



**REPORT ON**

**EASTERN AND SOUTHERN AFRICA**

**WATER AND SANITATION REGULATORS ASSOCIATION**

**8<sup>TH</sup> ANNUAL GENERAL MEETING**

***Theme: "Enhancing Regulatory Governance"***



**8th ANNUAL GENERAL MEETING**  
20th - 22nd August, 2014  
Maputo - Mozambique

**Hosted by the Water and Sanitation Regulatory Council (CRA)**

Girassol Indy Congress Hotel, Maputo, Mozambique

20-22<sup>nd</sup> August, 2014

Report prepared by: ESAWAS Secretariat

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## **1. INTRODUCTION**

The eighth Annual General Meeting of the Eastern and Southern Africa Water and Sanitation (ESAWAS) Regulators Association was held in Maputo, Mozambique from 20<sup>th</sup>–22<sup>nd</sup> August, 2014. The meeting was hosted by the Water and Sanitation Regulatory Council (CRA) at the Girassol Indy Congress Hotel.

The three-day meeting which drew a total of eleven countries, had over 50 participants from the six members of ESAWAS, as well as, the Public Utilities Regulatory Commission (PURC) of Ghana, the Regulation Unit under the Ministry of Water & Environment of Uganda, representatives from the Ministry of Electricity, Dams, Irrigation and Water Resources from South Sudan, as well as from South Sudan Urban Water Corporation, the Department of Water Affairs of Botswana and representatives from the Ministry of Energy and Mines of Burundi. Local representation was also from FIPAG, AIAS and local providers. The opening was graced by the Vice Minister of Public Works and Housing – Mr. Cadmiel Filiane Muthemba.

## **2. PROGRAMME OUTLINE**

The meeting was structured around the theme *'Enhancing Regulatory Governance'*, also referred to as the “how” of regulation. Regulatory governance, is concerned with the institutional and legal arrangements of the regulator that provide for decision making independence and the processes that enhance its credibility and legitimacy

The programme (annexed) conducted over three-days was as follows:

- Day one and two of the programme was conferencing focussed on the theme and included presentations on:
  - legislative frameworks and appellate process;
  - independence of Board members;
  - accountability to stakeholders, strategic planning and funding for regulators;
  - adapting lessons in setting-up the regulatory framework;
  - regulation of sanitation;
  - regulation of small and medium cities through an extended framework; and
  - benchmarking large cities in the region.
- Day three was dedicated to the Annual General Meeting to discuss business of the ESAWAS Regulators Association.

## **2.1 DAY ONE**

### **2.1.1 OFFICIAL OPENING**

The Executive Secretary of CRA, Mr Miguel Magalhaes begun the meeting with brief welcoming remarks and introduction of participants.

This was followed by remarks from the CRA President, Mr Manuel Alvarinho who thanked the representatives of the water sector for their presence in Mozambique. The President reminded participants that the annual meetings strengthen the value of collaboration. He said regulators end up feeling as lone rangers in the midst of sector challenges, but with the relationship among fellow regulators in other countries, one finds that problems are similar. This is the reason why the annual meetings generate a lot of expectations for participants.

In touching on the theme in the remarks by the Chairperson of ESAWAS, Eng Robert Gakubia highlighted that regulators bring about good governance in the sector of regulation. Governance is a key ingredient. The question is always asked not only on how regulators are impacting governance but how are regulators also governed, hence the theme of the 8<sup>th</sup> meeting.

The meeting was officially opened by the Vice Minister of Public Works and Housing, Mr. Cadmiel Filiane Muthemba. In his opening speech, Mr Muthemba stated that the Government of Mozambique is working on strengthening water sector. He encouraged the meeting to get good practices that can be replicated among countries.

### **2.1.2 PRESENTATIONS**

#### **i. The Institutional Context and Regulatory Governance, CRA-Mozambique**

Mr Mr Manuel Alvarinho, the President of CRA gave a keynote presentation on the theme of Regulatory Governance. The presentation highlighted:

- The ability to balance interests – the gyroscope;
- The enabling/disabling context
  - Regulator Accountability
  - Regulating state-owned or majority shared operators
  - Compliance enforcing regulator
  - Didactic or catalytic regulator
  - The role of the regulator on service provision development

## ii. Legislative Framework and Appellate Process, EWURA-Tanzania

Mr Felix Ngamlagosi gave a presentation on the Legislative Framework and Appellate Process in the context of EWURA, with case examples. The presentation covered:

- Establishment of EWURA
- Governance Structure
- EWURA's Mandate
- Duties of EWURA
- Functions of EWURA
- Dispute Resolution
- Filing of a Complaint
- Resolution of a Complaint
- Complaint Hearing
- Decision of the Board
- Appeal Process
- Challenges
- Way Forward
- Case Examples

### Plenary Discussion

The plenary discussion centered on the following.

- The word 'Consumer', does it mean consumer of service or customer? Who can lay a complaint? Consumer or customer? *Registered customer has right to submit complaint*
- In Nicaragua, the provider is required to respond within 15 working days of complaint. The Regulator imposes time limit on itself to respond to complaint.
- The appeal to Court of Appeal is it in legislation? *Yes in EWURA Act*
- Is there any role of Board in the hearing? *There is a hearing team which submits to Board for consideration*
- How is the nomination procedure for the Board established?
- Why is there low level of awareness of consumers? Despite having a PR reporting to DG, are consumers losing confidence in regulator?
- 28 complaints per year- is because providers are doing well or low-level of awareness?
- Who nominates the nominating committee? *Spelt out in EWURA Act*
- Is CCC unit of EWURA? *No.*
- What happens when a customer complains directly to EWURA? *most customers are directed to report to the provider unless by past history of dealing with provider, EWURA writes to the provider to inform them that a complaint has been received first and to respond*
- When a penalty is levied, what happens if Utility does not pay penalty?
- How efficient is receiving a complaints via SMS?
- Is there fair attention given to WSS against other sectors?

### **iii. Independence of Board Members, NWASCO-Zambia**

Ms Yvonne Magawa gave a presentation on the independence of Board members using the NWASCO context. The presentation outline covered:

- Background of NWASCO
- Board Composition
- Appointment of Board
- Board Structure
- Tenure and Vacation of Office
- Board Meetings
- Decisions of the Board
- Issues presented to the Board
- Notable Board Decisions
- Public disclosure of Board Decisions
- Board Charter

### **Plenary Discussion**

The plenary discussion raised the following issues:

- How is independence maintained if some representative are from Government? *The Chairperson of the Board and heads of Board committees are non-Government officials.*
- It is recommended is to have a stakeholder Council, representatives coming from institutions is not a good idea as faces can change periodically with no consistency.
- There is an advantage in a Board being appointed by the President (as opposed to Ministers) as it keeps focus on the mandate to the citizenry.
- How is Council funded? *From 2% of annual operator turnover (paid monthly)*
- How has Board operated especially when all Board Members go at the same time. *It has been a challenge, where at times, the institution operated without a Board for over two months. However, reconstituted Boards always retain at least two old member for memory and continuity.*
- How do you suspend license, why not remove the Board and management who are incompetent? *License suspension is a last resort where all other avenues have failed. It is only by suspension of a license that the incompetent Board and Management can be removed.*
- How can a Board exist and work independently if they can be removed by Minister at any time?
- How does Board appoint CEO? *Through competitive recruitment from the open market.*
- Is CEO a member of Board? *No.*

- Are there guidelines to appoint Statutory Manager? *Yes. The Statutory Manager is appointed by the Minister of Local Government who oversees the water utilities through consultation with NWASCO.*
- What type of contract is entered into for a Statutory Manager? *These are initially six-month contracts, renewable until the utility begins to get back on track.*
- How does the NWASCO Board directly engage a Utility Board? What is the agenda? *This is done in special circumstances where it has been gauged that intervention must be at Board level to map-out interventions for the utility that may not require suspension of a license.*
- Are penalty units monetary? *Yes.*
- Board decides on remuneration- how is that controlled?
- Is term of CEO pre-determined? *No. It's a three-year contract, renewable.*

iv. **Strategic Direction and Funding for Regulator, WASREB-Kenya**

Eng. Njaggah gave a presentation on Strategic Planning and funding for the regulator, in the context of WASREB. The presentation included:

- What makes a world-class regulator?
- Strategic Planning process
- Situational Analysis
- Review of external environment
- Strategic response to PEST
- Internal Analysis
- Inter-disciplinary nature of work
- Strategic Goals
- Where do we want to be
- Formulation of goals
- Strategic Objectives
- Implementation Plan
- Sustainable funding for regulators – key questions
- Determination of budget, levy and fee
- Operationalising Strategic Plan

**Plenary Discussion**

The discussion considered the following:

- Is the tariff uniform for all utilities? *No because of differing operational areas.*
- Why develop a 5 year plan? – *aligned to transition period of Government and Vision 2030 periods. The Sector direction is also linked to transition period.*

- How can one ensure linkage from regulatory functions to impact on the ground? *Identify key issues in the sector through independent external person and undertake mid-term review of plan.*
- Comparing the budget to the levy, it seems there is not enough to fund operations. *There is intention to increase the levy from 1.5% to 2%.*
- What is the level of involvement of stakeholders?
- What mechanisms have been used to gain goodwill from stakeholders? *You have to show that SP is responding to needs*
- What monitoring tools are being used?
- We can't implement a SP without long-term vision. Up to now, we have been guided by MDGs, now we need to consider post-MDG.
- What is the outcome of clustering survey?
- How is levy determined, is there a formula?

## OPEN DISCUSSION

An open discussion on all the presentations of the day looked at:

- Who regulates the regulator?
  - EWURA appears before 4 committees of parliament
    - Government can initiate a study through controller
    - Accountability is to the Minister
  - PURC Act is clear that they do not report to anybody nor directed/controlled. Report to President of Ghana.
    - Regulatory levy obtained in 2010, after 10 yrs of lobbying
    - Collaborate with energy and water resources parliamentary committees and public account committee
    - Regulatory levy is in monetary terms and not a percentage
    - Establish an average from budget to determine levy
  - PURC invited ESAWAS for Peer Review of its Water Sector
  - CRA Board nominated by Council of Ministers. The Ministers of Water and Finance take the names to Cabinet. CRA reports to Cabinet.
- *A proposed topic for ESAWAS was 'Dealing with state-owned utilities'*



## 2.2 DAY TWO

### 2.2.1 PRESENTATIONS CONTINUED

#### v. Regulation of Sanitation – Cleaning Services, RURA-Rwanda

Eng. Nzitonda gave a presentation on Regulation of Cleaning Services under RURA. The presentation covered:

- Introduction
- Regulatory functions in Cleaning services
- Legal & Regulatory framework
- Regulated services in Cleaning services
- Licensing
- Licensee Obligations
- Enforcement & Regulatory sanctions
- Way forward

#### Plenary Discussion

The main issues raised in the discussion were:

- Cleaning of households is not regulated- what about septic tanks? *Septic tanks fall under regulation of Sanitation services for decentralised sewer systems*
- What is role of regulator in developing standards and noncompliance of standards?
- What is the link between RURA and environmental agency? *They work hand-in-hand*
- How are inspections done?
- How do you monitor landscaping?
- How do you ensure compliance? *Quarterly workshops are held with cleaning companies on requirements*
- What is the regulatory structure to handle the component? *1 staff dedicated but intend to restructure and recruit more staff*
- Is the levy sustainable from cleaning services? *Regulating cleaning services for 4 years. RURA has not yet evaluated the level of levy but there is good indication that the levy can be collected 100% due to the nature of the market.*

vi. **Regulation of small/medium Towns, CRA-Mozambique**

Ms Clara Dimene Santos gave a presentation on the CRA regulatory framework developed to regulate small/medium towns in Mozambique. The presentation outline was as follows:

- Background
- The Challenge
- Indirect regulation
- Integrated regulatory system with the support of the local level
- Who do we count on?
- Indirect regulation engagement tools
- CORALs establishment procedure
- Expected results
- Where are we?

**Plenary Discussion**

The discussion raised the following matters:

- Can the delegated perform the function? How strong is the MoU?
- Why can't CRA decentralise instead of devolving through local level?
- What systems will CORAL be using for small towns- same as big towns?  
*Piloting use of smartphones for reporting*
- How are small towns classified?
- Is the local council not the regulated entity that is appointing members of CORAL? Is that not a conflict? *No. because they have an interest in seeing better performance in their areas*
- What is sustainability vs ability to pay regulatory fee? *CRA will pay CORAL if regulatory system is unable to pay levy.*

vii. **Adapting lessons in setting-up the regulatory framework, LEWA-Lesotho**

Prof. Rapapa gave a presentation lessons in setting-up the WSS regulatory framework in Lesotho, being the most recent instituted mandate for LEWA.

The presentation covered:

- The Why, What and How of Regulation?
- Legislative Framework (The How?)
- LEWA Board
- Legal, Financial and Administrative Independence
- Accountability, Statutory Reporting, Transparency and Participation
- Appeals
- Concluding Remarks

### **Plenary Discussion:**

The discussion raised the following aspects:

- Board of regulator and utility report to same place – who is the authority?
- What happens when provider is non-compliant?
- Can LEWA impose penalties?
- Regulatory fee should show on bill for transparency.
- Is there possibility of requesting permission from AG to use private auditor?
- Staggering of Board Members should be for first appointment only
- What is the role of the regulator in Universal Access Fund?
- The law says LEWA is independent, so why continually engage Minister?

#### viii. **Benchmarking Utility Performance across regional countries**

Mr Jordi Gallego-Ayala gave a presentation on Benchmarking Utility Performance across regional countries undertaken by CRA. A Water Utility Performance Index (WUPI) was developed by which the performance of the utility in Maputo was compared against the performance of the utilities in Dar es Salaam, Lusaka, Nairobi and Mombasa.

### **2.2.2 OPEN DISCUSSION – Observers**

The status of regulation in Observer countries was discussed as follows:

#### **Uganda**

- Currently regulating by performance contracts. National Water has a separate performance contract by Ministry.
- Towns classified by population, +15,000 is large.
- The establishment of an independent regulator is underway with a name already proposed – UWASRA. Consultants conducted viability of regulator which was successful. Draft bill is in place for establishing the independent regulator, awaiting Cabinet and Parliament approval.
- The draft bill proposes levy of up to 2%, although there is concern by stakeholders to reduce to 1%.
- There is need to take into consideration that collection of license fees may take time, hence Government should set aside a budget.

### **South Sudan**

- Regulation is within Ministry of Energy and Irrigation which has a department for water regulation.
- Utility Board is appointed by the President. The Chairman is the Minister of Water. All Board Members are P.Ss except Secretary of the Board who appointed by qualification.
- Concept of regulation not very well understood.
- A delegation from ESAWAS was requested to go to South Sudan to assist explain the concept of regulation to stakeholders.

### **Botswana**

- Currently restructuring Ministry with an intention to form Energy and Water Regulator.

### **Burundi**

- In Nov 2012 Government accepted to create an agency for control of water supply.
- The East African community has been pushing Burundi to accelerate establishment of the agency.

### **Ghana**

- PURC was established in 1997 as a multi-sectoral regulator.
- PURC is regulating urban water. Small systems regulated by community water system.
- Sanitation regulated by Municipal Assemblies.
- 9 member Board- 5 year terms, renewable.
- CEO has no term limit.
- The NRW benchmark was at 45%, collection at 90% which is embedded in tariff.
- Pro-poor fund includes provider in selection of projects as they know the water stressed areas.
- PURC took deliberate steps to engage stakeholders, particularly media and parliamentarians. Identified 'problem' stakeholders and personally educated them on regulatory matters.

### **3. CLOSING REMARKS**

The meeting was closed by the Executive Secretary of CRA who thanked everyone for their active participation.

#### **4. CRA ANNUAL AWARD CEREMONY**

Participants were invited guests to the CRA annual award giving ceremony where utilities are recognised for outstanding performance. The evening was graced by the vice Minister for Water where all the regulated entities were in attendance. The high-level event was characterised with festivities and deserving utilities walked away with trophy recognitions for performance in selected categories.



**EASTERN AND SOUTHERN AFRICA WATER AND SANITATION  
REGULATORS ASSOCIATION**

**8<sup>TH</sup> ANNUAL GENERAL MEETING**

**Theme: “Enhancing Regulatory Governance”**  
20<sup>th</sup>-22<sup>nd</sup> August, 2014 Maputo, Mozambique

**PROGRAMME**

**Tuesday 19<sup>th</sup> August, 2014**

TIME	ACTIVITY	RESPONSIBLE
14:30	Executive Committee Meeting	Executive Secretary-CRA
17:00	Welcome cocktail (all participants)	CRA

**Wednesday 20<sup>th</sup> August, 2014**

TIME	ACTIVITY - CONFERENCE	RESPONSIBLE
08:30	Registration of Participants	CRA, Mozambique
09:00	Opening session	Welcome Remarks & Introduction of Participants
09:05		Remarks by CRA President
09:10		Remarks by the Chairperson of ESAWAS
09:15		<b>Official Opening of ESAWAS Conference</b> <b>Speech by Guest of Honour</b>
09:30		Keynote Presentation –Regulatory Governance
09:50		<i>Group Photo</i>
10:00		<b>Tea Break</b>
10:30	<b>Legislative Framework and Appellate Process</b> - Functions and powers of the regulator with case examples - Appeal process and dispute resolution with case examples	EWURA, Tanzania
11:00	Plenary discussion- <i>key considerations for regulators in legislative framework</i>	
11:45	<b>Independence of Board Members</b> - Appointment, Board meetings and decisions, public disclosure	NWASCO, Zambia
12:15	Plenary discussion- <i>key considerations to ensure independence of Boards</i>	
13:00	<b>Lunch Break</b>	
14:00	<b>Strategic Direction and Funding</b> -Relating the Strategic Plan to Vision and Mission -Determination of license fees and budgeting	WASREB, Kenya
14:30	Plenary discussion- <i>key considerations in regulatory strategic planning and funding</i>	

15:15	Open discussion and summary of day one	CRA
<b>16:00</b>	<b>Tea Break and End of Day 1</b>	

#### Thursday 21<sup>st</sup> August, 2014

TIME	ACTIVITY - CONFERENCE	RESPONSIBLE
09:00	<b>Regulation of Sanitation – Cleaning Services</b>	RURA, Rwanda
09:30	Plenary discussion- <i>key considerations in sanitation regulation</i>	
<b>10:00</b>	<b>Tea Break</b>	
10:30	<b>Regulation of small/medium Towns</b> - Extent of regulation, enforcing of regulatory decisions with case examples	CRA, Mozambique
11:00	Plenary discussion- <i>improving regulation in small/medium towns</i>	
11:45	<b>Adapting lessons in setting-up the regulatory framework</b> - Key elements adopted from other regulators for setting up the Governance Framework: Legislation, Board, Appellate Process, Staffing, Funding	LEWA, Lesotho
12:30	Plenary discussion- <i>Key success elements for regulatory formation</i>	
<b>13:00</b>	<b>Lunch Break</b>	
14:00	<b>Benchmarking Utility Performance across regional countries</b>	CRA
14:30	Plenary discussion - Status of regulation in Observer countries (verbal) and how existing regulators can assist	ESAWAS
<b>16:00</b>	<b>Tea Break and End of Day 2</b>	

#### Friday 22<sup>nd</sup> August, 2014

TIME	ACTIVITY - AGM	RESPONSIBLE
<b>08:30</b>	<b>ESAWAS Regulators Association-Internal issues</b>	<b>Secretariat</b>
	Opening Remarks	
	Apologies	
	Adoption of agenda	
	Adoption of Minutes of the 7 <sup>th</sup> AGM	
	Matters arising from the minutes of the 7 <sup>th</sup> AGM	
	Presentation of Chairperson's report to AGM	
	Adoption of Financial Report for 2014	
	Adoption of Draft Operational Plan and Budget for 2015	
	9 <sup>th</sup> AGM, Selection of Coordinator	
	Closing Remarks	
<b>11:00</b>	<b>Lunch Break and END OF AGM</b>	
<b>15:30</b>	<b>****CRA's Annual Performance Award Event****</b>	<b>CRA</b>