

# Electricity Sector Governance in India : An Analysis of Institutions and Practice

Application of the Electricity Governance Indicator Toolkit in India

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This modest effort is but a beginning point. It is our hope that this report will serve as a bridge to an informed discussion about the state of governance in India's electricity sector and ultimately to a brighter electricity future.

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## EXECUTIVE SUMMARY

In India, as in many countries worldwide, the last two decades have witnessed dramatic reforms in the structure, organization and management of the power sector. The slow and inconclusive record of reforms has often been attributed to problematic governance of the sector. However, there is limited systematic understanding of what “good governance” in the electricity sector might entail.

The Electricity Governance Indicator Toolkit was developed to provide a way to assess the state of governance in the electricity sector. It is a flexible toolkit that can be applied across countries and systems. Developed jointly by World Resources Institute (Washington D.C.), National Institute of Public Finance & Policy (New Delhi) and Prayas Energy Group (Pune) the toolkit seeks to assess the *process* through which decision-making is undertaken in the sector. The presumption is that good process is necessary, even if not sufficient, for good outcomes in the sector. The toolkit is composed of a set of structured questions relating to four categories of governance principles: transparency, participation, accountability and capacity to engage in decision-making process. The questions are further organized under three distinct heads – policy process, regulation and environmental and social aspects of the power sector.

In India, the toolkit was applied to assess the state of governance in the power sector reform process under way since the early nineties. The study was conducted by a team of experienced researchers with in-depth knowledge of the sector. Since power sector straddles both the Central and State governments, the study was conducted at both levels, depending on the content of the question. Governance in policy-making was assessed predominantly at the central level. While policy-making does occur at the state level, an analysis of this process was beyond the scope of the study.

Regulatory processes were assessed at the state level for three states – Andhra Pradesh, Tamil Nadu and Haryana. An assessment of the environmental and social aspects of reforms was conducted at both central and state levels as appropriate. Since there are certainly gaps in the study—regulatory processes in only three states were examined, and state level policy making was not considered—the findings of this section must be considered indicative rather than representative.

The research team drew on extensive interviews and document searches in utilizing the toolkit. An eminent advisory panel comprising experts from the power sector provided valuable advice and direction, although responsibility for the results rests entirely with the authors. The remainder of this executive summary provides a synthesis of the main findings and lists the policy recommendations that follow.

### *Governance in the Policy Process*

The policy-making process in India retains an overwhelmingly expert driven flavour, revealing only a few elements of a transparent and participatory policy-making in the electricity sector. Recent positive trends include posting of draft policy statements on the web for comment, and consultations in different parts of the country, notably for a draft rural electrification policy. However, considerable weaknesses remain in the governance process. There is insufficient clarity about how the decision process will unfold, it remains unclear how input from consumers and other stakeholders will be used, and information availability and consultation processes are determined on an *ad hoc* rather than predictable basis. The problem of insufficient opportunity for public deliberation on key policy issues is made worse by a pattern of weak and insubstantial media coverage.

Weaknesses in decision processes are reflected in institutional weaknesses. While there is a legislative committee on energy to provide oversight, it has weak internal safeguards against conflict of interest compounded by a culture of secrecy which limit the scope for any external checks. Since it relies on experts it has no mechanism for hearing a public or consumer perspective. The executive branch relies on advisory committees of experts, which themselves are relatively non-transparent in their functioning. Arguably the biggest lacuna is the use of consultants who may considerably shape policy, but whose work is not subject to external review or scrutiny.

The pattern that emerges is a decision process with weak mechanisms of accountability due to poor governance processes. While a more open and transparent decision process would provide a partial corrective, there is a simultaneous need for greater capacity, particularly among civil society and public interest groups, to take advantage of the recent trend toward more transparent and participatory decision making.

#### *Governance in the Regulatory Process*

A study of a small sample of three states suggests that the electricity regulatory process in India is backed by robust institutional rules and structures, but there is scope for considerable improvement in implementation. There are clear mechanisms and procedural requirements for disclosure of information, strong procedures requiring hearings and other participatory mechanisms, and well defined mechanisms of accountability and recourse, such as a requirement for reasoned decisions and an overarching appellate body.

However, flaws in implementation of procedures span the breadth of the regulatory process. The starting point is inconsistencies in the regulatory selection process, which despite stringent procedures is non-transparent in its functioning. This weakness allows the spirit of the process to be undermined; in one case a selection committee was disbanded when its choice of candidates were found unsuitable by the government. While procedures for access to information held by regulators is impressive for a public body, small but significant improvements – such as an indexed database, attention to local language and so

on – would help make the system transparent in practice. Also, there were few proactive measures to reach out with information to the public and particularly to disadvantaged communicates.

Regulatory Commissions have put in place comprehensive procedures for their own functioning which provide a mechanism of accountability. However, accountability in practice is elusive because, as with the policy process, the capacity of civil society and the public to make full use of regulatory spaces is deeply compromised. Weak civil society capacity is somewhat mirrored by weak regulatory capacity, with reliance on consultants who operate in a non-transparent manner. In addition, weak regulatory capacity is reflected in the reactive approach to regulation, rather than a proactive approach which is the need of the day in India's rapidly changing sector.

#### *Governance Related to Environmental and Social Aspects*

Decision-making in the electricity sector reflects a continued compartmentalization of electricity on the one hand and environmental and social considerations, on the other. Thus, bodies like the Standing Committee on Energy and the Ministry of Power define their role with respect to environmental and social issues quite narrowly, limited to issues like rural electrification and energy efficiency that are directly related to electricity. This compartmentalization belies the reality that many electricity decisions have environmental and social aspects embedded in them. Related to this point, both the Parliamentary Standing Committee on Energy and state level electricity regulators have low capacity to address environmental and social issues. Thus the regulators studied for their attention to environmental and social aspects were observed to do so reluctantly at best.

As a result of this narrow perspective, important issues like job losses, the fate of project affected people, and environmental impact assessments, all of which are directly related to power sector decisions, tend to be discounted. Job losses due to electricity reforms, for example are not even effectively monitored, making difficult any effective policy action. By contrast, monitoring and reporting on international obligations, like greenhouse gas emissions, are fully carried out.

A full assessment of environmental and social dimensions of electricity is challenged by a multiplicity of institutions that deal with these issues. Thus there are four separate administrative or judicial for that provide avenues for redress on environmental and social issues. The existence of these avenues augurs

well, but the exact impact on the accountability and effectiveness of redress remains unclear.

These findings lead to a concrete set of policy recommendations, which are divided into the three major categories of analysis: policy, regulation and environmental and social.

## **Key Recommendations**

### *Policy Process*

1. Reform policy making processes at the national level to introduce mandatory provisions to ensure:
  - a) Clarity in jurisdictions of institutions
  - b) Clarity in procedures and timelines to be adopted,
  - c) Public access to background analysis and expert inputs that formed the basis of draft policy
  - d) Proactive dissemination of draft policies to solicit inputs from wider cross-section of the society, especially weaker sections
  - e) Public access to comments and suggestions received from all stakeholders
2. Ensure transparency in the selection of regulatory commission members, through measures such as tabling the report of the selection committee before the legislature.
3. Ensure greater transparency in the role played by consultants and donor agencies, through measures such as compulsory disclosure of consultant/donor terms of reference, selection criteria, and dissemination of reports submitted by consultants.

### *Regulatory Process*

1. Develop training and capacity building mechanisms for regulatory commission members, staff, as well as government officials (e.g. those assisting legislative committees) and civil society organizations. Such efforts should aim at providing specialized training on technical, economic, and legal aspects, basic multi-disciplinarily capacity building. Such training and capacity building efforts should ensure that participants are exposed to diverse perspectives and social policy approaches.
2. Create mechanisms for provision of financial as well as analytical - technical, economic and legal - resources to civil society groups and weaker / marginal sections of society, to ensure effective public participation in the regulatory process.
3. Create mechanisms, in the working of the regulatory commissions, to operationalise various transparency, accountability and participation related provisions in the Act and regulations, through measures such as easy access to all relevant information and documents, provision of greater democratic space for civil society participation and easy access to redressal mechanisms.

### *Environmental and social aspects*

1. Broaden the mandate of core electricity-focused institutions to internalize social and environmental considerations:
  - a) Expand the mandate of regulatory commissions to include attention to trade-offs with social and environmental aspects;

- b) Mandatorily include social and environmental considerations in planning frameworks and large policy decisions such as sector reform
2. Build and expand the capacity of key electricity institutions – particularly legislative committees and Regulatory Commissions — to address social and environmental considerations.
3. Strengthen attention to neglected social and environmental dimensions of electricity reform, both for reasons of better outcomes and to better ensure long-term sustainability of electricity reform processes. In particular,
  - a) Monitor and analyse job impacts of power sector reforms;
  - b) Strengthen Environmental Impact Assessment laws and procedures;
  - c) Protect and enforce the rights of project affected persons.

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## PREFACE

### *The Electricity Governance Initiative*

The Electricity Governance Initiative (EGI) is a collaborative research-action initiative to promote “good governance” in the electricity sector. The study of electricity governance in India described in this report is the first country report to emerge from the EGI, which has an initial focus on Asia. This note provides details on the motivation, objectives, methodology, and organizational structure of the EGI.

### *Motivation for the Electricity Governance Initiative*

Electricity reform is underway in many parts of Asia and other regions. Experience with these reform efforts has been mixed at best. Sector reform has generally failed to win the confidence of the societies it is meant to benefit, and has also failed to attract sustained interest from investors. Since electricity is an important ingredient for successful sustainable development, a failure to restore health to the electricity sector in Asia and elsewhere is a considerable problem.

One explanation for the problematic history of electricity reform is the flawed process through which reforms have been designed and implemented.<sup>1</sup> Governments, often with the support of donor agencies, have designed reforms through closed political processes, and with inadequate public input into the goals of electricity reforms. These closed processes have not only constrained attention to sustainable development of the sector, but have also undermined the political sustainability of reforms because they lack support of the population. Private

sector actors have sought to insulate themselves from what is a high-risk environment by seeking guarantees from governments, which have proven politically and financially unworkable. Civil society organizations, for their part, have been hampered by highly restricted access to decision-making, and by the technical challenges of advocacy around electricity sector policy reform.

In short, improving governance – which we define broadly as the processes of decision making and implementation – could be an important ingredient in working toward a fair, sustainable and better performing electricity sector. As this definition should make clear, we see governance not only as the role of formal government institutions, but we also see a complementary role for stakeholders to participate directly in decision-making processes at all levels. Well functioning governance mechanisms will allow for better decision-making about the goals (as distinct from the implementing means) of electricity reform and ensure that these goals are tailored to local needs. Better governance will allow for flexibility and feedback mechanisms in implementation, and ensure a way of holding the private sector and governments accountable to the goals of reform.

However, there is currently little systematic understanding of what constitutes good process in reforming a large and technically complicated sector such as electricity. What, for example, is an appropriate level and mechanism for public input into policy processes? How can regulators most effectively engage the larger community of stakeholders? What constitutes adequate standards of transparency about technical matters, such as the details of power purchase agreements? These are all unanswered questions.

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<sup>1</sup> See, for example, Navroz Dubash (ed.) *Power Politics: Equity and Environment in Electricity Reform*, Washington DC: World Resources Institute, available on line at [http://www.wri.org/governance/powerpolitics\\_toc.html](http://www.wri.org/governance/powerpolitics_toc.html).



## Goals of the Electricity Governance Initiative

By developing a “toolkit” organized around structured questions, or “indicators,” which are used to conduct detailed empirical assessments of the state of electricity governance, the EGI aims to achieve the following goals:

- Develop a common language and metric for stakeholder discussion of governance;
- Establish a benchmark of best practice;
- Build civil society capacity to enforce accountability and monitor progress toward improved governance;
- Attract government attention to and build capacity for measures to promote and practice good governance at legislative, executive and regulatory levels;
- Promote accountability at legislative, executive, regulatory and utility levels.

## The Approach and Methodology

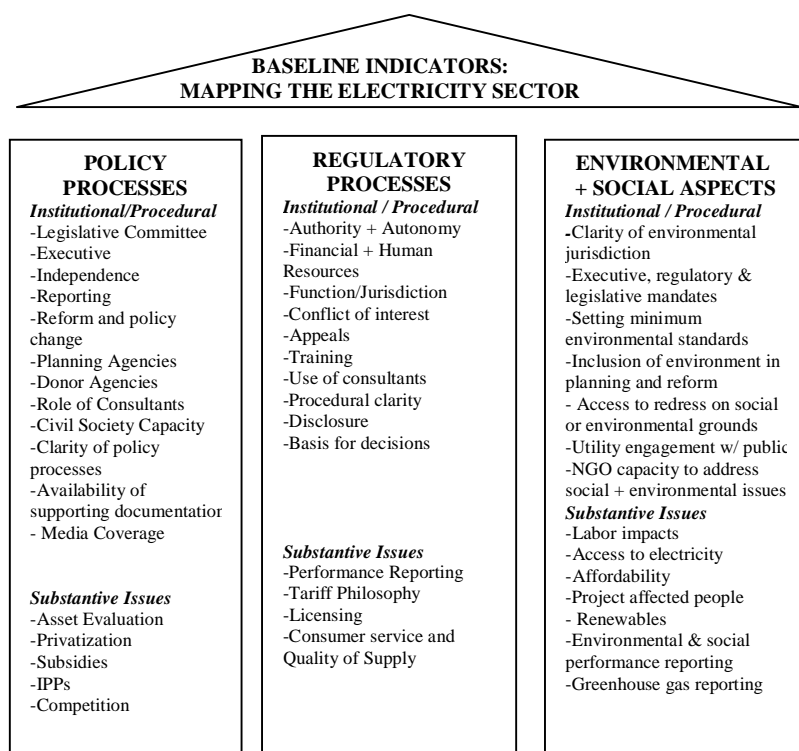
The conceptual framework of the EGI rests on three “pillars” or sub-divisions within the electricity decision

making process: policy, regulation, and environmental and social aspects of electricity decisions. Policy is the starting point for decision making and encompasses key institutions such as the legislature, executive, and supplementary actors such as donors, consultants and civil society. Regulation has emerged as a key institutional arena for electricity, with distinct and separate governance arrangements. Finally, a separate category of environmental and social aspects recognizes that many public stakeholders are motivated to engage in the sector because of these key outcomes.

Within each pillar, the toolkit address principles of governance drawn from the Aarhus Convention – access to information or transparency, public participation in decision making, accountability and redress. In addition, we add a fourth principle, capacity of institutions and individuals to meet the requirements of good governance. Together, these four principles of transparency, participation, accountability, and capacity, constitute the conceptual framework for a broader governance framework that embraces a role for stakeholders in decision-making.

The toolkit itself consists of over sixty qualitative research questions organized by the three pillars, and cross referenced to address the four principles of governance, supplemented by a baseline survey of the sector. Adjustment figure provides a schematic that illustrates this structure.

Each indicator prompts the researcher to explore a set of characteristics of a decision making process, which are then reported against a multiple choice format, as well as with detailed justification, explanation and documentation. A completed assessment therefore provides both a snapshot of governance concerns and issues, and a detailed set of annotations and documentary resources which provide a more fine-grained basis for analysis.



## The Electricity Governance Initiative

This approach and methodology builds

on two prior pieces of work. First, the EGI approach builds on the experiences of The Access Initiative, a global coalition coordinated by the World Resources Institute, which seeks to promote sound environmental governance through assessments of information, participation and justice using a common methodology.<sup>2</sup> Second, the content and approach draw on the Prayas, Energy Group’s survey of transparency, accountability, participation and resources in regulatory agencies in India.<sup>3</sup>

The EGI approach focuses on the *process* or on “how” decisions are made, not on “what” decisions or *outcomes* are reached. The premise is that good decision-making processes are necessary to ensure good outcomes, although in many cases they may not be sufficient. However, in practice, there is an iterative relationship between process and outcomes; the EGI process indicators were designed by scrutinizing and diagnosing the causes of problematic outcomes. The indicators are also written to capture not only formal processes, but actual practice. Since the EGI is a multi-country effort, the indicators were written to be broadly generalisable, a challenging task given different political traditions and histories, even while preserving space for country-specific commentary. Since differences are captured in the qualitative treatment rather than the scores, the structure does not support explicit cross country quantitative analysis.

### *Organizational Structure of the Electricity Governance Initiative*

The EGI was conceptualized and developed collaboratively by the World Resources Institute (USA), the National Institute for Public Finance and Policy (India), and Prayas Energy Group (Pune, India). Between December 2003 and July 2004 we designed the toolkit, subjected it to rigorous external review, and revised the methodology to incorporate expert feedback. Subsequently, the work has passed to implementing coalitions in India, Indonesia, Thailand and the Philippines for national implementation and analysis. WRI, NIPFP and Prayas retain responsibility for an initial induction in the toolkit approach, review of the assessments, and cross-country analysis.

The EGI has benefited from the generous support of the C. S. Mott Foundation, the Foreign and Commonwealth Office of the United Kingdom through the Renewable Energy and Energy Efficiency Partnership, the Netherlands Ministry of Foreign Affairs, the United States Agency for International Development, and the Wallace Global Fund.

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<sup>2</sup> For further information see [www.theaccessinitiative.org](http://www.theaccessinitiative.org)

<sup>3</sup> For further details see [www.prayaspune.org/energy/36\\_Prayas\\_ERC\\_Survey.pdf](http://www.prayaspune.org/energy/36_Prayas_ERC_Survey.pdf)



# Electricity Sector Governance in India : An Analysis of Institutions and Practice

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# 1. INTRODUCTION

## *The Backdrop*

Good governance is the keystone of a vibrant democracy. It is a continuum that looks beyond periodic elections; it requires constant nurturing and fine-tuning by an informed, vigilant and active citizenry. A sectoral approach to good governance practices provides a detailed understanding of how larger governance problems shape decisions in specific circumstance.

This project examines governance in India's power sector. Governance issues are often cited as being at the root of the larger malaise in the power sector. Moreover, as a key input to industrial processes and household needs, electricity is critical to India's future development and growth trajectory. Both as a lens onto larger governance processes, and because it is important in its own right, electricity sector governance is an important topic. However, while governance is often invoked as a problem, there is little systematic effort to describe the nature of governance problems, let alone solutions. This project is one modest effort to provide a structured analysis of electricity governance, as a means of promoting an informed debate among the full range of stakeholders on the root causes of governance problems in the electricity sector.

## *Electricity Governance Toolkit*

This is the context in which the Electricity Governance project is located. It is an initiative that presents a framework to assess governance in the electricity sector in a broader context of equity and environmental sustainability. The framework consists of a toolkit that asks the right questions to elicit relevant information which would help assess whether

decision making processes in the power sector are transparent, allow for public participation, address concerns of public interest and allow scope for addressing grievances and deficiencies. In addition, the toolkit seeks to assess institutional and civil society capacity to adequately meet requirements of good process.

The implementation methodology involves finding answers to the research questions in the toolkit and generating indicators of performance based on the feedback.

The toolkit comprises three main sections. The first consists of 22 indicators that test the policy processes predominantly at the national level, the second contains a set of 23 indicators that test governance processes in regulation and finally a third section of 23 indicators test environmental and social aspects of power sector reform. Nearly half of these indicators are marked as "priority indicators", assessment of which is essential, whereas the remaining indicators are optional. But the India team decided to assess all the indicators so as to develop a complete picture of the governance challenges in the sector. Box 1 shows one indicator from the toolkit to give more clarity about the design of indicators in the toolkit.

Currently, the toolkit is being tested in four Asian countries, namely, India, Indonesia, Philippines and Thailand.

## *The Indian Project*

This project is a pilot study that tested the toolkit in India. The implementing team is sensitive to the fact that governance processes in the power sector cannot be far different from the processes prevailing

## Box 1 - Sample Indicator

### Section A – Policy Process

\* **PRIORITY INDICATOR** \*

#### *PP 2 - Legislative (Electricity) Committee*

#### **Governance Principle: Accountability and Redress Mechanism**

#### **Relevance of the indicator:**

In addition to having capacity, a successful legislative committee should be independent and function actively in its policy-making and oversight role, while providing scope for public input and participation.

Values	Select	Explanation and Justification
Not applicable/not assessed	<b>(0) N. A.</b>	
There is no mechanism of legislative oversight through committee process or the process has not a single element of effective process	<b>(i) Low</b>	
There exists legislative committee overseeing electricity but it meets only <b>one or two</b> elements of effective process	<b>(ii) Low -Medium</b>	
There exists legislative committee overseeing electricity but it meets only <b>three or four</b> elements of effective process	<b>(iii) Medium</b>	
There exists legislative committee overseeing electricity but it meets <b>five or six</b> elements of effective process	<b>(iv) Medium – High</b>	
There exists legislative committee overseeing electricity and it meets <b>all seven</b> elements of effective process	<b>(v) High</b>	

#### **Guidance for assessment teams:**

The seven key elements that make the legislative committee process effective:

- Committee members are required to disclose their past links and commercial interests in the electricity sector industry before joining the committee
- The committee prepares reasoned reports and regular proceedings. Reasoned reports are those that explain the logic and thinking behind the committee’s pronouncements
- The committee is active; meets regularly; is proactive in considering issues relevant to electricity, and produces reports on a timely basis. Examine the number of meetings held by the committee, the purposes of those meetings and assess whether significant issues and events in the electricity sector during a given period are proactively taken up
- Committee undertakes periodic public consultations (after issuing public notice) and its proceedings are open to the public
- Documents brought before the committee are made public
- Reports and recommendations of the committee are public documents
- The executive branch (electricity department / ministry) is required to present an “action taken report” or similar response to the committee’s recommendations in a time bound manner, and does so regularly

Obtain detailed documentation pertaining to the functioning of the legislative committees. Key documents include records and proceedings of meetings, submissions to the committee and reports produced by the committee.

#### **Researcher Name and Organization:**

#### *Sources of Information:*

#### **Additional Information:**

#### **Comments on this Indicator:**

elsewhere in the country and that it will necessarily have to be located in the larger politico-economic context of the country. This toolkit attempts to examine the existing governance paradigm and diagnose the areas of weakness using the power sector as the detailed case. In doing so, the focus of the inquiry is on decision-making processes, not the final outcomes of those decisions, based on the assumption that better decision-making processes are necessary, even if not sufficient, for better outcomes.

The Indian project had to deal with certain challenges posed by the federal structure of the country's polity. The study therefore, spanned the two tiers of governance – at the federal level for policy processes and at the state level for regulatory processes. Environmental and social aspects of power reform had to be examined at both central and state levels. Thus, while the policy and environmental sections were tested at the national level, regulatory processes were tested in three states – Andhra Pradesh, Tamil Nadu and Haryana. The choice of the states was determined by the availability of civil society organizations with competent research capacity to undertake the study. The implementing team is aware that the sample is perhaps too small to capture the variations that may occur across states in a country where two dozen states have independent regulators, but financial as well as human resource constraints limited the scope of the study. The findings on regulatory processes, therefore, should be considered to be indicative rather than representative. In addition, while policy-making occurs at both federal and state levels, here we only examine federal policy-making. The report should be read with these limits in mind.

### *The Study Approach*

The study was conducted simultaneously at the central level and in three states over a period of nine months beginning January 2005. The research team comprised individuals with a wide range of backgrounds: technical, economic, legal and political, drawn from three states and Delhi:

- | Centre for Environmental Concerns, Hyderabad represented by Dr. Thimma Reddy conducted the assessment for Andhra Pradesh.
- | Consumer and Civic Action Group, Chennai, represented by Bharat Jairaj, Sriharini Naryanan and Kirtana Chandrasekhar conducted the assessment for Tamil Nadu as well the national level environmental and social indicators.
- | Praja, Delhi was represented by Prof. K. Surinder Kumar and Rajesh Kumar who conducted the assessment for Haryana.
- | The project was co-ordinated by Sudha Mahalingam at Centre for Policy Research, New Delhi.

An inaugural workshop was held in February 2005 to discuss the scope and methodology of the study. An eminent advisory panel comprising sector experts, existing and former government officials, as well as former regulators attended the workshop and gave valuable inputs which have been employed in the implementation of the project. These Advisory Panel members are listed and thanked in the acknowledgements section.

The research was conducted over a six month period. The methodology adopted included extensive interviews with a spectrum of stakeholders as well as scrutiny of relevant documents to examine whether the key attributes contained in the toolkit were satisfied or not. Where appropriate, a case study approach was also adopted. Values were assigned to each indicator based on careful scrutiny of all relevant information. The documentation provided in the toolkit is extensive and includes, apart from the values assigned and the justification thereof, the names of all the stakeholders interviewed as well as the supporting documents scrutinized.

A second mid-course workshop with the team partners in June 2005 reviewed the methodology, discussed the challenges and attempted harmonisation



of valuation parameters among the teams. Once the indicator worksheets were completed, a draft report was prepared and submitted to the advisory panel.

A third workshop held in August 2005 provided an opportunity for team members to discuss the complete draft assessment and obtain, once again, feedback from the advisory panel on the completed assessment, which informed the final report. While this exercise benefited considerably from engagement with the Advisory Panel, the final report represents the views of the authors alone, and the Panel, which itself encompassed a broad range of divergent perspectives, holds no responsibility for the outcome.

This report is organized in three parts, one each for policy process, regulatory process and environmental and social aspects respectively. Each part presents a brief summary of the main findings under four governance parameters, namely, capacity, transparency, accountability and participation. The summary is interspersed with visual representation of the findings in graphic format. The full set of completed indicators is available at <http://electricitygovernance.wri.org>. **Annex 1** contains a table that summarizes the indicators, key elements of the variables examined, and the summary score. Examples of full, and completed indicators are at **Annex 2**.

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## 2. OVERVIEW OF THE INDIAN POWER SECTOR

The architects of the Indian Constitution envisaged electric supply as a joint responsibility of both the Centre and the States and included it in the Concurrent List where both the federal and the state legislatures enjoyed the power to legislate for the sector. However, over the years, the sector evolved within the framework laid down by two federal laws, the Indian Electricity Act of 1910 and Electric Supply Act of 1948. Vertically-integrated state-owned monopoly utilities – one for each state – known as State Electricity Boards – produced, transmitted and supplied electricity to the consumers within their jurisdiction, although a few private licensees distributing power in cities like Mumbai, Calcutta, Ahmedabad and Surat prior to 1948, were allowed to continue. The federal government's role was one of policy-making, planning and co-ordination, exercised through the Ministry of Power, as well as through central agencies like the Planning Commission and Central Electricity Authority. Table 1 gives the statistical overview of Indian power sector.

India's power sector was one of the earliest candidates for structural reforms introduced in the early 1990s. The choice was prompted by the poor state of utility finances under government ownership and management. Consequently, State utilities were unable to make new investments in generation, leading to a widening demand-supply gap. Therefore, the first reform phase liberalized power generation, permitting and facilitating private and foreign investments in generation, hitherto the preserve of state-owned utilities. This was followed by more drastic structural and governance reforms in the second half of the nineties. The second reform phase envisaged the establishment of independent regulatory commissions which would, inter alia, license utilities and set tariffs through a participatory process. In many states, the SEB was unbundled into its functional constituents, namely, generation, transmission and distribution and

the unbundled entities were corporatised. In two states – Orissa and Delhi – distribution companies were also privatized.

The second reform phase can be said to have ushered in relatively greater transparency in the functioning of India's power sector. At the core of institutional reforms was the independent regulatory commission designed to provide participatory space for stakeholders in decision-making processes. Procedural reforms targeted greater transparency, access to information, structured avenues for participation and mechanisms for grievance redressal etc. All regulatory commissions routinely hold public hearings where stakeholders – utilities as well consumers – are provided a forum to voice their concerns and viewpoints so that decision-making is more accountable.

The third phase of reforms was introduced in 2003 with the passage of the Electricity Act 2003 which consolidates the laws relating to generation, transmission, distribution, trading, regulation and use of electricity and repeals the earlier laws in this regard. At the core of the new law is 'open access' to transmission and distribution networks, which seeks to introduce limited markets in electric supply. The role and remit of the regulators – who are now required to facilitate competition even as they ensure affordable electricity tariffs – as well as of the federal government - which is now required to make policies to operationalise the mandate of the new law - are now much wider. With the introduction of markets in electric supply, rational pricing policies seem appropriate and desirable. Yet, both policy-makers and regulators need to internalize concerns of equity and affordability – acutely relevant considerations in country like India where a substantial part of the population remains too poor to afford market rates for power supply. In a post-Kyoto energy

dispensation, policy makers as well as regulators need also follow an environmentally sustainable development paradigm. Thus the new governance paradigm introduced by Electricity Act 2003 places enormous responsibilities on policy-makers and regulators.

The time is just ripe, therefore, to see whether

commensurate with this increased responsibility, institutions and procedures in place to ensure democratic decision-making processes that address the common good. With structural reforms under way for the last ten years (with some states undertaking reforms as recently as four years back) it is time to prepare a scorecard of their performance with a view to course correction, where considered necessary.

**Table 1: Statistical Overview of India's Power Sector**

**A. Installed Capacity and Electricity Generation - Ownership break-up**

	Installed Capacity		Annual Generation	
	MW	%	Million kWh	%
State Sector	65941	56	240300	41
Central Sector	38790	33	296401	50
Private Sector	13688	12	50665	9
Total	118419		587366	
Captive (connected to grid)	14636			

**B. Installed Capacity and Electricity Generation –Fuel break-up**

Fuel	Installed Capacity		Annual Generation	
	MW	%	Million kWh	%
Coal	67791	57.2	486301	82.8
Hydel	30935	26.1	84497	14.4
Nuclear	2770	2.3	16838	2.9
Gas	13112	11.1		0.0
Others	3811	3.2		0.0
Total	118419		587636	

**C. Electricity Consumption Pattern (Million kWh, MU)**

	Domestic	Commercial	Industrial	Railways	Agricultural	Other	Total
1950	525	309	2604	308	162	249	4157
1961	1492	848	9584	454	833	630	13841
1974	4645	2988	32481	1531	6310	2292	50247
1980	8402	4657	45956	2301	13452	3316	78084
1990	29577	9548	80694	4070	44056	7474	175419
2002	79694	24139	107296	8106	81673	21551	322459
2004	89736	28201	124573	9210	87089	22128	360937

<b>D.</b>	Per Capita Consumption (kWh)	625
	Un-electrified –Rural Households	56%
	Projected capacity addition by 2012 (MW)	1,00,000

Source: CEA, Monthly Report – March 2005

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### 3. THE POLICY PROCESS

The design of electricity reforms is normally the prerogative of the legislature which lays down the legal framework for the sector, and of the executive - both at central and the state levels - which then fleshes out policy within this framework. In practice, electricity policy is designed through interplay between executive and regulator with formal and informal input from stakeholders. Therefore, this section examines the governance mechanism in the policy sphere with a focus on the two institutions — the legislature and the executive – but with some attention to other actors such as donors, consultants and civil society. While emphasis has been substantially on central level policy-making, there are a couple of indicators that also look at state-level policy processes.

The toolkit addressing policy process has 22 indicators which cover all the four governance principles, namely, capacity (4), access to information or transparency (9), participation (3) and accountability and redress (6). The 22 indicators span 113 discrete key attributes addressing specific aspects of each governance mechanism. For instance, PP 5 which evaluates the role of advisory agencies assisting the Ministry of Power in policy formulation, examines six key attributes - the terms of reference which outline the role and mandate of the committees, the range of stakeholders represented in their composition, their access to adequate financial resources to perform the tasks assigned to them, the number and frequency of their meetings, whether such meetings were held after public notification, whether there is public disclosure of the minutes of such meetings, whether the executive publicises its response to the recommendations made by the committees etc. Please refer to **Annex 1** to see a summary table of indicators as well as attributes and information about which attributes are met, and the overall score for each indicator.

Values have been assigned to various indicators after a rigorous analysis of information collected through interviews with a range of stakeholders (parliamentarians, standing committee members, officials of Ministry of Power, Planning Commission, Central Electricity Authority, State governments, donor agencies, consultants, civil society organisations, etc) as well as examination of relevant documents. The analysis as well as the supporting data has been documented in detail under each indicator in the toolkit. For select indicators, a case study approach has been used to arrive at values. Criteria for case selection included significance of the case for national policy debate, whether it is of recent origin and therefore indicative of future trends, and the availability of information. As is always the problem with case studies, it is difficult to ensure that a case is adequately representative. For the policy analysis, the National Electricity Policy has been used as the case study to assess the extent of public participation in policy-making, and the N. K. Singh Committee that drafted the National Electricity Policy is the case study used to evaluate the functioning of advisory committees to the Ministry of Power.

In the following sections we present the salient findings of this inquiry under each governance principle.

#### *Transparency*

Transparency is a pillar of good governance. Transparent decision-making processes can lead to better acceptance of policies by the general public. This indicator brings under the scanner, a range of institutions - ministry of power,(5 indicators) consultants advising on reform policy (1), donor agencies funding and directing reforms (1) and even the role of the media in portraying policies that impact the public (1). It also examines processes adopted in policy-making. Out of the 9 indicators assessed for

transparency, four record a “Low” value, indicating complete opacity while two more indicators score only marginally higher at “low-medium”.

Formulation of the National Electricity Policy, a recent policy initiative of considerable importance was used as a case study to evaluate the degree of transparency in institutions and processes. The draft policy was posted on the website and public comments were solicited. The final policy was notified nearly one year after posting on the website. Though the process for decision-making was clear and transparent to *participating stakeholders*, the latter did not include consumers who are impacted by the policy. There was no systematic effort to reach out to disadvantaged communities to explain the implications of the new policy. Thus, the process of policy-making envisages limited scope for meaningful public contribution in a formal, mandatory manner and it is largely left to the discretion of the concerned decision makers. Even where public participation is possible, it is hampered by lack of access to relevant data, documents, and analysis on which draft policies are based.

While consultants play an increasingly important role in policy-making, their role and reach have remained entirely non-transparent. For example, the research

for these indicators revealed that MoP had appointed a consultant while developing guidelines for competitive bidding, but even the fact that MoP had appointed such consultants was not made public. Similar was the situation in the case of N.K. Singh committee for preparing draft national policies. In the circumstances, it’s not surprising that the other attributes of this indicator, (e.g. making public inputs, analysis and reports provided by consultants) are not even in the reckoning. As a result this indicator was assigned the value “Low”.

As in many other countries, donor agencies play an important role in influencing the course and content of reforms. Yet there is little attempt, on the part of the government, to bring transparency to their role and contribution. For their part, donor agencies have, in recent years, made public key documents but donor influence over reform decisions remains unclear. Other non-donor influenced decisions also remain non-transparent. For example, vital policy decisions - such as the amendment to the then existing law to allow private investments in power generation, or the methodology used for privatisation of state-owned power utilities – were adopted without extensive legislative debate or informed public consultation.

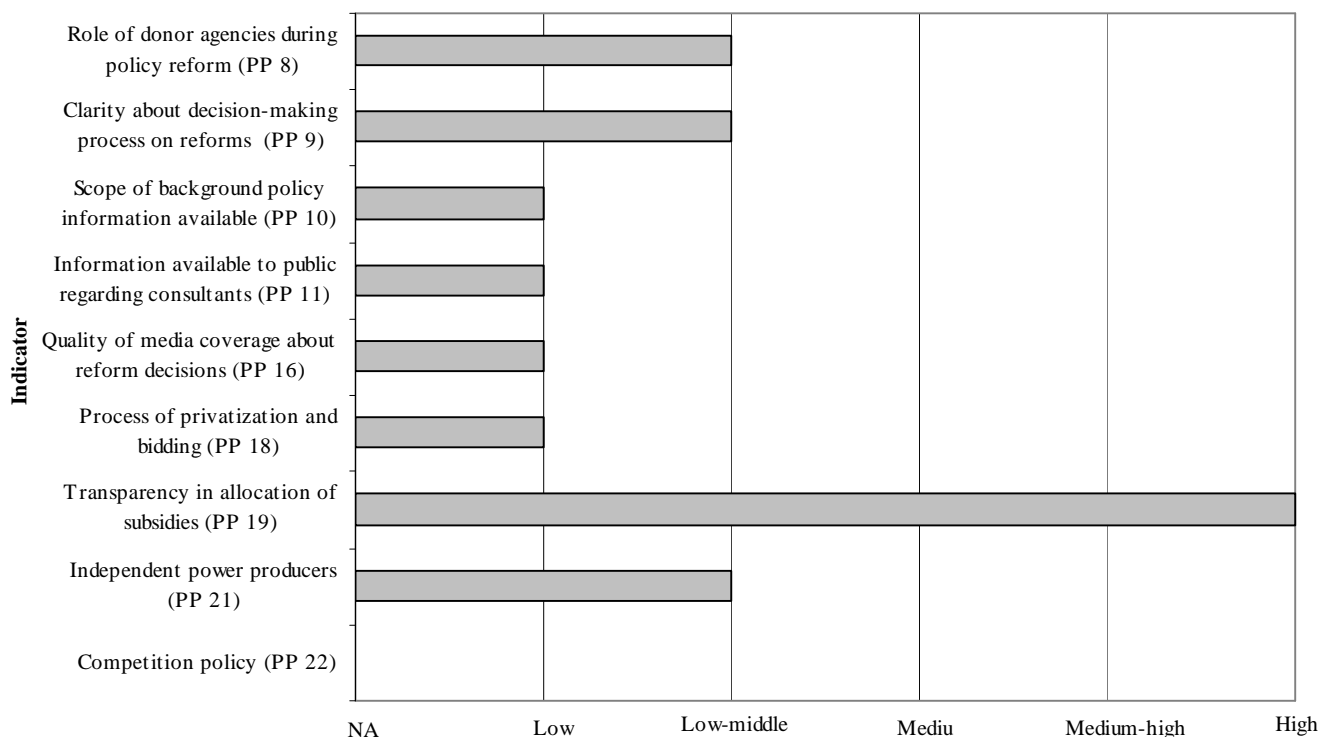


Figure 1: Transparency in Policy Process

Media coverage of key policy issues – which could have improved the level of transparency - was sketchy and uncritical. The only transparency indicator that has scored the highest in our assessment is the subsidy mechanism of Government of India - the Accelerated Power Development and Reforms Program (APDRP) subsidies given by GoI to accelerate distribution reforms. However, this experience may not be representative as the APDRP scheme is unique as subsidies go to state governments rather than to end-consumers. The latter are more likely to be marked by populist pressures and corruption.

**Figure 1** gives a diagrammatic representation of the values assigned to each of the transparency indicators in the policy process section.

### *Participation*

Participatory governance is the touchstone of good governance. Therefore, this section looks at avenues for participatory decision-making. In particular, it examines the extent to which advisory committees of Ministry of Power envisage consultative processes, not only with state governments and utilities, but also with consumers who will be impacted by these policies. Of the three indicators assessed for this section, one relates to institutional issues, for which the Task Force headed by N.K. Singh to draft National Electricity Policy was used as a case study, while two relate to processes, for which the National Electricity Policy was the case study.

As an example of an Advisory Committee, the NK Singh committee had a clear role and mandate in the terms of reference provided to it. Comprised of a range of stakeholders, the committee had access to adequate financial and human resources. Our study found that the advisory committee had engaged the services of a consultant to provide inputs, but this fact was not disclosed to the public, nor were consultant inputs made public. Transcripts of advisory committee meetings were not maintained. Minutes of the meeting were not made available to the general public although the draft policy was put on the websites of the Ministry as well as the Planning Commission, soliciting comments and feedback from the public. However, the fact that public inputs were being solicited on the draft policy was neither notified nor publicised. No

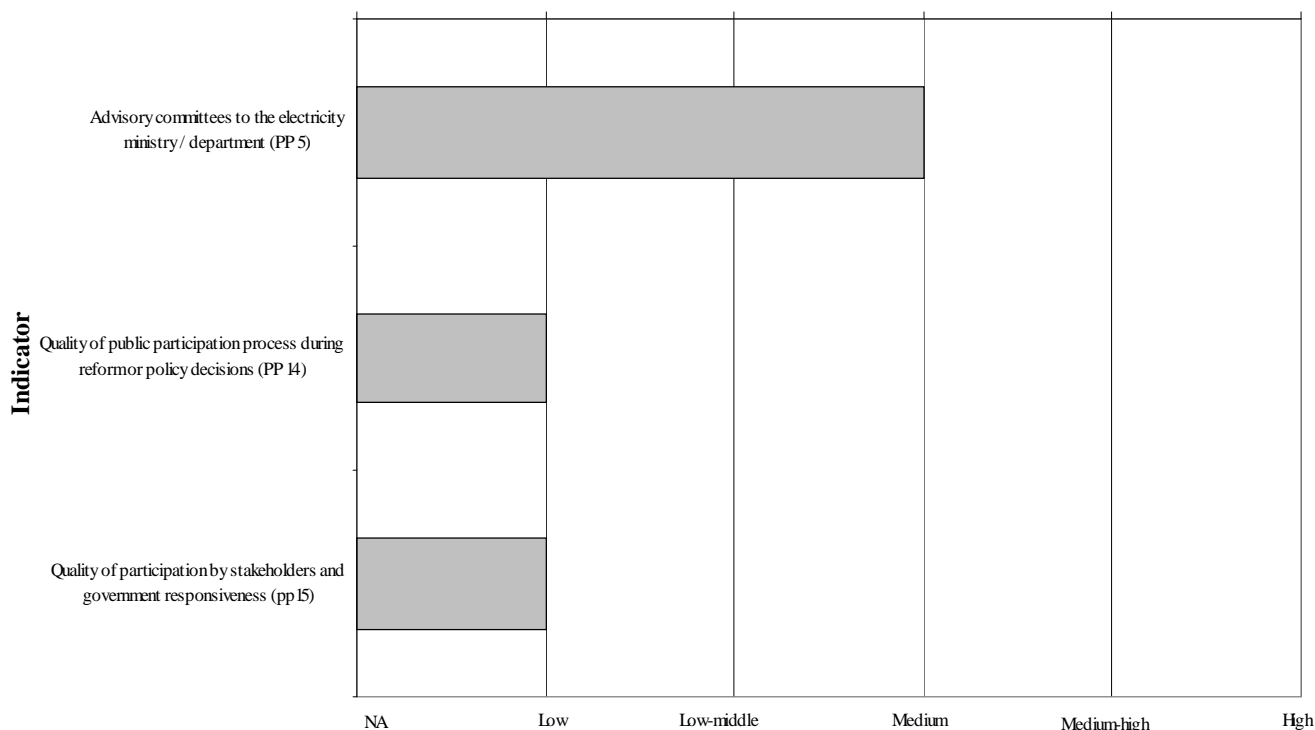
effort was made to reach out to disadvantaged communities to explain to them the implications of the proposed policy. In short, participation envisaged was a one-way process with neither the committee nor the ministry considering it necessary to provide responses to any feedback received from the public.

An exploration of the process behind drafting the National Electricity Policy (NEP) illustrated that public participation is by no means accepted or practiced as a mandatory step in electricity policymaking. There was no well laid out procedure for participation, and other necessary steps such as availability of documents, communication of decisions, opportunities for hearings, feedback on results and so on were all lacking. This is not to say there was no consultation; some stakeholders did indeed file comments. But the consultation was ad hoc, not open to all, and there was lack of clarity on how the results of consultation were used. All these indicate a highly inadequate process of public participation. There are indications that other policy processes, notably around rural electrification, were organised around a more complete public participation process, but the experience of the NEP suggests that much more work needs to be done on public participation in electricity policy making.

**Figure 2** gives a diagrammatic representation of the values assigned to each of the participation indicators in this section.

### *Accountability*

Accountability of legislators, executive, regulators and utilities to consumers is an integral part of good governance. There are several ways of ensuring accountability, such as by putting in place mechanisms to ensure that the voices of those who will be impacted by policies are heard and listened to, ensuring that those who make policies do not harbour conflict of interest which might skew policies, requiring a reporting back on the results of consultation and other deliberation processes, vigorous outreach to stakeholders, and independent verification. These are examples of the considerations applied to the indicators in this section. Of the five indicators assessed, two assess legislative accountability while three address executive accountability.



**Figure 2: Participation in Policy Process**

The existence of legislative committee (parliamentary standing committee) does provide a mechanism of legislative oversight through committee process and its functioning is procedurally satisfactory. But there are some structural weaknesses. The provisions to prevent conflict of interest on the part of committee members are both weak and weakly enforced. Besides, committee proceedings are held behind closed doors and the only experts that the committee generally consults are those suggested by the Ministry of Power. Perhaps legislative committees do not have access to diverse perspectives and they rarely get to hear the views of public interest groups on proposed policy changes. Thus, accountability of legislators to consumers ranks rather low although on other parameters like periodic meetings and deliberations, the functioning of the standing committee was found to be satisfactory. However, the debate on the floor of the House – as distinct from committee deliberations - on key reform legislation such as Electricity Bill 2001 (which later became Electricity Act 2003) was sketchy and largely uninformed.

Executive accountability was found to be rather low in two out of the three parameters on which it was assessed. Consultant recommendations which formed key inputs into policy were not subject to independent

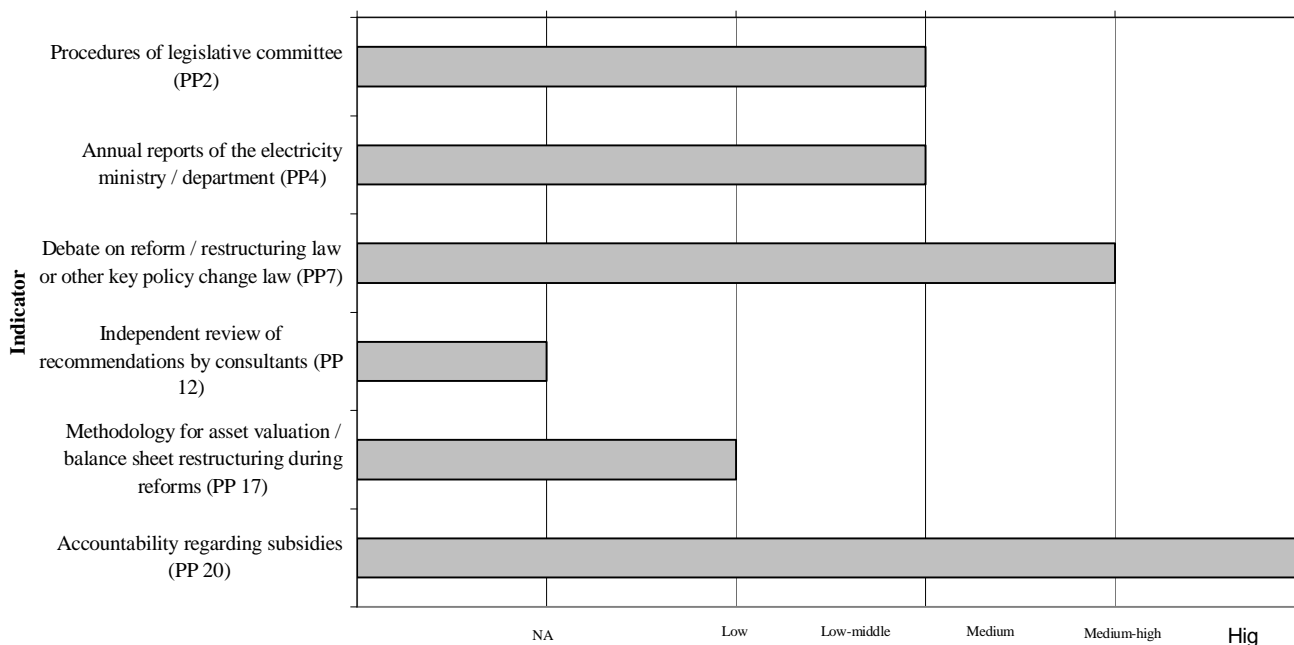
review. The executive’s low accountability was also manifest in the example case of privatisation of state-owned utilities. Specifically, the methodology for asset valuation/balance-sheet restructuring, a key element in the privatisation process, was not disclosed to the general public nor debated, although these were public assets which were being privatised. The only indicator on which MoP was assessed to be sufficiently accountable was in the administration of subsidies targeting distribution reforms.

**Figure 3** gives a visual depiction of the values assigned to each of the indicators in this section.

### Capacity

Capacity is assessed across the spectrum of stakeholders. One indicator each has been devoted to assess the capacity of legislators to oversee drafting of reform laws, and of the Ministry of Power to formulate policies independently; capacity of policy planning agencies like Central Electricity Authority to effectively assist Ministry of Power in decision-making, and of civil society to effectively participate in policy-making was also assessed.

Legislative capacity as manifest in Parliamentary Standing Committee on Energy ranks medium in our



**Figure 3: Accountability in Policy Process**

assessment. Members are not necessarily nominated to committees on account of their expertise on the subject; in fact, there is no attempt to even develop such expertise through structured training programs. Besides, standing committees do not even have access to trained or expert staff to assist them in their tasks. As for financial resources available to legislative committees, these are neither predictable nor under the committees' own control, although so far, resources have never been a constraint for the successful functioning of the committees. Finally, while committees do have the authority to consult experts, usually consultation occurs through a structured consultative mechanism with the line ministry. Therefore, it can be argued that parliamentary committees' access to expertise and knowledge is circumscribed by their ability to independently identify experts.

While assessing the independence of the Ministry of Power, this study found that the recruitment and staffing rules and procedures allow enough flexibility to the minister to appoint (or remove) candidates of his choice to the ministry, including the top job in the bureaucracy. Our research also found that provisions for preventing conflict of interest on the part of MoP officials are not satisfactory.

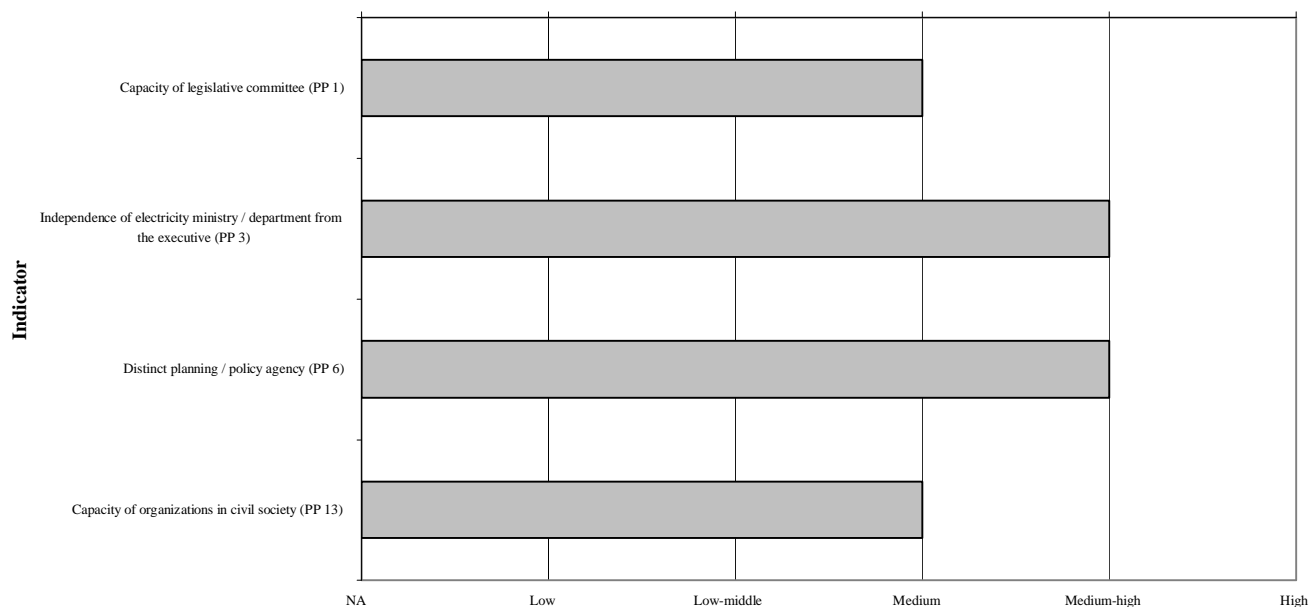
Technical capacity in the form of a statutory expert agency is available through the office of the Central

Electricity Authority, but this organisation is not accorded the importance it deserves. The statute envisages CEA to be a subsidiary of the Ministry of Power, entrusted with a consultative role. CEA has the authority to seek information from stakeholders and make recommendations to Ministry of Power on key policy issues, but these are not binding on the latter. Besides, MoP is not even under obligation to explain reasons for not accepting CEA's recommendations. The interaction between CEA and MoP, though structured, occurs behind closed doors.

A scrutiny of civil society organisations active in the policy arena reveals that there are only two CSOs with demonstrated capacity to engage in power policy debate based on informed positions and sound analysis. This is grossly inadequate, considering the size of the country and the range and complexity of the issues facing the sector. Despite the acute asymmetry between consumers and the other stakeholders, this crucial capacity constraint had not even been acknowledged in the reform discourse till recently. Only the recently notified National Electricity Policy mentions that governments and regulatory commissions need to take efforts to build capacity of consumer groups.

**Figure 4** gives a snapshot of the values assigned to each indicator under this section.





**Figure 4: Capacity in Policy Process**

Thus, the score-card on governance in policy process indicates several lacunae in terms of all four governance principles. Despite the medium score awarded to capacity, all stakeholders can do with capacity strengthening: policy planning agencies that plan, advise and monitor the functioning of the sector need to be taken more seriously, civil society capacity to effectively contribute to policy processes needs to be strengthened. Even legislators can do with training. As for transparency, policy processes ought to be

more transparent, especially when decisions are made on key issues such as privatisation of state owned utilities, or on IPP policy. While consultants are used widely to advise on policy, their role remains secretive and this needs to be made more transparent. In fact, policy-making is largely done behind closed doors pre-empting public participation which in turn, contributes to poor accountability. The advisory committee system is a poor substitute for participatory policy-making.

### Key Recommendations – Policy Process

The policy process section of the electricity governance toolkit consists of 22 indicators with over 100 discrete key attributes. These indicators and attributes identify specific measures that need to be adopted to improve the governance in the sector. This Box highlights some of the key, macro recommendations emerging from this analysis.

1. Reform policy making processes at the national level to introduce mandatory provisions to ensure:
  - a) Clarity in jurisdictions of institutions
  - b) Clarity in procedures and timelines to be adopted,
  - c) Public access to background analysis and expert inputs that formed the basis of draft policy
  - d) Proactive dissemination of draft policies to solicit inputs from wider cross-section of the society, especially weaker sections
  - e) Public access to comments and suggestions received from all stakeholders
2. Ensure transparency in the selection of regulatory commission members, through measures such as tabling the report of the selection committee before the legislature.
3. Ensure greater transparency in the role played by consultants and donor agencies, through measures such as compulsory disclosure of consultant/donor terms of reference, selection criteria, and dissemination of reports submitted by consultants.

## 4. THE REGULATORY PROCESS

Regulatory Commissions are a key element of the power sector reform paradigm. Structural reforms in the sector have focused on unbundling integrated electric utilities and establishing regulatory commissions both at the centre and at the state level. Key functions hitherto performed by the state have now been delegated to this new governance institution. Hence, our study devotes a separate section to assess regulatory processes. The toolkit examines 23 indicators relating to the regulatory process. Similar to the policy process, these indicators cover four good governance principles viz. Capacity (7), Information (7), Participation (3) and Accountability and redress (6). Spread across these 23 indicators are nearly 80 discrete attributes, each examining a specific aspect of a particular governance mechanism. For example, indicator RP 4, relating to selection process of regulatory body members, covers 5 attributes ranging from ‘well-defined procedures’ to ‘existence of differing tenures’. Please refer to **Annex 1** to see a summary of the indicators as well as attributes and information about which attributes are met, and overall score for each indicator.

India has state level regulatory commissions, having jurisdiction over intra-state matters, in nearly two dozen states in addition to a Central Regulatory Commission, with jurisdiction over inter-state issues. Since retail electric supply is essentially a state responsibility, the India country study has applied the indicator toolkit to analyse regulatory process in three states, viz. Andhra Pradesh, Haryana and Tamil Nadu. We are aware that the diversity and differences in regulatory process in large number of states may not be captured by this small sample, but owing to resource and other constraints, we have had to limit our sample to three. However, we have chosen states in which regulatory commissions have been functioning for a while and see the results as indicative, rather than representative, of electricity regulatory processes

in the country as a whole.

Similar to the other sections of the toolkit, values are assigned to different indicators in Regulatory Process section on the basis of interviews with diverse stakeholders (regulatory commission members and staff, academics, civil society organisations etc.) and are supported by sound analysis and detailed documentation of research results. In the following sub-section, we present the salient results of this inquiry grouped under the four good governance principles.

### *Transparency*

There are seven indicators on access to information that address the entire spectrum ranging from selection of regulators to use of consultants by regulatory commissions. This section also looks at procedural certainty about regulatory process and decisions including their dissemination, availability of relevant documents to the public for meaningful participation in regulatory processes and periodic performance reports by utilities.

The study found that the processes for selection of regulators are neither transparent nor independent and the eligibility criteria for regulators are vague enough to allow less than optimal choices. This inference is borne out by the findings of Toolkit Indicator RP-4. But it is interesting to find some variation between states. For instance, in Andhra Pradesh, the selection process seems to have a greater degree of transparency while in Tamil Nadu, it ranks the lowest of the three. The low score owes to the fact that the state government went to the extent of disbanding the selection committee, which nominated a candidate unacceptable to the former.

By contrast, regulatory procedures provide good scope for transparency. All three regulators studied

provide procedural certainty about processes. Legal procedures and operating provisions for disclosure of documents, periodic performance reports, dissemination of decisions, procedures for public access etc. score in the “low-middle” to “medium” category for the states studied, although there are some variations across states. For example, disclosure of documents in the possession of regulators as well as the procedure for allowing public access to these documents ranks medium in Andhra Pradesh and Haryana while Tamil Nadu scores lower on this attribute. In all the states reviewed, dissemination of regulatory orders is moderately satisfactory. Only Tamil Nadu found periodic performance reporting by its utilities moderately satisfactory.

While formal procedures for access to information are moderately satisfactory, if not perfect, a scrutiny of the details of these procedures also suggests that there is some distance to go to make these procedures practical and user-friendly. For example, regulators typically fail to have a well-indexed database of documents, a daunting obstacle given the volume of information, they do not have material in local

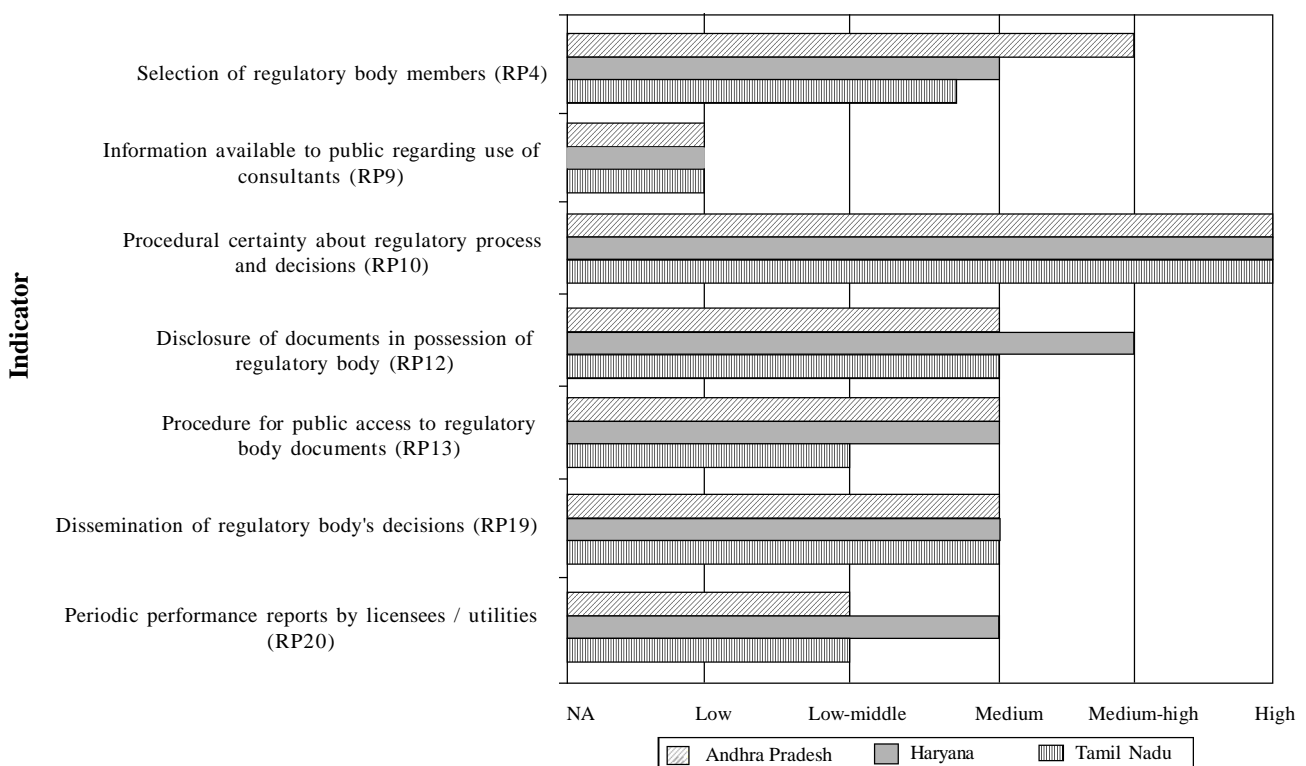
languages, and are insufficiently proactive in getting information to stakeholders.

Finally, an area where both procedures and practice are weak is the use of consultants. While all three commissions surveyed employed consultants to assist them in their work, they were uniformly opaque on the role played by the latter. Consultant reports are not made public. Since many regulators in India rely heavily on consultant input, this lacuna is an area of concern.

**Figure 5** gives a snapshot of the values assigned to the various transparency parameters under the regulatory process section.

### Participation

Three indicators examine avenues for participation in regulatory process. The first examines the regulatory space available for public participation in terms of public hearings and open proceedings both of which rank medium to high in all the three states surveyed. However, none of the three ERCs reviewed has made any effort to put in place an institutional mechanism to



**Figure 5: Transparency in regulatory Process**

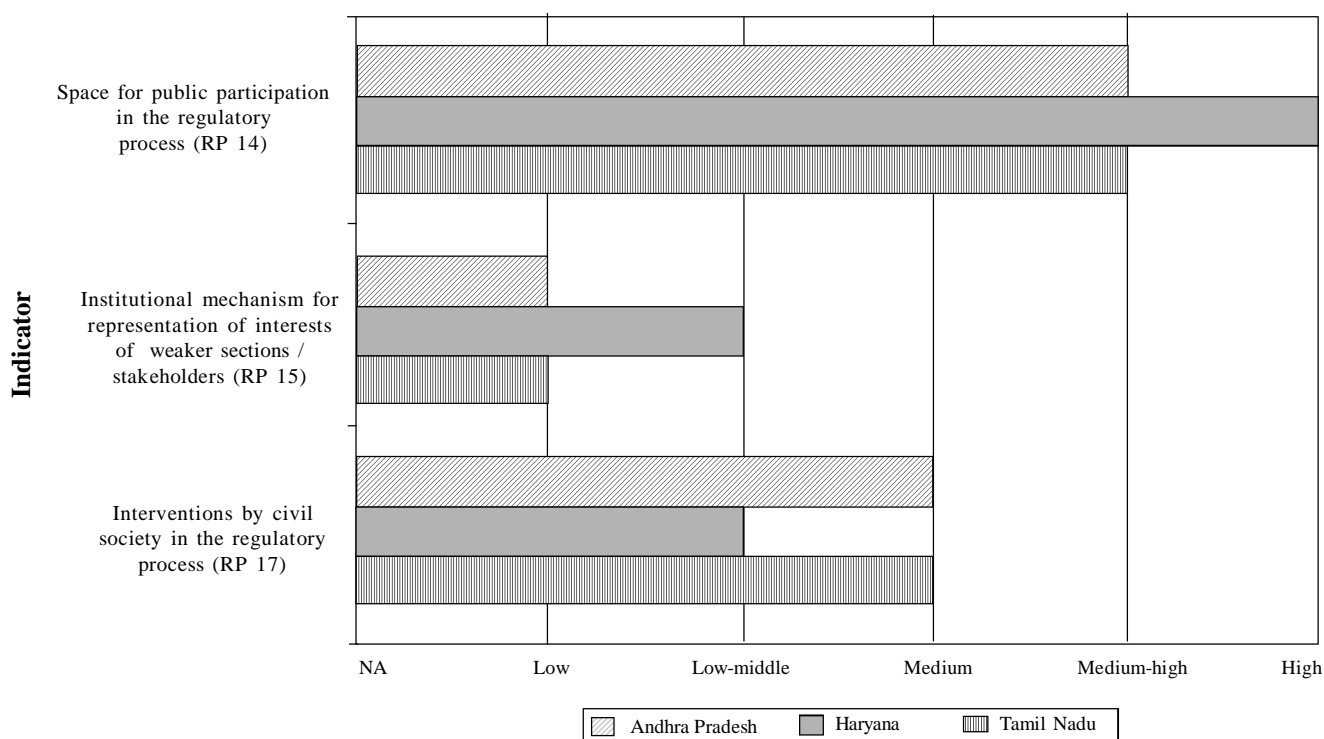
represent the interests of disadvantaged sections of consumers. Civil society interventions in regulatory space have been modest in all the three states surveyed, with Haryana faring lower than the other two. In Andhra, individuals making interventions have been restrained from doing so because they are also utility employees – citing service rules for government employees. But in a sector like electricity with its complexities, it is unrealistic to expect the common man to intervene meaningfully in the regulatory process with hardly any systematic efforts on part of governments, regulatory commissions and donor agencies to build capacity of consumer and citizen groups. ERCs have not been sensitive to this need for special skills and capacity. While Andhra and Haryana request the ERC staff to make submissions on behalf of the public, such submissions rarely address the interests of the weaker sections with sufficient strength. Thus participation in regulatory process is frustrated by lack of capacity. ERCs have signally failed to build capacity of weaker sections of stakeholders.

**Figure 6** presents a visual overview of the extent of participation in regulatory process.

### Accountability

This section examines institutions, mechanisms and procedures in place for ensuring regulatory accountability. Of the six indicators assessed for this section, one deals with institutions and the rest with mechanisms and procedures. On the whole, the three ERCs under review seem to have fared reasonably well in terms of accountability parameters although there are some weaknesses arising mainly out of lack of proactive steps by ERCs to operationalise the transparency and public participation mandate.

Among institutions, the Appellate Authority that looks into appeals from regulatory orders has been established and has just begun functioning. Yet, it does not detract from the inherent powers of the courts to hear appeals. Thus institutional structures in place to ensure regulatory accountability are satisfactory. Provisions to prevent conflict of interests of regulators



**Figure 6: Participation in Regulatory Process**

are well-defined in all the three states surveyed. Legal provisions require regulators to give reasoned orders, although the Haryana team found that the regulatory commission was less responsive to public comments and inputs.

RP 21 examined regulatory certainty and predictability manifest in tariff philosophy papers put out by the Commissions. Tamil Nadu and Haryana commissions devoted moderate attention to some the key attributes of this indicator, namely, sound analysis of various impacts of tariff, and even enlisted public participation in drafting the philosophy paper. Andhra Pradesh, on the other hand, did draft a tariff philosophy paper and circulate it for comments, but never notified it.

Mechanism for ensuring Standards of Performance by utilities is in place in all the three states surveyed. All ERCs have well-defined and adequate powers to issue, revoke and amend licences. Similarly, the legal provisions that empower the regulator to scrutinise power purchase agreements are unequivocal although the Andhra Pradesh regulator has displayed coyness in the interpretation of these provisions.

**Figure 7** gives a visual depiction of our assessment

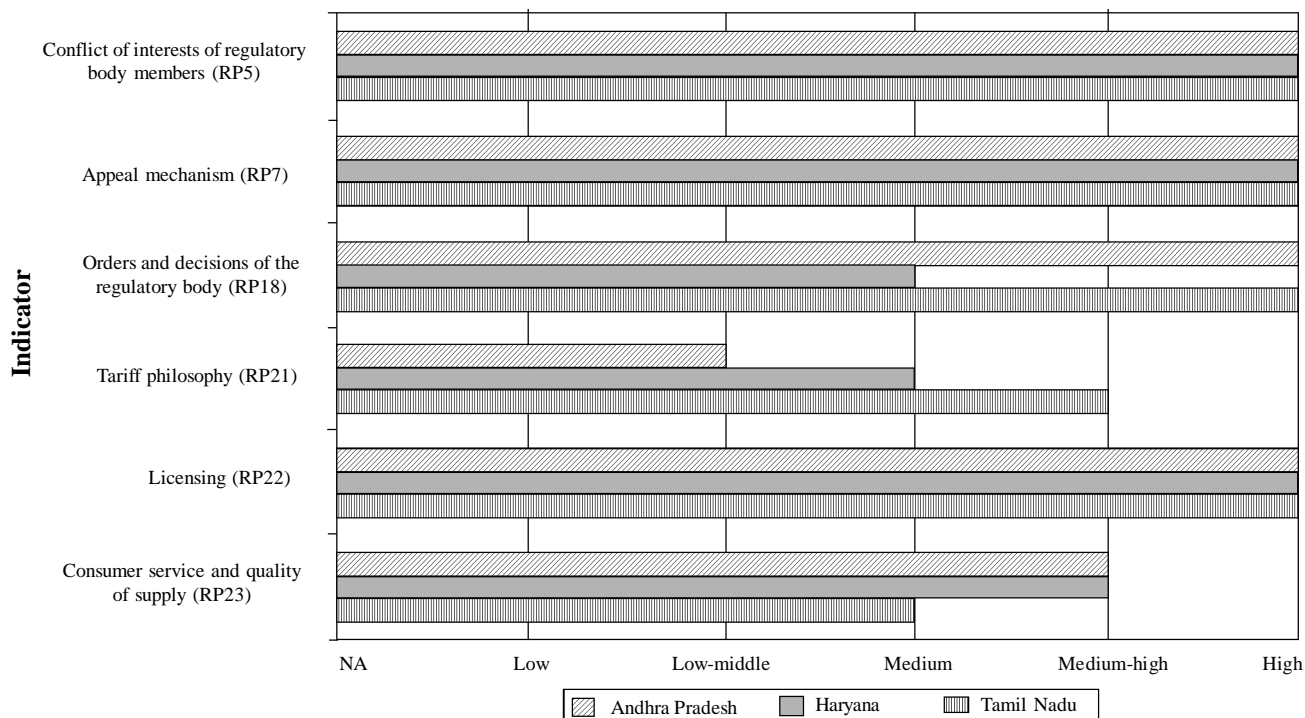
of accountability parameters in the regulatory process.

### Capacity

Out of seven (7) ‘capacity’ indicators in the toolkit, broadly speaking, four look at capacity of governing institutions, i.e. Regulatory Commissions, in terms of legal authority, autonomy and remit, which are crucial requirements for effective regulation. In other words, these indicators evaluate the structural and legal provisions governing the regulatory process, or the regulatory hardware, as it were. In addition, three (3) other indicators look at the software or non-structural aspects of capacity, such as training mechanisms to enhance techno-economic decision making capacity of the regulatory body members and staff as well as efforts undertaken by regulators to enhance capacity of weaker sections to effectively participate in the regulatory process.

**Figure 8** provides a snapshot of values assigned to different ‘capacity’ indicators for the three states.

As can be seen from **Figure 8**, in all three states, four indicators relating to the structural arrangements, show “high” degree of institutional capacity. The consistency



**Figure 7: Accountability in Regulatory Process**

in the values across states is due to Electricity Act 2003. The Act is applicable in all Indian states and provisions of this Act prevail over any state level Acts have differing provisions. Since nearly 20 attributes in these four indicators are reflected in the Electricity Act 2003, the “hardware” dimension of Regulatory Commissions is well satisfied and scores “Highest”. For example, some of the key attributes met are legal existence of independent regulatory commissions, provisions relating to autonomy (fixed and differing tenures of RC members, financial autonomy etc.) and significant legal authority in terms of seeking information and enforcing decisions/orders. Considering the different context of power sector issues and structure in different countries, the toolkit requires assessment teams to develop a list of ‘critical functions’ that must be entrusted to the regulatory body in the specific country context. India team identified six such critical functions, which must have been entrusted to the regulatory commissions, these are, 1. Regulation of power purchase from all sources, 2.

Determination of bulk supply tariff, retail supply tariff, transmission charges and wheeling charges, including cross subsidy surcharge. 3. Issue of transmission, distribution and trading licenses, 4. Ensuring fair competition and prevention of market power/monopoly 5. Setting service standards. 6. Advising state government on sector policies. Analysis of the Electricity Act 2003, shows that all these functions have been entrusted to the regulatory commission, leading to a “high” value for indicator RP 3 which looks at functions of the regulatory commission.

Though, the regulatory process gets “high” values for indicators relating to the structural capacity, the effectiveness of this seems to be compromised due to “low” to “medium” values for three other indicators. For example, training opportunities for regulators and their staff, were found to be limited and lopsided. Such training as is available is usually conducted by agencies which have a stake in the implementation of reforms and as such, possibly reflect singular perspectives.

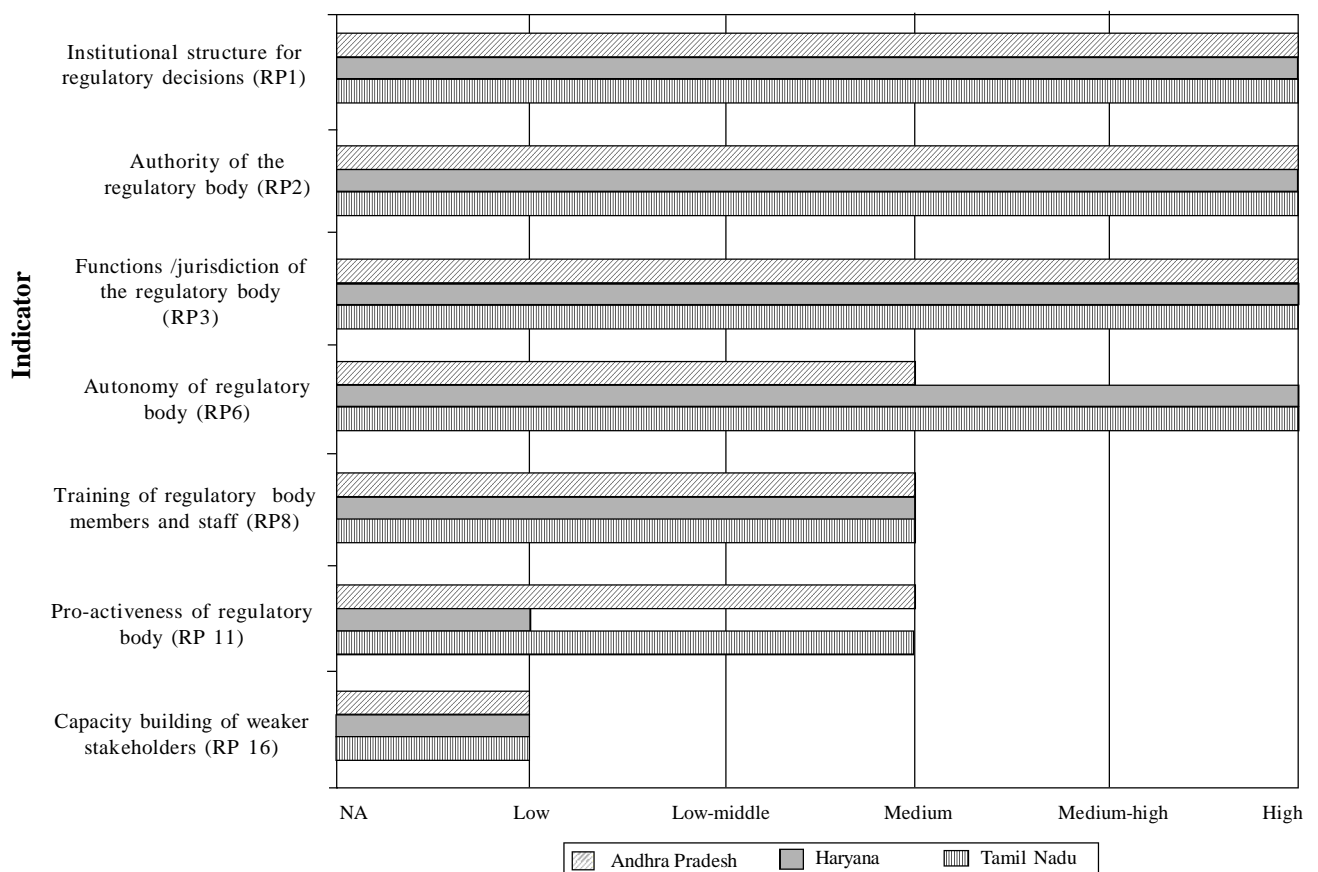


Figure 8: Capacity in Regulatory Process

Moreover, as our research for indicator RP 16, demonstrates, hardly any efforts are being made by either state government, or regulatory commissions or donor agencies in all three states to enhance capacity of civil society to effectively participate in the regulatory process. None of the commissions surveyed were found to be proactive enough in their functioning in terms of taking up suo motu petitions or imposing penalties for non-compliance with their orders. Haryana was found to be the least proactive of the three. And finally, none of the three commissions surveyed deemed it necessary to build the capacity of weaker sections of society to participate in the regulatory forum. In short, reforms have created fairly robust institutions, but have done little to equip human resources to take advantage of them.

To summarise, the hardware in terms of regulatory capacity- existence of statutory institutions with adequate authority, autonomy and remit - is satisfactory. However, there is need to strengthen the software in terms of more transparent selection processes for regulators and systematic, comprehensive and well-rounded training efforts to strengthen regulatory capacity. Regulators also need to function more proactively and go that extra mile to

ensure that the interests of the most disadvantaged among the regulated don't go unaddressed, although this is not expressly stipulated in the Act. After all, being pioneers in an uncharted area, regulators have the responsibility to correct the asymmetry in civil society knowledge and capacity. Regulatory transparency should extend to maintaining an indexed database of relevant documents and having procedures in place to provide public access to such documents. The role of consultants who advise regulators needs to be transparent.

Institutional mechanisms for ensuring regulatory accountability are in place and when assessed for accountability, the regulatory hardware appears to be robust enough. There are well-defined provisions to prevent conflict of interest. Accountability is also strengthened by legal provisions that require regulators to give reasoned orders. Regulatory certainty and predictability has been manifest in tariff philosophy papers put out by the Commissions. That the regulatory commissions are designed to be participatory has enhanced their accountability, but lack of civil society capacity impedes effective participation.

### **Key Recommendations–Regulatory Process**

The regulatory process section of the electricity governance toolkit consists of 23 indicators with nearly 80 discrete key attributes. These indicators and attributes identify specific measures that need to be adopted to improve the governance in the sector. This Box highlights some of the key, macro recommendations emerging from this analysis.

1. Develop training and capacity building mechanisms for regulatory commission members, staff, as well as government officials (e.g. those assisting legislative committees) and civil society organizations. Such efforts should aim at providing specialized training on technical, economic, and legal aspects, basic multi-disciplinarily capacity building. Such training and capacity building efforts should ensure that participants are exposed to diverse perspectives and social policy approaches.
2. Create mechanisms for provision of financial as well as analytical — technical, economic and legal — resources to civil society groups and weaker / marginal sections of society, to ensure effective public participation in the regulatory process.
3. Create mechanisms, in the working of the regulatory commissions, to operationalise various transparency, accountability and participation related provisions in the Act and regulations, through measures such as easy access to all relevant information and documents, provision of greater democratic space for civil society participation and easy access to redressal mechanisms



## 5. ENVIRONMENTAL AND SOCIAL ASPECTS

Power reforms in India, as elsewhere, need to balance the twin objectives of development and sustainability. Only half the households in the country have electric connections. Improving access to electricity at prices affordable to the majority of the poor is a paramount concern for the State. In a post-Kyoto world, development of power sector cannot be segregated from the pursuit of a clean energy paradigm. Thus environmental and social aspects of power development assume critical importance.

This section of the toolkit therefore, looks at 23 indicators that address environmental and social aspects of power reforms. In particular, it looks at laws, processes and institutions which internalize environmental and social considerations in power sector development. Like in the other sections, these are organized under four governance principles. Of the 23, 5 are capacity indicators, 4 address transparency, 5 indicators are devoted to accountability and 9 examine participation. Each indicator looks at several key attributes and together, the 23 indicators examine more than 130 attributes. For instance, ESA 8 looks at inclusion of environmental considerations in the national electricity plan. The attributes examined whether there is more than one mechanism employed to seek public inputs into draft of plan, evidence of systematic effort to seek inputs into plan from less-privileged or potentially affected populations, reasonable public comment period, whether the agency that developed plan the disclosed public comments provided etc.

The results obtained in this section have been arrived at after detailed interviews with several stakeholders such as regulatory commissions, civil society organizations, Ministry of Environment & Forests, Government of India, utility officials, academics, consultants etc. Once again, our analyses are backed by detailed data and documentation. In the following

sub-section, after a brief introduction outlining our assessment of the overall scenario in India's power sector, we present the results of our analysis of ESA indicators grouped under four governance principles.

### *Transparency*

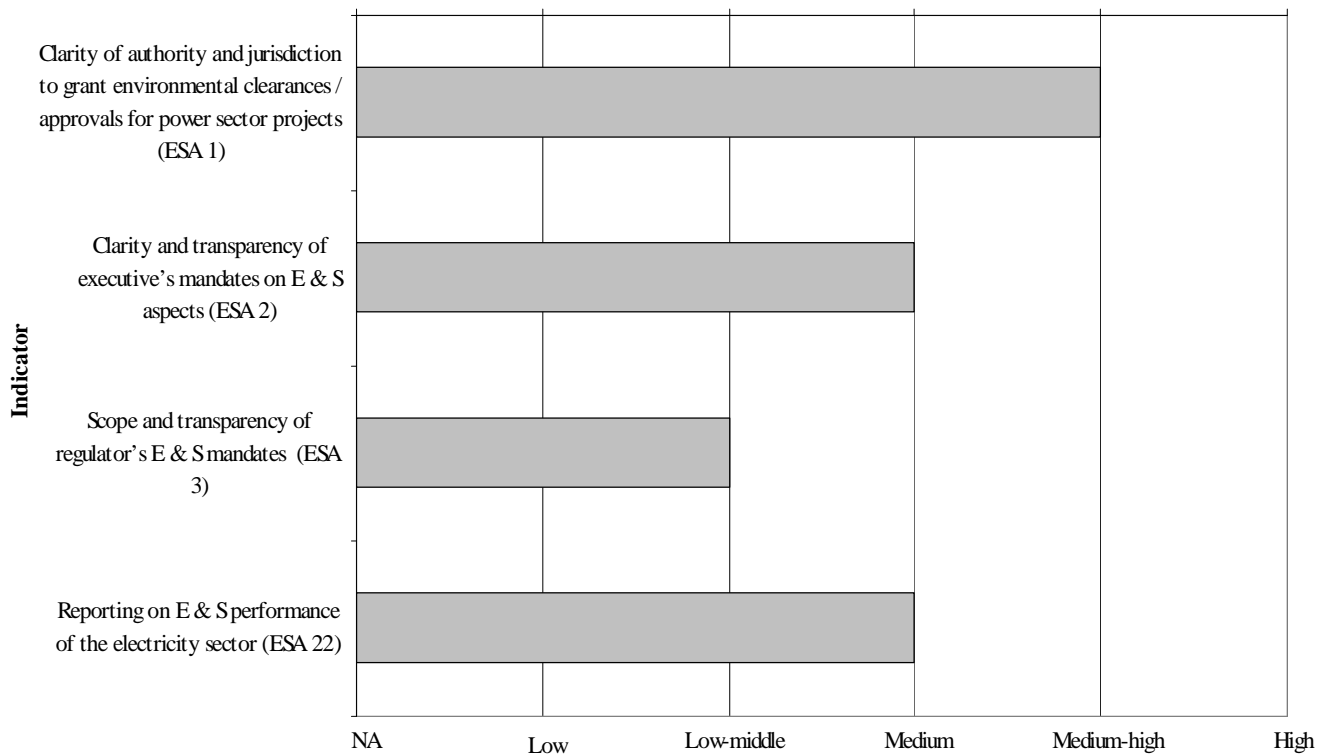
Foremost among attributes of good governance is the requirement of transparency. In a federal polity like India, there is need for coordination across departments / ministries, or between central and state governments, for granting approvals or exercising authority over environmental issues. There is also need for transparency about where authority lies and when it is exercised and the checks and balance between these institutions. Therefore our team looked at transparency in procedures, authority and accountability in addressing environmental clearances.

The EIA Notification grants clear authority to the MoEF and to the State Government (in some cases) to grant environmental clearance. The powers and functions are clearly delineated on the issue of studying possible environmental impacts of new power plants or expansion of old power plants.

However, the role of the primary executive agency entrusted with planning and developing the power sector – i.e., the Ministry of Power (MoP) – does not seem to have an express mandate for environmental and social aspects. There is no mention of EIA in the charter of MoP and even the policy documents put out by MoP such as Rural Electrification Policy or National Electricity Policy, do not mention EIA which is deemed to be the domain of the Ministry of Environment & Forests.

Similarly, the role of Regulatory Bodies in environmental aspects is given only a cursory reference in the Electricity Act 2003 and the National Electricity Policy. No social responsibilities are mentioned in





**Figure 9 : Transparency in Environmental and Social Aspects**

either of these documents barring the reference made to rural electrification. Therefore the mainstreaming of social issues in the electricity sector is largely limited to efforts at energy conservation and at rural electrification only.

On the issue of reporting on ESA, the Annual Reports of the TNEB (since the TNEB was used as the standard for this indicator) includes attention to issues relating to affordability of electricity services, employment trends in the sector, renewable energy and electricity theft / distribution losses. Similarly, documents available on the website of the Ministry of Power and the Energy department of Government of Tamil Nadu reveal some efforts to report on the sector's social and environmental performance. However, social reporting is limited to rural electrification and the environmental reporting is limited to use of renewable energy and DSM and is as such weak.

The four transparency indicators assessed yielded an average score of low to medium level of transparency which is depicted in the accompanying **Figure 9**.

### *Participation*

This section has the maximum number of indicators (9) indicating the importance of participatory governance especially in relation to environmental and social aspects of power reforms. When our team examined whether environmental standards are evolved in consultation with the people who would be impacted by them, it found no such evidence. Although there are minimum standards of emission prescribed by MoEF in its various Rules and Notifications (with requirement for regular reporting), these standards have been arrived at by the 'experts' with no public consultation or public inputs.

Similarly, the EIA process detailed by the MoEF has been repeatedly criticized in India because it only provides for a public hearing process (instead of involving project affected persons or other interested persons / organisations in the scoping stage of the project) after the EIA has been carried out. Therefore, though the full EIA document and an executive summary of the EIA is made available to the public and an opportunity is provided to comment on these documents, this does not satisfy the basic quality of participation of stakeholders in the decision making.

However, this is not to say that participation is absent in policy making. In the case of the Rural Electrification Policy (arguably the most significant “access to electricity” policy document), there is evidence regional consultations, national meetings and publication of discussion papers to get public input into planning or programs related to improving access to electricity services, though there has been no special effort made to reach out to representatives of vulnerable socio-economic groups in the consultation processes. There was no evidence on whether the comments received from various stakeholders were actually used, so the participative quality of these efforts was limited. But this effort was significant nevertheless.

At the Utility level, after the enactment of Electricity Act 2003, increasing effort is being made to explain to consumers how they can file complaints. Utilities are also setting up Complaints Redressal Forums and / or 24/7 Complaints cells. However, no attempt has been made to provide this assistance to the weaker sections of society, which need it the most. However, this same effort was not seen in the drafting of the NEP. Further, although ERCs tend to focus on issues

for low-income and rural consumers in the tariff setting process, they do not adequately reach out to include participation by these vulnerable communities.

And finally, though the Ministry of Non-conventional Energy Sources (MNES) provides many avenues for stakeholder consultations as also for promoting low environmental impact technologies, there is no evidence to suggest that the MoP is mandated to include MNES policies in their decision making.

To conclude, the reform process makes only a nodding concession to environmental concerns. EIA is often treated as a necessary evil, but not accorded the seriousness it deserves in terms of engaging the public. In fact, EIA’s potential for addressing concerns of project-affected peoples is severely watered-down by several amendments. Low-carbon technologies and management practices are not yet mainstreamed. Service provider engagement with project-affected people to redress their grievances is non-existent. Pricing of electricity, an important area of social concern, does exercise the minds of the regulators as is evident in the Tariff Philosophy Papers put out by ERCs, but the statutory framework gives them little

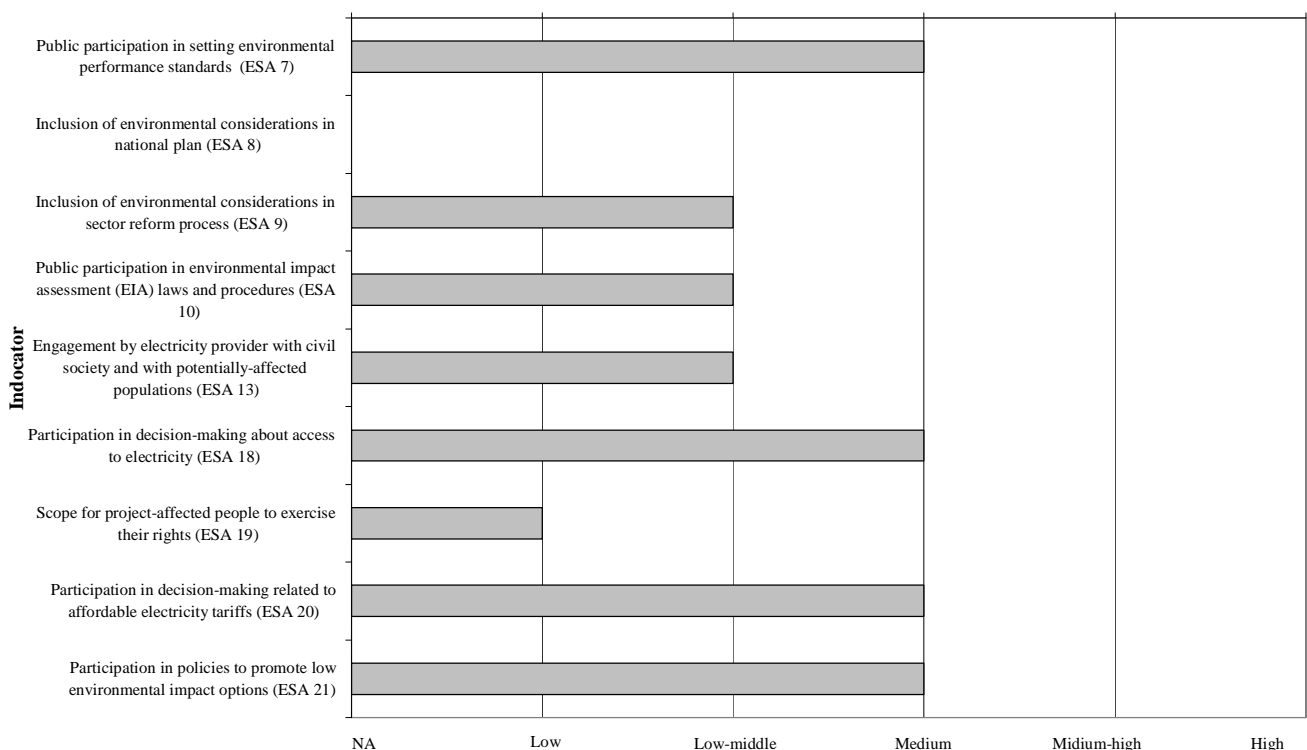


Figure 10 : Participation in Environmental and Social Aspects

leeway in translating the concerns into regulatory actions.

It is an unfortunate commentary on the level of participatory governance in the environmental and social aspects of power reforms that the average of the nine indicators analysed scores low in our assessment. The accompanying **Figure 10** illustrates this section.

### Accountability

Accountability requires decision-makers and the regulatory body in the electricity sector to recognize the relevance or legitimacy of environmental and social claims. For example, the setting of electricity prices can have different effects on consumers, and may make household electricity services unaffordable for low income consumers. Claims regarding the impacts of electricity prices, and the need to balance these impacts with the utility’s need for cost recovery or profit should be considered by the regulatory body.

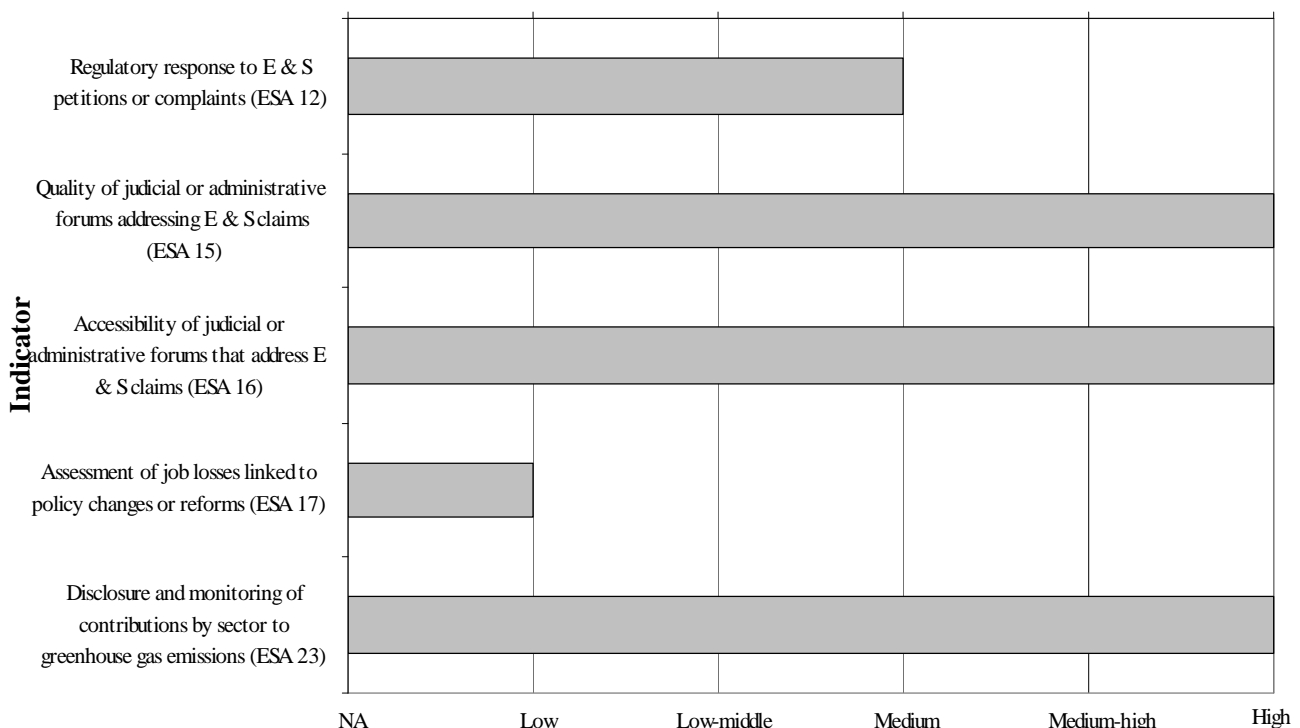
Based on a case study of a single state, this assessment found evidence of several petitions filed before the ERC raising environmental and pricing (social) issues. However, our team found that ERCs were not

proactive in dealing with these issues, but when they were faced with such issues, they dealt with them, perhaps, ‘reluctantly’.

Accountability is enhanced by the quality of the judicial systems that hear or are responsible for hearing and resolving claims related to environmental damages. The ability of ordinary citizens to gain access to and rely on the judicial system to hear legitimate claims is as important as the quality of the judicial system. Our team found that there are four judicial/administrative forums that address environmental and social claims. ERC, Courts (High Court and Supreme Court), National Environment Appellate Authority and Appellate Authority for Electricity. Of these, courts satisfy all elements of accountability – such as capability to issue binding orders, independence and objectivity, investigative powers etc, but whether justice is dispensed in a timely manner is arguable.

Also, the fact that two of these appellate bodies are situated in the national capital, restricts easy geographic access to aggrieved parties located in far flung regions.

In many developing countries, state-owned utilities are an important source of government employment,



**Figure 11 : Accountability in Environmental and Social Aspects**

but reforms often entail job losses. Therefore, accountability requires the government to assess the anticipated employment impact of reforms. But our study found little evidence of any such assessment. Indeed nowhere is this aspect even mentioned in any of the policy documents, although CEA's reports do contain employment statistics, these are routinely collected and presented rather than provide a focused enquiry on employment and wage movements during reforms.

On international obligations relating to reporting on greenhouse gas emissions, India's accountability mechanisms are very good.

The five indicators assessed for accountability scored medium to high in our study. These are represented in the following **Figure 11**.

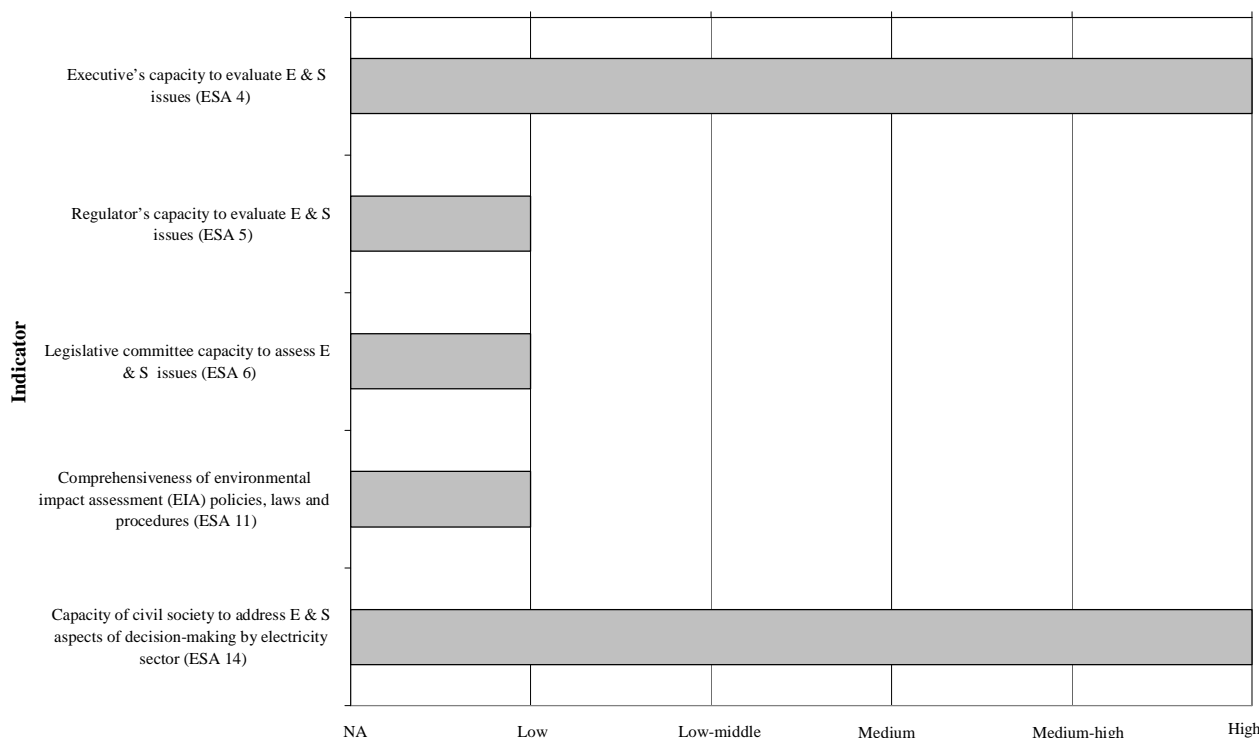
### Capacity

This section examines the capacity of all the major stakeholders and institutions to address environmental and social aspects of power sector development. These include the capacity of legislative committee to factor in ESA in its deliberations, of MoP to

incorporate ESA in its policies and of ERCs to address ESA in its processes and functions.

Reports of the parliamentary standing committee on energy reveal that committee members do debate on affordability of power supply and rural electrification issues, although environmental issues were rarely discussed. Therefore, the study concluded that legislative committees do not have sufficient capacity to address environmental issues. MoP also was found to have capacity to address ESA although its definition of environmental aspects is limited to energy conservation and of social aspects is limited to rural electrification.

There are specific budgets allocated for the Central Energy Conservation Fund and for the Rajeev Gandhi Grameen Vidyutikaran Yojana (for rural electrification). Similarly, there is identified staff - the Bureau of Energy Efficiency (BEE) entrusted with energy conservation work. There is also some mention of training on the issue of non-conventional energy, though the study found no evidence of implementation of this training.



**Figure 12 : Capacity in Environmental and Social Aspects**

As for regulatory commissions, the study found that they had no capacity – in terms of dedicated staff or expertise, to deal with ESA. In fact, ESA is rarely on the radar screen of ERCs.

Finally, although there are several examples of civil society’s capacity to address ESA, these efforts are restricted to small pockets within this country. There

is simply no evidence of capacity of the general public on any ESA in electricity sector worth mentioning.

The average value of the five capacity indicators assessed was 3, indicating a medium level of capacity. **Figure 12** gives a snapshot of how **each** of the institutions has fared in terms of capacity.

### **Key Recommendations – Environmental and social aspects**

The environmental and social aspects section of the electricity governance toolkit consists of 23 indicators with over 100 discrete key attributes. These indicators and attributes identify specific measures that need to be adopted to improve the governance in the sector. This Box highlights some of the key, macro recommendations emerging from this analysis.

1. Broaden the mandate of core electricity-focused institutions to internalize social and environmental considerations:
  - a) Expand the mandate of regulatory commissions to include attention to trade-offs with social and environmental aspects;
  - b) Mandatorily include social and environmental considerations in planning frameworks and large policy decisions such as sector reform
2. Build and expand the capacity of key electricity institutions – particularly legislative committees and Regulatory Commissions — to address social and environmental considerations.
3. Strengthen attention to neglected social and environmental dimensions of electricity reform, both for reasons of better outcomes and to better ensure long-term sustainability of electricity reform processes. In particular,
  - a) Monitor and analyse job impacts of power sector reforms;
  - b) Strengthen Environmental Impact Assessment laws and procedures;
  - c) Protect and enforce the rights of project affected persons.

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## 6. CONCLUSIONS

The primary objective of this study was to assess the state of governance in India's power sector in the context of reforms. The most salient finding of the study, that the power sector is poorly governed, does not come as a surprise since it merely confirms popular perceptions in this regard. The significance of this study stems from the fact that it identifies those institutions and processes which need to be strengthened for better governance and thus provides a good starting point for governance reforms. At the same time, this study also identifies and acknowledges both the significant structural changes at policy and regulatory levels targeted at better governance and the pioneering role played by Indian regulators who have had to steer the sector without the benefit of appropriate precedents. In this brief conclusion, we summarise the implications of our results organized by institutional category, and end with a brief discussion of how the various dimensions of governance link together to shape decision making in the sector.

*Legislature:* Legislative Committees of the Indian Parliament provide satisfactory structures and procedures for deliberation on the legal framework for reforms. However, committees can function more effectively in practice if members have access to diverse perspectives, knowledgeable staff and structured training opportunities. Moreover, procedures for preventing conflict of interest among members are both weak and weakly enforced.

*Executive:* The Ministry of Power has significant strengths and capacities to deal with the complexities of policy-making, although, as in the case of parliamentarians, provisions for preventing conflict of interest on the part of officials are weak. In its policy-making functions, MoP is assisted by a statutory expert body with demonstrated competence – the Central Electricity Authority — but whose advice is

not binding. Frequently, advisory committees or consultants assist with policy making, but neither are directly accountable to those who are impacted by their recommendations. It is instructive to note that there is no structured, mandatory mechanism that requires these institutions to follow transparent, consultative or participatory processes for policy-making. As a result, often transparency and public participation in policy making depends on the attitudes of individuals at the helm of affairs, leading to the danger that these procedural safeguards may be curtailed at any time, especially when they are most needed for protection of the public interest.

*Regulation:* Statutory regulatory institutions now exist in India with adequate authority, autonomy and remit to deal with commercial and technical aspects of regulation. But regulators remain inadequate to address environmental and social obligations thrown up by reforms. Reform efforts have built a robust regulatory hardware in terms of legal provisions but have stopped short of creating the appropriate software in terms of human resources. Regulators themselves are selected through a non-transparent process and have no access to structured and well-rounded training opportunities. The participatory space created by the regulatory forum remains under-utilised mainly for want of civil society capacity, but also due to lack of pertinent information, both of which regulators have done little to address.

*Consultants and Donors:* Consultants as well as donor agencies often wield considerable influence over policies, yet are subject to few safeguards and checks. Consultants, in particular, advise on policy as well as regulatory decisions, but their role and reach are non-transparent, their advice is seldom subject to independent review or scrutiny. Donors often place a substantial role in steering policy, but rarely consult those who will be impacted by their directions.

Civil society is unequipped to deal with the complexities of the power sector and there are too few organizations to make their interventions effective. The reform discourse does not even take cognisance of this glaring lacuna. The media that could have played a key role as a bridge between policy makers and the consumers has not fulfilled its role, and has failed to generate informed debate about core issues facing the sector.

The analysis of governance processes reveals that unless corrective actions are taken, reforms will merely make a nodding concession to good governance principles such transparency, accountability and participation. Both institutions and processes need to be strengthened and reinforced for effective governance.

While transparency is not an end in itself, it serves an important purpose in promoting public debate and dialogue, and the information necessary for accountability. Transparency of inputs provided by consultants and donor agencies emerge as particularly important. In the regulatory sphere, public hearings provide the space and forum, but unless regulators actively ensure that the public has access to relevant and pertinent information and documents to participate meaningfully in the process, the space would remain effectively unoccupied.

Provisions for public participation in policy processes are half-hearted and poorly implemented. Indeed, a dominant mind-set discounting the value of participation and consultation in the policy making arena persists. Public participation in policy process must be internalised through rigorous procedures and mandatory implementation since it is the public who would bear the impact of such policies.

Accountability weaknesses include inadequate conflict of interest provisions at various scales – legislative, executive and regulatory. The policy making process also falls short in providing the public the means of ensuring that their input has been adequately considered while regulators do somewhat better on this count. As these examples suggest, both transparency and participation are key components of ensuring accountability.

Finally, appropriate and adequate capacity-building is a must if institutions and processes are to be effective. Capacity of all stakeholders needs to be strengthened, but building civil society capacity heads the list.

It is evident that there is circularity in the governance processes. In fact, all the four governance parameters are links in a chain and the chain itself can be only as good as its weakest link. Identifying the weakest links in each section, this study found structural weaknesses such as lack of participatory space in policy processes. In regulation, while the structure is fairly sound, capacity and functional aspects warrant attention. As for environmental and social aspects, there are weaknesses both in structural and functional links of the governance chain.

The indicators in the toolkit pinpoint the precise weak spots and also give an indication of how these could be fixed. Now that we know where we are, in terms of governance in India's power sector, it is up to us to decide where we want to go and how we want to get there.

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## Annexure I

**Summary Indicator Table showing key attributes covered and their status**  
**Status – 1= Attribute is met, 0 = Attribute is not met**

### Policy Process

	Indicator	Key Attributes	Status	Score
PP 1	Capacity of Legislative Committee	<ul style="list-style-type: none"> <li>• Existence of committee</li> <li>• Trained staff and access to documentary resources</li> <li>• Opportunities for training</li> <li>• Financial resources</li> <li>• Authority to call for evidence</li> </ul>	1 0 0 1 1	Medium
PP 2	Procedures of Legislative Committee	<ul style="list-style-type: none"> <li>• Disclosure of interests of the members</li> <li>• Reasoned reports</li> <li>• Active, with regular meetings</li> <li>• Public consultations and open proceedings</li> <li>• Public availability of submissions</li> <li>• Public availability of own documents</li> <li>• Action Taken Report</li> </ul>	0 1 1 0 0 0 1	Medium
PP 3	Independence of Electricity Ministry / Department from the Executive	<ul style="list-style-type: none"> <li>• Criteria for appointment</li> <li>• Fixed tenure and removal procedure</li> <li>• Disclosure of interests</li> <li>• Rules about Conflict of Interests</li> </ul>	1 1 0 1	Medium-high
PP 4	Annual reports of the Electricity Ministry / Department	<ul style="list-style-type: none"> <li>• Financial reporting</li> <li>• Review of progress</li> <li>• Public availability</li> <li>• Dissemination in Local language</li> </ul>	0 1 1 0	Medium
PP 5	Advisory Committees to the Electricity Ministry / Department	<ul style="list-style-type: none"> <li>• Clear role and sufficiently broad mandate</li> <li>• Wide and balanced representation</li> <li>• Access to financial and analytical resources</li> <li>• Periodic meeting with public notification</li> <li>• Public disclosure of minutes</li> <li>• Responses of the executive to deliberations of the advisory committee are disclosed along with minutes</li> </ul>	1 0 1 1 0 0	Medium
PP 6	Distinct planning / policy agency	<ul style="list-style-type: none"> <li>• Existence of planning/policy agency</li> <li>• Mechanism for consultation by executive</li> <li>• Authority to seek information</li> <li>• Availability of resources</li> <li>• Requirements for transparency</li> <li>• Requirements for consultation (from stakeholders)</li> </ul>	1 1 1 1 0 0	Medium-high
PP 7	Debate on Reform / Restructuring Law or other key Policy Change Law	<ul style="list-style-type: none"> <li>• The reform/restructuring law was enacted through the legislature</li> </ul> <p><b>Criteria of effective legislative process</b></p> <ul style="list-style-type: none"> <li>• Adequate time for debate</li> <li>• Attendance of members</li> <li>• Duration of debate</li> <li>• Availability of transcripts of debate</li> </ul>	1  1 1 0 1	Medium-high



PP 8	Role of donor agencies during policy reform	<p>Conditions of transparent donor engagement</p> <ul style="list-style-type: none"> <li>• Information about (donor's) policy positions</li> <li>• Availability of loan documents and conditions</li> <li>• Information about financial disbursement</li> <li>• Information about technical assistance</li> </ul>	<p>0</p> <p>1</p> <p>0</p> <p>0</p>	Low-middle
PP 9	Clarity about decision-making process on reforms or policy change	<p>Clarity About the Process:</p> <ul style="list-style-type: none"> <li>• Clarity about the decision-maker</li> <li>• Pre-laid out time-frame</li> <li>• Clear format for decisions</li> <li>• Timeframe for public input</li> <li>• Specification for the use of public input</li> <li>• Anticipation of feedback</li> <li>• Specification of a mechanism for recourse</li> <li>• Provision for documentation of the process</li> </ul> <p>Ease of access and breadth of information:</p> <ul style="list-style-type: none"> <li>• Information circulated with reasonable lead time</li> <li>• Information available on internet and more than one other tool</li> <li>• Systematic efforts to reach out to disadvantaged communities</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>1</p> <p>1</p> <p>0</p>	Low-middle
PP 10	Scope of background policy information available to the public about government analysis and stakeholder views	<ul style="list-style-type: none"> <li>• Breadth</li> <li>• Ease</li> <li>• Timeliness</li> </ul>	<p>0</p> <p>0</p> <p>0</p>	Low
PP 11	Scope of background / supporting information available to public regarding use of consultants	<ul style="list-style-type: none"> <li>• Availability of terms of reference</li> <li>• Availability of budget</li> <li>• Availability of selection procedure</li> <li>• Availability of report</li> <li>• Ease of availability</li> <li>• Timeliness of availability</li> </ul>	<p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>	Low
PP 12	Independent review of recommendations by consultants	<ul style="list-style-type: none"> <li>• Provision for independent review</li> <li>• Clear process for review</li> <li>• Clear outreach strategy</li> <li>• Clear revision process</li> </ul>	<p>0</p> <p>0</p> <p>0</p> <p>0</p>	Low
PP 13	Capacity of Organizations in Civil Society	<ul style="list-style-type: none"> <li>• Presence of organizations</li> <li>• Techno-economic analytical capacity</li> <li>• Proactive engagement and strategic capacity</li> <li>• Grass-roots links</li> <li>• Capacity for ongoing learning</li> <li>• Networking</li> <li>• Broad credibility</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>0</p> <p>1</p> <p>1</p> <p>1</p>	Medium

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"> <li>• Public notification</li> <li>• Public registries of documents</li> <li>• Communication of decisions within one month</li> <li>• Use of diverse communication tools</li> <li>• Adequate time for public consideration</li> <li>• Opportunity for consultation</li> <li>• Clear communication on the results of public participation</li> <li>• Outreach to vulnerable communities</li> </ul>	0 0 0 0 0 0 0 0	Low
PP 15	Quality of participation by stakeholders and government responsiveness	<p>Quality of participation:</p> <ul style="list-style-type: none"> <li>• Quantity of input</li> <li>• Breadth of input</li> </ul> <p>Responsiveness of policy maker:</p> <ul style="list-style-type: none"> <li>• Notification of public participation by government</li> <li>• Summary of public participation</li> <li>• Response to public participation</li> </ul>	0 0 0 0 0	Low
PP 16	Quality of media coverage about reform or policy decisions	<ul style="list-style-type: none"> <li>• Volume of coverage</li> <li>• Local language coverage</li> <li>• Balance of coverage</li> <li>• Quality of coverage</li> </ul>	0 N.A. 0 0	Low
PP 17	Methodology for asset valuation / balance sheet restructuring during reforms	<ul style="list-style-type: none"> <li>• Disclosure of methodology</li> <li>• Justification</li> <li>• Independent scrutiny</li> <li>• Public disclosure of independent scrutiny</li> </ul>	1 1 0 0	Low-middle
PP 18	Process of privatization and bidding	<ul style="list-style-type: none"> <li>• Release of request for proposals</li> <li>• Release of information provided to the bidders</li> <li>• Release of decision criteria and decision-making process</li> <li>• Justification for final selection</li> </ul>	1 0 0 0	Low
PP 19	Transparency in allocation of subsidies	<ul style="list-style-type: none"> <li>• Public criteria for allocation</li> <li>• Public process for allocation</li> <li>• Reporting on disbursement</li> </ul>	1 1 1	High
PP 20	Accountability regarding subsidies	<ul style="list-style-type: none"> <li>• Monitoring system</li> <li>• Accountability for monitoring</li> <li>• Procedure for review</li> </ul>	1 1 1	High
PP 21	Independent Power Producers	<ul style="list-style-type: none"> <li>• Legislative involvement</li> <li>• Competitive bidding</li> <li>• Transparent and detailed analysis of demand-supply scenario</li> <li>• Detail analysis of tariff impacts</li> <li>• Public consultation while approving PPAs</li> <li>• Public consultation during IPP policy development</li> </ul>	1 0 0 0 0 0	Low-middle
PP 22	Competition Policy	<ul style="list-style-type: none"> <li>• Mechanisms for prevention of market power</li> <li>• Scrutiny of conditions for competition</li> <li>• Adequate public consultation</li> <li>• Transparent competitive mechanisms</li> </ul>		N.A.

## Regulatory Process

	Indicator	Key Attributes	Status/Score					
			Andhra Pradesh		Haryana		Tamil Nadu	
RP 1	Institutional structure for regulatory decisions	<ul style="list-style-type: none"> <li>• Regulatory decision through executive</li> <li>• Regulatory decision through independent commission</li> </ul>	0	High	0	High	0	High
			1		1		1	
RP 2	Authority of the regulatory body	<ul style="list-style-type: none"> <li>• Seek information</li> <li>• Investigations</li> <li>• Penalizing defaulters</li> <li>• Enforcement of orders</li> </ul>	1	High	1	High	1	High
			1		1		1	
			1		1		1	
			1		1		1	
RP 3	Functions / jurisdiction of the regulatory body	<ul style="list-style-type: none"> <li>• Clarity about functions / jurisdictions</li> <li>• Entrustment of all critical functions</li> </ul>	1	High	1	High	1	High
			1		1		1	
RP 4	Selection of regulatory body members	<ul style="list-style-type: none"> <li>• Independence</li> <li>• Well-defined procedure</li> <li>• Transparency</li> <li>• Composition and eligibility criteria</li> <li>• Differing tenures</li> </ul>	1	Medium	1	Medium	0	Low-middle
			1	-high	0		1	
			0		0		0	
			1		0		0	
			1		1		1	
RP 5	Conflict of interests of regulatory body members	<ul style="list-style-type: none"> <li>• Legal recognition of conflict issues</li> <li>• Adequate preventive provisions</li> </ul>	1	High	1	High	1	High
			1		1		1	
RP 6	Autonomy of regulatory body	<ul style="list-style-type: none"> <li>• Fixed tenure of members and well-defined removal procedures</li> <li>• Financial autonomy</li> <li>• Human resources</li> </ul>	1	Medium	1	High	1	High
			1		1		1	
			1		1		1	
RP 7	Appeal Mechanism	<ul style="list-style-type: none"> <li>• Permission to appeal</li> <li>• Clarity about grounds of appeal</li> <li>• By whom?</li> <li>• Before another authority or forum</li> </ul>	1	High	1	High	1	High
			1		1		0	
			1		1		1	
			1		1		1	
RP 8	Training of regulatory body members and staff	<ul style="list-style-type: none"> <li>• Certainty and regularity</li> <li>• Diverse fields of training (legal, technical and financial)</li> <li>• Diversity of perspectives</li> </ul>	0	Medium	0	Medium	0	Medium
			1		1		1	
			0		0		0	

RP 9	Information available to public regarding use of consultants	<ul style="list-style-type: none"> <li>• Terms of reference</li> <li>• Budget</li> <li>• Selection process</li> <li>• Final reports</li> <li>• Ease of availability</li> <li>• Timeliness of availability</li> </ul>	0 0 0 0 0 0	Low	0 0 0 0 0 0	Low	0 0 0 0 0 0	Low
RP 10	Procedural certainty about regulatory process and decisions	<ul style="list-style-type: none"> <li>• Clear, well laid-out rules of procedure</li> <li>• Clear, well laid-out rules for substantive decision-making</li> </ul>	1  1	High	1  1	High	1  1	High
RP 11	Pro-activeness of regulatory body	<ul style="list-style-type: none"> <li>• Use of penal powers</li> <li>• Suo motu petitions</li> <li>• Discussion papers (public debate)</li> </ul>	0 0 0	Medium	0 0 0	Low	0 0 1	Medium
RP 12	Disclosure of documents in possession of regulatory body	<ul style="list-style-type: none"> <li>• Legal provisions</li> <li>• Operating procedures</li> </ul>	0 0	Medium	1 0	Medium-high	1 1	Medium
RP 13	Procedure for public access to regulatory body documents	<ul style="list-style-type: none"> <li>• Well-indexed database of documents</li> <li>• Simple, well-defined procedure for inspecting</li> <li>• Reasonable cost</li> <li>• Wide dissemination of information</li> </ul>	0 1 1 0	Medium	0 1 1 0	Medium	0 1 1 0	Low-Medium
RP 14	Space for public participation in the regulatory process	<ul style="list-style-type: none"> <li>• Open proceedings</li> <li>• Public right to participate</li> </ul>	1 0	Medium-high	1 1	High	1 0	Medium-high
RP 15	Institutional mechanism for representation of interests of weaker sections /stakeholders	<ul style="list-style-type: none"> <li>• Routine considerations</li> <li>• Ad-hoc considerations</li> <li>• Availability of diverse institutional structures</li> </ul>	0 0 0	Low	0 1 0	Low-middle	0 0 0	Low
RP 16	Capacity building of weaker stakeholders	<ul style="list-style-type: none"> <li>• Capacity building activities by different agencies</li> <li>• Availability of financial and analytical resources</li> </ul>	0 0	Low	0 0	Low	0 0	Low

RP 17	Interventions by civil society in the regulatory process	<ul style="list-style-type: none"> <li>• Filing of cases/appeals before the ERC</li> <li>• Private interest cases and appeals</li> <li>• Public interest cases and appeals</li> <li>• Presence of active CSOs</li> </ul>	1 1 1 1	Medium	1 1 0 0	Low-medium	1 1 1 1	Medium
RP 18	Orders and decisions of the regulatory body	<ul style="list-style-type: none"> <li>• Reasoned orders</li> <li>• Response to public comments</li> </ul>	1 1	High	1 1	Medium	1 1	High
RP 19	Dissemination of regulatory body's decisions	<ul style="list-style-type: none"> <li>• Easy availability</li> <li>• Timely availability</li> <li>• Local language</li> </ul>	0 1 1	Medium	1 1 0	Medium	1 0 1	Medium
RP 20	Periodic performance reports by licensees /utilities	<ul style="list-style-type: none"> <li>• Periodic filing by the utilities</li> <li>• Well-defined consequences of non-filing</li> </ul> <p>EoQ of effective periodic reporting</p> <ul style="list-style-type: none"> <li>• Easy availability</li> <li>• Timely availability</li> <li>• Local language</li> <li>• Reliable</li> <li>• Comprehensive</li> </ul>	1 0 0 0 0 0	Low middle	0 0 1 1 0 1	Medium	1 0 0 0 0 0	Low-middle
RP 21	Tariff philosophy	<ul style="list-style-type: none"> <li>• Existence</li> <li>• Based on detailed analysis</li> <li>• Provision for mitigating adverse impacts</li> <li>• Simple language</li> <li>• Public participation</li> </ul>	1 0 0 0 1	Low-middle	1 1 1 0 1	Medium	1 1 0 1 1	Medium-high
RP 22	Licensing	<ul style="list-style-type: none"> <li>• Clarity about requirement and exemption</li> <li>• Clarity about process</li> </ul> <p>Clear provisions regarding</p> <ul style="list-style-type: none"> <li>• Amendment / Revocation</li> <li>• Dispute resolution</li> <li>• Compliance / performance monitoring</li> </ul>	1 1 1 1 1	High	1 1 1 1 1	High	1 1 1 1 1	High
RP 23	Consumer service and quality of supply	<ul style="list-style-type: none"> <li>• Well-defined standards of performance</li> <li>• Monitoring of supply quality</li> <li>• Periodic public review</li> <li>• Consumer grievance redress mechanism</li> </ul>	1 1 0 1	Medium-high	1 0 0 1	Medium-high	1 0 0 1	Medium

## Environmental and Social Aspects

	Indicator	Key Attributes	Status	Score
ESA 1	Clarity of authority and jurisdiction to grant environmental clearances/approvals for power sector projects	<ul style="list-style-type: none"> <li>• Provisions in law / implementing regulations</li> <li>• Definition of how authority is shared across jurisdictions</li> <li>• Adequacy of access to relevant information</li> <li>• Provisions published in official journal/gazette</li> <li>• Provisions posted on the websites</li> <li>• Public sector agency with principal authority issues brochure, poster, information sheets, etc.</li> <li>• Provisions may be obtained from public information office/library</li> <li>• Public sector agency discloses projects granted approvals in timely fashion</li> <li>• Principal authority discloses all projects requesting/ pending approval</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p> <p>1</p>	Medium-high
ESA 2	Clarity and transparency of executive's mandates on Environmental and Social aspects	<ul style="list-style-type: none"> <li>• Reference to environmental and social performance of sector in description of responsibilities of executive</li> <li>• Guidance on how executive will cooperate or consult with regulators or other authorities</li> <li>• Commitments to information disclosure</li> <li>• Reporting on ESA of performance of electricity sector</li> <li>• Availability of documents on executive's environmental and social responsibilities</li> <li>• Availability of these documents in a range of forms</li> <li>• Dissemination using various media/outlets</li> <li>• Efforts to aware marginalized socioeconomic or cultural groups</li> </ul>	<p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>	Medium
ESA 3	Scope and transparency of regulator's environmental and social mandates	<ul style="list-style-type: none"> <li>• Reference to environmental and social responsibilities in documents describing role and mandate of regulatory body</li> <li>• Consideration of social and environmental issues in tariff setting</li> <li>• Adequacy of access to relevant information</li> <li>• Publication of regulator's environmental and social responsibilities in the official govt. journal</li> <li>• Posted on the regulator's website</li> <li>• Available at low cost or free to the public</li> <li>• Availability in range of forms/formats</li> <li>• Dissemination through various media/outlets</li> <li>• Efforts to aware marginalized/less privileged population</li> </ul>	<p>0</p> <p>0</p> <p>1</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p>	Low-middle
ESA 4	Executive's capacity to evaluate environmental and social issues	<ul style="list-style-type: none"> <li>• Specific budgetary resources to support social and environmental issues</li> <li>• Existence of dedicated staff</li> <li>• Expertise of staff</li> <li>• Availability of training</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>1</p>	High

ESA 5	Regulator's capacity to evaluate environmental and social issues	<ul style="list-style-type: none"> <li>• Specific budgetary resources to support social and environmental issues</li> <li>• Existence of dedicated staff</li> <li>• Expertise of staff</li> <li>• Availability of training</li> </ul>	0 0 0 0	Low
ESA 6	Legislative Committee capacity to assess environmental and social issues	<ul style="list-style-type: none"> <li>• Specific budgetary resources to support social and environmental issues</li> <li>• Existence of dedicated staff</li> <li>• Expertise of staff</li> <li>• Availability of training</li> </ul>	0 0 0 0	Low
ESA 7	Public participation in setting minimum environmental performance standards in electricity sector laws and policies	<ul style="list-style-type: none"> <li>• Minimum environmental performance standards for the electricity sector in regulatory policies and laws</li> <li>Elements of quality for participation</li> <li>• Evidence of public consultation in determining standards</li> <li>• Evidence of communication of public input</li> <li>• Existence of explanation for existing standards</li> <li>• Regular reporting on industry compliance with standards</li> </ul>	1  0 0 0 1	Medium
ESA 8	Inclusion of environmental considerations in national power sector plan	<ul style="list-style-type: none"> <li>• Analysis of environmental considerations in most recent plan</li> <li>• Inclusion of project-specific impacts and broader sectoral impacts</li> <li>Public access to relevant documents</li> <li>• Mechanisms to seek public input</li> <li>• Inclusion of less-privileged and affected populations</li> <li>• Communication of how public input is incorporated</li> <li>• Reasonable public comment period</li> <li>• Availability of public comments</li> </ul>	N.A.	N.A.
ESA 9	Inclusion of environmental considerations in sector reform process	<ul style="list-style-type: none"> <li>• Inclusion of environmental considerations in official documents, before reform</li> <li>• Broad framing of environmental issues</li> <li>Access to documents</li> <li>• Less restrictive confidentiality rules applied to reform related documents</li> <li>• Adequacy of public comment period</li> <li>• Effort to reach affected and less- privileged populations</li> <li>• Mechanisms to seek public input</li> <li>• Availability of public comments</li> <li>• Communication of how public input is incorporated</li> </ul>	0 0  1 0 0 0 0 0	Low-middle

ESA10	Public participation requirements in environmental impact assessment (EIA) laws and procedures	<ul style="list-style-type: none"> <li>• Participation mandate at scoping stages</li> <li>• Use of more than one mechanism</li> <li>• Adequacy of time period for comment</li> <li>• Release of full and summary reports, prior to approval</li> <li>• Existence of guidelines to define adequate public consultation</li> <li>• Availability of summery or full public comments</li> <li>• How public comments informed the findings/ recommendations is discussed in final IA</li> <li>• Principle of free prior informed consent is incorporated into EIA guidelines for consultation</li> </ul>	0 0 0 0 N.A 0 0 0	Low-middle
ESA11	Comprehensiveness of environmental impact assessment (EIA) policies, laws and procedures	<ul style="list-style-type: none"> <li>• National or electricity sector laws and policies are in place that specify or require EIAs for electricity sector activities</li> <li>• Electricity sector policies, regulations or guidelines detail for project level EIA</li> <li>• Electricity sector policies, regulations or guidelines detail for project-level social impact assessment</li> <li>• Strategic assessments have been carried out to evaluate environmental or social objectives</li> <li>• Strategic assessments have been carried out to evaluate both environmental and social objectives</li> <li>• Strategic assessment guidelines for electricity sector programs, plans and policies</li> </ul>	1 0 0 0 0 0	Low
ESA12	Regulatory Response to Environmental and Social Petitions or Complaints	<ul style="list-style-type: none"> <li>• Formal cases or evidence of environmental or social complaints filed</li> <li>• Regulatory agencies have accepted them</li> </ul>	1 1	Medium
ESA13	Quality of engagement by electricity provider with organizations in civil society and with potentially-affected populations	<ul style="list-style-type: none"> <li>• Existence of specific department / staff to engage with the public</li> <li>• Requirement to engage public is defined in corporate policy</li> <li>• Support to vulnerable weaker sectors to enable engagement</li> <li>• Availability of information on how public can lodge complaints</li> <li>• Disclosure of its own EIAs</li> <li>• EIAs include non-technical summary and summary of public consultation</li> </ul>	0 0 0 1 0 0	Low-middle
ESA14	Capacity of civil society to address environmental and social aspects of decision-making by electricity sector	<ul style="list-style-type: none"> <li>• At least one CSO has used appeal or redress mechanisms</li> <li>• Existence of independent CSO assessment of social / environ. implications of sector policy</li> <li>• Records of CSO participation in official consultations</li> <li>• CSO input on most sector EIAs</li> <li>• Evidence of CSOs specializing in sector issues or providing legal support to vulnerable groups</li> </ul>	1 1 1 1 0	High



ESA15	Quality of judicial or administrative forums addressing social and environmental claims	<ul style="list-style-type: none"> <li>• Issuing binding decisions to redress social and environmental damages</li> <li>• Independence and impartiality</li> <li>• Capacity and training</li> <li>• Access to information</li> <li>• Definition of triggers for claims and standing in laws</li> <li>• Applicable provisions of law define what parties have ‘standing’ before the forum</li> </ul>	1 1 0 1 1 1	High
ESA16	Accessibility of judicial or administrative forums that address social and environmental claims	<ul style="list-style-type: none"> <li>• Geographic</li> <li>• Temporal</li> <li>• Linguistic</li> <li>• Economic</li> <li>• Amicus briefs from non-parties</li> </ul>	0 1 0 1 1	High
ESA17	Assessment of job losses linked to policy changes or reforms in the electricity sector	<p>Evidence of assessment of employment impacts (at least two of the following)</p> <ul style="list-style-type: none"> <li>• Magnitude of job losses</li> <li>• Effect on job security</li> <li>• Impact on wages and benefits</li> <li>• Significance to the macro economy</li> <li>• Assessed before making changes</li> <li>• Measures to address impact</li> <li>• Creation of redress mechanisms for workers</li> </ul>	0 0 0 0 0 0 0	Low
ESA18	Participation in decision-making about access to electricity	<ul style="list-style-type: none"> <li>• Consultation with relevant socio-economic sectors on developing access objectives</li> <li>• Efforts to reach vulnerable groups</li> <li>• Use of more than two participation mechanism</li> <li>• Public input referenced in relevant planning or policy processes</li> </ul>	1 0 1 0	Medium
ESA19	Scope for project-affected people to exercise their rights	<ul style="list-style-type: none"> <li>• Existence of explicit requirements or procedures for consultation of project affected people in project review and approval</li> <li>• Efforts to educate potentially affected people on their rights</li> <li>• Use of more than two participation mechanism</li> <li>• Free Prior Informed Consent</li> </ul>	0 0 0 0	Low
ESA20	Participation in decision-making related to affordable electricity tariffs	<ul style="list-style-type: none"> <li>• Attention to low income and rural consumers in tariff setting principles</li> <li>• Efforts to communicate impacts and reasons for tariff changes to low income or differentially impacted groups</li> <li>• Use of more than one participation mechanism to get their input</li> </ul>	1 0 0	Medium

ESA21	Participation in development of policies to promote low environmental impact management and technology options	Decision-making considers at least three of following management and technology options: <ul style="list-style-type: none"> <li>• Co-generation</li> <li>• Demand-side management</li> <li>• Creation of energy saving companies</li> <li>• Grid-connected renewable energy technologies</li> <li>• Distributed renewable energy technologies</li> <li>• Improved thermal/fossil fuel generation technologies</li> <li>• Improved pollution control technologies for thermal power plants</li> <li>• Reduction in T&amp;D losses</li> <li>• Consultation with stakeholders and interest groups</li> <li>• Use of more than one participation mechanism</li> </ul>	1 1 0 1 1 1 0 1 0 0	Medium
ESA22	Reporting on environmental and social performance of the electricity sector	Annual reviews, include attention to a broad set of environmental and social issues, at least three of the following <ul style="list-style-type: none"> <li>• Access to electricity</li> <li>• Affordability</li> <li>• Employment trends in the sector</li> <li>• Theft/distribution losses</li> <li>• Energy security</li> <li>• Energy efficiency</li> <li>• Renewable energy</li> <li>• Air emission or pollution from generation</li> <li>• Contributions to green house gas emission</li> <li>• Regular reporting and disclosure of performance data</li> <li>• Use of range of outreach media</li> <li>• Development of public information for non-technical audience</li> </ul>	1 0 0 0 0 1 1 0 0 0 0 0	Medium
ESA23	Disclosure and monitoring of contributions by electrical sector to national greenhouse gas emissions	<ul style="list-style-type: none"> <li>• Regular reporting on sector's cumulative and annual greenhouse gas (GHG) emissions</li> <li>• Data or baselines to quantify electrical sector's contributions to national GHG</li> <li>• Inclusion of sector in UNFCCC reports</li> <li>• Courts uphold public right to this information</li> </ul>	1 1 1 0	High

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## Annexure II

Filled in sample indicators from three sections of the toolkit

Section A – Policy Process

\*\* PRIORITY INDICATOR \*\*

*PP 7 - Debate on reform / restructuring law or other key policy change law*

**Governance Principle: Accountability and Redress Mechanism**

**Relevance of the Indicator:**

This indicator assesses one of the most important aspects of the reform / restructuring process, i.e. enactment of the law. The overarching law governing the electricity sector should set the policy direction, and is critical in ensuring that there is space to address public interest concerns. Moreover, the nature and characteristics of the debate during enactment of the reform / restructuring law is often an illuminating pointer to the quality of governance in a country.

Values	Select	Explanation and Justification
Not applicable / Not assessed	(0)	Electricity Act 2003 is the major law that replaced all previous existing laws relating to the sector was first introduced in August 2001. The Bill was based on a draft legislation drawn up by National Council for Applied Economic Research, New Delhi and had gone through eight revisions.
The reform / restructuring decision was taken without legislative sanction (through means such as ordinance / presidential decree)		The Bill was referred to the Standing Committee on Energy, which deliberated upon it and submitted its report in December 2002. The Committee made 150 recommendations. The government then introduced 130 amendments to the Bill. It was finally passed in May 2003 and notified in June 2003. In view of the complexities of the Bill, the time available for analysis of the provisions of the Bill is deemed warranted. Therefore, this element of quality is satisfied.
The reform / restructuring law was enacted through the legislature but the process meets <b>only one</b> criterion for effective legislative process		The revised Bill was introduced in the Lok Sabha on April 8, 2003 by the Union Power Minister, but owing to lack of quorum on that day, it was not taken up for debate. On April 9, the Bill was debated. 366 members were present in Lok Sabha on the day Electricity Bill 2001 was passed. However, information on their party affiliation is not available. The Lok Sabha debate on April 9, 2003 indicates that members from several political parties were present in the Lok Sabha on that day. Hence this element of quality is deemed satisfied. While the Bill was very widely debated in the parliament as well as the legislative committee. The Bill was debated on two days in Rajya Sabha and one day in Lok Sabha. During the debate on April 9, as many as 26 members from the entire political spectrum participated. The debate began at 14-51 hours and ended with the passage of the Bill with amendments at 21-19 hours, less than 7 hours later. Bills are usually passed by voice vote. Besides, the quality of debate in Lok Sabha was far from instructive. Hence this element of quality is NOT satisfied.
The reform / restructuring law was enacted through the legislature but the process meets <b>three</b> criteria for effective legislative process	(iv) ☒ <b>Medium - high</b>	Transcripts available and obtained. Hence this element of quality is satisfied.
The reform / restructuring law was enacted through the legislature and the process meets <b>all the four</b> criteria for effective legislative process		

## **Guidance for assessment teams:**

The four criteria of effective legislative process:

- Duration of time between tabling of legislation and passage of the law: This is crucial as any legislation on a complex; dynamic sector such as electricity requires significant time for analysis. Hence it is important to assess the time available for legislators to study and understand the whole range of issues. If the legislation is unduly delayed beyond the time required to understand issues, it is a signal of ineffective legislative process. As a general guideline, a minimum of one month and a maximum of one year should be considered reasonable, subject to specific country contexts.
- Attendance of members: For legislation as important as electricity reform, it is desirable that a large number of legislative members from both ruling as well as opposition parties are present during the debate. Attendance of members should be considered satisfactory if significantly more members than the minimum or quorum are present from the ruling as well as the opposition parties. Since it is unrealistic to cite a single number for all countries, please specify the percentage above quorum present in practice.
- Duration of debate and composition of speakers is another important pointer to the importance attached by legislators to the electricity legislation. This could be considered satisfactory if serious debate took place at the time of enacting the law and if a reasonable number of opposition members had an opportunity to participate in the debate.
- Availability of transcripts of debate is important for post-facto analysis of the positions of different legislators and political parties. This is essential to assess their accountability. This should be considered satisfactory if such transcripts are made available to the public within a reasonable time after the debate.

Information necessary to assess this indicator will be available in legislative records. In addition, it will be helpful to interview key legislators of both ruling and opposition parties.

**Researcher Name and Organization: Sudha Mahalingam, Centre for Policy Research, New Delhi**

### ***Sources of Information:***

Documents obtained:

Report of Parliamentary Standing Committee on Energy, Transcripts of Lok Sabha debates on Electricity Bill 2001 conducted on April 9, 2005.

Persons Interviewed:

Suresh Prabhu MP (April 21 & 28, 2005 at 5, Ashoka Road, New Delhi)

Mr. Rajagopalan Nair, Addl Secy, Lok Sabha Secretariat at the Lok Sabha Secretariat on April 13, 2005.

Mr. Lad, Joint Director, LADIS, Parliament Library, April 13, 2005

Senior Asst. Librarian, Lok Sabha Secretariat at the Lok Sabha Library on April 15, 2005.

**Additional Information:** Two pieces of legislation defined the legal framework for reform/restructuring at the national level – The ERC Act 1998 and the 2003. Since the latter's scope is much more comprehensive than the former, EA 2003 has been taken up for case study to assess this indicator. That a legislation such as Electricity Act 2003 which has far-reaching implications should have been debated just for 7 hours in the Lok Sabha shows the level of engagement of parliamentarians with the issue. One could, of course, argue that since the Bill had gone through extensive debate in the Standing Committee, the debate in the floor of the House was sufficient.

### **Comments on this Indicator:**

**Section B – Regulatory Process [From Andhra Pradesh Study] \* PRIORITY INDICATOR \***

***RP 13 - Procedure for public access to regulatory body documents***

**Governance Principle: Access to Information and Transparency**

**Relevance of the indicator:**

Availability of regulatory body documents to the public is certainly important. But for effective use of such access to information it is equally essential that at the operational level there are no difficulties / hurdles in actually exercising this right to information and obtaining relevant documents. Hence, this indicators focus on operational issues / practices regarding sharing of documents.

<b>Values</b>	<b>Select</b>	<b>Explanation and Justification</b>
Not applicable/ Not assessed		There is no well-indexed database on the documents and other information available with the Commission. Same is the case with the Orders of the Commission. Some important Orders are placed on the website of the Commission. But these Orders are not placed in a proper order, and for the interested it poses difficulty in locating the document. At present the Commission's office is redesigning the web site and hope in the future it will be user friendly and provides comprehensive information.
<b>None of the four</b> elements of desired procedure for public access to regulatory body documents are present		Section 20 (3) of the Conduct of Business Regulations 1999 provides that any person shall be entitled to obtain certified copies of the records of the Commission on payment of fees. One has to write to the Secretary of the Commission for the copies of the records.
Only <b>one</b> element of desired procedure for public access to regulatory body documents is present		The Regulation on Levy of Fee for Various Services Rendered by the Commission – 2005 stipulates the fee to be paid in order to inspect and obtain copies of the documents. For inspection of the documents one has to pay Rs.700 in the case of bulk documents and Rs. 100 in the case of other documents. For supply of certified copies one has to pay @ of Rs. 1 per page. This can be considered reasonable cost. Previously it was Rs. 2 per page.
Only <b>two</b> elements of desired procedure for public access to regulatory body documents are present	<b>(iii) Medium</b>	There is no effort on the part of the Commission to publicize or disseminate the information at its disposal. Even the Commission's website is not user friendly.
<b>Three</b> elements of desired procedure for public access to regulatory body documents are present		Two elements of quality: simple, well-defined procedure and reasonable cost are fulfilled.
<b>All the four</b> elements of desired procedure for public access to information are present		

### **Guidance for assessment teams:**

Four elements are crucial to remove operational hurdles and to encourage actual use of the right to information by various stakeholders. The elements of desired procedure are:

- *Well-indexed database of documents* – This will ensure that people know what documents are available to the public.
- *Simple, well-defined procedure for inspecting / obtaining documents* – Absence of such procedure discourages people from exercising their right to information, as they are required to spend significant time and effort to obtain documents. Also lack of such procedure becomes a tool in the hands of officials to deny information.
- *Reasonable cost* – The cost for assessing (inspection or obtaining copies) the documents should be reasonable, as too high a cost would again discourage actual exercise of the right to information. The reasonability of cost could be judged on the basis of considerations such as cost of photocopying documents or cost of administering the document disclosure system, etc.
- *Wide dissemination of information* about the above three elements – through measures such as advertisements, brochures, websites and newsgroups is essential to inform and encourage people to use such procedure. Otherwise, there is a danger that though there is a simple procedure very few people will take advantage of it, as they may not be aware of it.

### **Researcher Name and Organization:**

**M. Thimma Reddy, Centre for Environment Concerns, Hyderabad**

#### ***Sources of Information:***

1. Andhra Pradesh Electricity Regulation Commission's Website: [www.ercap.org](http://www.ercap.org)
2. Andhra Pradesh Electricity Regulation Commission's Regulation on 'Levy of Fee for Various Services Rendered by the Commission.' 2005 <http://www.ercap.org/Fees%20Regulations%20final1.htm>
3. Discussion with Mr. M.Venugopala Rao (Date: 14-04-2005), Dr.M.V.Mysoora Reddy (Date: 16-04-2005), and the Secretary APERC (Date: 21-04-2005, 14-06-2005).

#### **Additional Information:**

Experience with accessing documents/information from the Commission is not promising. Mr. M. Venugopala Rao explained that he had written to the Commission for copy of the Business Plans of APTRANSCO. After some time he received some papers from the Commission. But they are found to be not useful, as they are unimportant extracts of the document he had requested.

Similarly Dr. M.V.Mysoora Reddy requested for a copy of the Government of AP letter mentioned in the Commission's Order dated 14-12-2004. This Order was not given to him. He contends that, as these documents are not classified under the Official secrets Act the same should be provided to the public.

The present researcher had written to the Commission on 29-09-2004 requesting for project reports on High Voltage Distribution System (HVDS) taken up on a large scale by the distribution companies in the state. As there was no response a letter reminding our request was sent on 10-11-2004. In response to this the Commission through a letter dated 25-11-2004 sent a list of HVDS schemes approved by it. As far as project reports are concerned the researcher was asked to approach the distribution companies. As a matter of fact these reports are available with the Commission's office.

#### **Comments on this Indicator:**

**ESA 2 - Clarity and transparency of the executive's environmental and social mandates****Governance Principle: Access to Information and Transparency****Relevance of the indicator:**

The degree to which electricity sector policy and planning processes formally acknowledge the executive's environmental and social responsibilities—and how these interact with related authorities—reflects the importance of these concerns to the executive. It is also a way to gauge the degree to which critical institutions or structures in the electricity sector have mainstreamed social and environmental issues. The extent to which electricity sector policy-makers communicate these environmental responsibilities serves as an additional measure of their commitment to addressing public interest concerns related to the environmental quality of the sector. In this indicator, “executive agency” refers to the executive body responsible for power sector planning and policy.

Values	Select	Explanation and Justification
Not applicable / Not assessed	(0)	Value= 3, Medium
Documents that describe the executive agency's roles and responsibilities <b>do not</b> define or make reference to the environmental and social performance of the electricity sector	(i) <input type="checkbox"/> <b>Low</b>	The legislation that discusses the executive's environmental responsibilities is the Energy Conservation Act, 2001. This legislation details the roles of the agency responsible for energy conservation.
Documents that describe the executive agency's roles and responsibilities include mention of the environment and social issues. BUT they refer only to the role of other agencies in assuring the environmental or social performance of the electricity sector	(ii) <input type="checkbox"/> <b>Low-medium</b>	However, the primary ‘electricity sector policy / legislation’ – i.e., the Electricity Act, 2003 mentions that the MoP shall consult with the State Governments and prepare NEP based on optimum utilization of resources and renewable energy sources, stand alone systems non-conventional energy sources, and endeavour to supply electricity to rural areas.
Documents that describe the executive agency's roles and responsibilities define specific environmental and social responsibilities of the executive, AND include guidance on when and how the executive will cooperate with regulators or other authorities	(iii) <input checked="" type="checkbox"/> <b>Medium</b>	The National Electricity policy discusses ‘Adequate safeguards for environmental protection’, reducing fly ash, using non-conventional energy sources, and general ‘environmental issues’ in electricity generation.
Documents that describe the executive agency's roles and responsibilities define specific responsibilities of the executive, AND include guidance on when and how they should cooperate with regulators or other authorities, AND contain commitments to <b>at least one</b> of the elements of quality for information disclosure	(iv) <input type="checkbox"/> <b>Medium – high</b>	These documents do refer to the role of the executive with regard to ESA, but do not detail guidance on cooperation between the executive and other agencies.
Documents that describe the executive agency's roles and responsibilities define specific responsibilities of the executive, AND include guidance on when and how they should cooperate with other regulators or authorities, AND contain commitments to <b>more than two</b> elements of quality for information disclosure	(v) <input type="checkbox"/> <b>High</b>	None of the documents meet any element of quality for information disclosure.

## **Guidance for assessment teams:**

Elements of quality for information disclosure:

- Reporting on the environmental and social aspects of performance of the electricity sector
- Documents related to the executive's environmental and social responsibilities are available at cost or free to the public
- Documents related to the executive's environmental and social responsibilities are provided in a range of forms / formats printed and electronic formats
- Effort to disseminate using various media / outlets (public offices / libraries, internet, radio, newspaper)
- Planned efforts were made to target documents, audio-visual materials, or meetings at marginalized socioeconomic or cultural groups

Assessment teams should review reform legislation as well as major policy and planning documents. The degree of clarity of the executive's role versus that of the electricity regulator or the environmental regulator or authorities is the main focus of this indicator. Important roles for the executive that might be set out in such documents include:

- setting environmental and social performance standards for power plants
- distribution services and transmission infrastructure
- developing sector and project level impact assessment policies and guidelines
- establishing criteria for the evaluation of the environmental and social costs or benefits of particular policy actions/proposals

These are illustrative examples and will vary widely from country to country. Assessment teams are not expected to judge the substantive quality of the social and environmental responsibilities taken on by the executive or regulator, but assess only the degree to which these responsibilities are clearly laid out and communicated to the public.

A disjunct may emerge between the scope / transparency of the social mandate and the clarity of the environmental mandate. If it is not possible to accurately capture this difference in the indicator values, then the assessment team should provide separate explanations for the environmental mandate and the social mandate.

## **Researcher Name and Organization:**

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## **Sources of Information:**

The National Electricity Policy, 2005. available at [www.powermin.nic.in](http://www.powermin.nic.in) See specifically,

5.2.5/5.2.11 – hydroelectricity

5.2.13 – thermal energy

5.2.20 – renewable energy

5.10 – environmental issues in electricity

Electricity Act 2003, sections 3, 4, 5, 6

Interview with Mr. M.G.Devasahayam, IAS (Retd.), Former Chairman, Haryana Electricity Board 3.6.2005

Interview with Dr. R. Hema, Associate Professor, Madras School of Economics, Chennai 20.5.2005

Interview with Mr. T.B. Chikkoba, Retd Member Generation, Consultant on Renewable Energy, TNEB 30.5.2005

## **Additional Information:**

## **Comments on the Indicator:**



