

Improving Transparency and Accountability in the Electricity and Water Sectors

December
2010

This document is one of a series of discussion papers exploring a specific aspect of transparency and accountability in the electricity and water sectors.

Consultative
Document

IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN THE ELECTRICITY AND WATER SECTORS

1.0 INTRODUCTION

Many governments, advocacy groups and international agencies dedicate substantial resources to identify and deter corrupt practices. Often, however, little emphasis is placed on eradicating the factors that breed corruption, such as lack of accountability, transparency and adequate public information, which result from poor governance and weak management systems. In fact, research has shown that reforms to strengthen customer rights, enhance stakeholder participation and increasing transparency can significantly improve organization performance and reduce corruption. The Regulated Industries Commission (RIC), has oversight responsibility for the electricity and water sectors and is mandated to protect consumer interests and promote good governance. Therefore, the RIC should take a leading role in shaping these sectors by promoting good governance and ensuring that there is an adequate level of transparency and accountability. This document presents a suite of tools that the RIC proposes to implement to improve transparency, accountability and access to information. Many of these tools call for increased participation by stakeholders and civil society.

1.1 Document Structure

Section 2 of this document presents the legislative framework that underlies the RIC's duty to improve transparency and accountability in the electricity and water sectors. Section 3 emphasizes the importance of transparency, accountability and participation for good governance and good regulation. The specific proposals through which service providers can improve their transparency and accountability are outlined in section 4.

2.0 LEGISLATIVE FRAMEWORK

By virtue of Section 6(1) of the Act No. 26 of 1998, the RIC is responsible for, *inter alia*, establishing rate-setting principles and methodologies, prescribing and monitoring standards of service and carrying out studies of efficiency and economy of operation and of performance of service providers and publishing the results thereof.

In the performance of its functions, the RIC must, in accordance with Section 6(3), **have regard to the public interest** and in particular to “maximum efficiency in the use and allocation of resources to ensure as far as is reasonably practicable, that services are reliable and provided at the lowest possible cost”. Additionally, Section (6)(1)(n) explicitly directs the RIC to “do all such things as may be necessary or expedient for the proper performance of its functions”.

Consequently, the RIC has incorporated into its regulatory framework, various standards and performance targets that are designed to secure an economical and reliable service for customers and will further the objective of continuous improvements in the operational efficiency of service providers. Additionally, in accordance with Sections 56 to 59 of the RIC Act, the RIC can determine the specific requirements for information (in the time, manner and form) that will be necessary to provide the basis to continuously assess the operations and performance of the service providers. The RIC expects that in conforming with this section, the service providers will supply the required information. The effective and timely provision of adequate information and consultation will further the reasonable interests of customers, promote the efficient and economic operation of service providers and encourage timely investments in network facilities.

3.0 TRANSPARENCY, ACCOUNTABILITY AND PARTICIPATION

Transparency, Accountability and Participation are key elements of any good governance structure. Transparency ensures that information is available on which the performance of the utility can be assessed. The assessment of performance that can result therefrom, can be used to determine whether the service provider has achieved set targets, whether it has utilized its resources efficiently, and can generally indicate how effective its management and management

strategies/systems have been. In the case of monopolies, such as T&TEC and WASA, where the lack of competition provides little or no incentive for improved performance, the regulator must insist on high levels of transparency and accountability. Improving access to information is also a key factor for the realization of potential benefits of this initiative.

Involving the public and major stakeholders in discussions on key issues and in the decision-making process, not only assists in gaining their support, but also fosters transparency and creates an opportunity for them to hold utilities accountable. Additionally, providing public access to such items as utility performance reports, also serves to increase the level of transparency and accountability of the utility and its management, to those who pay the rates with the expectation of receiving a high quality service.

For a State-owned public utility, customers can be regarded as its ultimate shareholders and consequently they should be involved in key decision-making. In fact, their voice as consumers is vital if State-owned utilities are to be held accountable. There are also certain expectations about how State-owned utilities communicate with the public and are held accountable for their activities. Overall, there are serious shortcomings in the way in which WASA and T&TEC meet these expectations. Currently, there is a reflex aversion to disclosure and for a closed rather than an open style of operation/communication. The service providers appear to have lost their social focus. The management in these entities do not feel compelled to be accountable for ensuring these social focuses are achieved. This is in marked contrast to the practice of other successful international public sector utilities.

The RIC holds that transparency and accountability are hallmarks of good regulation and values the importance of stakeholder participation as an essential component of good quality governance. As principles of best practice utility regulation, the RIC embraces transparency and accountability in the performance of its own functions. In fact, appreciating the significance of transparent approaches, the RIC leads by example by creating self-imposed guidelines similar to the requirements being suggested for service providers. In particular, the RIC ensures that the same principles prevail in-house by undertaking the following activities:

- publishing the salaries and other benefits of senior management in its annual report;

- establishing key performance indicators and setting targets to improve its effectiveness;
- benchmarking its methodologies and approaches against those of regulatory bodies in other jurisdictions; and
- engaging stakeholders through early and open consultations which outline clearly defined decision-making processes and for which rationales/detailed explanations for proposed interventions are provided.

The RIC stands committed to employing stringent methods to ensure that the service providers under its purview develop cultures of transparency in their operations, which have become necessary in today's environment, and are held accountable for their performance.

4.0 SPECIFIC TOOLS/METHODS

There is a series of measures available to promote accountability and transparency. The specific proposals that follow suggest ways in which service providers can improve their transparency and accountability. These proposals are likely to be the most productive way for them to gain credibility and trust and consequently improve support from stakeholders. They are broadly classified under the following headings:

- Consultation
- Information Disclosure
- Openness – Making service providers answerable to consumers
- Ethics and Integrity – New Business Protocols
- Promoting Assessment and Monitoring

4.1 Consultation

Stakeholder participation can ensure that varying viewpoints are articulated and incorporated. This can provide a sense of ownership and stewardship over the process and resulting decisions. However, service providers must ensure that they adopt best practice in both communication and consultation and develop a “consultation code”. The RIC sees consultation as a process which

provides for, and encourages, genuine two-way, constructive dialogue. The RIC accepts that effective consultation will not always lead to agreement. However, the RIC believes that the likelihood of enduring disagreement should be significantly reduced if there is clarity about the nature and purpose of consultation and the need for adequate and timely information provision. Consultation must be demonstrably effective. Genuine consultation should improve the quality of decision-making. **Consequently, the RIC proposes that:**

- **Service providers must consult with the public on proposals for, and the undertaking of any significant activity in the exercise of their core functions.**
- **Among the topics for public consultation, service providers must ensure that those affected by their infrastructure and construction projects are fully consulted and informed about these activities.**

4.2 Information Disclosure

The RIC believes that information disclosure by service providers is an important step forward in sector regulation. Increased access to information enables customers to scrutinize the service provider's work and, therefore, pressure can be exerted to encourage the service provider to be more accountable and perform better. The media has a key role to play in public information/education by making information available and in highlighting the service providers' performance. The Freedom of Information Act provides a right to access official information and enables customers to scrutinize service providers' performance. NGOs can play a useful role in helping customers to benefit from this legislation by raising pertinent issues and seeking information from service providers.

There are a number of components of information provision. First, information should be provided to enable the evaluation of future projects/developments. Second, it is important that information is provided so that customers can evaluate the success with which projects/developments have been implemented. Third, the timely provision of information is

essential to enable stakeholders to make informed judgments. Finally, it is important that the information is relevant to the needs of the stakeholders and is understandable to them.

The RIC will insist that service providers ensure that their websites become a useful communication channel and information resource for their customers and stakeholders. However, public communications should be characterized by objective and non-tendentious information. In particular, selective communications should not be used and information should be made available regardless of whether it is perceived to be “damaging” to service providers or not. **Consequently, the RIC proposes that:**

- **Service providers must use their websites to promote openness and facilitate public knowledge about, and participation in, their core activities by:**
 - **making information and documentation available on their website;**
 - **putting a more human face to the website, including contact details for key personnel (e.g. e-mail, telephone);**
 - **making the website more interactive, especially in relation to e-mail queries, outlining how queries are responded to, i.e. feedback function; and**
 - **including a prominent section dealing with the utility’s planning and development activities (on-going and completed), which must be periodically updated.**

Regular information on budgets, expenditure and performance can be valuable tools for improving access to information, transparency and accountability. Although reports are unlikely to be read by the majority of consumers, simple summaries can be provided with utility bills, and the information provided can be more widely distributed to NGOs and the media. **In this regard, the RIC proposes that:**

- **the service providers must produce audited reports and accounts within six months of the end of their financial year;**
- **the service providers must produce quarterly revenue and expenditure statements in accordance with the regulatory accounting guidelines established by the RIC;**

- **the service providers make these reports and accounts widely accessible on their websites and to the media; and**
- **the service providers must provide information on key performance indicators (as determined by the RIC), the number of complaints and their effectiveness in dealing with those complaints. This information should be provided with bills, at least twice per year.**

Participatory budgeting is an innovative financing mechanism that gives customers a say as to how funds are spent for capital projects. Involving customers in the setting of investment priorities for capital works would help ensure that monies are spent more wisely. This is particularly important where sector regulation directly relates infrastructure delivered to the price paid for the use of the network, as the RIC does under its regulatory framework through the use of the building-block approach (i.e. RAB-based regulation). **Consequently, the RIC proposes that:**

- **Service providers must demonstrate that their Five Year Business plans have been discussed with their customers and that due regard has been given to the views expressed during the consultation process.**

There are a number of other tools that can be used to increase transparency by service providers, including:

- **publishing the salaries and other benefits of senior management in the annual reports; and**
- **annually declaring all foreign trips and expenses incurred by Board members and management.**

4.3 Making Service Providers answerable to Consumers

Public authorities should be accountable and have a duty to improve and strengthen their links to those who use and pay for the services they provide and to the general public. Currently, the ability of customers to hold service providers accountable is seriously lacking. Holding annual public meetings by Boards can become a major event demonstrating service providers' commitment to openness, accountability and transparency and to solicit the views of customers. Customers who have had reason to complain about their services in previous years should be invited to participate. These meetings would ensure a better flow of information from service providers to customers, and would enable follow-up and public scrutiny of actions taken by service providers. These meetings can also be used to collect qualitative feedback about customer service, education programmes, policies and procedures, as well as customers' general perceptions about service providers. NGOs can play a critical role at these meetings by institutionalizing and becoming a "public oversight" body on behalf of customers.

In this regard, a number of measures must be implemented by service providers:

- **Boards must hold formal Annual Public Meetings and should make arrangements for consultation and deputation's of individuals to question the Board and the CEO.**
- **Service providers will be required to disclose the identity of all their contractors, the value of the contracts and the main evaluation criteria used. In the interest of transparency and openness, this information should be made available on their websites. There is much to be gained and little to be lost by making all final contracts public. Even the appearance of corruption is a serious matter. Therefore, prompt investigations of allegations by a credible third party should be undertaken whenever matters of that nature occur and the findings made public where appropriate.**
- **The service providers must make arrangements to provide information on their website on their procurement. This information would allow customers access to**

service providers' procurement processes that are underway, completed, or pending approval, including information such as requirements for submitting bids, important dates, and the amounts bid by tenderers.

4.4 Ethics and Integrity – New Business Protocols

Self-regulation to eliminate corruption in the procurement process of service providers must be promoted by developing procedures to ensure transparent and fair procurement, employing indicators to monitor compliance and establishing sanctions and ethics committees to take action against transgressors. These initiatives can promote cultural change within the sectors by focusing and encouraging better business ethics. **In this regard, the RIC would encourage the introduction of two specific measures¹ to be implemented to help safeguard public procurement from corruption:**

- **Integrity pacts; and**
- **Social witness.**

An **integrity pact** is a binding agreement between a procurement agency (i.e. service provider) and bidders for specific contracts. The parties agree to a code of conduct clearly rejecting the use of bribes and other unethical behavior. The essential elements of the pact include:

- a statement by each bidder that it has not paid, and will not pay, any bribes;
- an undertaking by bidders to disclose all payments made in connection with the contract in question at the time of tender submission; and
- an undertaking by the procurement agency that its officials will not demand or accept any bribes, gifts or other favours, with appropriate disciplinary or criminal sanctions in case of violation.

¹ These concepts have been advocated by Transparency International.

The **Social Witness** is a representative of civil society who acts as an external observer in the procurement process. This innovative practice to promote transparency, diminish the risk of corruption, and improve overall efficiency of procurement, has been used in some countries. The social witness is a highly honourable, recognized and trusted public figure who is independent of parties involved in the process. The social witness makes recommendations during and after the procurement process, provides public testimony, and has the right to full access to information during critical stages of the procurement process, especially:

- checking the basis of the bid and the bidding notice;
- witnessing the opening of technical and financial proposals;
- observing all the sessions that are held with bidders;
- observing the session where the successful bidder is announced;
- monitoring of works before they are signed off and last payment made; and
- certifying that the bidding process was fair.

Establishing and adhering to decision process rules (a self-imposed code of conduct) is one way of ensuring maximum transparency. Codes of conduct can also help to create a shared culture of transparency, where people inside and outside an organization know what is expected of them. This document should provide a general framework for a code of good conduct with clear definitions, overall ethical principles and a guide for conducting internal activities and relations with external parties. In particular, the regulations should focus on a number of typical transparency and integrity issues, including:

- conflicts of interest;
- abuse of position (in particular at managerial levels) for economic or personal (e.g. unfair hiring of family or friends) ends; and
- acceptance of gifts and preferential treatment.

In this regard, the RIC proposes that:

- **Service providers develop a general anti-corruption policy and produce their own codes of conduct and publish these documents on their websites.**
- **Service providers be required to have records and procedures in place by which they can demonstrate that their procurement and hiring practices occur at arms length, as patronage employment in any form is a form of corruption.**
- **Service providers must establish an ethics and sanctions committee to take action against transgressors.**

4.5 Promoting Assessment and Monitoring

Promoting assessment and monitoring is a valuable tool for increasing public awareness and mobilizing a constituency committed to tackling corruption. Monitoring in itself can start to reduce or prevent corruption. Therefore, apart from publishing documents and reports, service providers must collect and publish data on public perceptions of their services. This will help improve communication between service providers and their customers. **Consequently, the RIC proposes that:**

- **Service providers must disclose information about how many complaints they receive and resolve annually. In fact, service providers should establish a customer service charter that outlines the key levels of service that customers can expect to receive, publish fact sheets containing data on operations and subject themselves to public review.**
- **Service providers must collect more systematic data on public views. This should be done by means of general population surveys every five years and by focused work on the experience of those who have had cause to complain, to ascertain how their concerns were dealt with. This work should be carried out by independent researchers.**

- **Service providers must publish on their websites their performance against all targets and produce a half-yearly overview report for the public with commentary on where and why this performance has not met the targets.**
- **Service providers must provide updates on performance for key performance indicators with bills. These updates must be provided at least twice per year.**

The RIC sees the voice of customers as a key missing link for holding service providers accountable and an underlying reason for generally low performance of the sectors. Customers have few mechanisms or only very weak ones for making legitimate complaints and seeking redress for poor service. This is a particular problem given the monopolistic nature of the sectors.

In this regard, the RIC proposes that:

- **It will take all necessary steps for establishing a Utility Watch Group (UWG) comprising NGOs/civil society/individuals to engage with service providers, on behalf of customers. The UWG's approach should include customer mobilization, raising awareness, preparing for engagement with service providers, and dialogue.**

5.0 OTHER MEASURES - INSTITUTIONAL AND GOVERNANCE ARRANGEMENTS

The RIC is of the firm view that its proposals for the improvement of transparency and accountability would be enhanced if complementary changes to service providers' current institutional and governance arrangements were also adopted. The current institutional and governance arrangements are not sufficiently specific, detailed or transparent to enable the Government to set strategic direction and required performance standards, evaluate service providers' performance, hold them accountable for their performance, or create effective incentives for them to improve their performance. Effective institutional and governance arrangements are especially important for monopoly service providers, which are not exposed to the disciplines of a competitive market.

The RIC considers it critical, that proper institutional and governance arrangements should be put in place. At a minimum, the Government should clearly specify the levels of service and financial performance it expects service providers to deliver, and hold management accountable if these performance levels are not met. Improved transparency in the way public expenditure is made available to service providers would also help to ensure that customers receive better value for money on a sustainable basis. Currently, the service providers are neither asked nor required to report their performance against the Government's expectations. This means there is neither transparency and public scrutiny of the true cost of providing services, nor is there transparency about how much of this cost is properly borne by taxpayers, and how much is due to inefficiency.

In this regard, the RIC proposes that Government should have three written agreements with the service providers:

(1) Statement of Corporate Intent (SCI) – The SCI should:

- clearly articulate the Government's objectives and priorities for the service providers; and
- set out short-term and long-term financial performance targets for service providers that are measurable and consistent not only with the Government's objectives but also with the efficient operating cost benchmarks determined by the RIC as part of the tariff determination.

(2) Funding Agreement – The Government's funding arrangement with service providers must:

- clearly and transparently set out the level of funding to be provided to service providers, including a detailed breakdown of the different components and the associated amounts of this funding;
- be in the form of incentive-based grants and loans, whereby these funds are transferred by making them conditional on good performance;
- be capped to reflect the RIC's tariff determination. The parameters for compensation, in the event that WASA's expected revenue from customers is less

than the RIC's revenue forecasts, should be established ex-ante and that Government funding is only provided for events outside of WASA's control;

- be a multi-year agreement that aligns with the RIC's tariff determination period and which is updated when funding is altered, through an updated funding agreement; and
- be consistent with the other elements of the RIC's regulatory framework, in particular, the RIC's revenue determination.

(3) **Performance Agreement** – The Government as an owner should establish a written performance agreement with service providers that:

- clearly specifies performance targets required of service providers (for example, the targets should include service coverage, financial targets, customer policy, etc.) and any other Government policy requirements, along with a strong reporting framework, including regular financial audits and annual and periodic performance status reports;
- the performance agreement should be a multi-year (five years) document that aligns with the RIC's determination period. While the strategy conveyed in the agreement should not be subject to change, periodic revisions may be necessary to reflect unforeseen developments; and
- Government should rigorously monitor and evaluate service providers' performance in meeting the targets set out in the agreement and apply appropriate sanctions in the event of failure to meet the targets.

The RIC further proposes that these written agreements be made publicly available at the time of executing them and whenever they are updated. Additionally, the service providers should publish on their websites the results of their performance against all targets and produce half-yearly overview reports for the public with commentary on where and why the performance targets were not met.

6.0 NEXT STEPS

This paper outlines the RIC's initial thinking on how to improve transparency and accountability in the electricity and water sectors. In keeping with its mandate, the RIC will be facilitating public consultation and promoting wide-ranging discussion by holding consultations and workshops. Only by making their views known, can stakeholders assist the RIC in reaching its decisions which achieve an acceptable balancing of the interests of the service providers and stakeholders.

Submissions

Submissions are invited from interested parties concerning the issues raised in this document and related matters. Responses should be directed to:

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