumers if they win.

Looking at the consumer protection laws of the Commonwealth states, it can be seen that the consumer protection laws of each state have both similarities and differences. The consumer protection laws of different jurisdictions have several common features:

- Protecting Consumer Rights: The primary goal of these laws is to protect consumers from unfair, deceptive, or abusive business practices.
- Definition of consumer: Most laws define a consumer as an individual who purchases goods or services for personal use, while some laws, such as the Indian Consumer Protection Act, include online transactions.
- Enforcement Agency: Consumer protection laws usually establish agencies or organizations to ensure enforcement.
- Consumer Redress Mechanisms: These laws generally give consumers the right to seek compensation, damages, or an injunction from a business that violates consumer protection laws.
- Protection against deceptive practices: Consumer protection laws generally prohibit deceptive or misleading advertising and require businesses to provide accurate information to consumers.
- Class Action and Private Action Rights: Some jurisdictions allow consumers to bring class action or private lawsuits against businesses that violate consumer protection laws.
- Punitive Damages: Certain laws allow for punitive damages to be awarded when a violation was committed willfully or knowingly.

While there are many similarities in consumer protection laws, there are also significant differences between consumer protection laws in different jurisdictions. Here are some of the key differences:

- Legislative structure: Some countries, such as the United States and Canada, have a federal system with multiple layers of consumer protection laws, while others, such as the United Kingdom and Australia, have a more centralized system
- Scope and coverage: Consumer protection laws may vary in the range of products and services covered. For example, Nigeria and South Africa have specific laws for financial products and data privacy, while the UK has the more comprehensive Consumer Rights Act 2015.
- Enforcement agencies: The structure and responsibilities of enforcement agencies vary. For example, the United States has the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB), while the United Kingdom has the Competition and Markets Authority (CMA) and the Trading Standards Service.
- Consumer redress mechanisms: The procedures for consumers to seek redress may vary, with some countries allowing for class actions or private rights of action, while other countries may have more limited options
- Penalties and remedies: The type and severity of penalties for violations may vary, as may the remedies available to consumers, such as punitive damages or forced disclosure.
- Consumer Data Protection: The level of protection of consumer data and the specific laws governing it can vary, with some countries having more comprehensive data protection laws than others.
- Consumer awareness and use: Consumer awareness and use of consumer protection laws may vary, with some jurisdictions having more aggressive enforcement and higher levels of consumer engagement
- Regulatory approach: Some countries take a more proactive approach to consumer protection, while others may take a more reactive approach, relying on consumer complaints to trigger enforcement action
- Regulatory focus: The focus of consumer protection laws may vary, with some jurisdictions emphasizing specific areas such as product safety, financial services or privacy
- Regulatory evolution: The pace and extent of regulatory evolution can vary, with some countries updating laws more

frequently to respond to new technologies and business practices.

These differences reflect the unique legal, cultural, and economic context of each jurisdiction, as well as the different levels of consumer protection that different governments prioritize.

The Food Safety Act No. 7 of 2019

The Food Safety Act No. 7 of 2019 represents another piece of legislation that forms part of the consumer protection legislative framework in Zambia. This Act enacted on the 12th of August 2019 aims to provide for protection of the public against health hazards and fraud in the production, sale and use or consumption of food. Part III of the Act provides the provisions for consumer protection in Zambia. Precisely, the Act prohibits sale of poisonous, adulterated or unfit food to consumers.⁴⁸ According to Article 7 (1) of the Food Safety Act states that a person or entity must not sell, export, import, store or manufacture any food that (a) is contaminated, unsafe or adulterated, (b) contains any harmful or poisonous substance, (c) consists in part or whole of any filthy, rotten, putrid, decomposed or diseased substances or foreign matters or (d) is unfit for human consumption.⁴⁹

Furthermore, Article 8 of the Food Safety Act states that a person shall not manufacture, sell, store or import food items which are not of the nature, substance or quality required by the purchasers. More so, Article 8 of the Act requires that no person or firm shall not label, sell, package or advertise food in a manner that is misleading, false or deceptive as regards to its character, nature, substance, value, quality, composition, merit or safety.⁵⁰ Article 12(1) also states that a person commits an offence by rendering any food injurious to human health.

Zambia Compulsory Standards Agency

As for the Zambia Compulsory Standards Agency (ZCSA), it is a government unit that is responsible for the development, implementation, and enforcement of compulsory standards in Zambia. It was established under the Compulsory Standards Act No. 3 of 2017. It could be stated that the agency has complementary roles to that of the Commission. Its mandate and Objectives are to ensure the quality, safety, and performance of products and services in Zambia. It also protects consumers, promoting fair trade practices and facilitates trade. In its quest to do so, the agency among others performs the following key functions:

Development of compulsory standards: The ZCSA develops, reviews, and updates compulsory standards for various products and services. These standards are mandatory and must be adhered to by manufacturers, importers, and service providers.

- Certification and inspection: The agency provides certification services to ensure that products and services meet the required standards. It also conducts inspections to verify compliance.
- Market surveillance: The ZCSA monitors the market to detect non-compliant products and takes appropriate actions to protect consumers and ensure fair trade.
- Consumer protection: The agency educates consumers about their rights and responsibilities, handles complaints, and takes action against unfair trade practices.
- Standards Development Process. - The ZCSA follows a transparent and inclusive process to develop standards. It involves stakeholders such as industry representatives, consumer associations, government agencies, and experts. The process includes research, consultation, drafting, review, and finalization of standards. The agency ensures that the standards are practical, effective, and aligned with international best practices.
- Compliance and Enforcement: The ZCSA has the authority to enforce compliance with compulsory standards through inspections, testing, and market surveillance activities. Non-compliant products may be seized, recalled, or prohibited from entering the market. Offenders may face penalties, fines, or legal action. The agency conducts awareness campaigns to educate businesses and consumers about the importance of complying with standards.
- Collaboration and Partnerships: The ZCSA works closely with other government agencies, industry associations, consumer organizations, and international bodies to promote standardization and quality assurance. It collaborates with the Zambia Bureau of Standards (ZABS) to ensure synergy in standardization activities and avoid duplication of efforts.

The Competition and Consumer Protection Commission

The Competition and Consumer Protection Commission (CCPC) is the agency of the government of Zambia that seeks to ensure consumer protection across Zambia. The Commission was renamed from the Zambia Competition Commission which was established under the Act repealed by the CCPA of 2010. The mission of the CCPC is “to safeguard and promote a competitive business environment and enhance consumer welfare by prohibiting anti-competitive and unfair trading practices in Zambia”.⁵¹ As stated in section 5 of the CCPA, the functions of the CCPC are to:

- Review the functioning of the Zambian market and the competitive conditions in the market;
- Reviewing the trade practices of businesses doing business in Zambia;

⁴⁸ Food Safety Act No. 7 of 2019

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ <https://www.ccpc.org.zm/media/report/Annual-Report---2023.pdf>

- Investigating and evaluating restrictive agreements, abuse of dominant market position and mergers;
- Investigate unfair trade practices and unfair contract terms and impose necessary sanctions;
- To conduct and publish comprehensive research on the effectiveness of competition in various sectors of the Zambian economy and on issues of concern to consumers;
- As a leading advocate for competition and effective consumer protection in Zambia;
- Advising the government on laws affecting competition and consumer protection;
- Provide information to guide consumers about their rights under the Act;
- Liaise and exchange information, knowledge and expertise with competition and consumer protection authorities in other countries;
- Advise the Minister on agreements relating to competition and consumer protection and on any other matters relating to competition and consumer protection;
- To cooperate with and assist any association or group in developing and promoting a code of conduct to ensure compliance with the provisions of this Act; and
- To do all acts and things which are necessary, incidental or conducive to the better performance of the functions conferred upon it by this Act.

The CCPC as the regulatory body was established to promote and protect competition in the economy and safeguard consumer rights. The CCPC plays a crucial role in protecting consumers from unfair trading practices. The Commission is responsible for enforcing consumer protection laws that safeguard consumers from unfair trading practices, such as misleading advertising, deceptive pricing, and the sale of substandard or unsafe products. By holding businesses accountable for their actions and ensuring that they comply with consumer protection regulations, the Commission helps to build trust between businesses and consumers and protect vulnerable consumers from exploitation. In order to fulfill its mandate, the Commission is provided powers by the CCPA to conduct investigations, gather evidence, and take enforcement actions against businesses found to be in violation of competition and consumer protection laws.

In terms of governance, the CCPC is headed by the Chairperson and commissioners to whom as executive director reports to as shown in Figure 2.4. Before the executive directors there are directors for (i) legal and corporate affairs, (ii) mergers and monopolies, (iii) finance, (iv) consumer protection, (v) human resource and administration and (vi) restrictive business practices. The CCPC is a statutory body established under Section 4 of the Competition and Fair-Trading Act. The Competition and Fair-Trading Act was enacted to prohibit anti-competitive trade practices, encourage economic competition, regulate monopolies and concentrations of economic power, and protect consumer welfare. In its efforts to regulate competition, the government recognised that competition law should directly address the interests of consumers and protect their rights, particularly the right to complete and accurate information when purchasing goods and services. This led to the enactment of Section 12 of Chapter 417, which prohibits unfair trade practices that infringe on consumer rights and empowers the CCPC to enforce these provisions.

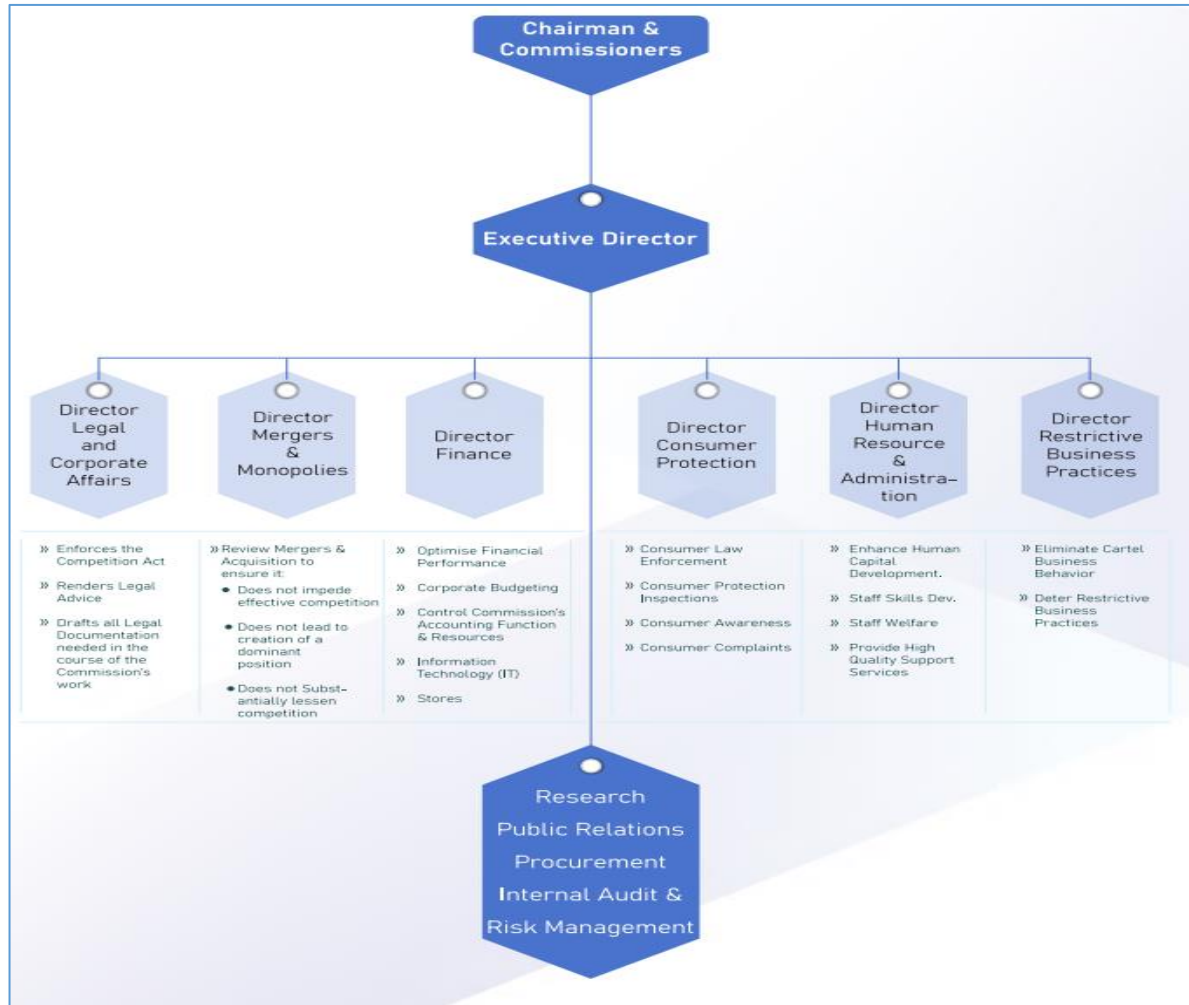


Figure 1: Organizational structure of the CCPC⁵²

The CCPC also has the authority to impose fines, issue directives, and seek legal remedies in order to deter anti-competitive behavior and protect consumers from unfair trading practices.⁵³ In addition, the Commission also works closely with other government agencies in Zambia including the Zambia Bureau of Standards and the ZCSA to coordinate efforts in promoting consumer protection. The CCPC also plays an important role in educating consumers about their rights and responsibilities. The commission conducts awareness campaigns, outreach programs, and consumer education initiatives to empower consumers with information about their rights under the law and how to protect themselves from fraudulent or deceptive practices. By providing consumers with the knowledge and tools they need to make informed choices, the CCPC helps to create a more transparent and competitive marketplace. In conclusion, the CCPC plays a vital role in protecting consumer rights in Zambia.

Zambia Bureau of Standards (ZABS)

ZABS is a statutory body under the Ministry of Commerce Trade and Industry established in 1982.⁵⁴ It facilitates development of standards to help the industry produce quality products that meet expectations of the consumers and complies with the health, safety, and environmental regulations.⁵⁵ The main role that ZABS plays in the promotion of consumer welfare is through the preparation of minimum standards for consumer products.⁵⁶ ZABS recognizes the fact that standards play a very important role not only to manufacturers for competition purposes, but to consumers as well.⁵⁷ Consumers expect certain minimum quality standards for certain products to satisfy their various tastes. Setting minimum

⁵² <https://www.cpc.org.zm/media/report/Annual-Report---2021.pdf>

⁵³ de Waal, André. "Achieving high performance at Zambia's Competition and Consumer Protection Commission." *Global Business and Organizational Excellence* 37, no. 4 (2018): 14-26.

⁵⁴ <https://www.zabs.org.zm/>

⁵⁵ *ibid*

⁵⁶ Alex, Mubita Katungu Mundia, and C. Taonaziso. "Factors leading to increase in Imported Substandard Products on the Zambian Markets: A case of Zambia Bureau of Standards." *International Journal of Economic Policy* 1, no. 1 (2021): 83-96.

⁵⁷ *ibid*

quality standard for commodities such as food products, cosmetics, drinks and bathing soaps also helps to ensure that such commodities, when manufactured, are safe for the consumers' use.⁵⁸ This entity plays a critical role in safeguarding the rights and interests of consumers in Zambia.

The Zambia Bureau of Standards (ZABS) is the statutory national standards body of Zambia established under the Standards Act, Chapter 416 of the Laws of Zambia. The main responsibilities of the Bureau are to develop product standards in Zambia and promote their use. A "standard" is a document approved by a recognized body that provides rules, guidelines or characteristics for products or related processes and production methods of common and repeated use, but compliance with which is not mandatory. It may also include or deal specifically with terminology, symbols, packaging, marking or labelling requirements applicable to products, processes or production methods. ZABS is a major provider of standards for products as diverse as mineral water, beer, soap, canned food and various household appliances. The Agency also determines and provides facilities for the inspection and testing of materials and substances used in the manufacture or processing of goods, and responsible for pre-export inspection of goods. Products certified by the bureau as meeting established quality standards will receive a certification mark or logo, allowing consumers to check whether the product meets the certification standards.

The Zambia Consumers Association (ZACA)

ZACA is also an important institution in the field of consumer protection in Zambia. The institution was first formally registered as the Zambia Consumer Protection Association under the Societies Act in 1977.⁵⁹ZACA is a voluntary organization dedicated to protecting consumer rights. It is the leading consumer protection agency in Zambia. ZACA's main activities are handling complaints and conducting campaigns. ZACA's main objective is to protect consumer rights.⁶⁰It achieves this by advocating for consumer rights and providing consumers with thoroughly tested information on products and services. ZACA educates consumers through various mediums including media with the aim of enhancing consumer welfare through sensitization, dissemination of information and capacity building of consumers, corporate entities and the government.⁶¹

The Zambia Consumers Association (ZACA) was first formally registered under the Societies Act in 1977. At that time, it was known as the Zambia Consumer Protection Association. ZACA is a voluntary organisation dedicated to protecting consumer rights. It is an independent, not-for-profit organisation with its offices in Kitwe, Copperbelt Province, Zambia. The main objective of ZACA is to protect consumer rights. It achieves this by advocating for consumer rights and providing consumers with information about its thoroughly tested products and services. ZACA educates consumers through various media such as newspapers and provides independent assessments to consumers through its e-newsletter Consumer Watch, a joint initiative of the Consumer Unity and Trust Society-African Resource Centre (CUTS-ARC) and the Consumers Association of Zambia, which aims to improve consumer welfare through sensitization, dissemination of information and capacity building of consumers, corporate entities and government.

However, another shortcoming of ZACA is the lack of power to enforce its aims and objectives. Its efforts are limited to advocating for compliance with consumer rights and it can only seek intervention from agencies such as CPCC and ZABS to enforce these rights.⁶²Therefore, without the support of such interventions, their efforts may be in vain. In conclusion, it can be said that ZACA plays an important role in promoting and enforcing consumer rights. However, the contribution of this agency in achieving its objectives is very limited due to the problems such agencies face such as insufficient funding and manpower shortages that restrict their operations.⁶³These issues, coupled with the agency's central location, make it difficult for consumers in the country's nine provinces to access it.⁶⁴Therefore, there is an urgent need to provide ZACA with adequate funding and open at least one branch in every province, or to establish a dedicated agency responsible for enforcing consumer rights.

The Telecommunications (Consumer Protection) Regulations

The Telecommunications (Consumer Protection) Regulations also forms part of consumer legislative framework in Zambia through specifically for the telecommunications sector. The Communications Authority of Zambia (CAZ) promulgated the Telecommunications (Consumer Protection) Regulations under the Telecommunications Act 1994. However, in line with global best practices, consumers are advised to first lodge a complaint with the service provider and only if dissatisfied with the outcome, lodge a written complaint with CAZ. The CAZ's specific functions include consumer protection duties, namely promoting the interests of consumers, purchasers and other users of telecommunications services (particularly persons with disabilities or of retirement age) as to the charges, quality and variety of such services and the equipment provided for such services.

CAZ ensures that consumers make informed choices and receive affordable, efficient and high-quality services. The

⁵⁸ *ibid*

⁵⁹<https://wca.org.my/about-us/our-services/international-consumer-association-info/zambia-consumer-association-zaca/>

⁶⁰Same as above

⁶¹<https://wca.org.my/about-us/our-services/international-consumer-association-info/zambia-consumer-association-zaca/>

⁶²Same as above

⁶³Mukosa, David. "A Qualitative Study in Zambia: Empowering the Regulator to Protect Consumer Rights in the ICT Sector." (2010).

⁶⁴<https://wca.org.my/about-us/our-services/international-consumer-association-info/zambia-consumer-association-zaca/>

consumer protection mandate given to CAZ by the Telecommunications Act has been implemented through the Telecommunications (Consumer Protection) Regulations, which were prepared by CAZ in consultation with stakeholders at the national level. CAZ promulgated these regulations in 2004 and revised them in 2006 after acceptance by all stakeholders. These regulations, among other things, outline consumer rights, consumer choice, complaint handling procedures and penalties. Consumer rights encompass fundamental elements such as full disclosure, privacy, high quality, reliable sources, timely and accurate billing and redress, responsive regulator, emergency services, market abuse and safety. The consumer complaints handling process is outlined in Section 10 of the Regulations. Complaints should first be made to the service provider, but if the consumer is not satisfied with the licensee's feedback, the consumer can refer the complaint to the CAZ, which will investigate the matter. The CAZ does not have to wait for consumer complaints to reach it but can take the initiative to investigate any matter related to the provision of services whenever it deems it necessary for an investigation by the competent authority. The scope of the investigation includes poor service quality due to poor technical capabilities and the failure of service providers to provide consumers with an acceptable level of service. If there is a contract between the consumer and the operator, the investigation may also cover the breach of such contract. These investigative powers are complemented by the right to impose sanctions on operators who fail to comply with the directives, and the power to suspend, revoke or refuse to renew a licence if the licensee breaches any provision of the consumer protection regulations. The Authority has from time to time warned operators that their licences would be revoked, but has never taken such action against any operator so far.

The Zambia Metrology Agency

The Zambia Metrology Agency (ZMA), formerly known as the Zambia Weights and Measures Agency (ZWMA), is a Statutory Body under the Ministry of Commerce, Trade and Industry (MCTI), established by the Metrology Act No. 6 of 2017. Its overarching mandate is to oversee the provision of Scientific, Industrial and Legal Metrology services in Zambia, in accordance with the Law. The Zambia Weights and Measures Authority (ZWMA) is a statutory body that ensures fair dealing in transactions involving measurements and provides protection for consumers in commercial transactions that require sellers to make accurate measurements. Under Section 32 of the Weights and Measures Act, Chapter 403 of the Laws of Zambia, one of the main objectives of the ZMA is to protect consumers from misrepresentations regarding weights and dimensions. However, in its present form, it would require great legal wisdom to successfully invoke the provisions of the Act in relation to ICT-related services. The Act does not contain any ICT-related unit measurements such as bandwidth and other units that serve as the basis for service charges in the ICT sector.

3. Conclusion

Zambia's consumer protection landscape, though supported by a reasonably structured statutory framework, suffers from its weak normative anchorage in constitutional law. The lack of explicit constitutional recognition of socio-economic rights, including consumer rights, has led to a regulatory framework that lacks vertical coherence. Judicial passivity, coupled with an overly formalistic approach to statutory interpretation, further entrenches this disconnect.

This article has demonstrated that constitutional rights—particularly those relating to equality, access to justice, and administrative fairness—ought to serve not merely as background principles but as substantive instruments in interpreting and enforcing consumer law. It advocates for a harmonised legal regime wherein statutory consumer protections are animated by constitutional values. Achieving such integration requires both judicial courage and legislative foresight. In this regard, the judiciary must embrace its role as a co-guardian of consumer interests through purposive and rights-sensitive interpretation. Simultaneously, constitutional reform that entrenches socio-economic rights would provide the legal basis for a consumer-centric jurisprudence.

Only through such recalibration can Zambia develop a consumer protection regime that is not only procedurally coherent but normatively grounded in constitutional justice.

Conflict of Interest

The authors declare that they have no conflicting interests

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Ethical considerations

The article followed all ethical standards appropriate for this kind of research.

References

Primary Legislation

Constitution of Zambia (Amendment) Act No 2 of 2016

Competition and Consumer Protection Act No 24 of 2010

Cases

Attorney General v Roy Clarke [2008] ZMSC 31

Godfrey Miyanda v Attorney General (1992) ZR 128 (SC)

Christine Mulundika and 7 Others v The People (1995) ZR 175 (SC)

International Instruments

United Nations, Guidelines for Consumer Protection (UNCTAD 2016)

Books

Patricia Kameri-Mbote and Migai Akech, Justice Sector and the Rule of Law (Open Society Institute 2011)

Journal Articles

Anne Peters, 'The Rise of the Constitutionalist Perspective in International Law' (2017) 22(2) European Journal of International Law 21

Frederick J Eboe-Osuji, 'Socio-Economic Rights and Constitutionalism in Africa' (2010) 3 African Journal of Legal Studies 1

Muna Ndulo, 'Constitution-Making in Africa: Assessing Both the Process and Content' (2011) 15(4) African and Asian Studies 331

Mulenga M, 'Human Dignity and the Right to Development in Zambia's Constitutional Order' (2017) 39(2) Comparative Constitutional Law Review 217

Mwansa Chitambala, 'The Challenges of Implementing Consumer Rights in Zambia: A Constitutional Perspective' (2018) 42 Zambia Law Journal 55