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Why Contract Enforcement Drives Energy Investment in Africa

BLUF: Africa's power sector challenge is less about missing laws, weak regulators, or poorly designed reforms and more about whether governments consistently enforce tariffs, contracts, and regulatory decisions. Countries like Kenya show that credible enforcement attracts private capital and sustains utility performance even under political pressure. Chad, by contrast, illustrates how weak enforcement undermines reform credibility, deters investment, and heightens the sector's dependence on public and donor financing.

Updating electricity regulations is ineffective without enforcement

Most power sectors across Africa now have modern electricity laws, independent regulators, and detailed tariff and contracting frameworks. Yet sector effectiveness varies dramatically. Evidence from the African Development Bank's *Electricity Regulatory Index* shows that countries with similar regulatory designs can deliver very different results.

The difference lies in enforcement. Often, governments issue tariff decisions, but do not implement them; negotiate contracts informally; and override regulatory rulings through political or administrative channels protected by members of the political class who benefit from them. Because they may have positioned themselves to capture value throughout the project's financial flows, these elites have little incentive to support transparency. Over time, this practice creates the perception of surface-level reform rather than institutional reform. Investors respond rationally by pricing project risk proportionally, which introduces exaggerated costs for consumers. Since access to electricity is essential for economic opportunity and human well-being, higher prices disproportionately disadvantage poor consumers.

Why enforcement matters

Electricity sits at the center of economic growth, industrialization, and the energy transition. Because it is highly capital-intensive and politically exposed, electricity is hyper-sensitive to "enforcement risk," — a macroeconomic risk that affects:

- **Debt sustainability:** Weak enforcement creates fiscal pressure and contingent liabilities for countries, and these effects are passed on to citizens.
- **Industrial competitiveness:** Unreliable enforcement leads to higher capital costs and deteriorating utility services.
- **Energy transition:** Clean energy projects typically have long tenors, which make those projects highly sensitive to "enforcement risk," rendering it a primary driver of bankability.

At this stage of Africa's reform journey, enforcement credibility matters more than new policy announcements.

Three reasons enforcement is necessary to improve African electricity markets

To attract long-term private capital, regulators must move beyond mere policy announcements and focus on three core areas:

1. **Enforcement as a binding constraint**
   The regulator must be willing to exercise its authority to maintain market discipline. Regulatory frameworks lose value if tariff orders or contracts can be delayed or reversed without consequence, regardless of how well they are designed on paper. Nigeria's 2015 tariff reversal is a clear example. The *original Tariff order* (December 2014) reflected costs accurately. But, due to political pressure, it was replaced with the *Amended Tariff order* (March 2015), which reduced tariff rates, leading to a monthly shortfall of USD $14.6 million (₦20 billion). In this case, policy intent was defeated by political pressure.

2. **Investors finance credibility over policy**
   Private capital responds to what actually happens, not what is promised. In countries with predictable enforcement, investors accept lower returns and longer tenors. For example, in 2011, South Africa launched its *Renewable Energy Independent Power Producer Procurement Programme*. Solar and wind prices declined steadily with each bid cycle because investors prioritized a predictable procurement framework, and were willing to accept thinner margins for a 20-year tenure. By contrast, when enforcement is unpredictable, investors demand guarantees, shorten exposure, or stay away entirely. For example, in 2022, Chad signed an agreement with Savannah Energy to develop 500 megawatts (MW) of wind and solar capacity with storage. However, the agreement collapsed after the government nationalized its oil assets in 2023, triggering ongoing arbitration and killing the planned renewable rollout. Likewise, projects like Djermaya Solar have remained stalled for years, despite signed power purchase agreements (PPAs) and backing from development finance institutions. Ultimately, sovereign unpredictability, a weak utility, and inconsistent enforcement have made project cash flows unbankable and pushed investors away.

3. **Utility performance follows enforcement**
   Utilities do not improve because of speeches or reform roadmaps. They improve when collections, cost recovery, and efficiency are enforced. Weak enforcement normalizes losses and inefficiency. Strong enforcement creates financial discipline and accountability for management. For example, the Kenya Power and Lighting Company, in coordination with Kenya's Energy and Petroleum Regulatory Authority, moved tariffs toward cost-reflective levels, strengthened revenue collection, and, most importantly, paid independent power producers consistently. This discipline enhanced the credibility and bankability of the distribution utility, helping unlock private capital for projects like the Lake Turkana Wind Power Project. Kenya also demonstrated how to manage political pressure without breaking investor confidence. Despite calls to revoke or renegotiate allegedly expensive contracts, the government upheld existing PPAs

and reaffirmed their legal standing while adopting a hybrid currency structure that protected foreign debt and shifting more costs into local currency. By late 2025, Kenya lifted the PPA freeze, reopened the market under the Electricity Act 2019, and tightened governance through Attorney General oversight. Because policy credibility held, investors stayed.

An “Enforcement-First” approach can unlock investment and accelerate the energy transition

As electricity demand grows, clean energy projects characterized by long tenors will magnify the visibility and costliness of enforcement risk.

Because these projects require significant foreign direct investment, investor confidence is essential. In an increasingly connected global economy, this capital is highly mobile and selective. It will gravitate toward markets that offer clear, credible, and enabling environments for investment.

Passing new laws produces diminishing returns if existing rules are not enforced. To build the trust required for sustained investment and accelerate the continent’s energy transition, African governments should adopt an "Enforcement-First" approach built around the following strategies:

1. **Institutionalize automatic tariff adjustments.** Protect regulatory decisions from political interference by automating tariff adjustments with contractual lock-in so that undoing them becomes financially expensive. Countries like Morocco and South Africa use structured adjustment mechanisms that trigger automatically and are difficult to suspend without consequences. Any government interference comes at a high financial cost.
2. **Address contingent liabilities.** Ministries of finance must recognize that weak enforcement translates directly into sovereign debt risks. As a result, energy policy should be treated as macrofiscal policy, positioning ministries of finance as de facto enforcement anchors. Once contingent liabilities are measured, transparently reported, and embedded in fiscal frameworks, enforcement successes translate directly into lower fiscal costs. This alignment ensures that fiscal discipline reinforces sector discipline by constraining politically motivated deviations from established rules and increasing the cost of non-enforcement.

Conclusion

Africa’s power sector suffers not from a shortage of policies or institutions, but from weak and inconsistent enforcement. Bridging the gap between policy and practice requires disciplined execution of tariff mechanisms, reforms, and liability management — all anchored in binding regulatory decisions. The goal is not to remove discretion, but to make non-enforcement financially, legally, and reputationally costly enough that compliance becomes the default. Evidence from Kenya, South Africa, Nigeria, and Chad shows that strong regulatory credibility attracts investment and sustains reform. Conversely, weak enforcement drives up costs, stalls progress, and decreases competitiveness across African energy markets.