

6711

ECA/NRID/ MR/16/07



**UNITED NATIONS
ECONOMIC COMMISSION FOR AFRICA**

Mission Report

Purpose of Mission: To participate in the IVth Annual Conference and General Assembly of the African Forum for Utility Regulators (AFUR)

Venue: Livingstone, Zambia

Date: 25 – 27 April 2007

Staff Members on Mission: Robert M. Okello, Director
NEPAD & Regional Integration Division (NRID)
&
Pancrace Niyimbona
Energy Affairs Officer / NRID

1. Background

The IVth AFUR Annual Conference and General Assembly was convened in Livingstone, Zambia from 25-27 April 2007 on the theme “A Re-assessment of Regulatory Independence and Accountability: How effective are Africa’s infrastructure regulators in facilitating investment and protecting consumers?” This provided an opportunity for exchanging views among AFUR member regulators and their partners on strategies to improve regulatory effectiveness in Africa.

The Conference took place almost two months after the courtesy visit the Chairperson of AFUR paid to the Executive Secretary of ECA. ECA was thus invited to participate in the Conference as one of the strategic partners of AFUR that were expected to make a statement during the opening ceremony. In response to this invitation, the Executive Secretary designated Mr. Robert Okello, Director and Mr. Pancrace Niyimbona, energy expert in the NEPAD and Regional Integration Division (NRID) to represent ECA at the Conference.

2. Purpose of the Mission

The main purpose of the mission was for ECA delegation to contribute to the deliberations at the Conference. The ECA delegation also took advantage of the presence of the chief executives of various African regulatory agencies to discuss some ideas for possible cooperation between the Commission and AFUR members.

3. Proceedings and outcomes

The structure of the Conference included the opening ceremony, five plenary sessions in which keynote addresses were presented by eminent personalities in the area of utility regulation and complemented by case studies from selected regulators, three breakaway sessions to discuss the issue of regulatory independence and accountability in electricity, water and communications sectors, and final comments and closing ceremony.

Opening session

The Conference was formally opened by Hon. Joseph Muyata, Minister for Southern Province on behalf of the newly appointed Minister of Energy and Water Development. Representatives of AFUR strategic partners were given the opportunity to make opening statements. These included:

- Dr. Cosmas Musumali, Chairman NWASCO Board
- Mr. Pierre Ndouga Hell, Deputy Chairperson of AFUR
- Mr. Klaus Bruckner, Programme Manager of GTZ
- Mr. Amadou Diallo, Head, Energy and Communication Division, ADB
- Mr. Robert Okello, Director, NEPAD and Regional Integration Division, UNECA
- Mr. Lorenzo Bertolini, Regional Program Leader, PPIAF
- Mr. Batalatsang Kanetsi, RERA Board Member

In his opening statement, Mr. Okello recalled that independent utility regulation had been introduced in many countries to help them implement reforms and liberalization of their infrastructure sectors. The related objectives include protecting consumers from possible abuse

by service providers, protecting service providers and investors from possible arbitrary interference by government; and promoting efficiency of the economy as a whole. He referred to data from the Private Participation in Infrastructure (PPI) Database of the World Bank to show that Sub-Saharan Africa region accounted for the lowest share of total investment flow into private infrastructure projects in developing countries during the period 1990-2005. To illustrate this, he gave the example of Latin America and the Caribbean, which mobilized more than 11 times the value by Sub-Saharan Africa. He indicated that Sub-Saharan Africa thus still needed to put in place a regulatory framework that creates investor confidence by establishing independent regulators thereby separating the government policymaking and regulatory roles.

The ECA representative then took the opportunity to inform the participants about the main findings of the study on assessment of power sector reforms in Africa commissioned by ECA, in partnership with the United Nations Environment Programme (UNEP). The study revealed that most of the regulatory agencies were still not granted the required authority to make independent regulatory decisions and some of them still had to build the necessary capacity to effectively contribute to making informed regulatory decisions.

The statement of Mr. Okello is annexed to this report.

Introduction to the theme of the Conference

In a keynote address entitled “The independence and accountability of Africa’s infrastructure regulators: re-assessing regulatory design and performance” Prof. Anton Eberhard of the University of Cape Town invited the participants in the Conference to examine how the issues of regulatory independence have impacted on the credibility and consistency of regulatory decisions, especially tariff setting. He pointed out that regulatory independence and accountability was intended to facilitate affordable and quality infrastructure services to consumers while providing incentives for improved operational efficiencies, financial viability and new investment.

Re-examining the principle of regulatory “independence”

In a presentation entitled “Independent Utility Regulation in Africa: Limiting discretion”, Prof. Jorry Mwenechanya of the Institute of Infrastructure Services in Lusaka, Zambia considered whether the “independence” of Africa’s regulators did lead to more or less credible and predictable regulatory decisions. Prof. Mwenechanya noted that, based on the results of a survey conducted among members of the Regional Electricity Regulators Association (RERA) of Southern Africa in 2005, independent regulators were often not established to act independently. He indicated that regulatory independence was compromised in such areas as the appointment of Board members, the management of the regulatory agencies whereby the budget and conditions of service of senior staff are to be approved by Minister, the regulatory mandate as minister gives final approval of price adjustment, as well as the limited technical capacity of staff and political behaviour of Commissioners.

Prof. Mwenechanya’s presentation was complemented by presentations on the experience of regulation and licensing of utility infrastructure in South Africa, Kenya and Niger. The case of Kenya was particularly interesting because the Kenya Electricity Regulatory Board (ERB) has been involved in re-negotiating with some independent power producers (IPPs) the renewal of

concession agreements so as to lower tariffs charged the off-taker in the power purchase agreements (PPAs).

Accountability of Africa's regulators for their regulatory decisions

In a presentation entitled "Are Africa's Utilities Regulators held accountable for their decisions?" Dr. Ahmed Kaloko of the International Management & Regulatory Institute in the USA stated that lack of accountability could create an atmosphere of "regulatory uncertainty" that is inimical to investment. He observed that there was need to support consumer groups because regulatory decisions had a significant impact on consumers. He noted that some African countries have regulatory frameworks that allow interested parties to appeal regulators' decisions. He further noted that there was need for regulatory agencies to carry out an impact assessment of their regulatory decisions on (i) tariffs; and (ii) ability of regulator to explain to the public how regulators determine tariffs and make final decisions on issues affecting the public. However, he pointed out that conducting impact assessment of tariffs on consumers and explaining regulators' decisions required significant expertise and was not in much use in Africa.

This presentation was complemented by case studies on accountability in decision-making in Ghana, Mozambique, Nigeria and South Africa. The need of accountability towards consumers was highlighted by the representative of the Zambia Consumer Association.

Better balancing between regulatory independence, accountability, decision making discretion and performance

In a presentation entitled "Improving the balance between regulatory independence, accountability, decision-making discretion and performance", Mr. Ian Alexander of the Centre for Competition and Regulatory Policy, City University, London, observed that investors were unwilling to commit, or would only commit at high cost, because they did not trust the regulatory regime. He indicated that this perception could arise from the fact that new regulators were lacking a track record and so were not credible, that regulators were perceived as weak due to poor capacity and lack of independence; that the regulatory regime were "high-level", poorly developed, non transparent and seen as discretionary, making long-term commitment difficult; or that the regulator were "too" independent and faced no accountability or checks and balances. He further indicated that the various solutions that could be considered included: (i) lowering discretion of regulators; (ii) improving regulatory effectiveness through making existing staff more effective and outsourcing (contracting out) certain regulatory functions for technical support and decision-making, and (iii) improving governance.

Breakaway sessions

Separate breakaway sessions were organized for the three established sectors of energy, communications and water and sanitation to discuss the draft AFUR Guidelines on "Regulatory Independence and Accountability: Re-assessing regulatory design and performance". The ECA delegation participated in the communications and energy breakaway sessions. The amended draft guidelines will be submitted to AFUR's relevant policy organs for consideration before its adoption.

Closing session

During the closing session Ms. Katharina Gassner of the World Bank made a presentation on "Assessing regulatory governance". Ms Gassner indicated that good governance played a key role in ensuring the effectiveness of utility regulation, but it needs to be complemented by other aspects such as competent staff. She indicated that her presentation was based on a study from Latin America related to evaluating and benchmarking the governance aspects of electricity regulatory agencies. She further indicated that the methodology used was to calculate a composite of governance in 4 areas: autonomy, transparency, accountability and regulatory tools. She pointed out that although the study referred to the assessment of regulatory governance in Latin America, calculating the composite index and sub-indices for African regulators could be useful in facilitating the identification of areas of weakness and targeted action for improvement. She concluded by observing that governance indicators could be useful for AFUR as advocate and facilitator of best practice among African regulators.

4. Conclusion and Follow-up Action

Conclusion

The AFUR Conference gave the opportunity to African regulators and their strategic partners to identify what are the causes of current weaknesses of regulatory independence and accountability and to discuss some of the options that could help improve the credibility and consistency of regulatory decisions taking into account the country's regulatory commitment and its institutional and human resource endowment.

Follow-up Action

As a follow-up to ECA participation in the AFUR Annual Conference and General Assembly, two activities could be considered:

- (i) ECA could initiate some cooperation arrangements with AFUR and its member regulators in the area of capacity building through well-targeted training seminars on regulatory issues within IDEP; and
- (ii) ECA could assist AFUR in carrying out regulatory impact assessments of regulatory decisions taking advantage of the experience gained with APRM process. This last activity could complement the assessment of regulatory governance for which Ms. Katharina Gassner of the World Bank has been advocating.

Annex 1: Statement by Robert M. Okello, Director NRID

Annex 2: List of documents



**UNITED NATIONS
ECONOMIC COMMISSION FOR AFRICA**

**IVth Annual Conference and General Assembly of the African Forum of Utility Regulators
(AFUR)
Livingstone, Zambia: 25-27 April 2007**

Statement by

**Robert M. Okello
Director
ECA/NEPAD & Regional Integration Division**

Chairperson
Honourable Joseph Muyata, Minister for Southern Province
Mr. Smunda Mokoena, Chairperson of AFUR
Chief Executives of Utility Regulatory Agencies
Representatives of African Regional Organizations
Representatives of International Institutions & Development Partners
Distinguished Guests
Ladies and Gentlemen,

On behalf of Mr. Abdoulie Janneh, the United Nations Under-Secretary General and Executive Secretary of the United Nations Economic Commission for Africa (ECA), I would like to express my appreciation for the invitation extended to ECA to participate in this Fourth Annual Conference and General Assembly of the African Forum for Utility Regulators (AFUR).

The presence of all the eminent personalities and policy makers in the field of infrastructure regulation from Africa and around the world and their development partners in this beautiful city of Livingstone is undoubtedly an indication of the quality and relevance of the issues proposed for discussion at AFUR's annual conferences.

Chairperson
Ladies and Gentlemen

During the last decade and half, many African countries have introduced reforms and liberalisation of their infrastructure sectors in a bid to improve their performance, facilitate private participation in their operational management and investment in their development, and expand the quality and coverage of services available to customers. To make this happen, most countries have decided to move away from a command and control type of regulation, in which governments played the dual role of operator and regulator of their infrastructure industries, to a new regulatory system.

This new regulatory system was expected to allow the regulators achieve such objectives as: protecting consumers from possible abuse by service providers in terms of excessive prices or poor or unsafe service; protecting service providers and investors from possible arbitrary interference by government; and promoting efficiency of the economy as a whole.

With the increasing private sector participation in the management and operation of utility infrastructure, the existence of an independent regulator entrusted with the required authority to manage the different and often conflicting interests and expectations of stakeholders – the government, consumers and service providers – appears to be of utmost importance.

In this context, the theme of this year's Conference that is "A Re-assessment of Regulatory Independence and Accountability: How effective are Africa's infrastructure regulators in facilitating investment and protecting consumers?" is of particular relevance.

Distinguished participants,

The theme raises issues of particular concern for regulators and policy makers since Africa is still lagging behind all other developing regions in terms of attracting private investment and expanding access to infrastructure services to the majority of the population.

This Conference offers a unique opportunity for regulators, policy makers and development partners to exchange views and debate on the challenges of making African regulatory agencies more effective in their effort to build investors' confidence by providing them with stable consistent and predictable regulatory environment to attract investment.

A quick glance on the Private Participation in Infrastructure (PPI) Database of the World Bank shows that, during the period 1990-2005, Sub-Saharan Africa region was able to mobilize US\$36.51 billion of investment in private infrastructure projects, including privatisation and concessioning of existing assets and financing new facilities. Of this amount, telecommunications accounted for the greatest share of nearly 70% with US\$25.4 billion, followed by energy with nearly 20% (or US\$ 7.2 billion), transport with just over 10% (or US\$3.8 billion), and water and sewerage with less than 0.4% (or US\$146 million). However, Sub-Saharan Africa is the region, which accounted for the lowest share of total investment flowed into private infrastructure projects in developing countries during this period. For example, Latin America and the Caribbean region mobilized 11 times the value by Sub-Saharan Africa.

This shows that much still needs to be done to create a regulatory framework that creates investors' confidence through separating the government's policymaking and regulatory roles by establishing independent regulators. Yet, it is estimated that 60-77% of African countries had separate regulatory bodies (i.e., not part of a ministry, government department or operator) in 2001, although it was difficult to assess the true extent of regulatory independence due to absence of clear definitions and overlapping functions between different regulatory agencies.

Distinguished participants,

A survey conducted by AFUR in October 2002 among its participating members on regulatory governance allowed to learn more about such issues as the rules governing the internal functions of regulatory agencies (e.g., the relationship between staff and commissioners, conflicts of interest) and the external relations between utility regulators and government entities (e.g., public audit bodies, ministries and the legislature). The survey concluded that, as each country and sector is different, and its regulatory requirements are therefore different, it was not possible to prescribe a single set of regulatory arrangements to promote regulatory independence.

Most of the regulatory agencies established in Africa have been organized under three main basic approaches: industry-specific approach whereby there is a separate agency for each industry such as electricity and telecommunications regulatory agencies in many countries; sector-wide

approach whereby there is an agency for each broadly defined sector such as energy in Zambia and more recently South Africa; and multi-sector approach whereby there is a single agency for two or more utility industries such as the multi-sector regulatory agency (ARM) in Niger and Rwanda.

However, whatever the institutional design of regulatory agencies, the regulators should be granted: (i) organizational independence which requires that the regulators be organizationally separate from existing ministries and departments; (ii) financial independence which requires that the regulators be provided with an earmarked, secure and adequate source of funding; and (iii) management independence which requires that the regulators be granted autonomy over internal administration and protection from dismissal without due cause.

But, regulatory independence needs to be reconciled with measures to ensure that the regulator is accountable for its actions. The accountability of regulators is particularly important where the legislative mandate for regulation is less than clear and where the interests of consumers and service providers have to be carefully balanced. Therefore, there is need for striking the proper balance between independence and accountability of regulators through among other things, mandating rigorous transparency, including open decision-making and publication of decisions and the reasons for those decisions.

It was also noted that the effectiveness of regulatory agencies could not be improved, unless the issue of lack of skills and competencies for regulators to perform regulatory substance tasks is properly addressed. Indeed, functions such as facilitating investment, negotiating terms of awarding licenses and concessions, dispute resolution, monitoring compliance with performance standards and service quality, providing policy advice to the government, managing subsidies and setting poverty tariffs, all require that regulators be provided with improved skills and competencies. This is the capacity building, and indeed capacity development, that the African Development Bank (ADB) speaker just referred to.

In this regard, a study on assessment of power sector reforms in Africa commissioned by ECA, in partnership with the United Nations Environment Programme (UNEP), reveals that most of the regulatory agencies are still not granted the required authority to make independent regulatory decisions. The study also reveals that most of the regulators are not involved in negotiating licenses and concessions with new private operators in the power sector. Finally, it was noted that most of the newly established regulatory agencies have not yet built the necessary capacity to effectively contribute to making informed regulatory decisions. A few copies of this study are available on CD's for those who may be interested.

Chairperson
Ladies and Gentlemen,

I am confident that, with efforts being made by AFUR and other regional regulatory associations such as the Regional Electricity Regulatory Association (RERA) for Southern Africa and the Regional Electricity Regulatory Agency to be created and operationalized in West Africa, it will be possible to improve the effectiveness of utility regulatory agencies in Africa.

Let me conclude by reiterating that this AFUR Conference offers a unique opportunity to the regulators and their partners to exchange views on the challenge of improving the effectiveness of the various regulatory agencies and come up with workable strategies to improve their performance.

Mission to participate in the IVth Annual Conference and General Assembly of the African Forum for Utility Regulators (AFUR)

Livingstone, Zambia: 25-27 April 2007

List of Documents

1. ***The independence and accountability of Africa's infrastructure regulators: Re-assessing regulatory design and performance*** by Prof. Anton Eberhard of the University of Cape Town
2. ***Independent Utility Regulation in Africa: Limiting discretion*** by Prof. Jorry M. Mwenechanya of the Institute of Infrastructure Services in Lusaka, Zambia
3. ***The Independent Regulator in Africa: Experience of the Kenya Electricity Regulatory Board (ERB)*** by Dr. Frederick O. Nyang, Manager of ERB's Market Operations
4. ***Are Africa's Utilities Regulators held accountable for their decisions?*** by Dr. Ahmed Kaloko of the International Management & Regulatory Institute (IMRI) in the USA
5. ***Improving the balance between regulatory independence, accountability, decision-making discretion and performance*** by Mr. Ian Alexander of the Centre for Competition and Regulatory Policy, City University, London
6. ***AFUR Guidelines on Regulatory Independence and Accountability: Re-assessing regulatory design and performance***, working document for breakaway sessions
7. ***Assessing regulatory governance*** by Dr. Katharina Gassner of the World Bank
8. ***Annual Report & Financial Statements 2005/2006*** of the Kenya Electricity Board (ERB)