



4th AFUR ANNUAL CONFERENCE
25-26 APRIL 2007
Livingstone, Zambia

CONFERENCE THEME:

**A RE-ASSESSMENT OF REGULATORY
INDEPENDENCE AND ACCOUNTABILITY:**

How effective are Africa's Infrastructure regulators in facilitating investment and protecting consumers?

Wednesday 25 April 2007

Master of Ceremonies: Mr. Oswald Chanda, Executive Director, NWASCO

SESSION 1: 09:00 – 10:30 **Opening ceremony**

Opening statements:

- Mr. Smunda Mokoena, AFUR
- Ms. Jyoti Shukla, Programme Manager, PPIAF/World Bank
- Mr. Klaus Bruckner, Programme Manager, GTZ
- Mr. Enrico Strampelli, European Union Commission
- Mr. Silvester Hibajene, Chairperson, RERA
- Prof. Firmino Mucavele, Chief Executive Officer, NEPAD Secretariat
- Mr. Mandla Gantsho, Vice-President, Infrastructure, Private Sector and Regional Integration, AfDB
- Mr. Abdoulie Janneh, Executive Secretary, UNECA
- Dr. Bernard Zoba, Commissioner for Infrastructure, AU Commission
- Dr Cosmas Musumali, Chairman NWASCO Board

Opening address:

- Minister – Hon. Felix Mutati, Minister of Energy and Water Development.

10:30 – 11:00 **Tea / coffee break**

SESSION 2: 11:00 – 12:30**Programme introduction and overview**

Chair: Prof. Assi Benie, Director General ANARE

Conference overview: Mr Stephen Adu, Executive Secretary, PURC

Key note address: Prof Anton Eberhard, University of Cape Town

The independence and accountability of Africa's infrastructure regulators: re-assessing performance and improving development and investment outcomes

This session will introduce the theme of the conference which will examine whether regulatory independence and accountability have led to more credible and predictable regulatory decisions in Africa – especially in terms of facilitating investment and protecting consumers. The conference will also examine ways in which the performance of regulatory agencies could be strengthened through lower-discretion legal frameworks, rules and contracts that provide greater specificity and more predictability in core areas of regulatory decision-making – especially tariff setting.

Questions and discussions**12:30 – 14:00****Lunch**

SESSION 3: 14:00 – 15:30 Re-examining regulatory “independence”: does it lead to more or less credible and predictable regulatory decisions? – PRESENTATIONS

Chair: Dr. Mavis Chidzonga, Commissioner General and Executive Chairperson, ZERC

Presentation: Speaker: Prof Jorry Mwenechanya, Zambia
Does the “independence” of African regulatory agencies lead to more or less credible and predictable regulatory decisions?

Panel discussion:

Panelist 1 – Ms Lee-Ann Cassie, Manager Telecommunications Enforcement, ICASA, South Africa

Panelist 2 – Dr Frederick Nyang, Manager, Market Operations, ERB, Kenya

Panelist 3 – Mme Sory Boubacar Zaliha, Executive Chairperson, ARM, Niger

Panelist 4 – Mr. Clive Ferreira, Fieldstone, South Africa

Panelist 5 – Ms. Diane Terblanche, Chair, CICODEV, Senegal

This session will re-examine the principle of regulatory independence – which has been the core regulatory principle shaping the design of regulatory agencies over the past decade. The lead presenter and the panellists will be asked to comment on the experience of regulation in their own contexts and respond to the following questions. Are independent regulatory agencies in Africa producing credible and predictable regulatory decisions? Are their decisions facilitating or hindering investment? Are their decisions protecting consumers while ensuring the financial viability and efficiency of operators? How essential is “independence” for effective regulatory performance?

Are relevant roles and responsibilities of government ministries and regulator adequately defined? Is there a gap between “law” and “practice” – i.e. despite formal independence, are regulators being politically influenced? Does the frequent changing of Commissioners / Board members undermine independence? Does institutional fragility compromise regulatory independence?

How do “independent” regulators interface / work alongside long-term regulatory contracts (such as tariffs embedded in Concession Agreements or Power Purchase Agreements)?

Should we consider less regulatory discretion – i.e. more specific regulatory rules and processes should be embodied in primary or secondary legislation and in contracts?

15:30 – 16:00 Tea / coffee break

**SESSION 4: 16:00 – 17:30 Re-examining regulatory “independence”:
does it lead to more or less credible and predictable
regulatory decisions? – DISCUSSION**

Chair: Mr. Ibrahima Thiam, Chairperson, CRSE, Senegal.

Questions and discussions:

Summary of the Day & Closing Remarks: Ini Urua Manager, NEPAD Division of AfDB

Thursday, 26 April 2007

Master of Ceremonies: Mr. Shuller Habeenzu, Chief Executive Officer, CAZ

**SESSION 5: 09:00 – 11:00 Are Africa’s regulators being held
accountable for their regulatory decisions?**

Chair: Dr. Frank Sebbowa, Chief Executive Officer, ERA, Uganda

Presentation: Speaker: Dr. Ahmed Kaloko, President & CEO, IMRI Inc

**Are (Africa’s) regulators being held accountable for their
regulatory decisions? Are these decisions facilitating investment
and protecting consumers while ensuring the viability of
utilities?**

Panel discussion:

Panelist 1 – Mr. Bernard A. Forson, Deputy Director General, NCA, Ghana.

Panelist 2 – Mr. Manuel Alvarinho, Chairperson, CRA, Mozambique

Panelist 3 – Dr. Ransome E. Owan, Executive Chairman, NERC, Nigeria

Panelist 4 - Mr. Kevin Morgan, General Manager - Power, BHP Billiton Aluminium, Southern Africa

Panelist 5 - Mr. Muyunda Ililonga, Director, Zambia Consumer Association

The lead speaker and the panellists will be asked to respond to the following questions. In which respects are regulators accountable to government, parliament, investors, operators and consumers? Do regulators have to account for the correctness, robustness, predictability and fairness of their decisions? Do stakeholders have an opportunity to comment on proposed methodologies and later, on draft regulatory decisions, before they are finalised? Can regulated entities appeal against the regulators decisions? Do African regulators achieve a fair balance between ensuring the financial viability of utilities while still protecting consumers? How are regulators accountable to consumers? Are African regulators facilitating cost-effective and reliable service delivery for consumers?

Do regulators publish and seek inputs on their regulatory methodologies? Do regulators explain their regulatory decisions to the public? Are public hearings held and can consumer groups make representations? Is separate funding available to strengthen and support consumer groups – especially those representing small consumers?

If lower regulatory discretion rules are introduced that provide more specificity and predictability in regulatory decision-making (especially in tariffs), would this increase or decrease the accountability of regulators?

Questions and discussions

11:00 – 11:30	Tea / coffee break
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SESSION 6: 11:30 – 12:30	Towards a better balance between regulatory independence, accountability and regulatory performance
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Chair: Mrs. Jacqueline Musyoki, Ag. Chief Executive Officer, WSRB, Kenya

Presentation: Speaker: Mr. Ian Alexander
Towards a better balance between regulatory independence, accountability, decision-making discretion and performance

This session will wrap up the conference through exploring the following issues:

- A realistic assessment of the performance of African infrastructure regulators: how have they facilitated good investment outcomes (i.e. attracting investment into the sector, with secure revenue streams that adequately reward the cost of capital) and have they balanced this with good development outcomes (i.e. reliable and cost-effective power to consumers)?
- An examination of the extent to which regulatory “independence” and “accountability” have diminished or exacerbated regulatory risk?
- Getting the balance right between regulatory independence, accountability and performance
- Acceptance that there are perhaps limits to independence and that there should be wider use of hybrid and transitional regulatory models in Africa? – i.e. a mix of regulatory agencies, regulatory contracts and outsourcing of regulatory functions to third parties (for example, Expert Panels)?
- Acceptance of the fact that accountability to stakeholders means, at the minimum, producing credible, predictable and robust regulatory decisions.
- Exploration of the setting up of an AFUR-led Regulatory Peer Review Mechanism that could support national regulators.
- Key regulatory design issue is the appropriate level of decision-making discretion mandated to regulators – and how this might change over time – i.e. relatively low discretion in the early days and then more discretion as regulatory institutions mature and capacity is strengthened.
- Ways to strengthen accountability

Questions and discussions

12:30 – 13:30	Lunch
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SESSION 7:	13:30 – 16:00	Breakaway session: AFUR guidelines for Regulatory Independence and Accountability
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Chair: Mr. Pierre Ndouga Hell, Director General ARSEL and AFUR Deputy Chairperson

Break away sessions: **The three established Sectors (Communications; Energy and Water and Sanitation)** discuss draft AFUR guidelines for Regulatory Independence and Accountability

Report back to plenary (15:00 – 16:00)

16:00 – 16:30	Tea / coffee break
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SESSION 8: 16:30 – 17:00	Closing session
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Chair: Mr. Smunda Mokoena, Chief Executive Officer NERSA and AFUR Chairperson.

Summary of the Day: Speaker: Lorenzo Bertolini, PPIAF, Dakar, Senegal