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Energy Sector Regulations & Consumers in Pakistan

A policy brief by
TheNetwork for Consumer Protection

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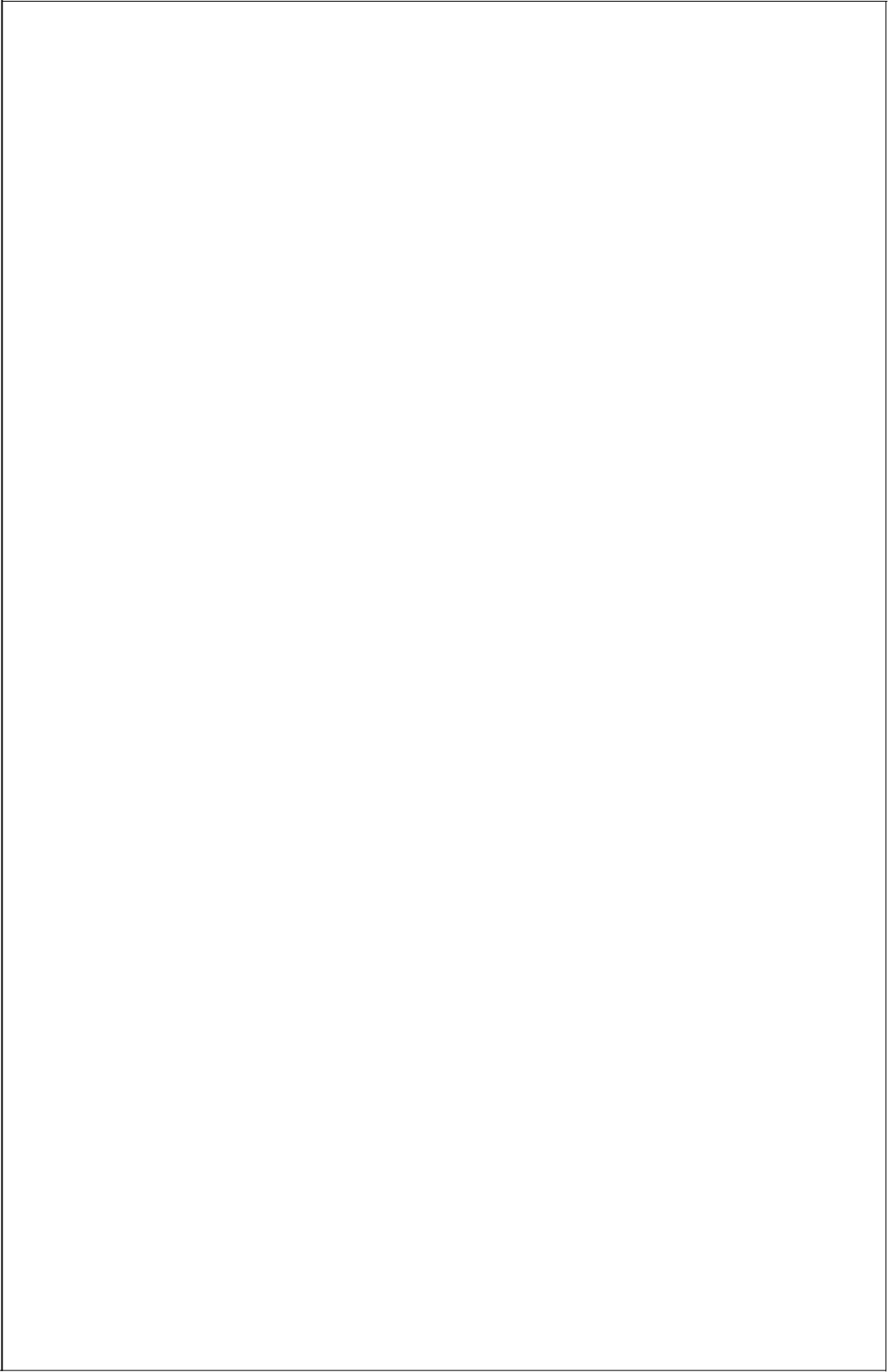
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Abbreviations

LPG	Liquefied Petroleum Gas
NEPRA	National electric Power Regulatory Authority
OGRA	Oil & Gas Regulatory Authority
ICT	Islamabad Capital Territory
KPK	Khyber Pakhtunkhwa
RBDC	Rana Bhagwan Das Commission Report
CP	Consumer Protection
CR	Consumer Right
CI	Consumer International
CPC	Consumer Protection Council
CC	Consumer Court
DCO	District Coordination Officer
CPL	Consumer Protection Law
ICPA	Islamabad Consumer Protection Act 1995
DCPC	District Consumer Protection Council
PCPA	Punjab Consumer Protection Act 2005
GOP	Government of Pakistan
CNG	Compressed Natural Gas
POL	Pakistan Oilfields Limited
AEDB	Alternative Energy Development Board
SNGPL	Sui Northern Gas Pipeline Limited
SSGC	Sui Southern Gas Company

Executive Summary

This brief contains coverage of consumer protection laws and energy sector grievance redress mechanism in and around the jurisdiction of Islamabad, KPK and Punjab. Application of Consumer Protection Laws in Pakistan is a provincial subject. Whereas, India contains a Federal Consumer Protection Act of 1986.

Consumer Protection Law of ICT and KPK deal with defective provision of goods and services. 'Energy' is not mentioned specifically and therefore it is not categorized in the term services. Consumer laws lack proper administration. For example absence of notification on Consumer Protection Council (as is the case in ICT) or deactivation of consumer protection councils as is the case in KPK. Simultaneously, the energy regulators have an explicit role to protect consumer interest while regulating their actors. Section 7 (6) NEPRA Act mandates to protect the interests of consumers and companies providing electric power services. The OGRA Ordinance, 2002 also subscribes to the aim of protecting public interest while respecting individual rights in the mid-stream and down-stream petroleum industry. But, complexity of the sector and conflicting interests of stakeholders like GOP, Service Providers or licensees and the consumers demands adoption of a balancing function by the regulator, which despite the statutory pronouncement of being exclusively responsible (independent) in their domain, are always subjected to non-transparent policy guidelines issued by i.e. GOP from time to time. The energy regulators are quasi-judicial bodies and do not have power to grant compensation. The situation necessitates a review of existing policy and legal framework governing energy sector and protection of consumer rights.

The report recommends the following:

- Improvement in the administration of provincial consumer protection laws;
- Enhanced synergy between the proceedings of provincial and district consumer protection councils; and
- Awareness programs on consumer rights
- To develop a system of implementing standards of service for protection of rights for the energy consumer.
- Implementation of standards of service as per determined by energy regulators.
- In case of termination of liability of their licensees by the regulators, the consumer shall be able to approach Consumer Courts for seeking award of compensation.

- Regulators must balance interests of consumers with that of service providers and implement policy guidelines.
- The regulator must act independent of government pressures and service providers in order to ensure economic, safe and sustainable provision of energy services.
- There must be sufficient capacity building of the regulators in order to strengthen accountability and safeguard consumer rights.
- To develop a framework for national consumer policy, publication and update of annual reports of provincial and District Consumer Protection Councils.

Introduction

The redress mechanism for an energy consumer is yet to become effective in Pakistan. NEPRA and OGRA are public bodies meant to be distinct from the government for economic regulation in the energy sector. This is to bring transparency and consumer participation in decision-making process¹, particularly tariffs, terms and conditions of service delivery (Rana Bhagwan Das Commission (RBDC Report 2009). The Consumer Protection Laws grant compensation and relief after accrual of a cause of action against a manufacturer or a service provider. Because of the disparity between the consumer protection laws and the two energy sector regulators, a consumer is unable to gain desired appreciation of their rights (Hafiz Aziz et al, 2005).

Context and Importance of the problem:

Consumer Laws:

In following paragraphs, an effort has been made to review three- ICT, KPK and Punjab-consumer protection laws in Pakistan. This review provides brief summary of the facts, an over view of the root causes of the problem and finally implication of the problem.

Features	KPK- CP Law	Punjab – CP Law	ICPA-CP Law
Definition	Supply of Electrical, Mechanical and other forms of Energy Section 2(n) of the KPK CP Law, included in the definition of services.	Energy Supplies not provided separately and covered under “product” as goods under the Sale of Goods Act.	Silent as regards definition of goods services including energy defined as in the case of KPK CP Law. But consumer courts have entertained energy related cases.
Prohibited Activities	No Display of retail price, weights, size, standards and their contact details over their products, non-issuance of receipt and prohibition of false advertisement (section 7)	Exclusion of liability under contracts prohibited safeguard against contractual waivers in case of defective products and services (Section 12 and 17).	Silent Unfair trade practices and false advertisement prohibited

¹ 1997 SCMR 641, 711

Features	KPK- CP Law	Punjab – CP Law	ICPA-CP Law
In aid of other laws	The KPK CP Law acts in addition to and not in derogation of any other law for the time being in force (section 3).	“Liability arising from defective products” and “Liability arising out of defective and faulty services” (Part II and Part III, respectively). Available	Silent
Jurisdiction and Limitation (Time)	District court in whose jurisdiction the opposite party resides or works for gain complaint filed by the consumer, the CPC, a registered consumer protection organization and a Government officer so designated. Ordinary limitation of 10 days from the date of sale, delivery of goods and services extendable upon court’s satisfaction up to a maximum period of 1 year In case of warranty or guarantee, limitation can be extended up to 60 days after expiry thereof.	15 days notice before filing a case in CC is not a pre-condition if filed by the consumer council.	Silent with respect to time.
In aid of other laws	Time for filing response to complaint is one month with a 15 days extension, Provision for lab verification, complaint disposal within 2 months.	Available	Silent

Features	KPK- CP Law	Punjab – CP Law	ICPA-CP Law
Redress	Award of compensation, ordering rectification/replace ment of defective goods, or returning price of the good	Award of compensation, ordering rectification/replace ment of defective goods, or returning price of the good	
Appeal	Against decision of High Court within 30 days	Against DCO’s order before Secretary.	High Court
Fines and Penalties	Rs. 50,000/- with or without two year jail.	Rs. 50,000 — 100,000/- with or without two years imprisonment,	Two years punishment and fine.

— The consumer protection laws seem to recognize rights of consumers except the right to be heard (in respect of consumer rights protection needs) and informed. Similarly, the inclusion of non-official members in the CPC i.e. representatives of consumer organization and women voluntary organization, does not suffice unless their adequate qualifications/criteria are also provided (Asad 2006).

— The KPK CP Law provides a distinction between CC and the authority i.e. Magistrate. However, the district magistrate – both in ICT CP Law and KPK CP Law - can only investigate but no express powers to decide the complaint have been provided. KPK has notified consumer councils and courts in 10 districts but to date they are functional in six districts the rules for the conduct of office of CPC were notified in 2007. Unlike Punjab CP Law, KPK CP Law fails to provide for a nexus between provincial CPC and a district CPC. Similarly, rules need to include provisions for transparent handling of affairs.

— Certain improvements have been made in the case of Punjab CP Law as adjudicating authority is available with the district administration, i.e., DCO; it is possible that consumers may get their complaint resolved without resorting to litigation before the Court of Sessions. Punjab Consumer Protection Rules, 2009 clearly explain the manner to conduct offices of PCPC and DCPC and the coordination between the two, along with a plan for progressive review of their functions etc. Respective directorate has put up a website carrying information for consumer education; archiving all decisions of different district consumer courts.

Energy Sector Regulations:

- Sustainability - promotion of sustainable alternatives and energy efficiency
CNG was initially introduced as a social service to public but its indiscriminate use even in luxury cars, made Pakistan world's no. 1 country to burn precious natural gas in vehicles. Hence, domestic consumers don't even have gas to turn on their stoves. Industry, particularly the textile sector, the main foreign exchange earner for the country, is unable to operate optimally in the absence of gas.
- Choice and flexibility - development of off-grid systems; choice of payment methods
NEPRA is yet to finalize distributed generation rules promoting off-grid generation. Currently no choice of payment methods have been envisioned by NEPRA though efforts have been made by the Alternative Energy Development Board (AEDB) of the Government of Pakistan to get approval for net metering, energy and banking etc.

Non-pipe line consumer of OGRA is provided Oil and gas services through tankers and Cylinders. The upcoming LPG policy proposes to establish infrastructure for retail outlets for LPG, as available in case of petrol, placing number of persons out of job in CNG sector and turning the CNG kit redundant for consumers. Dependence of OGRA is also an issue in its inability to foster consumer protection. Despite OGRA's reported objection to switch to quarterly POL price review, the GOP announced quarterly Oil price review, which has now even been reduced to one week (The Nation, 2012).

- Fairness - equitable distribution of supply, fair price formulae
Despite setting up a criterion for load shedding under NEPRA's PSD, different areas in Pakistan are subjected to discriminate hours of load shedding. 80% of consumer-end prices comprise of generation tariff, which consumers have no effective means to contest. Similarly, despite the legal bar against retrospective application of tariff, Fuel Adjustment Surcharges are being recovered for previous months. The circular debt, inhibiting the existing capacity to be utilized but also a deterrent for new power investments, has a big portion of subsidy announced but not paid by the GOP to distribution companies. (Chris et al, 2011). NEPRA has been unable to resist to this practice of the GOP.

Fair pricing demand participation at the time of tariff determination, an account of notification of oil, prices provided above, does not allow OGRA to have a role on the subject. Hence, consumers are subject to unfair pricing. Federal Government has high stakes in the sector as it is an important revenue (sales tax etc.) generation sector.

— Customer care and support - protection through consumer contracts
NEPRA has institutionalized customer service manual supported with adequate contractual arrangements. However, no such standards of service have been approved by OGRA for its distribution companies, i.e. SSGCL and SNGCL.

— Mediation, redress - complaint and dispute resolution systems
Both NEPRA and OGRA administer their complaint handling rules; an area where consumers can claim grievance redress from the two energy regulators; however the redress is often delayed and beyond the capacity of the regulator to handle bulk of complaints. Also, the regulators are not delegated the power to penalize.

— Special assistance - targeted help for poor consumers
Lifeline consumer subsidy should only be provided to deserving consumers only. NEPRA has been unable to devise a mechanism whereby only targeted subsidy could be provided to needy consumers (Chris et. al, 2011).

OGRA's advice is ineffective in the interest of consumers, as the final decision rest with the GOP.

— Governance and consumer influence - representation and regulation
NEPRA rules and regulations and its other functions are undertaken with due public consultation. Policies made by the Ministry of Power or Oil & Gas need to develop a mechanism of seeking effective consumer consultation (Hafiz et al. 2005). NEPRA, despite capacity constraints and conflicting policy guidelines issued by the Federal Government has acknowledged voice of consumers, but the same yet needs to bring practical respite in the grievances of electricity consumers. Tariff determination by OGRA needs to be made more open and transparent such that it moves towards sale of gas and oil products in line with best industry standards and principles of economic regulation. OGRA also has an effective complaint handling procedure, but both NEPRA and OGRA are unable to grant damages/compensation to their complainants and provincial protection courts/council can be harnessed towards this end.

Recommendations to improve the Consumer Protection Laws and Grievance Redress Mechanism in the Energy Sector:

— CPLs must be reviewed to remove operational difficulties and effective handling of energy complaints falling in the domain of other bodies like energy regulators.

— CPLs can only be administered and enforced effectively, if provincial and district CPCs are strengthened by:

- Providing a strict criteria of appointment for their members;
 - Prescribing rules for their effective functioning and monitoring; and
 - Taking measures, like for example laying of reports before PCPC by DCPC and by the former before respective provincial assemblies.
- Appointment of consumer advocates in each district and providing awareness and education to these councils on consumer rights through curriculum;
 - To maintain a journal on cases before the Consumer Court and also stimulate awareness about handling of consumer cases by courts apart from its compilation and availability for all concerned.
 - Formation of an appellate bench in respective high courts for speedy adjudication of the appeals filed against the decisions of CCs.
 - Demand supply gap of electricity hovering between 5, 000 - 8,000 MW should be addressed in best interest of the consumers.
 - Internationally, United Nations General Assembly in 1985 (Asad, 2006) derived a framework to safeguard consumers against deception, fraud and exploitation. The eight basic consumer rights, recognized by the United Nations shall be adopted and implemented in letter and spirit by Pakistan.
 - Consumer International (CI)² has exclusively developed and launched a Global Energy Charter 2008. The charter is with the aim to promote universal access to sustainable energy services for all consumers. It sets out the responsibilities, rights and principles that suppliers, governments, regulators and consumers must embrace to achieve this goal. Consumers are reminded of their responsibilities to consume prudently and contribute to the optimum utilization of these energy resources. The same shall be adopted and implemented by the Government of Pakistan.

² Consumer International (CI) is a global campaigning voice for consumers. With over 220 member organizations in 115 countries, it is building a powerful international consumer movement to help protect and empower consumers everywhere. For details, please see www.consumerinternational.org

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