

AFRICAN FORUM FOR UTILITY REGULATION

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Background Note

CONSUMER INVOLVEMENT IN UTILITY REGULATION

Utility regulation is a complex task, involving a range of technical and broader strategic considerations. Participation in the regulatory process by stakeholders—including consumers and service providers—helps to ensure that regulatory decisions are well informed and perceived as fair and legitimate, and can also contribute to accountability of the agency. International experience illustrates a broad range of approaches for engaging consumers in the regulatory process, reflecting differences in legal frameworks, social traditions, resources, and the strategic choices of regulators.

This paper provides an overview of alternative approaches for: (a) fostering consumer awareness of the regulatory system; (b) dealing with consumer complaints; (c) involving consumers in regulatory decisions, and (d) designing regulatory institutions to deal with the above challenges. Responses to a survey of African utility regulators on related issues are included as an attachment.

A. Fostering Consumer Awareness

The first step in any strategy for engaging consumers is to ensure they understand their rights and obligations under the relevant regulatory framework, as well as the role of the regulatory agency and the avenues for interacting with the agency. Inadequate understanding of these basic issues can lead to many problems. If consumers do not understand the basis for regulatory decisions, including the role of cost-covering tariffs in ensuring services can be improved and sustained, regulatory decisions may attract unjustified criticism or opposition. Inadequate information can also lead consumers to feel disempowered, without any effective mechanism for voicing concerns or grievances. And uninformed consumers will not be in a position to help regulators by making inputs to regulatory decisions.

Developing an effective strategy for building consumer awareness raises many challenges. First, it is important to note that "consumers" are not a single homogeneous group. Different categories of consumers will have different interests, incentives, needs, capabilities and resources. For example, common sub-categories that may overlap to different degrees include:

- Existing consumers of network services vs. those that currently lack access to formal services;
- Household vs. commercial vs. industrial consumers;
- Urban vs. rural consumers;
- Higher-income vs. lower income consumers.

Second, and reflecting in part these differences, no single communication medium will be ideal for all consumers on all issues. In assessing options, there is a basic distinction between one-way mechanisms (eg, publications, advertisements, radio, TV and web-sites) and mechanisms that allow a two-way exchange of information (eg, public meetings and seminars, talkback radio, information kiosks, and one-on-one meetings). While two-way mechanisms are better in ensuring a high level of understanding, cost and other considerations will usually require a strategy that draws on both approaches.

Third, in seeking to reach consumers, regulators may be able to draw on intermediaries such as journalists, NGOs, churches, tribal leaders, members of parliament as well as the service provider itself.

While these options can play a useful role in carrying the message to broader audiences, the interests and incentives of the intermediary will need to be taken into account.

Finally, in framing strategy in this area, regulators will need to strike a balance between a range of factors. For example, while consumer ignorance of their rights and the role of the agency is an obvious problem, care may need to be taken to avoid creating unrealistic expectations of what the agency can do, particularly during its formative period, as disappointed expectations can undermine confidence in the regulatory system.

B. Dealing with Consumer Complaints

Consumer confidence in the regulatory system will depend in large part on how effectively regulators deal with complaints from consumers concerning the performance of service providers. From a technical standpoint, the validity of any such complaints and the consequences that flow from proven non-performance will depend on the rights and obligations of consumers and service providers under the relevant regulatory framework, which will vary between countries and sectors. From a broader standpoint, however, even complaints that may not be found to have a solid legal or factual basis present opportunities for regulators to demonstrate their responsiveness, to educate consumers, and to learn about consumer priorities and concerns. Procedures for handling complaints can be structured in different ways.

First, the regulator must decide what role it will play vis-à-vis service providers in addressing complaints. For example, in many countries the consumer is required to first present their complaint to the relevant service provider, and the regulator only becomes involved if the complaint is not resolved within a specified period of time. To prevent abuse of this system, the regulator may require the service provider to establish an effective complaint processing system, and to maintain records that can be reviewed from time to time by the regulator.

Second, the regulator may delegate to decentralized entities—whether these be regional offices of the regulator, local government officials, or others—some roles in dealing with consumer complaints. The role might be limited to the mere receipt of complaints and transmission to the regulator or extend to some role in undertaking investigations. In some cases, toll-free telephone numbers can play a role in this area.

Whichever structure is adopted, it is important to provide responses to consumer complaints in a reasonable period of time. For example, Jamaica's Office of Utility Regulation has set a target of five business days within which to acknowledge written complaints, and forty business days within which to investigate complaints and advise consumers of their outcome. Well-functioning record-keeping systems are also essential monitoring the regulator's own performance, as well as tracking patterns or trends in the performance by service providers.

C. Consumer Input in Regulatory Decisions

In addition to dealing with ad hoc complaints, regulators require effective mechanisms for tapping consumer input to major decisions such as those relating to the adjustment of tariffs or quality standards or other matters that may affect consumers generally.

In framing strategy in this area, regulators must face a number of challenges. First, regulatory decisions of this kind often have major implications for service providers, who will thus have strong incentives to

provide detailed inputs, and also be able to draw on considerable technical expertise and other resources to advance their case. In contrast, individual consumers each have a more limited stake in such decisions, and hence reduced incentives to provide input. Moreover, different categories of consumers may have different and sometimes conflicting interests in such decisions, different levels of incentive to participate, different capabilities to grapple with complex issues, and different resources from which to fund assistance from consultants or others. These kinds of factors mean that it is particularly difficult to ensure the perspectives of low-income consumers are heard and not drowned out by the voices of other stakeholders.

To address these kinds of concerns, regulatory systems often include special mechanisms to ensure that a broad range of consumer interests are adequately represented in regulatory proceedings. Some of the main issues to be considered include:

- Should the regulator hold formal hearings, less-formal consultative processes, or some combination of the two?
- To what extent can regulators use intermediaries to represent consumer views? For example, can regulators get NGOs or other groups to play a role on behalf of broader interests? If no relevant representative group exists, should the regulator actively encourage the formation of such groups?
- To what extent can or should the regulator provide financial assistance to help under-represented groups present their interests?
- What other strategies can the regulator adopt to ensure adequate information? For example, are consumer surveys a useful mechanism for obtaining input from consumer groups?
- To what extent can the regulator expect the service provider to help with this process? For example, should the utility be required to help finance or administer consultative processes or surveys?

D. Implications for Institutional Design

Options of the kind outlined above can be adopted case-by-case or be embodied in the formal design of the regulatory system. International experience illustrates a number of approaches for institutionalizing the perspectives of consumers. Some of the main options are outlined below.

(i) Representation of Consumers and other Stakeholders in the Decision-making Body

One option would be to involve representatives of consumers and other stakeholders in the decision-making body itself, whether this is structured as a commission or board. These representatives thus play a direct role in making regulatory decisions.

Despite the political appeal of this approach, international experience highlights a number of practical problems with this approach. These include:

- It is difficult if not impossible to find an effective representative of "consumer" interests. Consumer sub-groups—such as industrial consumers, residential users, urban users, rural users, low-income users, high-income users, etc— will often have different and sometimes conflicting interests in particular regulatory decisions. Attempts to reflect this diversity can lead to pressure to expand the size of the decision-making body, which slows decision-making and reduces accountability of individual members.
- Representative decision-making bodies place emphasis on the specification of voting rules. If consumers have an effective majority, very few requests for tariff increases will be approved; if investor interests have an effective majority, very few requests for price increases will be rejected. If

the voting power of representatives of consumers and concessionaires is evenly balanced, deadlock may result or real authority will reside in other interests represented on the body.

- This model encourages internal bargaining between represented interests, rather than fostering a more open and objective assessment of where the balance should be struck between competing community interests. The result is less transparency and reduced legitimacy of regulatory decision-making.

(ii) *Specialist Advisory or Consultative Bodies*

Given the problems associated with involving stakeholders directly on the decision-making body, many countries have focussed instead on establishing specialist advisory or consultative bodies to provide regulators with a source of non-binding and non-exclusive advice. As they are not directly involved in the regulator's decision, there are fewer constraints on size or composition or concerns about voting rights.

When considering the establishment of such bodies, a number of issues require attention. These include:

- Are there any existing groups that might fulfill this role, without the need to create a new body?
- If a new group needs to be created, should it be established only on an informal basis or are there advantages in more formal structures, possibly supported by legislation?
- Should any such groups be limited to consumers, or also include investors and other interest groups and thus act as a forum for trying to build consensus?
- Who decides on appointments and terms of reference?
- Should such groups meet at regular intervals, or only in response to particular regulatory decisions?
- Should members receive payment, or only be compensated for out-of-pocket expenses?
- Should such bodies be organized on a national or regional basis?
- Should separate groups be established for each utility sector, or would it make sense to have a single group for all utilities?

(iii) *Other Mechanisms*

Other institutional options for engaging consumers might include:

- Establishing dedicated consumer affairs bureaux with agencies;
- Establishing formal working relations with any economy-wide consumer affairs agencies;
- Establishing regional offices.

Participant Survey on Consumer Issues in Utility Regulation – Summary of Responses

Country	Agency	Sector	Mechanisms for Responding to Consumer Complaints and Fostering Awareness	Mechanisms for Involving Consumers into Regulatory Decision Making	Institutional Options for Engaging Consumers
Cameroun	Agence de Régulation des Télécommunications	Telecom	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Newsletters • Flyers 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Regional offices
Cote d'Ivoire	Autorité Nationale de Régulation du Secteur de l'Electricité (ANARE)	Electricity	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Newsletters • Flyers • Web site 	<ul style="list-style-type: none"> • Formal consultation with consumer groups 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Formal Advisory/consultative groups • In-house consumer affairs bureau/staff
Cote d'Ivoire	Agence de Télécommunications de Cote d'Ivoire	Telecom	<ul style="list-style-type: none"> • Press releases • Workshops & seminars 	<ul style="list-style-type: none"> • Quality of service surveys 	<ul style="list-style-type: none"> • In-house consumer affairs bureau/staff
Cote d'Ivoire	Direction de l'Hydraulique	Water	<ul style="list-style-type: none"> • Television or radio advertisements • Material included with bills • Word-of-mouth • Flyers • Workshops 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Regional offices
Ghana	National Communications Authority	Telecom	<ul style="list-style-type: none"> • Press advertisements • Press releases • Information in dairies and booklets • Annual reports 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None
Ghana	Public Utilities Regulatory Commission	Electricity, Water, Petroleum	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Material included with bills • Word-of-mouth 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Public hearings • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Formal Advisory/consultative groups • Regional offices • In-house consumer affairs bureau/staff

Country	Agency	Sector	Mechanisms for Responding to Consumer Complaints and Fostering Awareness	Mechanisms for Involving Consumers into Regulatory Decision Making	Institutional Options for Engaging Consumers
Kenya	Electricity Regulatory Board	Electricity	<ul style="list-style-type: none"> • Telephone “hot line” • Annual reports • Material included with bills • Word-of-mouth • Newsletters • Flyers 	<ul style="list-style-type: none"> • Public hearings 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • In-house consumer affairs bureau/staff
Madagascar	Office Malagasy d’Etudes et de Régulation des Télécommunications (OMERT)	Telecom	<ul style="list-style-type: none"> • Press advertisements • Press releases • Annual reports • Website 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • In-house consumer affairs bureau/staff
Malawi	Electricity Council	Electricity	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Word-of-mouth 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Informal public outreach 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • In-house consumer affairs bureau/staff
Mauritania	Autorite de Regulation	Telecom, Water, Electricity	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Material included with bills 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None
Morocco	Agence Nationale de Réglementation des Télécommunications	Telecom	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Web site 	<ul style="list-style-type: none"> • Comments from formal advisory bodies 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Formal Advisory/consultative groups
Namibia	Electricity Control Board	Electricity	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Website 	<ul style="list-style-type: none"> • Mechanisms to solicit comments from formal advisory bodies and public hearings are planned. 	<ul style="list-style-type: none"> • In-house consumer affairs bureau/staff
Namibia	Namibia Communications Commission	Telecom	<ul style="list-style-type: none"> • Press releases • Newsletters • Word-of-mouth 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Public hearings • Informal public outreach 	<ul style="list-style-type: none"> • In-house consumer affairs bureau/staff

Country	Agency	Sector	Mechanisms for Responding to Consumer Complaints and Fostering Awareness	Mechanisms for Involving Consumers into Regulatory Decision Making	Institutional Options for Engaging Consumers
South Africa	National Electricity Regulator	Electricity	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Material included with bills • Newsletters • Monthly journals • Word-of-mouth • Consumer forums • Quality of service & supply standards • Telephone “hot line” 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Public hearings • Informal public outreach • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Formal Advisory/consultative groups • In-house consumer affairs bureau/staff • Customer Service Committees
South Africa	Independent Communications Authority	Communications	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Newsletters 	<ul style="list-style-type: none"> • Public hearings 	<ul style="list-style-type: none"> • Formal Advisory/consultative groups • In-house consumer affairs bureau/staff • Customer Service Committees • Regional offices
Togo	Autorite’ de Reglementation	Communications	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements 	<ul style="list-style-type: none"> • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • In-house consumer affairs bureau/staff
Uganda	Electricity Regulatory Authority	Electricity	<ul style="list-style-type: none"> • Press advertisements • Flyers • Word-of-mouth 	<ul style="list-style-type: none"> • Public hearings • Informal public outreach • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • Customer Service Committees
Uganda	Uganda Communications Commission	Telecom	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Workshops & seminars • Material included with bills • Website 	<ul style="list-style-type: none"> • Public hearings • Meetings with stakeholders • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • Formal Advisory/consultative groups • In-house consumer affairs bureau/staff

Country	Agency	Sector	Mechanisms for Responding to Consumer Complaints and Fostering Awareness	Mechanisms for Involving Consumers into Regulatory Decision Making	Institutional Options for Engaging Consumers
Tanzania	Tanzania Communications Commission	Telecom	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Material included with bills • Newsletters • Flyers • Word-of-mouth • Social activities 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Stakeholder fora 	<ul style="list-style-type: none"> • In-house consumer affairs bureau/staff
Zambia	Communications Authority	Telecom	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Flyers & brochures • Trade shows & exhibitions • Website 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Formal meetings with stakeholders 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Formal Advisory/consultative groups • Regional offices • In-house consumer affairs bureau/staff • In-house consumer affairs bureau/staff
Zambia	Energy Regulation Board	Energy	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Newsletters • Flyers • Word-of-mouth • Telephone “hot line” 	<ul style="list-style-type: none"> • Public hearings 	<ul style="list-style-type: none"> • Formal Advisory/consultative groups • In-house consumer affairs bureau/staff
Zambia	National Water Supply & Sanitation Council	Water	<ul style="list-style-type: none"> • Television or radio advertisements • Press advertisements • Press releases • Annual reports • Newsletters • Flyers • Word-of-mouth • Brochures 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Informal consultation with consumer groups 	<ul style="list-style-type: none"> • Consumer interest represented on agency board • Customer Service Committees

Country	Agency	Sector	Mechanisms for Responding to Consumer Complaints and Fostering Awareness	Mechanisms for Involving Consumers into Regulatory Decision Making	Institutional Options for Engaging Consumers
Zimbabwe	Department of Energy	Energy	<ul style="list-style-type: none"> • Press advertisements • Press releases • Newsletters • Flyers • Word-of-mouth • Telephone “hot line” • Exhibitions 	<ul style="list-style-type: none"> • Comments from formal advisory bodies • Workshops 	<ul style="list-style-type: none"> • None