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THE INSTITUTIONAL AND POLICY FRAMEWORK FOR REGULATION AND COMPETITION IN GHANA

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THE INSTITUTIONAL AND POLICY FRAMEWORK FOR REGULATION AND COMPETITION IN GHANA

Abstract

There is a long history to regulation in Ghana, dating back to the colonial days when the regulation of mining land was perceived to be a tool used by the colonial government to protect large mining concessionaires from the intrusive activities of indigenous small scale and informal mining operations. Throughout the long period beginning from the 1960s to the early 1980s, when the state controlled most formal economic activities, the issue of regulation was taken for granted as the state developed only minimal structures for the purpose of regulating the interaction among different economic agents, without interfering too much with old regulations.

Since economic reforms began in 1983, however, there has been a significant movement towards the establishment of formal regulations intended to ensure that the withdrawal of the state from the production of basic goods and services did not result in new private monopolies that exploited their market positions, particularly against the poor. The political liberalization that later accompanied economic reforms, was also used to entrench the development of regulatory institutions and policies, particularly with respect to the exploitation of natural resources. A new culture appears to have been developed where consumers increasingly see regulation as essential to the enhancement of livelihoods in a liberal economy. This is reflected by the increasing civil society consciousness and activism, despite the obvious weakness of organized consumer groups. But while the need for regulation is now widely accepted, the role that donors played, through the attachment of conditions to various aid packages in ensuring that regulatory bodies were created, cannot be overemphasized. Thus the creation of regulatory agencies was as much the outcome of donor pressures as it was a 'natural' consequence of the new liberal environment.

The result of these influences, however, is that the approach to regulation of many economic activities, is fairly standard, i.e., the development of a level playing field for all actors, without taking into account the capacity of the different actors to play on that level field. Regulation is used to remove policy bottlenecks to effective competition but not the structural ones. Regulation is intended to bridge informational gaps between different economic agents, but the gaps are often wider than can be feasibly bridged by the agencies. Regulation is not yet widely used to strengthen weak institutions through economic incentives, as in the financial sector, for example.

Regulation is carried out through a large number of new regulatory agencies, required by the constitution. The agencies are often fairly independent from the various arms of government, but sometimes have to rely on government ministries for logistical support. Their major problems are indeed largely logistical, as they struggle with inadequate human and financial resources.
In sum, many observers see the regulatory environment as still developing, with fairly solid laws and clear enforcement mechanisms, but weakened by the

still poor environment. The continued dominant role of a 'state monopoly' in the telecommunications sector is often used as an example of how 'half-hearted' regulation can impede competition. Just as the mass poverty of the people makes price regulation a difficult option, so does the weakened legal system after many years of poor governance.

INTRODUCTION

Ghana has pursued macroeconomic and institutional reforms for the best part of the last twenty years. The reforms, which are basically for the development of a stronger market economy, have not only changed the nature of government economic policies, but have incorporated into them the design of regulation and institutional strengthening at all stages. The introduction of what is perceived to be more effective regulation is premised on the idea that as the public sector withdraws from the direct production of goods and services, the private sector that replaces it will require some regulation and supervision to ensure that it functions in the interest of the wider public. One thus finds new regulatory arrangements in many of the major areas where new economic agents have taken over activities previously carried out by the public sector. But beyond that, areas that were hitherto unregulated have recently come in for some action towards regulation. This is first, a consequence of the fact government is required to do so under the new governance arrangements and in particular the constitution, and secondly a consequence of greater demand by donors as increasing use is made of aid for those activities. Indeed, the new constitution of 1992 requires the regulation of the usage of all natural resources.

Some of the prominent new areas for regulation following restructuring are the water, electricity and telecommunications sectors. Similarly, new regulatory arrangements have been instituted for the financial sector following major reforms. In the area of production, government has pulled back extensively its direct involvement in the manufacturing and agricultural sectors and has sought to encourage a more extensive private sector participation, at both the small-scale and large-scale ends of the hierarchy of enterprises. Thus, for example, the much-expanded role of the private sector in the management of forest resources has led to a considerable expansion of the capacity of the regulatory infrastructure for the forests, taking into account the necessary environmental considerations that need to be made at the same time as rapid economic growth using forest resources is considered essential. While these have happened, the form that regulation for enterprise development takes is far less clear-cut and its

objectives appear to be less appreciated. But, besides the utilities, this is where considerable interest for many consumers and producers lies.

The institutions vary somewhat in their mandate and structures. For example, while in the urban water, energy and telecommunications sectors new high profile independent commissions and authorities have been recently set up the financial sector is still largely regulated by the central bank. The creation of the stock exchange also led to the setting up of a Securities Exchanges Commission. The provision of rural water has been decentralized in the reform process and overseen by a separate agency from the urban water management arrangements. In the area of small enterprises, the old national board continues to oversee policy development with a regulatory role not well defined.

Besides the utilities and finance, regulation in other markets in Ghana is far less well organized. In the labour market for example, the issue of regulation is handled by a myriad of institutions with responsibilities for wages, standards, training, productivity, etc, with very little coordination. The land market is certainly perceived to be unregulated as different organizations handle land matters without any oversight over the sale and purchase of land. The focus of public attention is currently on the documentation of ownership.

While the numbers of institutions for regulating specific economic activities have increased in the last decade, there are hardly any studies that suggest that the problems of producers and consumers as they interact on the market have been lessened. On the contrary, probably as a result of the much more liberal political environment, the growing extent to which consumers articulate problems in relation to the production and delivery of various goods and services, following economic liberalization, suggests that the new institutions probably now have their work cut out for them, and that the regulatory environment in Ghana is only now beginning to tackle many of the issues thrown up by liberalization, particularly the divestiture of state assets and functions.

The areas in which regulation has been most expected to lead to greater competition in the delivery of goods and services have been the financial markets and the utilities markets. In the financial markets, less direct but effective ways of regulation were expected to focus on the costs of the institutions, removing obstacles to entry into the markets and reducing risks associated with information which would the make the market more competitive. Similarly,

in the utilities markets, following the withdrawal of the public sector from a number of areas and the relaxation of the low caps on prices, the sectors were expected to become increasingly competitive. New participants with better resources were expected in the sector as the environment was created for the negotiation of higher prices with other stakeholders.

This paper discusses the development of the institutional and policy framework for regulation and competition in Ghana over the last ten years in response to the liberalization of the economy in most sectors. Its objective is to highlight the different types of institutions and policies being employed to develop a level playing field for economic agents as they interact among themselves and also with consumers. In discussing the history of regulation over a longer period, it shows that while the professed goals have always been the creation of the level playing field, regulation has sometimes been also perceived as a tool for directing the involvement of distinct socio-economic groups in the economy.

The paper first discusses the legal framework for regulation in section 2 with attention on the general governance structure and how it impacts on the choice of regulatory approaches. Section 3 highlights major institutions that have been put in place by government for the purpose of regulating different economic activities in the last decade. In section 4, the paper discusses the policy setting with a focus on how policies are used to address the issue of competing interests and management of production resources and processes through the regulatory institutions. Section 5 is devoted to looking at the broader picture of how the regulatory bodies are coordinated, while section 6 discusses various influences on the functioning of regulatory bodies. Section 7 concludes the paper. It is important to note that, while many areas of economic life in Ghana are now regulated by distinct institutions, the paper will discuss regulation in more general terms and introduce the separate institutions when necessary to underscore a particular aspect of the development of regulation policies and institutions.

THE LEGAL FRAMEWORK FOR REGULATION IN GHANA

As earlier indicated, the more prominent role that regulatory agencies play in Ghanaian economic management today is linked first to the pursuit of liberal economic reforms and then to the adoption of a more open political system in which governance issues attract greater discussion and interest. It is important to underscore the fact that the new interest in the freedoms of economic agents has influenced considerably choices made in fashioning the system of governance. The need for institutions to be created with oversight responsibilities for the

actions of economic agents, and independent of the central arms of government has been a major facet of the new legal framework. We discuss below briefly how the current constitutional system has evolved and the way it is used to ensure accountability in the markets.

The Evolution of the Constitutional System and Economic Reforms

It is interesting to observe that Ghana began its economic reforms in 1983 under an authoritarian regime that had been put in place by the military. The Provisional National Defence Council (PNDC) was a regime that was not answerable to any other political structures. The path to reform began with a coalition of young radical ideologues who appeared more interested in the political outcomes related to development issues than in the economic processes. The issues of distribution were considered more important than production and growth. They believed that the poor economic situation was a simple outcome of corruption that was related to incompetence; and that once the issues of equity were resolved through the institution of sanctions for wrong doing the situation could be resolved. In the interim, aid from sympathetic governments would ensure that the institutions to fight corruption would be erected and made functional, while taking care of the immediate material needs of Ghanaians.

As the control regime failed to work, the need for economic reform became even more urgent. Working together with the World Bank and IMF led to the liberal policies that have characterized the economy since then. The increased flow of resources in the mid-1980s that accompanied the new policies led to an expansion of the economy and saw many more economic agents getting involved. With the increased level of economic activity and associated economic independence for various agents, the sense of empowerment that evolved was one that appeared incompatible with the authoritarian political structures. In a sense, economic liberalization and diversification were perceived to be increasingly incompatible with autocratic rule. As private investment continued to elude Ghana's quest for development, various explanations for that continued to attach importance to the uncertainty involved in dealing with a government that could not guarantee individual freedoms (Aryeetey 1994). There were many that questioned the legitimacy of the reform process in the absence political legitimacy (Ninsin 1991).

But aside from the need to legitimise the regime in order to attract private investment, there were other pressures on government to search for a more inclusive arrangement for development, particularly as it had committed itself earlier to a decentralized form of government

that facilitated rural development. Coupled with this was the external pressure that came in the wake of the collapse of the Soviet Union and the eastern bloc for political reforms that would lead to democratic governance (Afari-Gyan 1995). Thus, by 1991 the government could afford to set in motion the processes that would lead to the preparation and adoption of a constitution, and eventually to the democratic election of a government in 1992.

The current constitution of Ghana is often described as a mixture of the American and French constitutions, with a smattering of principles enshrined in the British style of government. It provides for a unitary state in which the executive, the unicameral legislature and the judiciary share the powers of government. While providing for the independence of each these arms of government, the constitution also enjoins the executive president to ensure that a majority of ministers are members of the elected parliament; a move designed to achieve significant collaboration between the two arms. The constitution sets up several institutions and offices and guarantees their independence to perform their functions freely without being encumbered by government. They are made distinct from government departments that are associated with particular organs of government under the control of the executive. An example of such is the Electoral Commission.

The development of a system of checks and balances underlies the principles of the constitution. Aside from setting up institutions that are not under the control of government, the constitution provides for the appointment of certain public officers by parliament in order to protect those from possible excesses of the executive. These include justices of the Supreme Court, ministers and deputy ministers of state and a vice-president nominated by a former vice president who has assumed office of president. It would appear that from its structure and resources that while parliament has the authority to initiate bills, most bills would come to it as initiatives of the executive to which it responds by making modifications or improvements.

The constitution seeks to guide the government of Ghana on how it should rule the country. Indeed this is what drives the inclusion of a "directive principles of state policy" to guide Ghanaian governments as they pursue social and economic activities for development. These basically indicate what the state's development obligations towards the people of Ghana are, within the resource constraints of the country. They provide for political objectives including the promotion of democracy and the avoidance of abuse of power and corruption, economic

objectives that suggest a need for equity in the use of national resources, social objectives which seek to guarantee freedom, justice, probity and accountability, educational objectives which seek to guarantee all Ghanaians free education at all levels, and cultural objectives which seek to promote customary and cultural values that are judged useful for a developing society. The directive principles serve only as a guide and are therefore not legally enforceable.

The operation of a constitutional government has been effective for ten years. It first saw the National Democratic Congress (NDC) led by Jerry Rawlings hold power for eight years. In December 2000, for the first time in Ghana's history, an elected government lost elections and had to hand over power to another elected government. It is important to emphasize, however, the fact that the expected relationships between the executive and the legislature have had their ups and downs. The Rawlings government never stopped showing its disdain for the parliamentary processes that were supposed to oversee public expenditure programs and the raising of revenue from both domestic and foreign sources. It always considered long-winded debates about government programs and their financing a luxury. This was not surprising considering the culture of quick-action that prevailed in the technocratic system of governance that had earlier prevailed in the early reform years. Aryeetey and Cox (1997) reported that some donors also believed that the process of economic reform had been slowed down as a result of the introduction of democratic rule and other new institutions. Increasingly, however, the quality of parliamentary debates is improving, especially as they affect the activities of different economic agents, and hence improving the length of time required to pass bills. Also, the different arms of government are perceived to be beginning to understand and appreciate their roles under democratic governance.

Legal Forms for Governing Regulation

One area in which the constitution is particular about is the issue of equal access to natural resources. This is why it requires the creation of regulatory bodies that would focus on judicious use and equity. An example is the requirement for a Lands Commission and a Minerals Commission, among others, and their empowerment to deal with the relevant sectoral issues. The constitution provides for parliament to make laws by passing bills that seek to direct or redirect general courses of action in a manner not adequately dealt with by existing law. It is this power that has seen parliament pass a number of bills aimed at regulating economic or business activity in the wider public interest An example of such laws is the bill that received

presidential assent to become the Environmental Protection Agency Act (490) and then set up the agency, as well as Act (538) setting up the Public Utilities Regulatory Commission 1997 and Act (541) for the Energy Commission.

The laws for creating the regulatory agencies are quite similar in structure, with a little variation in content to suit the relevant sector. In the law that set up the Public Utilities Regulatory Commission (PURC), Act 538 is presented in five parts. The first part deals with the establishment and functions of a Public Utilities Regulatory Commission. The second is devoted to "provision of service and rates" for public utilities. Complaints and enforcement of the decisions of the commission are provided for in part three. Part four makes administration and financial provisions for the commission, while the final part (5) defines what constitute offences and the penalties for them under that Act, as well as other miscellaneous provisions.

The Act setting up the Energy Commission is structured only a little differently. In its first part, the establishment and functions of the Commission are provided for. This is followed in part two with general provisions on licenses and in part three with edicts on "transmission, wholesale supply and distribution of electricity and natural gas". Part four of Act 541 makes special provisions relating to petroleum products and part five establishes the "energy fund". Provision is made for administration and financial and miscellaneous matters in part six.

Act 490 (1994) which set up the Environmental Protection Agency makes provision for the establishment of the institution, enforcement and control, the national environment fund and finally for the administration and financial matters of the agency. Similarly the Bank of Ghana Act provides for its role as a regulator of the banking industry, as indeed does the law on the setting up of the Ghana Investment Promotion Centre that requires the Centre to help develop a sound investment climate for Ghana.

But by far the main source of legal authority to protect consumers of goods and services is the issuance of the "Protection Against Unfair Competition Act, 2000" (Act 589) which is administered by the Minister for Justice. The law seeks to stop the "causing of confusion with respect to another's enterprise or its activities", among other things. It also has clauses dealing with

?? damaging another person's goodwill or reputation;

?? misleading the public;
?? discrediting another person's enterprise or its activities;
?? unfair competition in respect of secret information; and
?? unfair competition in respect of national and international obligations.

The Minister of Justice is authorized to cause the issue of legislative instruments for the purpose of developing regulations aimed at protecting the public as consumers and also as producers of goods and services from unfair competition.

In general, for all the regulatory bodies, the main approach to developing instruments for regulation is the enactment of legislative instruments. For example, Act 568 gives PURC the power to make regulations that are necessary for the implementation of its mandate. Two such regulations are the Public Utilities (Termination of Service) Regulations 1999, LI 1651, which set out the circumstances under which utility service to consumers may be terminated, and the Public Utilities (Complaints Procedure) Regulations 1999, LI 1665, specifying the procedures by which any person (utility or consumer) may lodge a complaint with the Commission.

Legal Mechanisms of Implementation, Arbitration and Enforcement

The various acts put in place for the regulation of various economic agents provide for specific means to be applied in implementing those regulations. The regulation on public utilities is probably the most illustrative of how the legal mechanisms work. Typically, in the case of public utilities, the act enjoins the utility provider to

a. maintain its equipment and property used in the provision of the service in such condition as to enable it to effectively provide the service;
b. make such reasonable effort as may be necessary to provide to the public service that is safe, adequate, efficient, reasonable and non-discriminatory; and
c. make such repairs, changes, extensions and improvements in or to the service as may be necessary or proper for the efficient delivery of the service to the consumer.

After requiring providers to achieve the above outcomes, the regulatory body (PURC) is then empowered as follows: "Where the Commission discovers on its own or upon a complaint that the service provided by a public utility is not in accordance (with the above requirement),

the Commission shall in writing direct the provision of the adequate or reasonable service that should be provided by the public utility and may include such other directions as to secure compliance with (the requirements above).

The act on public utilities empowers the regulatory bodies to seek compensation for a consumer if necessary, pressure the utility to employ technology that improves service delivery and/or reduce cost for the consumer over a reasonable time period. PURC is required to monitor standards of performance by public utilities. The act further requires that whenever a public utility enters into an agreement with any body corporate the agreement be complied with as entered into in the agreement. There are also provisions on refusal to provide service which do not permit any public utility to refuse to serve any body except with the permission of the Commission, guidelines for fixing rates and demanding payments with the approval only of the Commission, cost of production, etc. Public utilities are required to make all rates charged by them public by publishing these.

The regulatory body is required to put in place a procedure for the lodging of complaints by the public and also to investigate all of these except it is of the opinion that the complaint "is trivial, frivolous, vexatious or not made in good faith".

Enforcement of decisions of the Commission may be done through the courts. The law specifies that "Where the Commission, whether before or after any investigation, makes any decision or gives any direction, requiring any person to do or desist from doing any act, and there is failure on the part of this person to comply with the decision or direction, within a specified period, if any, or within a reasonable time, the Commission may apply to the High Court for the enforcement of the decision or direction". It is the case that for all the regulatory bodies, the enforcement of their decisions or directives is through the courts. Considering the overburdened nature of the judicial system, the time dimension of issue of legal enforcement of such decisions becomes very crucial. As we will see in the next section where there is a discussion of an actual case, time can be a major problem.

In practice, a number of complaints have come before the Public Utilities Regulatory Commission since it began work in 1997. Most of the complaints are related to billing, tariff increases and quality of service in that order. The Commission received 184 complaints in 1999

and 186 in 2000. It was able to resolve 180 of these in both years. The remaining cases are still pending and have not yet been sent to the courts for determination.

An explanation for the absence of a 'hard-nosed' approach to regulation of public utilities is the fact that the regulatory body considers itself to be still developing the standards that have to be applied by the utilities in their dealings with consumers, taking into account the socio-economic circumstances of all parties. With the standards not yet fully in place, the strategy is to reduce arbitrariness in enforcement. The same appears to apply to the Energy Commission as well as the Environmental Protection Agency.

Significant Legal Cases or Determinations

One of the most interesting cases of the legal system being used by a consumer in order to assert his rights and enforce a contract to deliver a service has been the case of *Hasnem Enterprises Ltd (Plaintiffs) vs. Electricity Corporation of Ghana (Defendants),* which happened before a regulatory body was put in place for the utilities. In the original case, the plaintiffs sued the defendants for negligence resulting in damage to equipment used at the premises of the plaintiff for business in 1981. This was after a break in an underground cable belonging to the defendants and delivering electricity to the premises of the plaintiffs caused damage to plaintiff's equipment. The break occurred outside of the premises of the plaintiff. The High Court threw out the case. The judge found that the plaintiffs had not established a case of negligence against the defendants despite the application of the notion that negligence did not have to be proven so long as it could be reasonably established that the absence of action on their part on property belonging to them was the cause of the damage to plaintiff's equipment. Upon appeal at a higher court in 1996, the decision of the lower court was upheld. Plaintiff continued with a further appeal to the Supreme Court, which decided in his favour in January 1998, overturning the decisions of the two lower courts.

The most interesting aspect of the Supreme Court decision is the way it is widely perceived to have opened the way for holding utility companies and other service organizations liable for negligence leading to loss of income. The Court ruled that the defendants knew from evidence available that there were technical problems with power supply in the area that plaintiff operated from, but failed to take corrective action. The defendants also knew what the possible consequences of such problems could be for users and yet took no action. They therefore found defendants liable for damages and ordered payment.

From a different perspective, another interesting case, supposedly for the protection of the consumer, arises from the legal suit between Accra Brewery Ltd. and Guinness Ghana Ltd. This was an application brought by the plaintiff (Accra Brewery Ltd) seeking an order of interim injunction to restrain the defendant (Guinness Ghana Ltd) from entering into or in any other way enforcing an agreement entitled "Guinness means profit" with outlet owners of the plaintiff[1]. In the supporting affidavit, the plaintiffs claimed that they produced products, namely Club Super Stout, Club Dark Beer and Castle Milk Stout, which competed with the product of the defendant, i.e., Guinness Foreign Extra Stout. They contended that the defendant had entered into an agreement with a number of their common retailers through a monetary inducement, which obliged them to stock only the defendant's products and to put up only advertisements from the defendant. They argued that, as a result of the agreement, the retailers refused to stock the plaintiff's products and had refused to sell the plaintiff's products. The plaintiff further argued that the defendant's actions were unlawful by inducing their mutual customers to break their contracts with the plaintiff. It was further argued by the plaintiff that "the conduct of the defendant (was) preventing the Ghanaian public from exercising its freedom to choose any alcoholic or non-alcoholic beverages in drinking bars or other authorized places where the plaintiff's and defendant's products (were) sold". A further argument by the plaintiff was that "the defendant's act of inducement contravene(d) the tenets of social and economic liberty and prosperity, particularly the liberty of the individual to trade with whom he pleases and the prosperity of the nation by the expansion of the total volume of trade". The plaintiff contended that he had lost substantial income as a consequence of the activity of the defendant.

In this case the judge ruled against the plaintiff arguing that there was no indication of the defendant seeking to create a monopoly. He said there was no evidence that the defendant by his action was seeking to prevent customers from buying a similar product more cheaply from elsewhere. This was so since the products had the same sale price that was determined by agreement among the producers and that consumers were free to choose which outlets they would buy from. He also contended that there was no evidence that the defendant's market share had risen as a consequence of the agreement. With respect to the public interest issues, the judged ruled that there was no evidence that the public interest was likely to suffer as a result of the agreement between the defendant and selected retailers since consumers still had a choice.

Considering that this second case came up shortly before the law on "protection against unfair competition" (Act 589) was enacted, it is difficult to tell how the case might have gone had it been brought a year later. While the law on unfair competition is quite specific on the grounds under which such unfair competition may occur, it also has the umbrella clause that "any act or practice in the course of industrial or commercial activities that is contrary to honest practices constitutes an act of unfair competition". It is certainly not clear how a judge would have determined what constituted or did not constitute honest practice in this instance.

It is interesting that despite the fact that the new constitutional and democratic arrangements have strengthened the hand of consumers and other economic agents enormously, the number of suits or legal cases brought up in relation to consumer rights and unfair competition remains insignificant[2]. This may be attributed to a number of factors including a general apathy in relation to legal matters. Another possible explanation is the fact that the financial costs of litigation tend to be beyond most economic agents, who tend to seek informal solutions to their grievances.

Precise Methods for Profit or Price Regulation

Currently, issues of regulation and competition for many of the new regulatory bodies tend to focus much less on profits and prices than on other aspects of public interest. The regulatory bodies that are directly involved in setting prices or regulating the profits of service producers are the Public Utilities Regulatory Commission (PURC) (for water and electricity) and National Communications Authority (NCA) for telephones. They are required to do so by law. In the act setting up the PURC, it is required that a public utility must file a proposal for at least 60 days prior to the commencement of a new service or the effective date of new tariffs. These proposals have to be published widely in the mass media. The Commission is enjoined to take reactions to these proposals in written form or from representations made at public hearings for tariff review considerations. After the Commission arrives at decisions following consultations with providers and consumers in this manner, these are published in the *Gazette.*

The law requires that in negotiating tariffs, the PURC take into account

a. consumer interest;
b. investor interest;

c. the cost of production of the service; and
d. assurance of the financial integrity of the public utility;
e. economic development of the country;
f. best use of natural resources;
g. uniformity of prices throughout the country;
h. competition among utility companies.

In particular the Commission must determine whether costs provided by public utility providers are justified.

In pursuit of the above outcomes PURC prepared guidelines for setting electricity tariffs in 1998, applying a price cap regulation approach PURC has determined that the following considerations are important in arriving at rates:

1. fair apportionment of total cost of supply to various classes of consumers and provision of a certain minimum level if service at an "affordable" price to residential customers who may not be able to pay the full cost;
2. appropriate rate of return on investments to satisfy the interests of investors in the national interconnected system;
3. setting of bulk supply tariff to ensure that distribution facilities procure at least cost from wholesale power suppliers, electricity for distribution and retail to regulated customers;
4. setting of transmission service charge to ensure economically efficient, reliable and secure operation of the transmission system by the electricity transmission utility;
5. setting of distribution service charge to ensure economically efficient, reliable and secure operation of the distribution system by distribution utilities;
6. provision of adequate revenue to ensure financial viability of the power utilities;
7. allowance for "special rates" for priority consumers whose activities may enhance economic development.

Based on the above considerations, PURC has also worked out charges for the utility buying power wholesale from the generation agent, in this case Volta River Authority, and distribution service charges to be paid by consumers. For the purpose of computing the bulk genera-

tion charge, PURC has indicated that, "a two-component tariff shall represent the price of capacity and energy that distribution utilities purchase from the spot market as follows:

1. a capacity charge that shall be set at a value equal to the investment annuity plus the fixed operating and maintenance costs for developing a single cycle gas turbine for peaking capacity required in the national interconnected system; and
2. an energy charge derived from the expected short-run marginal costs of supplying energy in the national interconnected system, based on a 12-month forward simulation economic merit order dispatch of all generation facilities in the national interconnected system.

Each year (VRA) shall compute for the PURC a levelised energy charge that shall apply for electricity purchases from the spot market. The levelised energy charge shall be adjusted in June and December each year, taking into account annual hydrology of the reservoir for VRA's hydroelectricity facility at Akosombo. To this is added the transmission charges and the distribution charges. The distribution service charge consists of standard distribution losses of power and energy, standard investment, maintenance and operation costs, costs associated with the user, independent from his demand for power and energy. To this is factored annually average inflation (CPI), a productivity factor (G) set by PURC, a quality of service penalty/reward (QSP) set by PURC and a cost of capital adjustment factor (CCAF) set by PURC. Thus the distribution service charge (DSC) is derived as

$$DSC = \frac{\text{Annuity} * (1+ \text{CCAF}) + \text{O\&M}*(1+\text{CPI-G}) + \text{QSP}}{\text{Distribution System Max Demand.}}$$

The total expenses of a utility company are distributed among different user categories on the basis of the actual costs incurred by the distribution company in providing the service, and the distribution service expenses are allocated to each class of customers as energy or demand related costs on the basis of their contribution to coincident peak demand.

In the case of water, PURC uses a modified approach but with the same principles. In this case, the tariff will be structured taking into account projections of sales volumes, the number of customers in each tariff class, and PURC expectations of the overall efficiency of water delivered to water supplied. PURC will also take into account the Government of Ghana water sector policy in balancing tariffs between different classes of customers.

It is important to emphasize the fact that due to difficulties in determining acceptable and practical operating standards under prevailing institutional and environmental circumstances, rates are set largely as an outcome of an iterative process that takes into account largely material on costs provided by the utilities with far less room for independent assessments of these by PURC.

Other Legal Requirements Relating to Quality of Service

The acts establishing various regulatory bodies make clear what the environment for producing and delivering the output should be like. For example, Act 541, which sets up the Energy Commission, requires the Commission to work together with the PURC to develop standards of performance for the supply, distribution and sale of electricity or natural gas to customers by licensed public utilities. The standards include voltage stability, maximum number of scheduled and unscheduled outages, number and duration of load shedding periods, and metering. The law provides for the payment of compensation where the utility fails to satisfy standards set by the regulatory body.

But, as earlier indicated, the regulatory bodies may, for example, find it difficult to specify the maximum number of power outages when it is obvious that the capital required by the electricity utility for improving its service has not been made available to it as the sector undergoes restructuring in the hope of privatisation.

INSTITUTIONAL FRAMEWORK

After a decade of trying to improve the conditions for the regulation of various resources, it is still not clear what the overall goal of regulation in Ghana is. While it may be argued that regulation is intended to achieve a level playing field for businesses as they engage in their lawful economic activities, producing goods and services for the public, there is also the perception that regulation has sometimes been used as an instrument for ensuring that specific powerful groups are able to protect themselves and their economic interests. There are certainly elements of both in the way regulation institutions have grown with time. It is important to emphasize, however, the fact that for the new regulatory institutions, where appropriate, the law enjoins them “to promote fair competition in the sector”.

The Evolution of Regulation and Competition Institutions in Ghana

The idea of having in place a regulatory body that oversees the functioning of any number of economic agents as they produce and deliver services has certainly seen considerable evolution over time in Ghana. The earliest cases of regulation may be linked to the colonial governments early attempts to regulate the influx of mining capital in what was then the Gold Coast. Bentsi-Enchill (1986) has documented extensively the rapid growth of mining activity involving both indigenous miners and foreign mining concerns in the latter part of the 19th century. As the mining companies entered into contractual agreements with local chiefs for land concessions, this often alienated local interests in terms of use rights. The initial opposition of the colonial government to the rapid growth of concessions to mining companies soon gave way to active support for it. The terms of concessions were such that they literally gave away the land for very little to the concessionaires. Soon Ghanaian small miners began to work on the concessions granted by chiefs to the foreign companies, usually in areas not yet being mined by the mining companies. Sometimes this was with the approval of the mining company for a fee or for a share of the produce. At other times this was considered an interference with legal contracts. The growing confusion surrounding how such concessions were issued and managed by chiefs finally led the colonial government to issue the 1900 Concessions Ordinance. This Ordinance made it clear that no byelaws made under the Native Jurisdiction Ordinance could interfere with the terms of a validated concession. What many analysts see as the end-result of this ordinance was not only an attempt to bring some discipline into the mining and land industry by the colonial government, but more an attempt to protect foreign capital that was using its influence to alienate local people from their natural resources. Indeed, the different mining regulations that have come into being since the colonial days have largely been seen as an attempt to protect large foreign interests against small indigenous interests and not necessarily for fostering competition (Bentsi-Enchill 1986).

In post-colonial Ghana, the regulation of the financial market by the central bank was institutionalised early with its creation in 1958. But here, regulation was used as an instrument to protect local interests against perceived foreign exploitation through the segmentation of the market and the reservation of different parts for different user groups (Aryeetey et.al 1992). This is what led to the creation of different development banks for different sectors by the government.

But regulation in other markets has been far less clear and often only implied in the functions of institutions that supervise other public sector organizations. Thus, for example, while there have been different departments that have been responsible for the production and delivery of water to consumers since 1928, there was never an institution assigned the specific role of regulating the water sector until 1997. Urban water supply began as a function of the Public Works Department in 1928. A Rural Water Department began operation in 1948, and the two structures were merged in 1958 for reasons of rationalization. The merged Water Supply Department operated until 1965 when the Ghana Water and Sewerage Corporation (GWSC) was established by an Act of parliament (310) to operate as a public monopoly. The mandate of the erstwhile GWSC was to provide, distribute, and conserve water for domestic and industrial purposes, provide sewerage services, and cause its affairs to be managed to ensure its revenues are equal to or greater than its outgoings. While no specific regulatory body was appointed to oversee its functions, by making the Ministry of Works and Housing responsible for its operations, it was implied that the ministry would 'regulate' it. This meant that tariffs had to be approved by the ministry before they could be applied, and this was obviously done with great reluctance and significant political considerations. There were no standards imposed on the delivery of the services assigned to the corporation.

Indeed the reality of government ministries overseeing the production and delivery of goods and services prevailed throughout the period of active state involvement in such production and delivery. Thus the Electricity Corporation of Ghana also became the public monopolist providing power under the supervision of the Ministry of Fuel and Power, while the mining companies, private and state-owned, were supervised by the Department of Mines on behalf of the Ministry of Mines and Energy at one time. The Ministry of Industries (now Trade and Industry) for a long time was responsible for supervising the operations of the large number of state-owned enterprises that produced anything, from shoes to toilet paper.

Supervision of SOEs by ministries often entailed ministerial representation on the boards of the corporations, where such representatives became the organs of contact between government and these semi-autonomous institutions. There were no such contacts between consumers and the service deliverers. The absence of consumers may be attributed to the fact that there was never a serious organization of consumers for various goods and services, until recently. There are countless anecdotes of how lowly paid civil servants sitting on the boards simply lost their oversight function as they became co-opted by the SOEs as their agents in

getting additional public assistance in matters of subsidies, capitalization, etc. in return for significant financial rewards.

Increasing awareness of the need to introduce some direct regulation into the manner in which institutions functioned and delivered outputs began with the creation of the Ghana Standards Board in the middle of the 1970s for quality control and the Prices and Incomes Board to ensure that the pricing of various goods and services was 'reasonable' taking into account projected government revenues. No institution was concerned with environmental issues until the Environmental Protection Council was set up in 1982. As indicated earlier, the new era of regulation starting in the 1990s came with the liberalization of the economy and growing multiplicity of service deliverers. The realization that government ministries and departments with many other administrative functions were not the most appropriate institutions for regulation has led to the new era of independent regulatory institutions[3].

Institutional System Governing Regulation and Competition Issues

There is an arrangement whereby the production and distribution of many goods and services are undertaken by different types of agents, some in the public sector and others in the private sector. These are regulated by agencies that are still evolving in their early stages. Thus the system of regulatory bodies includes a large number of agencies dealing with an assortment of regulatory issues in different sectors. These include the Bank of Ghana, The Securities and Exchanges Commission, The Public Utilities Regulatory Commission, The Energy Commission, The Forestry Commission, The Lands Commission, The National Communications Authority, The Media Commission, Commission on Human Rights and Administrative Justice, The Ghana Standards Board, The Food and Drug Administration, and the National Board for Small Scale Industries.

The system of regulation of public departments, which provide most public services, is quite interesting. (See Chart 1). These include the provision and regulation of services like agricultural extension, crop services, births and deaths registration, passports, company registration, public works, etc. Such public departments are typically placed under ministries that supervise or regulate them. Thus, the Ministry of Food and Agriculture is responsible for the regulation of Extension Services and Crops Services Departments, among others. Similarly the Public Works Department reports to the Ministry of Works and Housing as does indeed the Department of Town and Country Planning. Public delivery of health services is provided by

the Ghana Health Service, which is regulated by the Ministry of Health. Similarly education services are the responsibility of the Ghana Education Service, as well as other private agents, and the Ministry of Education regulates these.

At the same time, however, the constitution of Ghana makes provision for a decentralized local government system, which requires that all public departments operating in any administrative district report to the representative District Assembly, which is supposed to be responsible for their activities in the district. In effect, each of the decentralized public service departments is responsible to both a national ministry and the local government structure. The essence of decentralization is basically to allow for representatives of users of the services to have an input into how such publicly provided services are derived. The District Assembly system has thus become the main rallying point for consumer input into public service delivery, particularly in rural communities.

There are public services that are not necessarily provided by any single department, but which have become community issues. One such is the provision of rural water and sanitation. There is a Community Water and Sanitation Agency responsible for assisting and coordinating the provision of water and sanitation services in rural communities using community management approaches. So while district assemblies assume part of the financial responsibility for the provision of water in towns and villages, with the communities also sharing in that responsibility, the agency provides technical support for the development and installation of rural water systems. The agency reports to the Ministry of Works and Housing and liases with the local government bodies.

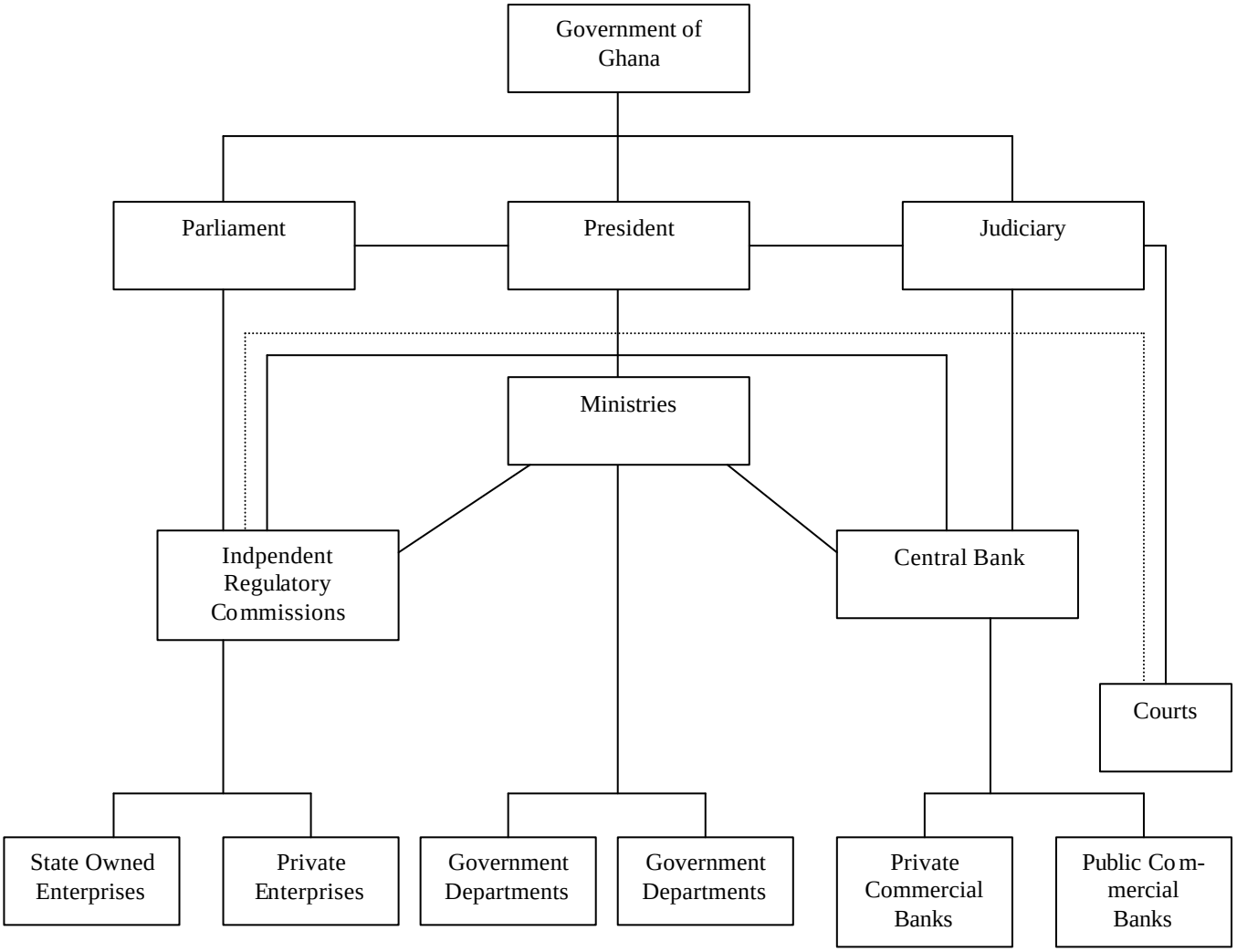
As indicated earlier, with the privatisation of a number of state-owned enterprises, beginning in the second half of the 1980s, the regulation of these has been transferred from the ministries that supervised those entities to an assortment of new bodies. The first stage in the changes to how they were regulated came with the setting up of a State Enterprises Commission as an oversight body, a function taken away from the Ministry of Trade and Industry. For the privatisation exercise, an independent Divestiture Implementation Committee was put in place to prepare SOEs for eventual divestiture.

It is important to note that as the partial privatisation of a number of services, including telecommunications, public transport, news media, etc. began, the use of the independent commissions (listed earlier) to regulate them also emerged. Thus, for example, the National

missions (listed earlier) to regulate them also emerged. Thus, for example, the National Communications Authority (NCA) was set up in 1996 under Act 524 with the following objectives:

1. to ensure that there are provided throughout Ghana as far as practicable such communications services as are reasonably necessary to satisfy demand for the services;
2. to ensure that communications systems operators achieve the highest level of efficiency in the provision of communications services and are responsive to customer and community needs;
3. to promote fair competition among persons engaged in the provisions of communications services;
4. to protect operators and consumers from unfair conduct of other operators with regard to quality of communications services;
5. to protect the interest of consumers
6. to facilitate the availability of quality equipment to consumers and operators;
7. To promote research into and the development of technologies and use of new techniques by providers of new communications services and to develop adequate human resources in collaboration with such other government departments and agencies as the Authority considers appropriate.

Chart 1: Institutional Arrangements for Regulation



Autonomy of Regulatory Bodies

Most of the independent regulatory commissions set up in the last decade have a responsibility to "advise the Minister (responsible for the sector) on policy formulation and development strategies for the (sector or industry)". The fact that they are required to take from a minister "such directions of a general character as appear to him to be required in the public interest relating to the discharge of the functions of the (regulatory body)" is not limited to just a small group of them, as most of the regulatory commissions have such a clause in the act setting them up. Thus, while they are shielded from the daily intrusions of civil servants and the ministerial system in the way they are managed, the degree of autonomy they enjoy is only partial. It is not obvious what "directions of a general character" may mean in some instances and could therefore be subject to abuse. But the commissions have access to parliament and can seek protection from such abuse through other guarantees embedded in the constitution

and in the Acts that set them up. It is argued that the degree of autonomy that an institution can enjoy depends on how capable its leadership is. By making the President responsible for the appointments of the Commission members and their Executive Directors, they are supposedly protected from overzealous ministers.

A notable exception is the Public Utilities Regulatory Commission where it is stated in its Act that, "subject to the provisions of this Act, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions". The reasoning behind this provision is to protect the consumer from utilities that are still largely owned by the state in the fixing of price caps and the setting of standards. The most important checks on the authority of this commission is the appointment of its board and management by the President and its financing from funds approved by Parliament.

Another interesting area in which the degree of autonomy has been an issue is that of the central bank. One of the oft-touted explanations for Bank of Ghana's difficulties in regulating commercial and other banks in the exercise of a sound monetary policy is a supposed lack of adequate independence. Thus, in 2001, a new Bank of Ghana Act (612) was passed by Parliament, which sought to strengthen its role in the conduct of monetary policy. The central bank is given the authority to maintain price stability "independent of instructions from government or any other authority". The new Act emphasizes the position of the Governor as independent through appointment by the President in consultation with the Council of State. The role of the council of state is intended to make it more difficult to change the governor in the middle of his/her term. In regulating banks, the law gives Bank of Ghana the authority to apply any tools or instruments of control in the event of unusual movements in money supply and prices. The law also limits government borrowing from the central bank to no more than 10% of the total tax revenue of the previous year. These are all intended to ensure that Ghanaian consumers and investors are protected from excesses in the behaviour of government and banks.

Inter-Agency Relationships and Divisions of Responsibilities

The laws that govern the functioning of regulatory bodies provide sufficiently for them to compel cooperation in the performance of their functions. That cooperation may be required of the service providers that are being regulated or from agencies that may have information necessary for carrying out a regulatory function. Thus, for example, under Act 538 for PURC,

"Every body or institution authorized by any enactment to grant a license to a public utility for the provision of the relevant utility service shall assist the Commission in the performance of its function under this Act".

Some evidence of such collaboration has been observed from the annual reports of PURC. It has collaborated with the Ministry of Works and Housing, responsible for the water sector, as the Ministry works to find permanent office accommodation for the Commission. Collaboration with the Energy Commission has taken the form a joint project to develop a legislative instrument on technical operations and standards of performance for electricity distribution utilities. The Technical Director of PURC sits on the Technical Committee of the Energy Commission, which serves as an important link between the two regulatory institutions. Collaboration with the Water Sector Restructuring Secretariat is on going as they have jointly participated in each other's workshops to determine how to move the water sector forward.

Most regulatory bodies have various departments or divisions to deal with different areas of expertise required for their operations. Thus, for example the Environmental Protection Agency has an Intersectoral Network Division, which has four departments for natural resource management, environmental education, the built environment and mining. The Natural Resource Management Department has four units, namely Forest and Wildlife Resources Management, Land Resources Management, Water Resources Management, and Energy Resources Management. In addition to the Intersectoral Network Division, there are four other divisions, namely Operations, Technical Support Services, Regional Programs and Chemical Control and Management Centres. All of these are headed by specialists who report to the Executive Director. The Executive Director reports to the Board of the Agency.

The Public Utilities Regulatory Commission has nine Commissioners appointed by the President. The Commission does its work through 7 committees, namely Finance, Technical, Tariffs, Administration, Consumer Affairs and Public Relations, Legal and Water Issues Committees. It is supported by a secretariat headed by the Executive Secretary. The secretariat does its work through three separate bureaux, namely Technical Operations and Rate Economics, Consumer Services and Legal Services.

The relationship between the regulatory agencies and the local government system is expected to be one of mutual cooperation. The agencies carry out their mandates in various areas without necessarily having offices in those areas. They interact with the relevant public

departments that operate under the district assemblies to carry out their functions, without necessarily being responsible to those assemblies. There are often complaints that the regulatory agencies do not function effectively outside Accra in view of their poor logistical preparation.

Financing and Staffing of Regulatory Bodies

Regulatory bodies are generally provided for in annual government budgets with a regular subvention. Thus, like all public institutions receiving a subvention, they are required to submit a budget annually to the Ministry of Finance. Allocations to them are made in the national budget, which is then submitted to parliament for approval.

But again, like all public institutions, such regular subventions tend to be largely inadequate, often covering less than 70% of the budgeted expenditures of the institutions. Thus, despite the fact that it is stated in Act 490 setting up the Environmental Protection Agency that "Parliament shall annually provide to the Agency such sums of money as may be necessary for the efficient discharge of its functions under this Act", the Agency has indicated in several reports the inadequacy of its finances. For the PURC, Act 538 makes provision for it to add to the government subvention through loans granted to the Commission, any monies accruing to the Commission in the course of the performance of its lawful functions, and grants. The legal provisions made for funding indeed vary considerably as the law for the Ghana Investments Promotion Centre suggest that the Centre "may levy such fees and charges for its services as may be determined by the Board". The Centre is also empowered "with the approval of the Board (to) invest as it considers fit any monies not required for immediate use".

In practice, the bodies have had difficulty meeting their financial requirements. The Public Utilities Regulatory Commission noted in its second annual report (1999) that "funding constraints still remain a problem due to the rather arbitrary ceiling imposed on the Commission's budget proposals submitted to government for approval. Inevitably, the budget fell short of what was required to sustain the Commission's programs". In the 2000 report, it appeared that the situation did not improve as they again observed financial difficulties.

Interestingly, PURC has responded to the financial difficulties by proposing to government the option of obtaining funds from the utilities as a charge for regulatory costs. Government has indicated a willingness to consider it and is currently discussing the proposal with the

utility companies who appear to have no difficulty with it. The idea of having a regulatory charge as a major source of funding is seen by PURC as a major step in securing its financial independence, regarded as a major step in ensuring full independence to pursue its mandate.

The governing bodies of the regulatory bodies are free to hire and fire personnel of the institutions with the exception of the chief executives who are appointed by the President. For many of them, the financial difficulties that they face imply that their ability to hire staff for their various functions is constrained. PURC has indicated that it began work in 1997 with four professional and six support staff. The staffing situation has only improved marginally as it still has over 30% of vacancies still unfilled in the professional categories. Aside from funding constraints, the inability to fill those vacancies is worsened by the limited space in the rented premises. It has vacancies for Energy analysts, water analysts and legal officers.

Codes, Guidelines on Public Interest

The main source of inducement to officials of the regulatory bodies to respond to public interest considerations comes from the growing public awareness of the obligations of public institutions and other service deliverers. A lot of that growing awareness was first kindled, ironically, in the early days of the Rawlings' 'revolution' when "probity and accountability" became buzzwords generally used to justify the need for the military intervention to save the masses. Groups of people came together to question the actions and behaviour of public servants and agencies. Ironically, as the regime began to tighten its grip on civil institutions in order to contain any opposition to liberal economic reforms, a lot of that enthusiasm to pursue the public interest actively was lost.

But as the changes in governance structures began to take shape, Ghanaians once again found 'their voices' and began to articulate quite loudly their views and expectations of all manner of public institutions. A lot of that enthusiasm is amply reflected in the constitution, earlier discussed, where the state's obligations towards people are clearly spelt out.

Also with the new growth of the mass media, duly reflected in the number of private newspapers and radio stations, public views on most issues of interest to consumers are loudly expressed. There is indeed hardly a day when no one calls a radio station to express dissatisfaction with water services, power services, telecommunications, roads, health, education, etc. in specific areas, often urban.

The new pressure has been more formally expressed in the clauses dealing with compliance in the legal documents of regulatory agencies. In all the acts, provision is made for the public to make representations to the regulatory agency in a manner that obliges the agency to receive complaints. The agencies are then required by law to show within specified periods what actions they have taken on them. As much as possible, the procedure for filing complaints must be widely publicized and the process of examining or assessing them made as transparent as possible. Thus, for example, PURC is obliged to have a Consumer Services Committee. The laws also provide for the enforcement of decisions taken by the agencies. Thus, Act 524 for the National Communications Authority empowers the authority to issue licenses to communications systems operators and provides for penalties enforceable through the courts. The main tool for giving effect to the regulatory functions of agencies is the power of the agencies to cause legislative instruments to be drawn up, either through a ministry or on their own authority.

Forms of Accountability

As indicated earlier, while the structure of most of the regulatory bodies is that they are associated in a supervisory relationship with a minister, the extent to which they must account to that minister is not very clear from the statutes. Thus they are obliged only to take "directions of a general character" from the minister, but it is no where defined how that may be determined, leaving considerable room for discretion.

Ultimately, however, regulatory bodies are all accountable to parliament, where the representatives of the people may be found. Parliament may summon any regulatory body to explain any regulation and its enforcement at any time. This has been increasingly so in the cases of water, electricity and telecommunications lately. The authority of parliament is amply reflected by the procedure for issuing regulations. Thus PURC for example, goes through the following steps to issue new regulations: It first prepares an initial draft of the regulation and sends it to the Attorney General's office for legal drafting. Upon consideration of the draft by the Commission, this is presented to Parliament's select committee of subsidiary legislation. Unless parliament rejects the draft within 21 days, the regulation becomes effective.

Customer/User Participation and Influence

Despite the growing awareness of customer/user rights in Ghana, there is relatively little presence of organized consumer groups throughout the country. Thus, most complaints from users of various services come from individuals. There is provision however for consumers to be represented on the Public Utilities Regulatory Commission and indeed there is a representative of consumers, albeit selected in her own right and not representing any organized consumer group.

The PURC is obliged under the law to seek consumer inputs in arriving at particular rates that may be applied. Its rate setting process involves a public hearing after the filing of proposed rates by a utility and its review by PURC. "When the PURC accepts the filing of the utility company, it shall organize public hearings to give the opportunity to other stakeholders to comment on the proposals. Prior to the public hearing, the utility company shall publish its tariff proposal in the print media. The publication of the proposed rates should be done at least 14 days before the public hearings".

POLICY SETTING

Policies for regulation have evolved over the years as a consequence of specific interest groups championing change in the way business is conducted, as is indeed the case in many places. But these are nit necessarily consumers. Early regulation policies were intended to strengthen the state's position in the economy, while latter policies are largely intended to ostensibly ensure that in the aftermath of the withdrawal of the state no one group dominates the scene. But it is not at all clear how far the state can retrieve into a smaller area in specific sectors. While it has continued to express a commitment to the private sector's role, it has faced major problems in handing over to the private sector significant areas of economic activity. This is amply reflected by the increasing number of policies relating to private sector activity not accompanied any major changes in the size of the sector and its performance.

Regulation and Competition Strategies

One feature of the reforms that Ghana has pursued in the last two decades has been a stated gradual withdrawal of the state from the direct production of goods and services and an attempt to promote the "private sector as the engine of growth". Since the last elections, the slogan has been changed to one of a "golden age of business". Essentially, emphasis has been placed on developing an appropriate enabling environment to foster the expansion of the pri-

vate sector. I discuss here the efforts on the decentralization and privatisation fronts as key strategies to foster competition and efficient use of public resources.

The long-term objective for the development of an enabling environment as contained in Ghana Vision 2020 has been "to create an environment in which all sections of society can contribute to a sustained and accelerated rate of economic and social development over the long haul". The areas of concentration have included universal literacy, awareness of the role of science and technology, support for research and development, effective public administration system, effective co-ordination of development programmes, decentralisation of public service delivery, including fiscal decentralisation, capacity-building for the public agencies, streamlining of the legal framework to support national development, and finally the reduction of reliance on aid. In the medium-term, a programme of action was developed which focused on decentralisation, governance and the public administration system, capacity-building for private sector development and science and technology for development.

The assessment of the decentralisation programme suggests that significant progress has been made with respect to political decentralisation, planning and revenue sharing, the development of a district treasury system, etc. While significant effort has been made to strengthen district assemblies, there is evidence of continuing difficulty in meeting targets. In the area of public administration, the objectives have been to foster democratic institutions, improve human resource management, improve public policy formulation, co-ordination and management, improve the efficiency of government financial management and create an enabling legal environment for the private sector. One area of obvious positive growth has been the development of civil society organs. They have managed to create a new awareness in the minds of the public about public policy processes, even if their own procedures for engaging the public are limiting

For the period 1996-2000, government's objectives for building the capacity of the private sector to respond to an improving enabling environment were:

?? Rationalise the financial sector;
?? Promote a more positive attitude towards the role of the private sector;
?? Build an efficient and cost-effective infrastructure;
?? Reduce cost of doing business;

?? Institutionalise current entrepreneurial development programmes;
?? Put in place a more supportive legal and regulatory framework.

Relations between the private sector and the governmental machinery have improved considerably since the beginning of the 1990s, culminating in the organisation of a National Economic Forum in 1997 and again in 2001. It is, however, recognised that a crucial requirement in the development of an enabling environment for enhanced private sector activity is the development of an environment in which the rule of law prevails and one that respects contractual obligations of all parties.

The Judiciary drew up a program of action aimed at creating an enabling legal environment for the development of the private sector. A diagnostic study was completed in 1998 in six main areas including:
?? Law libraries and information systems
?? Human resource development
?? Production and dissemination of legal information
?? Restructuring of Ministry of Justice and all government legal systems
?? Operations of the judiciary and the Ghana Bar Association
?? Administrative mechanisms for alternative dispute resolution.

Indeed, a number of activities have been initiated to strengthen the legal, social, administrative environment to enhance investor confidence and private sector development.

The issue of public-private partnerships in the delivery of goods and services has also been given some attention in official pronouncements. It was stated in the medium term plan of the last government that public-private partnerships will underscore most of their development initiatives. There have been a number of developments that already make this an essential and still-growing part of institutional processes in Ghana. An example is cost sharing and cost-recovery in the delivery of social and other public services. It is acknowledged by the National Development Planning Commission that an effective legal system is also crucial for nurturing a good relationship between the public and private sectors. For the purpose of poverty-reduction, however, an even more crucial institution for mediating the concerns of the public and private sectors would be the district assemblies. Government has indicated that an

area of crucial importance in the process of creating jobs, facilitating the development of exports and attracting foreign direct investment will be the development of business partnerships. Strategic partnerships in the development of business will therefore be fostered so long as the exit strategies of the public sector are not harmful to social progress.

Despite these laudable goals, the privatisation experience of Ghana in the 1990s shows how the strategy of involving both the state and the private sector in the economy has worked with difficulty to date[4]. An interesting example is the divestiture attempts with water, electricity and telecommunications. The government first tried several rehabilitation exercises with each of these as full-fledged SOEs in the early 1980s. These included institutional improvements through capacity-building initiatives and decentralization, financial restructuring with the withdrawal of significant subsidies, and finally operational improvements expansion and rehabilitation of infrastructure. In the water sector, for example, tariffs were increased fourteen times up to 1986 with 25% annual rises. Institutional improvements included the adoption of performance contracts for all three sectors in 1989-90. The World Bank has judged that these performance contracts had little effect on the performance of the respective SOEs and it attributed this to low targets that had little reflection on the potential productivity of the enterprises. Having failed with these performance contracts, the government is today contemplating a wider scope for privatisation. Today, in the water sector, there is a re-assessment of the role of the government, a desire to move it away from being an active and exclusive operator to either a partner in the provision of water, or a purchaser of water services or an enabler and regulator. The ambition is to attract substantial capital investments in infrastructure through private equity and contain borrowing for the sector through efficient operation and cost recovery measures.

Institutions, Processes and Actors for Implementing Regulation and Competition Policies

There is a general tendency in the 'new' laws on institutions for regulation to grant the regulatory bodies the authority to enforce or implement their policies/decisions, either on their own or with the assistance of other public agencies. The National Communications Authority (NCA), for example, is given the authority to develop regulations for the sector and implement them through a number of steps. The main function of issuing and withdrawing licenses to communications operators is the most significant tool for ensuring compliance with regulations. This is different from the electricity sector where the license to operate is issued by the

Energy Commission but the regulation with respect to standards and tariffs is done jointly with the Public Utilities Regulatory Commission. The latter does not issue any licenses to operators.

Again, in the communications sector, Act 524 provides for the NCA to grant exemptions from licenses, the treatment of applications for license, conditions of license, non-transferability of license, renewal of license, power to modify license, designation of standard and approval of equipment, monitoring of performance of equipment and compensation for damage, access rights of licensed operators, suspension or cancellation of license, appeals, standards of performance, information levels of performance. It also provides for the assignment of frequencies for communications systems. The law requires all operators to establish a procedure for dealing with complaints by customers or potential customers, and such procedures must be approved by the NCA and widely publicized.

The NCA has subsequently issued "arrangements of regulation" in which it basically provides details of policies on regulation. In these arrangements, the first part provides "principles applicable to communications industry" and covers such issues as universal coverage, non-discrimination in provision of services, fair competition as well as the obligations of private-use communications operators in the public interest. The regulations for the provision of communications services list the procedure that must be followed following the receipt of an application for license. Receipt of such an application must be acknowledged within five working days. The NCA may decide to conduct a public hearing on an application for a Class 1 license, but is not required to. But a public hearing and significant public input are required for the renewal of such a license after the publication of an evaluation report. Where the availability of frequency bands is limited in a given area, the authority is obliged to grant licenses by public tender in a manner that must be seen to be open and fair to all. The NCA is the body that must settle all disputes between operators after they have applied for such a settlement, and after this an appeal can be made to the minister in charge of communications if dissatisfied with the determination by the Board of the authority working through a hearing panel.

Under fair competition the regulations provide that an operator who controls a network or facility may not limit access to his/her network for competitors. Similarly, a dominant operator in a geographic market specified in a license "shall not resort to conduct or practices that

unfairly disadvantage rival operators or that are calculated to keep out competition". Thus, limiting access to a network or interconnection is not allowed. Neither is the provision of sub-standard access. Despite these provisions, most mobile phone service operators complain that their difficulties in providing satisfactory services to customers arise because they have sub-standard access to the network of the large partly privatised public telephone company. This is probably one area in which despite the growth in the number of service providers there is considerable public concern about the low level of competition, reflected in the perceived high prices for the service. Indeed, the issue of mobile phone services and access to the largest phone operator's network remains one of the biggest challenges facing the regulatory body and is seen by many as a test of how effective the new regulatory environment is for fostering competition.

Self-Regulation

The presence of self-regulation appears to have diminished considerably in the last decade following the institution of a large number of formal regulatory agencies. By far the best-known forms of self-regulation are associated with the operations of various professionals in the private sector. By statute, (The Professional Bodies Registration Decree NRCD 143 of 1973), any person who seeks to practice a profession for which there is a recognized association or professional body must be a member of such an association in order to be so recognized or permitted to practice. Thus, one can only practice medicine if one belonged to the Ghana Medical Association. Similarly only the Ghana Institution of Engineers can provide public recognition for practicing engineers, as does the Ghana Institution of Architects for that profession. There are 16 such recognized professional bodies recognized by law, and they provide the source of regulation for their members.

Each recognized professional body publishes its conditions for eligibility for membership, which include largely acceptable and relevant minimum academic qualifications for the profession, adequate experience and acceptance of the institutions' codes of ethics and conduct. The institutions are intended to promote the profession through continuing education and the creation of a level playing field for its members, while securing them against 'unfair competition' from non-members. By regulating the practices of their members they seek to ensure that those members remain 'in good standing' in the eyes of the public and do not bring the profession into disrepute. In a number of such associations, there are standard fees to be charged members for providing professional services. The rationale behind such standard fees

is to ensure that level-playing field in which the attraction of a firm is largely on non-price terms. Thus a good architect will attract more clients than a not-so-good one, and that is where differences in income would supposedly emerge.

While some of the professional bodies are widely acknowledged to have successfully regulated their professions, ensuring that most practitioners have been duly licensed/approved by them, and work using standards that are generally accepted as being high, and accepting the caps on rates as binding, this has not been the case for a good number of others. The case of professionals practicing without membership of the relevant professional body is growing, as has been acknowledged by the Association of Recognized Professional Bodies[5]. Even more discouraging is the fact that most of such professionals are employed by the government.

One of the newest areas in which some significant self-regulation is observed is in the operation of microfinance schemes and arrangements. The central bank currently regulates a large number of non-bank financial institutions under the NBFI law enacted in 1993. The law authorizes and provides for the regulation of the operations of discount houses, finance companies, acceptance houses, building societies, credit unions, mortgage finance companies, venture capital companies, leasing and hire-purchase companies, and savings and loan companies. But, beyond this list, another set of financial sector operators remains quite active and these are considered to be beyond what may be feasibly reached by the official regulators. But it is considered important that some regulation is in place for them. It may be observed that in the late 1980s, registered *susu* companies used informal savings collection techniques to mobilise substantial deposits by promising depositors credit after six months of regular deposits. Most of these collapsed due to poor management and inability to meet increasing demand on their liquidity; but some re-emerged under the new NBFI Law as Savings and Loan Companies. In the mid-1990s, *susu* clubs emerged as privately-run savings and credit associations. NGOs also moved increasingly into financial activities, with innovations such as the inventory credit scheme of TechnoServe, which enabled farmers to set aside part of their crops during harvest season for credit which could be repaid by selling the crop at a higher price during the off season. In order to self-regulate all of these emerging institutions, the Ghana Microfinance Institutions Network (GHAMFIN) was set up by the various key players in the sector. It has been at the forefront of attempts to set standards and develop training schemes for member institutions. The network also provides guidelines on the setting of interest rates without imposing any on the member institutions. Indeed, what it does is to assist

in the development of training programs for the determination of interest rates within an acceptable market framework. It would appear that the urgency attached to self-regulation through a network is in response to the need to attract financial backers to the sector and also help establish credibility for microfinance organizations.

Rationale for Regulatory Instruments and Competition Rules

The main regulatory instruments identified from the new statutes are the application of negotiated price caps for the public utilities (power and water) and licensing for many other economic activities. Licensing and binding settlement of disputes between operators and between customers and operators are the main instruments available to many of the regulators, including those for telecommunications. The competition rules tend to emphasize 'free entry' into the regulated activities by different operators, as seen with the telecommunications and the power sectors.

The statutes tend to suggest that the main rationale for setting caps on rates for the utilities is to ensure that consumers are protected from monopolistic suppliers while investors are not made to think that their interests have been unduly compromised. We discuss later in section 6 an interesting test of the effectiveness of the regulatory instruments in relation to water and electricity following applications to the PURC from the utilities for rate increases this year.

The rationale for obliging unhindered entry into the networks of various service providers by other operators is very much in line with the liberal economic policies, which seek to minimize the number of both state and private monopolies, where possible. The logic behind free entry for operators assumes that the entry costs are not prohibitive and that an increasing number would lead to a reduction in prices. As we indicated earlier, where this was expected to happen most readily has been in telecommunications where indeed the number of mobile operators has increased steadily but prices have risen relatively fast in contrast to other sectors. The very large demand for telephone services in an environment where the infrastructure for telephony is still inadequate ensures that there is ample room for the operators to derive monopoly profits in the segmented markets. The rural and urban markets are quite distinct in structure, further deepening the segmentation that is not addressed under the current conditions for regulation. In essence the inability of the huge state monopoly in the provision of fixed-line telephones to expand its infrastructure reduces the incentive for mobile operators to invest in further expansion of their services beyond their urban segments of the market. Even

worse is the poor access for other firms competing for fixed-line telephone service provision, as exhibited by the exacerbating conflict between Ghana Telecom and Westel Communications. There is a growing perception that the regulator has little effective control over the partly state-owned Ghana Telecom.

Implementation Deficiencies

It would appear that the obvious defect in the implementation of regulation policies is the inadequate attention paid to the enormous information requirements for sound regulation. The notion of regulation suggests that the consumer and the operator of a service have certain basic information about the processes associated with the production of a service or good, and the costs that go with the production and distribution. Following the existence of information asymmetry, a regulator is required to fill that gap between the position of the consumer and operator. Thus, in effect, the regulator is expected to broker information exchange at the negotiation table for the benefit of both the operator and the consumer. But, in many developing countries, the ability of the regulator to acquire such information is severely limited by the fact that there are very few credible sources of such information. There are several examples in Ghana of the poorly resourced Ghana Water Company Limited being the only source of not-so credible information on costs for water production (World Bank 1995). And the scope of information required is even larger in these poor environments. In effect, the information gap between the consumer and the operator is often too large for the regulator to adequately fill. The current difficulty in preparing guidelines for setting water tariffs is testimony to the difficulty in obtaining useful information on the production and distribution of water.

An illustration of the implementation deficiencies is provided by the current public outrage over the revision of rates for the utilities in Ghana. At the beginning of the year, the Volta River Authority and the Electricity Company requested an increase of about 105% in the end-user tariff for electricity. In July, the PURC decided on a 60% increase with effect from August 2002 and another average 12% increase to take effect in March 2003, taking into account the fact there had been no increase for three years in a high-inflation environment. Similarly for water, the PURC approved a two-step increase of 40% effective from August 2002 and a 12% increase to take effect in March 2003, compared to a request for a 77% increase requested by Ghana Water Company Ltd. In the PURC's view, the fact that the increases were done in stages was a reflection of its efforts to protect consumers from the increases that had to take place in order to cover costs in an efficient manner.

The public uproar that has been generated by the steep increases has led the government to issue statements that suggested that the regulatory body had acted improperly in making the decision to announce increases. While the public questions the basis for such a steep increase, regarding it to be far higher than was required to keep the utility companies running efficiently, and obviously beyond the means of many households, the utility companies have argued that the increases were far less than they required to provide an efficient service. In effect, none of the parties to the negotiation of tariffs is happy with the outcome, even when it is not obvious what would have been a more satisfactory outcome for the two parties besides their initial positions. The starting positions for the two parties were too far apart for the PURC to effectively bring meaningfully closer. But this is the nature of the problem that regulatory bodies face in an environment riddled with poverty, high-risk investment and poor information quality and quantity.

The government has obviously not helped the situation by suggesting that the decision of the PURC was problematic for it. The basis for questioning the decision was that there had not been adequate consultation between the regulatory agency and the government on the issue. But it may be argued that the agreed procedures of the Commission for making such decisions involve the participation of government by default, through the mechanism of the 'public hearing'. In addition, government, as the owner of the utilities has every opportunity to influence the rates through the proposals that the utilities submit. The government's comments that followed the announcement could only damage the long-term credibility of the regulatory processes. The current experience shows clearly also the difficult socio-political context within which regulation takes place.

Evaluation, Review and Impact Assessment Mechanisms

The issues of evaluation, review and impact assessment of regulation policies has not featured prominently in the operations of the new regulatory bodies, even though the need to do that is often implied under the statutes. For example, the Energy Commission, is required "to prepare, review and update periodically indicative national plans to ensure that all reasonable demands for energy are met". The commission is also required to develop a comprehensive database for national decision-making on the extent of development and utilization of energy resources available. Similarly, the PURC is required "to conduct studies relating to economy and efficiency of public utilities", while the Ghana Investments Promotion Centre is enjoined

to "evaluate the impact of the Centre on investments in the country and recommend appropriate changes where necessary".

The various regulatory bodies have indicated that they are in the process of setting up and equipping appropriate research departments that will undertake these functions, either by themselves, or through consultants. The PURC, for example, currently carries out the function of research through its Bureau of Technical Operations and Rate Economics, which has the function of monitoring the performance of the utilities, among other functions. While the unit is acknowledged to suffer obvious capacity problems, it has nevertheless carried out some review activities that have been applied in the revision of rates for the utilities. Its annual reports have included sections that deal with the financial impact of tariffs on utility companies as well as the impact of tariffs on energy-intensive industries. The review of the impact on energy-using industries was to look at the effect of the rise in utility rates on their own prices and on their profitability. They have also commissioned independent studies on the socio-economic impact of water rates on different households.

METAPOLICY

It is important to re-emphasise the point that most of the reform of regulation and competition has taken place as a spin-off from the economic and political reforms that Ghana has been attempting for the better part of the last two decades. While the donors that encouraged less public sector involvement in the economy also encouraged greater regulation in order to increase competition, the forms that regulation was supposed to take were seldom agreed upon. Hence the difficulties associated with the water and electricity sector reforms.

The current wave of setting up regulatory bodies is a consequence of the 1992 constitution, which requires that government create independent oversight bodies for the preservation and optimal use of natural resources. In effect, the regulatory bodies that one finds are mandated by the constitution. Under this arrangement, the relevant ministries of government table proposals in parliament for the passing of laws that establish the regulatory institutions. For subsequent changes to those laws to affect the functioning of the agencies, the regulatory body may seek any such amendments by having them sponsored on the floor of parliament by the relevant ministers, where the law so requires. In other cases, any lobby group may seek to introduce reforms by finding appropriate and interested sponsors in the legislature. Indeed, all the current legislation on regulation and competition have been introduced by government

agencies through sector ministries. There is as yet no other specialized system for formulating and delivering regulatory and competition reform.

It is important to point out that with a growing civil society, the number of initiatives from outside of government to introduce regulation is seen to be increasing. Indeed a major feature of life in Ghana in the last decade has been the organization of workshops, conferences and seminars intended to bring different actors in the provision of social and other public services together. Such gatherings have become major tools for promoting the adoption of new regulations. An example of such initiative is seen with many of the initiatives on the environment where many NGOs have led sustained campaigns for changes. The next section discusses at length further involvement of civil society organizations in the drive to pursue the public interest in the delivery of good and services.

POLITICAL, SOCIAL AND EXTERNAL INFLUENCES

Organized Interests

The political climate in Ghana today is certainly much more conducive to the organisation of pressure groups. The situation has improved steadily since 1992 when the fourth republic was introduced after many years of authoritarian rule. There is no doubt about the fact that the existence of democratic governance structures imposes some pressure on governments to pursue increasingly the public interest. The number of opposition parliamentarians who raise questions on the floor of parliament in search of probity and accountability has risen steadily. While such questioning does not necessarily lead to action about the economic activity under scrutiny, they are generally acknowledged to put public institutions on their toes. Parliament certainly has the authority to invite regulatory agencies to explain any situation within their purview, and the governor of the central bank has on occasion been invited to explain issues relating to the bank's regulatory functions. The standing committees are being used increasingly to discuss regulatory issues with regulatory agencies, but these are not necessarily public.

The last few years have also seen the emergence of the National Association of Consumers. While the association has been in existence since ….. it is not a widely known body. It recently came into prominence when it voiced its rejection of the new tariffs decided by the PURC for electricity and water. It had earlier made submissions to the PURC regarding the proposals it received from the two utility companies and campaigned steadily for a much

lower rise in the tariffs than was decided by the PURC. The National Association of Consumers does not have any formal roles within the regulatory system.

Another interesting development of the more liberal economic and political environment is the emergence of independent think tanks that exert some pressure on government and other public institutions. These include the Centre for Policy Analysis (CEPA), the Institute for Economic Affairs (IEA), and the Centre for Democracy and Development. The growing interest of civil society organisations in regulatory and competition issues has perhaps been most forcefully highlighted by the emergence of the non-profit organisation called the Centre for Public Interest Law (CEPIL). While the centre has not yet made any significant impact on the development of regulations, its existence is beginning to generate considerable interest in the role of civil society in this regard. CEPIL has indicated that, "The case for a strong and vibrant public interest law practice in Ghana can be made based upon the current rapid socio-economic and political developments in the country". It argues that, "Since Ghana's unquestioning adoption of structural adjustment programs (SAPs), there has been an aggressive liberalization of markets and consequent rolling back of the state as an economic actor. This has drastically reduced the direct oversight of state institutions over economic activity. Ideally, the state should now intervene only in situations of market failure such as where private investment activities cause environmental pollution or where manufactured or imported goods do not meet product quality standards. But the situation in Ghana is far from ideal. State institutions charged with enforcing laws designed to protect the public interest either mostly fail or neglect to do so, thus allowing private corporations/businesses to externalize the costs of their investments. In short, society is made to pick up part of the costs of private business ventures. Those worst hit by these developments are the poor and the less articulate who live in rural communities where economic activities such as mining and timber logging take place as well as the urban poor."

CEPIL suggests that the accountability and transparency of government institutions and private entities cannot be attained without a well-developed public interest law practice. This is based on their observation that following the market liberalization of the past two decades and the consequent expansion of private sector economic activity, Ghanaian legal practitioners have tended to concentrate their areas of practice to contract, corporate and other financially lucrative private law areas. Public law in general (except criminal law) and public in-

terest law in particular, do not interest most legal practitioners due to the minimal, or even absence of, financial gain involved.

In furtherance of its objectives, CEPIL has put in place a project on mining and timber intended to offset the negative outcomes of expanding mining and timber activities following investment incentives offered to foreign firms. They argue that over 200 foreign and local exploration companies are currently searching for gold in Ghana, with the result that nearly 30% of the country's land surface area, which covers all known prospective grounds for minerals including at least 2% of the country's dwindling forest reserves have been licensed to various mining companies for mineral prospecting. The environmental damage is judged to be significant. They observe further that, "Notwithstanding (its) constitutional obligation, the Environmental Protection Agency (EPA) which is charged with taking measures aimed at protecting the national environment is yet to prosecute a single mining company for the spate of environmental pollution that has hit mining communities nation-wide. They also suggest that environmental pollution by mining companies has given rise to conflicts between them and the local communities within which they operate where the main areas of conflict include, land user rights, resistance to relocation/resettlement schemes for communities affected by mining projects, disagreement/lack of consensus over compensation for local infrastructure, land and crops affected by mining projects, pollution of communities' water sources, and destruction of cultural sites, etc.

As a result, CEPIL is attempting to build a legal support network that will assist communities and individuals whose rights are violated by powerful actors. CEPIL sees mining as its entry point. Its objectives in this regard are to

- Provide legal aid to communities impacted by mining projects
- Provide legal advice and help build communities' capacity in negotiation skills to enable them effectively negotiate with mining companies for resettlement and compensation schemes for farms, crops etc. or resist them altogether.
- To provide technical assistance to communities to enable them contribute more effectively to Environmental Hearings and assessments.
- Assist to build local para-legal capacity on basic items of the country's mineral and mining laws, National guidelines on Mining and the Environment and the basic requirements of an Environmental Impact Assessment

CEPIL has indicated that it will put pressure on regulatory agencies to ensure that they operate more effectively in the public interest. As part of the campaign to reduce the environmental problems affecting mining communities, CEPIL draws attention to a comprehensive study on the subject carried out by the Third World Network (TWN) Africa Secretariat, an institution it is strongly linked to. A report emanating from the study has been the basis of environmental and social hearings in which many stakeholders, including the World Bank, have participated.

There are a number of economic groups that show interest in the regulatory environment. These include the Association of Ghanaian Industries, Federation of Associations of Ghanaian Exporters, Ghana Association of Women Entrepreneurs, Ghana Employers Association, Ghana Chamber of Commerce, Ghana Chamber of Mines, Trades Union Congress and many others. In the last few years, these interest groups have become quite active in lobbying government for particular policy changes, particularly those relating to corporate and personal income taxation. While their role in the regulatory systems is not fully formalised, considerable attention is paid to these bodies as their members are appointed to serve on the boards or commissions that provide regulatory services. Thus, for example, the Trades Union Congress and the Association of Ghanaian Industries are both represented on the Public Utilities Regulatory Commission. Indeed, private sector as well as consumer representation on the regulatory commissions has become very much the norm. What is not clear is the qualification of those representatives for the task. In general, government does not provide any explanation for the appointment of particular persons to the boards of the various regulatory bodies, and in a number of cases there have been obvious questions about the suitability of board members.

It is interesting that despite the active participation of the consumer interest groups in the setting of rates by the PURC, these groups have come out strongly criticising the recent tariffs for water and electricity. While it is obvious that they reflect the genuine concerns of the majority of members, it is not equally obvious that the groups are adequately organised to discuss the issues of regulation and how these affect their membership. In effect the contributions of those who represent consumers at the regulatory agencies tend to reflect more the individual preferences or positions than those of organized groups. The Ghana Chamber of Mines has emphasized the cost difficulties that the latest tariffs will impose on mining. While this is certainly the case, it does not however reflect the concerns of small-scale or informal

miners whose operations are largely illegal on account of the nature of the regulations on mining activity and do not have access to the Chamber of Mines.

Alongside the growing organised interests in regulatory matters, it is important to acknowledge the similar rapid growth in the less organised parts of civil society. With the increase in access to communications facilities, has come a surge in the numbers of people expressing a public concern about the performance of various institutions. On any day of the week, it is highly likely that there will be several calls to radio stations to complain about water services, electricity services and telecommunications services in particular areas. In some of the programmes, hosts invite the affected service providers to respond to the queries of the callers on air. This trend certainly puts pressure on the utility companies to respond to consumer complaints to avoid being embarrassed. But there is no formalised structure for getting the utility companies to respond to these complaints, besides that provided by the PURC.

Role of External Agencies

The role that donors have played in shaping the economy of Ghana in the last two decades cannot be over-emphasised. Aryeetey and Cox (1997) and Aryeetey and O'Connell (2002) have argued that most of the significant growth that Ghana has seen since economic reforms began can be linked to policy reforms that have taken place. But those policy reforms would not have been easy or even possible without aid, which came with significant conditionality. Indeed, a major reform requirement was the privatisation of state-owned enterprises, and the creation of the necessary regulatory arrangements. The role that donors have played in this regard has had two dimensions, first ensuring the development of a new management practice of regulating economic agents, and secondly imposing regulatory approaches that are not necessarily intended to solve the structural problems facing the economic agents as they operate in a poorly developed economic and political environment.

With regard to the first dimension of helping to entrench a new form of regulation, it is important to underscore the fact that not only did donors require that regulation of private economic agents accompany the greater involvement of the private sector, they also partly financed the creation of many of the regulatory bodies. In the reforms of the financial sector, focus on regulation and supervision of banks saw the World Bank and other bilateral donors provide Ghana with significant technical advice. Consultants from the World Bank reviewed management structure, staffing, training and compensation issues for all the state owned banks.

The Banking Law was amended to require that each bank be examined at least once a year. Regulation was extended to semi-formal financial institutions through the Rules and Regulations and Control Measures for the Establishment and Supervision of Savings and Loan Companies issued by the Bank of Ghana in 1990. Standard accounting and auditing principles were introduced with assistance from the World Bank. But these changes to the regulatory environment did not focus on how regulation could be used to generate incentives for banks to seek out marginal borrowers in highly segmented market through inter-linkages among different operators.

For the public utilities, the major rehabilitation and restructuring exercises pursued since the mid-1980s have all been carried out with support from the World Bank. The Bank initially assisted the government in the 1980s to enter into performance contracts with Ghana Water Company Ltd, Electricity Company Ltd and Ghana Telecom. By its own reckoning the contracts with public managers were fraught with several problems which made outcomes not always satisfactory.

Currently, with the establishment of the PURC, donors continue to play a major role in its operations. The World Bank, USAID and DfID have been the major sponsors of its institutional development as well as the development of its programmes. The World Bank has provided technical support through consultants in the setting of electricity tariffs as well as financial support for the Commission. DfID has supported the Commission's work by sponsoring study tours of UK regulatory agencies for water and electricity. Similarly, USAID has sponsored a tariff study to assist the PURC through a consulting firm, and supported study tours of power and water regulatory agencies in a number of states in the US. In sum, the donor influence in getting regulation to occur has been significant.

SUMMARY AND CONCLUSIONS

The regulation of economic activity, particularly of the use of natural resources, has been accelerated in the last decade. This has been an outcome of the economic and political reform processes that the nation has experienced. While the drive to reform the economic and political development processes may have had some domestic impetus, the active involvement of external agencies ensured that fairly standard approaches to reform and governance have been deployed, hence the approach to regulation. These generally pay relatively little attention to structural issues, focusing largely on policy reforms.

New independent institutions have been created that draw their mandate directly from a new constitution. The institutions may or may not be subject to limited controls from government ministers. While authorised to carry out standard regulatory functions in order to protect the public interest and promote fair competition in the use of resources, they do suffer enormous logistical difficulties as a result of the limited funding that they receive from government. The limited financial support makes it difficult for them to attract and hire key technical personnel for the development of enforceable standards. Also, while the political environment has improved considerably and is generally supportive of sound regulation, indiscretions by public officials sometimes undermine the credibility of regulatory agencies.

But by far the most significant structural constraint of the new regulatory agencies remains the wide information gap existing between providers of services and the users of those services. The information gap is engendered by the poverty of the users of services and the 'inappropriateness' of the technology used by the service providers, and the absence of a common ground for determining what the most suitable approach to production and delivery should be. When service providers use technology that is well beyond the means of the majority of the users of the service, the regulator's task of setting tariffs becomes extremely difficult to carry out meaningfully.

The gradual growth of civil society initiatives has been quite supportive of the development of a new culture for regulation. These initiatives seek to move government away from what is perceived as a regulation culture that only entrenches powerful groups against smaller less powerful groups in the exploitation of national resources. Public interest issues are being pushed forward much more forcefully in relation to regulation than has hitherto been the case. While consumer groups are not very visible in this cause, organized non-profit organizations are seen to be actively influencing new legislations for regulation, particularly those relating to environmental causes.

In sum, the regulation institutions of Ghana are still in the early phase of their development and have become a part of a new culture in Ghana that supports private participation that could be competitive. As their logistical problems are dealt with over time, and as greater attention is paid to narrowing the information gap between service providers and consumers, regulation is bound to have greater positive impact on achieving competition.

Notes

[1] Guinness Ghana Ltd entered into an agreement with 183 retailers of alcoholic beverages out of an estimated 7000 outlets in 1999.

[2] Personal communication with Mr. Kojo Bentsi-Enchill, a highly respected attorney.

[3] Eboe Hutchful (2002) has argued that even though the pressure to privatize was strong, this was not translated into pressure to prepare the legal framework (such as anti-trust laws) and regulatory capacity, or to ensure effective enforcement of existing regulations. He describes existing regulatory agencies as "weak and ineffective", and notes that the setting up of the PURC in 1997 was an "afterthought" resulting from the public outcry against sharp increases in electricity tariffs. But this view does not consider the changing political climate at the time, reflected by the constitution and other developments noted in this paper.

[4] Eboe Hutchful (2002) has a very comprehensive discussion of the reform of the public sector in the 1980s and 1990s, and its links with the private sector through divestiture of SOEs.

[5] The Secretary of the Association made this point to the author in an interview.

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