



RERA Regulatory Principles

by

Elijah C. Sichone

Executive Secretary

**Presentation for the RERA-NARUC Regulatory Course
Eskom Convention Centre, Midrand, South Africa, 27 – 31 July 2009**

Presentation Outline

- ❑ **About RERA**
- ❑ **Background to the Regulatory Principles**
- ❑ **Regulatory Principles**
- ❑ **Conclusions**

About RERA

- **SADC Energy Ministers approved the establishment of RERA on 12 July 2002 in Maseru, Lesotho and it was formally launched on 26 September 2002 in Windhoek, Namibia – *the Seat of the RERA Secretariat***
- **RERA is one of the building blocks of AFUR (African Forum for Utility Regulators)**
- **Clause 110 of the NEPAD Programme of Action endorses the establishment of such regional associations in Africa**

About RERA.....

● Vision

“To be a world class Association that ensures a consistent and harmonised regulatory framework in the energy sector within the SADC region”

● Mission

“To facilitate harmonisation of regulatory policies, legislation, standards and practices and to be a platform for effective cooperation among energy regulators within the SADC region”

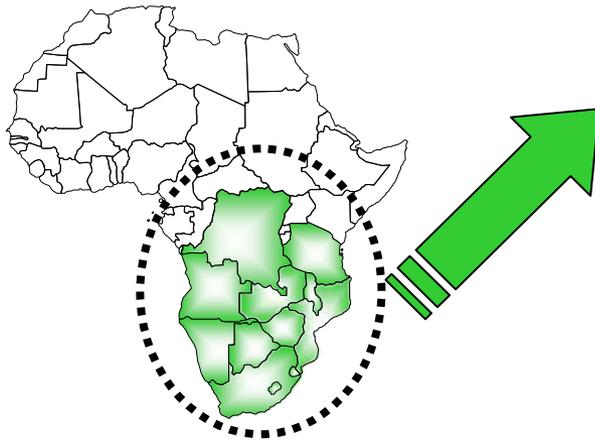
About RERA.....

● Current 9 RERA members are:

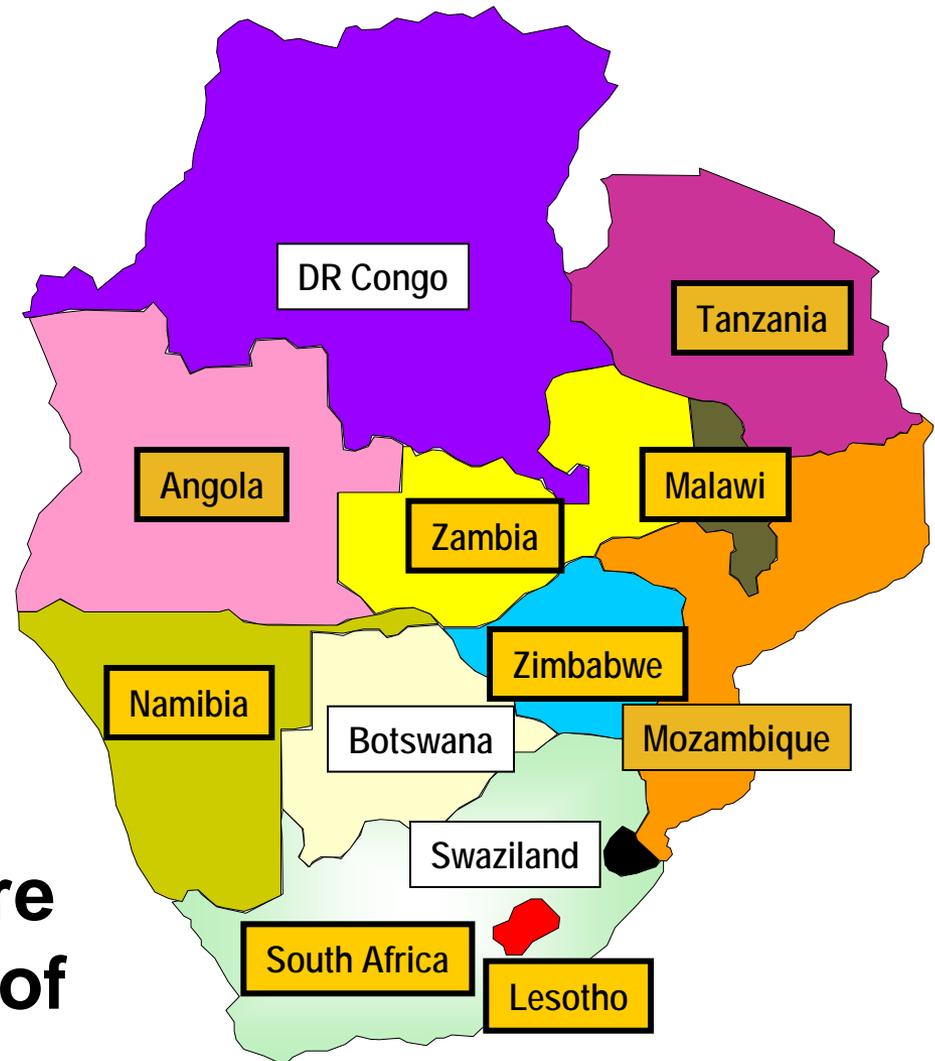
1. National Electricity Advisory Council (**CNELEC**) of [Mozambique](#)
2. Electricity Control Board (**ECB**) of [Namibia](#)
3. Energy Regulation Board (**ERB**) of [Zambia](#)
4. Energy & Water Utilities Regulatory Authority (**EWURA**) of [Tanzania](#)
5. Institute for Electricity Sector Regulation (**IRSE**) of [Angola](#)
6. Lesotho Electricity Authority (**LEA**) of [Lesotho](#)
7. Malawi Energy Regulatory Authority (**MERA**) of [Malawi](#)
8. National Energy Regulator of South Africa (**NERSA**) of [South Africa](#)
9. Zimbabwe Electricity Regulatory Authority (**ZERC**) of [Zimbabwe](#)

About RERA.....

RERA MEMBERS



**Other countries are
at various stages of
sector reforms**



Background

- ❖ **In 2004, RERA adopted a high-level set of principles and approaches espoused by the African Forum for Utility Regulation (AFUR)**
- ❖ **In responding to AFUR's desire for development of sector specific principles, RERA embarked on the development of principles specific for electricity regulation in SADC in 2005**
- ❖ **Through a competitive tender, Mclink Consulting Services to under the task**

Background.....

- ❖ **Terms of Reference (ToR) included:**
 - **Assessing & comparing regulatory practices in SADC**
 - **Identifying gaps in regulatory practices**
 - **Defining regulatory principles for SADC to attract investments**
 - **Recommending strategies for promoting, entrenching and assessing the implementation of the RERP**

- ❖ **A final Report was submitted in 2006**

Background.....

❖ Contents of the Final Report are as follows:

1. Background and Introduction
2. Elements of Regulation
3. Regulating Regional Markets
4. The Southern African Power Pool
5. Electricity Regulation in SADC
6. Harmonising Regulatory Frameworks
7. Summary of Regulatory Principles
8. Conclusion

Background.....

- ❖ **What does the word “Principle” mean?**
 - 1. an accepted or professed rule of action or conduct: - *a person of good moral principles*
 - 2. a fundamental, primary, or general law or truth from which others are derived: - *the principles of modern physics*
 - 3. a personal or specific basis of conduct or management: - *to adhere to one's principles*

- ❖ **What does the “Regulatory Principles” in the context of RERA?**

Regulatory Principles

Institutional Framework

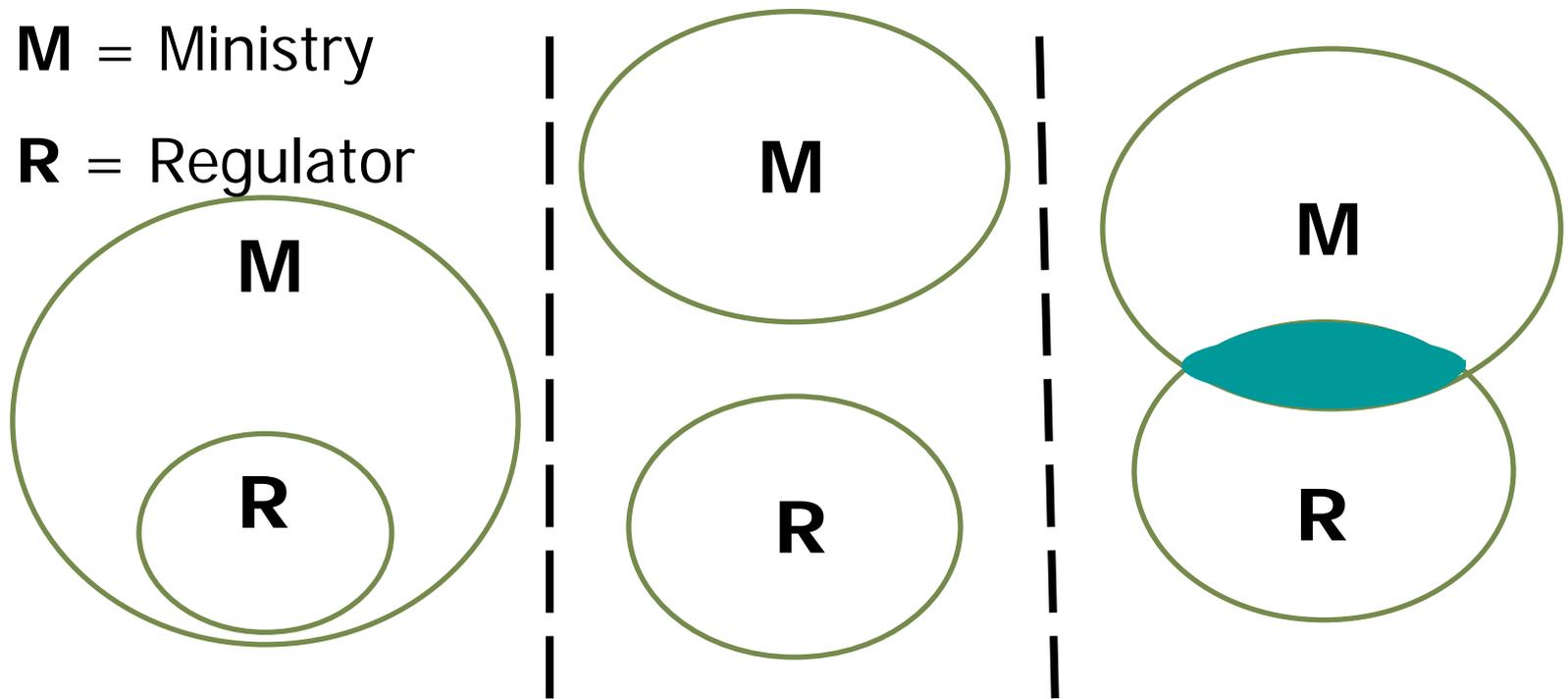
- ❖ The Regulator should be established as an autonomous body outside civil service structures.
- ❖ The regulator should be established under principal legislation enacted by Parliament specifying, amongst others, its functions, powers, sources of funding, and appointment procedures

Regulatory Principles.....

Institutional Framework

M = Ministry

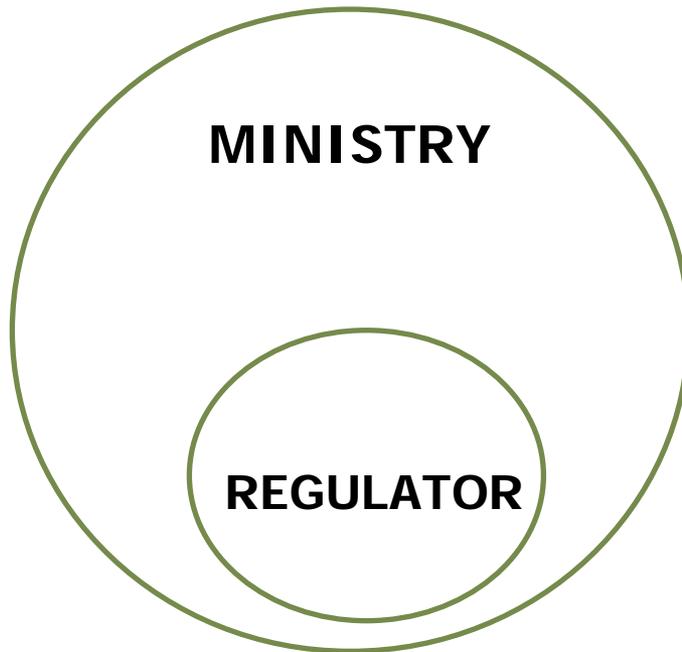
R = Regulator



WHICH ONE FITS?

Regulatory Principles.....

Institutional Framework



- Regulator impotent
- Frustration
- Instability
- Inefficiency
- Lack of credibility

NOT DESIRABLE

Regulatory Principles.....

Institutional Framework

MINISTRY

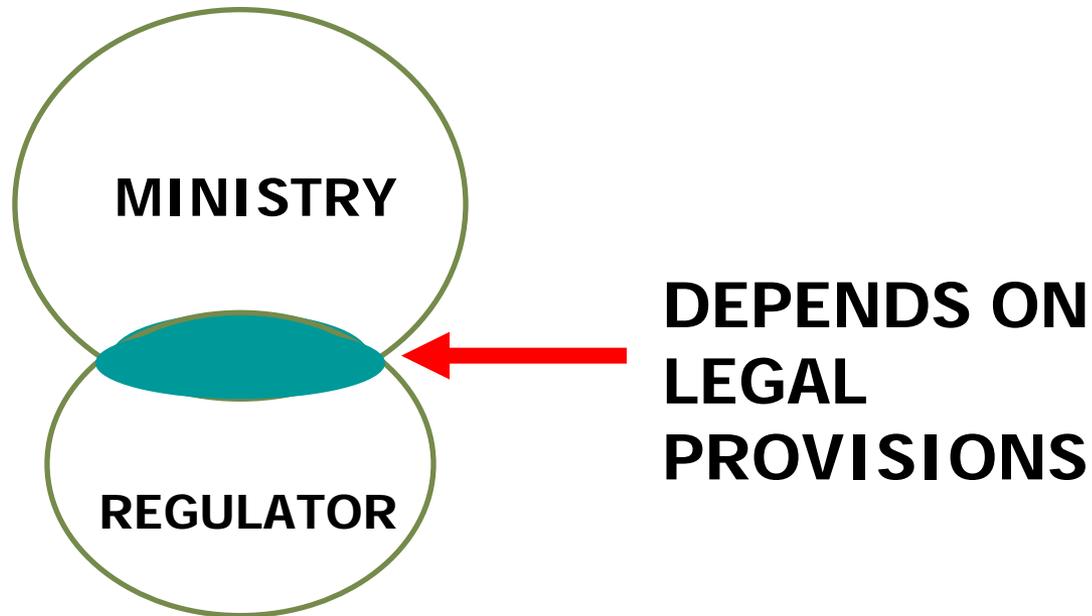
REGULATOR

- Total Independence
- Unhealthy tension
- Push and pull forces
- Suspicion

NOT FEASIBLE

Regulatory Principles.....

Institutional Framework



**DEPENDS ON
LEGAL
PROVISIONS**

**In Managing
Overlap,
COMUNICATION
is Key!!!**

PRACTICAL

Regulatory Principles.....

Institutional Framework

FEARS

MINISTRY

- Loss of Control
- Regulator too independent
- "A law unto itself"
(Unaccountable)

REGULATOR

- Interference
- Over controlled

NEEDS

MINISTRY

- Regulator to advance its agenda
- Achieve higher effectiveness
- A useful Resource
- "Dirty work" done for it

REGULATOR

- Political Will
- "Policy Will"

Regulatory Principles.....

Autonomy - Funding

- ❖ **The regulator should be funded through licence fees levied on consumers and collected directly from utilities**
- ❖ **The law must provide for strict accountability of funds through annual reporting and regular independent auditing of books of accounts.**
- ❖ **The regulator's annual budget should be approved by its Board or Commissioners**
- ❖ **The conditions of service for the CEO and other regulatory staff should be determined by the Commission or Board**

Regulatory Principles.....

Autonomy – Appointment Procedures

- ❖ **Members of the Commission or Board should be appointed in their individual capacities based on their professional expertise, experience, maturity and integrity**
- ❖ **The Minister's powers to appoint Commissioners should be subject to ratification by an independent body, usually Parliament**
- ❖ **The tenure of office of Commissioners or Members should be guaranteed, subject only to extraordinary circumstances like death, insanity and criminal conviction**
- ❖ **The Commission or Board should be left to elect its own chairman.**

Regulatory Principles.....

Mandate

- ❖ **Regulators should be responsible for determining tariffs according to publicised methodology and in accordance with prescribed procedures**
- ❖ **The regulator should use output-based regulatory methodologies that provide incentives for good performance especially in the areas of labour productivity, investment efficiency and overall cost containment**
- ❖ **The regulator should require utilities to maintain separate accounts and, wherever possible, separate management, for generation, transmission and distribution.**

Regulatory Principles.....

Regulatory Process - Transparency

- ❖ **The regulator should provide all stakeholders complete information about its establishment, procedures, regulations, decisions and work in progress**
- ❖ **The regulator should maintain a constant flow of information to the public on, for instance, licensed entities, regulations, conditions of licences, quality of service, and the obligations of providers and customers**
- ❖ **The regulator should use the most appropriate and effective means of communication to engage stakeholders in the development of proposals for regulations**

Regulatory Principles.....

Regulatory Process – Transparency....

- ❖ **Regulations should be in clear straightforward language and should provide ample time and opportunity to comply with the changes**
- ❖ **The regulated entities should be made aware of their obligations and the consequences of non-compliance**
- ❖ **The regulator should adopt participatory procedures for matters concerning tariff design and review**

Regulatory Principles.....

Regulatory Process – Accountability

- ❖ **The regulator should be open to public scrutiny and should at all times justify its decisions**
- ❖ **The regulator should ensure that complaints and appeals procedures are clear, well publicised and are fair, effective and accessible**
- ❖ **The regulator should give information about its accountabilities to the government, the legislature and to the public**
- ❖ **Mandatory annual reports should provide not only audited accounts, but also a comprehensive report on the year's activities like development of regulations, dispute resolution, rate reviews, and licensing**

Regulatory Principles.....

Regulatory Process – Predictability

- ❖ **Regulation should avoid excessive discretion in order to provide a stable and predictable environment to those being regulated**
- ❖ **Regulations should be applied consistently to all; changes to existing practice must go through a formal process of review and new conditions must affect everyone**
- ❖ **General regulations on safety must be reconciled with similar provisions that may exist in related areas like general health and safety or environment**

Regulatory Principles.....

Regulatory Process – Proportionality

- ❖ Remedial measures should be proportionate to the perceived risk
- ❖ Mandatory regulations should be used only when other approaches have been considered, including educational programmes. (Intervene only when necessary, reduce cost of regulation)

Regulatory Principles.....

Regulatory Process – Targeting

- ❖ **The force of regulations should focus on the problem and should not impact unrelated activities**
- ❖ **Wherever possible, and especially in relation to the design of tariffs, the regulator should focus on outcomes, leaving the utility the flexibility to devise ways of meeting the set targets**
- ❖ **Regulatory measures should be regularly reviewed to check their continuing relevance or effectiveness**

Regulatory Principles.....

Regulatory Process – Impact Assessment

- ❖ **Regulators should assess and quantify the costs and benefits of proposed new regulation and should endeavour to periodically review existing regulations**
- ❖ **The administrative burden of regulation should be consistent with its perceived importance**
(Avoid red tape)

Regulatory Principles.....

Regulatory Process – Regional Integration

- ❖ **Regardless of the tariff methodologies adopted in individual countries, there should be a regional migration of the electricity price to a cost-reflective level. Regulators should adopt a uniform approach to the determination of the cost of supply**
- ❖ **Regulators should establish basic common rules for the management of transmission networks providing for an open access regime, transparent management and a common approach to transaction costs**

Conclusions

- ❖ **While noting some positive regulatory developments in the region, there also a few worrisome trends against the principles**
- ❖ **To inculcate effective regulation in the region, RERA intends to:**
 - **formally table the RERP for adoption by the SADC Energy Ministers**
 - **advise, take positions and engage the relevant actors whenever barriers to effective regulation are observed**
- ❖ **Adoption of the principles can enhance the investment climate to enable the region exploit the abundant energy sources given the low access levels & increasing demand for modern energy services**

Thank You!