



Consumer Rights and Protection Regulatory Guidelines in the Electronic Communications Sector in SADC

Revised 2021

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ACRYNOMS

CRASA	Communications Regulators' Association of Southern Africa
FTA	Free Trade Area
ICT	Information and Communications Technologies
NRA	National Regulatory Authority
PwD	Persons with Disability
QoE	Quality of Experience
QoS	Quality of Service
SADC	Southern Africa Development Community
UAS	Universal Access and Service
UASF	Universal Access and Service Fund
UASO	Universal Access and Service obligations

DEFINITIONS OF TERMS

- Accessibility** - a measure of the extent to which a product or service can be used by a person with a disability as effectively as it can be used by a person without that disability
- Consumer** - a person to whom electronic communications and postal services are rendered; and includes any person who purchases electronic communications and postal products otherwise than for the purpose of re-sale; but does not include a person who purchases electronic communications and postal products for the purpose of using them in the production and manufacture of any other goods or articles for sale
- Information and Communication Technologies (ICTs)** - the technologies including computers, telecommunications, broadcasting and audio visual systems, that enable the collection, processing transportation and delivery of information and communications services to users.
- Electronic Communications** - emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct but does not include content service

Executive Summary

The Communications Regulators' Association of Southern Africa (CRASA) is committed to adequately protect the consumers of the services and applications of the Information and Communications Technologies (ICT) in the Southern Africa Development Community (SADC). CRASA is also aware of SADC commitment to issues regarding timely provision of affordable, reliable, effective, efficient and sustainable basic and advanced ICT services focused on meeting the developmental needs of the region.

In line with SADC Policy, the SADC Consumer Rights and Protection Guidelines in the Electronic Communications Sector in SADC ("the Guidelines") were developed in order to harmonise the manner in which ICT consumers were empowered and protected. The Guidelines are meant to assist decision makers in ensuring that consumer protection becomes an integral part of SADC development objectives. The process of implementing the Guidelines requires full participation of all stakeholders, taking into consideration the fact that regional integration is achievable through the adaptation and early implementation of common policies in the region. In this regard, the Guidelines will focus on the electronic communications market and its consumers of ICT products and services.

Section 1

1 INTRODUCTION

The Information and Communications Technologies (ICT) industry is continuously undergoing dramatic changes through innovations. In addition, the policy and regulatory landscape is undergoing a lot of change through deregulation and liberalization of markets to allow for increase in investment. These rapid technological changes coupled with the trends in ICT consumer needs have led to increasing disputes between the service providers and consumers. The range of consumer complaints is now diverse and it has been magnified by the immediate need to address the needs and concerns of the consumers with special needs.

Like all other developing economies, Southern Africa Development Community (SADC) have also moved from monopolistic telecommunication markets to liberalized and competitive ICT markets. These evolutionary changes have manifested themselves in the form of increased competition changing the social obligations to provide universal services to the citizens, and a growing uncertainty as to continued attention to social goals. On the other hand, SADC have an increasing number of potential consumers who are looking for highest quality service offering at the minimum cost. Furthermore, the convergence of technologies has compounded our accessibility challenges by creating a new breed of services that have increased the cherry picking on lucrative urban market at the cost of the semi-urban and rural masses.

Toward that end, an effort was initiated in 2001 to identify a core set of consumer protection measures, through establishment of a Code of Consumer Bill of Rights.¹ In 2004, the Code was developed into Consumer Protection Guidelines that would result in greater consumer involvement, empowerment

¹ Model Consumer Protections in the Telecommunications Industry, SADC Region, Consumer Bill of Rights, William R. Schulte, November 2003.

and confidence. With changes in the industry, the guidelines developed in year 2004 could no longer adequately address protection of ICT consumers.

In this regard, Communications Regulators' Association of Southern Africa (CRASA) had reviewed the guidelines in year 2018 with a goal to ascertain that the liberalization process in the ICT sector successfully delivers real choice to the consumer in the region. The review also recognizes that liberalization efforts in the region will only be effective if there is a sense of consumer protection from market abuses and unfair trade practices. The review of guidelines also intends to encourage development and diffusion of new and emerging ICTs to occur with limited consumer detriment. In addition, a review was done in 2021 to bring clarity on how National Regulatory Authorities (NRAs) could become more inclusive in consumer empowerment and protection for Persons with Disability (PwD).

Section 2

2 OBJECTIVES OF THE GUIDELINES

The objective of these Guidelines is to ensure that there is sufficient empowerment and protection of the ICT consumers. It is being recognized that consumers of ICT services and products often face inequality in educational levels, economic provisions and bargaining power and that consumers have access to safe ICT products and services.

The guidelines aim to promote regional cooperation and harmonization of policies in the area of consumer rights and responsibility when appropriate. They provide a clear step-by-step guide to promote development and diffusion of new and emerging technologies to occur with limited detriment to the regional social goals.

The guidelines propose a policy framework for the harmonized development and application of policy and regulations on consumer rights and protection in the region. The guidelines also make recommendations for the review of policies spanning issues such as the consumer privacy and confidentiality, Quality of Service (QoS) provision, safety of ICT products and services and regulatory responsiveness.

Based on assessment of key regulatory trends worldwide, the Guidelines aim to:

- a) Encourage keeping up with rapid changes within the ICT sector;
- b) encourage regional policy harmonization on consumer protection issues;
- c) facilitate achievement or maintenance of adequate ICT consumer protection in SADC region;
- d) encourage high levels of flow of information to consumers to allow them to make informed choices;
- e) encourage high levels of ethical conduct by ICT service and product providers;
- f) encourage availability of effective consumer redress;
- g) encourage availability of affordable ICT services; and
- h) encourage increase in accessibility to ICTs services for the Persons with Disability (PWD) and special social needs.

Section 3

3 PRINCIPLES

The following establishes a set of governing principles, called Consumer Bill of Rights and a series of implementing guidelines meant to aid NRAs in providing effective consumer protection. There has been no attempt to establish prescriptive standards of form or content, above minimum informational needs, that would limit the ability of service providers to cost-effectively implement these principles.

Principles should incorporate a converged ICT environment instead of treating them separately and this is inclusive of postal, telecommunications and broadcasting sectors. Given the prevalence in the region of prepaid service as opposed to postpaid services, disclosure guidelines may address information required either on a periodically provided bill or at the point of sale in the case of prepaid services, as the case may be from country to country. Service Providers are responsible for ensuring compliance with these guidelines by their agents and every person, firm or company representing the service provider or acting in the service provider's behalf.

It is recognized that traditional regulation of monopoly or significant market power situations protects against potential external market failures such as:

- a) high prices;
- b) insufficient supply;
- c) poor service quality and reliability;
- d) high turnaround time to repair;
- e) slow introduction of new services; and
- f) inaccurate and incontestable bills.

Markets with more providers are characterized by increased competition. However, there are concerns of unfair trade practices which can lead to market failure. As a result, consumer protection measures, enforcement and empowerment through awareness, entry and service protection are also

necessary. Experience from around the world, including the SADC region, consistently point to a set of common problems, without limitations:

- a) access to adequate information to empower consumers to make informed choices;
- b) availability of effective consumer redress mechanisms through private/public sector complaint processes and aggressive enforcement of consumer protections;
- c) lack of applicable rules in defining suitable degree of consumer protection regarding billing complaints;
- d) ability to participate in public policy debates;
- e) misleading marketing practices, false or misleading claims and irresponsibility, as well as indiscreet handling of personal information;
- f) protection of consumers against potentially hazardous products to the health and safety of consumers; and
- g) Protection of consumers against sub-standard products, poor QoS and reliability.

Section 4

4 KEY PRINCIPLES ON CONSUMERS PROTECTION

NRA are encouraged to ensure that service providers abide by these key principles on consumer protection:

- a) to act fairly, reasonably, timeously and responsibly in all their dealings with consumers;
- b) to make sure that all services and products meet the specifications as contained in their licenses and all the relevant regulations and code of service;
- c) not to discriminate against consumers on the basis of race, gender, ethnic background, sexual orientation, disabilities, special social needs, religious and vulnerable/marginalised/vulnerable groups;
- d) to assist consumers when they need information and guidance with regard to their products and services;
- e) to keep consumers' personal information confidential;
- f) to handle consumer complaints promptly, correct mistakes and inform them how to take their complaints forward if they are still not satisfied;
- g) to train their staff to make sure that the procedure they follow reflect the requirements set out in these Guidelines; and
- h) provide various for a for complaints registration including office visits, telephone calls, social media, etc.

Section 5

5 CONSUMER RIGHTS AND OBLIGATIONS

SADC Member States are encouraged to adapt into their ICT consumer policy and regulatory frameworks the following consumer rights and obligations that shall be respected by ICT service providers, consumers and NRAs.

5.1 Consumer Rights:

The following are the suggested ICT consumer rights:

5.1.1 The Right to Safety

The consumer has to be protected against ICT products and services which are hazardous to health or life.

5.1.2 The Right to Be Informed

The consumer has a right to receive clear, conspicuous, and complete information on following:

- a) each product or service ordered;
- b) prior notification of changes to the contract during its validity period;
- c) all applicable rates as consented to by the consumer, with specification of any additional fees and charges that apply;
- d) charges on the consumer's bills for services; and
- e) each service provider shall be required to notify consumers about the availability of the consumer complaint procedures.

The complaints handling process shall include the following minimum requirements:

- a) register of complaints;
- b) service provider toll free number or numbers by which consumers may inquire or dispute to services; and
- c) toll free number of the NRA where consumers may make inquiries or file complaints in cases where they are not satisfied with the redress to their complaint by service provider.

5.1.3 The Right to Consumer Education

The consumer has the right to acquire knowledge and skills needed to utilize the ICT products and services. The Consumer has also the right to acquire knowledge on how to use the ICT products and services in safety especially in use of online services.

5.1.4 The Right to Choose

The consumer has a right to affirmatively select their ICT provider and services where multiple options exist.

5.1.5 The Right to Be Heard

The consumer has the right to be heard and have the rights to the following:

- a) access to the complaint procedure;
- b) full participation in the complaint handling process;
- c) ability to submit evidence and witnesses; and
- d) appeal mechanism if not satisfied with the decision.

5.1.6 The Right to Remedy

The consumer has the right to receive a fair settlement of bona fide claims against the service providers.

5.1.7 The Right to Access Basic ICT Services

The consumer has the right to access basic ICT products and services that are reliable and of high quality.

5.1.8 The Right to Privacy

The consumers have a right to personal privacy and should be protected against unauthorized use of their personal information. The consumer shall have a reasonable expectation of privacy regarding their personal information and calling patterns. Service providers may use and disclose confidential consumer or subscriber information only for the purposes for which it was collected, except by written consent of the consumer or as expressly permitted by national law.

The consumer information that requires privacy includes:

- a) information about a subscriber (such as national identification number, credit and other personal financial information) collected directly from the subscriber or from another source;
- b) information derived by the service provider from the provision of service to a subscriber (such as the subscriber's calling patterns, type, destination, and amount of use, services subscribed to, and information contained in telephone bills); and
- c) a consumer's name, telephone number and address if a subscriber has requested that such information be withheld from a printed or electronic directory.

5.1.9 Right to Clear and Accurate Billing

The consumer has a right to accurate and clear bills for products and services they have consumed. Bills should include the following minimum information:

- a) a brief, clear, and non-misleading description of the services rendered;
- b) name of service provider associated with the charge;
- c) verifiable charges in a format that can be easily compared;
- d) billing period covered by the bill;
- e) disclosure of any rate or service change;
- f) payment due date;
- g) balance carried forward from the previous billing cycle;
- h) rental charges; and
- i) terms for late payment fees and termination of service.

In cases where consumers lodge a billing complaint against the service provider, the complaint handling process should be guided by the following:

- a) service provider shall not disconnect the service to consumer while the investigation of a disputed portion of a bill is still pending;
- b) service provider shall reach a determination regarding the billing complaint and communicate it to the complainant within a determined timeline;
- c) service providers shall not disconnect the service until they have notified the complainant about the results of their investigation and determination;

- d) service providers shall not take adverse collection procedures or assess late charges and/or penalties while the investigation of a disputed billing is still pending; and
- e) service providers shall ensure that the consumer was informed well in time about time for payment before they disconnect him/her.

5.1.10 Right to Responsive Regulatory Authority

The consumer has a right to a responsive NRA that is proactively looking out for their interests and takes into account the needs and values of consumers. As such the NRA shall:

- a) establish and publish clear rules requiring service providers to have quality, reliable and affordable ICT products and services
- b) establish and publish clear rules requiring service providers to have a consumer complaint handling process;
- c) monitor sector performance regarding provision of quality, reliable and affordable ICT products and services and report their findings at least on a yearly basis;
- d) create a consumer outreach program capable of educating and empowering consumers about their rights, responsibilities and opportunities; and
- e) ensure service providers provide emergency service by which the public may, at any time and free of charge, communicate during emergency situations.

5.2 Consumer Obligations

The following are the minimum ICT consumer obligations:

5.2.1 Payment of Bills for Services

The Consumer has obligation to pay bills/service charges for product and services utilised as stipulated in Consumer Service Agreements/Contracts and pay them promptly.

5.2.2 Proper Use of Products and Services

The Consumer has the responsibility to fairly make good use of the services, products and equipment as stipulated in the Consumer Service Agreement/Contract.

5.2.3 Genuine Claim

The Consumer has the duty to make genuine complaints and provide proof of the circumstances when registering complaints or claiming compensation.

5.2.4 Environmental Protection

The Consumer has the duty to ensure appropriate disposal of wastes from utilisation of ICT goods and services such as scratch cards and damaged equipment.

5.2.5 Respect Contractual Obligations in Consumer Service Agreements

The Consumer shall respect and adhere to the provisions of the Consumer Service Agreements at all times.

5.2.6 Respect the privacy of other users

The Consumer shall respect the privacy of other users of ICT/telecommunication services.

Section 6

6 SPECIFIC GUIDELINES FOR CONSUMERS WITH DISABILITIES AND SPECIAL SOCIAL NEEDS

6.1 Introduction

As the world continues to witness the rapid growth and innovations of ICT sector, it is being acknowledged that greater inclusion needs to be considered at all levels for sustainable ICT growth, economic development and reduction of dependence that results from excluding people/consumers with special needs and hence negating efforts put in ICT for development.

PwD and special social needs may range from all kinds of disabilities and vulnerable groups. It is being acknowledged that as for disabilities, accessibility is a major concern for people with mobility impairments, total or partial visual inabilities, hard to hear as well as other forms of situational disabilities caused by barriers like environment, language and geographical issues. Vulnerable groups or those with special social needs include, children, the aged, women, victims of disasters (natural and man-made) and the homeless.

There are several types of consumers with disabilities and special social needs and in this guideline are as follows:

- a) physically impaired;
- b) visually impaired (blind or partially sighted)
- c) sensory disabilities
- d) visual disabilities;
- e) hard to hear (deaf);
- f) mental disabilities;
- g) senior citizens;
- h) children;
- i) disaster prone groups; and
- j) others.

SADC's intervention focuses on consumers with disabilities and special social needs and aims to:

- a) facilitate the protection of ICT consumers with disabilities and special social needs;
- b) support PwD and special social needs to meet their goals hence creating better quality of life;
- c) mitigate challenges caused by disabilities; and
- d) create opportunities of their participation in development by accessing information and share information as any other consumer.

6.2 Guidelines on Policy and Regulatory Remedies Focusing on PwD And Special Social Needs

There is need to provide an institutional framework that SADC Governments and NRAs should consider in achieving consumer protection of PwD and special social needs through developing and implementing inclusive and coordinated legislations, regulations, standards and guidelines for ICT Accessibility. This will include:

6.2.1 amending the existing ICT sector legislations and Policies to:

- a) encourage innovations by and for disabled persons when designing and considering each new product idea, ICT tools and facilities by recognizing strengths and knowledge of people with special needs who are real experts in their areas of inabilities;
- b) facilitate availability and affordability of assistive devices and tools through subsidization or tax-free importation or manufacturing;
- c) establish an advisory committee on ICT accessibility to advise the ICT Ministry and NRAS on matters relating to the needs of the PwD and Special Social Needs; and
- d) promote education and awareness to PwD, persons with special social needs and organisations of PwD of the changes in ICT policies and legislation.

6.2.2 developing regulations, standards and guidelines for ICT Accessibility including:

- a. amending the Universal Access and Service (UAS) regulations to ensure revision of the definition of UAS and UAS obligations (UASO) to include ICT

accessibility and include ICT accessibility as part of its objectives of UAS and UAS Fund (UASF);

- b. including QoS and Quality of Experience (QoE) parameters considering ICT accessibility;
- c. introducing mandatory obligations to ensure access to emergency services through electronic communications, broadcasting networks and the web, where applicable, by public including PwD and Special Social Needs;
- d. providing incentive regulation to operators by encouraging each one to support specific aspects of disabilities in their delivery of service;
- e. promoting introduction of relay services by all ICT service providers to facilitate two-way communication with the PwD by transmitting voice into pictures/signs and vice versa;
- f. introducing mandatory minimal standards and regulations on assurance that ICT service providers' facilities and services consider all aspects of accessibility for PwD and special social needs;
- g. promoting education and awareness of ICT solutions for PwD and special social needs; and
- h. obligating operators to develop Consumer Care System capable of responding to specific PwD and special social needs inquiries and complaints.

Section 7

7 Conclusion

It is being recommended to NRAs in SADC that they should undertake public consultations in preparing regulations on consumer protection and responsibilities. It is also encouraged that information be made available to the public on such regulations. Making this information readily available to the public is an important step in advancing the transparency of ICT regulations and harmonization of ICT Consumer Rights and Obligations for the region.

Since distribution of hazardous ICT products can easily cross political boundaries due to the SADC Free Trade Zone (FTA), NRA of one country should, therefore,

communicate on the need for public notice in cases of known hazards to consumption of a certain ICT service or product with other SADC NRAs.

Service providers as well as public and private consumer protection bodies in the ICT industry are encouraged to uphold these rights and obligations; educate the public about them and put them into real practice, by conducting themselves in a manner that reflects enactment of these rights.

End//.