

Strengthening Regulatory and Oversight Role of Public Administration Institutions in African Countries

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Regulation as an art and craft of governance, as an institutional reality, as a field of study, and as a public discourse is more salient and celebrated nowadays than ever before. However, the challenges are as great as the achievements. Not least the degree of change in the ways governance through regulation is exercised can hardly be exaggerated. (Jordana and Levi-Faur, 2004:1).

1.0 Introduction

The preceding quotation serves as curtain raiser for this paper. Regulation is a popular subject of study in several disciplines across and beyond the social sciences as well as day-to-day functioning of governments especially in the contemporary era of privatization, neo-liberal hegemony and political liberalism. Economic liberalism and political pluralism have triggered the need for re-examining and repositioning the functioning of public regulatory institutions arrangements. Issues of regulation have long been matters of both public policy discussion and academic research particularly in developed economies and tend to attract significant attention especially in times of economic and social crises. Most intriguing is the expansion of regulatory bodies and oversight institutions in public administration milieu. Regulation has existed for as long as governments have interfered in private actions.

There is also an emerging consensus among scholars and practitioners pointing to a positive correlation between the mode of regulation/regulatory practices in public administration systems and 'good governance'. However, forms of governance are in transition on an international scale. Neither the juxtaposition of the market and state regulation nor that of the public versus private actors in governing society match well with the multiple faces of modern governance. The classical regulatory state, which has emerged as an alternative to the welfare state, (both however with intent to complement or correct market mechanisms) is gradually changing its distinctive face of top-down authoritative control of market and society and is joining with other steering mechanisms. The process of regulating is being decentralised,

allowing access to and spreading responsibilities across economic and societal actors. The regulations themselves are taking on various forms ranging from substantive rules to incentives and procedural requirements; chains of control are blurring and mechanisms of control softening with emphasis shifting towards more responsiveness and self-responsibility.

Anecdotal evidence reveals the existence of the camp of public administration practitioners and scholars as well as politicians who attribute the current global economic crisis to the dysfunctional character, failure and ineffectiveness of the regulatory and oversight institutions or rather the regulatory regimes in most countries. This camp questions the efficacy and competence of the regulatory and oversight institutions which governments create to help pre-empt or avert incipient or perceived crisis situations. We do not have sound reasons to refute the allegations against the public regulatory and oversight institutions. There are might be other principle reasons regarding the root causes of the crisis but it seems plausible to suggest that regulatory failure is but one of the factors that may correctly explain the current global economic downturn. The literature also documents several studies that finds positive link between economic and social crises and the efficacy degree of regulatory regimes.

This paper examines the regulatory and oversight role of public administration institutions in Africa. This paper has ... sections. The first section focuses on the conceptual and theoretical issues on regulation, including the meaning attached to the concept of regulation and regulatory governance as used in the main stream literature and in the context of this work. The efficacy, manner and extent to which public administration institutions in Africa are positioned and prepared to serve as early warning systems for government in the advent of an incipient or real crisis are examined. The paper delineates the role and efficacy of regulatory institutions in public administration. The capabilities of regulatory regimes¹ which are used in public administration are critically assessed in order to unravel problem areas and suggest possible ways of

¹ The concept regulatory regime is used to denote the institutional set up, legal framework and policies governing the regulatory function in public administration.

strengthening them in order to make a difference in the functioning of regulatory institutions in Africa.

2.0 Various Meanings of Regulation

Regulation is a popular subject of study in several disciplines across and beyond the social sciences. Various meanings are attached to the concept regulation, reflecting the existence of different theoretical perspectives and disciplinary concerns on the subject. Three meanings are delineated by Baldwin (1998) and his colleagues. The first meaning point out that regulation refers to the promulgation of an authoritative set of rules, accompanied by some mechanisms, typically public agency, for monitoring and promoting compliance². A second meaning of regulation refers to ‘all the efforts of state agencies to steer the economy’ This meaning is somewhat broader than the first since it includes, in addition to rule making, measures such as taxation, subsidies, redistribution and public ownership.

The third meaning of regulation is broader still, and encompasses all mechanisms of social control, including unintentional and non-state processes. According to Baldwin, et al it extends

Mechanisms which are not the products of state activity, nor part of any institutional arrangement, such as the development of social norms, and the effects of markets in modifying behaviour. Thus a notion of intentionality about the development of norms is dropped, and anything producing effects on behaviour is capable of being considered as regulatory. Furthermore a wide range of activity which may involve legal and quasi-legal norms, but without mechanisms for monitoring and enforcement, might come within the definition³.

The three meanings to some extent reflect the changes identified in the economic and social contexts of regulation. Thus, from the foregoing it seems

² Baldwin, R. Scott, C. and Hood, C. (1998). “Introduction” in R. Baldwin, C. Scott and C. Hood (Eds.). *A Reader on Regulation* Oxford: Oxford University Press. pp. 1-55.

³ Ibid. p. 4.; Also cited by Jordana, J. and Levi-Faur, D. “The Politics of Regulation in the Face of Governance” in Jordana, J. and Levi-Faur, D (Eds.). *The Politics of Regulation: Institutional and Regulatory Reforms for the Age of Governance*. Cheltenham, UK: Edward Elgar. p. 4

plausible to conclude that regulation does not only denote the general instruments of government for the control of the economy and society. It is more than that. Moreover regulation and intervention should not be used interchangeably. In this context were compelled to support Kirkpatrick and Parker's (2004)⁴ definition of the concept regulation which views regulation broadly as the totality of government measures which are intended to affect individual or group behaviour and market outcomes.

Economists, unlike lawyers and political scientists used to employ the word regulation in its broad sense. The global spread of the wave of regulatory reforms and especially the establishment of Independent Regulatory Agencies (IRAs) in various sectors of the economy (especially in the utilities) have led to some convergences in the meaning of regulation. As such, we are convinced that regulation should be viewed as specific sets of commands; and as deliberate state influence which involve a set of promulgated rules applied by a body created for this purpose. It also covers all actions of the state or government designed to restrict or influence activities of various social and economic groups in society. Regulation has both restricts or constricts (i.e. sanctions) as well as facilitative or enabling aspects.

3.0 Conceptual and Theoretical underpinnings of Regulation

We learn from the real life experience that theory without practice is 'empty' and practice without theory is 'blind'. We need theory to understand the nature and character of regulation and regulatory institutions. In most cases and for most people regulation is associated with the disciplines of economics, law and to some extent political science and public administration. The way in which economists have approached regulation has had a profound impact on regulatory scholarship and policy. The economic theory of regulation, as conventionally understood was developed during the 1960s and 1970s and did much to explain how the regulation of that period came into being and why it failed. The theory is less adept at explaining the phenomenon of regulation which occurred in the 1980s and 1990, and as consequence, its influence is much in decline. Many economists have a narrow vision of regulation. They

⁴ Kirkpatrick, C. and Parker, D. (2004). "Regulatory Impact Assessment and Regulatory Governance in Developing countries" in *Public Administration and Development* 24, pp.333-344.

focus almost exclusively on what can be referred to as economic regulation and which is applied to markets in respect of which there is inadequate competition⁵. These economists tend to ignore ‘social regulation’ the justification for which arises from other forms of market failure.

The age of governance has seen the expansion of regulation as a distinctive mode of social coordination both at national and supranational levels. The establishment in almost all countries and many sectors of Independent Regulatory Agencies (IRAs) demonstrates the expansion of regulation. These are one of the main distinctive features of the regulatory state that has been rising in African countries since the 1990s. Regulation has existed for ever, but regulation for defensible reasons of economic or social policy is more recent.

Available literature and anecdotal evidence show that theories of regulation may be grouped into public interest, regulatory capture, and median-voter classes⁶. The public interest theory states that regulation is the solution to certain sorts of market failure, especially market failure due to natural monopoly. A normative version states that given such failure, regulation *ought* to occur. A positive version⁷ would state that given such market failure, regulation *does* occur. However, what Wilson (1980:370) calls ‘policy entrepreneurs’ may create a public interest if they persuade enough people to believe that it is in the public interest to do what they advocate.

Regulatory capture, endorsed by a wide ideological range of scholars, from the Marxists to the public choice theorists is both positive and normative. In a strong positive version, it predicts that regulation comes into existence to serve the interest of the regulated⁸. A weaker positive version would hold that, once regulation has come into existence (for whatever, perhaps exogenous, reason)

⁵ Ogus, A. (2004). “W(h)ither the Economic Theory of Regulation? What the Economic Theory of Regulation?” in Jordana, J. and Levi-Faur, D. *The Politics of Regulation: Institutional and Regulatory Reforms for the Age of Governance*. Cheltenham, UK: Edward Elgar. pp. 31-32.

⁶ McLean, I. (2004). The History of Regulation in the United Kingdom: Three Case Studies in Search of Theory in Jordana, J. and Levi-Faur, D. *The Politics of Regulation: Institutional and Regulatory Reforms for the Age of Governance*. Cheltenham, UK: Edward Elgar. p. 45.

⁷ No scholar known to me is brave or foolhardy enough to espouse

⁸ Laffont, J and Martmort, D. (1999). Separation of Regulators against Collusive Behaviour, *Rand Journal of Economics*, 30 (2), pp. 232-262.

it is captured by the interest being regulated. A normative implication is that self-regulation is a bad thing.

The medium-voter theory states that, assuming that politics in the relevant arena has only one issue dimension, the outcome under any defensible voting system will be the favourite issue position of the median voter in that dimension. In ordinary application to any economic policy arena such as trade policy or optimal regulation, it implies that policy in each dimension sits stably at the median point of the interests concerned. Regulators may be captured, in any given policy area, by the regulated industry.

4.0 Economic Analysis of Regulation

The economic theory of regulation was revitalized by the neoclassical revolution. In the last three decades, political scientists have also identified a distinct ‘politics of regulation’⁹. Other scholars have gone the extra-mile to claim that European democracies have become “regulatory states” in which government has retreated as direct controller of the means of production, but advanced as an indirect regulator of them. The same phenomenon also appears in developing and African countries in particular especially in this era of ‘managerialism’ under the auspices of New Public Management (NPM) rubric. Others label this the replacement of ‘government’ by ‘governance’¹⁰. NPM paradigm emphasizes the shift from government to governance. As broadly defined, governance is the “system of values, policies and institutions by which a society organizes collective decision-making and action related to political, economic and socio-cultural and environmental affairs through the interaction of the state, civil society and the private sector”¹¹

Using the conventional tools of micro-economic analysis, in relation to any area of government intervention economic analysis serves twin purposes.

⁹ See for example Wilson (1980). “The Politics of Regulation” in J. Q. Wilson (Ed.). *The Politics of Regulation*. New York: Basic Books, pp. 357-394.

¹⁰ Majone. G. (1994). “The Rise of the Regulatory State in Europe”, *West European Politics*, 17, pp. 77-101.

¹¹ Work, Robertson (2003) *Overview of Decentralization Worldwide: A Stepping Stone To Improved Governance and Human Development. Decentralization and Power Shift, an Imperative for Good Governance*. Center for Local and Regional Governance, National College of Public Administration and Governance, U.P

First, it helps to identify the failure of the market which justifies regulatory interventions. Second, it enables to select the method of intervention which predictably will collect that failure at least cost. In relation to the first function, the incidence of the market failure will normally arise from the externalities (market transactions generate significant external effects which are not reflected in the pricing of the transaction) and information deficits (the information available to some of those engaging in the market transactions is seriously imperfect). These two forms of market failure will justify what is often and conveniently referred to as ‘*social*’ regulation’ whose typical examples include health and safety regulation, environmental and consumer protection. Inadequate competition (on the supply and demand side there are insufficient alternatives) which correctly denotes ‘*economic*’ regulation exemplified by price controls imposed on natural monopolies.

5.0 Regulatory Instruments

There are two main forms of regulatory instruments. These are the economic and social regulations. Economic regulation “applies to markets which are insufficiently competitive.”¹² This means that there is a need to come up with certain measures to make or enhance the competitiveness of the market such as the formulation of a law on competition and the passage of legal measures on controlling the price and quality of products and services.

On the other, social regulation deals more on the promotion of public welfare, health and safety. This further implies that rules are applied to the operations of the business firms to control their activities for lose abatement. The activities related to this are first prior approval, where the firms are required to first secure a license or permit to operate from an authorizing agency; second, mandatory standards, where the companies have to meet certain standards, both performance and specification, set by the agency tasked to formulate the standards; third, information disclosure, where the establishments are required to disclose to the public information regarding harms and risks that may arise from the operational activities and the product; and fourth economic instruments, where the local government can offer incentives to the firms in

¹² Ogus, A. (2001). “Regulatory Institutions and Structures”. CRC, University of Manchester, p. 10.

the form of a tax or charge.¹³ This could also be seen as a policy instrument where the local government adopts a policy of tax holiday for business firms for a certain tax payment period to encourage more investments into the area.

Nevertheless, the more important aspect of social regulation in governance is the control of certain operational activities of the firm for the health and safety of the general public. Thus, the enabling role of government puts premium on the social aspect of regulation primarily because of the need to protect the interest of the public and to promote more economic activities in the community for the people's general welfare and well being. However, social regulation may also be viewed as an instrument for the consolidation of the economic and political power of the leaders or politicians.¹⁴ By imposing certain regulatory measures on the entry or operations of economic or business firms, the leaders or politicians may be able to block the entry of certain businesses which would run counter to their economic or political interests. This situation is especially true in a third world economy where the distinctions between economic and political elites are blurred. The same case goes for public officials who are tasked to implement the regulatory measures for the entry of business firms. Given certain discretionary powers, they are provided with the opportunity to commit graft and corruption. This may explain their interest to maintain the system of entry controls. The concept of 'social regulation' implies then the promotion of public welfare and interests as well as the advancement of private interests.

6.0 Public Administration Regulatory Institutions

The use of regulation as a public policy instrument in public administration, and for improving economic and social development has had a long but chequered history, as part of the broader shift from the positive or interventionist state towards the regulatory state in Africa. This is even more so in the era of new public management and administrative reforms which has essentially called for the "minimalist" government. This entails the re-definition of government functions, including the need for governments to go

¹³ Ibid.

¹⁴ Ogus, A. and Zhan, Q. (2003). "Regulating Business Entry East and West". CRC, University of Manchester.

back to their basics, which are maintenance of law and order, regulation, economic infrastructure development and guaranteeing the enforcement of contracts.

Regulatory institutions are not new in public administration arena in Africa. On attaining independence, most countries inherited some of regulatory institutions that were created by colonial governments. These include the public/civil service commissions, Central Banks, licensing authorities, school inspection agencies and professional regulatory authorities. Most developing countries and African countries in particular, started with single regulator for multiple sectors; given the original focus on economic regulation and relatively simple technologies of the regulated industries¹⁵. However, the urge for deregulation, adoption of market economy principles and liberalization of the economy has necessitated the expansion of regulatory agencies in most African countries. Several regulatory agencies have been created to perform the regulatory function in public administration. Today there are several regulatory agencies in the public service. It seems the areas which have been given top priority include the transportation industry, utility networks such as water, electricity and gas and fuel supplies; telecommunication sector, education and training, finance, trade and industries, media, health and safety and so forth.

The role of the state and that of regulation have been changing overtime in Africa. The earlier view of positive interventionist government was replaced by the orthodoxy of minimal state, which in turn gave way to the notion of regulatory state¹⁶. The decision to create regulatory authorities in public administration in the current era has been triggered by privatization and adoption of the market economy principles in most African countries. Moreover, the redefinition of the role of the state and government from the interventionist function to the regulatory role, by and large, called for the establishment of strong oversight institutions to enable government carry out

¹⁵ See Minogue, M. and Carino, L. (2006). *Regulatory Governance in Developing Countries*. Chetenham: Edward Elgar Publishing Ltd.

¹⁶ Zhang, Yin-Fang and Thomas, M. (2009). Regulatory Reform and Governance: A Survey of Selected Developing and Transitional Economies, in *Public Administration and Development*, Vol.39, pp330-339.

its regulatory role. However, the push and efforts towards creating a minimal state and privatizing state enterprises did not match in significant ways with the need for creating strong and vibrant regulatory institutions.

6.1 Regulatory Policy in Public Administration and the Donor Factor

Compelling and anecdotal evidence exist showing the intervention of donors in regulatory reform effort in most African countries. Following privatization in African countries aid donors such as the European Union have promoted a model of regulatory best practice based on Western and North American examples of regulatory agencies independent of government control. However, there is reality gap between donors' ideas of the so-called "best practice" and the real legal, administrative, economic and political processes which exist in African countries, and indeed developing countries. In this regard, we are compelled to support the views expressed by Ogus (2005). He correctly argues that:

Western models of regulation have a growing influence in developing countries. Promoted by the World Bank and IMF, they are assumed to lead to economic growth. But many problems arise when attempts are made to put these imported models into practice - strategies designed for a Western context often do not work well when transplanted to different economic, social and political cultures. Although this is well recognised the most common response is to simply carry on 'as well as possible' in the circumstances¹⁷.

It seems plausible to point to the fact that Western models of regulation have a growing influence in developing countries. Despite the emphasis that donors and multi-lateral agencies have put on privatization and market liberalization, scant attention has been placed to creating capacity of regulatory agencies in Africa. Reforms in regulatory governance have not gained sufficient grounds in African countries.

¹⁷ Ogus, A. (2005). Towards Appropriate Institutional Arrangements for Regulation in Less Developed Countries. CRC Policy Brief, No. 13, 2006. A detailed account of the argument is also available at: www.competition-regulation.org.uk/publications/working_papers/

6.2 The State of Regulatory Institutions in Africa

Public administration institutions, including regulatory agencies are expected to play a crucial role in protecting the interests of the public. The citizenry, including customers must be protected from unscrupulous enterprises offering unsafe products and services. Regulatory agencies are supposed to ensure that standards are being met through inspection which may be random or targeted, sometimes in response to complaints from customers. State regulation needs to be effective if it is to benefit African countries by removing market failures, imperfections and, consequently promoting sustainable development.

6.2.1 Licensing

There is compelling evidence which reveals systemic and endemic problems in regulatory institutions in Africa. Empirical evidence shows that the necessary legal framework and institutional arrangement that provide the essential foundation for effective regulatory is lacking in many African countries. In some cases it has been established that regulatory agencies do not seem to serve the purpose they were created to serve, that is “regulatory regimes seem to be serving other than regulatory purposes”¹⁸. Their discussion of licensing systems demonstrates that:

Such systems at best are over-elaborate and dysfunctional, and at worst are kept in place to support rent-seeking activities by political and bureaucratic elites. The reduction and streamlining of such processes would, it is argued, remove constraints damaging to enterprises and economic growth in developing countries (*including African countries*).

It is important for the politicians to maintain controls over who enters the market through licensing, implying that the government has a lot of control over the economy as a whole. However the capacity of regulatory institutions in most African countries to use licensing as regulatory tool for alleviating the damaging effect of the market imperfections is acutely weak. Licenses are not solely money raising devise but are also intended for consumer protection. The

¹⁸ See Ogus (2004) in Minogue, M. and Carino, L., op.cit.

capacity of regulatory institutions in African countries to continuously monitor the licensed firms is somewhat weak.

6.2.2 Central Banks

Regulatory agencies are expected to demonstrate a high degree of efficiency and effectiveness in executing the functions they were created to perform. The credibility and efficacy of some of the most central regulatory institutions such as Central Banks in some African countries is doubted. There is evidence showing that, in the public eye Central Banks in some African countries are unable to regulate effectively other financial institutions. Moreover, it is argued that political interference, lack of transparency and unaccountability are some of the vices that characterise the operations of key regulatory agencies such as Central Banks.

6.2.3 Public Service Commissions

The most celebrated regulatory agency in the main stream public administration regarding human resource management is the Public Service Commission¹⁹. The Commission is supposed to ensure that the key practice areas in human resource management in the public service is carried out in a manner which is transparent, competitive based on merit principles²⁰. However, empirical evidence shows that the Commissions are acutely underfunded and, consequently, they do not have financial and human resources to carry out their regulatory function in the manner which is efficient and effective. Under-resourced regulatory institutions are unlikely to carry out their mandate efficiently and effectively.

6.2.4 Public Utilities: Water, Electricity, Gas, etc.

In this area studies conducted by Kirkpatrick and Parker in developing and African countries have revealed that the utilities sector faces two particular problems of its own which they refer to as *'hold-up'* and *'information asymmetry'*.

¹⁹ This is also referred to as Civil Service Commission.

²⁰ Especially employee 'resourcing' or staffing in the public/civil service, i.e recruitment, selection and disciplinary functions

Hold-up Phenomenon: When the investment is first negotiated the firm and the state must both agree a price - for example the fee the government will pay to the contractor for carrying-out a service. This price must be acceptable to both if the private investment is to go ahead. However, once the investment is undertaken and becomes 'sunk', there is considerable scope for 'opportunism' or 'gaming' from both sides. The state regulator, for example could attempt to reduce the contract fee. In principle, the firm will still choose to go ahead provided that its labour and material costs are covered. Therefore, the regulator could attempt to negotiate the price down to this bare minimum. Equally, the firm might recognise that it is providing an essential facility, such as water. If the government has no alternative supplier, or cannot obtain one quickly, the firm might attempt to renegotiate the price of the contract upwards, above the original fee.

The result is a dual 'hold-up' problem. The firm can be held-up by a government that takes advantage of the firm's vulnerability having invested heavily in a network. Equally, the government can be held-up by a firm that realises the government cannot afford the social and economic costs of closing an essential facility.

Information Asymmetries Phenomenon: To regulate effectively and efficiently the regulator need to have considerable and accurate information about the supplies (material and labour) and demands from consumers and the public in its entirety. This knowledge is especially necessary to set prices and restrain excess profits. However, in practice the firms and the regulators can be expected to have very different levels of information. In general, the firms have this information and the regulators must tease it out. Even with an efficient incentive system to reveal information, or alternatively draconian legal penalties for failure to co-operate, it is highly unlikely that the regulator will receive all of the information required to regulate optimally²¹. Available evidence shows that regulation of public utilities whose ownership and operations are in the hands of private firms has not been an easy task in the public administration of African countries.

²¹ David Parker and Colin Kirkpatrick

6.2.5 *Social Services: Education and Health*

Development statistics reveal significant expansion of social services in most African countries in the last decade. Both the public and private institutions involved in the provision of education and health have expanded rapidly. In some African countries the informed public and responsible citizenry and service consumers have raised their concern on the declining quality of education and health services. Regulatory agencies are supposed to ensure that set standards are being met through regular inspections which may be random or targeted. This is not always the case. Evidence exists in most African countries showing that providers of education and health services are not regulated effectively due to a number of reasons. The most pronounced reasons include inadequate financial resources and insufficient expert regulators as well as failure of the service consumers to exert continuous pressure in demand for quality education and optimal level of health care.

A very recent study on regulatory reform and in developing and transition economies shows that governments in many developing countries, including African countries have not increased resources for regulatory reforms. Moreover, most African countries except Ghana do not have dedicated permanent central bodies for coordinating and overseeing/supervising the roles of regulatory agencies (public and private) for the purpose of enhancing regulatory quality in the national administration. In Ghana the Ministry for Public Sector Reform is vested with the responsibility for enhancing and monitoring the regulatory quality at national level.

At the institutional level, it is essential that the substantive appraisal of new regulations is reviewed by a public body that is independent of the regulator proposing the regulations and ideally located at the centre of government²². We are not aware of other governments in African countries with distinctive central body for encouraging and monitoring regulatory quality. In the light of the preceding, we are compelled to pose one fundamental question on regulation. Who regulates the regulator? At the central government level there

²² OECD (2002). *Regulatory Policy in OECD countries: From Interventionism to Regulatory Governance*, Paris: OECD. Also cited in Zhang, Yin-Fang and Thomas, M. (2009). "Regulatory Reform and Governance: A Survey of Selected Developing and Transitional Economies", in *Public Administration and Development*, Vol.39, p. 335.

should be an organ which is vested with responsibilities to oversee the conduct of both public and private regulators.

7.0 Towards Improving Regulatory Agencies in Africa

In the light of the proceeding, it seems plausible to point to the fact that African countries need to devise processes and create institutions that should ensure that the quality of regulation is enhanced overtime. This is important to ensure that the quality of public service delivery is improved.

7.1 Institutional and Legal frameworks

There is a need to put into place the essential institutional underpinnings and legal frameworks for creating vibrant and effective regulatory institutions in African countries. The institutional and legal frameworks should take into account the economic and socio-political contexts of African countries. The designing of effective regulatory institutions should largely be informed by a model designed by Majone (1999:11) whose key components that should be taken into account include:

- the extent to which decisions are delegated to an independent agent rather than taken by the political principal;
- the nature of the structure of governance itself, particularly in determining the agent's degree of independence from the political process;
- the rules that specify the procedural framework, e.g. reason-giving requirements, consultative processes;
- the scope for political principals to overrule agency decisions;
- the relative autonomy of financial resources;
- the extent of ex post monitoring, e.g. legislative oversight, judicial review, citizen's complaints procedure.

It is important, however, to take into account the fact that “independence from political control does not mean independence from public accountability”²³ Undue political interference to the functioning of regulatory institutions, however, is

²³ Minogue, M. and Carino, L. (2006). *Regulatory Governance in Developing Countries*. Cheltenham, UK: Edward Elgar Publishing Ltd. p.5.

likely to more harm than good. Moreover, creating the regulatory institutions is one thing and their efficacy and capacity to facilitate effective regulatory enforcement is a different thing. Building an effective regulatory management system for a viable public administration in Africa requires the following ingredients²⁴:

- Adopt regulatory reform policy at the highest political level;
- Establish explicit standards for regulatory quality and principles for regulator decision making within government;
- Introduce effective training schemes in regulation theory and practice;
- Introduce effective data collection processes;
- Introduce systems to monitor regulatory implementation
- Ensure that Regulatory Impact Assessment (RIA) is built into the earliest possible stage in the design of new regulations;
- Assess alternative regulatory options, including not regulating;
- Review and update existing regulations;
- Apply the cost-benefit principle through both qualitative and quantitative analyses.

These guidelines are useful in order to facilitate and speed up the creation and institutionalization of effective regulatory regimes in government. There will also need to be flexibility in implementation to reflect country-specific needs and institutional capacity.

7.2 Institutionalizing Regulatory Impact Assessment (RIA)

This is a systematic and key policy tool used to examine and measure the likely benefits, costs and effects of new or existing regulatory measures. It is useful instrument which generates useful and relevant information for decision makers. It is not a substitute for policy decision making, but it contributes to regulatory design by providing information and justification for government

²⁴ The guidelines are adopted from the works of Kirkpatrick , C. (2006). Regulatory Impact Assessment in Crew, M. and Parker, D. (Eds.). *International Handbook on Economic Regulation*, Cheltenham, UK: Edward Elgar Publishing Ltd.

action. It is important to determine the responsibilities that will be allocated to different government agencies for enforcement and compliance, thus:

To ensure the effectiveness of a regulatory activity, it is vital to know how a proposed regulation will be correctly enforced and to understand the capacity of affected parties comply with it. At the final stage of the policy process, after regulation is operable, a RIA process should include an evaluation of whether regulations are operating in the manner that was expected²⁵.

We should recognise the fact that there is no single ‘correct’ model for Regulatory Impact Assessment. Available evidence reveals that RIA tool has not been widely adopted in developing economies, including African countries²⁶. Governments should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them. Emphasis must be placed on both *ex ante* assessment of regulation proposals and *ex post* evaluation of the existing regulatory measures.

Conducting RIA requires technical competencies that go beyond the training of officials. Training and capacity building is thus of utmost importance for the success of RIA implementation. As guardians of the public interest, regulators should in principle have both technical capacity and independence.

7.3 Coordinating and Networking Regulatory Agencies

Institutions which government create to carry out the regulatory function have ideas to share and transferable practical experiences to exchange. Regulators must be coordinated and networked at the central government level. Separate regulators are required in particular sectors or industries; however, they need to be coordinated. As such governments in Africa may wish to consider the need for the establishment of a dedicated permanent body for coordinating regulation at a national level as well as monitoring regulatory quality in the national administration.

²⁵ OECD (2008). *Building an Institutional Framework for Regulatory Impact Analysis (RIA)*. Paris: OECD. p. 14

²⁶ Zhang and Thomas, *op.cit.*, p. 335.

At the institutional level, it is essential that the substantive appraisal of new regulations is reviewed by a public body that is independent of the regulator proposing the regulations and ideally located at the centre of government.

7.4 Public Consultation

This is important for improving regulatory transparency in the process of regulatory decision making. Consultation must be used systematically and it should be mandated by law. Regulatory institutions in Ghana and Tanzania have developed the practice of consultation with the stakeholders and the public in the processes of reviewing existing regulations or initiating new regulatory measures. This is good practice worth emulating. However, there should be clear guidelines to facilitate effective and systematic consultation.

7.5 Regulatory Capacity Enhancement

The capacity of regulatory institutions in Africa is relatively weak. There are constraints in regulatory capacity. Most African countries are short of resources and expertise required for effectively regulatory reforms. Governments in African countries should invest adequately in enhancing the human and technical capacity of regulatory institutions. Regulators must (again, in principle) be abreast of the technological sophistication of the regulated industry, and have working knowledge of its needs. This would allow them to assess the capacity of firms to deliver required services, to evaluate their petitions for rate increases and to balance these against the demands of consumers and clients. Their lawyers and accountants must match the industry's own staff so that neither the state nor the public are misled by the arguments and figures produced by the regulated firms.

8.0 Concluding Remarks

Regulation is now considered an integral instrument in reinvigorating public administration in African countries. The need for effective regulatory frameworks and institutions to sustain the process of public service reforms for economic growth and development has now been widely recognized.

Foreign investors, and domestic ones alike, are discouraged from investing in countries where the regulatory framework falls well short of efficiency and effectiveness. Governments of African countries must make deliberate efforts to strengthen the regulatory institutions in order to enhance their performance. The institutions must be shielded not only from endemic corruption but also from undesirable political interference.

Regulatory institutions need to be set free to enable them execute their noble functions in a professionally acceptable manner. The 'independence' of a regulatory agency should mean relative insulation from both political and industry pressures. This may be aimed for through constitutional measures, judicial review arrangements, location outside the normal state bureaucratic system, or incentives to regulatory staff. The institutions in the eyes of the public should be perceived as assets created to safeguard the public interests rather than liabilities for enhancing corruption and related administrative vices. Too much effort has been spent on attempting to transplant Western models and that insufficient attention has been given to the conditions under which such transplants may be more or less successful.