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P.o BOX 117 HUYE

**INSTITUTIONAL FRAMEWORK
OF CONSUMER PROTECTION
IN RWANDA**

A Thesis submitted to the school of law
in partial fulfillment of the requirements for
the award of a master's degree in law

By: USANASE Aimée

SUPERVISOR: Prof. Dr. NGAGI MUNYAMFURA Alphonse

Kigali, August 2014

DECLARATION

I, Usanase Aimee, hereby declare that this work is my original work except where acknowledged, and it has never been submitted anywhere else for a similar award or any other purpose.

Student's signature.....

USANASE Aimee

Date:.....

Supervisor's signature:

Prof. Dr NGAGI MUNYAMFURA Alphonse

Date:

DEDICATION

To all those who advocate for the well-being of all.

ACKNOWLEDGMENT

My first and deepest gratitude goes to the God Almighty, for strengthening my steps during this journey;

There are a number of people whom I wish to express my deep gratitude, who without their contribution the completion of this thesis would not have been possible.

First, I wish to thank my Supervisor, Prof. NGAGI M. Aphonse, for his dedication and unequivocal commitment. He was always there to answer my questions.

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USANASE Aimee

ABBREVIATION AND ACRONYMS

- ATM: Automated Teller Machine
- BCP: Basel Committee Principles
- BNR: Banque Nationale du Rwanda
- CAD: Consumer Affairs Directorate
- ICT: Information communication technology
- LADAMET: Laboratoire d'Analyse Alimentaire, Médecine, Eau et Toxique
- MINAGRI: Ministry of Agriculture and Animal Resources
- MINICOM: Ministry of trade and industry
- MTN: Mobile Telephone Network
- NICA: National Standards Inspectorate, Competition and Consumer Protection Authority
- NBF: Non-Bank Financial Institution
- NIC: National Insurance Commission
- PIN: Personal Identification Number
- RBC: Rwanda Bio-medical Center
- RSB: Rwanda Standard Bureau
- RURA: Rwanda Utility Regulatory Agency
- RPC: Rwanda Penal Code
- RRA: Rwanda Revenue Authority
- UNCTAD: United Nations Conference on Trade and Development
- UK: United Kingdom
- UN: United Nations
- US: United States

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ABSTRACT

Since 1995, a bold program of socio-political reforms, aimed at improving justice, governance, human resource development and democratization has been implemented in Rwanda.

This has been in parallel with economic reform. Important changes that have been made include privatization of state-owned enterprises, financial and banking sector reforms, improved public financial management and civil service reform.

Rwanda has also embarked on a program to modernize its legislative and regulatory framework for trade and investment, with the aim of fostering a modern and competitive private sector. The emergence of a viable private sector to serve as the principal engine of the economy is key to Rwanda's development.

However, enabling a good environment for consumers remain key for the sustainability of all the reforms in place.

To be more efficient we need a strong institutional framework of consumer protection in Rwanda.

This thesis focused on the following questions:

- What is the actual situation of legal and institutional frame work of consumer protection in Rwanda?
- What can be done to have strong and focused institutions in charge of consumer protection in Rwanda?

To answer these questions, the first chapter looked at general consideration of institutional framework of consumer protection; while the second chapter showcases the situation of institutional framework of consumer protection in Rwanda.

And the third chapter focuses on proposing solutions on the way consumers may be protected through the institutions.

I. PRESENTATION OF THE TOPIC

One of the important functions of the Government of Rwanda is to create an enabling environment in which enterprises operate. Clear policies and legislation have to be put in place to foster a competitive environment for business enterprises, thereby increasing efficiency in the economy to the ultimate benefit of both consumers and producers¹.

The main objective of having a Rwanda competition and consumer protection policy is therefore to improve competition as a means of assisting in the creation of markets responsive to consumer signals, and ensuring the efficient allocation of resources in the economy and efficient production with incentives for innovation.

However, as economies move progressively towards increased liberalization, certain undesirable Business practices can emerge which act as a hindrance to development and economic growth. The absence of a competition and consumer protection policy in Rwanda should create opportunities for some sectors of the business community to engage in unfair business practices, such as price fixing, speculative hoarding and collusive tendering².

Consumption is the essence of production of goods and services. The process of production would be worthless if the products of that process are not consumed

The current situation in Rwanda shows that a lot is being done to reduce with the aim to eradicate fake substandard products, even though the RSB still find during its supervision defective and adulterated products in some cases The quality of services rendered by service providers leaves much to be desired and sometimes The consumer is left in a precarious position, having to pay for shoddy services, sometimes no services, and for goods that are below the regulated standards

¹ MINISTRY OF TRADE AND INDUSTRY, Rwanda Competition and Consumer Protection Policy, Kigali, December 2010, available on http://www.minicom.gov.rw/IMG/pdf/CompetitionPolicy_September_2010_3.pdf, 21/12/2012.

² *Ibidem*

However, some framework has been institutionalized to address these consumer problems. These take the form of administrative interventions that regulate the activities of manufacturers and suppliers of goods and providers of services

No doubt consumer protection policies benefit producers as well consumers have to be protected for them to have access to products and services and be able to purchase and pay for services in a manner that preserves their dignity.

The question of consumer protection has been raised since long time ago³. The need of protecting consumers in different area grows alongside development in every area of business and service delivery institutions.

Several times service providers are protected more than consumers of their services⁴. The Government of Rwanda has set up legal framework that are protecting service providers or regulate their business but another area sometimes is poorly remembered because it is not a source of generation of income even if it is well known that access to service is also a respect of human rights.

³ A.M. NGAGI, *La protection des intérêts économiques des consommateurs dans le cadre du libéralisme économique en droit rwandais*, Butare, Editions de l'Université Nationale du Rwanda, 2005, pg. 1-4.

⁴ G. TAORMINA, *Théorie et pratique du droit de la consommation: aspects généraux et contrats spéciaux*, Librairie de l'Université d'Aix-en- Province, p.15.

II. RESEARCH PROBLEM

Consumers are at the heart of the economy. Empowered consumers are important drivers of competitiveness and public utilities and basic to the competitiveness of an economy. However, in order for consumers to be able to play this role in imperfect markets where the balance of power lies in favors of businesses and suppliers, consumers must be protected. In order to give enough space to consumers to claim the respect of their rights, there is a need of well-structured channels of discussion.

Not only being at the heart of the economy but also get protected is one of fundamental rights of consumers. In order to develop this work, some explanation on the concept of consumer protection should be made. To be more specific with the institutional framework of consumer protection in Rwanda, we will focus on the following questions:

- What is the actual situation of legal and institutional frame work of consumer protection in Rwanda?
- What can be done to have strong and focused institutions in charge of consumer protection in Rwanda?

III. AIMS AND OBJECTIVES OF THE RESEARCH

The main aim of this research is to make a general analysis of the institutional framework of consumer protection and suggest solutions to questions and problems and/or abnormalities found during our research. Therefore, we also focused on the legal framework of consumer protection in order to highlight related deficiencies.

IV. SCOPE OF THE RESEARCH

Since the scope of consumer protection is broad and wide the research will only focus on the institutional framework, in the limits of the Rwandan context. This therefore will show and analyze the actual situation and propose the way forward.

V. RESEARCH METHODOLOGY

To gather information on the key concept of the research, it is necessary to use various techniques; some methods of which include documentary and interview techniques which will be used to consult various books and other documents such as reports, newspapers and gathering information from professionals involved in related field.

The exegetical method was used in order to deepen the interpretation and make a critical analysis of different legal instruments related to the research.

In order to extend the line of thought, there was a need of using comparative method such as the perception of different authors on the issue raised in the research problem. We used also analytic and synthetic method which will be helpful to analyze all information which we used during our research.

VI. RESEARCH DESIGN

The present work is divided in chapters, apart from general introduction and conclusion,

The first chapter deals with the general consideration of institutional framework of consumer protection;

The second chapter showcases the situation of institutional framework of consumer protection in Rwanda.

The third chapter focus on proposing solutions on the way consumers may be protected through the institutions.

CHAPTER. I: GENERAL CONSIDERATION ON LEGAL AND INSTITUTIONAL FRAMEWORK OF CONSUMER PROTECTION IN RWANDA

The technological developments have multiplied the need of consumers and have changed the tradition that guided our living in the past. The rapid industrial development has not only brought new innovations and products into common use but has also affected the mode and outlook of our living. The simple goods which were catering our needs have been replaced by complex and complicated goods. In view of the socio – economic changes which have taken place in the lives of the people, it is imperative to build up a strong and broad based consumer movement which may give impetus and bring about socio- legal measures necessary for consumer protection⁵.

The march of technology affecting, for example, the foods we eat, the medicines we take, and the many appliances we use in our homes has increased the difficulties of the consumer along with his opportunities; and it has outmoded many of the old laws and regulations and made new legislation necessary⁶.

In this chapter, we focus to definition of some concepts, the background of consumer protection in Rwanda, the description of rationale of consumers' protection in Rwanda and to give overview of current legislative, regulatory and institutional framework of consumer protection in Rwanda.

Sect. 1: Definition of concepts and overview of consumer protection in Rwanda

In Rwanda as in the other African countries, people believe that to establish economic liberalization should produce the advantages to the consumers, because this gives a free competition among the economic agents and everybody has the free choice of goods on market. Unfortunately, the practices show us the contrary result, the benefit of liberalization is illusion. The market, which is the privilege place of the meeting of request and demand of the consumers

⁵ RAJENDRA KUMAR NAYAK, *Consumer Protection Law in India: an Eco- Legal Treatise on Consumer Justice*, New Delhi: The Indian Law Institute, 1991, p.3.

⁶ J.B.COOPER., *Consumer Protection via the Doctrine of Strict Product Liability*, Texas, 1972, p.4.

has the obstacles to be effective. So, the system of market based on perfect competition doesn't exist⁷.

Countries have the obligation to regulate the market and establish the competition and consumer protection policy. The main mission of the competition policy should be to improve competition as a means of assisting in the creation of markets responsive to consumer signals, and ensuring the efficient allocation of resources in the economy and efficient production with incentives for innovation.

Before making a deep analysis of this situation in Rwanda, we have to talk about to points. First of all, we would like to define some concepts which will be used throughout this work, and then the attention will be turned to historical background of consumer protection in Rwanda

§1. Definition of the concepts

It is important to clarify definitions of words and phrases that will be commonly used throughout this assignment.

A. Notion of consumer

Consumer is a broad label for any individuals, households or organizations that use any of the goods and services produced or imported in an economy, for the fulfillment of the felt needs and wants⁸. It is a term commonly used in many disciplines like economics and marketing, law and politics and intelligence studies. In economics and marketing, the "consumer" is the one who purchases and/or uses goods and services for personal use⁹.

B. The notion of Professional

The concept of professional is generally replaced by other expressions chosen by the legislature as a seller, lender, producer, businessman ..., by field of intervention under or according to the

⁷ J.CALAIS-AULOY et F.STEINMETZ, *Droit de la consommation*, 5e éd., Paris, Dalloz, 2000, p.1.

⁸ F. O, UKWEZE, "Protection of Consumers of Financial Service in Nigeria": A Review, in *Consumer Journal*, 2006, p. 108.

⁹ F. N. MONYE, *Law of Consumer Protection*, Ibadan: Spectrum Books Ltd, 2003, p.1.

preference of the author. J. HUET describes a professional as seller not only manufacturer of the thing, but one whose usual activity is the sale of such property, and some people treated." Then, the professional can be a wholesaler or retailer, for example, a dealer, as well as a manufacturer or a producer¹⁰.

§2. Overview Institutional framework of consumer protection in Rwanda

Consumers of goods and services have been exposed to myriad of problems including problem of safety and quality of product and service. Some framework has been institutionalized to address these consumer problems. These take the form of administrative interventions that regulate the activities of manufacturers and suppliers of goods and providers of services. Furthermore, the private institutions are there to contribute in enforcement of consumer legislation¹¹.

A. Public institutions

This idea of government intervention in consumer protection matter has been discussed on April 9, 1985, when the UN General Assembly adopted the UN Guidelines for Consumer Protection in its resolution 39/248. The Guidelines have since been expanded by the UN Economic and Social Council Resolution of 1999 to include issues of sustainable consumption. The Guidelines take into account the role of government in consumer protection; the point 2 of this Guidelines, require Governments to develop, strengthen and maintain a strong consumer protection policy, taking into account the guidelines... This role is mainly to put in place the policies, the laws and the institutions which have the task to implement them¹².

According to the guidelines cited above consumers' concern refers among others to the issues of defective and adulterated products, shoddy services, exorbitant prices, and other forms of unfair trade practices that impact negatively the states, and is indeed a threat to public safety. It becomes

¹⁰ HUET, *Droit civil. Les principaux contrats spéciaux*, Paris, L.G.D.J., 1996, p. 303.

¹¹ Etefia E. E, *institutional framework for consumers protection in Nigeria*, *IJALSG*, Vol.2, No.1, April 2011, p.33

¹² <http://www.un.org/documents/ga/res/39/a39r248.htm> consulted on 20th january 2014

then a priority for the state to protect itself and the population from the antics of unscrupulous producers and service providers by way of administrative intervention.

The government has sought to ensure the protection of consumer by assigning specific functions to some government institutions¹³. Furthermore, administrative intervention institutionalizing appropriate legal framework has been put in place, leading to the creation of some regulatory agencies¹⁴. The agencies are vested with authority to supervise, monitor and regulate the activities of producers and providers of services.

In Rwanda, the main public institutions which involved in consumer protection are: Rwanda Standard Board (RSB); Rwanda Utilities Regulatory Authority (RURA); Ministry of Trade and Industry and Ministry of Health. In addition, recently a Competition and Consumer Protection Regulatory Body has been established by the law N° 61/2013 of 23/08/2013 under the name “National Standards Inspectorate, competition and Consumer Protection Authority (NICA)

In 2001, Rwanda Utilities Regulatory Agency (RURA)¹⁵ was created by law n° 39/2001 of 13th September 2001 and was published in the Gazette n° 20 of 15th October 2001 with the mission to regulate certain public Utilities, namely: telecommunications network and/or telecommunications services, electricity; water; removal of waste products from residential or business premises; extraction and distribution of gas; transport of goods and persons. Indeed, before the establishment of Rwanda Bureau of Standards in 2002¹⁶, the Ministry of Trade and Industry as it has successively changed its name until today had the mission to protect consumer through the Directorate General responsible for consumer protection, Standardization and quality control of products created in 1989. In addition, in 2013, the Law established the National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its

¹³ These include ministries of Trade and Industry and Ministry of Health

¹⁴ Law n° 43/2006 of 05/10/2006 determining the responsibilities, organization and functioning of Rwanda Bureau of Standards, in O.G N0 23of 1st December 2006, the Law N°09/2013 of 01/03/2013 establishing Rwanda utilities regulatory authority (RURA) and determining its mission, powers, organization and functioning, in *O. G. n°14bis* of 08/04/2013..

¹⁵ The name of this institution was changed by the Law N°09/2013 of 01/03/2013 establishing Rwanda utilities regulatory authority (RURA) and determining its mission, powers, organization and functioning, in *O. G. n°14bis* of 08/04/2013.

¹⁶ The law n°50/2013 of 28/06/2013 establishing Rwanda Standards Board (RSB) and determining its mission, organization and functioning, in *O.G. n° 30 of 29/07/2013*

mission, organization and functioning, has been published in the official gazette¹⁷. NICA shall have the following main missions¹⁸:

- to advise the Government for initiating the development of trade policy, competition and consumer protection and product quality;
- to carry out the inspection of standards, quality, product design, production process, product, services and determination of their conformity with specific legal requirements or regulations at the point of production, distribution, sale, imports and metrology inspections;
- to monitor the implementation of trade laws, standards and principles protecting consumers;
- to establish cooperation with regional and international institutions with similar mandate;
- to establish, implement and maintain the quality management system in accordance with relevant regional or international standards;
- to monitor and protect against bad practices that undermine the normal course of competition in business activities;
- to educate and encourage consumers to know their rights.

In this effect, this protection was only compared to the theoretical support currently provided by RBS and other public institutions involved in consumer protection like Rwanda Utilities Regulatory Authority (RURA) established with the mission to regulate certain public Utilities.

Among others there is also the financial sector regulated by the National Bank of Rwanda which is called also the Central Bank of Rwanda. . Like a normal commercial bank, a central bank charges interest on the loans made to borrowers, primarily the government of whichever country the bank exists for, and to other commercial banks, typically as a 'lender of last resort'.

According to J. NDAYISABA, RURA ensures Consumer protection by enforcing consumer rights, resolving complaints from consumers; consumer awareness campaigns with the

¹⁷ Law n° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning, in *O.G. n° 43 of 28/10/2013*

¹⁸ Id. Art.4, 5

importance of empowering consumers to take action to protect themselves against some of the risks that they face on the market. Having better informed consumers who are financially literate obviously reduces the need for strong regulatory intervention; and taking action to improve customer care in sectors regulated by RURA¹⁹.

It must be a call for attention to the role of the laboratory analysis of food, medicine, water and toxic (LADAMET) supported by Ministry of Education and Ministry of health. The laboratory of the pharmacy department (faculty of Medicine), The University of Rwanda, in partnership with the University of Liege in Belgium, was founded in 1999. It aims to analyze and control the quality of food, medicines, water, carry out the toxicological expertise, to support the training of students and support research on quality²⁰

In fact, we cannot forget the contribution of private institutions which are aiming to protect the consumers' rights in the field of professionals and consumers.

B. Private institutions

Consumer associations and Non-Government Organizations can play an effective role in broadcasting information concerning the issue of consumer protection.

In Rwanda, There were several associations of consumer protection among them: ARDEC²¹ founded in 1992, ARDECO²² founded 1995, APROCOR²³ founded 1997 and ASCORWA²⁴ created in January 23, 2000, with The objectives of fighting by all legal means against the excessive rise in prices on the market; to protect the consumer's interests as far as the quality goods and services is concerned, ensure the accuracy of the weights and measures of the products on the market; to train and to sensitize the consumers in regard to the protection of their rights and the respect their duties; to find solutions to all the problems which may affect the consumers in Rwanda; and to fully participate the development of our country in partnership with others socio-economic operators.

¹⁹ J.NDAYISABA, Get to know soe of the services provided by RURA, in *Regulator, quarterly Magazine of RURA*, Volume I Issue N. 002, p28

²⁰ O.NYIRAMUZIMA, *De la protection des consommateurs des produits alimentaires en Droit rwandais*, These de Maitrise en Droit des Affaires, faculté de Droit, UNR, 2009, p.47(Unpublished)

²¹ *Association rwandaise pour la défense du consommateur*

²² *Ibid.*

²³ *Association pour la protection du consommateur au Rwanda.*

²⁴ *Association des consommateurs du Rwanda.*

ADECOR received a legal status on 27/1/2009 and was published in the Official Gazette no 24 of 15/June/2009²⁵ All those association had the aim of consumer protection in general²⁶ The associations of consumers play an essential role in the protection of consumers. Their representative play preventive role of protecting the consumers form for example using defective products and services by collaborating with state institutions such as National regulatory agencies while drafting and setting up standards that enable the consumers to use products or service of suitable quality²⁷

It is generally conceded that policy and legislation alone cannot provide a complete solution to consumer problems in Rwanda. Thus in addition to the institutional and legislative reform, we also recognize the need to support voluntary associations and promote consumer awareness and education. Indeed, effective protection of consumer rights also requires a collective action of consumer associations, professions and public agencies²⁸. According to J.A. TUYISHIME institutions in place in Rwanda, to protect the consumer regardless of public or private, their role is not decisive²⁹. There are several examples of violation of consumers rights by those typically that have a responsibility to ensure their security in their relationships every day. These are some times professionals who attach paramount importance to the gain to the detriment of the consumer.

In the researcher's view, the next chapter examined the framework institutionalized for the protection of consumers in Rwanda. In particular, its administrative and regulatory mechanisms put in place for the protection of consumers and considered the attitude of the courts in matters affecting consumers.

§3. The rationale of Consumer protection in Rwanda

The consumer is someone who acts freely and is not in any way coerced or forced into the relation. The pertinent question is whether, in Rwanda, the consumer needs to be protected from

²⁵ *Association pour la Defense des Droits des Consommateurs*

²⁶ J.A. TUYISHIMIRE, *Effectiveness of protection of consumer's rights for defective products and services under Rwandan Law*, Thesis, NUR, 2012, p.29. (Unpublished).

²⁷ *Idem*, p.28

²⁸ A.MURORUNKWERE, *Del 'évaluation du cadre juridique et institutionnel de la protection du consommateur au Rwanda*, mémoire, ULK, 2005, p.52

²⁹ J.A. TUYISHIMIRE, *op.cit*, p.29

his own ignorance and failure to exercise due diligence in freely exercising his right of choice to purchase and, or use a product or service. This is the main issue about consumer protection all over the world, should the consumer be protected when freely exercising his right of choice, what is the interest if his is protected, how and against what is he protected?

The wheel of commerce grinds when the consumer is active. When the consumer meets his needs, suppliers of goods and services are activated, and in the producers bid to meet the ever increasing needs of the consumer commerce thrives with a consequential flourishing effect on the economy. This way, the consumer is projected as the king, he activates the course of commerce, the producer and service provider would only be ready to produce goods and provide services when the consumer is ready to pay for them. But is the consumer always the king? Reflecting on this, MONYE portrays a picture of the consumer thus: “It is a truism that there is high incidence of fake and substandard products ... The problem ... cuts across various fields including ... the supply of services. Most often, consumers find themselves saddled with shoddy services, or even nonperformance. Unfortunately, they rarely seek redress due to a number of reasons, the most prominent reason being ignorance.... The supply of shoddy products and services constitutes a big problem to the consumer”³⁰.

This expression, which finds support in several commentaries³¹, reveals that the consumer is anything but the king he ought to be, that the consumer is in a sordid state. A typical legal rationale for protecting the consumer is based on the notion of policing market failures, dishonesty and inefficiencies, such as inequalities of bargaining power between a consumer and a business³². The need for the consumer to be protected therefore arises.

In addition, the vulnerability of consumers in Rwanda is characterized by lack of information and training; the main raison of this situation is that most of them are illiterate, and the professionals are not willing to provide the information sought³³.

Consumer protection, term is applied to the efforts of government, public-interest organizations, individuals, and businesses to establish, protect, and enforce the rights of people who buy products such as food and automobiles or services such as health care and insurance.

³⁰ F. N. MONYE, *op.cit*, p.1.

³¹ I. M CHUKWU, “Advertising Practice and Consumer Protection, in *Consumer Journal*”, 2005, p.137.

³² BOURGOIGNIE, *Éléments pour une théorie du droit de la consommation*, Bruxelles, 1988, p. 51.

³³ A.M.NGAGI, *Competition law and consumer protection*, Course syllabus, NUR, Academic Year 2011, p. 56.

The problems and challenges faced by Rwanda with regard to consumer protection include problems with enforcement of laws; impact of illiteracy; access to justice limitations; lack of effective education and awareness programs on consumer protection; and issues of institutional support for the enforcement of consumer rights.

However, the basic rights of consumers, as set forth by U.S. President John F. Kennedy in his 1962 message to Congress on consumerism, are the following: the right to safety; the right to be informed; the right to choose; and the right to be heard. Each of these rights is of major importance in the objectives of the consumer-protection movement³⁴;

There is a need to talk about legal and institutional framework of consumer protection in few words as provided for by the government of Rwanda for effective consumer protection.

Sect. 2: Overview of the current legislative and regulatory framework of consumer protection in Rwanda

The role of lawmakers in the area of consumer protection is to put in place the laws and regulations. This section describes the law on competition and consumer protection in Rwanda and then briefly describes some other laws and regulation with significant consumer protection in Rwanda.

§1. The Law n°36/2012 of 21/09/2012 relating to competition and consumer protection

In Rwanda suppliers are employing an increasingly wide range of novel business devices and techniques for the expansion of their businesses and the promotion of sales. More aggressive forms of advertising and marketing are being employed, involving direct appeals to consumers and the giving of firm assurances on the performance and quality of goods. Considering the distinct influence of such business activities on consumer welfare and the limitless opportunities for exploitation, dishonesty and deception, there is the need for strong legislative controls to protect the public against unfair business practices which stifle competition and harm consumer

³⁴ <http://www.getareferral.com/Moreconsumer.cfm> , Consulted on march,2014

interests. In the Rwandan law, Law n°36/2012 of 21/09/2012 relating to competition and consumer protection (art.6-32) is the principal legislation which regulates and controls unfair business practices³⁵. It is the first specific law on competition and consumer protection in Rwanda. According to Article one of this Law, its principal aims is to encouraging competition in the economy by prohibiting practices that undermine the normal and fair course of competition practices in commercial matters. It also aims at ensuring consumer's interests promotion and protection.

The law n°36/2012 of 21/09/2012 relating to competition and consumer protection provides all those rights to the consumers (article 33-56). The legislation is relatively new and it remains to be seen what impact it will have on business practices and consumer protection in Rwanda.

§2. Other Laws having Consumer Protection Implications in Rwanda

Even if Rwandan has a specific legislation governing competition and consumer protection, there are also same laws and regulations related to consumer protection especially in the domain of manufacturing and trading of same consumption products³⁶. The consumer protection should also found in others laws and regulations but their main aims are not the protection of consumer. It is for example, the Civil Code³⁷, Penal Code³⁸, Civil Procedure Code, Administrative Law³⁹ and

³⁵ Law n°36/2012 of 21/09/2012 relating to competition and consumer protection has been published in Official Gazette n° 46 of 12/11/2012. It is the first specific law on competition and consumer protection in Rwanda.

³⁶ Those are : le décret du 26juillet 1910 sur la fabrication et le commerce des denrées alimentaires ; l'ordonnance du 17 octobre 1911 sur l'emballage, la préparation et la fabrication des denrées alimentaires ; l'ordonnance n° 74/453 du 31 décembre 1952 sur la préparation et la salubrité des denrées alimentaires ; l'ordonnance du 20 octobre 1911sur la fabrication et le commerce des pulpes et sucs végétaux conserves des fruits, confitures, gelées et sirops ; l'ordonnance n° 41/412 du 2 décembre 1983 sur la commerce d'huiles de table ; l'ordonnance n° 41/424 du 24 aout 1959 sur le commerce les œufs de coque ; l'ordonnance du 22octobre 1911 sur la fabrication et la commerce d'alcools-eau-de vie, vins et liqueurs...

³⁷ For example the analyses of articles 81, 321,323 CCBIII, reveals that the consumer of a product with hidden defects under Rwandan Law has a right to return the defective product to its seller and be refunded the purchase price, in addition to reimbursement of purchase price, the consumer of a product with defects has a right to claim interests and other expenses incurred in relation to defective products. Civil liabilities of damages caused to the consumer by producers are also provided by articles 258 and 259 of CCBIII.

³⁸ Article 598 of Organic Law N° 01/2012/OL of 02/05/2012 institute Rwandan Penal Code, state that "any person who manufactures, sells, prescribes a drug, harmful products, cosmetics or body hygiene and other herbal substances prohibited in healing practice, shall be liable to a term of imprisonment of six (6) months to two (2) years and a fine of one million (1,000,0000) to five million (5,000,0000) Rwandan francs or one of these penalties."

³⁹ Administrative law concern also the consumer, in the area of public services like the services provided by EWSA, Public Hospitals,...

fiscal Law⁴⁰ ...which the court should applied in resolution of issues of consumer protection. In the following line we have to talk about only the law n° 15 of 28 January 2001 on the Organization of Domestic Trade and consumer protection, the Rwandan Civil Code and Rwandan Penal Code.

A.The law n° 15 of 28 January 2001 on the Organization of Internal Trade

Before the implementation of law on competition and consumer protection, the issue of consumer protection was covered by law n° 15 of 28 January 2001 on the Organization of Domestic Trade, which establishes liberalization and prohibits dishonest dealings, express or tacit agreements that aim to impair the free movement of goods and services, obstruct the lowering of prices, or encourage artificial price increases in markets or in the event of competition.

It also prohibits the conclusion of secret agreements on the formation of uniform prices that are not the outcome of the normal interaction of supply and demand, and any other unlawful practices to establish monopolistic markets. In Rwanda, there are few markets with a single firm monopoly. Most markets can be characterized by imperfect competition, which may take different forms, according to the relative imperfection of competition: duopoly, oligopoly, monopolistic competition. Article 5 of above mentioned Law establishes consultation (on marketing and prices) between the Government and operators in the sector concerned for the purpose of price-fixing. Consultation consists of meetings between economic operators using the marketing channels of the product in question and government representatives. The price agreed on must accommodate both the normal interests of traders and the concerns of consumers.

⁴⁰It is for example VAT which concern the consumer because it is incorporate in price of goods and services and the producers or seller attempt to increase the price of goods and services (law n° 06/2001 of 20/01/2001 on the code of value added tax).

B.The general provisions of Rwandan Civil law which have implication on consumer protection

Generally, the consumer is the one who purchases, acquires or uses a product or service for personal use⁴¹. In this context, the consumer is essentially a contractor. He puts the act of consumption in various ways, sometimes he acts as buyer, borrower, tenant, or even insured and his legal situation is all the time governed by a contract⁴². Yet civil contract law contains a number of provisions providing protection to the consumer-contractor as at the conclusion as well as the performance of the contract. It contains also the provision which should be applied when the product or services caused the damages to the consumers.

The autonomy and equality of the contracting parties are the fundamental principles arising from the individualistic approach that has guided the development of the Civil Code in the nineteenth century. The fundamental principle that "Contracts made in accordance with the law shall be binding between parties."⁴³ is still required and the contract still appears today as one of the highest manifestations of human freedom, which is ultimately nothing more than the ability to choose their string.⁴⁴

According to the principle of autonomy, the law of obligations provided a safeguard, to file a case of nullity if the consent of the contractor was imperfect⁴⁵. Thus, for his effective autonomy, consumer must be informed beforehand. Therefore, if inaccurate or ambiguous were given, the contract may be cancelled because of fraud, error or at least a *culpa in contrahendo*. Similarly, if the consumer has not been informed previously, because the information was incorrectly given, she or he can invoke Article 279 CCL III which states that "Any obscure or ambiguous agreement is interpreted against the seller."

At the stage of performance of contract, the Civil Code provides some general rules of contractual liability that protect the consumer. In a contract of sale, one of the usual contracts concluded by

⁴¹ A.M.NGAGI, *op.cit.*p.80.

⁴² M. FONTAINE, "Rapport sur la protection du consommateur en droit civil et en droit commercial belge", *La protection des consommateurs*, Travaux de l'Association H.CAPITANT, Paris, Dalloz, 1975, pp. 33-63.

⁴³ Art.64 of law n° 45/2011 of 25/11/2011 governing contracts, in O G. n° 04bis of 23/01/2012, corresponding to the Napoleonic Civil Code article 1134.

⁴⁴ A. SERIAUX, *Droit des obligations*, Paris, PUF, 1992, n° 5, p. 22.

⁴⁵ Art. 4 to 63 of law n° 45/2011 of 25/11/2011.

the consumer, the buyer has the right of contractual liability, if the seller fails to meet his obligations, for example by delivering the goods agreed. It can, for example, to oppose the *exceptio non adimpleti contractus*, seek enforcement of the obligation or the termination of the contract and claim damages and interest⁴⁶.

The special rules of the Civil Code in sale contract (Art. CCBIII 263 and the followings) protect the buyer of real property in various ways, mainly by requiring the seller to deliver the thing sold (Art. 302 CCBIII), to guarantee the buyer against hidden defects (Art.318 to Art.328CCB III) and against any eviction (Art. 303, 314, 318 and 376, 3° CCBIII).

In the Rwandan Civil Code Book III based also on Articles 258,259 and 260 arise three types of tort liability. It indicates personal liability, vicarious liability or liability of others and liability of things. Although those articles are general and do not specifically provide the effectiveness protection of consumer's rights, they can still be applied to product liability for persons involved in the supplies of defective goods or services which have caused the damage to the consumers⁴⁷.

C.The Organic Law N° 01/2012/OL of 02/05/2012 instituting the Rwanda Penal Code

The penal law should be seen as the legal instrument for public order protection against the criminal act which should destroy or block the development of a state. This legal mechanism is used in order to punish and to intimidate the criminals⁴⁸.

On regarding of this, the criminal law has the important role in protection of consumer's rights because it gives the provisions which imposed the punishment to the professionals or producers when they disregard their obligations⁴⁹. It intervenes on consumer law by the provisions which provide penal punishment or the protection measure. Several penal provisions intervene in seller contract, marketing, disloyal competition, the matter of price...and provide the punishment⁵⁰. In addition, the provisions that punished the theft, extortion, fraud, deceit, Breach of trust and

⁴⁶ A.M.NGAGI, *Cours de droit civil des obligations*, éd. Université Nationale du Rwanda, 2004, pp. 100-114.

⁴⁷ R.RANGERMAN, *Countering Affirmative Strict to Defence Product Liability*, 1st ed. NY publishing limited, 4506 North 12th street Phoenix, 1991, p.138.

⁴⁸ H.BEKAERT, *Introduction à l'étude du droit*, Bruxelles, 19, éd. Bruylant, n° 16.

⁴⁹ G.PINDIMBENSA KIFU, *Le droit Zaïrois de la consommation*, Kinshasa, Ed. CADICEC, 1995, p. 68.

⁵⁰The punishment should be fine, publication of the penalty, dissolution of establishment or company, temporary prohibition or for a long time from carrying out one or several activities in a specific zone, placement under judicial supervision ...

vulnerability of a person, destruction of property ...have not only the role of protection of public order in general but also the consumer's rights protection⁵¹.

The Rwandan criminal code (RPC)⁵² punished the acts which should harm the consumer's rights. Same penal provisions concern the protection of health and physical integrity of consumers, and others concern the protection of economic interests. It is for example the provisions punishing poisoning (Art.144 RPC), involuntary manslaughter (Art.157 RPC), and assault and battery resulting from lack of foresight and precaution (Art.158 RPC)... on one hand protect the health and physical integrity, and the theft (Art. 300-313 RPC), extortion (Art.299 RPC), Fraud and deceit (Art.318-322 RPC), Breach of trust and vulnerability of a person(Art. 322-324 RPC),... which protect the consumer against the fraud of professionals on the market of goods and services, on other hand. There are also the provisions (Art.377-383) used in fighting against the breach of liberty of commerce and unfair competition.

In order to apply the texts of laws and the regulatory measures taken by the leaders and law makers, there must be the institutions undertaking it, or by their control or by the implication of penalties to those that compromise the rights of consumer.

⁵¹ A. DEVREUX, " Rapport sur la protection du consommateur en droit pénal belge ", *Travaux de l'Association H.CAPITANT, La protection des consommateurs*, Paris, Dalloz, 1975, p.289.

⁵² The Organic Law N° 01/2012/OL of 02/05/2012 instituting the Rwanda the penal code, in *O. G. n° Special of 14 June 2012*.

CHAPTER II: ASSESSMENT OF INSTITUTIONAL FRAMEWORK ON CONSUMER PROTECTION IN RWANDAN LAW

This chapter reviews the institutional framework on consumer protection in Rwandan law and assesses the role and impact of selected institutions involved in the protection of consumer rights. The chapter also examines various approaches to consumer protection and assesses their strengths and weaknesses as a basis for making recommendations on the optimum approaches to be adopted for the effective promotion of consumer protection in Rwanda. Some comparative analysis is conducted based on the experience and best practices of other jurisdictions in the area of consumer protection.

However, in this study, the writer tries to focus only on some regulatory bodies. This is because these regulatory bodies are more concerned with consumer protection than any other regulatory bodies do. Their activities are directly related to the protection of consumers. The activities of these regulatory bodies focus on regulating food, medicine, and quality and safety standardization of goods and services.

Sect. 1. The Assessment of the role and the impact of public institutions in consumer protection domain

In assessing the public institution framework on consumer protection, the study focuses on three major areas in its review and analysis. These are: Framework on Utilities (Electricity, Water and Telecommunications); Framework on Banking and other Financial Services, Framework on Health Delivery, Food and Drug Safety.

§1. The institutional framework on utilities in Rwanda

The major regulatory institution in Rwanda that oversees the operations of utilities (electricity, water and telecommunications network and/or telecommunications services, removal of waste products from residential or business premises, extraction and distribution of gas, transport of

goods and persons) is the Rwanda Utilities Regulatory Authority (RURA) as it is noted above. This institution works closely with the relevant sector ministries to administer the operations of the utility companies.

A. The role of the Rwanda Utilities Regulatory Authority (RURA) on consumer protection in Rwanda

The Rwanda Utilities Regulatory Authority (RURA) is an independent body established under the law n° 39/2001 of 13th September 2001. This law has been reviewed by law n°09/2013 of 01/03/2013 establishing Rwanda utilities regulatory authority (RURA) and determining its mission, powers, organization and functioning. RURA has the mission of regulating and supervision the provision of utility services in the country. RURA is also committed to ensuring the development and delivery of the highest quality of utility services to consumers, and aims to achieve efficiency, reliability and equity in the provision of these services⁵³.

The main mission as provided by the law are: to set up necessary guidelines in order to implement laws and regulations in force; to ensure compliance by public utilities with the provisions of laws and regulations governing the regulated sectors in an objective, transparent and non-discriminatory manner; to ensure the continuity of service delivery by the licensed or authorized service providers and the preservation of public interest; to protect users and operators interests by taking measures likely to guarantee effective, sound and fair competition in the regulated sectors within the framework of applicable laws and regulations; to protect and promote consumers' interests;⁵⁴

Though his mission, RURA is required by law to regulate, manage and develop the utilization of energy resources in Rwanda; to provide the legal, regulatory and supervisory framework for all providers of energy in the country: specifically by the granting of licenses for the transmission, wholesale, supply, distribution and sale of electricity and natural gas, refining, storage, bulk distribution, marketing and sale of petroleum products and related matters. RURA develops

⁵³ See Art.1 of law n°09/2013 of 01/03/2013 establishing Rwanda utilities regulatory authority (RURA) and determining its mission, powers, organization and functioning, in *O.G* No 14 Bis of 08/04/2013.

⁵⁴ Art 4, *op. cit.*

standards of performance for the supply, distribution and sale of electricity or natural gas to customers by licensed public utilities⁵⁵.

RURA ensures Consumer protection by:

- Enforcing consumer rights by resolving complaints from consumers,
- Consumer awareness campaigns with the importance of empowering consumers to take action to protect themselves against some of the risks that they face on the market;
- Taking action to improve customer care in sectors regulated by RURA⁵⁶.

Regulatory accountability involves regulators having appropriate procedures to channel consumer complaints, to educate consumers regarding their rights and obligations as well as to protect consumers in case of market failures. RURA, through its Consumer Affairs Directorate (CAD), deals with consumer issues on a daily basis⁵⁷.

To enhance their regulatory role, regulators should endeavor to establish and sustain a fair investment environment, promote competition, protect consumers against market players' abuses and educate consumers about competition⁵⁸. In order to achieve their objectives, regulators need to be independent, have the ability to enforce rules, be competent, accountable and transparent.

§ 1. The assessment of the role and the impact of Rwanda Utilities Regulatory Authority (RURA) on consumer protection in Rwanda

In most countries, Rwanda included, Regulatory Authorities were created to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests⁵⁹.

An attempt is made to assess the institutional framework for the regulation of utilities and how this impacts on consumer protection in Rwandan law. This involves a review of the roles of institutions responsible for overseeing the utilities, their functions and challenges and attempts to

⁵⁵ J. NDAYISABA, *op. cit.*, p.27.

⁵⁶ J. NDAYISABA, *op. Cit.*, p.27.

⁵⁷ *Id.*

⁵⁸ B.W. HARVEY and D.L.PARRY, *The Law of Consumer Protection and Fair Trading*, Butterworth, London, 1992, p.20.

⁵⁹ See United Nations Conference on Trade and Development, Best Practices for defining respective competences and settling of cases, which involve joint action of competition authorities and regulatory bodies of 19 August 2004, TD/B/COM.2/CLP/44.

ascertain how regulatory functions may be enhanced to promote consumer protection in Rwanda.⁶⁰

RURA has so far issued many guidelines and standards in order to guarantee the fair competition and consumer protection in Rwanda: for example in communication domain⁶¹, ICT⁶², transport⁶³, Energy, water and sanitation⁶⁴.

In addition, RURA has taken so many administrative decisions⁶⁵, the recent ones provide penalties to MTN Rwanda because of defect service which had been provided to consumers of its products⁶⁶.

Briefly, RURA has four high level objectives for consumer protection, which are creating effective competition which in the long run benefits consumers, making sure that consumers are well informed on purchase decisions, and adequately protected, as well as preventing anti-competitive practices. RURA embarks on all issues because there is increased market liberalization in Rwanda and competition is now on price, range and quality of services⁶⁷.

In the field of enforcing consumer rights by resolving complaints from consumers, RURA had dealt with the consumers' complaints. For example from January to December 2010, RURA through its consumer Affairs Directorate, received 17,057 complaints among which 13,816 representing 81% were resolved and 3,241 representing 19% of the complaints received were in

⁶⁰ D. RWABIKUMBA, "Tracking and Testing to Reduce Fuel Adulteration in Rwanda", in *The Regulator* - Volume I Issue N°: 002 June 2011, p.16.

⁶¹ RURA, Regulations on Promotions by Telecommunications Operators issued by Regulatory Board, may, 2011, RURA, Guidelines for Sitting and sharing of Telecommunication Base Station Infrastructure, Apr., 2011, RURA, Board Demission on the charging mechanism of Numbering Resources, oct., 2010.

⁶² RURA, Guidelines for limiting human exposure to Electromagnetic Fields (EMF), June 2009; RURA, Guidelines for Internet resources management and allocation in general and .RW domain in particular, Sept. 2009; RURA, Guidelines for Rwanda Internet Exchange point (RINEX) management, Sept. 2009; RURA, Guidelines for Internet resources management and allocation in general and .RW domain in particular, Sept. 2009; RURA, Guidelines for broadband Internet quality of service, Sept. 2009 ; RURA, Guidelines on the operations of Internet Cafes in Rwanda, Nov., 2009.

⁶³ RURA, *regulation on public transport by load in Rwanda*, Aug. 2011; RURA, Guidelines governing Boat driving in Rwanda, Nov. 2009; RURA, Decision regarding the functioning of driving schools in Rwanda Sept. 2009; RURA, Decision governing the licensing of freight forwarders and air travel agents Sept. 2009; RURA, Routes for public transport in Kigali City March 2009; RURA, Code of Conduct for boat drivers of public passengers and cargo boats in the Republic of Rwanda, Nov. 2009.

⁶⁴ RURA, Board decision n° 007/ENER-RURA/2012 of 19th June 2012, reviewing the end user electricity tariff in Rwanda; RURA, Directives on Minimum Requirements for Liquid Wastes Disposal and Treatment Nov. 2009; RURA, Standards on the Management of Waste Disposal Sites/Landfills, Nov. 2009; RURA, guidelines on solid wasters management, July 2009; RURA, Guidelines on Required Minimum Service Level for Water Service Provision, July 2009.

⁶⁵ RURA, Withdraw of Radio Communication License from Comium Rwanda LTD , June. 2011; RURA, Withdraw of ISP and Radio Communication Licenses from Star Africa Media LTD, June. 2011; Enforcement Notice To RWANDATEL S.A., Feb. 2011; RURA, Enforcement notice to AUGERE Rwanda limited ltd., Sept. 2010; RURA, Enforcement notice to COMIUM DATA RWANDA LTD, Sept. 2010; RURA, Enforcement notice To Star Africa Media Ltd Sept. 2010; RURA, Measures taken to the Company MTN Rwandacell S.A.R.L for failure to its license obligations, Aug. 2008; Withdraw of ISP license from Access Information System (Axis) S.A.R.L Aug. 2008; RURA, Penalties taken to the company TERRACOM S.A.R.L for failure to its obligations June 2007; RURA, Measures taken to the company Rwandatel S.A for failure to its obligations June 2007.

⁶⁶ The expression the "telephone number you call is not available, please try again letter" are well known by the MTN service's consumers, not for the good service given to them, but for the imperfect ones.

⁶⁷ Interview with de

the process of being fully resolved. Majority of the complaints received were concerning consumer rights and quality of service delivered, especially in telecommunications and transport sectors⁶⁸.

Most of the complaints in the information technology (ICT) sector emerge from internet quality, service overcharge, maintenance problems, inaccurate billing, abrupt disconnections and contracts terms and conditions⁶⁹.

With regard to complaints received in transport sector, a great number of them were related to transport overcharges, loss of luggage, poor customer service and breach of contracts some operators have with their customers⁷⁰. In the domain of consumer's information, RURA made consumer awareness campaigns with the importance of empowering consumers to take action to protect themselves against some of the risks that they face on the market. RURA organize on a regular basis, public awareness initiatives including talk shows on all regulated sectors⁷¹.

In order to deal with consumer issues effectively, RURA provided consumers of the utilities it regulates with means to communicate their complaints on a daily basis, these complaints were received through a toll free line, online complaint forms and written letters.⁷²

The challenges facing RURA today is related to the decision made regarding consumers' rights without collaboration of stakeholder mainly the consumers 'association, the professional group, the public institutions... For example, in transportation domain, RURA together with the city of Kigali had made a decision in the objective to improve public transport in Kigali city. This was in accordance with the Public Transport Policy and Strategy for Rwanda. This public transport reform took effect from 30th August 2013 and four companies have been licensed to operate in four separate zones. According to the transporters and consumers, the objective of this reform has not been achieved⁷³. Some transporters said that there is lack of real competition, and this causes the bad service to the transports 'consumers'⁷⁴.

⁶⁸ J.NDAYISABA, More than 17 000 consumer complaints have been received and handled in 2010, in *The regulator*, quarterly magazine of Rwanda Utilities Regulatory Agency, vol.1, n^o 001, 2011, p.26.

⁶⁹ J.NDAYISABA, *op.cit.* , p.26.

⁷⁰ J.NDAYISABA, *op.cit.* , p.26.

⁷¹ RURA, Report from January 2009 - June 2010, p. 40.

⁷² http://www.rura.gov.rw/index.php?option=com_content&view=article&id=46&Itemid=293

⁷³ According to the communication of Kigali City available on <http://www.kigalicity.gov.rw/spip.php?article1174> , 5th oct.20013, The aim of the reform was:

- a) Redesigning public transport routes in order to reduce distances walked by passengers to the nearest bust stop;
- b) Increasing reliability of public transport services through establishment of scheduled public transport services ;

Nevertheless, in view of J.A. TUYISHIMIRE, other main obstacle of RURA is about the lack of decentralization of regulatory bodies in different areas where consumers continued to be victims for defect product and services⁷⁵. The effectiveness and incentives of regulations are also hampered by limitations in the availability and access to information and data on economic and social parameters of national development. It is imperative that they should be a commitment to operating as transparently as possible for all actors to appreciate how decisions are taken and enforced, whilst at the same time demonstrating considerable expertise in the industry they oversee. Finally, regulatory bodies should display significant levels of efficiency in their businesses if they are to ensure reciprocal behaviors from utility service providers.

§ 2. Institution framework on consumer protection in banking and other financial services in Rwanda

This section of this research seeks to assess the institutional framework for the regulation of banking and other financial institutions and its impact on consumer protection in Rwanda. The review includes an examination of the institutions responsible for overseeing the banking and financial industry, their functions and challenges and how their regulatory functions may be enhanced to promote consumer protection in Rwanda. The major regulatory institutions in Rwandan law that oversees banking and other financial services is the National Bank of Rwanda. The National Bank of Rwanda⁷⁶ is mandated⁷⁷ by Law no. 55/2007 of 30th November 2007 to supervise financial institutions (Banks, Insurance companies and Pension schemes), and in particular Law No. 52/2008 of 30th September 2008 to supervise the insurance sector and the rationale of this responsibility is to protect the public interest by ensuring that the supervised institutions are financially sound and stable.

c) Encouraging the use of modern, smart and bigger buses appropriate for public transport along congested trunk roads in the City of Kigali, and

d) Putting in place a clear and favorable regulatory framework that encourages investment in public transport as a lucrative sector in the City of Kigali.

⁷⁴The information risen for on BBC GAHUZAMIRYANGO radio or in http://www.bbc.co.uk/gahuza/audio_console.shtml?programme=glak0530_sat , on 5th, October 2013.

⁷⁵ J.A. TUYISHIMIRE, p. 48 unpublished.

⁷⁶ referred to as « Central Bank » or “BNR”

⁷⁷ Law n° 55/2007 of 30/11/2007 governing the central bank of Rwanda, in *O.G*, Special number of 20/2/2008.

§ 3. The role of BNR on consumer protection in the domain of banking and other financial services

The primary goal of central banks is to provide their countries' currencies with price stability by controlling inflation. A central bank also acts as the regulatory authority of a country's monetary policy and is the sole provider and printer of notes and coins in circulation⁷⁸.

Central banks regulate banks, license their owners, supervise their operations, and keenly observe their liquidity⁷⁹.

The first objective is to maintain financial system stability with a view to encouraging and promoting the development of the productive resources of Rwanda; The second objective is to promote the access to finance whilst strengthening a stable and sound financial system.

In this paragraph we try to analyze the practical aspect of National Bank of Rwanda (BNR) in the field of consumer protection in banking sector in one hand, and financial services in other hand.

1. Assessment of the role of BNR on consumer protection in banking sector

Through its mandate of licensing and supervision of the banks, National Bank of Rwanda should take part in the role of consumer protection. The National Bank of Rwanda has been given the mandate to license and supervise banks under the Central Bank law n° 55/2007 of November 30th 2007 specifically in its Articles 53, 56, 57 and 58. The legal and regulatory framework for licensing and supervision financial institutions is detailed in the Banking law n° 007/2008 of June 8th 2008. Furthermore, the National Bank of Rwanda licenses and supervises banks in accordance with the Core Principles for Effective Banking Supervision (BCP's) issued by the Basel Committee on Banking Supervision⁸⁰.

BNR seeks to ensure that the country is either not over banked with too many financial institutions which may result in unsound banks and credit institutions, nor under banked with too

⁷⁸ F.NTEZIRYAYO, *Le cadre juridique de la réglementation bancaire et de l'accessibilité au crédit en droit Rwandais*, Kigali, Pallotti-Press, p. 34.

⁷⁹http://www.streetdirectory.com/travel_guide/1801/business_and_finance/bankers_banks_the_role_of_central_banks_in_banking_crises.html consulted on August 20th, 2014

⁸⁰ BNR, bank licensing policy, 2008, p.4, in <http://41.74.165.238:8081/docs/publicnotices/Bank%20Licensing%20policy.pdf>, available on 7/10/2013.

few financial institutions which may result in inadequate access to credit or inadequate financial services to the general public⁸¹.

It has been noted that for a long time governments have failed to establish a deliberate policy or legislative framework for the direct protection of bank customers⁸². In Rwanda the legislative trend shows that even though considerable legislative attention has been given to the regulation of the banking industry, is not enough, if anything has been done to protect the rights of the consumers. Banking statutes tend to deal with the financial soundness and stability of banks (which ultimately insures to the benefit of customers or consumers), but do not directly address the need for protection of customers' rights.

In Rwanda, there is therefore a significant gap in the regulatory regime and institutional framework on banking, which calls for legislative intervention to protect the bank customer's rights. A review of banking legislation shows that the interests of bank customers, both literate and illiterate, have not benefited from any serious policy or legislative action. Bank customers therefore suffer from various forms of injustice and unfair treatment in their contractual relationship with banking institutions.

The first of them relates to the non-disclosure of vital information to the customer at both the pre-contract stage (before an account is opened for the customer) and during the operation of the account. It has been noted that in most of its transactions with customers, banks routinely fail to disclose to the customer the precise terms and conditions of the contract being entered into or any changes to the terms; the type and nature of products available to the customer; the relevant fees, charges and commissions; the legal rights and obligations of the customer under the contract; complaint handling procedures etc..⁸³. The average bank customer is therefore often ignorant of the terms and conditions of the contract he enters into with the bank and not enough is done by the Central Bank to rectify this situation⁸⁴.

Again, most banks engage in unconscionable lending transactions manifested by high borrowing costs and interest rates, harsh terms and conditions, often tainted with inequality of bargaining

⁸¹ BNR, *op.cit.* p.5.

⁸² *Id.*

⁸³ F.NTEZIRYAYO, *op.cit.*, Kigali, Pallotti-Prese, p.409.

⁸⁴ *Ibid.*

positions of the parties and in some cases undue influence. Many lending transactions are conducted on a take-it-or-leave-it basis, leaving customers with very little choice to negotiate the terms of the transaction⁸⁵.

Some banks give inadequate attention to customer privacy and confidentiality, especially at the rural and community banks⁸⁶. Poor attention is given to low-income customers. In some cases banks breach customers' instructions or mandate with impunity (e.g. making of transfers to wrong persons, honoring cheques with forged signatures). It has further been noted that some banks pay very little attention to customer services and have weak internal dispute resolution mechanisms, thus resulting in a situation where customers who have been victims of abuse, fraud or incompetence have immense difficulty in seeking redress⁸⁷.

The introduction of new technology involving the use of the Internet and telecommunications in banking has also introduced new forms of fraud and crime within the banking industry. Emerging forms of banking including the use of the Automated Teller Machine (ATM) and electronic banking calls for regulation⁸⁸. It has been noted by a Ghanaian court that in developed countries legislation has been passed to regulate the relationship between the bank and the customer because of the peculiar legal problems posed by the use of ATM (machines)⁸⁹. In this case, the plaintiff joined the Automated Teller Machine (ATM) fast cash withdrawal system in 1997 and was issued with a Personal Identification Number (PIN) and a money link card. He obeyed the instructions accompanying the PIN. He made a few withdrawals with the card and never revealed the PIN to anyone and never parted with his card. In 1999 the plaintiff wrote a number of cheques which were not honored by the defendant bank. He subsequently requested for his statement of account and was shocked to realize that various ATM withdrawals had been debited to his account. It was the plaintiff's case that during the period the unauthorized⁹⁰.

⁸⁵ F. NTEZIRYAYO, *op.cit.* p. 410.

⁸⁶ Interview with S. BISENGIMANA, Client of *Banque Populaire du Rwanda*, branch Kamembe, on 15 December 2012.

⁸⁷ Interview with J. KOMEZUSENGE, Advocate and member of Kigali Bar Association, he is also client of Bank of Kigali, on 23 December 2012.

⁸⁸ In Rwanda, there aren't law regulating the matter of Automated Teller Machine (ATM) and electronic banking. The directive n° 01/2013 of 19/4/2013 of National Bank of Rwanda on monitoring of Automated Teller Machines is the only legal instrument in this domain.

⁸⁹ Tsegah v. Standard Chartered Bank (Ghana) Ltd, High Court, Accra Suit No. C.602/99.

⁹⁰ *Id.*

ATM withdrawals were made, on the new car park close to the High Street branch of the bank had rendered parking in the area very hazardous and he had therefore ceased going to the bank to make ATM withdrawals and rather made withdrawals by cheque. Within that same period too, he was hospitalized for a while. The defendant bank argued that the withdrawals in question were made with the Plaintiff's ATM card and personal identification number and that the withdrawals could not have been made without the Plaintiff's card. The bank further argued that the Plaintiff had compromised his card and therefore the amount debited to his account was genuine and not fraudulent. Defense Counsel also argued that the Plaintiff's claim could only be founded in the law of contract and by the terms of that contract that came into effect between the parties when the plaintiff joined the ATM scheme, the Plaintiff agreed to accept full responsibility for all transactions processed from the use of the ATM card⁹¹.

In its decision, the court noted that electronic banking is a relatively new scheme in the country and that there were no local judicial precedents involving electronic banking. The Court therefore relied on the common law approach to the issue and made references to decisions from other common law jurisdictions. The court also noted, as the defendant bank had admitted, that ATM machines are not foolproof. The plaintiff's integrity was also not in doubt. The court rejected the argument by the Defendant bank that by the terms of the contract existing between the Plaintiff and Defendant it was absolved of all liability on the grounds that no evidence was adduced on the existence of any such contract. The court further noted that in those developed countries where the scheme has been operating for a while, legislation have been passed to regulate the relationship between the bank and the customer because of the peculiar legal problems posed by the use of ATM machines⁹².

The court made reference to provisions in the UK Unfair Contract Terms Act of 1977 that seek to regulate contractual terms that banks may seek to impose on customers in relation to electronic banking services. His Lordship the Judge expressed the need for similar legislation to be passed in Ghana to protect both the customer and the bank in the provision of electronic banking services. The court added that if the banking sector wished to be abreast with the times in electronic banking, then care must be taken to introduce the safety measures that go with these electronic devices. The Court found that the contractual terms in the document tendered by the Defendant

⁹¹ *Id.p??*

⁹² Tsegah v. Standard Chartered Bank (Ghana) Ltd.

bank as binding on all its ATM users, were unreasonable and unfair in this era of electronic fraud. It was held by the court that as an international bank, the Defendant was aware of the hazards that go with electronic banking all over the world and therefore to neglect to introduce safety measures that go with ATM machines and yet continue to operate the system in the face of numerous reported instances of fraudulent withdrawals was very irresponsible on the part of the bank⁹³.

Emerging forms of banking including the use of the ATM and electronic banking call for direct regulation. In Rwanda, there is currently no specific legislation to regulate the relationship between the bank and the consumer or to address the peculiar legal problems posed by electronic banking procedures.

For the BNR, the protection of financial consumers is not his explicit goal but prudential supervisory measures are seen as protecting consumers indirectly and implicitly. BNR is responsible for ensuring if financial institutions are in compliance with banking regulations which include the interests of investors and consumers, but consumers' protection is not an explicit objective. BNR's primary objective is to ensure the proper functioning, stability and integrity of the Rwanda financial system⁹⁴.

Consumer protection is not about protecting consumers from bad decisions but about enabling consumers to make informed decisions in a marketplace free of deception and abuse. Financial education, financial literacy and consumer protection policies should form the foundation of any regulatory and supervisory framework for protecting consumers particularly make efforts to expand financial inclusion by reaching "unbanked" customers⁹⁵.

All banks that provide financial services to consumers are licensed and supervised with regard to their market conduct (i.e. their business practices in relation to retail customers) by the National Bank of Rwanda. However, the task of reform in the domain of consumer protection belongs to

⁹³ *Id.*

⁹⁴ Core Principles for Effective Banking Supervision: New Edition Released, <http://www.mofo.com/files/Uploads/Images/120917-Effective-Banking-Supervision.pdf> , available on 22 June 2013.

⁹⁵ *Financial Services Regulation Coordinating Committee (FSRCC)*, Consumer protection and education in the financial industry in Nigeria <http://www.fsccc.gov.ng/files/CONSUMER%20PROTECTION%20IN%20THE%20FINANCIAL%20SYSTEM%20IN%20NIGERIA.pdf> , available on October, 12th,2013

National Bank of Rwanda, as the main institution which deals with the banking issues in Rwanda and other organs such as MINICOM..

It is suggested that legislation must be enacted to clearly define the rights and obligations of the consumers and specify the obligations of banks towards consumers (customers). Such a law should also provide clear rules to protect both the customer and the bank in the provision of electronic banking services. Such legislation would also establish the channels and avenues for addressing and resolving customer grievances and thereby promote consumer protection in this area.

BNR should organize several consumer enlightenment activities aimed at improving financial literacy amongst consumers of financial services. Notable among these are participation at seminars, workshops and other forums. Also, BNR should undertake different programs to create awareness amongst consumers of financial services.

2. Assessment of the role of BNR on consumer protection in other financial services

The National Bank of Rwanda is mandated to regulate and supervise the Non-Bank financial Institutions (NBFIs) which are mainly insurance and pension sectors. The main purpose of this mandate is to protect the interest of policy holders and pensioners by ensuring that these institutions are financially sound and stable⁹⁶.

The National Insurance Commission (NIC) as the insurance regulator in Rwanda ceased operations since August 2007 when its mandate was reassigned to the National Bank of Rwanda⁹⁷. BNR is the overall regulatory body responsible for the effective administration, supervision, regulation and control of the business of insurance in Rwanda⁹⁸. The functions of BNR, which have a direct bearing on consumer protection, include the formulation of proposals for the promotion of a sound and efficient insurance market in the country and the establishment of standards for the conduct of insurance business for compliance by insurers and insurance intermediaries⁹⁹.

⁹⁶ <http://www.bnr.rw/index.php?id=196> available on October, 12th,2013

⁹⁸Art.1. of regulation n°05/2009 OF 29/07/2009 on licensing requirements and other requirements for carrying out insurance business, *O.G.*, n°34bis of 23/08/2010.

⁹⁹ BNR, non-banking financial institutions , in <http://www.bnr.rw/index.php?id=196> , available on 07/10/2013

Currently the insurance sector in Rwanda is composed of insurance companies, private and public, insurance intermediaries (insurance brokers, insurance agents and loss adjusters). All the above are requested to be licensed by BNR before they commence their businesses¹⁰⁰.

In order to fully execute this mandate, the Bank established NBFIs Department to conduct the day- to-day monitoring of these institutions by carrying out the on/off site inspections of supervised institutions. There are a number of regulations¹⁰¹ that have been adopted by BNR to ensure that the provisions of the insurance law are implemented.

However, the assessment showed that financial consumers generally have no clear idea about which agencies to contact in case of complaints.

In addition, BNR did not manifest significant acts in the domain of consumer protection. It is also important to notice the lack of department in charge of financial service consumer protection in BNR, even if in other jurisdiction this institution did an essential role in the domain of consumer protection. For example the United State of America has the Bureau of Consumer Financial Protection (hereafter “the Bureau”).¹⁰²

The Bureau has broad supervisory powers over “non-depository covered persons.”¹⁰³ The Bureau requires that a covered person make available to consumers any information concerning a financial product or service that the consumer obtained from the covered person, excepting any confidential information and information that cannot be retrieved in the ordinary course of business¹⁰⁴.

¹⁰⁰ Art.1 of regulation on licensing requirements and other requirements for carrying out insurance business stated that “ With the exception of public insurers established by law, no person shall carry on insurance business in Rwanda without being licensed by the Central Bank”.

¹⁰¹ Regulation n°04/2009 on accreditation and other conditions requirements for external auditors of banks, insurers and Insurance brokers, *O.G.n° 39* of 27/09/2010; Regulation n°05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business, *O.G. n°34bis* of 23/08/2010; Regulation n°6/2009 of 29/07/2009 on licensing requirements and other requirements for insurance intermediaries, in *O.G. n°36bis* of 06/09/2010; Regulation N°07/2009 of 29/07/2009 on corporate governance requirements for insurance business, in *O.G.n°35* Of 30/08/2010; Regulation n°12/2009 of 13/10/2009 on market conduct requirements for insurers and insurance intermediaries, *O.G., n°36 bis* of 06/09/2010; Regulation n°001/2010 of 28/01/2010 relating to market capacity facilitation for foreign insurers *O.G., n°36 bis* of 06/09/2010

¹⁰² The bureau of consumer protection, in www.consumer.gov. on 07/10/2013.

¹⁰³ A nondepository covered person is a person to who provides “brokerage or servicing of loans secured by real estate for use by consumers”, who “offers or provides to any consumer any private education loan,” “offers or provides to a consumer a payday loan,” and that the bureau has cause to believe “has engaged in conduct that poses risks to consumers.”, information available in www.consumer.gov, on 07/10/2013

¹⁰⁴ *Id.*

§.4. Institutional framework on consumer protection in the domain of price of goods and services, health delivery, insuring food, drugs safety and quality

The major institutions, which play the role for price of good, food and drugs safety and quality in Rwanda, are essentially the Ministry of Trade and Industry, Rwanda Revenue Authority (RRA), the Rwanda Bureau of Standards (RBS) and the Ministry of Health.

A.The role of Ministry of Trade and Industry (MINICOM) on consumer protection

Law n° 35/91 of 05/08/1991 on the organization on internal trade as has been amending and supplementing by the law n° 15/2001 of 28/01/2001 provides that the Minister holding internal trade in his responsibility may intervene in the distribution channels of goods and services where trade malpractices are discovered on the market¹⁰⁵. His intervention shall only be limited to the following: where there is monopoly that is organized with speculative intentions to raise prices on sensitive products; where there is professional monopoly on the sale of certain specific products; where there is excessive monopoly on products and services with high demand.

Article 8 of Law n° 15/2001 of 28/01/2001 amending and supplementing the law n°35/91 of 5 August 1991 on organization of the domestic trade, prohibits dishonest operations or expresses or tacit conventions having the aim of blocking freedom of movement of goods and services. It also prohibited, the conclusion of secret conventions relating to the formation of a uniform price not resulting from the normal play of supply and demand or all other illegal operations of installation of monopolistic markets.

To guarantee the enjoyment of the free pricing to the consumer, Article 11 of the 2001 law on the organization of internal trade imposes to the seller the traditional obligations to marking, labeling and displaying the prices relating to the particular requirements of the contracts of sale. In the view of A.M.NGAGI, the indication of the price must be correct, unambiguous, easily identifiable and clearly legible¹⁰⁶.

Indeed, in MINICOM there are departments in charge of competition and consumer protection which carry out inspection in shops, supermarkets... The inspection has the main task of looking

¹⁰⁵ Art. 4 of the Law n° 15/2001 in fine.

¹⁰⁶ A.M. NGAGI, *Competition and consumer protection*, courses notes, *op.cit.*, p.150.

the expired goods, banned goods, insurance of invoices... The departments handle also the consumer complaints and make the campaign of awareness of the consumer rights¹⁰⁷.

B.The role of Ministry of Health on consumer protection

Following the program outlined by the government, the ministry having health in its attribution is responsible for the implementation of the policy of health in general and in particular pharmaceutical. In this sense, it should be noted that within the department, operates a special commission for pharmacies. Inspection activities of pharmacies are a responsibility of this commission. Indeed, the consumer of medicine in Rwanda is protected by that Commission.

Articles 84 to 90 of the law n° 12/1999 of 2/7/1999 concerning pharmaceutical art in Rwanda provides details regarding the commission of the inspection of the pharmacy and the roles of inspectors etc.¹⁰⁸ In addition, the tasks related to the function of the inspector of pharmacy and performance conditions are determined by a Ministerial Order concerning the inspection of the pharmacy¹⁰⁹. More precisely, the Ministry of Health, through inspectors for the pharmacy is responsible for the inspection of any place on the national territory which is manufactured, packaged, stored, analyzed and delivered from drugs or other pharmaceutical products.

In our research on this Ministry, it is worth pointed out the contents of the Ordinance n° 74/453 of 31/12/1952 concerning the creation and food safety. Article 1 of the above said Ordinance provides that employers of hotels and restaurant are prohibited to employ people with contagious diseases and those where state of health or cleanliness of body constitutes a danger of contamination to participate in the production, manufacture and handling for the sale of substances used or intended for human consumption¹¹⁰. Article 4 of the same Ordinance, prohibits the possession of substances injurious to health or unsuitable for human consumption on the premises employed by sale, manufacture, preparation, packaging or holding for sale of substances food¹¹¹.

¹⁰⁷ Interview conduct with C.NGANGO, Director in charge of competition and consumer protection (MINICON), on 12/06/2013.

¹⁰⁸ Article 89 to 90 of the law n° 12/1999 regarding the pharmaceutical art in Rwanda in *O.G* no 23

¹⁰⁹ So far the inspection is regulated by the law no 47/2012 of 14/01/2013 relating to the regulation and inspection of food and pharmaceutical products

¹¹⁰Art. 1 of Ordinance n° 70/453 of 31/12/1952 concerning the creation and food safety, in B.A, 1953.

¹¹¹ *Id.*, Art.4

It is also in purpose of protection of medical service consumer that the Rwanda Biomedical Center (RBC) was created¹¹². This Center operates under the supervision of the Ministry of health and has the vision and mission among others to become a Center of Excellence for the prosperity of the country, ensuring quality health service delivery, education and research. It promotes quality affordable and sustainable health care services to the population through innovative and evidence based interventions and practices guided by ethics and professionalism. One of the core responsibilities of RBC is to coordinate and improve research activities in disease prevention, education and care of the population at all levels of the health¹¹³.

The role played by the Ministry of Health shows that the idea of consumer protection through this institution is not a recent development. However, it was during the different inspections carried out by the inspection of pharmacies, found that some of them are guilty of poor conservation of pharmaceutical products, maintaining of the filing of already damaged goods, the sale of products already expired, the sale of unauthorized products, to name but a few¹¹⁴.

During the research we found that there is some collaboration of public institution in order to perform effectively the protection of consumer in the domain of health delivery, insuring food and drugs safety and quality. For example the use of pesticides, which should be dangerous to the life of consumer in Rwanda, is monitored by the Ministry of Agriculture and Animal Resources (MINAGRI) in collaboration with the Rwanda Agricultural Board (RAB), the Rwanda Environment Management Authority (REMA) and the Rwanda Standards Board (RSB)¹¹⁵. However, this collaboration is not provided by any law. It would be better if there is a permanent and organized collaboration in the domain of consumer protection not only with public institutions but also with private organizations which fought for consumer rights.

¹¹² The law n° 54/2010 of 25th January 2011 establishing Rwanda Biomedical Center (RBC) and determining its mission, organization and functioning, in *O.G.* of 07/03/2011.

¹¹³ The Medical Research Centre (MRC) is one of the eight Divisions of the RBC, created in July 2011 by the government of Rwanda pursuant to law N° 54/2010; the Rwanda Biomedical Center (RBC) came with a mission of promoting health in Rwanda. MRC is principally charged with promoting, supporting and conducting high quality applied medical research in Rwanda to contribute to the knowledge used to improve health and wellbeing, through better policy, advice and health & social care services for individuals as well as the general Rwandan population.

¹¹⁴ S.F.MUSORE, De la responsabilité du fait des produits défectueux en droit rwandais: cas des produits pharmaceutiques, mémoire, UNILAK, 2005, p.39 (unpublished)

¹¹⁵ RBS, RBS Tests Organochlorine Pesticides to protect consumers and Promote Exports, in *Rwanda Bureau of Standard newsletter*, issue 11, April-June 2011, p.25.

C.The role of Rwanda Standard Board (RSB) on consumer protection

Rwanda Standard Board as (RBS) is a public institution established by Law n° 03/2002 of 19/01/2002, reviewed by law n° 43/2006 of 05/10/2006 determining the responsibilities, organization and functioning of the RBS. Now days, this institution is organized by a new law n°50/2013 of 28/06/2013 establishing Rwanda Bureau of Standards (RBS) and determining its mission, organization and functioning.

The Rwanda bureau of Standard has responsibility of the development of standards, quality assurance and metrology in all jurisdictions of country and it is the only body with powers to define and possess national standards¹¹⁶. Public services and public or private firms must present their standards for adoption to RBS. The Bureau is governed by Board of Directors composed of major stakeholders from Government, Industry, Academic institutions as well as Consumer associations.¹¹⁷ RBS has seven units and six of them play the crucial role in protection of consumers. Those units are the following: standards development unit¹¹⁸, quality assurance unit¹¹⁹, testing unit¹²⁰, metrology unit¹²¹, standards education unit and agriculture and livestock certification unit¹²².

Quality Assurance Unit (QAU) through its various sections namely: Market surveillance, Industry Inspection, Imports Inspection and Certification Services works together in protecting the consumer from unreasonable risks of serious injury or death from numerous products. Quality

¹¹⁶ See art.4 of the law n°50/2013 of 28/06/2013 establishing Rwanda Standards Board (RSB) and determining its mission, organization and functioning.

¹¹⁷ RSB, Quality assurance, consumer protection, available on www.rwanda-standards.gov.rw/quality-assurance/consumer/protection , available on 17 September 2013.

¹¹⁸ The standards development unit deals with formulating, adopting, drafting and dissemination of information on standards and related activities to the public (see the Rwanda Bureau of Standard prospectus).

¹¹⁹Quality Assurance Unit carries out the following services: products certifications, quality system certification, industrial inspection, tourism and hospitality, market surveillance and training of industries on quality management system (see the Rwanda Bureau of Standard prospectus).

¹²⁰ Testing unit is responsible for products and materials testing for conformity with the standards requirements. For this purpose the following laboratories are in place: General chemistry, microbiology, food chemistry, agriculture and chromatography (see the Rwanda Bureau of Standard prospectus).

¹²¹ Metrology unit offers calibration services to industry also to improve industrial product through improved measurement capacity and to ensure confidence in measurement trough exercising controls on measuring instruments used in trade as well as other sector of public interest like health and environment, for example legal and industrial metrology(see the Rwanda Bureau of Standard prospectus).

¹²² This unit is responsible for quality control and certification services for agriculture and livestock products including organic products (see the Rwanda Bureau of Standard prospectus).

Assurance Unit comes about to eliminate unfair or deceptive business practices, by daily inspection activities at the marketplace, hotels & restaurants and industrial premises as well as imported goods¹²³.

In this regard, the RBS, in 2010 conducted an abrupt inspection in Gatsata sector where it confiscated illicit alcohol. Among the reasons for the confiscation, according to the management of RSB, where the fact that the beverage did not bear the Bureau's stamp of approval, was sold in used Heineken bottles and did not mention manufacturing and expiry dates. In addition, the brew was prepared in poor hygienic conditions¹²⁴.

Hotels and restaurants inspections promote appropriate sanitation practices, hence keeping hotels, motels and restaurants clean and safe for the preparation, storage and provision of foods to consumers¹²⁵.

The certification given to the well performing gives confidence to consumers and claims the safety of product for the consumption¹²⁶.

RSB undertakes mass educational programs on products on the market which cause serious health problems. Samples of products are bought and sent to the laboratory for tests. This is to ensure that manufactures follow procedures all the time. Factory quality audits are also conducted¹²⁷.

The core problem facing RSB today is that of inadequate technical capacity. Indeed, RBS is unable to assist industry in the availing, in time, of much needed product standards. Knowledge in standards development and importance and relevance of standards in the promotion of trade is needed. Adequate and relevant tools necessary for standards development work could be of help. And testing laboratory staff needs training to assist uplift standards of performance of the

¹²³ In this regard, on 7th October 2011 RBS through its Quality Assurance Unit convened a meeting with bread bakers in Kigali. The meeting was mainly to improve the collaboration between RSB and SMEs especially bread bakers in speeding up the integration of standard implementation culture within food production chain (the information from Rwanda Bureau of Standards Newsletter, issue 9, Oct-Dec 2010, p. 29.).

¹²⁴X, protecting consumers while protecting fair competition, in www.focus.rw/protecting_consumers_while_protecting_fair_competition, available on 19 September 2013.

¹²⁵ For more information see E.UWINGENEYE, *De la protection juridique des consommateurs des produits alimentaires d'origine animale au Rwanda*, mémoire, ULK, 2007, p.39.

¹²⁶ S.KWIZERA, Rwanda bureau of standards organized the standards week to raise awareness on standards, in *Rwanda Bureau of Standard newsletter*, issue 15, April-June 2012, p.45.

¹²⁷ *Id.*

laboratory¹²⁸ in order to improve the reliability of the test results. This is important for conformity assessment which will lead to eventual recognition and accreditation of the laboratories¹²⁹.

Even if in Rwanda, public institutions participate in consumer protection, their contribution is not enough due to the lack of financial means and coordination. There is an overall need of capacity building, staffing and the provision of the necessary resources to the major regulatory institutions. In addition, staff and technicians of regulatory institutions should have regular training to be up-to-date with new technologies in the industry being regulated.

With regard of what is said above we found that it is important to discuss the role of private organizations in consumer protection in Rwanda, the detail about that will be covered in the section 2 of the same chapter.

D.The Role of the National Standards Inspectorate, Competition and Consumer Protection Authority (NICA)

In order to implement the effective institutional framework of consumer protection, in 2008, The Ministry of Trade and Industry through the consumer and competition policy proposed two options. Those options were, on one hand to establish a Competition and Consumer Protection Regulatory Body, and on other hand to set up the Department of Competition Regulation and Enforcement in the Ministry of Trade and Industry¹³⁰.

Article 5 of the Rwandan law on competition and consumer protection stated that a law should establish a Competition and Consumer Protection Regulatory Body. The same institution has been proposed in the competition and consumer law as well as in the Rwandan Competition and Consumer Policy of 2008. It is the typical model for competition and consumer enforcement and regulation in most countries.

The institution like this has been called National Standards Inspectorate, Competition and Consumer Protection Authority (NICA) by the law n° 61/2013 of 23/08/2013¹³¹.

NICA is a new institution established by the law, and recently a cabinet decision has put in place senior management staff. There is now hope that the above cited law begin to be implemented.

¹²⁸ Interview conduct with R. MURENZI employee of Standards Unit, on 17 December 2012.

¹²⁹ X, Trade facilitator in Rwanda, accessed in www.eac.quality.net, on 21 December 2012.

¹³⁰ MINISTRY OF TRADE AND INDUSTRY, *op.cit.* Pp.17-19.

¹³¹ *Id.*

The law stated that an Order of the Minister in charge of Justice shall confer upon NICA inspectors' powers of judicial police officers.

From above, the establishment of NICA should cover some advantages. First of all, its independence will enable it to carry out its activities more efficiently. Secondly, the specialized nature of the agency further guarantees that its resources and energies will be focused on competition regulation and consumer protection. Thirdly, it is in line with the UNCTAD model law on Competition enforcement as well as international and regional best practices.

Sect.2. Assessment of the role of private organizations on consumer protection

Civil Society Organizations, Non-Governmental Organizations (NGOs), Voluntary association and research institutions also play a critical role in consumer protection. In the following line we made an assessment of the role of associations of consumers in the one hand and the business persons or professionals in other hand, in enforcement of laws and regulation related to the consumer's rights.

§1 Assessment of the role of consumer associations on protection of consumer's rights

Associations of consumers play an essential role in the protection of consumer's rights, by collaborating with public institutions such as national utilities and regulatory agencies (RURA, RBS, BNR...), while formulating and setting standards that enable the consumers to use products or services of suitable quality¹³². Associations of consumers are aiming to¹³³: fight by all means against the excessive increase of prices on the market, fight for the quality, exactness of weight and measurements of products on the market, sensitize consumers about the defense of their rights and the fulfillment of their obligations, look for solutions to all the problems facing Rwandan consumers through dialogue and consultation, to represent their members in government institutions.

As it is provided by the new Rwandan consumer law, the associations approved had been authorized to practice before the courts of law, in civil action relation to acts violating the

¹³² P.NYAMWEYA, *Consumer protection: criteria for intervention*, Nairobi, National University of Nairobi, 1999, p13.

¹³³ M.J.RWAMPFIZI, *A critical analysis of Rwandan law on product liability against defective imported pharmaceutical products as regards protection of consumers in Rwanda*, Dissertation, Faculty of Law, NUR, Butare, 2007, p.68(unpublished)

consumer's rights¹³⁴. According to Article 50 of this law, "Registered consumers protection associations may institute a civil action in a court of law upon request by a consumer or when the subject matter of the action aims at seeking compensation for damages"¹³⁵. Article 26 of this law also provides that consumer associations, may request for investigation to the Regulatory Body where he/she has reason to believe that activities by an enterprise have the effect or are likely to have the effect of restricting competition¹³⁶.

In Rwanda, there are some consumer's associations which have the aim of fighting for consumer rights. For example, the Consumers Association of Rwanda (ASCORWA) which is in operation and ensures the protection and promotion of consumer's rights.

We point out ASCORWA because it is a member of the Consumers International organization which is the only independent global campaigning voice for consumers. With over 220 member organizations in 115 countries¹³⁷, Consumers International aims at building a powerful international consumer movement to help protect and empower consumers everywhere.

During our research we found that ASCORWA has participated in several meetings organized by Rwanda Bureau of Standard in order to establish some standards (Standards on Tea and Coffee, Electrical and Electronics Engineering, Quality assurance and quality Management, Horticultural and Derived products...)¹³⁸. ASCORWA also participated in the debate about some issues concerning the consumer protection; it contributed in discussion concerning the determination of the price, for example when price of gasoline products in Rwanda had become the highest¹³⁹. However, its role in protection of consumer is still weak because of economic and financial problems.

Associations of consumers in Rwanda are based in Kigali and their activities such as giving free legal advice to injured consumers by defective products are limited to a few individuals found in

¹³⁴ In France, there are the same provision, provide by loi no 73-1193 du decembre 1973 d'orientation du commerce et de l'artisanat, accessed on web site : www.legifrance.gouv.fr on 21/5/2013.

¹³⁵ Art. 50 of Law n°36/2012 of 21/09/2012 relating to competition and consumer protection (in fine).

¹³⁶ Id. art.26 .

¹³⁷ <http://www.eac-quality.net/quality-affects-your-life/consumer-organizations/rwanda.html>

¹³⁸ RBS, list of public and private agencies/institutions involved in setting standards, in www.Rwanda-standards.org, consulted on 12 January, 2013.

¹³⁹ N. NIYONDORA, *La protection des consommateurs en matière des transports des marchandises*, Thèse de Maitrise en droit des affaires, UNR, Kigali, 2007, p.66.

Kigali. Therefore, this service misses a huge chunk of consumer population found in other urban areas and local areas where by consumers in these locations even though their rights are violated by professionals, they are unable to be assisted by associations of consumers because sometimes they are not informed of their existence and activities.

The huge number of consumer whose rights have been violated due to ignorance, does not lodge cases to courts of the MAJ (Maison d'Acces a la Justice) or to the association of consumer in order to get legal counsel of how to lodge their complaints to the courts or to represent them. In addition, associations of consumers should try to sensitize consumers about their rights through consumer education either by publishing association magazine that would enlighten consumers about their rights or by holding seminars with consumers related to their rights.

§2. Role of professionals on consumer protection

It seems that the protection of consumer is not the direct role of businessman (professionals), because their interests are opposite to consumer interests. However, history shows us that the professionals had play enormous role in the domain of consumer protection, mainly in the issues of etiquette, security of goods and concurrence in trade¹⁴⁰.

As it provides for the rights of consumers, the law also imposes obligations on business persons. The obligations that are imposed on business persons are both positive and negative obligations. With respect to positive obligations, business persons are required to display the price of goods and services in such conspicuous place by adding the custom duties, taxes and other lawful fees. They have the duty to affix label on goods that can show its name, gross and net weight, volume, quantity, safety measures for usage, manufacturing and expiry dates as well as the country of manufacturing and name of manufacturer, importer and packer¹⁴¹. It is also their duty to display their trade names in an overt place, and to give relevant information to consumers about goods and services that the latter want to buy¹⁴².

One the other hand, business persons are prohibited from making false or misleading advertisements about the nature, component and quality of goods. It is also prohibited for them to

¹⁴⁰ Th. BOURGOIGNIE, *Eléments pour une théorie à la protection de la consommation*, Bruxelles, story Cientia, 1988, p.432.

¹⁴¹ Art.33-36 of Law n°36/2012 of 21/09/2012 relating to competition and consumer protection (in fine).

¹⁴² *Id.* Art. 37

make false and misleading advertisements as to the source, weights, volume, and method of manufacturing, date and expiry date of goods as well as the identity of the manufacturer, supplier and its trade mark¹⁴³.

The law has still to prohibit changing the country of origin of goods as well as cheating in balances and measurements or in any other measurements contrary to the lawful ones¹⁴⁴. Moreover, business persons are prohibited from making misrepresentations about goods of their competitors, applying pyramidal scheme of sale and making any of other unlawful business acts¹⁴⁵.

In addition to these, it is the duty of business persons to refrain from acts of hoarding or diverting of goods contrary to regular commercial practices¹⁴⁶. The rationale behind prohibiting acts of hoarding or diverting of goods from the regular channel of trade is that these acts would create artificial scarcity in the market and thus push the prices of goods up.

The role of business persons or professionals in consumer protection field command also the adoption of measures to promote self-regulation and the adoption of codes of good business ethics oriented to satisfaction of consumer needs through healthier products and services and royal marketing¹⁴⁷. The professionals should also have conflict resolution mechanism of the problems opposing them to consumers.

Professional Associations such as the Rwanda Nurse and Midwives Association, Rwanda Medical association (RMA) and the Kigali Bar Association (KBA) also have codes of ethics which provide guidelines for the practice of the various professions and establish *fora* for the resolution of disputes and the receipt of complaints from the general public¹⁴⁸.

In addition, private sector representation started in Rwanda prior to 1994, in the form of the Rwanda Chamber of Commerce¹⁴⁹. A government driven institution, the Chamber of Commerce exhibited three important limitations: lack of autonomy, weak representation, and lack of relevant services. As a result, Industrialists, Banks, Insurers, Transporters, and Women created stand-alone associations to serve their needs called Private Sector Federation (hereafter PSF-Rwanda).

¹⁴³ *Id.* Art.38.

¹⁴⁴ *Id.* Art. 7.

¹⁴⁵ *Id.* Art.39.

¹⁴⁶ *Id.* Art.7.

¹⁴⁷ A.M. NGAGI, *op.cit.*, p.110

¹⁴⁸ Interview with F. RUTAYISIRE, PSF's employee, on 13 September 2012.

¹⁴⁹ Décret-loi n° 3/82 du 6janvier 1982 instituant la chambre de commerce et d'industrie au Rwanda.

The PSF-Rwanda was therefore founded in December 1999 as the Private Sector's counterpart and umbrella organization in the Private Public Partnership framework in Rwanda. Initially, the PSF grouped together 14 Associations that were sector specific. The number grew to 23 Associations representing 17 specific business associations and six provincial business associations¹⁵⁰. However, PSF-Rwanda has not played a noteworthy role in the field of consumer protection.

It is generally conceded that policy and legislation alone cannot provide a complete solution to consumer problems in Rwanda. Thus, in addition to the policy and legislative reform, we also recognize the need to support voluntary associations and promote consumer awareness and education. We note the absence of consumer watch dogs for quality service delivery and recommend the adoption of measures to promote self-regulation and the adoption of codes of good business ethics as well as the provision of support for consumer associations and civil society organizations to provide critical support for the protection of consumer rights in Rwanda.

To sum up this chapter, the researcher notes that in the area of institutional regulation, comprehensive laws exist which give the mandate to specific regulatory institutions to promote food and drug safety, establish and enforce standards, regulate financial services, public utility services and health services, among others. However, consumer interests are not being adequately protected because of significant limitations in the enforcement of the laws and the execution of the regulatory functions of these institutions. One of the factors which undermines consumer protection particularly with regard to public utility services, health services and financial services in Rwanda arises from the weak institutional framework and capacity including training, resources and effectiveness of regulatory bodies. This tends to undermine the capacity of the regulatory institutions to fully execute their statutory mandates and enforce the laws to the benefit of consumers.

¹⁵⁰ PSF, "Entrepreneurs of tomorrow", in *Enterprise- Private Sector Federation Magazine* issue no 03, January-March 2008, pp.13-16.

CHAPTER. III. ENHANCEMENT OF INSTITUTIONAL FRAMEWORK FOR CONSUMERS' PROTECTION IN RWANDAN LAW

The government of Rwanda has shown significantly the will to protect and promote consumers however the result still not meeting the expectations. In this case the most significant factors affecting consumer protection in Rwanda law is the lack of effective mechanisms for the enforcement of the rights of consumers, even where laws exist. It is noted that in many cases, the cost of litigation is usually so disproportionately high for the purchaser that there is little motivation to seek redress for violation of consumer rights.

Sect.1. Enhancement of consumer protection from experiences of some selected Jurisdictions

When we talk about experiences of some jurisdictions, it is essential to bear in mind that the discussions would focus both on substantive regimes and institutional frameworks thereof. The jurisdictions for discussions are selected based on their relevance to the Rwandan legal system. For example the South Africa's experience has been taken into account in the enactment of its trade and Consumer protection Law, and based on their well-developed experiences. Kenya has been chosen basing on its regional location and its legal experience; Kenya and Rwanda are both members of East African Community, for sure they are project of legal harmonization in EAC. Therefore, the experiences of South Africa, USA, France and Kenya will be discussed.

§1. South African Experience

In South Africa, consumers' rights are protected by various acts consolidated under the Consumers' Protection Act of 2008. This act provides extensively for various rights of consumers. Accordingly, consumers have the right to protection against discriminatory marketing practices¹⁵¹. Consumers have the right to select suppliers, the right to cooling off period after direct marketing, the right to cancel advance reservation, booking or order, the right to choose or

¹⁵¹ Art.8 of South African Consumer Protection Act, 2008, retrieved in April 20, 2013 in <http://www.dti.gov.za/ccrd/cpact09.pdf> .

examine goods and the right to return goods when they are found defective or unsafe¹⁵². The act also provides for the right to information in plain and understandable language, the right to disclosure of price of goods or services and the right to product labeling and trade description¹⁵³. Moreover, consumers have the right to be protected from false or misleading representation and fraudulent and deceptive acts and misleading advertisements¹⁵⁴. Under procedural rights, consumers have the right to be heard and obtain redress, to make complaint to concerned organ in case of violation of their rights, and the right to seek alternative dispute resolution for cases, as well¹⁵⁵.

Institutionally, there is an investigation commission that makes investigation in case violations of consumers' rights upon its own initiation or when complaints are lodged¹⁵⁶. There are also consumer courts in each province to which the investigation commission refers cases for adjudication¹⁵⁷. As part of its institutional framework, the South African Consumer Protection Act clearly recognizes the role of civil societies in consumer protection. Particularly, accredited consumer protection groups are entitled to initiate class actions¹⁵⁸ before courts of law¹⁵⁹. In South Africa, there is also a National Consumer Commission established as an organ of state within the public administration but as an institution outside the public service responsible for the enforcement of the consumer protection act¹⁶⁰.

§2. The United States of America Experience

In the USA, there are several federal, state and local organs dedicated to the protection of consumers¹⁶¹. Laws dedicated to the protection of American consumers are also diverse and in

¹⁵² Id. Arts.13-21

¹⁵³ Id. Arts.22-28

¹⁵⁴ Id. Arts.29-39

¹⁵⁵ Id. Arts.63-71

¹⁵⁶ Id. Arts.72-75

¹⁵⁷ Ibid.

¹⁵⁸ Class actions: *a lawsuit that allows a large number of people with a common interest in a matter to sue or be sued as a group*

¹⁵⁹ Id. Arts.77-78

Class actions:

¹⁶⁰ Id.Art.85

¹⁶¹ J. G. Brady, Consumer Protection in Unites States: An Overview ,Loyola University, School of Law, 2008, from: <http://www.oecd.org/dataoecd/58/29/2485827.pdf> , p.17

depth in their protection¹⁶². Among the various laws dedicated to the protection of consumers, the law of credit reports, law of credit disclosure, and law of debt collection are very important for protecting American consumers from fraud and deceptive practices in the credit industry¹⁶³. The protection for American consumers ranges from face-to-face purchase to online purchase of goods and services as well as to unfair lobbying on consumers by sellers of goods and services¹⁶⁴.

Institutionally, American consumers are protected from fraud and unfair business practices through cooperation of national, state, and local governmental and private actors. Those actors both protect consumers and equip them with the knowledge they need to protect themselves¹⁶⁵. Although U.S. mechanisms for consumer protection often exist separately from each other, it gains in depth and variety¹⁶⁶. The principal, but not the only, consumer protection agency at the federal level is the United States Federal Trade Commission established as an independent federal agency¹⁶⁷. The Federal Trade Commission consists of the Bureau of Competition, the Bureau of Consumer Protection, and the Bureau of Economics. The Federal Trade Commission works alone, and in concert with other federal agencies, to administer a wide variety of consumer protection laws.

The overall goal is to afford consumers a deception-free marketplace and provide the highest-quality products at competitive prices¹⁶⁸. The Federal Trade Commission is currently dedicated to achieving the goals of protecting consumers by preventing fraud, deception, and unfair business practices in the market place and maintaining competition by preventing anticompetitive business practices¹⁶⁹.

The Federal Trade Commission derives its consumer protection jurisdiction primarily from Section 5(a) of the Federal Trade Commission Act, which prohibits “unfair or deceptive acts or practices in or affecting commerce¹⁷⁰.” In addition to its authority under Section 5(a), the Federal

¹⁶² *Ibid*

¹⁶³ *Ibid*

¹⁶⁴ S.W. Waller, *In Search of Economic Justice: Considering Competition and Consumer Protection Law*, 36 Loy. U. Chi. L. J. 631 (2005)(CHECK IF IS THE PRIMARY OR SECONDARY SOURCE)

¹⁶⁵ *Ibid*

¹⁶⁶ J. G. Brady, *op.cit.*,p.2

¹⁶⁷ *Id.*,p.3

¹⁶⁸ Posner, Richard A. 1973. *Regulation of Advertising by the FTC*. Washington, D.C.: American Enterprise Institute.

¹⁶⁹ *Ibid*

¹⁷⁰ *Id.*,p.4

Trade Commission has enforcement and administrative powers under forty six other statutes, thirty-seven of which relate to the Federal Trade Commission's consumer protection mission¹⁷¹.

Among these laws are credit-related acts, such as the Truth in Lending Act, Fair Credit Billing Act, Fair Credit Reporting Act, and the Equal Credit Opportunity Act, as well as industry-specific acts, such as the Petroleum Marketing Practices Act, and the Comprehensive Smokeless Tobacco Health Education Act of 1986, and additional laws relating to consumer privacy such as the Do Not-Call Registry Act of 2003 and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003¹⁷². The Federal Trade Commission uses its investigative authority to uncover deception, unfair activities, or violation of any statute under which it has authority¹⁷³. Upon completion of an investigation, if the Federal Trade Commission has reason to believe that a violation exists, and that enforcement is in the public interest, it may issue a complaint to the violating person, partnership, or corporation¹⁷⁴.

There are also divisions under the Bureau of Consumer Protection dealing with various acts of consumers' protection. These divisions include Advertising Practices, Financial Practices, Marketing Practices, Privacy and Identity Protection, Planning and Information, Consumer and Business Education, and Enforcement¹⁷⁵. The Division of Advertising Practices works to prevent false advertising claims, particularly when the claims affect the health and safety of consumers or cause economic injury to them¹⁷⁶. In addition to advertising claims regarding dietary supplements, this division deals with supervision of weight loss of products, alcohol, tobacco products, marketing of food items, violent movies, as well as music and electronic games to children¹⁷⁷. The Division of Financial Practices specifically protects consumers from fraud or deceptive practices in the financial services industry. Credit card offers, mortgage practices, and debt collection practices are all covered by this division¹⁷⁸.

¹⁷¹ Polinsky, A. Mitchell, and Rogerson, William P. 1983. Products Liability, Consumer Misperceptions and Market Power. *Bell Journal of Economics* 14: 581-589.

¹⁷² *Ibid*

¹⁷³ J. G. Brady, *op.cit.* . p. 4.

¹⁷⁴ *Ibid*

¹⁷⁵ J. G. Brady, *op.cit.*, p.7

¹⁷⁶ *Ibid*

¹⁷⁷ *Ibid*

¹⁷⁸ *Ibid*

The Division of Marketing Practices addresses the marketing of products and services over the Internet, the telephone, or through the mail¹⁷⁹. The newest division, the Division of Privacy and Identity Protection, protects consumers' personal information from being used improperly, and works to ensure that companies with access to that information keep it secure¹⁸⁰. The Division of Planning and Information manages the Consumer Response Center and the Consumer Sentinel database¹⁸¹. The Consumer Response Center receives and addresses consumer complaints via the phone or mail, while the Consumer Sentinel is a central database that analyses complaint data to better understand and prevent fraud and identity theft¹⁸². On its part, the Division of Consumer and Business Education seeks to equip consumers with skills to protect themselves by disseminating information to consumers through a myriad of media, including print, broadcast, and electronic outlets¹⁸³.

In addition to these federal organs for the protection, there are also mechanisms at state level dedicated to consumer protection. In most of the fifty states, State Attorney Generals are charged with enforcing state consumer protection laws¹⁸⁴.

As consumer advocates for their state populations, Attorney Generals may file lawsuits on behalf of consumers, investigate possible violations, issue injunctions to terminate ongoing illegal activity, obtain restitution on behalf of consumers, bring criminal cases when authorized by law, and make rules to govern trade practices¹⁸⁵. In addition to investigatory and enforcement powers, most state consumer protection statutes allow Attorney Generals, or other state regulatory or enforcement agencies, to create rules that advise businesses of prohibited and acceptable business practices¹⁸⁶.

It is still important to note that, in US, private actors and nonprofit entities also play an important role in consumer protection. One of these private actors is the Citizens Utility Board that represents the interests of residential utility consumers in their respective states or regions¹⁸⁷.

¹⁷⁹ Darby, Michael A., and Kann, Edi. 1973. Free Competition and the Optimal Amount of Fraud, *Journal of Law and Economics* 16: 67-88.

¹⁸⁰ Ibid

¹⁸¹ J. G. Brady, *op.cit*, p.8

¹⁸² Ibid

¹⁸³ Ibid

¹⁸⁴ Id.,p.10

¹⁸⁵ *Ibid*

¹⁸⁶ *Id.*, p.8.

¹⁸⁷ P. NELSON, Information and Consumer Behavior. *Journal of Political Economy*, no78, 1970, pp. 311-329. [SAME](#)

Another important organ is the Consumer Federation of America that advocates for consumers to state and federal legislative and regulatory bodies and carry out consumer education¹⁸⁸. There are also consumers unions that educate consumers about their rights¹⁸⁹.

The Institute for Consumer Antitrust studies is another non-partisan and independent academic center designed to explore the impact of antitrust enforcement and consumer protection law on the individual consumer and the public, and to shape public policy in these areas¹⁹⁰. The National Consumer Law Center is another nonprofit organ that advocates on behalf of low-income individuals who have been harmed by deception, fraud, or unfair practices¹⁹¹. There is also a Public Citizen, as a non-partisan organization, that represents consumers' interests before the executive, legislative, and judicial branches of U.S. government¹⁹².

§3. French Experience

France has given protection to consumers by enacting a consumer code that includes different areas of laws dealing with consumer information and the conclusion of contracts, the conformity and safety of products and services, credit and indebtedness, as well as the role of consumers' associations and consumer related institutions¹⁹³.

In France, the Ministry for the Economy, Industry and Employment is responsible for the development and implementation of the consumer protection policy¹⁹⁴. The French Competition Authority and other regulatory bodies have also direct role in consumer protection activities. The Competition Authority, which aims at controlling anticompetitive practices such as cartels and abuse of dominance positions as well as merger and acquisitions, supervises the market to the benefit of consumers¹⁹⁵. There are also different watchdogs that protect consumers' interests in different sectors of the economy such as finance and insurance, energy, communication, and

¹⁸⁸ *Ibid*

¹⁸⁹ *Ibid*

¹⁹⁰ *Ibid*

¹⁹¹ *Id.*, p.20.

¹⁹² *Ibid*.

¹⁹³ Consumer Protection in France ,retrieved on April 12, 2013 from:

http://ec.europa.eu/consumers/empowerment/docs/FR_web_country_profile.pdf , p.2. see also G.Raymond, *Bienvenu au code de la consommation*, in *contr.cons.*, no spéc. Sous la dir. de G.Raymond, 10 ans de jurisprudence comentée, dec. 2000, p.5.

¹⁹⁴ *Ibid*.

¹⁹⁵ G. TAORMINA, *op.cit.*, p.81.

health¹⁹⁶. France has also its special agencies that have a significant role for consumer protection through regulation of quality and safety of food and health products¹⁹⁷.

Moreover, there are many national consumer organizations dedicated to the protection of consumers. The National Consumer Council, as an assembly of consumer organizations, and other stakeholders are the principal organs in this regard¹⁹⁸. The National Consumer Council aims to facilitate confrontation and dialogue between the collective interests of consumers and users and the representatives of suppliers, the public services and the authorities responsible for enforcement of the competition law¹⁹⁹. The Consumer Complaints Board receives complaints arising from the sale of goods or the provisions of services by businesses persons to natural persons for their private use²⁰⁰. It is still important to note that, in France, any approved consumers association may bring joint actions on behalf of consumers²⁰¹.

§4. Kenyan Experience

In Kenya, the rights of consumers are found in a number of parliamentary Acts, all of which are consolidated under the 2007 Consumer Protection Bill²⁰². These different acts are designed to ensure that consumers are provided with full information, including the price and quality, of any product or service that they may wish to purchase, and to ensure that these products are safe and meet international standards²⁰³.

With respect to the institutional framework, there is an authority known as Kenyan Consumers' Protection Authority responsible for the enforcement of consumer protection acts. The Authority

¹⁹⁶J. AMAR, *De l'usager au consommateur de service public*, ed.PUAM, 2001, p. 13.

¹⁹⁷G. TAORMINA, *op.cit.*, pp.81-84

¹⁹⁸ Ibid.

¹⁹⁹Ibid.

²⁰⁰ Ibid.

²⁰¹ The decret of 20 december 1994 has ~~been~~ established the Consumer Complaints Board(Commission de Reglement des Litiges de la Consomation[C.R.L.C]) For more information see A.JURION, *la protection des personne morales par le droit de la consommation*, Memoire DEA, droits des affaires, ParisII, 1999, pp. 5-8.

²⁰² The Kenyan Consumer Protection Bill, 2007, accessed on April 12 from: http://kenyalaw.org/klr/fileadmin/pdfdownloads/Bills/2007/The_Consumer_Protection_Bill_2007.pdf , Art.42

²⁰³ Ibid

has elected members from various government organs, the civil society and consumer protection associations²⁰⁴.

The Authority has the power to carry out, promote or participate in consumer education programs and activities, disseminate consumer information and provide advice to consumers about their rights and responsibilities under appropriate laws²⁰⁵. It is also empowered to create or facilitate the establishment of conflict resolution mechanisms on consumer disputes, investigate any complaint received on violation of consumer rights, and where appropriate, refer the complaint to the competent authority and ensure that action may be taken by the competent organ against the violations. Moreover, it has the power to formulate and submit to government organs policy and legislative proposals in the interests of consumers²⁰⁶.

Lessons learned:

From the South African experience, Rwanda has an advanced path by the establishment of the commercial court since it can deal effectively with consumer protection cases since in ordinary court the cases delay because of the backlog of judicial proceedings. Therefore an awareness campaign should take place since many of consumers think that the commercial court has been established for business-to-business cases only.; From the USA experience, it seems that the institutions which have task of the consumers' protection are well structured, decentralized and independent. Rwanda should learn from this in order to give to the consumer an effective protection.

With France experience we need to strengthen consumer protections associations for their coherence and effectiveness in advocacy, creating an umbrella organ of consumer associations may help them to solve some of the issues like financial capacity and capacity building that appear as a big challenge for non-profit organization.

The Kenyan experience shows the importance in Rwanda of involving different consumer protection actors (government organs, civil society...) as permanent members of the governance body of NICA.

²⁰⁴ Id.,Art.107(1)

²⁰⁵ Id.,Art.109(1)

²⁰⁶ Id.,Art.109(1)

With the experience cited above, we notice that Rwanda is at a good level considering the regulations and laws in place emphasis made on the establishment of the commercial court in 2007 by the organic law n° 59/2007 of 16/12/2007.

Sect.2. Strengthening of the institutions to promote enforcement of consumer protection laws

According to A.M.NGAGI, the lack of consumers' protection laws is a serious handicap for consumers' protection. Even if the important task is not only to make the laws, it is still necessary to enforce them. It is crucial to establish and strengthen the institutions which are entirely or partially in charge of consumer protection. As stated by A.A SALL: "No provisions, no principles cannot be implemented in any society if there was not a social moral authority in our daily life."

From above, there is a need for governments to join forces with the Non governments' organizations in order to satisfy effectively the needs of consumers. It is therefore important to improve consumer protection by coordinating both public and private institutional structures.

§1. Strengthening of Public Regulatory Institutions

As we have discussed above in chapter two, the Rwandan authorities are not entirely indifferent to the problems of consumers, some positive action, has been carried out by various government institutions.

As a part of ensuring consumer protection, the government should help strengthen the various public institutions which have consumer protection in their responsibility. The government should also establish others public services with objective of consumer protection and strengthening the existing institutions.

In the following line we discuss how those institutions should be well organized or fortified in order to play an effective role in the field of consumer protection.

It is important to discuss the indecency of competition and consumer protection authorities since both are managed under same authority and entrusted to the same institution to better understand and avoid that one overlap the other. It is also important to note that effective competition

enforcement is an important element for consumer protection. This is so when competition authorities are independent.

A. Increasing the independence and the effectiveness of NICA

When discussing about an authority entrusted with the enforcement of competition and consumer protection laws, it is very important to take the issue of independence into account. Where an authority is independent, it can effectively enforce competition and consumer protection laws without any pressure from other government organs. Particularly, effective enforcement of competition law enhances the welfare of the consumer by providing them with wider choice of goods and services at a competitive price.

The power of a competition authority should include the making of an advocacy against government policies and laws that would hamper the competitiveness of the market. It is only when they are independent from the influence of government organs that authorities could carry out their function of advocacy effectively.

Moreover, in Rwanda, the functions of competition and consumer protection are entrusted to the same authority, the National Standards Inspectorate, Competition and Consumer Protection Authority (NICA). In fact, the integration is not only at the stage of enforcement but also in substance. Its independence helps the authority to enforce the law effectively and to promote the interests of consumers. It is from these perspectives that the independence of the authority is to be considered.

The Law establishes the authority as an autonomous government organ having its own legal personality²⁰⁷. It is an autonomous organ separated from the Supervisor Authority. This status of the authority is an important development when it is compared to the status of the Department of Competition Regulation and Enforcement within the Ministry of Trade and Industry.

²⁰⁷ [Article 1](#) of the Law n° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning

It is generally taken that having own organizational structure and budgets are important indicators of the independence of competition authorities²⁰⁸. It should be rather dependent upon the ministry for its budget and staff.

According to Article 1 of the Law n° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning, NICA shall have legal personality, administrative and financial autonomy and shall be managed in accordance with laws governing public institutions. From this provision, it is possible to say that there is no problem on the independence of the NICA. The Authority will have its own budget, will be conferred with the necessary staff, and is administratively separate from the supervising authority²⁰⁹. When an authority is not dependent for budget allocation on a supervising authority and when it has its own staff whom it self handles their employment and dismissal, this means that it is an independent authority. On the other hand, when the budget of a competition authority is allocated by a supervising authority, the latter may use the budget as a means to influence the day to day activities of the former. The same holds where the supervising authority is empowered to handle the issues of employment of the staff.

B. Streamlining of the roles of Regulatory Institutions to avoid overlaps and conflicts

The various regulatory institutions like Rwanda Utilities Regulatory Authority (RURA), the Rwanda Standards Board (RSB) and National Bank of Rwanda (BNR) must be better resourced and equipped to perform their regulatory and monitoring functions more effectively in order to promote consumer protection in Rwanda.

There is an overall need to assist with training, staffing and the provision of the necessary resources to the major regulatory institutions. Regulatory institutions must be equipped with experts in their respective sectors and should have attractive remunerative schemes to attract the best professionals. In addition, staff of regulatory institutions should have regular training to be up-to-date with new technologies in the industry being regulated. There is the need for constant

²⁰⁸ Interview.

²⁰⁹ The supervising authority should be for example the Ministry of trade and Industry. According to article 6 Law n° 61/2013 of 23/08/2013 establishing National Standards Inspectorate, competition and Consumer Protection Authority (NICA) and determining its mission, organization and functioning of A Prime Minister's Order shall determine the supervising authority of NICA and its category.

enhancement of the capacity of regulatory institutions to monitor compliance with existing laws. Issues of computerization and increasing use of IT and staff motivation must be addressed to ensure that these bodies provide effective oversight to promote consumer welfare in this area.

In the financial sector, the Central Bank's supervisory capacity was strengthened to enhance regulatory frameworks, reduce regulatory forbearance, ensure market discipline and comply with the Basel Principals of effective supervision²¹⁰. However, despite of all the reforms, the introduction of new technology involving the use of the Internet and telecommunications in banking has also introduced new forms of fraud and crime within the banking industry. Emerging forms of banking including the use of the ATM and electronic banking call for direct regulation.

In Rwanda, there is currently no specific legislation to regulate the relationship between the bank and the customer or to address the peculiar legal problems posed by electronic banking procedures. It is recommended that legislation must be enacted to clearly define the rights and obligations of the customer and specify the obligations of banks towards customers. Such a law should also provide clear rules to protect both the customer and the bank in the provision of electronic banking services. Such legislation would also establish the channels and avenues for addressing and resolving customer grievances and thereby promote consumer protection in this area.

It is also suggested that the National Bank of Rwanda (BNR) must be supported to play the role of watchdog in this sector more effectively. A fully electronic market surveillance system must be developed and maintained to improve the regulatory functions of the various institutions so as to enhance consumer protection in this area. The financial capacities of regulatory institutions must be tremendously improved, not solely from the state, but significantly from other stakeholders within the sector, whilst at the same time maintaining its independence and neutrality in disputes.

For the issue of jurisdictional overlaps between the various regulatory institutions, the law establishing National Standards Inspectorate, Competition and Consumer Protection Authority, provides nothing about the collaboration of NICA with the existing public institutions or Multi-sector Authority which have the role in consumer's rights protection such as national utilities and regulatory agencies (RURA, RBS, BNR...), with respect to regulating competition and consumer

²¹⁰ C. RUSAGARA, *Financial sector development program(FSDP): The case of Rwanda*, National Bank of Rwanda, African Finance for the 21st century High-level seminar organized by IMF Institute in collaboration with the Joint Africas Institute, Tunis, Tunisia, March 4-5, 2008.

protection in public utilities. Jurisdictional overlaps between the various regulatory bodies must be addressed and eliminated and their functions streamlined to enhance the enforcement of their respective laws. There is the need to streamline the legislative and policy framework by clearly outlining the functions and roles of the various regulatory institutions in order to avoid overlaps and promote enforcement of the relevant laws.

C. Decentralization of public consumer protections institutions

There is a problem of decentralization of public consumer protection institutions. The establishment in District or in other places than Kigali city²¹¹ of NICA is left optional²¹². This problem is common of others regulator authorities like Rwanda Utilities Regulatory Authority²¹³ and Rwanda Standard Board (RSB)²¹⁴.

In fact, one may, on the one hand, say that establishing these organs are the internal affairs of District. It may also, on the other hand, be said that it is not a problem as the authority could establish its branch where necessary to protect the interests of countryside consumers.

However, the requirement to establish consumer protection organs at District level should not have been left optional. This is because, first, the majority of illiterate consumers are countryside residents. These illiterate consumers are highly prone for exploitation. For this, the establishment of these District consumer protection organs would promote and enhance the protection of consumers.

Secondly, there would be discrepancy in the degree of enforcement of the law at District (countryside level) and city level. While the law may be properly and effectively enforced at Kigali city level, it may not be as such at countryside levels. This is because districts may not make the move to establish these consumers' protection organs. Thirdly, consumers at

²¹¹ The head office of NICA as provide by the law will locate in Kigali City

²¹² Art.3 of the Law n° 61/2013 of 23/08/2013 establishing NIKA stated that “in order to fulfill its mission, NICA may have branches elsewhere in the country if deemed necessary, upon approval by a Prime Minister’s Order”.

²¹³ - Art.3 of law n°09/2013 of 01/03/2013 stated that “establishing RURA may establish branches elsewhere in the country if considered necessary, in order to fulfill its mission, upon approval by Regulatory Board” - The head office of RURA situated in Kigali City.

²¹⁴ Art.3 of the law n°50/2013 of 28/06/2013 establishing RSB stated that “in order to fulfil its mission, RSB may have branches elsewhere in the country if deemed necessary, upon approval by a Prime Minister’s Order”.

countryside level need the same level of protection, if not more. And for that they should be given access to an appropriate organ that investigates on violations of their rights.

§2. Improvement of private institutions

In addition to government based institutions, consumer associations and other non-profit entities also play an important role in consumer protection matters. They have played a critical role in investigating, publicizing, lobbying, litigating, training and researching consumer issues.

A. Reinforcement of consumers' associations

One of the problems of enforcement mechanisms is the exclusion of private organs and the consumers' protection associations from the institutional framework of the law. Experiences show that the interests of consumers, particularly in developing countries, are better protected by the inclusion of consumers' associations in the enforcement mechanisms of consumer protection laws²¹⁵. For that reason, countries have recognized the role of consumer organizations in the enforcement of these laws. However, such is not the case in Rwanda.

Consumers and the private sector would greatly benefit with the inclusion of their representatives in the institutional framework of the law. A successful advocacy programs also requires the collaboration of civil society, trade associations and consumer protection associations. Particularly, as Rwanda has for long been subject to centrally planned economic systems, the role of these private organs in promoting advocacy is essential.

B. Promotion of self-regulation and voluntary associations

It is generally conceded that policy and legislation alone cannot provide a complete solution to consumer problems. Thus, we recognize the need to support voluntary associations and promote consumer awareness and education. The researcher notes the absence of consumer watchdogs for quality service delivery and recommends the adoption of measures to promote self-regulation and

²¹⁵ Check describe experience on page 47 and 48 of this thesis

the adoption of codes of Good Business Ethics as well provision of support for consumer associations and civil society organizations to provide critical support for the protection of consumer rights in Rwanda.

The following specific recommendations are made for the promotion of the role of voluntary organizations:

- (1) Collaborative relations will have been developed between government offices and consumer associations.
- (2) Consumer organizations must be encouraged and supported to focus on consumer information and advice in the food, health and financial sectors and to promote energy conservation, and environmentally sound consumer behavior.
- (3) Support must be provided by Government to existing consumer organizations in the organization of training seminars for the dissemination of consumer information, the elaboration of programs on consumer education in schools, the protection of consumers on issues of redress and solution of complaints.
- (4) Consumer organizations should be supported to undertake activities on education and awareness programs, assist in the monitoring and enforcement of standards (food, quality of goods and services), and to participate in the formulation of consumer protection legislation and the establishment of dispute resolution mechanisms, among others.
- (5) Consumer associations must also be encouraged and supported to participate in consumer protection activities to enhance the role of the consumer in decision-making processes related to consumer issues. In particular there is the need for more support and equipping of organized consumer protection campaigns dealing with food safety and health issues.
- (6) As a supplementary measure, trade associations and industry representatives must be encouraged to develop voluntary codes of practice and other self-regulating procedures to govern the conduct of business so as to enhance consumer welfare. It is suggested that the Private Sector Federation could provide guidelines for the various industries and professions.(REFERENCE!!)

Sect.3. Settlement of the issues related to consumers ‘rights violation

The implementation of laws has no value and not enough to protect the consumers’ interests, if these laws and regulations are not known and enforced. Access to justice is a condition of effectiveness of consumer protection and one of the essential mechanisms for guaranteeing fundamental rights. It is, more generally, a condition of effectiveness of the legal system as a whole and therefore reducing the gap between law and facts.

Three points deserve special attention in this section. The first is the avoidance of obstacles related to access to justices for consumers, then the study of alternative means of dispute resolution or out court settlement means, and finally examining the mechanisms for participation of consumer associations in the judicial process.

§1. Avoidance of obstacle related to access to justice for consumers

The judiciary is generally seen as the last hope of the consumers; the hope of the hopeless, the help of the helpless, and the safe sanatorium for the legally injured²¹⁶. In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the court for protection from the antics and vagaries of unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumer's expense²¹⁷.

The incidences of the supply of deficient and adulterated goods, coupled with provision of shoddy services in the market place have assumed an alarming situation in Rwanda²¹⁸. To check this tide, a variety of approaches have been adopted for the protection of the consumer.

The law on consumer protection provides that “any person who has incurred loss as a result of a violation of provisions of this Law regarding consumer protection may institute an action in a court of law”²¹⁹.

²¹⁶ A. REDFERN and M. HUNTER, *Law and practice of international commercial arbitration*, 2003, p. 4.

²¹⁷ *Id.*

²¹⁸ NGAGI, *op.cit.*, p.366

²¹⁹ Art. 50 of Rwanda consumer Act.

From the judicial perspective therefore, consumption is perceived as one of the fundamental citizens' rights²²⁰. As emphasized, access to justice is the main condition for the effectiveness of consumer protection.

However, it is clear that in practice there are several obstacles to access to justice for consumer in Rwanda. The most known obstacle to justice for consumers are the ignorance for the law, fair of risk, the justice delay and the high cost of legal proceedings²²¹.

To sum up, the lengthy judicial system, complex legal procedures and the high cost of legal proceedings are the major problems in implementing the consumer protection laws. Due to the long gestation period of legal procedure and to the high cost of legal proceedings the consumer protection laws are ineffective in real practice. To solve this problem, fast track courts in the form of consumer courts, for lower costs should be established. Comparing to Kenyan experience, Rwanda has solved this issue by establishing the commercial court since 2007 to facilitate the enforcement of commercial laws among them consumer protection laws in Rwanda.

In addition, to overcome the obstacles related to access to justice for consumers, it is crucial to consider others ways that could facilitate, like alternative dispute resolution.

§2. Out court settlement means

Historically, methods used to settle disputes have ranged from negotiation, to courtroom litigation, and even to physical combat. The legal needs of countries, multinational companies, and ordinary consumer have changed over the last decade²²².

When face with a dispute, business people or consumers are learning that, whenever possible, it is more advantageous to reach practical and private agreements than to fight for years and spend huge amounts of money in courtroom battles. Due to the vast amounts of time and money involved in the trial process, some countries, business communities have increasingly turned to legal alternatives that are more prompt, private and economical than courtroom. Alternative

²²⁰ The Constitution of the Rwanda Republic provides for fundamental right to citizen. Article 12 of the Constitution provides the right to life. This presupposes the right to consume safe food, water, air, services and other articles for the sustenance of the citizen's life.

²²¹ For more details see A.M. NGAGI. *op.cit.*, pp.366-367.

²²² Institute of Legal Practice and Development (ILPD), Alternative Dispute Resolution in *Diploma in Legal Practice Programme*, Module 4, Nyanza, 2010, p.4.

Dispute Resolution (ADR) refers to the wide spectrum of legal avenues that use means other than trial to settle disputes. The main ADR alternatives to civil litigation are negotiation, arbitration, conciliation and mediation. Arbitration and mediation both promote the same ideals, such as access to justice, a prompt hearing, fair outcomes and reduced congestion in the courts. Mediation, however, is a voluntary and non-binding process. It is a creative alternative to the court system²²³.

For Rwandans the arbitration is still expensive, we advise consumers to use for the meantime the commercial courts where is applicable.

A.Negotiation

Negotiation may be generally defined as a consensual bargaining process in which parties attempt to reach agreement on a dispute or potentially disputed matter²²⁴. Negotiation differs from other methods of dispute resolution in the degree of autonomy experienced by the disputing parties who are attempting to reach agreements without the intervention of third parties such as Judges, arbitrators or mediators.

B.Mediation and Conciliation

Mediation is an extension of the negotiation process. Parties who have been unable to resolve a dispute or conflict use an impartial third party to assist them in reaching a resolution. In other words, mediation is an ADR method where a neutral and impartial third party, the mediator, facilitates dialogue in a structured multi-stage process to help parties reach a conclusive and mutually satisfactory agreement. A mediator assists the parties in identifying and articulating their own interests, priorities, needs and wishes to each other²²⁵.

Conciliation is another dispute resolution process that involves building a positive relationship between the parties of the dispute. However, it is fundamentally different from mediation and arbitration in several respects. Conciliation is a method employed in civil law countries, like Italy,

²²³ <http://www.mediate.com/articles/sgubinia2.cfm> available on November, 20th, 2013

²²⁴ For more information see W. I. ZARTMAN, Concevoir la théorie de la négociation en tant qu'approche de résolution de conflits économiques, in *Lavoisier / Revue française de gestion*, 2004/6 - n° 154, pp.15-27

²²⁵ <http://www.mediate.com/mobile/article.cfm?id=1589>, available on November 20th, 2013

and is a more common concept there than is mediation. While conciliation is typically employed in labor and consumer disputes, Italian judges encourage conciliation in every type of dispute. The conciliator is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution²²⁶.

Mediation is a peaceful dispute resolution tool that is complementary to the existing court system and the practice of arbitration²²⁷. In order to strengthen the above said ADR, an organ called Abunzi has been put in place by the Government of Rwanda.

C. Mediation committee “Abunzi”

To promote universal access to justice, Rwanda adopted in 2006 the Organic Law No. 31/2006 establishing the Organization, Jurisdiction, Competence and functioning of the Mediation Committee-Abunzi, hereafter, Abunzi organic law.

This organic law was amended in 2010 by the Organic Law No 02/2010. Under the 2006 law, Abunzi were organized only at the cell level. With the 2010 amendments, however, another layer of Abunzi was included at the sector level to serve as the appellate for cases from the Abunzi at the cell level.

Considering the advantages of conciliation and mediation, we suggest the Rwandan consumers to use this method of conflict resolution (with respect to its competence²²⁸) when their rights have been violated in order to find the solution without going to ordinary courts, given that the *Abunzi committee* is organized such as is operating at a lower administration level (cell, sector) which make it more accessible.

D. Arbitration

An effective system of arbitration can undoubtedly increase the chances of consumer’s complaints resolution. In the past, commercial disputes were heard by ordinary courts which; given the

²²⁶ Hassan M. S. Azim, LL.M., *Legislative Development in Bangladesh for Alternative Dispute Resolution: Problems and Prospects*, 18th Nov, 2012

²²⁷

²²⁸ Organic law No 02 art. 10, par.3,

heavy case-load they were facing, often caused delays.²²⁹ Some time, it's the business man who violated the consumer rights, and consequently the complaint should be heard by commercial courts. An arbitration system can end delays by speedily hearing matters; arbitration can be set up quickly, the matter heard with less formality than a court, and the arbitral decision handed down within a limited period.

Article 3 (2) of Rwandan law on arbitration defines arbitration as „a procedure applied by parties to the disputes requesting an arbitrator or a jury of arbitrators to settle a legal, contractual or another related issue“²³⁰.

BUTLER and FINSEN define arbitration as “a procedure whereby parties to a dispute refer that dispute to third party, known as an arbitrator, for a final decision, after the arbitrator has first impartially received and considered evidence and submissions from the parties.”²³¹ Arbitration is a private way of resolving disputes with binding effect that may arise from a contractual relationship or another kind of relationship.²³²

Arbitration can also be defined as a streamlined private legal procedure used to resolve disputes between two or more parties.²³³ An arbitration proceeding is administered and managed by a knowledgeable, independent, and impartial third party and the parties to a dispute present their arguments and evidence to the arbitrator who decides the case and resolves the disputes ²³⁴.

E. The Kigali International Arbitration Center (KIAC)

In order to insure the efficacy and efficiency of the Arbitration as an ADR, the Government of Rwanda by the law No 51/2010 of 10/01/2010, established the International arbitration center as a supportive institution for the administration of the arbitration in Rwanda.

The Main mandate of KIAC is to arrange/avail necessities for the arbitration proceedings such as accommodation for the tribunal, secretarial services, translation among others...The arbitration

²²⁹ *Id.*

²³⁰ The Rwandan Law n° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, *O. G. Special* n° of 06. 03. 2008.

²³¹ Butler, David and Finsen Eyvind, *Arbitration in South Africa, law and practice* (1993).

²³² About arbitration and mediation, Available at <http://www.arbitration.co.za/pages/about.aspx> , accessed 3 March 2014.

²³³ Arbitration FAQ, Available at <http://www.arbitration-truth.com/arbitration-faq.htm#1> , accessed 9 March 2014.

²³⁴ *Id.*

rule defining the procedures was published in 2012 in the Official Gazette No 22bis of 28th May, 2012. The Establishment of KIAC will increase the number of arbitrators locally and as said above facilitate the proceedings and therefore will facilitate .as well cases resulting from conflict from contract between producers and consumers.

F. Importance of alternative dispute resolution for consumers

One thing we have realized is that there are limits to the judicial process. High level costs and long delays put a damper on the exercise of consumer's right to go to court. Once a case is in court, it is the judges and lawyers who are the major participants while the affected party often sits on the sidelines. A remedy will be fashioned by a neutral third party, applying the rule of law. The judicial approach does not consider the affected part's feeling and allow little rooms for other values such as an apology to the malpractice victim.

There are some particular advantages that exist in choosing an alternative method of dispute resolution (ADR) such as mediation or arbitration, as opposed to pursuing ordinary judicial proceedings. The first advantage concerns the all-important consideration of economics and the daunting costs of resolving disputes; arbitration and mediation proceedings are by far cheaper in monetary expense than ordinary judicial proceedings. Another important advantage of alternative dispute resolution proceedings is in the decreased time these proceeding customarily take as opposed to the traditionally litigated dispute.

Generally, choosing arbitration, mediation, negotiation and reconciliation are attractive to the consumers because they get to participate in these proceeding more directly than they would in a courtroom or in a litigated dispute proceeding.

However, in arbitration, the arbitrator still makes the final determinations of fault and compensation, and the parties must accept those decisions as though they were made by a judge. Also, an arbitration proceeding is governed by formal rules and the role of parties' attorneys is still central to the representation of their interests. With a mediator's help, the parties are increasingly empowered to participate directly in process and determine the outcome of their own dispute, thus regulating and protecting their own interests. We note that arbitration and conciliation in Rwanda are governed by the law no 005/2008 of 14/02/2008 on Arbitration and conciliation in commercial matters.

As above mentioned, there is a law on commercial arbitration and conciliation, this means that it only regulates commercial disputes. Nevertheless, arbitration and conciliation can be used in other matters than commercial such as consumers' rights violation and others.

Considering the importance of alternative dispute resolution, the researcher suggests the use of these methods by the consumers whose rights have been violated by the professionals. The Government of Rwanda in collaboration of consumers' associations should sensitize the use of these methods.

To sum up, all possible means must be used in order to sensitize the consumers, about the advantages of ADR and encourage them to use it.

VI.GENERAL CONCLUSION

Fair competition and consumer protection has long been recognized as a prerequisite to sustain economic growth. Businesses which operate in a competitive environment usually attain an optimum level of efficiency which benefits consumers with lower prices and greater product choices. Therefore, the competition and consumer protection institutions will assist competitiveness in Rwanda by identifying those aspects that harm consumer welfare, add unnecessary costs, entail anti-competitive practices, or distort the economy. In addition, an appropriate competition and consumer protection laws and enforcement body will position the country for continued growth and development.

In this thesis, two major tasks were carried out. First of all, the actual situation of legal and institutional framework of consumer protection in Rwanda was discussed. Secondly, the mechanisms which should be used in order to have strong and focused institutions in charge of consumer protection in Rwanda were examined, and the recommendations to reform the Rwandan legal and institutional framework of consumer protection were made.

The study makes the following findings:

First of all one of the most significant factors affecting consumer protection in Rwanda is the lack of effective mechanisms for the enforcement of the rights of consumers, even where laws exist. It is noted that in many cases, the lengthy judicial system, complex legal procedures and the high cost of legal proceedings are the major problems in implementing the consumer protection laws. Due to the long gestation period of legal procedure and to the high cost of legal proceedings the consumer protection laws are ineffective in real practice.

Secondly, in the area of legal and institutional framework, comprehensive laws exist, some of them give the mandate to a number of regulatory institutions to promote food and drug safety, establish and enforce standards, regulate financial services, public utility services and health services. However consumer interests are not being adequately protected because of significant limitations in the enforcement of the laws and the execution of the regulatory functions of these institutions. One of the factors, which undermine enforcement of consumer protection particularly with regard to public utility services, health services and financial services in Rwanda, arises from

the weak institutional framework and capacity including training, resources and effectiveness of regulatory bodies. In addition, the enforcement of the regulatory laws is also limited by overlaps and conflicts in the roles assigned to the various institutions.

Based on the findings of this thesis, the researcher would like to recommend the following:

1. Considering the level of illiteracy in Rwanda, the low level of consumer rights awareness and the prohibitive costs of litigation, there is the need for a more active and low cost approach to consumer protection. This should involve the establishment of a Trade Commission or Authority and Trade Practices Court as a small claims court, or to encouraging the consumers to use the alternative dispute resolution (ADR) to facilitate the enforcement of consumer protection laws in Rwanda.
2. There is also the need for the Government to strengthen and improve the enforcement procedures for implementing consumer protection regulations, including standards and safety measures and effective monitoring, inspection and evaluation mechanisms.
3. The various regulatory institutions like Rwanda Utilities Regulatory Authority (RURA), the Rwanda Standards Board (RSB), National Bank of Rwanda (BNR) and National Standards Inspectorate, competition and Consumer Protection Authority (NICA) must be better resourced and equipped to perform their regulatory and monitoring functions more effectively in order to promote consumer protection in Rwanda.
4. There is an overall need to assist with training, staffing and the provision of the necessary resources to the major regulatory institutions. Regulatory institutions must be equipped with experts in their respective sectors and should have attractive remunerative schemes to attract the best professionals. In addition, staff of regulatory institutions should have regular training to be up-to-date with new technologies in the industry being regulated. There is the need for constant enhancement of the capacity of regulatory institutions to monitor compliance with existing laws.

Jurisdictional overlaps between the various regulatory bodies must be addressed and eliminated and their functions streamlined to enhance the enforcement of their respective laws. There is the need to streamline the legislative and policy framework by clearly outlining the functions and roles of the various regulatory institutions in order to avoid

overlaps and promote enforcement of the relevant laws.

5. There should be extensive consumer education. This is because majority of Rwandan consumers are prone to exploitation by market actors. The law is enacted recently and consumers are not aware of their rights stipulated under it. Not only for consumers, extensive awareness creation should also be made on business persons about their obligations, their liabilities, about competition, anticompetitive practices and unfair competition, and about the rights of consumers in general.
6. Consumer associations must also be encouraged and supported to participate in consumer protection activities to enhance the role of the consumer in decision-making processes related to consumer issues. In particular there is the need for more support and equipping of organized consumer protection campaigns dealing with food safety and health issues.
7. As a supplementary measure, trade associations and industry representatives must be encouraged to develop voluntary codes of practice and other self-regulating procedures to govern the conduct of business so as to enhance consumer welfare. It is suggested that the Private Sector Federation could provide guidelines for the various industries and professions.
8. The law shall be properly and effectively enforced. In this regard, the enforcement of the law shall be made after due consideration of all factors that may influence its implementation. It is also essential to consult the concerned private organs in the enforcement of the law as their participation would be of help. Consultation and cooperation with the concerned government organs is also essential.

This research thesis comes to its end, but the efforts to improve consumer protection in Rwanda do not. A mechanical legal transplant is not difficult, but by manner by which to adapt the well-accepted experiences from other traditions to the social reality of Rwanda remains a high task, whose result remains to be seen. Improving consumer's protection is not only a legal and institutional framework remedy issue, but also an issue of judicial reform, social justice and rule of law. It is broader, deeper, and more important than the literal interpretation of this thesis title carries. It is even not only a legal issue, but also a political, economic, and cultural one that invites continuous research and heated debates.

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VII. INTERVIEWS

1. Interview conduct with C.NGANGO, Director in charge of competition and consumer protection (MINICOM), on 12/06/2013.
2. Interview with J. KOMEZUSENGE, Advocate and member of Kigali Bar Association, he is also client of Bank of Kigali, on 23 December 2012.
3. Interview conduct with R. MURENZI employee of Standards Unit, at RBS offices, on 17 December 2012.
4. Interview with F. RUTAYISIRE, PSF's employee, on 13 September 2012.