

**Record of CRC Capacity Building Workshop held for
South African Regulators in collaboration with the University of Stellenbosch**

9 September, 2003

Schedule

- 9.30am Registration/refreshments
- 10.00am Welcome/introductions
Professor Erwin Schwella, Director, School of Public Management and Planning, University of Stellenbosch
Professor Paul Cook, Centre Director, CRC, University of Manchester
- 10.20am Aim, objectives and structure of the Workshop
Derek Eldridge, CRC, University of Manchester
- 10.40am Overview of regulation and competition issues
Professor Paul Cook
- 11.10am Refreshments
- 11.20am Key concepts in regulatory governance
Martin Minogue, CRC, University of Manchester
- 11.55am Capacity building in ICT Policy and regulatory sector: challenges and action
Brian Goulden, Director, USAID/SPIRS Program Interviews Network
- 12.40pm Capacity building measures: a framework for research and action
Derek Eldridge & Erwin Schwella
- 1.30pm Lunch
- 2.30pm Discussion session in groups
Identify institutional issues that regulatory/CEs currently face in trying to improve performance and thereby regulatory effectiveness. Select two or three of these issues for more detailed discussion and identify ways in which they may be resolved.
- 3.45pm Refreshments
- 4.00pm Rapporteurs from the groups report back on findings in a plenary discussion. Discussion on findings.
- 4.45pm Final comments on workshop

Participants

Adéle Burger	School of Public Management and Planning, Stellenbosch University
Brian Goulden	USAID/SPIRS Program Interviews Network
Chose Choeru	Regulatory and Public Policy, Telkom
Christelle Snyman	School of Public Management and Planning, Stellenbosch University
Daniel Vincent	Nexant
Denise Umuhoza	Department of Computer Sciences, Stellenbosch University
Derek Eldridge	Centre on Regulation and Competition, Manchester University
Erwin Schwella	School of Public Management and Planning, Stellenbosch University
Fiona Bayat	University of Cape Town, Economic Department
Fungai Sibanda	Competition Commission of South Africa
Frederik Uys	School of Public Management and Planning, Stellenbosch University
Gama Mutemeri	Energy and Utilities, Nokusa Consulting
Johan Ackron	School of Public Management and Planning, Stellenbosch University
Jan de Wolde	NSOB (Netherlands School of Public Management)
Karel van der Molen	School of Public Management and Planning, Stellenbosch University
K C Marobela	Civil Aviation Authority of South Africa
Kim Gorringer	Civil Aviation Authority of South Africa
Lumkile Mondli	Transnet
Martin Minogue	Centre on Regulation and Competition, Manchester University
Melvin D Ayogu	University of Cape Town, Economics Department
W Vukela	National Department of Communications
Paul Cook	Centre on Regulation and Competition, Manchester University
Roberto Gonzalez	University of Villa Maria, Argentina
Rolfe Eberhard	Palmer Development Group
Simangele Sekgobela	Industrial Development Corporation

Aim/Objectives of the Workshop

(introduced by Derek Eldridge)

Overall Aim

To initiate a dialogue between regulators on how regulatory agencies can be made more effective.



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Objectives

- To identify current issues faced by regulators with particular reference to competition policy and regulatory governance.
- To explore the nature of capacity building measures to improve the performance of regulatory agencies.
- To highlight the internal management components that are central to capacity building activities.
- To explore the idea that regulatory agencies require management approaches and skills of a higher order compared to those traditionally prevailing in the public sector.
- Overall, to initiate an exchange of ideas on how to make regulatory agencies more effective.



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Process of the Workshop

- Presentations that stimulate reflection on the effectiveness of regulation proceeding from a broad view to the more detailed examinations of institutional or capacity building needs
- Group discussion to initiate dialogue on comparative experience and the priorities in capacity building (groups can be formed to reflect common areas of interest and/or sector representation)
- Suggestions on possible research needed to support capacity building
- The potential for networking and the growth of associations to promote regulatory practice
- The launch of CRC/University of Stellenbosch collaboration in regulation and competition



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Overview of Competition and Regulation

(Paul Cook)

Motives for Reform

1. Poor performance of state-run public utilities in terms of high costs, inadequate expansion of access to various services and unreliable supply of these services, e.g. electricity, transport, etc.
2. Inability of the state sector to meet investment and maintenance costs for public utilities, in order to keep pace with the increasing demands for public utility services resulting from economic development in other sectors of the economy.
3. Rapid changes in technology, for example, in the generation of electricity and in computing systems used to meter and despatch power, making new industrial structures possible.

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Motives for Reform

4. Need to remove subsidies to utilities so as to release resources for other areas of public expenditure.
5. Desire to raise immediate revenue for the government through the sale of assets.
6. Demonstration effects of the pioneering reforms, for example, in the power sectors in Chile, UK and Norway in the 1980s and early 1990s.
7. Pressure for reform from international financial organisations such as the IMF and World Bank through their 'lending for institutional reform' programmes.

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Regulation

- World Bank and the Asian Development Bank stress the importance of improving regulatory regimes and building institutions and capacity effectively to supervise the private sector.
- It is not self-evident that the lessons of operating regulation in developed economies are directly transferable to developing economies.
- It is not at all clear that developing economies can be lumped together and analysed as a common unit, in particular, institutional capability can be expected to vary from one country to another.

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Reforms Adopted in the Utilities Sector

- Introduction of competition to improve efficiency, customer responsiveness and innovation.
- Restructuring the industry in order to enable the introduction of competition. This means breaking up, or 'unbundling' the incumbent monopoly utilities, for example, possibly separating generation, transmission, distribution and retail suppliers in the electricity sector.
- Privatisation of the unbundled generators and suppliers. It is expected that entities under dispersed ownership will facilitate competition and that private investors and operators will bring in financial resources and managerial expertise into production and supply, previously dominated by state-owned monopolies.
- Development of a new regulatory framework involving the establishment of so-called independent regulatory bodies. This form of arm's length regulation is expected to encourage private capital to invest in capacity in the face of a potential 'hold-up' problem under conditions of incomplete contracts.

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Features of Regulation

- The institutional context is critical to the process and outcomes of any regulatory regime.
- Regulation is associated with information asymmetries.
- Investment in a regulated environment is subject to a threat of hold up leading to under-investment.
- Regulatory regimes are prone to capture.
- A regulatory system should be both effective and efficient.
- Competition is superior to state regulation and should be preferred.

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Competition and Regulation

TYPES OF REGULATION	REGULATORY AGENCIES
Self-Regulation	No formal regulation
Regulation of Competition	Competition agencies
Regulation for Competition	Sector regulators
Enforced self-regulation of competition rules	More formal regulation exercised by sector regulators/competition agencies

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Regulation inside Government

External/independent regulation

Self-regulation

Global regulation

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Regulatory Governance

(Martin Minogue)

Regulatory Governance Research Programme

Broad Objectives

1. To improve understanding of the institutional structures and relationships that form the essential foundation for regulatory policy and practice, with particular reference to legal, administrative and political systems in developing countries.
2. To establish what forms of policy transfer are associated with regulatory governance reforms, and the effects of these innovations.
3. To contribute to delineation of the chain of connections between regulation and competition reforms, and the poor.
4. To help policymakers to a better understanding of the regulatory strategies and policies for which they are responsible or to which they may make a contribution.
5. To enable regulators to analyse and improve their internal capacity-building systems.

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Research Themes and Projects

Institutional Innovation in Regulatory Governance

Sub-themes:

Institutional Change, Administrative and Legal Systems and Practices

Policy Transfer, Policy Diffusion and the Creation of Effective Regulatory Structures

Self Regulation and Ethical Trading

Internal Capacity in Regulation and Competition Agencies

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Methods

- a. Mapping (i.e. descriptive outline) of CRC partner countries, according to a specific template which covered legal and administrative practice and regulatory governance contexts.
- b. An overview of reform models based on developed country regulatory practice, leading to an assessment of what legal and institutional structures should enhance economic performance in developing countries.
- c. A literature and documentary review of the public management reform initiatives in developing countries, and the implications of these for regulatory capacity.
- d. Comparative case studies based on comparisons of specific regulatory instruments across countries and sectors.
- e. Surveys of regulatory agency officials, and associated interviews.
- f. Review and analysis of governance databases and indicators, and the implications for constructing a regulatory governance database.
- g. Network/supply chain analysis and informational economics models (Self-regulation and Ethical Trade project only).

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Key Findings To Date

- Regulatory structures in developing countries appear to serve a range of objectives other than the pursuit of efficiency.
- There are serious gaps in our knowledge and understanding of the regulatory reform process and its outcomes in developing countries.
- Due attention to governance (i.e. process, or how things really work in practice) is essential to effective regulatory reform.
- Direct regulation by the state machinery of government continues to be widespread, so that it is important to consider 'regulation inside government' as a likely focus of regulatory reform.
- But the proliferation of unjustifiable licensing systems exerts a significant constraint on economic performance, and deregulation reform is justified in this area.

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Key Findings To Date

- The 'blind' importing of 'best practice' models from developed economies is likely to be counterproductive where no account is taken of differences in legal infrastructure, bureaucratic culture, market institutions, and political values. Transferred models so far demonstrate substantial adaptive variations in different countries.
- Self regulation is relatively unexplored as an alternative type of regulatory mechanism in developing countries.
- Regulatory agencies have done little to establish what their own internal capacity-building needs are, or what type of assistance in this area would be useful to them. Knowledge of dominant regulatory reform models is fragmentary and sometimes these are misinterpreted locally.
- A key task is to design regulatory structures so that opportunities for corruption are minimised.
- Governance databases and indicators have significant limitations and require further critical analysis and development.

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Research Themes and Projects

Regulation, Politics and Poverty

Sub-themes:

Regulatory Effectiveness and Political Capture

Impact of Regulatory Governance on the Poor

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Methods

- a. Mapping of CRC partner countries incorporated some material on political context, and on the links between broad economic reform strategies and poverty reduction strategies.
- b. Literature review of the role of political systems and values in both economic policy reform and governance reforms.
- c. Country case studies on the significance of political structures and interests in determining regulatory policy and practice, and regulatory outcomes.
- d. Country case studies of the water sector to examine the ways in which regulation and competition reforms in this sector exemplify the impact on the poor of structural reforms in basic public services. These country studies will also form the basis for a comparative, cross-country study.

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Key Findings To Date

- Political institutions and relationships constitute a primary operating context for economic reforms.
- But these political factors are frequently inadequately understood or even ignored by economic policy actors.
- Regulatory agencies are 'captured' at the policy design stage, not just at the implementation stage.
- Well organised and institutionally entrenched political interests will often succeed in subverting or controlling economic agencies.
- But authoritative and stable political interests can be a driver for economic reforms.
- Market reforms of basic public services are likely to meet political and user resistance if they reduce access and affordability of services.
- The impact of such reforms on the poor is poorly researched and understood.

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Regulatory Capacity-Building in the ICT Sector: A Practitioners Perspective

(Brian Goulden)

Regulatory Capacity-Building in the ICT Sector *A Practitioners Perspective*

Brian Goulden
Former IDPM Study Fellow
& Director USAID/SIPRS Program

9 September 2003
CRC Launch, University of Stellenbosch

Overview

- Characteristics of Regulation
- Capacity-building defined
- Challenges for Regulators
- Framework for action
- Conclusion

Characteristics of Regulation

*"the success of telecom reform will depend heavily upon the establishment and maintenance of effective regulation, which must encompass a **wide range of expertise** and be **informed, forward looking** and **adaptive** in helping to shape the information infrastructure that will provide the foundation for 21st century information societies"*

Melody, 2001

Capacity-Building Defined

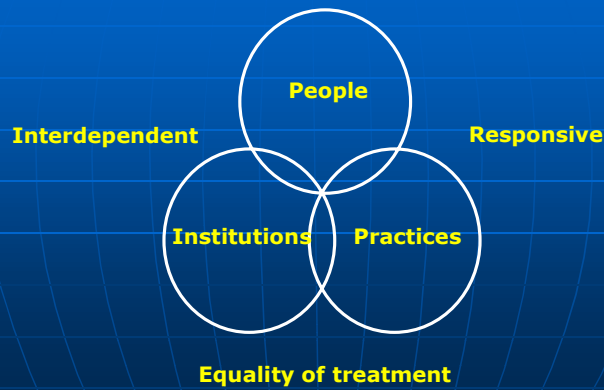
“The process by which **individuals, organisations, institutions,** and **societies** develop abilities (individually and collectively) to perform functions, solve problems and set and achieve objectives”

UNDP, 1997

“The combination of **people, institutions** and **practices** that permits countries to achieve their development goals”

World Bank, 1996

Complexity of Capacity-Building



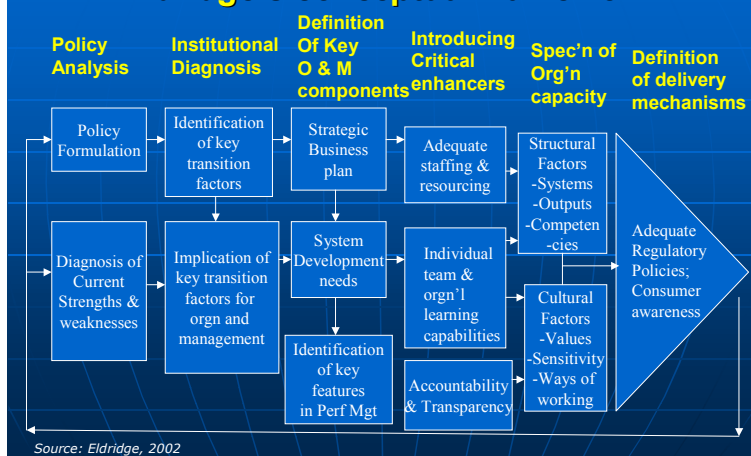
Challenges for Regulators

Challenges for Regulators

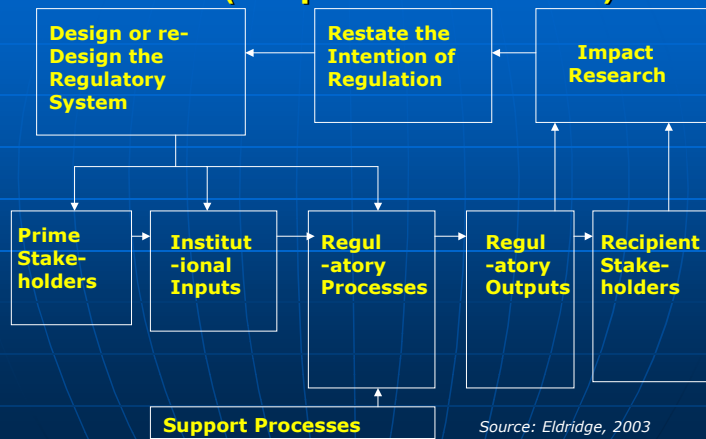
- New & developing organisations
- Inadequate financial resources
- Scarce professional skills
- Rapidly evolving external environment
- Potential for external influence / pressure
- Low level of professional learning opportunities
- "Fire-fighting" not "fire-prevention"

Framework for Action

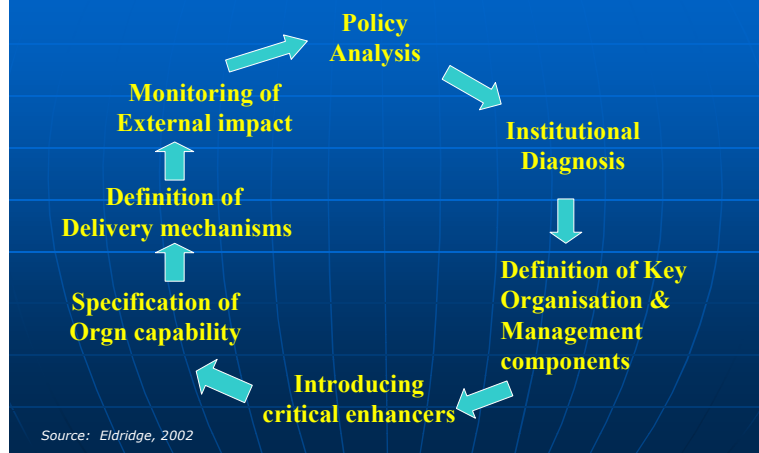
Capacity-Building: Eldridge's conceptual framework



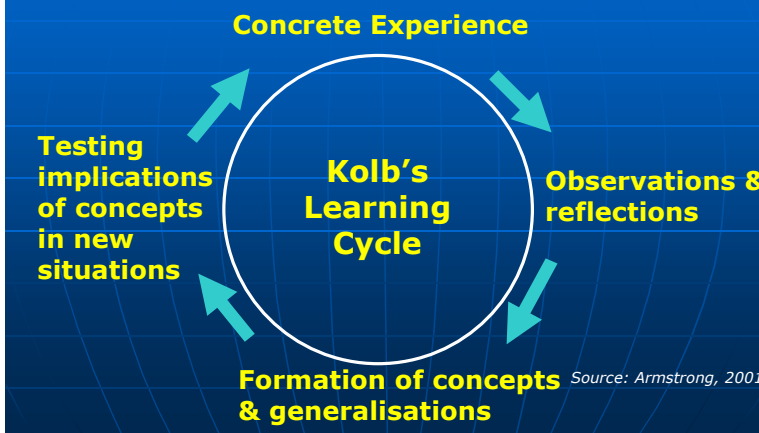
Eldridge's Strategic Diagnostic Model (adapted from SIPOC)



Capacity-Building: Eldridge's Cycle of Intervention



Individual Capacity-Building



Strategy for Capacity-Building

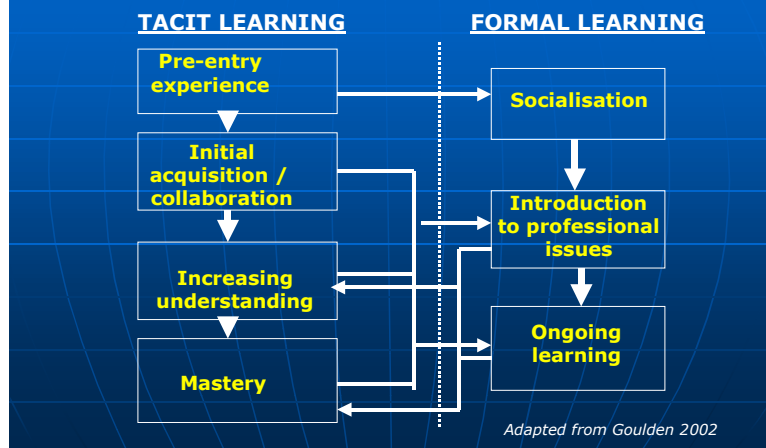
- Creates the right environment
 - good governance
 - good relationships – internal & with stakeholders
 - commitment to continuous development (& learning)
- Requires senior-level buy-in (Board & CEO)
- Requires constant monitoring

Capacity-Building Strategy

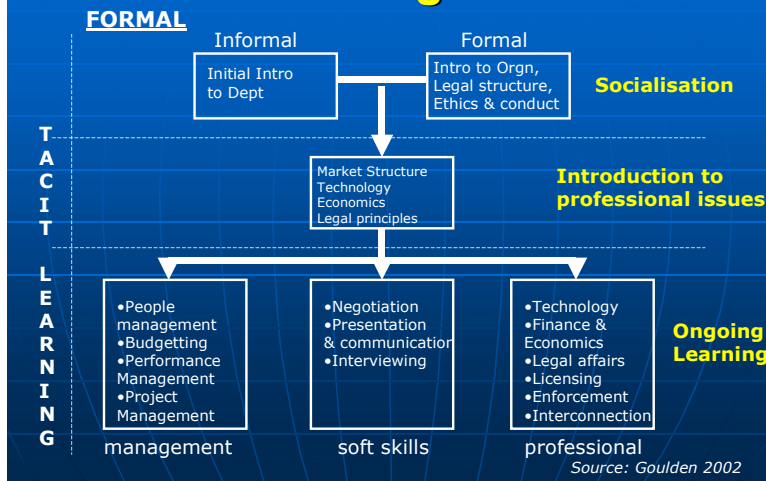
- Successful Implementation requires:
 - organisational clarity – vision & mission
 - defined roles & job descriptions
 - SMART objectives
 - transparent processes
 - professional HR function to support other professionals

A Learning Model for Regulators

A Learning Model



A Learning Model



Potential Resources

- Mentoring / coaching within national institutions;
- Action Learning activities– nationally, regionally, virtually, (the Revans’ model -“comrades in adversity”);
- Regional collaborative “model” development activities (in ICT in Africa – TRASA, ARICEA, WATRA, EAPTRO, ATRN) ;
- “Peering” relationships within the Regional Regulators’ Network(s) & externally;
- Development of regional capability teams providing scarce resources from within member institutions;
- Academic institutions – virtual and distance learning opportunities (NetTel@Africa: 8 African & 5 US universities + 2 UK universities).

Conclusion

- Capacity-building
 - is all-embracing – people, processes, institution – inter-dependent & equal
 - permeates all activities
 - is on-going
 - immediately impacts on effectiveness
 - requires commitment & resources
 - is best achieved if appropriate strategy developed
 - is ultimately self-directed

Sources

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- Bourreau M & Dogan P, "Regulation and innovation in the telecommunications industry", Telecommunications Policy, Vol 25, No 3, pp 167 – 184, April 2001, Elsevier.
- Eldridge, Derek, 2002, "Raising the agenda for capacity building in the CRC" Working paper No 19, Centre for Regulation & Competition, Institute for Development Policy & Management, University of Manchester, UK
- Eldridge, Derek, 2003, "A Diagnostic Model for Capacity Building in Regulatory Agencies", CRC, IDPM, University of Manchester UK

Sources (continued)

- Melody Prof William, 2001, Introduction, "Telecommunications Reform: Principles, Policies & Regulatory Practices", ed Melody, Technical University of Denmark,
- Smith, Warrick, 1997, "Utility Regulators – Decision-making structures, Resources and Start-up Strategy (Note 129)", Public Policy for The Private Sector, World Bank,
- "Capacity Development", UNDP, 1997, Technical Advisory Paper 2, page 3., New York,
- "Partnerships for Capacity Building in Africa: Strategy and Program of Action", World Bank, 1996, Washington DC,
- Wirick, David W, 1999, "New Models of Regulatory Commission Performance: the Diversity Imperative", NRRI, Ohio State University,

Web resources

- <http://idpm.man.ac.uk/crc/> (*Centre for Regulation & Competition*)
- <http://www.trasa.org> (*Telecommunications Regulators' Association of Southern Africa*)
- <http://www.nettelafrika.org> & <http://elearn.nettelafrika.org> (*NetTel @ Africa – Network for Capacity Building & Knowledge Exchange*)
- <http://www.regulateonline.org/> (*World Dialogue on Regulation for Network Economies*)

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A Diagnostic Framework for Capacity Building

(Derek Eldridge)

The Strategic Planning Process

- Dependent on input from the political decision making process
- The political decision making process by definition involves conflict revolving around philosophy, ends, means, timing, location, political advantage and reasons for change
- The strategic planning process aims to input from the political process and rationally define aims, objectives, etc.
- Stakeholder analysis as an aid to the strategic planning process aims to take into account the multiplicity of interests prevailing in a regulatory regime and assists in the definition of vision, aims and ways in which effectiveness can be judged
- Legislation available may assist in the resolution of conflicting aims by giving definition to regulatory activity and the assessment of its effectiveness
- The strategic planning process requires a range of institutionally located skills - networking, building commitment, creating thinking, political sensitivity and negotiation - if rationally defined direction is to emerge from the conflicting interests.

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

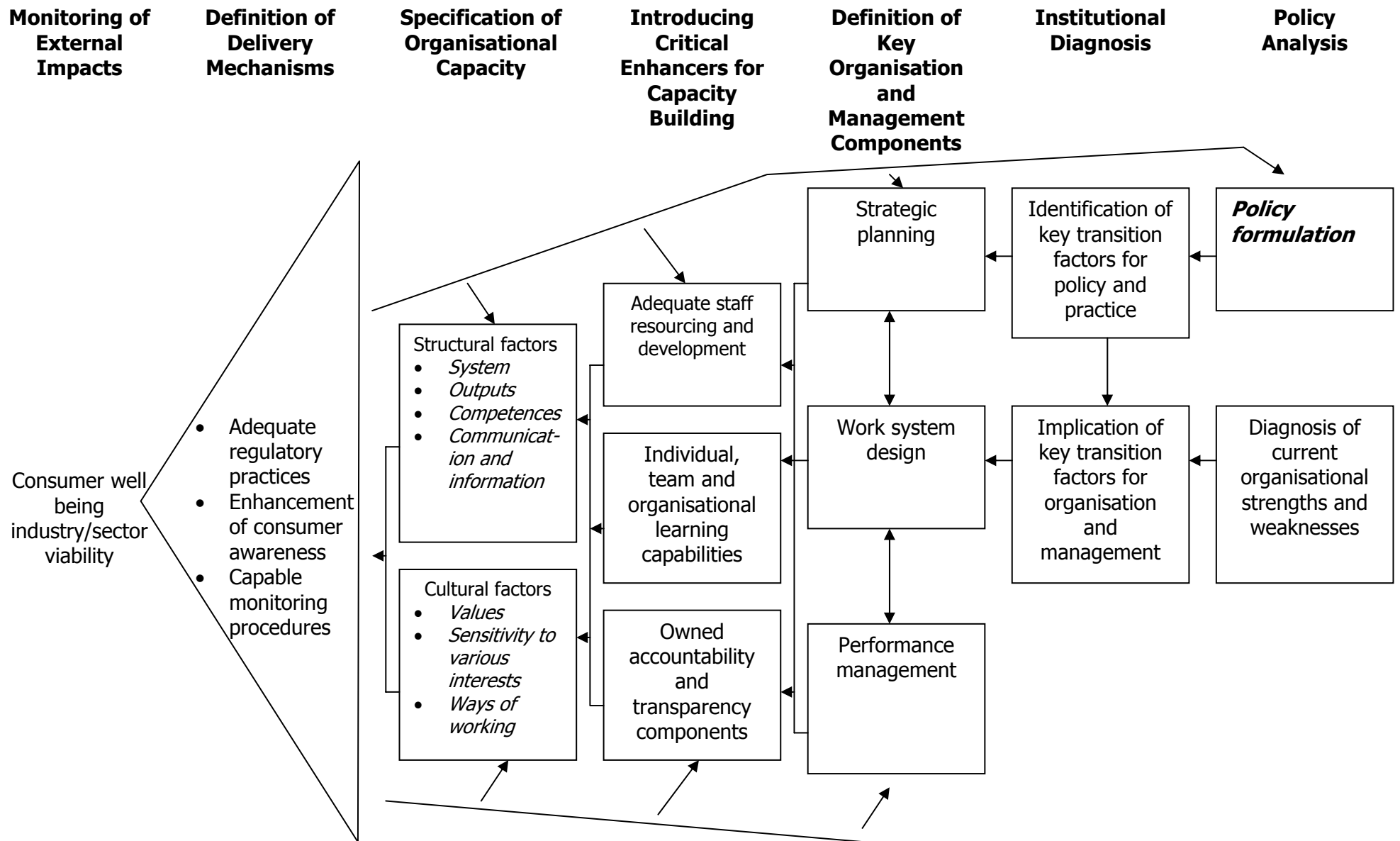
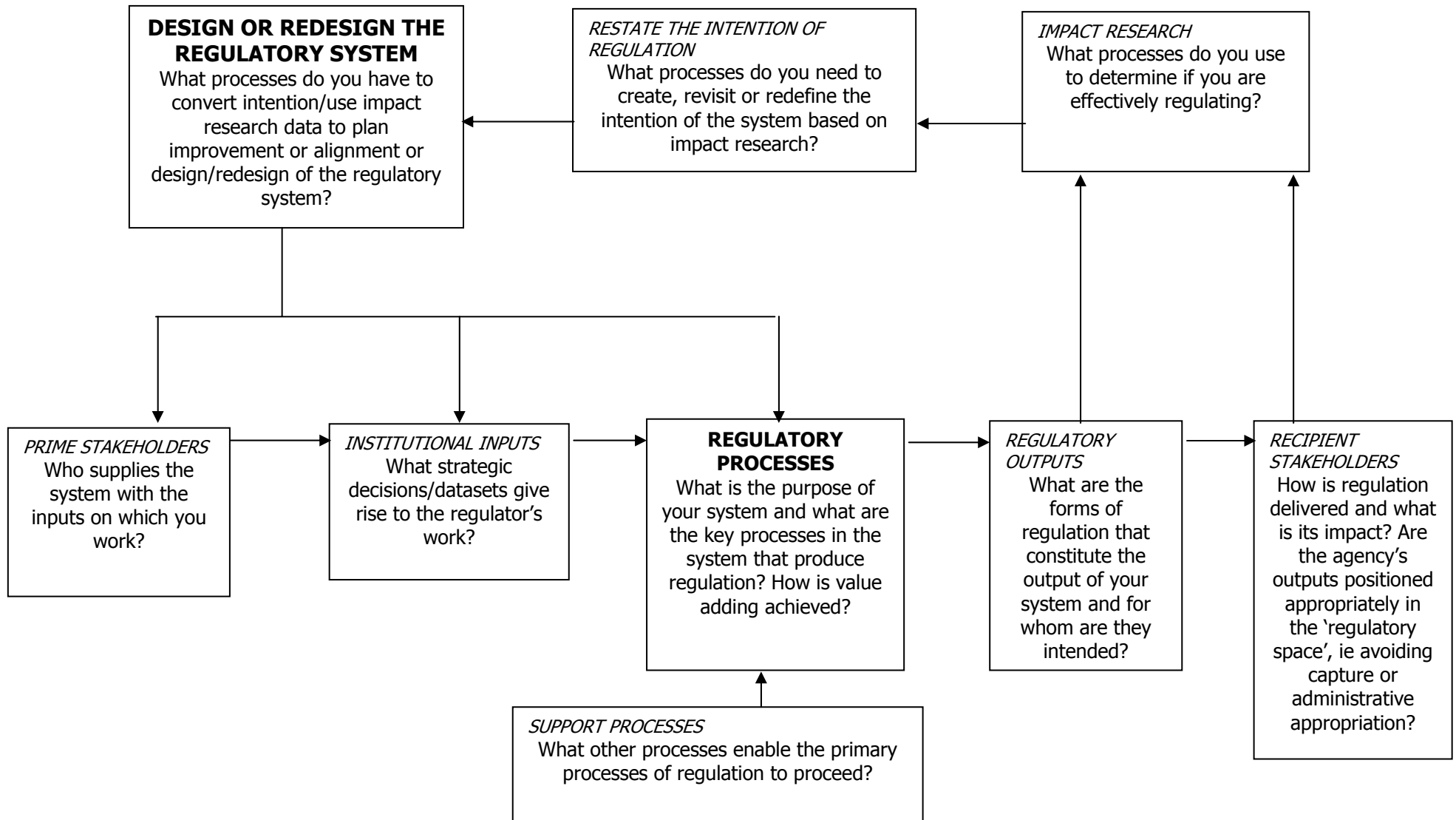


Figure 2: The Supplier-Input-Process-Output-Customer (SIPOC) Model as Applied to the Regulatory Process



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).

Discussion points

Three discussion groups were formed.

- GROUP A Topics
- Accountability and transparency
 - Citizen's involvement in regulatory organisations
 - Funding and independence

Findings

Independence for the regulator can be achieved by:

- apolitical appointments
- separate organisation/location outside of government and this is 'seen' by the public
- clear legal framework
- competitive staff package
- tough termination powers (stringent conditions)
- regulatory power is the responsibility of the regulator.

Accountability and transparency will be achieved by:

- clear budgetary process for the regulatory agency
- clear definition of the impartial function of the regulator
- clear paths to the legislature on strategic issues, e.g. consultation for additional funds
- establishing incentive based regulation.

Enhanced citizens' involvement will be enhanced by:

- defined roles for the public
- stressing partnership with regulators including 'criticise and build'.

- GROUP B Topics
- Skills/leadership in regulatory agencies
 - Knowledge required by regulators in relation to what they do

Findings

To pay due regard to both of these areas there is a need for:

- the development of a knowledge/skills profile – referring to professionals, soft and managerial skills
- the stating of minimum requirements/differing competency levels in respect of jobs/technical versus procedural skills, e.g. legal skills have to be benchmarked against judgements in cases
- a strong focus on the development of skills/competencies within regulatory agencies, not just individually based skills but those with an institutional focus as overall competence has to be built up (re-role of support given to the public administration development process by the 1996 South African Constitution)
- the full support of the CEO to help others develop and solve problems
- the creation of networks to support competency build e.g. sharing of ideas between legal people across agencies; utilising SADAC regulators' networks to resource problem solving.

- GROUP C Topics
- Market structuring/unbundling
 - Solving major issues affecting competition and regulation

Findings

- there is a need to fully analyse the reasons for re-structuring looking at efficiency, prices and capacity of industry, e.g. electricity industry in South Africa. All cases have to be examined on the basis of advantages/disadvantages
- in relation to restructuring a clear focus is needed on the role of competition policy, i.e. is it to enhance efficiency to promote competition, or to raise the public interest issue
- case investigations need to be resourced with experts to ensure that the Competition Commission/Tribunal relationship is enhanced
- ensure a memorandum of understanding governs relations between the Competition Commission and a sector regulator in establishing their respective roles vis a vis new legislation affecting the sector concerned
- enhance the capacity of the Competition Commission through
 - ~ links with similar African bodies, perhaps with an exchange of staff
 - ~ budgets for staff development
 - ~ internal training courses
 - ~ involving academic expertise