

ASSESSMENT REPORT

ELECTRICITY GOVERNANCE IN THE PHILIPPINES

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Introduction

The electricity sector in the Philippines is currently in the process of adjusting to a new policy environment following the passage in June 2001 of the Electric Power Industry Reform Act (EPIRA, or Republic Act No. 9136). Enacting the reforms into law took more than five years. Implementing the EPIRA may take even longer. The industry has yet to be fully segregated into the generation, transmission, distribution and supply sub-sectors. Privatization of the generation and transmission assets of the state-owned National Power Corporation (NPC) is proceeding at a pace much slower than anticipated or desired by the government and its creditors. But privatization involves more than just the NPC itself, encompassing rural electric cooperatives, the NPC-Small Power Utility Group (SPUG) tasked with missionary electrification, as well as the NPC's contracts with independent power producers.

Already the reforms are being felt by the public, by the industry itself, by the business community, and government. Tariffs have been unbundled and NPC generation rates have been raised. As a result of unbundling, electricity tariffs went up for 109 utilities; in only 27 utilities did rate unbundling result in a downward adjustment. The National Government has assumed PhP200 billion of the NPC debt. Through the Power Sector Assets and Liabilities Management Corporation (PSALM) it has absorbed PhP18 billion of the debt of rural electric cooperatives. Cross subsidies are being phased out, which should result in lower electricity costs for industrial and bulk users. A few rural electric cooperatives are serving as pilots for investment management contracts with private entities. The Energy Regulatory Commission (ERC) has had three chairmen heading it and has adopted codes for transmission and distribution, as well as a Magna Carta for consumers. Its decisions have also been questioned at least twice in the higher courts. Preparations have been made to operate the wholesale electricity spot market. Three new corporations have been created, as mandated by the EPIRA: the PSALM, the National Transmission Company (TRANSCO), and the Philippine Electricity Market Corporation (PEMC). The Powercom, or the Joint Congressional Power Commission, is functioning with its own secretariat outside of the staff of the respective committees on energy of each House of Congress.

The EPIRA was promised as a solution to the problems long plaguing the industry. Among the more serious problems were: the high cost of electricity, second only to Japan in Asia; over-contracted capacity supported by take-or-pay commitments from NPC and some private utilities;

consistent financial losses and heavy indebtedness of NPC, whose over-leveraged condition was a result of its undercapitalization, compensated by sovereign guarantees from the National Government; widespread allegations of corruption and fraudulent debt; generation-transmission mismatch; and the non-universal access to electricity at the household level, especially among lower income rural families.

An assessment of governance in the Philippines electricity sector at this current juncture and in the context of its pressing problems cannot serve as a final judgment on an industry in a state of flux. Rather, it aims to provide a crucial benchmark that can hopefully signal to the public, to industry players, the regulators, the policymakers and other public servants, the work that still needs to be done in order to transform the sector into one that best serves the public interest consistently, effectively and reliably.

Overall assessment

The Philippine team has found that electricity governance in the Philippines needs much improvement, in all areas of governance: transparency and access to information, participation of all stakeholders especially the weaker stakeholders, accountability and mechanisms for redress, and in building the capacity of both institutions of government and of civil society.

The final “scorecard” of governance in the Philippine electricity sector, based on the ratings by the Philippine team, is “low medium” to “medium”, with an average numeric score of 2.5. (The scale would be ‘1’ for the lowest rating and ‘5’ for the highest rating.) The overall results are presented in the table below.

| Governance Principle | Policy Processes | Regulatory Processes | Environmental and Social Aspects | Total Average Score |
|--|-------------------------|-----------------------------|---|----------------------------|
| Transparency and access to information | 1.7 | 2.7 | 3.3 | 2.3 |
| Participation | 1.0 | 2.3 | 2.8 | 2.3 |
| Accountability and redress mechanisms | 2.0 | 4.0 | 1.6 | 2.7 |
| Capacity | 2.5 | 2.9 | 3.0 | 2.8 |
| Total Average Score | 1.8 | 3.1 | 2.7 | 2.5 |

Note: A rating of ‘not assessed’ yields a score of ‘0’, lowest = 1, low-middle = 2, medium = 3, medium-high = 4, highest = 5.

As the above table shows, policy processes were found to be significantly lacking in transparency and were also unable to draw in the participation of non-industry players in the shaping of electricity reforms, in building consensus thereon, and in planning for the future.

Accountability and redress mechanisms were also weak or non-existent in the area of policymaking and even weaker in dealing with environmental and social aspects of the sector.

Regulatory processes scored highest for accountability and redress mechanisms, but scored poorly vis-à-vis transparency and participation. The existence (at least on paper) of an independent regulator, of clear rules and policies for tariff setting, for unbundling, for participating in the distribution and transmission sub-sectors and the like, largely explain this high score. But problems with regulation abound and will be discussed further below. One thing worth noting at this point is that of all the institutions and agencies involved in the electricity sector, it was only the Energy Regulatory Commission that did not make time to meet with the Philippine team.

Environmental and social aspects of the electricity sector scored highest in the area of access to information, but weakest in accountability and redress mechanisms.

On average the highest score was for capacity, with an overall rating of 2.8. A look at the individual indicators to measure capacity will show that civil society organizations rated much higher than the various government branches and agencies, which largely contributed to the relatively higher overall score recorded.

On the whole transparency remains the biggest source of lack of governance in the electricity sector. The asymmetry of information and non-disclosure of complete information to the public both give rise to an unequal sharing of power (market, financial, political) in a sector that is not by nature competitive. This may already account for the sector's long-term unresolved problems, and may give rise to new ones in light of the new policy environment.

Elements of quality of governance

In applying the governance toolkit to the electricity sector, the Philippine team looked for elements of quality of governance, the presence of which would determine what rating to give to each indicator. For example, the elements identified for the accountability indicator assessing the annual reports of the Department of Energy (DoE) were: the availability of the report to the public; the existence and availability of financial reports, and financial reporting by the DoE; review of progress as a consistent aspect of the annual report; and dissemination of the report in local language. The capacity indicator assessing the authority of the ERC looked at the power of the Commission to seek information or compel the disclosure of information; to conduct investigations; to penalize defaulters; and to enforce its orders. Among the elements of quality of public participation in setting minimum environmental performance standards were: evidence of public consultation in determining standards; evidence of communication of public input; existence of explanation for existing standards; and regular reporting on the compliance of the electricity sector with environmental standards. The transparency indicator with regard to the allocation of subsidies looked at the existence of public criteria for allocation of these subsidies; the existence of a public process for allocating subsidies for the electricity sector; and reporting to the public on the disbursement or actual allocation of said subsidies.

By identifying the elements present or absent, and by assigning a rating based on the presence or absence of each of these elements, the team had clear criteria and objective conditions on which to base its rating, and avoided the tendency to grade the performance of the Philippine electricity sector on the basis of the respective opinions and biases of each team member.

The table below summarizes the number of elements that the team found to be present in the Philippine electricity sector. The numerator indicates the number of elements of quality actually present, while the denominator denotes the entire universe of elements of quality corresponding to each governance principle being assessed for policy and regulatory processes, as well as for environmental and social aspects of the power sector.

| Governance Principle | Policy Process | Regulatory Process | Environmental and Social Aspects | All Aspects |
|--|----------------|--------------------|----------------------------------|----------------|
| Transparency and access to information | 10/45 | 7/22 | 19/37 | 36/104 |
| Participation | 4/19 | 5/9 | 20/55 | 29/83 |
| Accountability and redress mechanisms | 8/27 | 20/29 | 8/24 | 36/80 |
| Capacity | 11/22 | 10/19 | 10/23 | 31/64 |
| All Indicators | 33/113 | 42/79 | 57/139 | 132/331 |

Overall, policy processes appear to be weakest, especially in drawing in the participation of all stakeholders. Regulatory processes appear to be the strongest, largely because of the existence of a legally mandated independent regulatory body, and the putting in place of relatively clearcut procedures, standards and rules in tariff setting, licensing, in distribution and in transmission, and in the establishment of a declaration of rights of electricity consumers.

The relation between the two tables presented above is in the rating assigned to each indicator. A rating of “medium-high” or “highest” indicates the presence of most if not all of the elements of quality identified for each indicator. As it turns out, only 17 of 68 indicators meet this condition. Two of these are policy process indicators, eight are regulatory process indicators, and the remaining seven are indicators assessing environmental and social aspects. These are presented in the matrix below.

| Governance Principle | Policy Process | Regulatory Process | Environmental and Social Aspects |
|---------------------------------------|---|--|--|
| Transparency/ access to information | None | RP10: Procedural certainty about regulatory processes and decisions (highest) | ESA1: Clarity of authority to grant environmental clearance for power projects (highest) ESA2: Clarity of executive’s environmental and social mandates (medium-high) |
| Participation | None | None | ESA10: Public participation requirements in EIA laws and procedures (highest) ESA21: Participation in development of policies to promote low environmental impact management and technology options (medium-high) |
| Accountability and redress mechanisms | PP4: Annual reports of the Department of Energy (medium-high) | RP7: Appeal mechanism (highest) RP18: ERC Orders and decisions (highest) RP22: Licensing (highest) RP23: Consumer service and quality of supply (medium-high) | ESA15: Quality of judicial and administrative forums that address environmental and social claims (highest) |
| Capacity | PP13: Capacity of civil society organizations (medium-high) | RP1: Institutional structure for regulatory decisions (highest) RP2: Authority of the ERC (medium-high) RP8: Training of ERC members and staff (medium-high) | ESA4: Executive’s capacity to evaluate environmental and social issues (highest) ESA14: Capacity of civil society to address environmental and social aspects of decision-making (highest) |

In contrast, 19 indicators are found to have little if no elements of quality of governance present, as a result receiving a rating of “lowest”. Of these 19, nine are indicators of governance in policy processes, only three are in regulatory processes, and seven are in environmental and social aspects. These are enumerated in Table 4.

| Governance Principle | Policy Process | Regulatory Process | Environmental and Social Aspects |
|-------------------------------------|--|--|---|
| Transparency/ access to information | PP9: Clarity on process of decision-making on policy reforms PP10: Background/supporting information available to the public PP11: Information available to the public regarding use of consultants PP19: Transparency in allocation of subsidies PP21: Rational policy regarding IPPs | RP9: Information available to public re use of consultants | ESA3: Scope and transparency of the ERC’s environmental and social mandates |
| Participation | PP15: Quality of participation by stakeholders and government responsiveness | RP15: Institutional mechanism for representation of the interests of weaker stakeholders | ESA18: Participation in decision-making about access to electricity |

| | | | |
|---------------------------------------|--|--|---|
| Accountability and redress mechanisms | <p>PP12: Independent review of consultants' recommendations</p> <p>PP17: Methodology for asset valuation</p> <p>PP20: Accountability regarding subsidies</p> | None | <p>ESA16: Accessibility of judicial and administrative forums that address environmental and social claims</p> <p>ESA17: Assessment of job losses linked to electricity sector reform</p> <p>ESA23: Disclosure and oversight of electricity sector contributions to national greenhouse gas emissions</p> |
| Capacity | None | RP16: Capacity building of weaker stakeholders | <p>ESA6: Energy committees' capacity to assess environmental and social issues</p> <p>ESA11: Comprehensiveness of EIA laws, policies and procedures</p> |

Two aspects of Philippine electricity governance merit attention, because they cut across the different processes, mechanisms and aspects being assessed, and because of the serious implications they hold for governance in the electricity sector. These are: the role of consultants, and government's efforts to reach out to weaker stakeholders.

The use of consultants

Three indicators refer to the use of consultants in policy and regulatory processes. PP11 and RP9 both measure the availability to the public of information regarding the use of consultants in policy formulation and in regulation, respectively. PP12 assesses the existence of a process to independently review recommendations of consultants. All three indicators rated “lowest”. The contracts and terms of reference of consultants are not available. Nor are the budgets allocated for these consultancies, as well as the procedure for selecting consultants. In rare cases is the consultant's report made available to the public, usually, if these are commissioned by the international financial institutions. But there is no established process to ensure that the report is easily accessible at a time when it would be needed the most. For example, the consumer impact assessment commissioned by the Asian Development Bank in relation to the proposed power sector reforms was constantly being cited by the proponents of the bill when this was being deliberated in Congress, but the study was initially available only to the government, particularly the executive branch. Only after public pressure and criticism did the Asian Development Bank make this study available to the general public, including the bill's critics and opponents.

There also does not appear to be any established procedure to independently review recommendations by consultants.

A related indicator, PP8, assesses transparency of the role of donor agencies in policy reform. This was rated “low-middle”. Information was found to be least available with regard to technical assistance. Considering that the funding for consultants generally comes from the donor agencies, there is a need to render greater transparency and accountability with regard to the use of consultants.

While the use of consultants by the Energy Regulatory Commission is an established fact, information on consultancy agreements, the consultants contracted, and the consultants' reports are not available on the website of the ERC. None of these, at all stages of the consultancy, is readily available to the public at the ERC office. Thus there is neither ease of availability nor timeliness of availability to the public of information on ERC consultants

Anecdotal accounts regarding consultants were rife at the time of the deliberations in Congress over the EPIRA. One consultant with the Department of Energy, apparently supported by the

US government, introduced herself to an industry player as having come from Enron. Another story was that a success fee would be paid to Rothschild once the bill was passed. While the bill was being deliberated in the Philippine Congress, the government hired Credit Suisse First Boston (CSFB) to undertake a valuation of NPC's assets. But it appears that CSFB itself had clients who were interested in acquiring some of these assets. Clearly there are questions of conflict here, possibly imagined, potentially real, which could be mitigated by greater transparency and accountability to the public.

The ERC website includes a report of the ERC awarding plaques of appreciation to the United States Agency for International Development (USAID) and the World Bank for their commitment in helping in the reforms being implemented. (See, for instance, <http://www.aed.org/ToolsandPublications/upload/Market%20Monitoring%20Surveillance%20Primer.pdf>, downloaded 18 Nov 2005.) Specifically, the release said that the USAID was instrumental in the completion of the Commission's 2004 strategic planning, and that more funds and consulting resources have been allocated by said agency to complete the planning exercise. The World Bank, for its part, provided technical assistance to the ERC to establish a Rural Electrification Regulatory Framework.

A more recent anecdote which was partially confirmed in a public forum by the Chairman of the Energy Regulatory Commission, Rodolfo Albano Jr., is that for the last four years, the major decisions of the ERC have been written by its consultants. The consultants, according to insider accounts, are under contract with the US Department of Energy. Chairman Albano denied this, however, insisting it is the USAID that hired the consultants.

Post-EPIRA, the role of donor agencies in shaping Philippine electricity sector policy is well documented. The International Monetary Fund, the World Bank, the Asian Development Bank, the US Agency for International Development, and the Japan Bank for International Cooperation, have provided assistance to the Philippine government conditioned on the electricity reforms being instituted. Greater accountability and transparency in the use of consultants, including their corporate/client links to the power sector, if any, their terms of references and contracts, the source of financing for the consultancy and the like, could contribute significantly to improved governance in the electricity sector.

It is important for the public to have complete information on who exactly are shaping the country's energy and electricity policy, especially if those who influence policy through consultancies actually benefit from the policy through their client or creditor relationships with IPPs, industry players, suppliers to the industry, and the government itself.

Representation and participation of weaker stakeholders

Several indicators assess governmental processes to reach out to weaker stakeholders and to empower them to participate more meaningfully in the electricity sector. One of these, RP15, looks at institutional mechanisms for representation in regulatory processes of the interest of weaker stakeholders. Routine and even ad hoc considerations of the interest of the weaker stakeholders were not found to be existing in regulatory processes. Nor were there diverse institutional structures to enable such representation. A second indicator, RP16, looked at capacity building activities of weaker stakeholders by different agencies. These were absent; likewise missing was a conscious effort to make financial and analytical resources available to build the capacity of these groups.

One element sought in PP9, which measured the clarity about the decision-making process involving sector reform, was the existence of systematic efforts to reach out to disadvantaged

communities. Again, this was not found. In fact, anecdotal evidence from civil society organizations was that non-industry-player stakeholders were virtually “written off” by the Lower House energy committee as not having the technical capability of understanding the reforms. The same element was not found in PP14, which assesses the public participation process during power sector reform discussions.

A similar element was found to be absent in ESA2 and ESA3, each of which assesses the clarity and transparency of the executive’s and regulator’s mandates, respectively, on environmental and social aspects of the electricity sector. No efforts appeared to have been made to make aware marginalized socio-economic or cultural groups of the performance of the electricity sector in relation to environmental and social objectives and standards.

One indicator, ESA19, looked at the scope for project-affected people to exercise their rights, based on a case study of the Casecnan multipurpose water diversion, irrigation and power generation project in Northeastern Luzon. While efforts were made to assist one tribal community, the Bugkalots, affected by the water diversion, other ethnic groups and other communities that were also affected by the project were not identified as being primarily affected by the project and were not extended any help. The Bugkalot community was not given full and prior information about the project and about its potential threats to the community. In fact an outbreak of malaria occurred barely two years after the project went onstream, killing nine villagers. The Department of Health said that the diversion weirs built by the US-owned independent power producer were ideal breeding grounds for the malaria mosquito.

Reservations raised by the Bugkalots themselves, church officials, academe and NGOs were not sufficiently addressed. The National Government merely required the Environmental Compliance Certificate and approval by the Regional Development Council (RDC), not the direct approval of the project-affected people. The RDC approval from Region III (where the project-affected people were located) was signed “with reservations” by then Provincial Governor Agcaoili of Nueva Vizcaya.

The insufficient attention given to enabling and empowering weaker stakeholders, including project-affected people, weakens the ability of the electricity sector to pay consistent and conscientious attention to the environmental and social aspects of the sector. The latter cannot be left to the market to handle; it needs empowered and enlightened citizens to demand accountability from industry players and the government.

The insufficient attention accorded to weaker stakeholders is in stark contrast to the strong concern on the part of government to attract investors to the industry.

It is in this context that the low to medium rating of the following indicators must be viewed with concern:

- ESA16 – accessibility of judicial and administrative forums that address environmental and social claims (lowest)
- ESA18 – participation in decision-making about access to electricity (lowest)
- ESA20 – participation in decision-making related to affordable electricity tariffs (medium)
- ESA23 – disclosure and oversight of electricity sector contributions to national greenhouse gas emissions (lowest)

Policy processes

Policy processes were found to be weakest in transparency, participation, accountability and capacity. No indicator measuring transparency and access to information, as well as participation, obtained a rating higher than “medium”.

Several factors can account for the overall weak rating of policy processes.

One is that the main drivers of the policy shift embodied in the EPIRA were the international financial institutions (IFIs, primarily the Asian Development Bank) and the executive branch of the Philippine government. The bill was least understood by the legislators that enacted it. But the bill had to pass, because it was a condition for the release of IFI loan proceeds.

For many of the representatives in the Lower House, the bill’s delayed passage despite its having been given top priority by the Chief Executive was an opportunity for rent seeking from the industrial lobby groups and the executive branch. The fact that the resident representative of the International Monetary Fund even wrote the House Committee on Energy inquiring into the reasons for the delay, served to validate the bill’s importance to the Executive. On the night the bill was passed in the Lower House, money was distributed to all members, even those who voted against the bill.

Rent seeking aside, understanding the power sector reforms requires a basic knowledge of engineering and technical concepts, as well as a grasp of the economics of a market whose product cannot be stored and which has traditionally operated as a monopoly. In the case of most legislators, other key actors in government, the media and civil society, the hurdle was too much for them to bear, as a result they relied on a few key actors among these institutions and organizations to “carry the ball” for them (whether for or against the reforms).

Few of the legislators actually bothered to study the reforms. The vice chairman of the House committee on energy, for example, needed a cable connection from his laptop on the lectern to the laptop of the consultants sitting with the technical working group behind him, in order to reply to questions from the floor by representatives opposed to the bill. At the time of voting on the bill, a House representative inquired, “What does SPUG (Small Power Utility Group) mean?”

Members of the Senate were clearly well versed on the EPIRA, and more determined than the Lower House to pass the bill. This is because the industry links of a few of the senators were unabashedly used to push some provisions in the bill that would favor some players over others.

Another factor was the diverse and often conflicting business interests at work during the EPIRA deliberations which resulted in a version of a law that was nowhere near the bill’s original version. The ban on cross-ownership between distribution and generation was removed. The provisions that would limit conflicts of interest between affiliated businesses were relaxed. Contracts with independent power producers (IPPs) would be honored regardless of substance and effect. Only the assets, not the liabilities, of the National Power Corporation would be privatized. In addition the government would absorb PhP200 billion of the latter’s debts. Even the debts of the rural electric cooperatives’ would be passed on to the debt management corporation, PSALM, created by EPIRA.

Despite limited opportunities for meaningful participation (only four of 19 elements measuring participation were found to be present), civil society groups that opposed the power bill brought the issue to the streets and to ordinary households, and sharpened the terms of the debate. They questioned the promised benefits from the proposed reforms and provided a critique of the so-called model reforms in developed countries such as the UK. They brought to the fore the issue

of expensive contracts with the IPPs and the purchased power adjustment (PPA) in households' electric bills dreaded by one and all. The EPIRA became a popular and hot issue because serious doubts were raised by various groups about the ability of the EPIRA to resolve the heavy burden of the PPA. Efforts were also made to link the proposed reforms to structural adjustment lending of the WB, IMF and ADB, as well as the heavy indebtedness of the NPC, and its history of fraudulent borrowing and corruption.

The strong point in policy processes was in the area of capacity, particularly of civil society organizations, despite the low opportunities for participation accorded to them, and despite the lack of transparency and accountability in policy processes. Such capacity, however, rarely translates into the policy framework being advocated by these groups. Their ability to influence and shape policy remains limited. At the same time, the government's responsiveness to non-industry players is absent.

The ratings of the transparency, participation, accountability and capacity indicators for policy processes are presented in Figures 1 to 4, respectively.

Transparency

Five of nine indicators measuring transparency in policy processes received a rating of "lowest".

The EPIRA reform process, and within it the procedure for public input by non-governmental, non-business groups, was not clearly stated at the onset. Moreover, it was not disclosed except perhaps to a select group in the executive and legislative branches, as well as the business and creditor/consultant communities. Nor was information about the reforms made available to ordinary citizens and their organizations at the start of the discussions on the reforms. In fact, the consumer aspect of the ADB loan for the Philippine power sector was designed to gain public acceptance of the EPIRA *after* it had been enacted into law.

Background and supporting information about government analysis of the electricity reforms, and views of various stakeholders, were not available to the public. As previously discussed, a lack of transparency prevailed with regard to the use of consultants. Likewise, the government has consistently failed to regularly disclose to the public the allocation of subsidies for the power sector.

The policy of the government towards independent power producers (IPPs) did not meet any of the six critical elements to ensure a rational IPP policy. There was no involvement of the legislature in the crafting of the IPP policy. The enabling law was an Executive Order issued by then President Corazon Aquino. The InterAgency Review Committee tasked by the EPIRA to review the contracts between the state-owned National Power Corporation and IPPs found that of 35 contracts reviewed, only 16 went through competitive bidding. No transparent and detailed analysis of the demand-supply scenario was established in order to justify capacity additions by IPPs. On the contrary, electricity demand forecasting appears to have been used to justify new capacity offtake commitments. There was no detailed analysis of tariff impacts, particularly on the sensitive scenario of a significant devaluation of the Philippine pesos vis-à-vis the US dollar and other foreign currencies. Approval of the power purchase agreements was undertaken without the benefit of any public consultation. Contracts and minutes of relevant Inter-Agency meetings and board meetings of the National Power Corporation when these contracts were discussed and decided upon are also not available to the public.

Participation

All three indicators assessing the quality of participation in policy processes received a rating below “medium”. There is no permanent advisory committee to the Department of Energy, hence PP5 was not assessed. The quality of the public participation process during policy reform was rated “low-middle”. While public notification was made, and while opportunities for consultation with the public are available, there are no public registries of documents obtained or submitted. There is no requirement, and no practice, of communicating decisions to the public within one month of the consultation. Much less has there been any clear communication on the results of the public participation. No effort was made to reach out to affected communities.

A rating of “lowest” was given to PP15, which looked at both the quality of stakeholders’ participation and government’s responsiveness to stakeholders. During the EPIRA deliberations a broad range of stakeholders, including non-governmental, sectoral and advocacy groups, submitted statements, analyses, position papers to the congressional energy committees in support of their respective advocacies. However, government responsiveness was poor. Official decisions do not explain whether and how public input was solicited. No documents accompany official decisions to summarize the inputs received from the public and the discussions held at public consultations. Furthermore, official decisions do not explain how public input was incorporated into the final decision.

Accountability

The Department of Energy, through its annual Philippine Energy Plan, reports to the public on the performance of the power sector. Moreover, every six months it submits to the Joint Congressional Power Commission a status report on the implementation of the EPIRA. The PEP and the status report are available in the website of the Energy Department. The indicator (PP4) measuring the accountability of the Department of Energy was rated “medium-high.”

A Joint Congressional Power Commission (Powercom) was created by the EPIRA to oversee the electricity sector reforms. The committee has been functioning, but does not meet regularly. Its members are not required to disclose their vested interests, if any, in the electricity sector. The Powercom’s documents, as well as those submitted to it, are not readily available to the public. The Powercom also does not provide a report to the public on actions it has taken. The indicator (PP2) assessing the Powercom was rated “low-middle”.

Accountability remains low with respect to recommendations of consultants (PP12), the methodology for the valuation of assets to be privatized (PP17), and the allocation and disbursement of subsidies for the electricity sector (PP20).

The quality of the debate on the EPIRA (PP7) was given a “medium” rating.

The weakness of accountability and redress mechanisms in policy processes is a crucial gap in electricity governance, particularly in the Philippine case. Policy changes occur as frequently as there are occasions for them especially if such changes suit the vested interests of a select business group or of powerful government officials. However, the only channel for redress available to non-industry, non-governmental groups advocating shifts in electricity policy would be through the legislature or higher courts. This is a long and arduous process.

Capacity

There are four indicators to measure capacity, of which one refers to civil society organizations. This indicator (PP13) received a rating of “medium-high”, compared with a rating of “medium” given to the capacity of the legislative committee (PP1).

The independence of the Department of Energy from the executive also received a “medium” rating. Key positions in the Department of Energy, from Bureau Director to the head of the Department, are appointed by the President. While there is a civil service law to protect the employment of career service professionals, the criteria for selecting the Energy Secretary are set by the Office of the President, and actually change with every shift in presidential administration.

Regulatory processes

Regulatory processes were found to be strongest in accountability and redress mechanisms, but weak in transparency, participation, and capacity. No indicator measuring participation obtained a rating higher than “medium”. But more notable is that no indicator measuring accountability and redress mechanisms obtained a rating *lower* than “medium”, outperforming all other sub-groups of electricity governance indicators.

The ratings of the transparency, participation, accountability and capacity indicators for regulatory processes are presented in Figures 5 to 8, respectively.

It must be said, however, that the regulatory process in the Philippines has so far failed to help civil society organizations to improve decision-making process for the benefit of the broader public interest. While it is by law independent, has clear jurisdiction and powers, has promulgated rules with respectable substantive and procedural certainty, the fact remains that the regulatory process remains hardly accessible to civil society organizations.

The reasons, as could be gleaned from the regulatory indicators, are the following:

- *Difficulty in accessing information outside of the documents routinely published in the website.* Meaningful intervention in the regulatory process requires access to important documents. However, outside the documents routinely published, there is no guideline or procedure to access information. Responses to public requests are ad hoc and arbitrary. Without a classification system, the public information division of the Energy Regulatory Commission (ERC) is unable to make judgments on request, and will have to refer such requests to the ERC’s general counsel or to other ranking officials. This process unduly delays access, subjects the requests to so much discretion on the part of ERC staff, with the end result that civil society organizations are discouraged from actively exercising their right to information.
- *Lack of institutional support for civil society intervention and capacity building.* The electricity industry restructuring that took place in the Philippines was comprehensive. It required a lot of changes, with its accompanying technical difficulties. Civil society organizations needed technical, legal and financial support in order to upgrade their capacity to intervene and somehow mitigate the wide imbalance between their capacity and that of the industry players who have control of information and who have legal representation.
- *Lack of accountability.* The ERC is presently inordinately influenced by the USAID, the World Bank and the ADB as these are the institutions able to provide the technical assistance for ERC’s capability building. Without exposure from other perspectives, the ERC internalizes the biases of these institutions in favor of the private sector and against

“distortionary” interventions by the public. The translation of the ERC mandate to promote consumer interest has thus been confined to private consumer complaints. Their intervention in matters of general application such as rulemaking, policy direction, and tariff setting is de-emphasized. There is feedback that the ERC somehow maintains an adversarial posture in relation to civil society organizations.

- *Political appointments.* While the ERC is on paper an independent body, the fact is that appointments to it are highly political. As shown in the indicators, there is no transparent and clear process of appointing ERC members; it is left to the sole prerogative of the President. The incumbent ERC Chairman and his immediate predecessor are both former Congressmen. On the other hand, the other members often come from the ranks of the regulated industry players.

The following quotation, which describes regulation in the Philippines, is applicable to the power sector.

“Regulatory practice in the Philippines has shown that whenever controversial issues arise, the regulatory agency usually adopts a hands-off policy and leaves the final decision to the President. This has made the President a powerful interventionist element in resolving conflicts and has made the President and not the regulatory agency as the final regulator. The intervention of the President has also compromised the regulatory agency’s credibility and independence in making decisions. For as long as the President continues to mediate and broker controversies, the Presidency as an institution becomes subject to imminent ‘capture.’” (De Vera, M., 1997, cited in Rafaelita M. Aldaba, “Regulatory Policies and Reforms in the Power and Downstream Oil Industries,” Philippine Institute for Development Studies, Discussion Paper 2003-16, December 2003, pp. 28-29)

This makes of a strange brew of perceived informal factors in regulatory decision-making. The political tie between the President and the Chairman also politicizes regulation. There is a perception among academics in economics as well as among industry players that tariff setting is influenced by the populist political stance of the Presidency, resulting in low tariffs. On the other hand, there is also perception from civil society organizations that, given the background of many ERC members as well as the susceptibility of the Presidency to vested interests, the ERC is prey to regulatory capture by influential industry players. This results in poorly regulated pricing, particularly in the determination of rate base and automatic recoveries under the pricing mechanisms of the PPA and GRAM (Generation Rate Adjustment Mechanism).

Anecdotal evidence from industry players also raise more questions about how the ERC prioritizes its work given the vast scope of regulatory authority it must exercise over the electricity industry. The perception of industry players is that the Commission places greater priority on cases that could generate some income for the Commission in the form of penalties. The perceived trend is that the Commission is biased on imposing penalties, regardless of the merits of doing so, placing the burden on the penalized player to appeal the decision in court. The Commission also appears to be keen on obtaining a nationwide inventory of gensets and inverters so that it has a broader base from which to earn revenue from the issuance of certificates of compliance for generation. Furthermore, it also wants to take over from the utilities the responsibility for calibrating electric meters used throughout the country. Considering that there are over 10 million connections nationwide, calibrating a huge number of meters may generate sizeable income for the commission, but may leave it little time to attend to its regulatory functions.

Transparency

As shown in Figure 5, of six indicators measuring transparency in regulatory processes, only one received a rating of “highest”. RP10 looks at procedural certainty about regulatory processes and decisions. As part of the performance of its rule-making power, the Energy Regulatory Commission (ERC) has promulgated numerous rules, regulations, and guidelines pertaining to its regulatory functions. Among these are the Grid Code, guidelines on the methodology for setting wheeling rates for both transmission and distribution, guidelines on financial standards for generation companies, guidelines for the appraisal of property, plant and equipment for rate fixing purposes, guidelines for the issuance of licenses to retail electricity suppliers, and rules of procedure governing complaints filed with the Consumer Affairs Service.

These issuances are available in the ERC website and are posted according to the sub-sector to which they apply, specifically, generation, transmission, distribution, supply, and consumer concerns. They treat both substantive and procedural aspects.

Three of the six indicators received a rating of “lowest” or “low-middle”. These deal with the selection and appointment of ERC members, procedure for public access to ERC documents, and the public availability of information with regard to the use of consultants.

In the case of selection of ERC members, the EPIRA clearly specifies the composition of the ERC and eligibility requirements of its members. Terms of office of members are staggered to avoid the possibility of all members being appointed during the term of the same administration. However, the appointment of members of the ERC remains the sole prerogative of the President. There are no express requirements for an independent, well-defined, and transparent selection process.

The procedure for public access to ERC documents meets only one element of quality—the reasonable cost of accessing the public documents. The indexed documents are confined to case dockets; in the absence of a broad index even the public information division cannot act on information requests and will have to refer the request to the office of the general counsel for its opinion. Likewise, the procedure for accessing indexed documents is defined in relation to case records and documents available on the ERC website. Outside of this narrow set of documents the procedure is less clear and tends to be more arbitrary. The ERC’s responsiveness to information requests is also slow and ineffective. Furthermore, there are no clear provisions about which documents in the possession of the ERC are public or confidential.

Public access to ERC decisions is available in a timely manner, particularly through the ERC’s website. However considering the limited access to the website, public awareness of new orders and decisions of the ERC is very low. Furthermore, the decisions are available only in English; no translation into local languages is undertaken.

Participation

As shown in Figure 6, none of the three indicators assessing participation in regulatory processes obtained a rating higher than “medium”. The EPIRA’s implementing rules and regulations require a public hearing with a two-week prior notice in the fixing of transmission and distribution wheeling rates, as well as retail rates. The requirement of public notice and hearing means also that interested parties may participate in such proceedings, subject to orderly procedure. It is not clear, however, whether proceedings of the ERC on non-tariff issues are similarly open to the public.

Given the highly technical nature of electricity regulation, the high costs of legal representation and the difficulty in organizing collective action, consumers are often inadequately represented in regulatory processes. Although the ERC has issued a Magna Carta for Consumers outlining their rights as electricity consumers, this is framed within the context of individual consumer complaints and grievances. On matters affecting consumers at large, such as tariff setting and rulemaking, there is hardly any effort to ensure representation by the weaker section.

Civil society interventions in the regulatory process have been largely reactive, and tend to be confined to rate setting and more controversial cases. Among the limitations cited by the leader of an electricity consumer group interviewed are the following:

- » *Complexity of the technical aspects of regulation.* Learning the regulatory system, given the relatively new restructuring law, takes a long time especially without institutional support from the ERC.
- » *Difficulty in examining voluminous case records that are often based on information within the control of the utilities.*
- » *Difficulty in getting good legal and financial expertise, given their lack of financial resources.*
- » *Difficulty in accessing information.*

Despite these limitations, during the last two years civil society organizations have filed successful interventions and appeals.

Accountability

As shown in Figure 7, of the seven indicators assessing accountability in regulatory processes, three rated “highest”, and none rated below “medium.” There is a clearcut mechanism for appealing ERC decisions before a separate body, on both procedural and substantive grounds. The orders and decisions of the ERC contain the bases for such decisions and are sufficiently supported by facts and relevant rules. The ERC’s authority to issue, amend, revoke or suspend licenses is specified in the law, and licensees are required to submit regular reports. The ERC also has the authority to resolve disputes under EPIRA. The Grid Code, the Distribution Code, and the Magna Carta for Residential Electricity Consumers provide well-defined standards of consumer service and quality of supply, together with a mechanism for monitoring performance. Moreover, there exist well-defined procedures and forums for addressing consumer grievances with regard to service and quality of supply. However, while there is a periodic review of compliance, there is no systematic effort on the part of the regulator to involve the public, particularly the weaker stakeholders.

While the EPIRA recognizes the potential for conflict of interest of regulatory commissioners, it does not provide sufficient measures to guard against such conflicts. Individuals who are appointed to the ERC are merely required to divest their interest, if any, in any company or entity engaged in the electricity business. There is no limit to the number of ERC members who come from the industry, hence, influence can still arise out of the close relationship with the regulated stakeholders.

While the ERC requires the players it regulates to submit reports, and has two units to monitor compliance with such reporting requirements, it does not appear to be strict in enforcing these requirements and in compelling industry players to comply with their obligations.

Furthermore, while the ERC has a tariff philosophy, and has in fact shifted from the Return on Rate Base (RORB) philosophy to the performance-based rate setting, there appears to be no detailed analysis of the economic impact of such a shift on different categories of electricity consumers. The only measure used by the ERC to mitigate the adverse impact on poor consumers is the lifeline rate, but this is differentially applied by the ERC with each utility. (See discussion in ESA 20 and in the following section of this report on environmental and social aspects.) The tariff philosophy is also not presented in simple language easily understood by ordinary consumers. The ERC has held consultations with the public particularly with respect to draft documents and proposed changes in tariff philosophy, but the background analyses and studies are not sufficiently available. Also, given the lack of capacity of weaker sections, the consultations become formal compliance rather than a process for substantive participation.

Capacity

As shown in Figure 8, of seven indicators assessing the capacity of organizations and institutions in the regulatory process, only three rated “medium-high” or “highest”, two rated “medium”, one rated “lowest” and one was not assessed. The three indicators that had the highest rating looked at the institutional structure for regulatory decisions (RP 1), the authority of the ERC (RP 2), and training of ERC members and staff (RP 8). The ERC is by law an independent regulatory body, with authority to seek information and evidence from all stakeholders, investigate all matters under its jurisdiction, and penalize defaulters or parties responsible for breach of order. However it has no authority to enforce or require others to comply with its decisions and orders.

Training is provided to staff, but by a set of donors whose perspectives may not completely represent all the stakeholders, primarily, the weaker stakeholders, in the industry.

The jurisdiction and functions of the ERC, as well as its autonomy, were assessed “medium.” The ERC does not have financial autonomy.

And as discussed in an earlier section of this report, there was no effort on the part of the ERC to capacitate weaker stakeholders and enable them to participate more effectively in regulatory processes.

Environmental and social aspects

Governance in the electricity sector’s environmental and social aspects was found to be strongest in transparency and capacity, but weakest in accountability and redress mechanisms.

The ratings of the transparency, participation, accountability and capacity indicators for environmental and social aspects are presented in Figures 9 to 12, respectively.

In general, the quality of decision-making fails to adequately address the negative social and environmental impacts of the electricity sector. In the first place, existing policies are biased against new and renewable energy (NRE) technologies despite the inclusion of NRE as part of the Philippine Energy Plan (PEP). The twin goals of the 2005 PEP are energy independence and power market reforms. *There is no clear-cut environmental goal in the 2005 PEP.* The Plan in fact sends mixed signals. On the one hand, as part of its goal of energy independence, it is targeting to double the capacity of renewable energy-based generation within 10 years. At the same time, it plans to substitute imported coal with local low quality, dirtier coal.

To mitigate the harmful effects of coal the Plan affirms the DoE’s advocacy for the adoption of clean coal technologies in power generation. However, the clean coal pilot project included in

the 2005 PEP has to do with producing smokeless odorless briquettes from coal to serve as a substitute for charcoal and firewood.

While the 2005 PEP extensively discusses programs to mitigate hydrogen sulfide emissions of geothermal plants, no parallel extensive discussion is made to reduce carbon dioxide emissions and other toxic emissions and effluents from coal, gas and oil plants.

In fact, the 2005 PEP projects an *increase* in CO₂ emissions by 68.5% between 2004 and 2014.

Decision-making also generally fails to provide a critical assessment of the impacts of energy projects, especially in relation to overcapacity problems. Accordingly, ADB, at the height of the power crisis in 1990, provided a loan for a 600MW coal-fired plant of the National Power Corporation in Masinloc, Zambales, Central Luzon. By the time the plant began commercial operations in 1998, the supply-demand gap was close to being met. Yet ADB continued to implement the loan on the premise that “NPC needed the base load capacity for system stability, and that the main IPP plant in the region (with two 600 MW units) was ‘too large’ to provide base load stability.” (ADB, September 2005) In other words, “when faced with increasing signs of overcapacity in Luzon, ADB did little to help arrest the trend.” (ADB, September 2005) In fact, “the last two of ADB-supported IPP projects contributed to the overcapacity.” (ADB, September 2005)

Finally, it is interesting to note that both the Magna Carta for Residential Electricity Consumers issued by the ERC, and the DoE’s Department Circular No. DC 2004-02-002 “Prescribing the Guidelines for the Formulation of a Five-Year Distribution Plan” make no reference to environmental and social aspects of the electricity sector. In fact the words “environment” and “social” cannot be found anywhere in these documents.

Transparency

Overall, there is clarity of authority to grant environmental clearances for power projects. All the key elements are found to be present, such as: a legal mandate together with implementing rules, a definition of how authority is shared across jurisdictions, adequacy of access to relevant information, availability of these documents in official journals, in the government website, and through other public places apart from the central office. There is also clarity and transparency of the executive’s environmental and social mandate, although the commitment to information disclosure is limited to making documents available in a range of forms.

What is not clear is the regulator’s environmental and social mandate. The functions of the ERC are stated in Section 43 of Chapter 4 of the EPIRA. There is no reference to environmental or social responsibilities of the ERC anywhere in this section. The ERC website also does not contain a section dealing with environmental or social impacts of power plants. In the consumer services page, the “frequently asked questions” (FAQs) deal with pricing, pilferage and demand side management. The social and environmental impacts of power plants are not addressed.

Furthermore, the Department of Energy does not provide reports showing the sector’s performance vis-à-vis the energy-environment indicators identified in the PEP (2002-2012) despite the clear mandates for DoE’s Energy Planning and Monitoring Bureau and Energy Utilization Management Bureau to perform such task under Republic Act No. 7638. Greenhouse gas emissions as well as other toxic and fatal emissions and effluents are not included in the regular reports of the DoE.

Participation

Only one of nine indicators measuring transparency in environmental and social aspects received a rating of “lowest”. But only two indicators rated higher than “medium”.

The strongest rating (“highest”) was for public participation requirement in environmental impact assessment laws and procedures (ESA10). The laws require public participation at the scoping stages. The principle of free prior informed consent is incorporated into the guidelines for consultation under the Environmental Impact Assessment. More than one mechanism of participation has been used. Guidelines also exist to define adequate public consultation.

However, the time period for comment is not always adequate. Nor is there a practice to release full and summary reports prior to their approval. Similar to the policy and regulatory processes, no summary or full documentation is made of comments submitted by the public. No explanation is provided on how these comments or inputs from the public informed the findings and recommendations of the environmental impact assessment.

The only indicator in this group with a rating of “medium-high” looked at participation in the development of policies to promote low environmental impact management and technology options (ESA21). The government has considered co-generation, demand-side management, grid-connected renewable energy technologies, improved pollution control technologies for thermal power plants, and reduction in transmission and distribution losses. It has also consulted primarily with industry players and business corporations to develop renewable energy programs.

When it comes to public participation in setting minimum environmental performance standards in electricity sector laws and policies (ESA7), the rating is “medium”. Only one element of quality for participation exists: evidence of public consultation in determining standards. Similarly, the scope for project-affected people to exercise their rights (ESA19) received a “medium” rating because of efforts, albeit limited, to educate the potentially affected people on their rights in the face of the entry and operation of power plant projects in their community.

Participation in decision-making about access to electricity (ESA18) obtained a rating of “lowest”, while participation in decision-making related to the affordability of prices (ESA20) received a “medium” rating. Access to electricity at the household level is an avowed goal of the Philippine government. But there is no evidence that energy officials have consulted with relevant socio-economic sectors in order to develop access objectives. Nor is there evidence of sustained and systematic efforts to reach vulnerable groups.

ESA20 rated slightly higher because of the mechanism for a lifeline rate for low income consumers in the setting of tariffs. However, the setting of a lifeline rate by the ERC varies from one utility to the next. The ERC seems to have determined the probable monthly load requirement of low-income households to be two 20-watt lightbulbs and one 50-watt radio, used for “reasonable” lengths of time in a month.

However, a random scan of the 131 unbundling decisions of the ERC shows that the minimum and maximum threshold values set by the ERC vary from one utility to another, despite the ERC using the same probable monthly load requirement. The maximum discount for the poorest households also varies per utility. Because the subsidy for low income electricity users is paid for by those who consume above the maximum threshold, in some of the poorer provinces that are the franchise areas of rural electric cooperatives, it is actually the less poor who subsidize the poorest of the poor.

The discount is applied to the unbundled charges for generation, transmission, distribution, supply, metering, and system loss. It is *not* applied to the universal charge for missionary electrification, environmental and social protection of communities hosting power plants, and stranded contract costs. Nor is it applied to the franchise tax and the Consumer Exchange Rate Adjustment, or CERA, collected by some utilities such as Meralco in Metro Manila, Veco in Cebu, central Visayas, and Cepalco in Cagayan de Oro city, Northern Mindanao.

It therefore seems likely that low-income users may not be completely immune to upward adjustments in their electric bills, even if they do their best to “manage” their consumption within the threshold levels. This may create problems for poor households who face fixed if not falling budget constraints. As the Asian Development Bank acknowledges, “Electricity tariffs in the Philippines are among the highest and least affordable relative to people’s income in Asia...”

Accountability

Only one of five accountability indicators for environmental and social aspects merited a rating of “highest”. Three indicators were rated “lowest” and one was not assessed.

The quality of judicial and administrative forums that address environmental and social claims (ESA15) was deemed to have the elements consistent with a rating of “highest”. The Environment Management Bureau of the Department of the Environment and Natural Resources (DENR-EMB) was found to have all the elements of quality: authority to issue binding decisions to redress social and environmental damages; independence and impartiality; capacity and training; access to information; definition of triggers for claims and standing in laws; and applicable legal provisions that define which parties have “standing” before it.

The ERC could not be assessed with regard to its response to environmental and social petitions or complaints, for the simple reason that it would merely refer the complaint to the DENR-EMB.

One of the three indicators that rated “lowest” looked at the accessibility of judicial and administrative forums that address environmental and social claims (ESA16). None of the elements of quality—geographic, temporal, linguistic and economic—were found to be present. Another indicator (ESA17) looked for evidence of assessment of the employment impacts of policy reform in the electricity sector. A pool of privatization advisors was hired in the preparation of a privatization plan, which covers the treatment of affected officials and employees. Despite the preparation of a privatization plan for NPC, there is still no definitive indication that an assessment was undertaken of the potential or actual employment impacts before the major policy changes and reforms were passed.

Two elements of quality for remedies were found during the data gathering for this indicator, namely: explicit programs in place to ease or reduce impact of job losses; and creation of special redress mechanisms for workers.

There is no document showing that a broad assessment of unemployment impacts was undertaken prior to the passage of the EPIRA.

Capacity

The capacity of both the executive to evaluate environmental and social aspects (ESA4) as well as that of civil society to address environmental aspects of decision-making in the electricity sector (ESA14) were found to be “highest”. The regulator’s capacity to evaluate environmental and social issues (ESA5) was rated “medium”, while that of the congressional energy committees

(ESA6) was “lowest”. Similarly, the comprehensiveness of EIA laws, policies and procedures (ESA11) were assigned a rating of “lowest”.

There are no electricity sector policies, regulations or guidelines that specify requirements for project-level environmental and social impact assessment. Republic Act Nos. 7638 and 9136 only mention the need for the participants in the sector to comply with existing environmental and other related requirements.

No strategic environmental assessment has been carried out for the electricity sector in the last five years at a broad sectoral or landscape scale.

Likewise, there is no strategic environmental impact assessment guideline or requirement in place for electricity sector programs, plans, and policies.

Lessons from the Philippines

Five main lessons are worth mentioning. These are:

1. *Achieving good governance in the electricity sector starts with the policy process.* Reforms that tend to be creditor-driven, or that favor the industry players over the public, are not good for governance. Likewise, the enactment of reforms through the employment of processes that exclude the public from participating effectively through lack of transparency and accountability, through repeated failure to draw in public participation or outright efforts to bar weaker groups from participating, and through the absence of efforts to build public capacity to participate effectively, cannot be good for governance. Mechanisms to review and revise electricity policies must be developed in a manner that enables the equal and full participation of weaker stakeholders and of other non-governmental non-industry stakeholders.
2. *Effective regulation needs to put in place the right rules, but this is not enough.* In the case of the Philippines the enforcement of rules and the magnitude of punitive sanctions are inadequate. Thus it is more profitable for businesses to break if not change the rules, despite the detrimental effects of such actions on the public. Moreover, the regulator must have an in-depth understanding of the interests of all stakeholders in the electricity sector, particularly that of the non-governmental non-industry public.
3. *Transparent, accountable, competent agencies of government are needed in order to have good governance in the electricity sector.* A conscious effort to overcome the information asymmetry that has long characterized the electricity sector must be comprehensively undertaken. This asymmetry is sharply seen in the allocation of subsidies, in the use of consultants, in bidding and privatization processes, in contracts with IPPs, and the like. Putting in place mechanisms that would compel the disclosure of such information as standard operational procedure would greatly contribute to improved governance in the sector.
4. *The government and its creditor/ donor agencies must disclose the role played by the latter in shaping electricity sector policy, through financial assistance, policy advice and technical assistance provided to the government, and through the consultants they finance and support.*
5. *Equally if not more important is the participation of weaker stakeholders.* The participation of empowered stakeholders is necessary to compel the electricity sector to operate and function according to the best interests of the majority. Such participation should not be limited to the market, but in all the processes of governance in the electricity sector: policy setting, policy review and modification, power planning, independent regulation, environmental and social

impact assessment and monitoring, demand side management, and the like. Corollary to this, processes should be put in place to ensure that the government responds to inputs by the public on all these aspects of the electricity sector, beginning with policy formulation, review and revision.

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Policy Process

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|---|--|-------------------------------------|----------|----------|---|
| PP 2 | Procedures of Legislative Committee | <ul style="list-style-type: none"> • Disclosure of interests of members • Reasoned reports • Active, with regular meetings • Public consultations and open proceedings • Public availability of submissions • Public availability of own documents • Action Taken Report | 0 1 0.5 0.5 0 0 0 | 2 | A | Not all meetings are open to the public. No notices issued to the public of scheduled meetings. Meetings are not regularized. |
| PP 4 | Annual reports of the Electricity Ministry / Department | <ul style="list-style-type: none"> • Financial reporting • Review of progress • Public availability • Dissemination in local language | 1 1 1 0 | 4 | A | |
| PP 7 | Debate on Reform / Restructuring Law or other key Policy Change Law | <ul style="list-style-type: none"> • The reform/restructuring law was enacted through the legislature <p style="text-align: center;">1. Criteria of effective legislative process</p> <ul style="list-style-type: none"> • Adequate time for debate • Attendance of members • Duration of debate • Availability of transcripts of debate | 1 0 0 1 1 | 3 | A | NGOs and consumers were not thoroughly involved in the debates. Debates were not always substantive. There is no record of the final deliberations on the bill. |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|--|--|-----------------------|----------|----------|--------------------------------|
| PP 12 | Independent review of recommendations by consultants | <ul style="list-style-type: none"> • Provision for independent review • Clear process for review • Clear outreach strategy • Clear revision process | 0 0 0 0 | 1 | A | |
| PP 17 | Methodology for asset valuation / balance sheet restructuring during reforms | <ul style="list-style-type: none"> • Disclosure of methodology • Justification • Independent scrutiny • Public disclosure of independent scrutiny | 0 0 0 0 | 1 | A | Existence of PSALM merits a 1. |
| PP 20 | Accountability regarding subsidies | <ul style="list-style-type: none"> • Monitoring system • Accountability for monitoring • Procedure for review | 0 0 0 | 1 | A | |
| PP 1 | Capacity of Legislative Committee | <ul style="list-style-type: none"> • Existence of committee • Trained staff and access to documentary resources • Opportunities for training • Financial resources • Authority to call for evidence | 1 0 0 1 1 | 3 | C | |
| PP 3 | Independence of Electricity Ministry / Department from the Executive | <ul style="list-style-type: none"> • Criteria for appointment • Fixed tenure and removal procedure • Disclosure of interests • Rules about Conflict of Interests | 0.5 0.5 1 1 | 3 | C | |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|--|--|-------------------------------------|----------|----------|---|
| PP 6 | Distinct planning / policy agency | <ul style="list-style-type: none"> • Existence of planning/policy agency • Mechanism for consultation by executive • Authority to seek information • Availability of resources • Requirements for transparency • Requirements for consultation (from stakeholders) | 0 | 0 | C | Non-existent |
| PP 13 | Capacity of Organizations in Civil Society | <ul style="list-style-type: none"> • Presence of organizations • Techno-economic analytical capacity • Proactive engagement and strategic capacity • Grass-roots links • Capacity for ongoing learning • Networking • Broad credibility | 1 0.5 1 1 0.5 0 1 | 4 | C | CSOs/NGOs' networking efforts exist but need to be significantly broadened. |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|---|---|--|----------|----------|---|
| PP 5 | Advisory Committees to the Electricity Ministry / Department | <ul style="list-style-type: none"> • Clear role and sufficiently broad mandate • Wide and balanced representation • Access to financial and analytical resources • Periodic meeting with public notification • Public disclosure of minutes • Responses of the executive to deliberations of the advisory committee are disclosed along with minutes | 0 0 0 0 0 0 | 0 | P | Non-existent |
| PP 14 | Quality of public participation process during reform or policy decisions | <p>EoQ in a good process of public participation</p> <ul style="list-style-type: none"> • Public notification • Public registries of documents • Communication of decisions within one month • Use of diverse communication tools • Adequate time for public consideration • Opportunity for consultation • Clear communication on the results of public participation • Outreach to vulnerable communities | 1 0 0 0 0.5 0.5 0 0 | 2 | P | Most of the time the public was excluded from the deliberations on the grounds that power sector reforms were too technical to be understood by the public. |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|--|---|-----------------------|----------|----------|---------|
| PP 15 | Quality of participation by stakeholders and government responsiveness | <p>Quality of participation:</p> <ul style="list-style-type: none"> Quantity of input Breadth of input <p>Responsiveness of policy maker:</p> <ul style="list-style-type: none"> Notification of public participation by government Summary of public participation Response to public participation | 1 1 0 0 0 | 1 | P | |
| PP 8 | Role of donor agencies during policy reform | <p>Conditions of transparent donor engagement</p> <ul style="list-style-type: none"> Information about (donor's) policy positions Availability of loan documents and conditions Information about financial disbursement Information about technical assistance | 1 1 0 0 | 2 | T | |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|--|--|--|----------|----------|---------|
| PP 9 | Clarity about decision-making process on reforms or policy change | <p><u>Clarity About the Process:</u></p> <ul style="list-style-type: none"> • Clarity about the decision-maker • Pre-laid out time-frame • Clear format for decisions • Timeframe for public input • Specification for the use of public input • Anticipation of feedback • Specification of a mechanism for recourse • Provision for documentation of the process <p><u>Ease of access and breadth of information:</u></p> <ul style="list-style-type: none"> • Information circulated with reasonable lead time • Information available on internet and more than one other tool • Systematic efforts to reach out to disadvantaged communities | 0 1 0 0 0 0 0 0 1 0 0 0 | 1 | T | |
| PP 10 | Scope of background policy information available to the public about government analysis and stakeholder views | <ul style="list-style-type: none"> • Breadth • Ease • Timeliness | 0 0 0 | 1 | T | |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|---|---|----------------------------|----------|----------|---------|
| PP 11 | Scope of background / supporting information available to public regarding use of consultants | <ul style="list-style-type: none"> • Availability of terms of reference • Availability of budget • Availability of selection procedure • Availability of report • Ease of availability • Timeliness of availability | 0 0 0 1 0 0 | 1 | T | |
| PP 16 | Quality of media coverage about reform or policy decisions | <ul style="list-style-type: none"> • Volume of coverage • Local language coverage • Balance of coverage • Quality of coverage | 0 0 1 1 | 3 | T | |
| PP 18 | Process of privatization and bidding | <ul style="list-style-type: none"> • Release of request for proposals • Release of information provided to the bidders • Release of decision criteria and decision-making process • Justification for final selection | 1 0 0 0 | 2 | T | |
| PP 19 | Transparency in allocation of subsidies | <ul style="list-style-type: none"> • Public criteria for allocation • Public process for allocation • Reporting on disbursement | 0 0 0 | 1 | T | |

| Indicator | | Key Attributes | Status | Score | GGP | Remarks |
|-----------|-----------------------------|---|--------|----------|----------|---------|
| PP 21 | Independent Power Producers | <ul style="list-style-type: none"> • Legislative involvement • Competitive bidding • Transparent and detailed analysis of demand-supply scenario • Detail analysis of tariff impacts • Public consultation while approving PPAs • Public consultation during IPP policy development | 0 | 1 | T | |
| | | | 0 | | | |
| | | | 0 | | | |
| | | | 0 | | | |
| | | | 0 | | | |
| | | | 0 | | | |
| PP 22 | Competition Policy | <ul style="list-style-type: none"> • Mechanisms for prevention of market power • Scrutiny of conditions for competition • Adequate public consultation • Transparent competitive mechanisms | 1 | 3 | T | |
| | | | 0 | | | |
| | | | 0 | | | |
| | | | 1 | | | |

Regulatory Process

| | Indicator | Key Attributes | Status | Score | GGP |
|-------|--|--|--------|----------|----------|
| RP 5 | Conflict of interests of regulatory body members | <ul style="list-style-type: none"> • Legal recognition of conflict issues • Adequate preventive provisions | 1 | 3 | A |
| | | | 0 | | |
| RP 7 | Appeal Mechanism | <ul style="list-style-type: none"> • Permission to appeal • Clarity about grounds of appeal • By whom? • Before another authority or forum | 1 | 5 | A |
| | | | 1 | | |
| | | | 1 | | |
| | | | 1 | | |
| RP 18 | Orders and decisions of the regulatory body | <ul style="list-style-type: none"> • Reasoned orders • Response to public comments | 1 | 5 | A |
| | | | 1 | | |

| | Indicator | Key Attributes | Status | Score | GGP |
|-------|---|--|----------------------------|--------------|------------|
| RP 20 | Periodic performance reports by licensees / utilities | <ul style="list-style-type: none"> • Periodic filing by the utilities • Well-defined consequences of non-filing <u>EoQ of effective periodic reporting</u> <ul style="list-style-type: none"> • Easy availability • Timely availability • Local language • Reliable • Comprehensive | 1 1 0 0 0 0 | 3 | A |
| RP 21 | Tariff philosophy | <ul style="list-style-type: none"> • Existence • Based on detailed analysis • Provision for mitigating adverse impacts • Simple language • Public participation | 1 1 1 0 0 | 3 | A |
| RP 22 | Licensing | <ul style="list-style-type: none"> • Clarity about requirement and exemption • Clarity about process <u>Clear provisions regarding</u> <ul style="list-style-type: none"> • Amendment / Revocation • Dispute resolution • Compliance / performance monitoring | 1 1 1 1 1 | 5 | A |
| RP 23 | Consumer service and quality of supply | <ul style="list-style-type: none"> • Well-defined standards of performance • Monitoring of supply quality • Periodic public review • Consumer grievance redress mechanism | 1 1 0 1 | 4 | A |
| RP 1 | Institutional structure for regulatory decisions | <ul style="list-style-type: none"> • Regulatory decision through executive • Regulatory decision through independent commission | 0 1 | 5 | C |
| RP 2 | Authority of the regulatory body | <ul style="list-style-type: none"> • Seek information • Investigations • Penalizing defaulters • Enforcement of orders | 1 1 1 0 | 4 | C |
| RP 3 | Functions / jurisdiction of the regulatory body | <ul style="list-style-type: none"> • Clarity about functions / jurisdictions • Entrustment of all critical functions | 1 0 | 3 | C |
| RP 6 | Autonomy of regulatory body | <ul style="list-style-type: none"> • Fixed tenure of members and well-defined removal procedures • Financial autonomy • Human resources | 1 0 1 | 3 | C |

| | Indicator | Key Attributes | Status | Score | GGP |
|-------|---|---|----------------------------|--------------|------------|
| RP 8 | Training of regulatory body members and staff | <ul style="list-style-type: none"> • Certainty and regularity • Diverse fields of training (legal, technical and financial) • Diversity of perspectives | 1 1 0 | 4 | C |
| RP 11 | Pro-activeness of regulatory body | <ul style="list-style-type: none"> • Use of penal powers • Suo motu petitions • Discussion papers (public debate) | 1 0 0 | 0 | C |
| RP 16 | Capacity building of weaker stakeholders | <ul style="list-style-type: none"> • Capacity building activities by different agencies • Availability of financial and analytical resources | 0 0 | 1 | C |
| RP 4 | Selection of regulatory body members | <ul style="list-style-type: none"> • Independence • Well-defined procedure • Transparency • Composition and eligibility criteria • Differing tenures | 0 0 0 1 1 | 2 | I |
| RP 9 | Information available to public regarding use of consultants | <ul style="list-style-type: none"> • Terms of reference • Budget • Selection process • Final reports • Ease of availability • Timeliness of availability | 0 0 0 0 0 0 | 1 | I |
| RP 10 | Procedural certainty about regulatory process and decisions | <ul style="list-style-type: none"> • Clear, well laid-out rules of procedure • Clear, well laid-out rules for substantive decision-making | 1 1 | 5 | I |
| RP 12 | Disclosure of documents in possession of regulatory body | <ul style="list-style-type: none"> • Legal provisions • Operating procedures | 1 0 | 3 | I |
| RP 13 | Procedure for public access to regulatory body documents | <ul style="list-style-type: none"> • Well-indexed database of documents • Simple, well-defined procedure for inspecting • Reasonable cost • Wide dissemination of information | 0 0 1 0 | 2 | I |
| RP 19 | Dissemination of regulatory body's decisions | <ul style="list-style-type: none"> • Easy availability • Timely availability • Local language | 0 1 0 | 3 | I |
| RP 14 | Space for public participation in the regulatory process | <ul style="list-style-type: none"> • Open proceedings • Public right to participate | 0.5 0.5 | 3 | P |
| RP 15 | Institutional mechanism for representation of interests of weaker sections / stakeholders | <ul style="list-style-type: none"> • Routine considerations • Ad-hoc considerations • Availability of diverse institutional structures | 0 0 0 | 1 | P |

| | Indicator | Key Attributes | Status | Score | GGP |
|-------|--|--|------------------|-------|-----|
| RP 17 | Interventions by civil society in the regulatory process | <ul style="list-style-type: none"> Filing of cases/appeals before the ERC Private interest cases and appeals Public interest cases and appeals Presence of active CSOs | 1 1 1 0 | 3 | P |

Environmental and Social Aspects

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|--------|---|---|----------------------------|-------|----|---|
| ESA 12 | Regulatory Response to Environmental and Social Petitions or Complaints | <ul style="list-style-type: none"> Formal cases or evidence of environmental or social complaints filed Regulatory agencies have accepted them | 0 0 | 0 | A | |
| ESA 15 | Quality of judicial or administrative forums addressing social and environmental claims | <ul style="list-style-type: none"> Issuing binding decisions to redress social and environmental damages Independence and impartiality Capacity and training Access to information Definition of triggers for claims and standing in laws Applicable provisions of law define what parties have 'standing' before the forum | 0 1 0 1 1 1 | 3 | A | The ERC does not adjudicate environmental claims, except for the universal charge for the rehabilitation and maintenance of watersheds. |
| ESA 16 | Accessibility of judicial or administrative forums that address social and environmental claims | <ul style="list-style-type: none"> Geographic Temporal Linguistic Economic Amicus briefs from non-parties | 1 0 0 0 0 | 3 | A | |
| ESA 17 | Assessment of job losses linked to policy changes or reforms in the electricity sector | <u>Evidence of assessment of employment impacts (at least two of the following)</u> <ul style="list-style-type: none"> » Magnitude of job losses » Effect on job security » Impact on wages and benefits » Significance to the macro economy <ul style="list-style-type: none"> Assessed before making changes Measures to address impact | 1 0 0 1 1 0 | 1 | A | |

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|--------|--|--|----------------------------|-------|----|---------|
| | | <ul style="list-style-type: none"> • Creation of redress mechanisms for workers | 0 | | | |
| ESA 23 | Disclosure and monitoring of contributions by electrical sector to national greenhouse gas emissions | <ul style="list-style-type: none"> • Regular reporting on sector's cumulative and annual greenhouse gas (GHG) emissions • Data or baselines to quantify electrical sector's contributions to national GHG • Inclusion of sector in UNFCCC reports • Courts uphold public right to this information | 0 0 0 0 | 1 | A | |
| ESA 4 | <u>Executive's</u> capacity to evaluate environmental and social issues | <ul style="list-style-type: none"> • Specific budgetary resources to support social and environmental issues • Existence of dedicated staff • Expertise of staff • Availability of training | 0 0 1 1 | 5 | C | |
| ESA 5 | <u>Regulator's</u> capacity to evaluate environmental and social issues | <ul style="list-style-type: none"> • Specific budgetary resources to support social and environmental issues • Existence of dedicated staff • Expertise of staff • Availability of training | 0 0 0 1 | 3 | C | |
| ESA 6 | <u>Legislative Committee</u> capacity to assess environmental and social issues | <ul style="list-style-type: none"> • Specific budgetary resources to support social and environmental issues • Existence of dedicated staff • Expertise of staff • Availability of training | 1 1 0 1 | 3 | C | |
| ESA 11 | Comprehensiveness of environmental impact assessment (EIA) policies, laws and procedures | <ul style="list-style-type: none"> • National or electricity sector laws and policies are in place that specify or require EIAs for electricity sector activities • Electricity sector policies, regulations or guidelines detail for project level EIA • Electricity sector policies, regulations or guidelines detail for project-level social impact assessment • Strategic assessments have been carried out to evaluate environmental or social objectives • Strategic assessments have been carried out to evaluate both environmental and social objectives • Strategic assessment guidelines for electricity sector programs, plans and policies | 1 1 0 0 0 0 | 1 | C | |
| ESA | Capacity of civil society to | <ul style="list-style-type: none"> • At least one CSO has used appeal or redress mechanisms | 1 | 5 | C | |

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|-------|---|--|--------------------------------------|----------|----------|---------|
| 14 | address environmental and social aspects of decision-making by electricity sector | <ul style="list-style-type: none"> Existence of independent CSO assessment of social / environ. implications of sector policy Records of CSO participation in official consultations CSO input on most sector EIAs Evidence of CSOs specializing in sector issues or providing legal support to vulnerable groups | 1 1 0 1 | | | |
| ESA 1 | Clarity of authority and jurisdiction to grant environmental clearances / approvals for power sector projects | <ul style="list-style-type: none"> Provisions in law / implementing regulations Definition of how authority is shared across jurisdictions Adequacy of access to relevant information Provisions published in official journal/gazette Provisions posted on the websites Public sector agency with principal authority issues brochure, poster, information sheets, etc. Provisions may be obtained from public information office/library Public sector agency discloses projects granted approvals in timely fashion Principal authority discloses all projects requesting / pending approval | 1 1 1 1 1 1 1 1 | 4 | I | |
| ESA 2 | Clarity and transparency of <u>executive's</u> mandates on Environmental and Social aspects | <ul style="list-style-type: none"> Reference to environmental and social performance of sector in description of responsibilities of executive Guidance on how executive will cooperate or consult with regulators or other authorities <u>Commitments to information disclosure</u> <ul style="list-style-type: none"> » Reporting on ESA of performance of electricity sector » Availability of documents on executive's environmental and social responsibilities » Availability of these documents in a range of forms » Dissemination using various media/outlets » Efforts to aware marginalized socioeconomic or cultural groups | 1 0 0 1 1 0 0 | 2 | | |
| ESA 3 | Scope and transparency of <u>regulator's</u> environmental and social mandates | <ul style="list-style-type: none"> Reference to environmental and social responsibilities in documents describing role and mandate of regulatory body Certification or assurance of the mitigation of impacts Consideration of social and environmental issues in tariff | 1 0 | 3 | I | |

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|--------|---|---|--|-------|----|---------|
| | | setting <u>Adequacy of access to relevant information</u> » Publication of regulator's environmental and social responsibilities in the official govt. journal » Posted on the regulator's website » Available at low cost or free to the public » Availability in range of forms/formats » Dissemination through various media/outlets » Efforts to aware marginalized/less privileged population | 0 0 0 0 0 0 | | | |
| ESA 22 | Reporting on environmental and social performance of the electricity sector | <u>Annual reviews, include attention to a broad set of environmental and social issues, at least three of the following</u> » Access to electricity » Affordability » Employment trends in the sector » Theft/distribution losses » Energy security » Energy efficiency » Renewable energy » Air emission or pollution from generation » Contributions to green house gas emission • Regular reporting and disclosure of performance data • Use of range of outreach media • Development of public information for non-technical audience | 1 1 0 1 1 1 1 0 0 1 0 0 | 3 | I | |
| ESA 7 | Public participation in setting minimum environmental performance standards in electricity sector laws and policies | • Minimum environmental performance standards for the electricity sector in regulatory policies and laws <u>Elements of quality for participation</u> • Evidence of public consultation in determining standards • Evidence of communication of public input • Existence of explanation for existing standards • Regular reporting on industry compliance with standards | 1 1 0 0 1 | 4 | P | |
| ESA 8 | Inclusion of environmental considerations in national power sector plan | • Analysis of environmental considerations in most recent plan • Inclusion of project-specific impacts and broader sectoral impacts <u>Public access to relevant documents</u> | 1 0 | 3 | P | |

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|--------|---|--|--|----------|----------|---------|
| | | <ul style="list-style-type: none"> Mechanisms to seek public input Inclusion of less-privileged and affected populations Communication of how public input is incorporated Reasonable public comment period Availability of public comments | 1 0 0 0 0 | | | |
| ESA 9 | Inclusion of environmental considerations in sector reform process | <ul style="list-style-type: none"> Inclusion of environmental considerations in official documents, before reform Broad framing of environmental issues <u>Access to documents</u> Restrictive confidentiality rules applied to reform related documents Adequacy of public comment period Effort to reach affected and less- privileged populations Mechanisms to seek public input Availability of public comments Communication of how public input is incorporated | 1 0 1 0 0 0 0 0 | 2 | P | |
| ESA 10 | Public participation requirements in environmental impact assessment (EIA) laws and procedures | <ul style="list-style-type: none"> Participation mandate at scoping stages Use of more than one mechanism Adequacy of time period for comment Release of full and summary reports, prior to approval Existence of guidelines to define adequate public consultation Availability of summary or full public comments How public comments informed the findings/recommendations is discussed in final IA Principle of free prior informed consent is incorporated into EIA guidelines for consultation | 1 1 1 1 1 1 1 1 | 5 | P | |
| ESA 13 | Quality of engagement by electricity provider with organizations in civil society and with potentially-affected populations | <ul style="list-style-type: none"> Existence of specific department / staff to engage with the public Requirement to engage public is defined in corporate policy Support to vulnerable weaker sectors to enable engagement Availability of information on how public can lodge complaints Disclosure of its own EIAs | 0 0 0 1 0 | 2 | P | |

| | Indicator | Key Attributes | Status | Score | GP | Remarks |
|--------|--|--|--|-------|----|---------|
| | | <ul style="list-style-type: none"> EIAs include non-technical summary and summary of public consultation | 0 | | | |
| ESA 18 | Participation in decision-making about access to electricity | <ul style="list-style-type: none"> Consultation with relevant socio-economic sectors on developing access objectives Efforts to reach vulnerable groups Use of more than two participation mechanism Public input referenced in relevant planning or policy processes | 1 0 1 0 | 3 | P | |
| ESA 19 | Scope for project-affected people to exercise their rights | <ul style="list-style-type: none"> Existence of explicit requirements or procedures for consultation of project affected people in project review and approval Efforts to educate potentially affected people on their rights Use of more than two participation mechanisms Free Prior Informed Consent | 1 1 1 1 | 5 | P | |
| ESA 20 | Participation in decision-making related to affordable electricity tariffs | <ul style="list-style-type: none"> Attention to low income and rural consumers in tariff setting principles Efforts to communicate impacts and reasons for tariff changes to low income or differentially impacted groups Use of more than one participation mechanism to get their input | 1 1 0 | 3 | P | |
| ESA 21 | Participation in development of policies to promote low environmental impact management and technology options | <p><u>Decision-making considers at least three of following management and technology options:</u></p> <ul style="list-style-type: none"> » Co-generation » Demand-side management » Creation of energy saving companies » Grid-connected renewable energy technologies » Distributed renewable energy technologies » Improved thermal/fossil fuel generation technologies » Improved pollution control technologies for thermal power plants » Reduction in T&D losses <ul style="list-style-type: none"> Consultation with stakeholders and interest groups Use of more than one participation mechanism | 1 1 0 1 1 0 1 1 1 0 | 3 | P | |