 **Policy Brief**

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**Regulatory Law: Need for Streamlining and Accountability**

***The recent controversy between the outgoing Prime minister and the actual Government over expected telecommunications tariff reduction brings back to light the supposed independence of the regulatory authority. While the new Information and Communications Technologies minister is trumpeting that tariffs for international calls will go down soon, the ex-Prime minister is saying that it was his Government’s intention to reduce tariffs.***

Independent regulation is becoming the order of the day in several sectors in developing countries. The area of infrastructure services has possibly seen the establishment of independent regulators, perhaps the most. The reason being is that infrastructure services are scarce in many developing countries, and governments alone are unable to cope with the growing demand. In order to balance the demand, the sector has undergone policy alterations, with prime objective of attracting private investment. This necessitated the adoption of regulatory frameworks.

On the local scene, the outgoing minister of Information and Communications Technologies’ stand needs to be recalled. In a statement in Parliament, he affirmed that the Information and Communications Technologies Authority (ICTA), the regulator for this sector, was not independent of Government. His argument was based on the fact that the ICTA was financed from Government funds.

ICTA’s Telecommunications Order No.4, aligning international long distance tariffs for all operators with those of the historic operator, thus restricting competition, brought further evidence of the alleged control of the regulator by Government. It should be recalled that this order was subsequently quashed by the ICTA Appeal Tribunal, following protests from an independent operator. The law did not allow the consumer movement to be a party to the case.

Two other questionable stands need to be recalled. In its reply to ICP’s request to look into, what the consumer watchdog deemed to be misleading and abusive adverts on radio and TV, the Independent Broadcasting Authority affirmed that it was ICP’s job to educate consumers. Protests, from the ICP, against high increases in postal tariffs brought to the Postal Authority, whose members are the same people who constitute the ICTA, were squarely ignored.

Governments’ decision to review the Utility Regulatory Authority Act, the regulatory law for the electricity, water and sewerage sectors, and the Electricity Act before their implementation is a cause for concern, as consumer organizations have not been informed of or consulted over proposed amendments. ICP fears that provisions which would enable consumer organizations to dispute wastewater and electricity tariffs may be removed.

The setting up of regulators is a very recent innovation in the commercial environment of the country. The above mentioned shortcomings may be considered as some of the teething problems of regulators.

Regulators are expected to facilitate investment, growth, and competition in the sector and to advise the government on policy matters. They are even empowered to adjudicate. In Mauritius, regulators seem to have been set up to facilitate private sector investment in what used to be Government utilities. Frequent outcry from trade unions bears evidence of the absence of dialogue with relevant stakeholders.

On a general note, governments have failed to foresee the need for consistent and coherent approach towards independent regulation. Doing that would require putting an overarching framework in place to guide the formulation of any sector-related regulatory body.

Regulatory frameworks are required to deal with sector-related competition concerns such as abuse of market dominance, formation of combinations, collusive agreements etc. The ICTA Act, for example, deals with competition in Section 30.

The government is yet to determine what is expected of the sector-related regulatory agencies, the degree of independence they should have, their accountability and so on. Adopting a consistent and coherent approach towards independent regulation would require putting an overarching framework in place to guide formulation of any sector-related regulatory body. Some of the crucial aspects of regulation include the degree of regulatory independence, their mandate, regulatory objectives, and interface with other agencies including the government, functional overlaps, accountability, and so on.

This would require two things. First, proper identification of those essential attributes that any regulatory agency must possess. Second, establishing an empowered nodal agency to examine various draft regulatory legislation, which originate from various ministries. Such a nodal agency would regulate the regulatory law making and ensure the desired degree of uniformity across the board. It is our view that it should be the responsibility of the Ministry of Justice to facilitate the setting up of such a nodal agency.

***Accountability***

Parallel (and subsequent) to the debate on regulatory independence, another equally important and somewhat controversial issue has cropped up. This relates to regulatory accountability, i.e. accountability of the regulators.

In majority cases, these independent bodies have to submit a report before the legislature every year, and their expenditures are subject to independent audit. The ICTA, for example, “shall (…) cause to be published a report in relation to its functions, activities, affairs and financial position in respect of the previous financial year. The Authority shall (…) forward a copy of the report (…) to the Minister who shall lay it on the table of the Assembly.” The same provisions apply to the IBA and the URA. However, the Utility Regulatory Authority Act goes further. It specifies that the “Annual Report shall be made available to the public within 60 days of its announcement.”

Nevertheless, it is arguable whether the submission of an annual report to the legislature alone is sufficient to uphold the accountability of the regulators. How often does the legislative find time and interest to evaluate the performance of the regulatory bodies?

It should thus be worthwhile to find out other alternatives to hold regulators accountable. Asking these ‘independent’ regulatory bodies to report directly to the government would surely defeat the entire purpose of setting these institutions outside the government purview. Hence, this option is ruled out.

Positioning civil society organizations (CSOs), particularly consumer groups, to ensure accountability of regulatory authorities could be a workable way of dealing with the issue. Currently, the role of these groups is recognized in a very narrow and limited perspective. They are only observed as advocates for consumer interests and their representation is only provided at the level of advisory council. The ICTA Act, for example, provides for the presence of “persons representing the interests of consumers, purchasers and other users” in its ICT Advisory Council. No such provisions are found in the URA Act or the IBA Act. Nevertheless, several examples in the world demonstrate that consumer groups have worked hand in hand with regulatory bodies.

Consumer groups, in particular, and the civil society, in general, should be empowered to monitor the activities of the regulators to ensure effectiveness. These groups should play their part by bringing issues to the public domain, when required.

Such mechanism can be incorporated, in addition to the existing provisions of regulators reporting to elected representatives of the people. Making this prescription workable would require three major provisions. Firstly, recognizing the larger role of civil society/consumer groups in the law itself; secondly, ensuring a performance-based sustained funding for such activities; and thirdly, empowering these organizations through capacity building programmes.

In the US, most of the energy and gas regulators host and support the office of consumer advocates. This may not be a desirable arrangement, as the consumer groups may not be critical enough of the regulators who are supporting them. The UK model of providing for establishing a consumer watchdog within the Act, and supporting its activities by imposing a symbolic toll on consumers, could prove to be appropriate.

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