

INVESTIGATING THE EFFECTIVENESS OF REGULATORY AGENCIES FROM AN INTERNAL MANAGEMENT PERSPECTIVE

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Introduction

The aim of this paper is to report on research in progress on capacity building in regulatory agencies from the perspective of the “regulator as chief executive”. A justification for this research is that accumulated evidence suggest failings in regulatory processes may in some cases be the result of ineffective internal systems geared towards converting political and legislative intent for regulation into the necessary actions. Of particular concern are approaches to the development of strategic thinking and whether proposed actions are:

- directed into the appropriate “regulatory space”
- timely
- balanced between stakeholder interests, in particular consumers and sector suppliers
- invoking the necessary feedback mechanisms for improvement in regulation
- transparent and accountable

A question arises on how far the art/science of regulation is open to this type of internal analysis, bearing in mind that such approaches are inevitably linked with organisational and management concepts and practices. The answer to this rests at one level which explains that once organisations pass a certain threshold of size, say 30-40 persons (including in the regulatory sector a significant proportion of professional and technical staff), then the introduction of a management system to steer processes outputs and developments is an inevitable consequence. How many regulatory agencies are beyond this threshold size on a country/sector basis is a question that cannot at this stage be answered, but evidence to date suggests most of the agencies in close contact with CRC on capacity building matters are or predict they will be beyond this size. Below this threshold size of course we could assume that some regulators may manage situations “out of their own heads”, rather like small

entrepreneurs, but even this may be unlikely given the complexity of issues in regulation, the need to handle and analyse fairly sophisticated technical and information inputs, the urgent task of managing, developing and retaining skilled staff and most significantly the need to generate accountability and transparency of practice.

Perhaps we should at this stage reflect on the dire need of regulatory agencies if they are to succeed to be sharper in internal performance than the market suppliers that they are dealing with and be crucially aware of how to handle the multiplicity of stakeholder influences and needs. All this suggests the creation of organisations which have “antennae hanging out of them” in respect of receiving information, processing it and responding in appropriate ways through their internal mechanisms, a level of performance being required that in many cases is beyond what traditionally organised public sector organisations can offer.

In terms of the justification of a managerial perspective, a deeper level of analysis is concerned with accessing the mindset that chief executives bring to regulatory practice. While this aspect of our research is in its early stages, some evidence has already gathered from discussions with chief executives to suggest that an organisational and managerial perspective is indeed vital for their work. However, as will be discussed below, in spite of this commitment there may be an underdevelopment of some of the managerial skills and systems necessary to bring agencies to full effectiveness. This underdevelopment may in part be a reflection of the fact that many organisations are fairly young and are currently growing their approaches (as well as growing their staff numbers). In another way the underdevelopment, as some evidence suggests, may be a reflection on the inability to generate an appropriate culture for performance or be the result of leadership skills not conducive to the creation of a collaborative environment or both. These comments reflect some initial findings of the research and will be returned to below.

The paper is now divided into five further sections:

- A Research aims and design
- B The identification of a relevant conceptual framework for performance improvement
- C Obtaining further views on the viability of the diagnostic model
- D The development of the strategic planning/management component
- E Further agenda

A Research aims and design

The main aim of the research is to identify concepts, practices and frameworks relevant to the needs of chief executives contemplating performance improvement. In other words it hopes to produce diagnostic tools for enhancing management action in regulatory agencies which takes the agenda for capacity building beyond purely prescriptive management measures to a systemic view of internal processes widely understood by organisational members. For instance, given that external training features strongly as a capacity building measure, the output of this research will hopefully indicate ways in which institutional learning needs can be clearly defined and consequently learning resources more accurately focused. It is also the aim to describe the type of learning within institutions that take them beyond the threshold of undue dependence on outside consultancy input as, for instance, invoked by donors.

The research into the justification for and development of diagnostic frameworks for capacity building was initiated through discussions with regulators and other senior/ professional staff to establish their needs from management and organisational perspectives. The discussions and associated literature searches representing the first phase of the research were completed in August 2003, with views obtained from regulators and other stakeholders in the Philippines, Malaysia and South Africa. The main findings that emerged were of chief executives and their staffs

- still seeking to understand how to fully convert defined regulatory intentions into the required actions, particularly in terms of transition factors affecting their particular sectors and stakeholder relationships (strategic thinking/management issues)
- trying to establish ways of working conducive to regulatory effectiveness, particularly where agencies had been separated from or were still part of the mainstream public service (work system/design issues)
- wanting to build collaborative relationships and to invoke appropriate management styles (performance management issues)

B Conceptual framework

As a result of the initial research a diagnostic framework for capacity building appropriate to the needs of regulators was identified.

The preliminary model shown in Figure 1 which places the identified management components in a systemic framework that traces regulation from its policy origins to its delivery to recipient stakeholders. The advantage of this type of analysis is that it allows interactions between parameters within the system to be recognised and explored qualitatively as to their contribution to the regulatory process. This type of methodology, as described by Pollitt and Bouckaert (2000: 21), provides a framework within which the main forces for and against management change can be identified, and within this research it is utilised, in particular to investigate the interconnected roles of strategic planning, work system design and performance management. At a practical level the approach gives rise to the possibility that capacity building interventions initiated by regulators as chief executives are potentially not randomly chosen but are specifically focused and coordinated to strengthen the regulatory process (Asch and Bowman, 1989: 404). It also enables the contribution of performance management to be discussed as a key component in building the human dimension to sustain the whole system, and in particular to support strategic planning and work system design processes. A management system adopted by a regulator of the type shown in Figure 1 is likely to be explained as the means by which the efforts of managers and staff alike can be harnessed towards the required regulatory results and through which progress towards them can be evaluated. Further, a regulator in setting up a new agency, or re-energising the work of an existing one, is likely also to give due weight to the importance of such a system as a prime means by which institutional capacity for delivery can be maximised.

The key organisation and management components of this system as established from the first phase of the research, namely strategic planning/management, work system design and performance management, are further described in Table 1. They represent the basic building blocks by which regulators as chief executives can begin to discern institutional development needs and by which diagnosis can be directly linked with management interventions for growth or change.

Figure 1. Conceptual Framework for Capacity Building with a Regulatory Agency

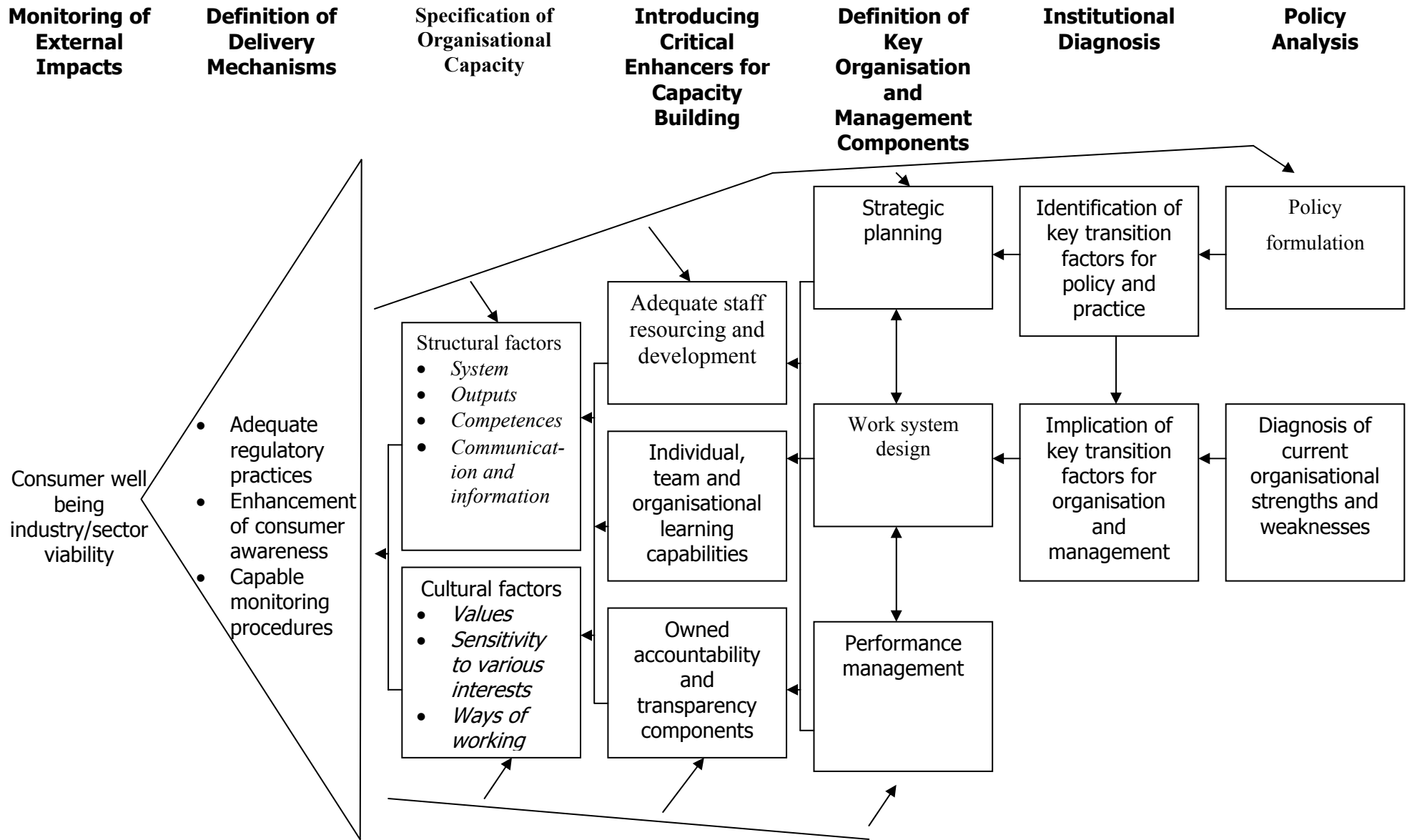


Table 1: Key Organisation and Management Components in a Regulatory Agency

Component	Likely source for information vital to component function (aims and content)
Strategic business plan	<ul style="list-style-type: none"> • The stated political aims of regulation • Legislation, including definition of the ‘regulatory space’ for intervention • Evaluation of previous regulatory practices in the sector concerned • Political climate for regulation including degree of emphasis on pro-poor provision • Views of key stakeholders including those of consumers • Financial/market performance of major private companies in sector • The type of relations expected between the regulatory agency and key stakeholders • Conditions under which ‘regulatory capture’ can be avoided
Work system development needs	<ul style="list-style-type: none"> • Nature and scope of the regulatory system implied by legislation and political objectives • Identification of supplier/client relationships in the regulatory system • Views of key stakeholders • Interpretation of key effectiveness criteria in regulation
Performance management system	<ul style="list-style-type: none"> • Definition of the above components <ul style="list-style-type: none"> ○ strategic business plan ○ system development needs (regulatory system) • Choice of management inputs <ul style="list-style-type: none"> ○ managerial style ○ culture ○ feedback mechanisms for increasing effectiveness • Knowledge of current skills and potential of the workforce • Views of staff and other stakeholders, such as human resource specialists

However, as pointed out by senior regulatory staff, each of the key components of Table 1 is unlikely to be treated in an isolated fashion when looking at actions intended to raise institutional capability. Figure 1, drawing on ideas in Eldridge (2002), thereby suggests the

need for a congruency of thinking in terms of these three key components on the part of a chief executive if an the agency is to convert required policies into appropriate executive actions. They are central to institutional capacity building as interactive elements and all underpin the abilities of staff to understand the needs of the relevant external stakeholders, to design appropriate delivery systems to meet these needs, and to utilise the necessary management, technical, learning and accountability competencies. Their successful incorporation contributes towards overall systems viability for an organisation (Beer, 1985) and is at the heart of ‘embeddedness of regulatory institutions’ (Stirton and Lodge, 2002, Mehta, 2002).

Further, as suggested in Table 1, the strategic plan and the form of the work system for an agency are predominantly shaped by the types of regulatory policies to be enacted and the nature of the ‘regulatory climate’. While the performance management system also is subject to these influences, its design and implementation strategy remain to some extent within the managerial remit of a regulator, as reflected in decisions about its objectives and form. There is a degree of independence for a regulator on the choices adopted for managerial style, the internal culture, the extent of team working to be encouraged and the degree to which staff members are to be empowered as individuals and in teams in securing effective organisational outcomes through performance management. While choices in these areas may reflect personal preferences on the part of a regulator, they are not exempt from the climate existing in similar organisations and the type of institutional ethos prevailing in regulation in the country concerned or the type of regulatory bodies favoured by governments.

C Obtaining further views on the viability of the diagnostic model

Beyond the first stage of establishing the form of the diagnostic model is the need to obtain the reaction of chief executives and other professionals in the regulatory sector as to its viability as an analytical and decision making aid. This is the stage of the research currently being conducted and is seen to have two distinct streams of information gathering: firstly, the presentation of the model to representative stakeholder groups to gauge reactions at a strategic level, and secondly, the introduction of the model in workshops aimed at the

development of skills amongst key staff involved in the development of regulatory organisations.

At the first level of seeking reactions from strategic stakeholders, the concentration of the work to date has been in the ICT sector in Africa and the Middle East (see Table 1).

Table 1: Stakeholder meetings at which the diagnostic framework has been introduced and discussed

Delegates of the Arab Telecomms Regulators’ Network – including Jordan and Egypt – meeting to discuss strategic developments in the sector (July 2003)
ICT (telecomms & broadcasting) Regulators Association of the Common Market of Eastern & Southern Africa (COMESA) – this includes countries as diverse as Zambia, Ethiopia, Kenya, Egypt, Djibouti, Rwanda (July 2003)
NetTel @ Africa Consortium – a group of eight southern African universities and five US universities’ representatives meeting in Botswana (Sept. 2003), (this consortium is responsible for the development of distance learning materials for the ICT sector in Africa)
Telecomms Regulators’ Association of Southern Africa (TRASA made up of 14 SADC member countries) – the CEOs at their Annual General Meeting in Lesotho (Oct. 2003)

On the whole the initial reactions to the diagnostic model have been favourable with suggestions that it could be used directly in strategic planning by chief executives and in capacity building activities amongst a range of staff. The resultant discussion has allowed further perspectives to be developed on the relevance, detail and potential use of the model. In particular, it has allowed us to refine the types of question to be used in a more comprehensive study of institutional practices for regulation. These questions are reproduced in Appendix One, which is a questionnaire designed to elicit views in a more structured way on the priority afforded to the key components of strategic management, system design and performance management in effective regulatory practice. It is designed for chief executives and other senior professional staff and is likely to be administered to a range of informants over the next year.

In terms of views obtained from institution building workshops (organised for TRASA staff and a range of regulators in South Africa) the response to the diagnostic model has been favourable with comments indicating that the thinking invoked by the model is useful in establishing a systemic view of the required institutional processes of reform. It has enabled participants to place in a wider context the contributions they can potentially make as part of their professional roles. However, this line of inquiry has revealed a major constraint identified by many of the respondents in respect of the adoption of a rational diagnosis for institutional change as implied by the model. This constraint emanates from the management approach of many chief executives who, through their engagement and decision making styles, generate an internal culture not necessarily conducive to high performing work groups. This is reported partly as a result of chief executives not being consultative enough in their respective organisations and who, perhaps, even exhibit authoritarian styles of management. These styles may reflect experiences drawn from earlier periods in their careers. Views suggest that these styles are not necessarily compatible with “national cultures” even when these exhibit a degree of power distance but are learnt modes of operation, perhaps transferred from the traditional public sector. Also, a few chief executives are not developing their styles as organisation needs change, which in some cases means they are exercising responsibilities with a “strong style” more attune with the setting up of their particular agencies, when dealing with the pressures of getting things off the ground. These styles are not necessarily compatible with organisations at a more mature stage of their operations when they probably possess a readily available pool of talent for strategic thinking. Views put by respondents on this matter have enabled a listing of areas in Table 1 which chief executives need to pay more attention to if appropriate cultures are to emerge.

Table 2: Culturally based management and organisation parameters not strongly enough encouraged by chief executives (views of senior HR staff, TRASA organisations)

Staff identify with the organisation	Salary increases and promotions are allocated on employee performance
Work is organised around teams	Staff are encouraged to air conflicts and criticisms openly
Management decisions take into account the effect of outcomes on staff	The organisation monitors and responds to changes in the external environment
Work units in the organisation are encouraged to operate in an interdependent manner	The organisation stresses a focus on the processes to achieve outcomes
Staff feel a degree of autonomy and related accountability in their work	
Staff are encouraged to be risk seeking and innovative	

D The development of the strategic planning/management component

As a concurrent part of the research, priority has been given to how chief executives think of the priorities they face, and in particular how they move forward from the legislative/political definitions of the regulatory mandate to a viable plan expressing purposes, strategies and outcomes as internal drivers of performance. Starting at the level of outcomes, and building on Cook (2001), a conceptual description of how the performance of a regulatory agency is likely to be established and the underlying strategic considerations can be made. Judgement on overall performance is likely to be established under one or more headings:

- the degree of success achieved in regulation in relation to political and economic considerations as judged by government, the legislature or other influential stakeholders
- the extent of implementation of any ‘business plan’ mandated by government/legislature for enhancing consumer interests and/or sector economic/financial viability
- the degree to which effective use has been made of any legislation underlying the work of the agency to address specific market issues
- the extent to which a positive impact has been made in the markets in question from the perspective of consumers, consumer interest groups and the wider public
- the extent to which views of the network of stakeholders within the industry/sector have been incorporated in the regulator’s responses
- the level at which monitoring procedures to gauge the effectiveness of regulation have been established.

While not all of these criteria will be applicable at any one time in a specific agency, the combination of even two or three of them can give rise to quite complex strategic planning processes in terms of the range of stakeholders to be satisfied and the scope of the quantitative and qualitative information to be analysed and presented.

In establishing the appropriate outcomes primary consideration has to be given in strategic planning to the political decision making process which Bryson (1995: 11) sees as inductive and based on issues which by definition involve conflict, not consensus. Such conflict revolves around expressed opinions based on philosophy, ends, means, timing, location, political advantage and reasons for change, and is subject to efforts for resolution in the planning process. Out of this resolution can emerge policies and programmes that are politically acceptable to the involved or affected parties, but which are expressed as rationally applied intentions or plans. Guth and Macmillan (1989: 316) suggest that part of this process is the emergence of more general policies to capture, frame, shape, guide, or interpret the policies and programmes specifically geared to particular issues. A number of writers (Mintzberg, 1983; Pfeffer, 1992 and Peters, 1995) also stress the importance of the interface between the political process and strategic planning as a prelude to the organisational rationale of writing vision, aims, objectives and targets and placing them within a consensually agreed statement. Consequently the strategic planning component of Figure 1 has at its heart strategic thinking which encompasses not only the interpretation of hard data on direction but also insights from key stakeholders which broadens the consideration of issues and invokes a learning process (Mintzberg, 1994). As such plan formulation rests on intuition, creativity and building commitment, skills somewhat remote from the hard nosed economic competences governing regulation, but ones which a regulator needs to have on board to ensure the adequate interpretation of political direction, to stimulate a dialogue to improve political decisions and understand what constitutes effective outcomes. This line of argument implies an institutional need to conceptualise strategic planning so that the political decision making model subsequently leads to consensual agreements on what policies and programmes will best resolve key issues through a rational planning model (Bryson, 1995: 12). Furthermore the rational planning model potentially provides a feedback mechanism by which inconsistencies in the political outcome can be addressed (Katz and Kahn, 1978).

Coalescing with the political debate, stakeholder analysis is likely to be another key ingredient in the strategic planning process given the multiplicity of interests prevailing in a regulatory regime. Boschken (1994) refers to the inherent danger of not recognising the credentials of key stakeholders and not knowing the criteria of performance they would apply to an organisation. This lack of knowledge can contribute to inappropriate or ineffective standards of performance being accepted for the organisation. Bryson and Crosby (1992) picture a situation in which individuals and groups wrestle for control of the organisation's

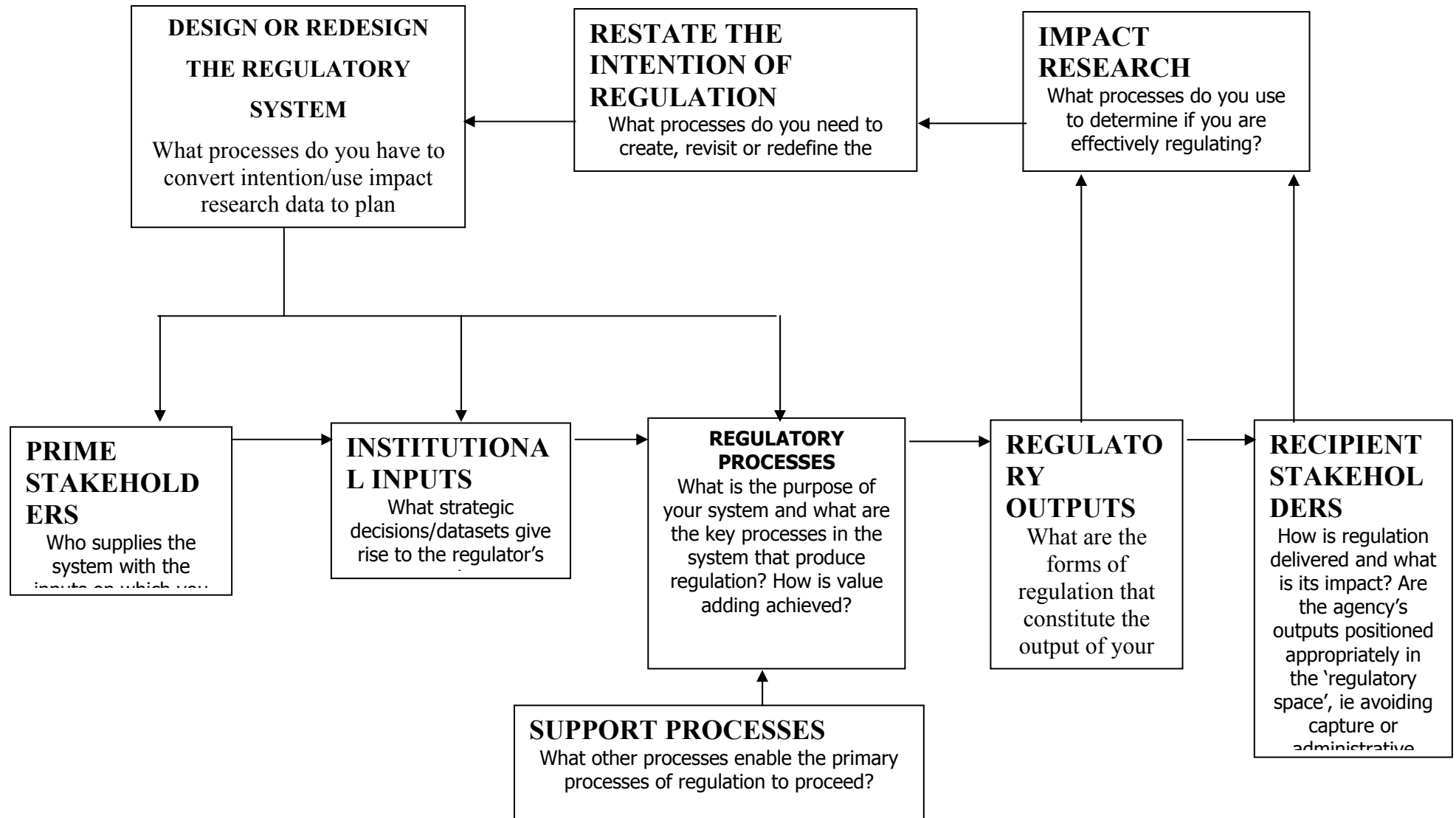
attention, resources and outputs, possibly an endemic feature of the regulatory process, and refer to the importance of stakeholder analysis in obtaining a more precise view of the contestants through surveys, interviews and group discussions. This is very much in line with the remit of the ‘new public management’ as exemplified in Osborne and Gaebler (1992) with its focus on customer needs and the generation of criteria of performance directly related to them. Bryson sees these criteria covering areas of organisation strength and weakness, overlaps, gaps, conflicts and contradictions in the quantity and quality of outputs. Most importantly he refers to a stakeholder analysis as being a process by which managers, in our case regulators, can place themselves in the shoes of others, especially outsiders, and make assessments of the organisation from these external perspectives. Not only does this form a basis for Strengths/Weaknesses/Opportunities/Threats (SWOT) analysis, strategic issue identification and strategic development but is an essential precursor for ethical action (Lewis, 1991). Additionally, stakeholder analysis may provide an understanding on what the organisation needs from each stakeholder group, a very essential process in the delicate economic balances to be achieved in regulation. Mintzberg (1994: 111) reminds us that

‘vision is unavailable to those who cannot ‘see’ with their own eyes. Real strategists get their hands dirty digging for ideas, and real strategies are built from the occasional nuggets they uncover’.

Strategic planning undertaken by chief executives can be furthered by the systemic unravelling of the processes of of regulation from inception to delivery. This builds the ability to avoid political and regulatory capture, to minimise information asymmetries and to maximise transparency of the criteria covering relationships with key stakeholders and the decisions affecting them. Limiting the randomness of approach amongst regulatory staff, ensuring the consistency of decisions and fulfilling accountability needs are also key aims that can only be met by an integrated and collaborative model of delivery. Such a model based on Tribus (undated) is envisaged in Figure 2 and represents a conceptualisation of the organisation well beyond conventional corporate planning.¹

¹ This represents a change in our conceptual understanding since the initiation stage of the research. The SIPOC model that is introduced was originally seen to be purely related to work design aspects, but discussions with chief executives have allowed us to see its relevance to the whole process of strategic thinking.

Figure 2: The Supplier-Input-Process-Output-Customer (SIPOC) Model as Applied to the Regulatory Process



This diagram has been developed specifically for this paper based on a generic SIPOC model originally devised by Elaine Torres and referenced in an article by Tribus (undated).

The demands of regulation as related to the continual need to improve its quality in meeting intentions, and to respond to underlying instabilities in the market being regulated, lead also, in the view of Ackoff (1999: 158) to the need for a systemic concept of the organisation that naturally inculcates a learning function. Such a possibility is demonstrated in the model of Figure 2 with its well developed feedback of information to improve performance. Latent within the system is the intention of regulation which gives rise to key questions in every box (node) of Figure 2, which potentially involve learning processes amongst those involved and provide vital feedback to the chief executive. It is this aspect that gives the approach such a vitality to drive strategic thinking process as expressed in meetings with TRASA chief executives and two donor agencies involved in regulation (USAID) and the International Telecommunications Union (ITU). Views were expressed that the approach could be used directly in workshops involving chief executives and senior staff for the development of strategy (and the observation of such a process is certainly an aim of our research).

Beyond its strategy development role Deming (1994: 61) refers to a system such as reproduced in Figure 2 as the ‘real’ organisation chart which, as the questions are answered, ‘... shows people what their jobs are, how they should interact with one another as part of a system’.

He refers to a system (Deming 1994: 50) as a network of interdependent components that work together to try to accomplish the aim of the system, and in the case of Figure 2 it would give rise to an understanding of (British Deming Society, 1995)

- the various tasks contained within the process
- how tasks are transformed into outputs
- the decisions that need to be made at various stages
- the essential interrelationships and interdependence between the process steps
- where weak points are that may inhibit success of the total process.

While these are stated in general terms they are directly related to the types of concern expressed on page one of this paper. Fundamentally, this type of system exemplifies the situation in which work flows cut across departmental or functional boundaries which, through analysis, leads to an understanding of what constitutes client satisfaction. Burr (1990) refers to the most important outcomes of this strategic process being common

knowledge amongst the employees involved on how each link in the chain fits together, and constitutes a learning process geared towards improvement. Deming (1994: 54-60) suggests further that when change is proposed, flow diagrams allow the possibilities to be explored in terms of each component and the system as a whole, exposing for instance what constitutes value adding as against tasks conducted purely 'as norm'. Additionally, examination of process promotes a dialogue of:

- where things most easily go wrong
- difficulties arising in staff relationships at 'transaction points'
- required criteria of performance to enable the system to function.

Hence the strategic planning process invoked by the SIPOC cycle leads directly to the identification of key priorities in both work system design and performance management.

E Further agenda

The paper reviews the first stage of the research including the identification of two relevant models for understanding the demands of capacity building, namely the diagnostic framework and the SIPOC model. Also described is some of the ongoing research to establish the viability of these models as aids to decision making amongst key stakeholders. The scope of the research has been largely limited to the ICT sector in Africa with some limited exposure to other sectors and regulators elsewhere, e.g. Middle East, Philippines, Malaysia. However, it is hoped in the longer term to offer a more generic view of the demands of institution building across a range of sectors and to establish whether the emergent tools for capacity building related to the models described have a potentially wider remit amongst regulatory institutions.

To move the research forward a number of proposals are currently being considered:

- a questionnaire survey of chief executives on the state of strategic planning and associated matters in their respective agencies
- workshops with key staff which will generate further views on the viability of the approaches established

- interviews with chief executives and other senior/professional/technical staff to understand the types of skills approaches necessary if the models are to be of use in increasing effectiveness
- information gathering from staff on the nature of the performance management system necessary to help develop the appropriate skills and deliver the required performance

Your views on these proposals and the paper in general are welcome.

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CRC Research and Capacity Building Programme

Questionnaire for Senior Staff of Regulatory Agencies

The following questions are designed to elicit information on the nature of capacity building in regulatory agencies. Your views will be most welcome.

Answers given will not be attributed to you in any way. Nor will your organisation be highlighted as an individual case. Responses are to be summarised and incorporated in the overall research write up.

However, for purposes of possible further contact could you please record your name, email address and organisation name and address as indicated at the start of the questionnaire.

Note that the questionnaire is designed to find out what the current situation is. Your views on what might be the ideal situation should therefore be avoided.

Name:

Email:

Organisation name:

.....

Organisation address:

.....

.....

.....

What do you understand by the terms 'strategic planning' and 'strategic management' in the context of your own organisation? (Note that sometimes these terms are used interchangeably).

While the CE is ultimately responsible for 'strategic planning/management' who actually undertakes it and how?

How do you evaluate whether 'strategic planning/management' has been successful?

What principles govern the way that your organisation approaches the allocation of work responsibilities?

How does the organisation encourage a 'team response' to key work outputs?

How do you evaluate whether your current system of work is adequate?

What information is available to managers on how staff members perform?

If you have a performance management or appraisal of performance system what are its objectives?

How is feedback given by managers to staff on performance

- informal?
- formal?

How is the identification of 'learning needs' linked directly to performance?

In terms of culture and management style, how does your organisation differ from the mainstream public service sector? Why does it differ?

What types of skill do senior professional and managerial staff possess (in addition to purely technical skills related to work input such as economic analysis)?

What is the essential difference in your profile of skills as against those prevailing in the wider public sector?

Any other comments?

Could you also complete the attached 'tick box' proforma on the current status of your organisation.

Thank you for your cooperation.