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Fintech for the poor? Regulating the Kenyan digital credit market and its impact on borrowers

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ABSTRACT
Digital credit claims to improve financial inclusion by providing loans to financially excluded populations, thus alleviating poverty. However, contrary to this claim, borrowers are often struggling with violations of consumer rights due to the absence of appropriate regulation. We investigate the case of Kenya where the Central Bank of Kenya Amendment Bill 2021 was introduced to solve consumer protection issues raised by the digital credit industry. In this paper, we draw on qualitative interviews finding that digital credit consumers are being unfairly treated. Consumers are suffering from default and blacklisting, aggressive debt collection practices that cause mental distress, exorbitant interest rates, and unlicensed lenders. In addition, there are problems with the transparency and effectiveness of digital credit due to deceptive marketing and the infringement of data privacy. Finally, this study reveals that the Central Bank of Kenya Amendment Bill 2021 leaves significant gaps to be addressed with some elements of the bill potentially putting borrowers at risk.

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Fintech; digital credit; regulation; Kenya

Introduction

Since the launch of M-PESA in 2007, Kenya has become one of the leading mobile money service providers worldwide. As of 2024, mobile money transactions in Kenya have continued their upward trajectory. In the second quarter of 2024 alone, the total value of mobile money transactions reached Ksh 2.1 trillion (US$ 14.61 billion).[1] The expansion of access to mobile money has led to an increase in demand for other digital financial services such as loans, thus traditional financial institutions in Kenya launched digital credit, i.e. mobile-enabled loan services. At the same time, multinational financial companies such as Visa and Paypal,[2] also entered the Kenyan market by investing in FinTech firms such as Tala and Branch. There were 51 licenced digital credit lenders operating digital credit businesses.[3] The Central Bank of Kenya (CBK) reported that digital credit services were provided worth Ksh 437 billion (US$ 3.04 billion) in 2021, representing a 48 percent increase compared to 2020.[4]

Despite this remarkable growth, the digital credit market in Kenya is operating in a largely unregulated environment, thus raising concerns about consumer protection of digital credit borrowers (Francis, Blumenstock, and Robinson 2017; Mazer and Garz 2024; Mitheu 2018). Kiplagat (2023) argues that Kenya is now confronting dangerously high levels of over-indebtedness claiming that this trend has been exacerbated by digital credit, such as the activities of M-PESA and other FinTech companies.[5] Mitheu (2018) insists that issues related to excessive interest rates and multiple borrowing have increasingly put digital borrowers at risk. However, the most serious problem is the increase in the loan default rate in Kenya. For example, the 2021 FinAccess Household Survey reveals that default rates among borrowers using mobile banking loans were 50.9 percent (CBK et al. 2021). These rates were significantly higher compared to those taking loans from microfinance institutions (30.8 percent), government credit institutions (22.5 percent), banks (22.1 percent), Savings and Credit Cooperatives (SACCOs) (16 percent), and chamas or other social groups (34.4%). This shows that borrowers using digital credit are exposed to greater risks of default, which

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could subsequently lead to being blacklisted by the Credit Reference Bureau (CRB). In addition to over-indebtedness and high default rates, illegal methods of debt collection and infringement of data privacy laws have been reported as further risks to consumers (Brailovskaya, Dupas, and Robinson 2021; Owens 2018). However, the academic literature is scant and has not yet sufficiently taken these problems into account to date, with few exceptions (e.g. see Waliszewski et al. 2023, 2024).

Especially the lack of an appropriate regulatory framework is one of the key reasons for why digital credit borrowers are unnecessarily exposed to consumer protection risks (Garz et al. 2020). Kenya is one of the pioneers in promoting the use of digital credit to foster financial inclusion and economic growth with other countries, especially low – and middle-income ones, looking to adopt the Kenyan model, thus the country should also be the front runner in developing a regulatory framework within this context. However, the Kenyan digital credit market leaves millions of vulnerable people unprotected due to a lack of appropriate regulation (Mitheu 2018; Putman, Mazer, and Blackmon 2021), thus exacerbating consumer protection risks. Owens (2018) suggests that self-regulation by the lenders should be firstly considered for reducing consumer protection risks; the association of lenders needs to ensure that their members operate in a responsible way. However, self-regulation has clear limitations as profit-seeking lenders have no qualms to exploit vulnerable consumers and see no need to restrain their profit-making activities (Kline and Sadhu 2011; Persson 2010).

Therefore, due to pressure from the media and advocacy groups, there have been several attempts to initiate a regulatory framework to control digital credit lenders. The CBK tried to enact the CBK Amendment Bill for several years, and it was finally approved by the Parliament of Kenya on 7th December 2021[6] coming into effect on 31st December 2021. The CBK Amendment Bill 2021 (CBKB 2021) has the purpose of ensuring that the CBK has the authority to license digital credit lenders. However, it has yet to be seen whether this Bill will also lead to improvements in protecting consumers from irresponsible lending practices. For the Bill to have its desired effects, it is important to understand the types of risks that tend to threaten the livelihoods and the wellbeing of digital credit borrowers. There are only very few studies providing empirical evidence about the consumer protection risks of digital credit. An Evidence Gap Map (EGM) funded by The Mastercard Foundation in 2019 provides an overview of the literature on the effects of digital financial services, including digital credit, revealing that there are few studies focusing on consumer protection in relation to digital credit.[7] There are even fewer studies examining regulatory frameworks of digital credit markets and their appropriateness in terms of protecting consumers. Some gray literature articles and blogs (Centurion Plus 2022; Mbaluto and Mutua 2022; Mulika et al. 2022; Waliszewski et al. 2023, 2024) provide cursory insights into such regulations but without including an in-depth understanding of the risks consumers regularly face when borrowing digitally.

Therefore, building on Kim (2022) and Upadhyaya, Weitzberg, and Bonyo (2025), the aim of this study is to explore consumer protection risks in the context of Kenya's digital credit industry. Drawing on the case of the CBKB 2021 and using qualitative interviews conducted with digital credit borrowers living in the informal settlements of Nairobi, the purpose is to understand how well current regulatory policies work to mitigate risks to consumers. We also reflect on the shortcomings of the Kenyan digital credit regulatory system with the goal to provide insights to Kenyan policymakers and others in low – and middle-income countries hoping to follow the Kenyan model to ensuring they adopt a regulatory framework that protects consumers right from the start.

Literature review

Consumer protection in financial markets in low-and middle-income countries

Responsible finance received a lot of attention after the global financial crisis in 2007–08, as the repercussions from unethical financial activities in the United States and other developed economies had a severe impact global finance (Schoen 2017). The failure of the financial sector to adequately protect consumers has been one of the reasons that provoked an economic crisis (Melecky and Rutledge 2011). Therefore, consumer protection is highlighted as a significant issue in maintaining stable and efficient markets (Brix and McKee 2010). Consumer protection issues caused by financial market failure tend to be more harmful to vulnerable populations as they are more exposed to the risks stemming from consumer protection issues than less vulnerable populations (Rutledge 2010). Hence, consumer protection issues were raised not just in high-income countries, but also in low – and middle-income countries, especially in the context of microfinance (Ghate 2007; Sane and Thomas 2013). Microfinance provided by microfinance institutions (MFIs) was one of the alternatives to providing loan services to those that had been excluded from formal financial services in low – and middle-income countries (Hulme and Mosley 1996; Kimenyi 1997). While extending the breadth and depth of loan distribution was clearly central to microfinance's mission of having an impact on reducing poverty through financial inclusion, the issue of consumer protection within microfinance was also raised (Addae-Korankye 2014; Mensah et al. 2013; Sane and Thomas 2013).

A major criticism that emerged in the microfinance industry was that of charging excessive interest rates that would eventually lead to defaults by borrowers (Balogun and Alimi 1988; Okpugie 2009; Vandel 1993). High interest rates increase the repayment burden for microfinance users, which increases the likelihood that users fall into a debt traps and default more easily (Ghate 2007; Madeira 2019; Sane and Thomas 2013). In addition to high interest rates, coercive collection practices by MFIs have also been a critical consumer protection issue. Simeyo et al. (2013) demonstrates that successful debt collection mechanisms are central to ensuring the survival of an MFI in a crowded market space. It is further argued that effective debt collection procedures have a beneficial association with an institution's viability (Adongo and Stork 2006; Bankowska 2010). However, unfair debt collection procedures have been observed. For example, in research by Ghate (2007) in India, MFI borrowers experienced aggressive and inappropriate debt collection methods such as charging overdue money against the security deposit, MFI employes sitting in front of a defaulter's door, violent language used by group leaders or staff, and posting a loan overdue notice at the door of a defaulter's house. Even several suicides have been reported in India, with the excruciating pressure placed by debt collectors perhaps being the cause (Chen, Rasmussen, and Reille 2010).

In the newly formed digital credit industry, like in the microfinance environment, consumer protection issues have also been raised. For example, high interest rates and unfair debt collection methods are not uncommon problems (Greenacre 2020; Mazer and McKee 2017; Mitheu 2018; Putman, Mazer, and Blackmon 2021) as we will see in the next section.

Consumer protection issues in the Kenyan digital credit industry

After the adoption of M-PESA, the largest mobile money service in Kenya, the number of accounts using mobile money services increased to 77.1 million in December 2023.[8] This is a tremendous success, given that Kenya has a population of 56 million[9] and an adult population of 30 million over the age of 18. Therefore, financial service providers, e.g. KCB Bank Kenya, Commercial Bank of Africa and others, have been keen to expanding their service lines, particularly lending services, to further increase their profits. In 2012, many of these financial service providers launched digital credit as a new product for delivering lending services to its existing mobile money customers. Digital credit, operated on mobile devices, provides a straightforward transaction process that allows borrowers to obtain loans within an hour (Chen and Mazer 2016). Digital credit has gained in popularity since its inception in 2012 reaching now more than 11.2 million digital borrowers. In contrast, there are just over 1 million borrowers using analogue credit products, i.e. non-digital loans from formal and or informal loan providers (FSD Kenya et al. 2024). The first type of digital credit service that was introduced was a mobile banking loan (MBL) provided by banks and mobile network operators. Subsequently many FinTech companies also entered the market and started to provide their own digital credit services, the FinTech loan (FTL).

Problems regarding consumer protection in the Kenyan digital credit industry have recently been raised (Greenacre 2020; Mazer and McKee 2017; Mitheu 2018; Putman, Mazer, and Blackmon 2021). Although there are few studies exploring consumer protection issues in the Kenyan context, among the few, Mitheu (2018) suggests that the main problem is that of over-indebtedness and default caused by the prevalence of excessive interest rates as well as a lack of disclosure of terms and conditions by digital lenders. As with microfinance discussed above, the high rate of default among digital borrowers is particularly worrying. After the economic shock caused by the COVID-19 pandemic, the default rates of digital credit borrowers substantially increased. According to the FinAccess Household Survey 2021,[10] while on average 10.7 percent of all borrowers had defaulted, this figure was 50.9 percent for MBL borrowers and 46.3 percent for FTL borrowers. The fact that the default rate of digital credit is so high implies that digital credit borrowers are in a precarious situation. There have been several reports of exploitative debt collection practices in Kenya,[11] e.g. late repayment would trigger endless phone calls from debt collectors harassing friends and family and issuing threats if borrowers failed to repay. However, few studies have systematically and empirically examined the extent of unethical debt collection practices in Kenya.

Though significant consumer protection problems have become visible in the digital credit environment, the digital credit industry in Kenya has grown significantly without an appropriate regulatory framework that ensures consumer protection (Mitheu 2018). Although digital borrowers in Kenya have accused digital lenders of predatory practices like charging high interest rates, practicing aggressive debt collection, and abusing personal data (Brailovskaya, Dupas, and Robinson 2021; Owens 2018), there has until recently not been any formal regulation in place that sought to control the digital credit market (Akram 2020; Brailovskaya, Dupas, and Robinson 2022). Therefore, pressure has been put on the Kenyan government to set up regulation and financial policies that ensure consumer protection and promote the efficiency and fairness of markets (Brailovskaya, Dupas, and Robinson 2021).

There is an argument against creating strict regulations, which argues that there could be a stifling effect on innovation within the digital credit sector (Didenko 2017). Furthermore, regulation could potentially lower the profits of digital credit lenders, thus making the market unattractive for future entrants. For example, in Nigeria and India regulation has been put in place to regulate digital credit lenders and as a result their digital credit markets have not been quite as prosperous as the Kenyan one (Muli 2020). However, a well-organized regulatory framework may contribute to consumer protection, even if at the same time it may also create challenges for financial inclusion (Didenko 2017; Greenacre 2020). Brix and McKee (2010) argue that the regulation for consumer protection is not a direct trade-off or in tension with financial inclusion and the growth of the financial market. According to them, as the level of consumer protection improves, the transparency and efficiency of the market increases, and financial inclusion can eventually increase. Of course, the regulatory framework should not be skewed towards a certain regulatory objective but should seek a balance between various regulatory objectives; soundness, guarding systemic risks, competitiveness, consumer protection, and financial inclusion (Staschen 2010).

The regulatory framework for digital credit in Kenya

There are various government agencies in Kenya that have the authority to regulate and control the digital credit industry (Muli 2020). The CBK is the main regulator in this area, controlling and monitoring all commercial banks and financial institutions as well as deposit-accepting MFIs (Musau, Muathe, and Mwangi 2022). The Communications Authority of Kenya (CAK) also has the potential to regulate the digital credit industry, both directly and indirectly (Muli 2020). CAK is the agency that predominantly regulates the telecommunications industry. Its main aim is to protect and safeguard consumers' interests in relation to the provision of Information and Communications Technology (ICT) services and equipment, it is therefore responsible for facilitating the development of the ICT sector that includes electronic commerce such as digital financial services (Malala 2018). Finally, the Kenyan Parliament plays an important role as a key stakeholder passing any regulatory frameworks (CABRI 2017).

The first attempt to regulate the digital credit industry in Kenya occurred in 2009. After the launch of M-PESA in 2007, the CBK initially decided that mobile money services were not banking services, and hence no regulation would be required (Mwega 2014). However, the CBK quickly changed its view and decided to regulate mobile money services adopting a light touch approach, thereby eliminating any confusion about the legal status of mobile money, and therefore providing clarity under what conditions mobile money could operate (Guild 2017). After the decision of the CBK, this laissez faire approach to regulation made Kenya an attractive territory for the mobile money industry to invest in and thus facilitating its growth (Burns 2018; Kimani 2021).

With the launch of digital credit in 2012, the laissez faire approach to regulation continued, there was no regulation in place for controlling digital credit lenders until 2021 (Didenko 2017; Muli 2020). FinTech companies, who provide FTLs, are usually based in the USA, and thus are not regulated by any rules of the CBK or CAK. Therefore, they could operate aggressively in Kenya without any regulatory considerations. However, this had consequences and several vulnerable consumers have been exposed to exploitative digital lending services. For this reason, the CBK sprang into action and tried to regulate digital lenders operating in the country by suggesting a Bill – the CBKB 2020.[12] Yet, the Bill failed to be passed by the Parliament in

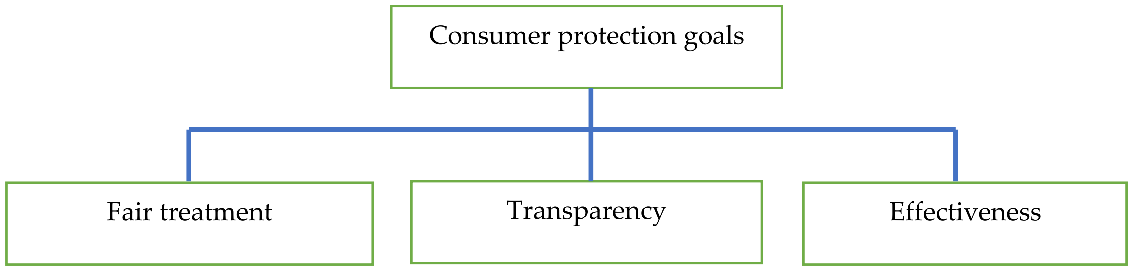

Figure 1. Consumer protection goals in the digital credit industry. Source: Based on Fritz, Kaiser, and Levy (2009) and Brix and McKee (2010).

2020. Although it is unclear why the Bill was not passed, it is reasonable to assume that the opposing viewpoints of the various stakeholders got in the way.

Despite this opposition to regulation, there was one more attempt to amend the CBKB, and it was finally passed in 2021. It was the first successful attempt to establishing a regulatory framework for the digital credit industry.[13] The cornerstone of the Bill is to have a license system for digital credit lenders in operation.[14] Digital credit suppliers must apply for and acquire approval from the CBK to operate their businesses. Digital credit lenders, that have been freely doing their business without any rules or sanctions, will finally be controlled by this regulation. As noted above, there is a dearth of empirical evidence examining whether the CBKB 2021 is an appropriate regulatory framework for the Kenyan digital credit industry in terms of protecting consumers from the risks of digital borrowing.

Conceptual framework

Consumer protection issues occurring in the digital credit market are not problems simply caused by the failure of digital credit suppliers' loose screening mechanisms used to weed out risky borrowers that are more likely to default (Putman, Mazer, and Blackmon 2021). The problems arise due to a combination of factors stemming from political issues related to regulation as discussed above. The lack of a regulatory framework has exposed consumers in the Kenyan digital credit industry to unnecessary risks (Didenko 2017; Muli 2020). To better understand these risks and how appropriate regulation can play a role, we draw on a conceptual framework inspired by Fritz, Kaiser, and Levy (2009) and Brix and McKee (2010) (Figure 1). Using this framework will allow us to understand the broad and complex nature of consumer protection issues in the Kenyan digital credit environment guiding the subsequent discussion of our results.

The first item in our conceptual framework is to clarify the challenges prevalent in the digital credit industry, i.e. a lack of consumer protection. To identify and understand these challenges, it is necessary to examine how well consumer protection goals have been accomplished. Brix and McKee (2010) suggest three aims for achieving a certain level of consumer protection, which provide us with the criteria we will subsequently use to evaluate the status of consumer protection in the case of Kenya. The first criterion is *fair treatment*. It refers to whether customers have been fairly treated and whether lenders provide appropriate and harmless financial services. Second, *transparency* is a significant indicator in evaluating the level of consumer protection. It is mainly about how much customers know about the product they are using and how much providers disclose information about their products. Lastly, *effectiveness* is also an essential factor for evaluating consumer protection, indicating how many customer complaints are resolved effectively. Examining these three criteria in more depth will allow us to assess whether and how consumer protection goals have been achieved.

Methodology

To draw out the problems related to consumer protection, and to examine the current regulatory system for the digital credit industry, a qualitative research design was employed comprising of in-depth semi-structured interviews with 30 digital credit borrowers. Documentary analysis of policy and regulatory documents published by government agencies were also used to supplement the primary data from the interviews. The semi-structured interviews were conducted in Nairobi in the following informal settlements: Kibera, Soweta, Mukuru, and Mathare. A snowball sampling approach was adopted to identify research respondents. An attempt was made to arrange interviews with various officials from MBL and FTL companies, as well as regulators. However, it was impossible to conduct interviews with digital credit lenders, especially officials from FTL, because their reputation had already been seriously undermined by various critical reports in the media.[15] Therefore, none of the FinTech lenders responded and or refused the interview requests in order to avoid further criticism.

Results and discussion

Of the 30 digital credit borrowers that were interviewed, 12 were male and 18 were female. All were economically active aged 18–61. Eight interviewees were educated to primary education level, 12 were educated up to secondary level, and the remainder were educated above that level. In terms of occupations, the majority of them (22) were small business owners running kiosks, beauty salons, tailor shops, butchers, or grocery shops. In addition, seven were casual workers, and only one person was formally employed. When asked about their financial behavior, nine of them said they had used loans with accounts at a formal bank or SACCO, and 17 answered that they had borrowed money only through informal loans like Chama, a shopkeeper, or an informal money lender. There were four that had only ever borrowed digitally. Digital credit was the most frequently used loan service, followed by Chama, which was used by 14 out of 30 people. The interviewees had experience of using several digital credit services, not restricting themselves to only one digital credit platform. Only two people said they had used only one type of digital credit service, seven people had used two types, eight people had used three types, four people had used four types, and nine people had used five or more types. This suggests extensive multiple borrowing and flexibility among borrowers to use various services at the same time.

In the remainder of this section, we discuss our findings in relation to the conceptual framework (Figure 1) to reveal the challenges that have emerged with regard to achieving consumer protection goals, and we contrast this with the ability of the CBKB 2021 to tackle some of these issues (Table 1).

Fair treatment

As suggested by Figure 1, fair treatment is one of the important criteria in achieving consumer protection. It considers whether borrowers have been treated properly and/or whether lenders have provided adequate financial services. Our findings suggest various problems related to fair treatment such as default and blacklisting, inappropriate debt collection behavior, high interest rates, and unlicensed lenders going rogue defrauding borrowers.

Default and blacklisting

A consequence of utilizing digital credit is the potential to default. As many as 24 of the 30 interviewees (80 percent) said that they had experience of late repayments. In addition, 13 of them answered that they had not only paid late but failed to pay back entirely, i.e. more than 43 percent of them had experienced default when using digital credit – this is not surprising as we have seen in the discussion of the literature above. The

Table 1. Consumer protection goals, challenges and applicable clauses in CBKB 2021.

Consumer protection goals	Challenges	Applicable clauses in CBKB 2021
Fair treatment	Default and blacklisted	Clause *13. (2)*
	Inappropriate debt collection	Clause *20. (a), (b), (c), (d)*
	High interest rates	Clause *19. (1)* *(2) – (a), (b), (c)*
	Licensing system	Clause *5. (1), (3)* Clause *8. (1), (4)*
Transparency	Deceptive and aggressive marketing	Clause *26. (1)* *(2) – (a), (b)*
	Data Privacy	Clause *9. (1) – (g), (3)* Clause *24. (a), (b), (c), (d), (e), (f)*
Effectiveness	Difficult to contact service provider	Clause *22. (1), (2), (3)*

Source: Author's own elaboration.

defaulters were blacklisted by the CRB which means that they were subsequently blocked from using all types of financial services. Many borrowers were blacklisted due to a default involving a small amount of money. According to the interviews, individuals usually borrowed a small amount from digital credit platforms, ranging from Ksh 200 to Ksh 25,000 (equivalent to US$ 1.43 to US$ 178.57). For example, one respondent reported that he was not able to repay Ksh 400 (equivalent to US$ 2.86) from a digital credit lender, and the company straight away reported him to the CRB. He subsequently tried to access loans through other companies but failed. He became uncreditworthy due to less than US$ 5. Some of the defaulters were trying to clear their names from the CRB blacklist, but they did not know how to do this.

During the COVID-19 pandemic, many more consumers started defaulting, e.g. in 2019, 12 percent of digital credit borrowers defaulted, but the default rate increased dramatically to more than 50 percent in 2021 (FSD Kenya 2019, 2016). Defaults on digital credit have reached serious levels and therefore, as discussed above, the CBK enacted the CBKB, 2021. Clause 13. (2) of the CBKB 2021 shows that the CBK intends to safeguard borrowers who are blacklisted.[16] Borrowers who have been blacklisted for small amounts of debts (up to Ksh 1000; US$ 7.15) can circumvent the difficulties they have encountered under the provision of the CBKB 2021. However, it should be noted that the Bill might not protect those that borrow from multiple digital credit services simultaneously. As mentioned above, multiple borrowing has become normalized, i.e. if a borrower does not repay on one digital credit platform, they simply move on to another to borrow again and thus evade being blacklisted.

Inappropriate debt collection

Given the rise in defaults, it is also worth examining the various approaches to often illegal debt collection that many of the interviewees have encountered as discussed in the literature review. Almost half of the respondents said that they felt harassed by the daily calls and messages they would receive from digital credit lenders when struggling to repay on time. One of the respondents said the lender contacted her so persistently that she felt it was a deliberate attempt to deprive her of sleep. Others who got repeated and urgent calls expressed that this affected their mental health. As a coping strategy, many respondents would switch off their phones as they felt bullied by the lenders. However, lenders would not only harass the borrowers but also their families, e.g. some respondents reported that lenders called their husband, younger brother, friends, and acquaintances with reminders to repay the loan. Others stated that lenders had threatened them. E.g. one interviewee said that the lenders had called to say that policemen would arrest him. Another interviewee felt scared when the lenders said they would stalk him until he pays, so he had to hide to avoid them. These statements support the stories published in the Kenyan media reporting on improper debt collection methods by digital credit lenders[17] and their effects on the mental health of borrowers. When confronted with this evidence, some lenders acknowledged that some aspects of their debt collection procedures had been inappropriate. They admitted that loan recovery tactics such as sending threatening messages to relatives, spouses, or friends of defaulters could ruin their reputation, however, they still felt that given the surge in defaults, more aggressive debt collection techniques were justified to recover debts.

To combat these aggressive and often illegal debt collection practices, the CBKB 2021 has included clauses 20. (a), (b), (c), (d).[18] These clauses are the provisions to protect borrowers who have suffered or might suffer from improper debt collection. However, the problem is that these clauses mainly deal with physical threats when collecting loans. In the case of verbal violence and harassment, the clauses prohibit the 'use of obscene or profane language' and 'improper or unconscionable debt collection tactic, method or conduct', but the Bill does not go far enough in addressing verbal violence. It is highly likely that lenders will claim that their language and tactics in terms of debt collection procedures are not obscene or improper. However, the consequences of persistent and unauthorized phone calls as mentioned by our interviewees, have not been sufficiently covered by the Bill, despite clause 20. (c). As mentioned above, the biggest problem of debt collection procedures was the psychological pressure imposed on individuals. Repeated calls, verbal threats, calling family members and sending people to collect money are representative of harassment and of mental bullying. On closer examination, Clause 20. (c) states that lenders cannot make unauthorized or unsolicited calls to a customer's contact (see footnote 24), but lenders tend to circumvent this provision by asking borrowers to enter their family members' names and numbers when signing up, thus allowing them to call these contacts as they were obtained legally. Therefore, the CBKB 2021 should adopt a more nuanced phrasing to protect the borrowers more effectively.

High interest rates

Excessively high interest rates can trigger default. In our sample of borrowers, the majority acknowledged that digital credit was a lot more expensive than traditional loan services. Interest rates would often range from 7.5 percent to 20 percent per month. Despite high interest rates, borrowers would keep using digital credit services as they felt they had no choice; accessing other formal or informal loan services was much more difficult. Digital credit lenders agree that interest rates are often too high, e.g. the annual percentage rate (APR) for digital credit can sometimes be more than 300 percent. High interest rates for digital credit derive from lenders cleverly exploiting an environment where people find it difficult to borrow money from other sources. Our respondents mentioned that late repayments would incur an increase in interest rate payments or even additional penalty payments. For example, one respondent borrowed Ksh 20,000 (US$ 143) with an interest rate of Ksh 2,000 (US$ 14.3), therefore having to repay a total of Ksh 22,000 (US$ 157.3). However, when she was late in her loan payment by just one day, she had to pay an additional Ksh 400 (US$ 2.86) as a penalty. This was 25 percent of the original interest rate. In some cases, the interest rate would double in a day, this is akin to usury similar to what traditional moneylenders were often accused of. The CBKB 2021 was put in place to ease the burden on borrowers struggling with high interest rates. According to Clause 19. (2). (b),[19] an excessive collection due to repayment 'delinquency' cannot exceed the principal. This means any extra cost should be set to not exceed the principal, which in turn means that the extra interest rate cap is limited to 100 percent.

This is a good start, however, there are no clauses yet to restrict the initially high contractual interest rates that are much higher than those of other lending services. Borrowers have been vocal about their concerns regarding high interest rates; they argue that the initially high contractual interest rates are the main cause for late repayments or even defaults and that the CBKB 2021 should be adjusted accordingly.

Unlicensed lenders

As explained above, the CBK regulates all financial institutions in Kenya that provide loan services, but digital credit is still a relatively new service that has evaded any regulation so far and therefore digital lenders could operate in a laissez faire environment potentially exposing consumers to unnecessary risks (Mitheu 2018; Putman, Mazer, and Blackmon 2021). Therefore, the CBKB 2021 sought to change this and introduce a licensing system that would apply to the growing number of digital lenders some of which have been described as rogue lenders that were incredibly skillful at defrauding borrowers. The classic modus operandi we identified in the interviews we conducted was that rogue lenders would ask for a subscription fee and then upon payment of said fee, promise to transfer as much money as desired to the borrower. However, the money would never arrive in the borrower's account and the lender would simply pocket the subscription fee, one of our interviewees describes the process as follows:

> There are those who con people, they build their empire out of conning. They said if I pay three hundred Shillings, they proceed with sending the money to me. The attractive thing they suggested was the low interest rate and the repayment period was thirty days so you can easily fall for the bait. Then, when you send the three hundred Shillings, after that, the line goes off and it is never picked up again.

According to the CBK, the introduction of a licensing system is one approach to deal with the emergence of all types of predatory, fake, or rogue lending. Hence one of the purposes of the CBKB 2021 is to adopt a licensing system for the digital credit industry. The relevant clauses can be found within Clause 5. (1) and (3).[20] They require every person, who has the intention to undertake a digital credit business to first obtain a license from the CBK. This means that the CBK has the discretion to manage the lenders through their licensing system. In addition, the regulation provides a basis for punishing rogue lenders who are illegally engaged in the digital credit lending business. In addition, according to Clause 8. (1) and (4), the CBK is authorized to get involved in the business practices of the lender if required.[21] For example, the CBK can veto the appointment of a director, CEO, or major shareholder if they fail to meet certain conditions, in fact, they can dismiss these individuals if they do not meet certain conditions.

The CBKB 2021 can be thought of as a cornerstone aiming to eliminate digital lenders that have been operating in an unregulated space practicing at times dubious lending practices. Not surprisingly and as discussed above, several digital lending institutions have expressed opposition to the Bill arguing that it would stifle growth and thus negatively affect the sector. They claim that new lenders would no longer enter the market which would weaken competition, and this would result in unfavorable results for consumers. Yet, there is no evidence to be found to support these claims, instead the sector has continued to grow disproportionately.

Transparency

This section focuses on transparency which we conceptualized as the second criterion to achieve consumer protection goals (Figure 1). Many of our respondents identified difficulties caused by deceptive and aggressive marketing, and by infringements of data privacy, thus obfuscating details about the credit products that were sold to them. We will explore the evidence further and analyze whether the provisions in the CBKB 2021 are sufficient to tackle these issues.

Deceptive and aggressive marketing

Our interviews with borrowers confirmed that deceptive and aggressive marketing techniques were regularly employed by digital credit lenders. 67% of our respondents had received text messages on their phones advertising digital credit, they would often receive messages from various digital credit platforms, not just one. Many of these advertisements could be interpreted as aggressive as they were often unsolicited tempting individuals to use digital credit even when it was not needed. The advertisements were very appealing as described by one borrower:

> These advertisements, especially the Safaricom posters, were very attractive, splendid. You could see yourself actually getting the loan.

The advertisements would often contain exaggerated content that could be misleading. For example, the digital lender called Branch uses the slogan *Fueling a world of opportunity* on their website as well as *We offer mobile financial services across emerging markets to spur human potential.*[22] Slogans of this kind lure borrowers into the web of digital credit but they can be seen as ambiguous promising unattainable goals bordering on fiction. The CBKB 2021 clarifies that the CBK can regulate false advertising through Clause 26. (1) and (2).[23] According to these clauses, exaggerated and false advertisements for digital credit must be restricted.

It is not just false and exaggerated advertisement that need to be dealt with but aggressive approaches to marketing as well. As noted above, aggressive advertising by digital credit providers is a common problem, most of our interviewees stated that they had received repeated text messages from several providers. Furthermore, it was often unclear to them how their mobile phone numbers had been obtained by the lenders; this raises issues related to consumer consent which we will discuss in the next section. In summary, the bulk of the advertisements were not desired by our respondents tempting them to buy a product that they could easily obtain but that they would not want or necessarily require. While the CBKB 2021 covers false or exaggerated advertisements, it does not restrict aggressive approaches to marketing which is a shortcoming of the current regulatory framework.

Infringement of data privacy

The infringement of data privacy is a serious issue in the world of digital credit. Our findings reveal that data privacy infringements are exacerbated by consumer ignorance. We asked our interviewees whether lenders had asked them for permission to access their personal data, among the 27 respondents who answered this question, 40 percent, stated ‘No’. It is possible that they may not have paid attention when this question was asked, or not fully understood the implications of sharing personal information with the lender as illustrated by the statement of this borrower:

> I don’t know why they take personal information. I just submitted it without any knowledge.

This suggests that consumers, especially when vulnerable, require protection from the regulator. Hence, the CBKB 2021 as put in place Clause 24 with the title ‘Customer information’.[24] According to these provisions, digital credit lenders must clearly provide information about the digital credit service they provide. Furthermore, they have the responsibility to educate the borrowers about the importance of data protection. We met borrowers who were struggling with loans which had been taken out in their name but without their knowledge; their passwords had been disclosed to people and acquaintances close to them, who had borrowed money secretly with their passwords. This shows the importance of ensuring data privacy and the need to put mechanisms in place to enforce data protection. Clause 24 in the CBKB 2021 shows that the CBK is aware of these issues, however, the phrasing of Clause 24 is fuzzy suggesting recommendations rather than imposing sanctions in case of non-compliance, thus leaving consumers without effective protection.

However, there is also the possibility that digital credit lenders did not even ask borrowers for permission to acquire their personal information. The lack of clear guidance regarding data collection led many lenders to acquire, use and or share borrowers' data without much consideration for data privacy or data protection principles. There are reports from several borrowers that some lenders had been accused of actively breaking data privacy laws. For example, some digital credit lenders acquired private data including the contact information of borrowers' friends and family,[25] and this information was used for improper debt collection methods as discussed above. To tackle this issue, the CBKB 2021 has put the emphasis on data collection by including Clause 9. (1) and (3).[26] Under those provisions, the CBK stipulates that digital credit lenders must fully comply with the Data Protection Act or the Consumer Protection Act. In other words, if lenders obtained personal information of borrowers illegally upon registration, or if they shared this information arbitrarily with third parties without consent, then the CBK may suspend or revoke their license.

Effectiveness

The final goal of consumer protection that we discussed in our conceptual framework (Figure 1) is that of effectiveness which is closely related to having consumer complaints resolution procedures in place. In our interviews with digital borrowers, we found that unstable ICT systems were the main cause of complaint. Interviewees repeatedly mentioned that they experienced technical problems when using digital credit services. For example, there were problems regarding installing and registering for the service for the very first time, largely due to unstable networks. There were also cases when networks went down during a transaction and borrowers would lose money, or the processing of transactions would be delayed for more than one day, again to the detriment of the borrower. When borrowers were faced with these technical issues, many were puzzled and did not know how to deal with them. About half of our respondents had such difficulties, but only 20 percent would formally contact their lender to try and solve the issue. Many simply did not know that lenders had a service center in place to resolve technical challenges and hence asked family and friends for help, or they simply left the issue unresolved. In the cases where borrowers contacted lenders requesting support to resolve technical glitches, they would often get disappointed. Interviewees stated that customer service centers were woefully inadequate with long queues and staff that were not sufficiently trained to provide feedback. This shows that the customer complaints and resolution systems in the digital credit sector are not operating efficiently.

Thus, the CBKB 2021 refers to complaint and resolution systems in Clause 22 (1), (2) and (3).[27] It encourages digital credit providers to establish consumer complaint resolution mechanisms. However, as argued above, the main issue is not a lack of such mechanisms but the unawareness among consumers about their existence and how to access them. Therefore, the CBKB 2021 could be strengthened by including a clause that explicitly refers to how digital lenders should inform their customers about complaints and resolution systems, how to access and use them. This is missing from the current regulatory framework.

Conclusion

In spite of the high expectations placed upon the impact of digital credit on financial inclusion and economic development, digital credit borrowers are instead faced with a number of consumer protection issues. This study draws on the case of Kenya to explore the risks many consumers face when borrowing digital loans in a market that is largely unregulated. We shed some light on the role regulation has to play in terms of protecting consumers. The findings from our interviews with borrowers living in informal settlements in Nairobi confirm that there are incidents where digital credit services treat consumers unfairly and cause them to get into serious financial trouble. For example, some of the borrowers we interviewed have suffered from default and blacklisting, inappropriate debt collections methods, and exorbitant interest rates. In addition, there have been problems with transparency due to deceptive and aggressive marketing practices as well as the infringement of data privacy. There has also been a lack of effectiveness in terms of poor or non-existing consumer complaints procedures.

Hence, to solve these problems, the CBK enacted the CBKB 2021 as an attempt to regulate Kenya's digital credit market. Our findings highlight several gaps in the current Kenyan regulatory system implying that many consumers are not sufficiently protected. E.g. the regulation needs to be more forceful in dealing with verbal harassment to curb bullying by lenders. The effects of illegal debt collection practices in particular cause severe psychological distress negatively affecting the mental health of borrowers. Furthermore, the CBKB 2021 does not yet sufficiently deal with high interest rates, there is a clause to regulate interest rates related to repayment 'delinquency', but that is not going far enough. The bill is also relatively weak with regard to imposing sanctions when data privacy is infringed and advocating for an appropriate complaints procedure.

The CBKB 2021 is a good start, and future revisions will hopefully consider some of the shortcomings we have highlighted. Another important strategy to consider in terms of improving levels of consumer protection is to raise consumer awareness. In talking to our interviewees, we were struck by their generally low levels of financial literacy which may have amplified the causes and effects of a lack of consumer protection. This shows that a multi-pronged approach is necessary to protect lenders and borrowers alike, i.e. by putting in place a strong regulatory framework but at the same time by educating borrowers as to their rights as consumers of financial services. We hope that the findings from this study provide the Kenyan government and regulators as well as other policymakers grappling with regulating the dynamic field of digital credit with insights as to how to enact as well as improve appropriate regulatory frameworks.

Notes

1. https://eastleighvoice.co.ke/business/70543/mobile-money-transactions-up-by-9pc-in-q2-to-sh21-trillion-on-recovering-economy
2. https://www.cnbc.com/2021/10/14/tala-fintech-for-unbanked-raises-145-million-for-global-crypto.html
3. https://www.citizen.digital/business/51-digital-lenders-now-licenced-to-operate-in-kenya-as-cbk-approves-19-more-n338015
4. https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/the-pivotal-role-of-digital-credit-in-kenya-s-economy--4317120
5. https://www.reuters.com/article/us-kenya-fintech-insight-idUSKCN1IQ1IP
6. The press announcement released by the CBK: https://www.centralbank.go.ke/uploads/press_releases/139697899_Press%20Release%20-%20Enactment%20of%20the%20Law%20to%20Regulate%20Digital%20Lenders.pdf
7. https://egm.financedigitalafrica.org/
8. https://www.statista.com/statistics/1188510/registered-mobile-money-accounts-in-kenya/#:~:text=Registered%20mobile%20money%20accounts%20in%20Kenya%202021%2D2023&text=As%20of%20December%202023%2C%20Kenya,overall%20increased%2C%20despite%20some%20fluctuations.
9. https://www.worldometers.info/world-population/kenya-population/
10. The survey was made possible through a public–private partnership involving the Central Bank of Kenya (CBK), Kenya National Bureau of Statistics (KNBS) and Financial Sector Deepening Trust (FSD) Kenya.
11. There were many news articles discussing improper debt collection behaviors by digital lenders, e.g., https://www.bbc.com/news/world-africa-57985667
12. https://www.attorneysafrica.com/2021/04/30/legal-update-on-the-central-bank-of-kenya-amendment-bill-2020/#:~:text=On%2030th%20November%202020,of%20digital%20money%20lending%20services.
13. https://www.businessdailyafrica.com/bd/economy/digital-lenders-have-six-months-to-register-in-new-cbk-rules-3755746
14. https://africa.businessinsider.com/local/markets/central-bank-of-kenya-issues-new-rules-to-digital-lenders-gives-september-deadline/c17rqbr
15. There are many news articles criticizing FinTech firms. Some examples: https://www.bbc.com/news/world-africa-57985667 https://www.theafricareport.com/22692/opera-denies-hindenberg-claims-of-predatory-loans-in-nigeria-kenya/ https://www.bloomberg.com/news/features/2020-02-12/tech-startups-are-flooding-kenya-with-apps-offering-high-interest-loans
16. Clause 13. (2) A digital credit provider shall not submit to any credit reference bureau any negative credit information of a customer or any other person where the amount related to the credit information does not exceed one thousand shillings (CBK Amendment Bill 2021).
17. https://www.bbc.com/news/world-africa-57985667

18. Clause 20. A digital credit provider, its officers, employes or agents shall not in the course of debt collection engage in any of the following conduct against the customer or any other person – (a) use of threat, or violence or other criminal means to physically harm the person, or his reputation or property; (b) use of obscene or profane language; (c) make unauthorized or unsolicited calls or messages to a customer's contacts; (d) improper or unconscionable debt collection tactic, method or conduct. (e) any other conduct whose consequence is to harass, oppress, or abuse any person in connection with the collection of a debt (CBK Amendment Bill 2021).
19. Clause 19. (1) A digital credit provider shall be limited in what it may recover from a customer with respect to a non-performing loan to the maximum amount under sub-regulation (2). (2) The maximum amount referred to in sub-regulation (1) is the sum of the following – (a) the principal owing when the loan becomes non-performing; (b) interest, in accordance with the contract between the customer and the digital credit provider, not exceeding the principal owing when the loan becomes non-performing; and (c) expenses incurred in the recovery of any amounts owed by the customer (CBK Amendment Bill 2021).
20. Clause 5. (1) No person shall establish or carry out digital credit business in Kenya or otherwise hold himself out as carrying out digital credit business unless licensed under the Act and these Regulations. (3) Any person who was at the commencement of these Regulations conducting digital credit business within six months of publication of these Regulations.
21. Clause 8. (1) A person shall not be a director, a chief executive officer or a significant shareholder of a digital credit provider unless the Bank has certified the person as fit and proper in accordance with the criteria set out in the Third Schedule. (4) The Bank may disqualify any director or chief executive officer from holding any office in a digital credit provider if he is determined not to meet the fit and proper criteria or for any other good cause shown.
22. https://branch.co/
23. Clause 26. (1) A digital credit provider shall ensure that any advertisement that it publishes or authorizes does not include any false, misleading or deceptive representation, or is otherwise misleading or deceptive. (2) Without prejudice to the generality of sub-regulation (1) a false, misleading or deceptive representation includes – (a) a representation that the provision of the credit has an approval, benefits or qualities that it does not in fact have; (b) a representation that the digital credit provider has an approval, status, affiliation or connection that it does not in fact have.
24. Clause 24. A digital credit provider shall: (b) ensure that any information given to a consumer on among other things benefits, prices, risks and the terms and conditions, whether in writing, electronically or orally, is fair, clear and transparent. (f) educate its customers on its services and products, and in particular, make its customers aware of the need to keep their personal details and information such as Personal Identification Number (PIN) secure.
25. https://www.businessdailyafrica.com/bd/economy/digital-lenders-under-probe-sharing-defaulters-data-3613676
26. Clause 9. (1) The Bank may, suspend or revoke a licence of a digital credit provider, if the licensee – (g) is in breach of subsection (3) or the conditions of the Data Protection Act or the Consumer Protection Act;
27. Clause 22. (1) A digital credit provider shall establish a complaints redress mechanism, including a channel for communicating customer complaints, and shall ensure proper communication of this mechanism to its customers. (2) A customer complaint shall be addressed within thirty days of a customer reporting a complaint to a digital credit provider. (3) A digital credit provider shall keep a record of all complaints lodged by customers and the outcome of their resolution.

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Data availability statement

The data are qualitative and thus data sharing will be problematic as confidentiality and anonymity could be compromised.

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