State of Electricity Reforms in Kenya

1. Background

a. Importance and need for regulation

Well-functioning, reliable and competetively priced electricity supply is a critical factor for both the wider economic development of a country and the quality of life of ordinary consumers. Firstly, electricity is one of the infrastructural enablers for sustained economic growth by providing the energy needed for the acceleration in industrialization and local production as well as service provision in the tertiary sector. Sufficient installed electricity capacity coupled with affordable electricity tariffs for large scale industrial consumers are expected to generate sustained economic growth, employment oportunities in the respective growing sectors and, therefore, a reduction of poverty in the longer-term. Secondly, the ability to access electricity that is affordable and most importantly reliable is a major determinant for the quality of life of Kenyan citizens. For those consumers that are not connected to the electricty grid in Kenya, such as the majority of rural consumers, the priority of energy policies is to extend access to electricity to those currently excluded. According to Karekezi&Kimani (2004), there is a very low rate of electrification in rural areas. Their research has shown that only 1 per cent of rural Kenyans have access to electricity, while around 15 per cent of the overall population of Kenya is connected to electricty, which nevertheless is a comparatively small percentage.

The Government of Kenya has expressed its committment to "continue with structural, policy and institutional reforms in the energy sector" as part and parcel of the implementation strategy of Kenya's Vision 2030.Reform target areas include an increase in installed power generation, enhanced access to electricity, improving the operational efficiency of power utilities, facilitation of private sector investment in Kenya's energy sector and the exploration and development of new sources of energy such as geothermal, coal and renewable energy sources to meet the energy requirements of the country for the medium term (GoK 2011). In order to reap the economic and social benefits of access to electricity and the expansion of electricity consumption, an approprite regulatory and policy framework is essential to facilitate and catalyze the development of the electricity sub-sector. In addition, electricity sub-sector regulation should protect the interests and address the concerns of all electricty consumers and stakeholders in the electricity sector.

The bundling of electricity generation, transmission and distribution leads to an undesirable monopoly situation, which disadvantages all electricity consumers including large scale commercial consumers as well as private households. A lack of competition in the electricity sub-sector generally results in lower quality of services delivered due forgoing nessesary infrastructure investment and maintainance;and high electricity tariffs. Therefore, it is crucial to implement regulatory and policy reforms to (i) unbundle power generation from power distribution and supply; (ii) facilitate the entrance of private electricity generating companies to improve service delivery and encouarge competition; (iii) establish an independent regulatory authority and (iv) provide a framework for consumer interest representation, such as redressal mechanisms and a platform for effective consumer participation in regulatory reform processes.

Overall, there have been some advancements in the electricity sub-sector such as increased installed capacity, energy production and total electricity consumption for the general benefit of consumers. According to the Kenya National Bureau of Statistics (2012), the electricity sub-sector in Kenya has experienced growth in installed capacity, total electricity generation as well as total electricity consumption in 2011 outlining a positive trend in energy production and consumption within the Kenyan economy. Installed capacity expanded by 8.6 per cent to 1,534.3 MW in 2011, while the total electricity generation rose by 8.4 per cent to 7,559.9 GWh in 2011. This growth in electricity generation can be mainly attributed to the 27.3 per cent rise in production from thermal oil. Total electricity consumption increased at an even larger rate than electricity generation with a growth rate of 9 per cent from 5,754.7 GWh in 2010 to 6,273.6 GWh in 2011 (KNBS 2012).

b. Electricity Reform Process - Historical Account

In 1989, the basis for competition related reforms in the electricty sector were set with the enactment of the **Restrictive Trade Practices, Monopolies and Price Control (RTPMPC) Act of 1989** which aimed at promoting competition and reducing direct control of prices in the entire economy(CUTS ARC 2009). The **Competition Act of 2010**is the latest piece of legislation aimed at promoting fair competition within all sectors of the enconomy. The act has provided for the estabishment of the Competition Authority of Kenya (CAK), which has a mandate of consumer protection through competition including receiving and investigating consumer complaints; dissemination of information and guidelines to consumers relating to the authority's obligations under the Act; and carrying out research into matters relating to the protection of consumer interest.

The Kenyan energy sector specific structural and regulatory reform process started in the mid-1990s with the enactment of the **Electric Power Act, 1997**. The legislative reform aimed at the unbundling of power generation from the transmission and distribution processes. The Electric Power Act, No. 11 of 1997 provided for unbundling of the power sub-sector from a vertically integrated structure to a horizontal integration framework, in which the Kenya Electricity Generating Company (KenGen) was assigned with the responsibility of power generation while the Kenya Power and Lighting Company (KPLC) took the responsibility for power transmission and distribution. Consequently, a number of private sector Independent Power Producers (IPPs) have entered Kenya's electricity generation. However, KenGen as a majority state-owned company is still Kenya's dominant electricty generating company. The Act also established the Electricity Regulatory Board (ERB) to set, review and adjust consumer tariffs and promote competition among other responsibilities (CUTS ARC 2009).

In 2004, the Government indicated the need to fully un-bundle the transmission and distribution functions of Kenya Power and Lighting Companyin **Sessional Paper No. 4 of 2004 on Energy**. However, instead it was decided that a separate wholly state-owned company will be created to construct future additional transmission lines, while KPLC retained and continues operating existing transmission systems. In 2008, the government, therefore, registered The Kenya Electricity Transmission Company Limited (KETRACO) to to plan, design and construct, own, operate and maintain high-voltage electricity transmission lines and fiber optic cables (KETRACO 2013). As a result, Kenya Power still has a quasi-monopoly over Kenya's electricity transmission and distribution

and the unbundling process has not been completed in the electricity sub-sector.

The climax of reforms in the energy sector was the enactment of the **Energy Act No.12 of 2006** which consolidated all laws relating to energy including law relating to electricity. Furthermore, it provided the legal framework for the establishment of the Energy Regulatory Commission (ERC) as the single energy sector regulatory agency with responsibility for economic and technical regulation of the electric power, renewable energy and petroleum sub-sectors. The Energy Act 2006 mandates ERC to ensure genuine competition in the electricity sector where appropriate and facilitate consumer participation and protection in the legislative and regulatory process of the energy sector.

2. Policies and Implementation

a. Electricity Policy/ Legislation

According to the Kenyan Ministry of Energy (2012), "The overall objective of the energy policy is to ensure affordable, sustainable and reliable supply to meet national and county development needs, while protecting and conserving the environment" as highlighted in the National Energy Policy Document 2012. Specifically, the *objectives* of Kenya's energy policy that are relevant to consumer protection and consumer involvement in the reform process are for example:the improved access to quality, reliable and affordable energy services; the promotion of appropriate standards, codes of practice and specifications for equipment, systems and processes in the energy sector; the promotion of diversification of energy supply sources to ensure supply security; the promotion of healthy competition in the sector; and the protection of consumer interests.

Within the objectives of the overall energy policy of Kenya, the Ministry of Energy is also providing policy guidelines for the respective energy sub-sectors such as the electricity sub-sector. Policy choices and reform efforts are designed to feed into these general energy policy objectives. The Ministry of Energy has outlined the specific aims for the restructuring of the electricity sub-sector (electricity supply industry ESI) in Kenya as follows:

(a) Creating appropriate legal, regulatory and institutional framework for the ESI.

(b) Ensuring provision of reliable, efficient and sustainable electric power supplies.

(c) Increasing the population's access to electricity as a means of stimulating economic growth.

(d) Improving the efficiency of power distribution and supply through reductions in technical losses and collection of revenues.

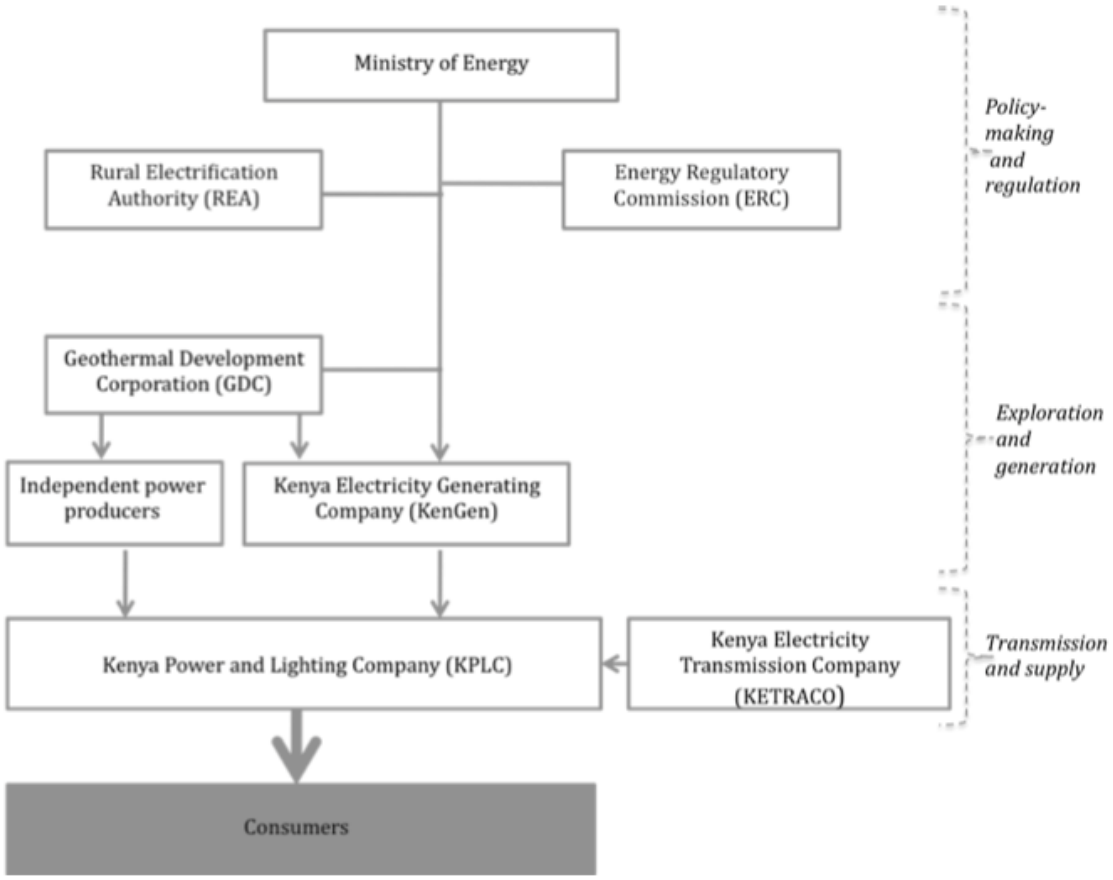
(e) Creating a more competitive market structure with clear definition of roles for public and private sector players in generation, transmission, distribution and retail functions.

b. Institutional Structure (of the regulators)

There are two main institutions that have a mandate in electricity sub-sector regulation.This institutional structure came about following reforms that resulted in the separation of policy setting, regulatory and commercial functions in the energy sector. While, the Ministry of Energy is responsible

for overall policy formulation, the ERC is responsible for regulating generation, transmission and distribution of electricity as well as the importation and transportation of petroleum products. On the other hand, the commercial functions are performed by both public and private sector entities as guided by existing rules and regulations (Onyango et al 2009). Figure 1 visually presents the overall structure of the Energy sector with a specific focus on the electricity sub sector. The structure is presented on three levels: the policy making and regulatory institutions; exploration and electricity generating institutions; and transmission and supply entities.

Figure 1: The Structure of the Electricty Sector in Kenya



Source: http://www.gsb.uct.ac.za/files/Kenya.pdf

Firstly, the **Ministry of Energy**is responsible for the formulation and articulation of overall power sector policiesthrough which it is supposed to provide an enabling environment to all operators and other stakeholders in the energy sector. Furthermore, among other functions, the Ministry is also responsible for the expansion and of the upgrading of energy infrastructure, increasing the accessibility to power and electricity to all segments of the population for example through administering the Rural Electrification Scheme;ensuring security of supply in power through diversification of sources in a cost effective manner; and enhancing the legal regulatory and institutional frameworks to create consumer

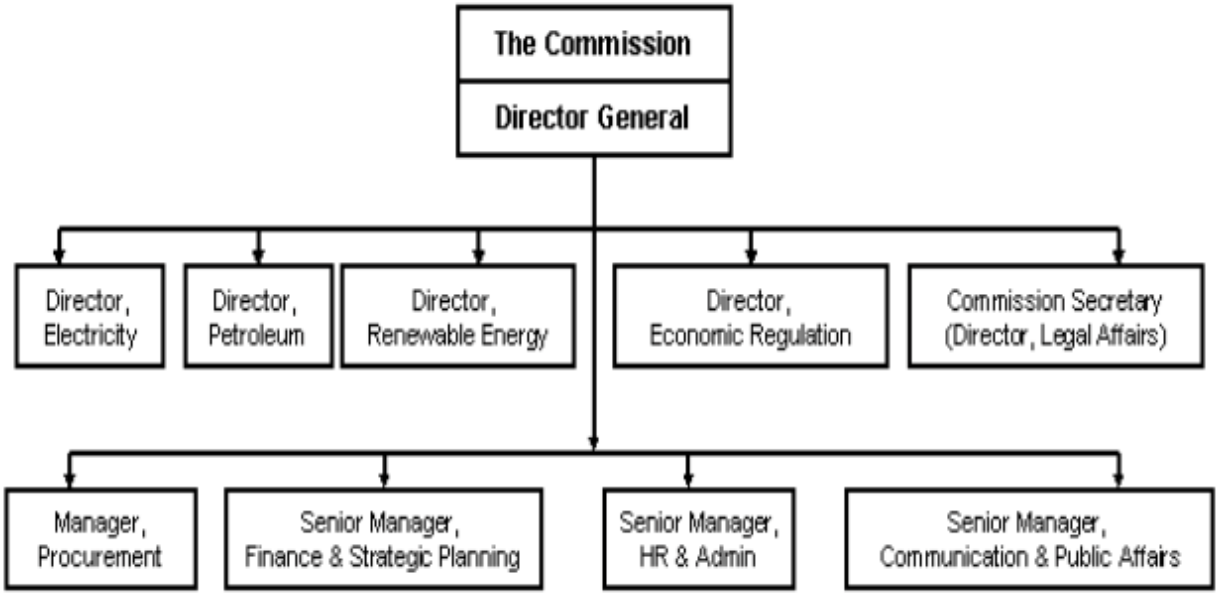
and investor confidence (Onyango et al 2009).

The second main regulatory agency related to the electricity sub-sector isthe Energy Regulatory Commission. The commission was established in 2007 under the Energy Act 2006 as a "single sector regulatory agency, with the responsibility for economic and technical regulation of the electric power, renewable energy and petroleum sub-sectors". The commission is an independent and autonomous regulating agency. The areas of responsibilities of the ERC include the setting and reviewing of tariffs, licensing, enforcement, dispute settlement and the approval of power purchase agreements. All of these tasks are very relevant for consumer satisfaction and the ability to access electricity for example. The objectives and detailed functions of the ERC are set out in section 5 of the Energy Act 2006 (Onyango et al. 2009). Relevant functions for the electricity sub-sector with which this study is concerned include:

- The regulation of importation, exportation, generation, transmission, distribution, supply and use of electric energy
- The production, distribution, supply and use of renewable and other forms of energy
- The protection of the interests of consumer, investor and other stakeholder interests
- Maintenance of a list of accredited energy auditors as may be prescribed
- Monitoring to ensure implementation of, and the observance of the principles of fair competition in the energy sector, in coordination with other statutory authorities (such as the Monopolies and Prices Commission)
- Provision of such information and statistics to the Minister as he may from time to time require
- Collection and maintain energy data
- Preparation of an indicative national energy plan

To fulfill these roles, the Energy Regulatory Commission (ERC) has four departments namely the Electricity, Petroleum, Renewable Energy and Economic Regulation Departments. The Electricity Department comprises two sections: the Power Systems and the Consumer Affairs sections which represent the different responsibilities of the ERC (see Figure 2). The Consumer Affairs Department of the ERC deals with consumer complaints and conducts complaints redressal, which will be utilized after the complaints procedures with the distribution company's complaints department have been exhausted or if the complaint matter is outside of the distributor's mandate (such as licensing of electricans etc).

Figure 2: Structure of the Energy Regulatory Commission Kenya



Source: ERC (http://www.erc.go.ke/erc/about_erc/?ContentID=9)

c. Experiences and Achievement

- Tariff setting

Unfortunately, the partial unbundling of electricity generation from electricty transmission and distribution has not lead to a significant reduction in electricity tariffs in Kenya. The majority of Kenyans (70 per cent according to a recent CUTS study) are concerned about the high cost of electricity services (Asher&Sengupta 2012). The Energy Regulatory Commission as the sub-sector regulator, is providing technical input in the review of retail electricity tariffs. For the fullfillment of this mandate, the ERC are regularly holding consultative tariff-review meetings in which consumers are included through workshop. However, one of the reasons for the continually high electric power prices is the continued market domination by the quasi monopoly in electric power transmission and distribution by the majority state-owned Kenya Power. It is difficult to compare state-owned utilities with private sector players or even measure the resulting impacts of regulations since the former are often not exposed to market costs of capital (Onyango et al 2009).

- Consumer Protection/ welfare

The creation of the Energy Regulatory Commission with its specific Consumer Affairs department allows for the direct communication of consumer issues such as complaints to the regulator. This Department is solely based in the capital city of Nairobi, with no offices available direcly to consumers outside of Nairobi. Furthermore, currently there is no consumer representative on the board of the ERC. The Consumer However, the ERC has noted that they are in regular contact with Consumer Federation of Kenya (COFEK), which is a consumer protection organization in order to gain insight

into the consumer perspective in regulation. The commission has acknowledged to respond to written complaints within three working days and attend to the complaint within 10 working days or a maximum period of 15 working days(ERChttp://www.erc.go.ke/erc/energy_sub_sectors/?ContentID=1).Through the consumer affairs department of the ERC, consumers are also able to file complaints about ERC licensees according to the rules set out in the Electric Power (Complaints and Disputes Resolution) Rules, 2006. This, in theory, provides a clear avenue for consumer protection through comlaints and redress mechanisms as a result of the enactment of the Energy Act 2006. In practice, however, consumers lack awareness of the complaints redressal mechanism with ERC, which limits the ability of the ERC to address consumer concerns comprehensively. For more challenges please see the specific section 4c on grievance redress mechanism below.

3. Overview of the electricity market

a. Structure

The current electricty sub-sector institutional arrangement that came about through the regulatory reforms can be classified as a purchasing agency model. This model seperates the electricity sub-sector policy setting, regulatory and commercial functions. Whereby, the commercial functions are performed by both public and private sector entities that are guided by rules and regulations provided by the Ministry of Energy and the Electricity Regulatory Commission (Onyango et al 2009). Through the partial unbundling undertaken in the regulatory reforms in 1997 and 2006, the commercial division of the Kenyan electricity sub-sector is devided into seperate electricity generation functions; and electricity transmission and distribution functions.

b. Overview of the key players in each segment

Electricity generationfunctions in Kenya are undertaken by Kenya Electricity Generating Company Ltd. (KenGen) and Independent Power Producers (IPPs). KenGen is a State Corporation with the Government of Kenya being the major shareholder with 70 per cent ownership and private shareholding accounting to 30 per cent as of December 2011. Since 1997/98 KenGen is responsible for electric power generation and produces the bulk of electricity consumed in the country. Its establishement has been based on the enactment of the Electric Power Act 1997, which seperated generation from transmission and distribution (Onyango et al 2009). The company utilizes various sources to generate electricity ranging from hydro, geothermal, thermal to wind (MoE 2012). **Independent Power Producers IPPs** are private companies which generate power and sell electricity in bulk to Kenya Power and Lightning Corporation. In 2011, they accounted for about 26 per cent of the country's installed capacity and play an important role in bridging the demand gap (MoE 2012). Kenya's electricity generation sector has seen the entrance of private market players since the implementation of the reform process in 1997. The entry of IPPs has been encouraged in order to address the shortages in electricity generation and distribution in the region and to encourage healthy competition in the sub-sector. Kenya has introduced IPPs operating in the renewable energy generation

through geothermal and hydroelectric IPP developments (Karekezi&Kimani 2004).By December 2011, the operating IPPs were (MoE 2012):

- Iberafrica Power (E.A.) Company Limited (thermal power plant)
- Tsavo Power Company Limited (thermal power plant)
- Mumias Sugar Company Limited(co-generation)
- Orpower4Inc(geothermal power plant)
- Rabai Power Company Limited (thermal power plant)
- Imenti Tea Factory Company Limited (mini-hydro)

Electricity Transmissionand Distribution functions areundertaken by two major players. Firstly, it is the mandate of **Kenya Electric Transmission Company Limited (KETRACO)** to design, construct, operate and maintain *new* high voltage electricity transmission infrastructure that will form the backbone of the National Transmission Grid in line with Kenya's Vision 2030 (KETRACO 2013). KETRACO can therefore be regarded as the transmission and infrastructure development authority. Secondly, **Kenya Power and Lighting Company Ltd** is responsible forpurchasing electrical energy in bulk from KenGen and other power producers IPPsthrough bilateral agreements or through Power Purchase Agreements (PPAs) approved by the Energy Regulatory Commission. Furthermore, KPLC is carrying out the transmission, distribution, supply and retail of electric power (MoE 2012).KPLC retained and continue to operate all *previously existing* transmission systems.

KETRACO is a wholly state owned company, which is responsible for the development of the national transmission grid network and for the facilitatation of regional power trade through its transmission network (MoE 2012).Kenya Electricity Transmission Company Limited was incorporated on 2nd December 2008 and registered under the Companies Act, Cap 486 pursuant to Sessional paper No. 4 of 2004 on Energy. As a government-owned institution, KETRACO is governed by the State Corporations Act. According the companies web-site, one of the guiding principles in the operations of the company is "costomer focus: The Company commits itself to attaining the highest standards in service delivery to all stakeholders".Furthermore, according to KETRACO, the "Creation of the company also aimed to shield electricity consumers from higher tariffs in future arising from construction of this expensive power transmission infrastructure. Projects undertaken will be fully funded by the Government and no capital related expenses will be passed on to the consumer. Thus the transmission company will contribute to improvement of power quality, supply and affordability".

Kenya Power and Lightning Company Ltd(**Kenya Power**), which is responsible for the transmission and distribution and retail supply of electrical energy to end-users, is a majority State-owned Company with the GoK holding 50.1 percent of shares and private shareholding of 49.9 percent as of December 2011 (MoE 2012). The company has rebranded as Kenya Power in 2011. Even though in the Sessional Paper No.4 of 2004 on Energy the government had indicated the need to fully unbundle the transmission and distribution functions of Kenya Power and Lighting Company, it was decided that a separate wholly owned government company KETRACO will be created to construct future additional transmission lines, which will be completely funded

by the government (KETRACO 2013).

c. Renewable Energy

It is the Ministry of Energy's objective to generate at least 70 per cent of electricity for the Kenyan market from clean or renewable resources and build the infrastructure necessary to transmit that electricity (MoE 2012).Hydroenergy was the leading source of electricity generation in 2008with an installed capacity of 737MW, which accounted for 73 per cent of the KenGen's installed capacity. Thermal (based on non-renewable fossil fuel resources) and wind accounted for 22.8 per cent and 0.03 per cent respectively.One of the measures to implement the advancement of renewable energy sources for electricity generation, was the establisment of the Geothermal Development Company Limited in 2008. This is a state-owned company established by the Government of Kenya is a Special Purpose Vehicle for the development of geothermal resources in Kenya (MoE 2012).

d. Rural Electrification

Rural electrification rates still lag far behind urban electrification in Kenya with 1 per cent of the rural population being connected to electricty (Karekezi&Kimani 2004). The Rural Electrification Authority (REA)was established under section 66 of the Energy Act as a body with the principal mandate of extending electricity supply to rural areas, managing the rural electrification fund, mobilizing resources for rural electrification and promoting the development and use of renewable energy. The Rural Electrification Programme displayed the successful increase in connections from 251,056 customers at June 2010 to 309,287 as at June 2011, which marks a 23.2 per cent growth rate (KNBS 2012). The relatively large growth rate in rural connection could be attributed to the more effective functioning of the Rural Electrification Programme under the Rural Electrification Authority and respective new policies and regulation concerning rural electrification.

4. Consumer Participation in Electricity Sector

a. Enabling legislation/ programme/ rule

Across the various economic sectors in Kenya a number of consumer protection and regulatory agencies have been established. For the electricity sector, the Energy Act 2006 provided the legislative foundation for the establishment of the Energy Regulatory Commission (ERC) in July 2007 (Asher&Sengupta 2012). The institution's Consumer Affairs Department follows the mandate to regulate the energy sector in a fair, transparent and predictable manner, while conducting consumer consultation with consumer groups in order to incorporate consumer concerns into the policy making and regulatory process. According to the Energy Regulatory Commission, the "ERC has a full fledged department that handles all issues related to electricity consumers. This is done through public hearings, inspections, dispute resolutions and formal application by the consumers".Furthermore, the Commission states its commitment to "consulting with its customers and to evaluating its services"

(ERC 2009). These feedback mechanisms provide a framework for consumer participation in the energy related legislation process based on the Energy Act 2006.

b. Actual Status of Consumer Participation

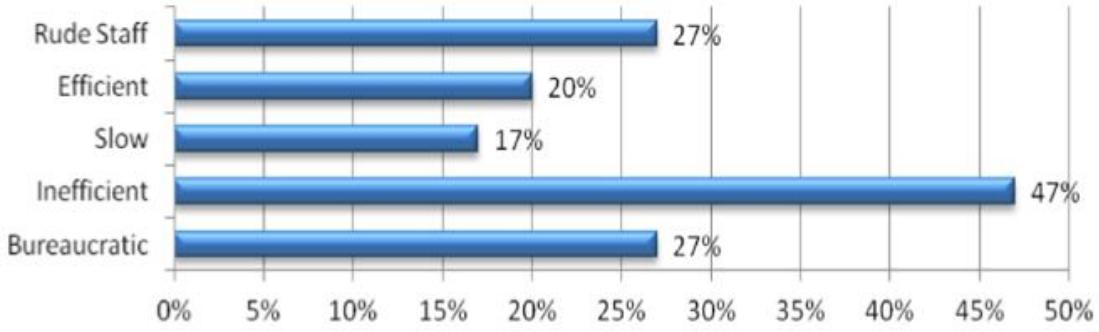
However, as suggested by Asher and Sengupta (2012), the ERC has not fulfilled its role up to expectation to adjust electricity sub-sector regulation taking into consideration consumer inputs, because it has not effectively and regularly consulted with consumer groups to gain insight into the electricity consumer perspective. This can be partly attributed to a lack of awareness by consumers and consumer groups of complaints and consultation mechnisms in the regulatory decision making process. Another reason for low consumer involvement in electricty regulation are missing links between consumerorganizations and government regulatory agencies that would be facilitated through a clearly defined and effectively implemented engagement strategy.As a result, consumers in Kenya are still facing high electricity costs and sub-standard electricity services, which also reflects to the wider consumer product pricing and economic progress of the nation.

c. Grievance Redress Mechanism

In 2011-12, CUTS International conducted a study on the state of the Kenyan consumer awareness on consumer protection legislation including redress mechanisms in various sub-sectors including the electricity sub-sector. The majority of 53 per cent of interviewed consumers were unaware of the redress mechanisms in the electricity sub-sector at their disposal by Kenyan law. When consulted about reasons for not seeking redress or filing complaints to relevant authorities, the study subjects outlined a number of reasons of which the most important were a lack of information on the channel of redress (41 per cent), unreliability of the authorities that are responsible for complaints-handling (24 per cent) and bothersome, lengthy bureaucratic procedures involved in the redressal process (21 per cent). Other reasons for the avoidance of filing complaints with authorities that were stated by study participants were corruption, a lack of access to redressal services at the electricity provider and perceived inefficiency in the process.

The consumers who sought redress of their electricity grievances in spite of these obstacles, often faced negative experiences while making use of their rights as consumers. While only 20 per cent of respondents found the redress mechanism to be efficient, the majority of 47 per cent have experienced redressal mechanisms as inefficient. The complaints handling has been described as slow (17 per cent), overly bureaucratic (27 per cent) and in addition the consumers felt treated rudely and their complaints were not received well by the redress staff (27 per cent). Therefore, the majority of consumer experiences can be summed up as negative and time-consuming.

Figure 3 Consumer Experience when seeking Redress



Source: Asher&Sengupta 2012

d. Role of Consumers in the Regulatory Decision Making

Ideally, consumers should be empowered to actively participate in regulatory decision and tariff-setting mechanisms making in the electricity sub-sector because they will be directly affected by the regulatory decisions taken through the services provided to them. Through consultation with regulatory and policy setting entities such as the Ministry of Energy of Kenya and the Energy Regulatory Commission, consumers and their representative groups such as CSOs, consumers can advocate for their intersts directly with the relevant authorities. This stakeholder interaction with the regulators takes place through public hearings, complaints and redressal mechanisms and consultative workshops. The framework for these avenues for interaction has been set with the enactment of the Energy Act 2006. However, for the legislation to be translated into empowering action, consumers need to be aware of their rights as key stakeholders in the regulatory process. In practice, awareness among household consumers has been low, which limits their ability to get directly involved in the regulatory process of the electricity sub-sector in Kenya. Clear avenues of consumer participation will need to be presented to household as well as industrial consumers to manifest the potential of the current legislation.

5. Rights and Responsibilities of Consumers

a. Rights of Consumers in Kenya

On a general basis, consumer rights in Kenya have been enacted with the Constitution of the Republic of Kenya 2010, Article 46 under the Bill of Rights. Article 46 of Kenya's new Constitution grants consumer rights to goods and services of reasonable quality, right to information to them to gain full benefit from goods and services, to protection of their health, safety and economic interest and right to compensation for loss or injury arising from defects in goods or services. The Constitution furthermore empowers parliament to enact legislation to provide for consumer protection. Furthermore, Article 43 (1) of the Constitution is reinforcing consumer rights through the provision of social and economic rights to every person. Article 43(1) of the Constitution contains the right to:

- The highest attainable standard of health, including the right to health care services, and reproductive health care

- Accessible and adequate housing
- Reasonable standards of sanitation
- Freedom from hunger, and to have adequate food of acceptable quality
- Clean and safe water in adequate quantities
- Social security
- Education

Furthermore, the Competition Act, 2010 that is concerned with legislation of competition, also contains consumer rights and protection aspects. For example the Competition Act provides for a right to choice by granting the right of consumers to be presented with a variety of products and services to choose from. In case of a natural monopoly such as the electricity sub-sector, the government should be responsible to provide for regulation that guarantees for the availability of affordable and best quality products and services.

More specifically, the Electric Power Act 1997 provides the legal basis for certain consumer rights specific to the electricity sub-sector in Kenya. For example, section 115 of the Electric Power Act, No.11 of 1997 provides the consumers of electricity services with redress against complaint with the licensee (supplier of electricity) under the electric power (complaints and disputes resolution) rules, 2006. Rule number 4 of the Act require the licensee to promptly, fully, and fairly deal with any consumer complaint with the objective of ensuring consumer satisfaction and have in place procedures approved by the board for dealing with consumer complaints. However, not much of consumer redress has been realized due to slow redress process in the country (Asher & Sengupta 2012).

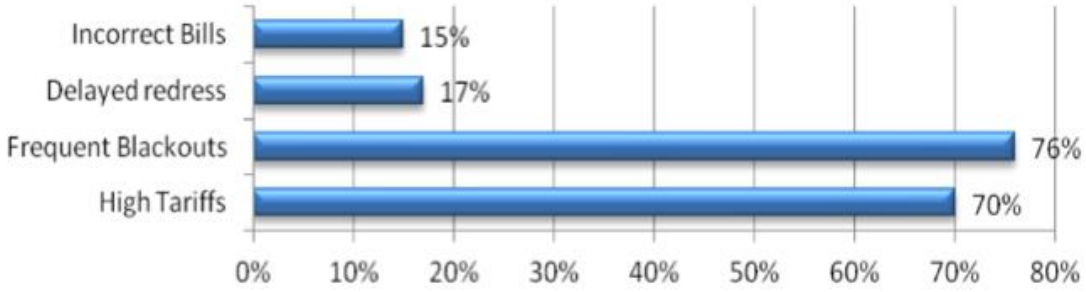
b. National Consumer protection legislations

Legislators have recently enacted a consolidatedConsumer Protection Act 2012. The Act provides for "the protection of the consumer, prohibit unfair trade practices in consumer transactions, promote a fair, accessible and sustainable marketplace for consumer products and services, establish national norms and standards relating to consumer protection, provide for improved standards of consumer information, promote responsible consumer behaviour, promote a consistent legislative and enforcement framework relating to consumer transactions and agreements, make consequential amendments to various other Acts; and to provide for matters connected with and incidental thereto. The principle objective is to promote and advance socio-economic welfare of consumers in Kenya and establish a consistent enforcement regime." Part II of the Consumer Protection Bill 2011 outlines Fundamental Consumer Rights. Rights that are especially relevant to the utilization of electricity services include the Right to Fair Value, Good Quality and Safety such as for example Section 48(1) Consumer's Right to Demand Quality Service.As an advancement in consumer protection through regulators, the Consumer Protection Act 2012 provides the legal obligation for all Regulatory Agencies in Kenya to appoint a consumer representative to their boards. This also applies for the Energy Regulatory Commission and other regulators such as the Competition Authority of Kenya, which will enhance the consumer representative participation in the regulatory decision making process. However, to date no regulator has appointed consumer representative to its board.

Key Issues for Consumers in Electricity

Kenyan electricity consumers are facing a number of issues when making use of Kenya's electricity services.The graph below shows that the greatest concern of consumers in the Kenyan electricity sector is frequent unannounced power cuts with 76 per cent of respondents highlighting this quality of service related concern. The high rate of electricity disruption is closely followed by the concern with high electricity cost, which was mentioned as a concern by 70 per cent of respondents. Almost half of the consumers (47 per cent) have complained the bad quality of electricity services in Kenya. Other concerns include incorrect billing as well as delayed redress of consumer complaints, these however, have been outlined by a much smaller fraction of the study respondent with 15 percent and 17 per cent of interviewees respectively (Asher and Sengupta 2012).

Figure 1 Consumer Concerns in Electricity



Source: Asher& Sengupta 2012

Strikingly, as mentioned above, the study found that 53 per cent of the study respondents were not aware of how to redress their dissatisfaction with electricity services and therefore did not have the opportunity to address the high cost and low quality services provided by Kenyan electricity providers.

The ERC has published the most common consumer complaints lodged on their website. These also give a clear indication of the key concerns and issues of consumers in the electricity sub-sector in Kenya. Common complaints included billing, damages, disconnection and reconnections, health and safety, interruptions of power supply, metering, new connection and extensions, quality of service and supply and tariffs.

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