

**THE IMPACT OF LEGAL FRAMEWORK ON REGULATORY
AUTHORITIES IN TANZANIA: A CASE STUDY OF THE SURFACE AND
MARINE TRANSPORT REGULATORY AUTHORITY (SUMATRA)**

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**A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY OF THE OPEN
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CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by The Open University of Tanzania the Thesis entitled “*The Impact of Legal Framework on Regulatory Authorities in Tanzania: A Case Study of The Surface and Marine Transport Regulatory Authority (SUMATRA)*” in fulfilment of the requirements for the Degree of Doctor of Philosophy of The Open University of Tanzania.

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DECLARATION

I, **Oscar Ishengoma Kikoyo**, do hereby declare that this Thesis is my own original work and has not been presented, and will not be presented, to any other university for a similar or any other degree award.

.....

Signature

.....

Date

DEDICATION

This piece of work is dedicated to my beloved wife Levina Nfura and our cherished children Cuthbert Mugishagwe, Carlin Ruhangisa, Cassian Kikoyo and Carson Bin'Omutonzi.

ACKNOWLEDGEMENTS

I thank the Almighty for serenity of mind which enabled me to successfully undertake this study.

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However, I remain responsible for any weakness that may arise from this work.

ABSTRACT

It should be noted that shortly after independence in 1961, Tanzania chose Ujamaa (African Socialism) which was christened as “Arusha Declaration” as its social-economic policy. The chosen policy did not, though, deliver to the expectations of the country. The 1980s for instance, experienced economic decline and macroeconomic imbalances which had an adverse effect on real GDP. Due to that economic decline, the Government took bold decisions to reverse some of the tenets of socialist policies spelt out in the Arusha Declaration. The government withdrew from offering some social services letting the private sector fill in the gap. The role of Government, as the tenets of the market economy require, was to set policies on production and distribution of goods and services. Regulatory authorities were consequently established to spearhead the market economy by promoting competition, nurturing the private sector and safeguarding consumers by setting regulations, standards and tariffs of the regulated goods and services. The absence of a legal framework for the established regulatory authorities, though, was a setback to achieve the intended goal. This study, therefore, analysed the impact of the legal framework put in place to enable regulatory authorities to spearhead the market economy in Tanzania. SUMATRA was used as the case study whereby data were collected and analysed using the Software Package of Social Sciences (SPSS). The findings indicated that regulatory authorities were neither independent, transparent nor predictable due to unwarranted political interference in their operations. The study therefore recommended that the current legal framework should be overhauled because it creates room for political intervention in regulatory operations.

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LIST OF ABBREVIATIONS AND ACRONYMS

BICO	Bureau for Industrial Cooperation
BIS	Basic Industrialisation Strategy
BOT	Bank of Tanzania
CHAKUA	Chama cha Kutetea Abiria
CTLA	Central Transport Licensing Authority
DARCOBOA	Dar es Salaam Commuter Buses Owners Association
DART	Dar es Salaam Rapid Transit
DAWASCO	Dar es Salaam Water Supply Company
DMT	Dar es Salaam Motor Transport
DRTLTA	Dar es Salaam Region Transport Licensing Authority
ERP	Economic Reform Programme
EWURA	Energy and Water Utilities Regulatory Authority
FCC	Fair Competition Commission
FCT	Fair Competition Tribunal
FDI	Foreign Direct Investment
GDP	Growth Domestic Product
GN	Government Notice
KAMATA	Kampuni ya Mabasi Tanzania
IMF	International Monetary Fund
LDC	Less Developed Countries
LGAs	Local Government Authorities
MOID	Ministry of Infrastructure Development

MP	Member of Parliament
NBC	National Bank of Commerce
NGOs	Non-Governmental Organisations
NTP	National Transport Policy
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PMO-LARG	Prime Minister's Office, Local Government Authorities and Regional Administration
ROI	Return on Investment
SADC	Southern Africa Development Community
SAP	Structural Adjustment Programme
SAS	Statistical Analysis Software
SAUT	St. Augustine University
STC	State Trading Company
SUMATRA	Surface and Marine Transport Regulatory Authority
SUMATRA CCC	SUMATRA Consumer Consultative Council
TABOA	Tanzania Bus Owners Association
TAFFA	Tanzania Freight Forwarders Association
TANESCO	Tanzania Electricity Supply Company
TANROADS	Tanzania Roads Agency
TAZARA	Tanzania and Zambia Railways Authority
TBS	Tanzania Bureau of Standards
TCAA	Tanzania Civil Aviation Authority
TCFB	Tanzania Central Freight Bureau

TCRA	Tanzania Communication Regulatory Authority
TIB	Tanzania Investment Bank
TICTS	Tanzania International Container Terminal Services
TIPER	Tanzania-Italy Petroleum Refinery
THB	Tanzania Housing Bank
TPA	Tanzania Ports Authority
TPC	Tanganyika Planting Company
TRA	Tanzania Revenue Authority
TRANSED	Transport for Elderly and Disabled Persons
TRC	Tanzania Railway Corporation
TRDB	Tanzania Rural Development Bank
TRL	Tanzania Railways Limited
UDA	Shirika la Usafiri wa Umma Dar es Salaam
WB	World Bank

CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 General Introduction

Regulatory Authorities in Africa, Tanzania in particular, are a new concept introduced in our economic systems due to economic reforms made in the late 1980s (Reed, 1996). The economic reforms made in 1980s introduced the market economy as a new economic system in Tanzania. Regulatory Authorities were resorted to as an alternative after the centralised state command economy was seen not to deliver. Mwandosya (2009) attributes that failure to the Government's involvement in regulatory activities which overstretched it with many responsibilities and consequently many projects failed. Regulatory Authorities were therefore recommended to most African economies. Tanzania welcomed the recommendation as means of rescuing the crumbling socialist based economy. It was argued that Regulatory Authorities had played a significant role in shaping and developing western economies and thus they could do the same to the crumbling Tanzanian economy in the 1980s.

Market economy as a new economic system was commended that the discipline and financial accountability and transparency in developed economies owes much to regulatory authorities. While in developed economies regulatory authorities have been regulating their markets for the past hundred years or so, in Tanzania regulatory authorities would be a new concept. Hence, most of the literature available is sourced in developed economies. Nevertheless, for a period of seven (7) years since 2004 to 2010, regulatory authorities in Tanzania have done a lot in developing regulations,

establishing performance tools and nurturing their literature. With due respect, only a handful of authors have dedicated time to write on the legal framework and performance of regulatory authority in Tanzania. The prevailing literature calls for independence of the regulatory authorities; however, not much has been analysed in terms of the problems which might arise if the regulatory authorities operate in a hostile legal framework.

This study therefore intends to add to that knowledge gap by analysing the impact of a legal framework on regulatory authorities in spearheading the market economy in Tanzania. Regulatory authorities in Tanzania were established to regulate the market, promote effective competition, economic efficiency and at the same time safeguard the interest of consumers. The current legal framework within which these regulatory authorities operate, though, poses operational challenges.

To-date, three regulatory authorities, namely the Surface and Marine Transport Regulatory Authority (SUMATRA), the Energy and Water Utilities Regulatory Authority (EWURA) and the Tanzania Communication Regulatory Authority (TCRA) have been established and tasked to regulate sectors of the economy which previously had been monopolistic in their operations. They respectively regulate sectors in the fields of transport, energy, utilities, water and communication. From the very beginning of their establishment, these regulatory authorities were meant to promote effective competition and economic efficiency on the one hand, and act as moderators through setting tariffs in the regulated segments of the market on the other. The Authorities were therefore established to curb monopolistic tendencies by

setting tariffs and enforcing the same through enacting rules and regulations. The underlying philosophy in setting tariffs is termed a co-regulation system.

For reasons which shall be argued herein later, the awe-inspiring regulatory authorities have not been able to perform to the expectations of the market. To bring the point home, the Surface and Marine Transport Regulatory Authority (SUMATRA) has been sampled by analysing the legal impact on its performance to spearhead the tenets of the market economy in the surface and marine transport sub sector.

1.2 Background Information

Like many other African countries, Tanzania was colonised. Initially, it was colonized by the Germans (1884 -1918) and then by the British (1919 – 1961) before getting its independence on the 9th day of December 1961. Shortly after independence, the Government chose “*Ujamaa*” (African Socialism) as its socio economic policy. The chosen socioeconomic policy was highly characterised by the government’s uncommonly direct control of the economy (Reed, 2001). It should be noted that there was no other African country whose post-colonial government controlled its economy like Tanzania (*Ibid*). This policy was a deliberate decision made by the Government to chart its own development course tied to neither western capitalism nor eastern communism. The economic reforms that are now taking place in Tanzania should be looked at in that historical perspective, and are aimed at reversing some of the fundamental social economic policies that were embarked upon after the country’s independence.

The process of reversing Tanzania's previous socioeconomic policies started in the late 1980s whereby some tenets of socialist policies which were spelt out in the Arusha Declaration were set aside (Kaduma, 2004). The Government, for instance, withdrew from offering free social services and including in direct trading, letting the private sector fill the gap (Mkocha 2009). The role of the Government remained mainly to set policy backed by laws and regulations on standards and tariffs of the required services.

In order the regulatory functions of the Government to be effective, regulatory authorities with different specialties were established to regulate the market. The regulatory authorities so established faced a range of operational problems due to the fact that the legal framework within which they were established had many competing pieces of legislation.

1.3 Statement of the Problem

Regulatory Authorities in Tanzania were established not only to spearhead the market economy by promoting competition and economic efficiency, but also to safeguard the interests of consumers and at the same time protect the financial viability of efficient suppliers. Regulatory authorities were thus tasked to promote the availability of regulated goods and services to all consumers including the low income bracket, rural and the disadvantaged; and to enhance public knowledge, awareness and understanding of the regulated sector. However, the efficiency of regulatory authorities is not yet well-established.

This situation calls for the assessment of the role of a legal framework in the performance of regulatory authorities. Incidentally, the regulatory authorities legal

framework contravenes the Constitution of the United Republic of Tanzania 1977 which in its preamble, paragraph 3 and article 3(1) clearly states that Tanzania is a socialist country, a stance which does not promote market economy. The independence of regulatory authorities is also compromised for political gains by giving ministers powers to appoint Director Generals and Board Members of respective regulatory authorities. But also, consumer protection falls short of realisation due to lack of a strong consumer protection authority.

The current legal framework is inadequate to guarantee the expected regulatory performance because regulatory authorities' duties and functions are in conflict with sector legislation which are not part of the regulatory framework. SUMATRA, for example, operates amidst many pieces of legislation which contradict each other and which in turn contravene the philosophy of a regulatory framework. Hence the regulatory performance in the market is crippled. Yet in some sectors, the legal framework within which the regulator operates is too disintegrated and uncoordinated such that regulation of the market remains purely theoretical. At this juncture, the main question therefore is how can the current legal framework be reviewed to enhance the performance of the regulators in pursuit of a market economy in Tanzania

1.4 General Objective of the Study

On account of the aforementioned, the general objective of this study is therefore to analyse the impact of the current legal framework of regulatory authorities in spearheading the market economy in Tanzania.

1.4.1 Specific Objectives of the Study

From the general objective, seven specific objectives of the study were set:

- (i) To establish the relevancy of the regulatory authorities in the regulated markets.
- (ii) To analyse the competency of the regulatory authorities in the regulated markets.
- (iii) To elucidate the visibility of the regulatory authorities in the regulated markets and the process of regulating the same.
- (iv) To critically analyse the conduciveness of a legal framework for regulatory authorities in the process of regulating the market in order to spearhead the market economy in their respective areas of specialisation.
- (v) To extensively analyse qualities of functional regulatory authorities in Tanzania.
- (vi) To critically analyse the performance of the Surface and Marine Transport Regulatory Authority in regulating the transport sub sector market in Tanzania.
- (vii) To propose a proper legal framework within which Regulatory Authorities should work and be able to spearhead the market economy in Tanzania.

1.5 Research Questions

The study was guided by the following research questions:

- (i) What is the relevancy of regulatory authorities in regulating the market economy in Tanzania?

- (ii) What is the competency of regulatory authorities in regulating the market economy in Tanzania?
- (iii) What is the visibility of regulatory authorities in regulating the market economy in Tanzania?
- (iv) To what extent is the legal framework conducive for regulatory authorities to spearhead the market economy in Tanzania?
- (v) To what extent do regulatory authorities in Tanzania meet qualities of functional regulatory authorities?
- (vi) Has the Surface and Marine Transport Regulatory Authority succeeded in regulating the transport sub-sector to the expected market economy standards?

1.6 Significance of the Study

This study intends to make a contribution to the pool of knowledge on the impact of a legal framework on the performance of Regulatory Authorities in the process of regulating the market. The study further intends to analyse the role of a legal framework to regulatory authorities in the process of regulating the market and thus spearheading the market economy in Tanzania. The study aims at proposing an appropriate legal framework which should nurture regulatory authorities in order to tend market economy by setting relevant principles and regulations to cement discipline and business ethics. Furthermore, the study lays down basic principles for the best regulatory framework suitable to shape the market economy in Tanzania. The study shall therefore add value to the pool of knowledge on the role of Regulatory Authorities in overseeing business based on ethics and openness in the Tanzanian market.

CHAPTER TWO

2.0 LITERATURE REVIEW AND THE CONTEXTUAL FRAMEWORK OF REGULATORY AUTHORITIES IN TANZANIA

2.1 An Overview of Regulatory Authorities

Regulatory Authorities in Tanzania were established by the Government to moderate the market players in order to avoid any possible chaos in the market place. In many countries, regulatory authorities are creatures of Acts of Parliament vested with immense powers to regulate the market hence fostering the market driven economy. There is no single economy in the world which operates free of any regulation. It should be noted that even major economies have some regulation regardless of the stiff competition their markets (Nellis *et al.*, 1997).

Most African economies are small, fragile and susceptible to every kind of abuse as the private sector is still in its infancy. Regulatory Authorities are therefore of paramount importance and help to shape the market in order to develop business ethics at an early stage. In Tanzania, the economy was initially partly state controlled and to some extent privately owned in line with socialist objectives. In his report on structural adjustment in Tanzania, Mans (1993), pointed out that compared to many African countries, by the late 1970s Tanzania had a rigid economic system characterised by monopolistic and heavily regulated production structures in all sectors of the economy and discrimination against an insignificant private sector. Following the economic reforms which were implemented under the structural adjustment policy, the social and economic map was redrawn and altered the

relationship between the state, the market and the consumers. The subsequent establishment of regulatory authorities in Tanzania was therefore the right remedy at the right time. What was a taboo in 1970s is now clear that it is the market, not the state, which is the motor of economic growth. What is needed therefore is a well defined regulatory authority's legal framework in order to harness private sector potentials so as to enable it to take its position as a motor of economic growth with minimum regulations to ensure ethics, compliance and accountability in all economic patterns.

2.3 Definitions of Terms and Concepts

2.3.1 Regulatory Authority

A regulatory authority is an agency with powers given to it by the legislature to enforce statutes, to develop regulations that have force of the law, and to assist the public in complying with laws and regulations (<http://www.answers.com/topic/regulatory-authority-1>). Carson (1987) defines regulatory authority as a logical outcome of the need to improve market conditions in a certain industry in particular those where natural monopolies tend to develop.

Oxford Advanced Learner's Dictionary, 7th Edition defines a regulator as a person or an organisation that officially controls an area of business or industry and makes sure that it is operating fairly. It is further defined as a public authority or government agency responsible for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity (http://www.en.wikipedia.org/wiki/regulatory_authority accessed on 25 January 2011 at 17:51hrs).

2.3.2 Market Economy

According to the Investment Dictionary, (<http://www.answers.com/topic/market-economy>) a market economy is an economic system in which economic decisions and the pricing of goods and services are guided solely by the aggregate interactions of a country's citizens and businesses and there is little government intervention or central planning. Shapiro (2003) noted that in market economy systems, decisions are made by individual decision makers based on prices of goods, services, capital, labour, land and other resources. This is the opposite of a centrally planned economy, in which government decisions drive most aspects of a country's economic activity.

2.3.3 Independent Regulatory Authority

Independent regulatory authorities are institutions that make it possible to implement regulations in a transparent and non-discriminatory way, ensuring that the public interest is not subordinated to special interests (Organisation for Economic Co-operation and Development, 2006).

Maggetti of the University of Lausanne in his paper “The Role of Independent Regulatory Agencies in Policy – Making: a Comparative Analysis of Six Decision-Making Processes in the Netherlands, Sweden and Switzerland” (2007) quoting Thatcher and Stone Sweet 2002, defined independent regulatory authorities as “governmental entities that possess and exercise some grant of specialised public authority, separate from that of other institutions, but neither directly elected by the people, nor directly managed by elected officials”.

2.3.4 Legal Framework

A legal framework is an instrument used to foster a desirable activity by limiting the opportunity for abuse or fraudulent activities in the market and also to encourage predictability in order to ensure market integrity, transparency, consumer protection and investor protection (Tanganyika Law Society Journal, Vol. 1, No. 1 of 2006). Shapiro (2003) defines a legal framework as an instrument that stimulates the development of the market economy. That instrument must be made by stable rules governing society, fair and predictable application of laws administered by a judicial system free of corruption. Shapiro argued further that it was a legal structure which replaced officials' whim with the rule of law; combined with a system of property rights and property enforceable contracts, facilitates the development of the market economy.

2.3.5 Natural Monopoly

Natural monopoly is a firm that has such low average total costs that it can out compete all other firms in the industry, thus remaining as the sole survivor (Roger, 1995). Natural Monopoly is further defined as a type of monopoly that exists as a result of high fixed or start-up costs of operating a business in a particular industry. It is argued that since it is economically sensible to have certain natural monopolies, governments often regulate them in operations ensuring that consumers get a fair deal (http://www.invastopedia.com/terms/n/natural_monopoly.asp accessed on 24/1/2011 at 17:50hrs).

Natural Monopoly was further defined as a situation where, for technical or social reasons, there cannot be more than one efficient provider of goods and services.

Public utilities such the Tanzania Electricity Supply Company Limited (TANESCO) and the Dar es Salaam Water Supply Company (DAWASCO) are usually considered to be natural monopolies ([http://economics.about.com/cs/economicsglossary/g/naturalmonopoly .htm](http://economics.about.com/cs/economicsglossary/g/naturalmonopoly.htm) accessed on 24/1/2011 at 17:37hrs). Natural monopoly arises where the largest supplier in an industry, often the first supplier in a market, has an overwhelming costs advantage over other actual and potential competitors. This tends to be the case in industries where capital costs predominate, creating economies of scale that are large in relation to the size of the market and hence high barriers to entry. Taken as examples in the case of Tanzania they could be the Tanzania Railways Limited (TRL) and the Tanzania Electricity Supply Company Limited (TANESCO) where infrastructures and/or transmission networks are extremely expensive to build (http://en.wikipedia.org/wiki/natural_monopoly accessed on 24/1/2011 at 17:32hrs).

The Surface and Marine Transport Regulatory Authority (Tariff) Regulations of 2009 (GN. NO. 92 dated 26 February 2010) addressed the impact of monopolistic tendencies in a market economy. Rule 17 of the Surface and Marine Transport Regulatory Authority (Tariff Regulations (2009)) prohibits a dominant service provider (monopolist) to apply tariffs that intend to prevent market entry or distant competition by applying tariffs below the underlying cost of providing the service.

2.3.6 State Economy (Command Economy)

According to Britannica Concise Encyclopaedia (<http://www.answers.com/topic/market-economy>) State Economy is an economic system in which the means of production are publicly owned and economic activity is controlled by a central

authority. Central planners determine the assortment of goods to be produced, allocate raw materials, fix quotas for each enterprise, and set prices. Whereas, Shapiro (2003) defines Command economy as an economic system in which all the fragments of knowledge existing in different minds are brought together in the minds of the central planner. It is a system in which people at the top, in most cases who have no direct touch with the market operations, decide what is to be produced, how it should be produced, and where it should be produced.

2.3.7 Privatisation

Privatisation has a broad meaning; it can mean transferring government assets, production or service delivery to the private sector. On the other hand, it can also include a wide range of public-private partnerships, such as the voucher system. Privatisation is further defined to mean reduction of government role in the economy and broadening the role of the private sector (Economic and Liberalisation in Tanzania, 2003). Privatisation promotes efficiency and growth, thereby reinforcing macroeconomic adjustment.

Simon (1996) defines privatisation as a transfer of ownership of economic enterprises from the state to the private sector. He noted that privatisation and liberalisation were two sister concepts which dominated international economic policy which were imposed on African economies through structural adjustment programmes. Privatisation and liberalisation became a reality in Tanzania through vigorous political pressure from the northern donor community as part of the so-called economic conditionality for continued aid from both bilateral and multilateral sources.

2.3.8 Trade Liberalisation

Trade liberalisation is a concept that evolves on trade regime transition mainly from a centrally planned economy to a market based economy. It is a system of trade policy that cultivates freedom of trade with minimal government interference. Under trade liberalisation, prices of goods and services are a reflection of true supply and demand which in turn influences resources allocation.

Jayagovind in his paper “Emerging Economic Laws, The Concept of Liberalisation, has defined liberalisation as the process of freeing economic activities from the stranglehold of political and bureaucratic control. He went a step further to outline the underlying assumption that socialism and its concomitant process of planning have suppressed entrepreneurship and shackled the economy. He argued that in extreme version, trade liberalisation would mean that the government should totally withdraw itself from economic activities, leaving them to the care of the so-called “market forces”.

He further notes that liberalisation may sometimes mean an increasing reliance on the market forces within the framework of planning, and not the sacrifice of planning at the alter of the so-called market, a euphemism for multinational corporations. Market like so many other things, is a good servant, but a very bad master. Transition economies undergo economic liberalisation, where market forces set prices. In this system, trade barriers are laid redundant, through privatization of the government-owned enterprises and resources, and hence creating a financial sector to facilitate the movement of a private capital.

According to wikipedia (http://www.wikipedia.org/wikitransition_economy, accessed on the 24/1/2011 at 16:05hrs) the transition process is usually characterised by the changing and creation of institutions, particularly private enterprises; changes in the role of the state thereby the creation of fundamentally different government institutions and the promotion of privately-owned enterprises, market and independent financial institutions. The transition process is characterised by the following ingredients:

- (i) **Liberalisation** – this centres on allowing prices to be determined in free markets and eliminating trade barriers which limit the price structure of the world's market economies.
- (ii) **Macroeconomic stabilisation** - this is bringing inflation under control and lowering it overtime, after the initial burst of high inflation that follows from liberalisation. In Tanzania, inflation rate rose at 30% in 1995 and was reduced to 4.4% by the end of 2004 as a consequence of tight monetary and fiscal government policies (Abedi, F.Y. (2004) in his article “Can the Transport Sector Development Programme Deliver “Mkukuta”. This process requires discipline over the government expenditure and the growth of money credit and the progress towards sustainable balance of payment.
- (iii) **Restructuring and Privatisation** – this leads to creation of viable financial sector institutions and reforming the enterprises in the country to render them capable of producing goods that could be sold in free markets and of transferring their ownership into private hands.

- (iv) **Legal and Institutional reforms** – these aim at redefining the role of the state in these economies, establishing the rule of law and introducing appropriate competition policies.

2.4 Justification of Regulatory Authorities in Market Driven Economies

Regulatory authorities in market driven economies are crucial as they are intended to correct market imperfections which are the product of monopolistic tendencies in the market place (Anord, 1995). Adam Smith's philosophy initially was that the free market does not need regulation as it regulates itself through competition. However, this argument has failed to hold water due to the lure and greed for wealth. Adam Smith himself later came to admit that allowing service providers regulate themselves tends to lead to reaping huge profits by restricting free competition and then raising prices.

Adam Smith also later confessed that people of the same trade seldom meet even for leisure, and when they do the conversation ends in a conspiracy against the public, or in some contrivance to raise prices (Coleman *et al.*, 1996). This swift change of thinking justified the need for regulatory and competition authorities in any market to countercheck such conspiracies which create cartels against the public. Smith's change of thinking tells volumes that there is no perfect market that can regulate itself. Smith's new thinking was supported by Monye in her article, "Competition Law in Nigeria" (Consumer Journal, Vol. 4: 2008) as she commented that the need to institute a viable competition law and policy in Nigeria cannot, therefore, be over-emphasised. Otherwise, the government may unwittingly exchange government monopoly for private monopoly.

Many governments even in capitalist states established a couple of authorities to regulate the level of economic activities particularly after the great depression of the 1930s, to protect the public as a whole with special consideration to consumers and employees, and finally to protect competition itself through altering free market distribution of income and wealth (Nellis *et al.*, 1997). Nellis argued further that although consumers are considered to be sovereign in the market economies, they still need protection from the government through a regulatory framework in order to prevent undesirable outcome. Mwaizugbo (2008) asserted that consumer sovereignty was a concept that recognised the prominence of consumers as the major purpose of doing business through their choice process in the market.

He further asserted that producers, for a couple of decades had assumed superiority over consumers and therefore enjoyed the privilege of determining production and distribution patterns in the market (*Ibid*). Regulatory Authorities therefore play important roles in such market economies as they fortify stable rules and predictable laws which guide the market administered by a judicial system free of corruption (Shapiro 2003).

The National Transport Policy (2003) noted that as the Tanzanian Government disengaged itself from operational and economic activities, it allowed the private sector to take lead in the production and distribution of goods and services under market competition principles. It was therefore important to separate, streamline and consolidate the market economy policy where policy issues were left to the Ministry responsible for transport. Under the auspices of a regulator in this regard, the Surface and Marine Regulatory Authority (SUMATRA) was established to deal with

licensing, standards and regulation, while operation issues of the transport sub-sector were left to operators.

Mwandosya notes that in the past regulatory works were carried out by the government itself, but it resulted in the government being overstretched with unprecedented activities in many projects which more often than not ended up in failure. By establishing regulatory authorities to oversee regulatory activities, the government could then concentrate on its core functions (EWURA Newsletter, June 2009:10). Regulatory Authorities in Tanzania have been established along those lines with the following aims, namely:

- (i) promoting effective competition and economic efficiency,
- (ii) safeguarding the interests of consumers,
- (iii) protecting the financial viability of efficient suppliers,
- (iv) promoting the availability of regulated services to all consumers, including low income, rural and disadvantaged consumers,
- (v) enhancing public knowledge, awareness and understanding of the regulated sectors and, finally, taking into account the need to protect and preserve the environment (SUMATRA Act, Act No. 9 of 2001: Section 5 (a to f), TCRA Act, Act No.12 of 2003: Section 5(a to f), EWURA Act, Act No. 11 of 2011: Section 6 (a to f)).

Regulatory Authorities in Tanzania were established with their own separate judicial system link; the Fair Competition Tribunal (Fair Competition Act, Act No. 8 of 2003: Section 83 (1)). The idea of having a judicial regime dealing with competition

issues and acting as an appellate body for regulatory authorities' decisions was a noble idea. Regulators are established to moderate the market by setting ceilings on prices as circumstances may dictate that a monopolistic entity could charge. The regulated firm is duty bound to implement decisions given by the regulator but also has options to appeal against it. The regulated firm can challenge the order issued by the regulatory authority to the tribunal (Carson, 1987). In the case of Tanzania, all appeals intended to challenge any order passed by regulatory authorities are filed at the Fair Competition Tribunal (FCT). It is interesting to note that the number of individuals and firms seeking redress at the Fair Competition Tribunal has been growing year after year. The open register of the Fair Competition Tribunal indicates that in 2007, two appeals filed, in 2008 four appeals were filed, in 2009 again four appeals were filed and in 2010 there were seven appeals.

Regardless of the highlighted legal system pertaining to challenging regulatory orders, there are yet other service providers who file their grievances at Resident Magistrate courts. The precedent case of this nature was set at Morogoro Resident Magistrate court in 2008 which issued injunctive orders against EWURA to close down six petrol stations which were found selling adulterated fuel (EWURA newsletter June 2009).

It should be further noted that regulators' role in the market is to intervene and prevent monopoly by setting rules of the game in order to prevent powerful firms or industries from using their market power to earn excessive profits. The regulator is further mandated to set predictable rules by which on its own motion, or by an application of any player in the market, may review tariffs. SUMATRA, for

example, through its order N0. SMTRA/02/2009 dated 27 February 2009 which was later incorporated into the Surface and Marine Transport Regulatory Authority (Tariff) Regulations, 2009 (Government Notice 92, dated 26/2/2010) set the criteria under which tariff reviews would be carried out. According to the Surface and Marine Transport Regulatory Authority (Tariff) Regulations, 2009, Rule 18 stipulates that bus fares review will be done either annually, in the event of Return on Investment (ROI) falling below 5% or rising beyond 25% or any other factor which may necessitate fares review.

Notably, regulatory authorities play an important role to ensure that all market imperfections are controlled through well thought out strict regulations (Arnold, 1995). The regulator is duty bound therefore to make regulations to compel all players in the market to be accountable for their actions which in one way or the other affect any third party. The redress system is part and parcel of the regulator's powers in the market. A good example is an order issued by SUMATRA to TPA, TICTS and Port users. SUMATRA through its order SMTRA/06/2008 which made it a rule of thumb that a cargo or consignment not delivered to a consignee by TPA/TICTS to an otherwise ready and willing consignee that consignee must be compensated in monetary terms at the rate or rates that TPA/TICTS would otherwise have charged the consignee if he/she had delayed to take delivery of the consignment (SUMATRA, 2008).

This order was a bad news to TICTS, which appealed against the order to the Fair Competition Tribunal vide Appeal No. 3 of 2008. SUMATRA Consumers Consultative Council filed an application to intervene on behalf of Consumers. The

application was granted. The appeal was heard on merits. In its judgment, the Fair Competition Tribunal fortified SUMATRA's order, where the Tribunal emphatically held that:

“...it would, in our opinion, be grossly discriminatory if the consignees were charged a penalty for late collection of their cargoes whereas the appellant, the service provider, was not similarly obliged to compensate ready and willing consignees for late delivery for reasons attributable to TICTS/TPA”.

The Tribunal went a step further to order SUMATRA to make rules to govern the entire process of charging/granting a penalty/compensation related to delays in delivery or taking delivery of cargoes at the Dar es Salaam Container Terminal at the Dar es Salaam Port. The rules have been made and are in effective use. This is one of landmark cases ever made in the transportation sub-sector which establishes dual responsibility and penalty to either side for failure to adhere to the agreed principles governing the market. It has been for quite a long time that the service providers enjoyed immunity even for the omissions made by them, penalising heavily the consumers for failure to adhere to principles they themselves do not adhere to. The Regulator's order and the subsequent Tribunal's judgment are a break-through and a change from sellers market to buyers market in Tanzania.

It is through such competition and regulatory framework that our markets are experiencing a drastic change from traditional and centralised control to market economy due to a simple reason that the latter tends to allocate goods and services so much effectively and competitively. For an ordinary consumer of goods and services,

a liberalised economy becomes a blessing if it is properly regulated because it commands accountability, responsibility of both service providers and consumers, and entry of a large number of private producers, none of them having a position of dominance in the sector by sheer size.

2.5 Types of Regulation

Regulatory Authorities are endowed with two main types of regulation in any market depending on which mischief the regulation intends to address (Schiller, 1997:619). The regulator can be vested with either social regulation, economic regulation or both. In Tanzania, for example, SUMATRA enjoys both social regulation and economic regulation in the Marine and Railways Transport sub-sector. However, SUMATRA has economic regulation in road transport; while social regulation in road transport is vested with the Ministry of Home Affairs (Road Traffic Act, 1973). The other two regulatory authorities are vested with both aspects of regulation, that is to say social and economic regulation.

2.5.1 Social Regulation

Social Regulation is an arm of regulatory authorities' responsibilities that deals with issues such as safety, health, environmental protection and highway safety (Schiller, 1997). SUMATRA has social regulation of the Marine and Railway Transport sub-sectors but has been denied social regulation of road transportation and government ferries. The Road Traffic Act, 1973 vests social regulation of road transportation in the police force, the traffic police department in particular.

Similarly, section 3 of the Ferries Act (Cap. 173) vests social regulation of ferries in the Minister responsible for Works. It is therefore important to note here that ferries,

although offering passenger transport across rivers and oceans (in the case of ferries plying between Magogoni and Kigamboni) have voluntary compliance to standards set by SUMATRA. They also have voluntary compliance to be inspected by SUMATRA. This is a clear indication how the mandate of the regulator can be given in piecemeal, something which is inappropriate to the sector.

2.5.2 Economic Regulation

Economic Regulation is the other arm of regulatory authorities' activities. It deals with tariffs, production of goods and services, the quality and quantity of goods and services produced, conditions of entry and exit in the market (Schiller, 1997:619). Section 18 (2) (b) of the SUMATRA Act, grants the regulator economic regulation mandate over marine, rail and road transportation sub sector, except over government ferries though they offer public transport in some parts of the country.

In regulating the market, regulatory authorities use various methodologies. The common methodologies are the Rate of Return on Investment (ROI) methodology and the price cap methodology. SUMATRA vide its order SMTRA/01/2009, for instance, set out scenarios under which bus fares reviews could be carried out. The above mentioned order states that review could be done annually; or could be done when return on investment falls below 5 percent or rises beyond 25 percent, or any other factor which may necessitate fares review.

2.6 Regulatory Options

Regulatory authorities employ different means to ensure that there is perfect operation of the market. Regulatory Authorities' prime aim is to keep all economic

patterns at their proper rate, especially where a single player enjoys monopoly of the market. To attain this goal, regulatory authorities may opt to deploy either price regulation, profit regulation, output regulation or a combination of any two or three of these options. In Tanzania, for example, all regulatory authorities use a combination of price regulation and profit regulation. SUMATRA, as an example, revises prices on the basis of its own observation or upon application filed either by service providers or consumer groups when the profit in any industry rises beyond 25% of profit margin or falls below 5% of profit margin.

2.6.1 Price Regulation

Price regulation is deployed when the industry charges prices in excess of profit margin as stated hereinabove. In order to improve market outcome, the regulator has the mandate to compel any service provider to set prices to fit the agreed upon profit margin (Schiller, 1997). In Tanzania, SUMATRA and EWURA regulate goods and services with monopolistic inclinations, and therefore the two are compelled to use price regulation in order to maintain market stability and equity. At the beginning EWURA was not vested with the price regulation mandate in the fuel industry, because it was assumed that players in that market would act competitively.

The government quickly learnt that in the fuel industry there was artificial competition which called for strict price regulation. This led to an amendment of the EWURA Act, the amendment which bestowed price regulation powers on EWURA in the fuel industry (EWURA Newsletter, Vol. 1:7). The fuel industry is so speculative and lucrative that without price regulation in small economies like Tanzania, it may create chaos in the market place.

2.6.2 Profit Regulation

Profit regulation may be used as an alternative to price regulation. Regulators may permit an industry to charge a price which is high enough to cover all costs involved in the production of goods and services including a fair profit (Schiller, 1997). In Tanzania, SUMATRA has designed its pricing strategy whereby in calculating regulating profit, it takes care of all costs involved in the production of the goods or services and allows 15% as return on investment (ROI). In exercising this mandate, the regulator is duty bound under section 16 (2) (a – h) of Act No. 9 of 2001 to consider, *inter alia*, the cost of making or producing and supplying that good or service, bench marks including international benchmarks for prices, costs and return on assets in comparable industries, promotion of competition, etc.

2.6.3 Output Regulation

Circumstances differ from one industry to another, from one market to another. What may be possible in one industry may not necessarily be possible in the other. Sometimes price and profit regulation may fail, therefore output regulation may be chosen to moderate the market. Regulation is put on both quality and quantity of output in any industry or market. The role of the regulator is therefore to set standards of the desired output.

2.7 Qualities of a Functional Regulatory Authority

Any regulatory authority established is expected to discharge its regulatory functions as stipulated in the legislation establishing the same. To measure this might not be a simple arithmetic game. Few concepts have been set to test and measure the performance of these regulatory authorities as enumerated hereunder.

2.7.1 Information Accessibility

For any regulator, getting adequate information is of paramount importance. The regulator is supposed to access information on all aspects of market patterns such as market prices, labour, land policies, government policies and any other information which may help any person to invest in that industry. Such information need be readily available for any individual without undue delay and unprecedented costs or bureaucracy. Information accessibility on time is vital as investment decisions need be accurate and must be done timely. Information is a key ingredient in making sound and accurate decisions on the regulated sector. Notably, adequate information promotes the investor's confidence and nurtures rational investment decision-making and facilitates the efficient use of resources by the company (Mkocha, 2008).

To ensure that the regulator gets adequate information, it is empowered to summon any person it believes has information that may assist the authority to perform its duty effectively (SUMATRA Act No. 9 of 2001, Section 17 (1)). Denying the authority any information it deems important for it to discharge its function is a criminal offence whose punishment upon conviction is a fine of three hundred thousand shillings (Tshs 300,000) or imprisonment not exceeding fifteen months or both, that is, fine and imprisonment (Ibid).

2.7.2 Transparency

Transparency plays a great role in the regulatory process as it helps the parties concerned to accept any decision made by the regulator. It further helps the regulator to be in touch with key information from the regulated sector. Transparency cultivates dialogue between the regulator and the main market actors. Where

transparency is mutually managed, the regulator's independency is strengthened in the market. This transparency component should be incorporated into the enabling Act. It is unfortunate that this important aspect is not embedded in the enabling Acts of all current regulatory authorities. It is difficult to establish a sound argument that the omission was an oversight by the legislature or was by design.

2.7.3 Clarity of Decisions

The clarity of the decisions made is a cornerstone of the regulatory authority's performance. The combination of clarity of decisions and transparency build up a strong regulator in the market when it comes to decisions on technical subject matters. The general public may not be in a position to understand the decisions reached by the regulator; it is, therefore, again a requirement on the part of the regulator to explain in simple terms and disseminate information to the public through public hearings, media houses, newsletters, Websites, etc.

2.7.4 Consistency

The regulator should be flexible and consistent by availing market participants to focus on the needed future changes timely and effectively. It is a matter of principle, therefore, that regulations made by the regulators must allow predictability and certainty to all players in the market.

2.7.5 Independence of Regulatory Authorities

Independence of regulatory authorities is one of the most critical issues in regulatory governance. The worthiness of any regulatory authority is pegged on its independence in its regulatory role. Mwandosya (2009) points out that:

“...if one wants success, one needs vibrant and firm regulators in determining various regulatory activities without government interference, because regulators’ independence is also core to attracting investors”(EWURA Newsletter, June 2009).

Basing on this premise it is certain that a regulatory authority whose independence is interfered with by government executives would be just like any government department. According to the report on Regulatory Authorities for Air Transport, Railways, Telecommunications and Postal Services by the Organisation for Economic Co-operation and Development (OECD, 2006), proper regulatory authorities were endowed with significant powers and unlimited autonomy in their decision-making. The essence of a regulatory authority is enshrined in its autonomy in decision making. Without that noble autonomy to make decisions, it would fall short of the qualities of a fitting regulatory authority. To maintain this independence there ought to be established a well-thought out institutional set up. Principally Tanzanian regulatory authorities seem to be independent on the face of the record and the law establishing them.

Nxele and Arun (2005) argue that effective regulation depends on the extent of independence of the regulatory authorities. They further argued that the independence would be defined in terms of the ability to implement policy without undue interference from politicians or industry lobbyists. They elaborated that judging regulatory effectiveness and assessing their impact would depend on the policy frameworks within which the regulators operated, as well as their conduct and performance in the execution of their mandates. To attain this, they noted that

politically and legally, regulators must be allowed space to regulate, which assumes the political will to do so.

In most cases it was difficult for the government executives to allow that space as proposed by Nxele and Arun. More often than not, regulatory authorities found themselves in tag of wars with government executives or their orders being reversed by the government executives. For example, on 10 December, 2009 *Daily News* reported: “*SUMATRA’s Agent unaware of Lukuvi’s Order*”. In its day to day operations, SUMATRA had decided to contract Majembe Auction Mart to inspect commuter buses and fine defiant commuter bus operators. Mr. William Lukuvi who by then was the Regional Commissioner of Dar es Salaam Region, the principal city of Tanzania, for reasons known to himself reversed SUMATRA’s order.

In another incident, it was reported in *Majira Newspaper*: *Daladala bubu ruksa kesho*, translated as “Unlicensed Commuter Buses allowed to operate tomorrow”. This announcement by Mr. William Lukuvi allowed unlicensed commuter buses to operate on political grounds against the regulator’s policy. Regulatory Authorities’ independence is crucial to making faster and timely decisions in a transparent and accountable manner. Independence of the regulator is a yard stick to measure whether the regulator yields the expected benefits in market performance while respecting norms of transparency and accountability (OECD, 2006).

The underlying principle of the independence of regulatory authorities is a guarantee of the transparency, predictability and quality of decisions made by them. It was

noted in the USA in the Report on Treasury Outlines Framework for Regulatory Reform (2009) that a single independent regulator is very important for the effectiveness and efficiency of the regulatory authority. Similarly, Matsebula *et al.* (2005) elucidated that drug regulatory agencies play key roles in ensuring that medicines available for use are safe and of good quality.

The legal frameworks within which the political, institutional and administrative implications of independence are embedded are not easily grasped. The regulatory authorities' independence ought to be guided by several procedures built on an effective system of checks and balances. There should be an organ that counterchecks the decisions made by these regulatory authorities, but which does not paralyse (the actions of these regulatory authorities).

Basically, the decisions of the regulatory authorities are final but with an option for appeals. In the case of Tanzania, all decisions made by regulatory authorities can be challenged at the Fair Competition Tribunal. This tribunal was set up to ensure that regulatory authorities do not misuse the independence they have been granted under the law to victimise either service providers or consumers of regulated goods and services.

2.7.5.1 Independence from Political Influence

The established regulatory authorities in Tanzania are caught up in a political web and hence cannot expressly enjoy this noble notion of the regulator's independence. Shapiro (2003) cautions as follows:

“...The process of reform is greatly complicated by egalitarian ideologies that deprecate private success while justifying public privileges and by the pervasiveness of the state, which distorts the reward patterns and makes it easier to get rich by politics rather than by industry, by connections rather than by performance”.

He argues that bureaucrats will always frustrate the independence of regulatory authorities so as to maintain the *status quo*; their fear being based on diminished powers and influence and safety of jobs. Shapiro’s argument is supplemented by CUTS International; CUTS Competition, Regulation and Development Research Forum 2005 – 2006 as it holds that in developing countries and least developed countries, competition and regulatory laws may be in place to ensure that certain minimum standards are complied with, unfortunately, political economic policies of Government do often have a toll on the effectiveness of implementing competition and other regulatory laws (CUTS International, <http://w.w.w.cuts-international.org/cdrf-abstract2.htm>, accessed on 10/09/2009 at 14:46hrs).

Both Shapiro’s and CUTS’ arguments are not far-fetched in Tanzanian regulatory legal framework. One of the core duties of any regulatory authority is the licensing of service providers within the regulated sector. Political interference with the regulatory licensing duty is vividly reflected in Section 6 (3) of the SUMATRA Act, Section 6 (3) of the TCRA Act, Section 6 (3) of the EWURA Act. Section 6 (3) of the three Acts has more or less the same wording. The SUMATRA Act, Section 6 (3), for example, reads:

“In performance of its functions, the Authority shall not award or cancel a major or exclusive license having a term of five or more years without prior consultation with the Minister and the relevant sector Ministers”. Likewise the EWURA Act, Section 6 (3) reads; “In performance of its functions, the Authority shall not award or cancel a major or exclusive license having a term of five or more years without prior consultation with the Minister and the relevant sector Ministers”. Similarly the TCRA Act, Section 6 (3) reads: “In performance of its functions, the Authority shall not award or cancel a major license with an exclusivity period or universal service obligations or having a term of five or more years without prior consultation with the Minister and the relevant sector Minister”.

All three regulatory authorities have no powers whatsoever to award or cancel a major or exclusive license having a term of five years without prior consultation with the Minister of the relevant Ministry. This has serious implications as far as business is concerned. Major businesses need longer payback periods which mean they need over 5 years investment periods. The following example for such a snag is not far-fetched: RITES and Railway Holding Company (RAHCO) signed a concession which created the Tanzania Railway Limited (TRL). Clause 4-2 of the Concession provided for the concession term to be 25 years from the commencement date. What does this mean to the regulator? The SUMATRA Act, Section 6 (3), for instance, states as follows:

“In performance of its functions, the Authority shall not award or cancel a major or exclusive license having a term of five or more years

without prior consultation with the Minister and the relevant sector Ministers”.

This provision, therefore, abrogates SUMATRA’s licensing power which is a cardinal function of any regulator. It means that, in Tanzania a regulator has to get blessings from the executives in order to award or cancel a license with five (5) or more years life-span. It should be noted, though, that major investment in the transport sub-sector can in no way be undertaken under 5 years.

As already stated, this is what Shapiro notes that bureaucrats shall use whatever means to sabotage any reforms that aim at reducing their upper hand on economic ventures by extending state control over regulatory performance with a view to keeping their *status quo*. Shapiro’s contention is evidenced by Section 6 (4) of the Surface and Marine Transport Regulatory Authority Act which waters down the main powers of the regulator to discharge its responsibilities independently and professionally for the betterment of the regulated market.

Looking at the regulatory legal framework which is in place and the flow of events, one would tend to think that the Government was not prepared for the market economy and the consequent institutions. What is apparent is that the Government decided to venture into the market economy quietly in order to graduate the International Monetary Fund (IMF) and the World Bank (WB) loan package conditionalities without going into deep intricacies of putting strong regulatory legal frameworks which in turn could put the Government to task.

Another scenario which exemplifies executive interference with the regulator is on the implementation of laws and its own rules and regulations relating to transportation. The Transport Licensing Act, Cap. 317 and the Transport Licensing (Road Service Vehicles) (Prescribed Conditions) Regulations 1973, Section 2 (C) provide that every person who is under the age of sixteen years but over the apparent age of three years, shall be entitled to travel at a reduced fare equivalent to one half of the full fare chargeable in respect of an adult for the same journey. Furthermore, the Transport Licensing (Road Passengers Vehicles) Regulations, 2007, issued vide Government Notice 218, which is the product of SUMATRA itself, Regulation 26 provides that the fare for children and students should be one half of the full fare chargeable in respect of an adult for the same journey. To the contrary, SUMATRA does not comply with its own regulation but instead compells commuter buses to charge students Tshs. 100 (SMTRA/02/2009:6.2). One finds it rather difficult to justify a flat rate fare of Tshs. 100 for all students across the country. It is also difficult to comprehend why the regulator acts contrary to the law; and worse still fails to abide by its own regulations, whereas, its legitimacy remained intact. The student flat rate fare tells volumes on how the independence of regulatory authorities is compromised to meet political ambitions.

Notwithstanding the above arguments, through the Public Financing Act 2008, the government added another function to all regulatory authorities. Henceforth, the regulators were turned into revenue collectors on behalf of the government. However, this role is not stipulated in the Acts establishing regulatory authorities. Nevertheless, basing on the mandate provided by the Public Financing Act, the

Minister of Finance, on behalf of the government issued Circular No. 8 of 2008/2009 which requires all regulatory authorities to remit to the Ministry of Finance 10 percent of their gross revenue. This again exemplifies how the government encroaches the independence of the regulatory authorities in Tanzania. It was under such circumstances that the Chairman of EWURA's Board of Directors, Mr. Simon Sayore was quoted by one of the papers calling for more independence from the government institutions including the ministries.

2.7.5.2 Independence from Service Providers Influence

The regulatory framework adopted by Tanzania is likely to be influenced by the service providers. The looming threat of such influence stems from the funding system of the established regulatory authorities. All regulatory authorities have similar funding systems wherefrom regulators levy service providers to the tune of 1% of their annual turnover for the services rendered by the regulator to the service provider. The levy paid by the service providers to the regulatory authorities is finally passed on to the consumers.

The existing relationship between regulators and service providers is of master – agent relationship against consumers. This situation is likely to shake the independence of the regulator when exercising its powers to review tariffs at a time when the regulator is in financial difficulties. The challenge is eminent as the regulator may tend to side with service providers to raise tariffs so as to reap more revenue in terms of levies collected by the service providers from consumers of regulated goods and services.

2.7.5.3 Independence from Consumers Influence

Consumer movements in Tanzania are still in their infancy. In a nutshell, consumers cannot influence regulators due to the lack of proper knowledge on regulatory matters. Every Regulatory Authority has a Consumer Consultative Council whose role is to look at the welfare of consumers of the regulated goods and services. These Consumer Consultative Councils are at the mercy of the Regulatory Authorities in terms of funding. It is therefore obvious that regulatory authorities enjoy absolute dominance over the consumers as there is no proper consumer protection framework which has hitherto been put in place. What is in place are pieces of legislations scattered in different laws providing for consumer rights.

2.8 Conceptual Analysis of Regulatory Authorities in Tanzania

2.8.1 State Owned Economy

Shortly after independence, post-independence African thinkers and leaders were faced with critical challenges of socio-political, economical and cultural reconstruction. They advocated a critical revolution based on a socialist strategy of economic and political reforms. The advocated revolution was to be sustained by a new discourse expressing the need to confront underdevelopment and capitalist neo-colonialism by way of an alternative system, namely African socialism. Post-independence states strongly believed that colonialists had transplanted European beliefs and values on the Africans. Some of the European beliefs and values that were directly transplanted on the African beliefs and values were capitalism and the market economy, concepts which were totally alien to Africa. With the introduction of capitalism as an economic system, the principle of individualism replaced the African cultural context of brotherhood (Afisi, 2009).

It is further argued that socialism was not alien to Africa; rather, Africa was naturally socialist. This argument was based on the fact that pre-colonial African societies were communalistic in nature – three principles were dominant, namely, communalism, collectivism and egalitarianism. Some African philosophers are opposed to the concept that Africans had no elements of individualism; rather, they argue that individualism is an intrinsic nature of any human being. These philosophers (Afisi, 2009) hold that “an exhaustive account of the nature of man must explain self-consciousness, the urge to void pain, the desire for a purposeful life and for freedom from external interference, the passion for distinction, and, most importantly, the desire to acquire personal property”

Basing on the above stated facts, the government of Tanzania opted to build its economy in line with African Socialism principles. The reason was apparent that it offered equal opportunities on equitable basis. Part two of the Arusha Declaration highlights that a truly socialist state is one in which all people are workers and neither capitalism nor feudalism exists. (<http://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm>: accessed on the 3/12/2010 at 17:23hrs). Basing on those premises, between 1960s and 1970s Tanzania’s government adopted and implemented radical policies of self-reliance enshrined in the Arusha Declaration, whose implementation led to compulsory villagisation (Ujamaa), nationalisation of economic pillars and price control (Reed, 1996).

Afisi (2009) further propounds that socialism was opted by a number of African countries, Tanzania in particular, in the belief that African Socialism was based on the ontological presuppositions of communalism. This stance was further propagated

by the notion that capitalism encouraged a bi-polarisation of people into classes of the oppressed and the oppressors. Julius Kambarage Nyerere was extremely worried that under capitalism Tanzania would become a country of a thousand (1000) Wabenzis (tycoons) and ten (10) million paupers (<http://kenya740.tripod.com/nyerere.html>: 3/12/2010 at 17:34hrs). Nyerere borrowed the term Wabenzi from the legendary German luxury car, Mercedes Benz.

He therefore opposed capitalism on the grounds that it did not conform to the African way of life which centred on communal living. Nyerere, being an ardent believer of socialism, was totally convinced that adoption of socialism was a panacea for the problems of the society. He therefore strongly believed that African problems could best be solved by resorting to African initiatives. It is important to note that his idea of *Ujamaa* was to create a self-sustaining and a classless society in Tanzania, where everybody could enjoy equal rights and share equitably in the available resources.

The second reason was a search for an alternative development paradigm rooted in the people's own national identity because they believed that capitalists' interests would not work for the interests of the poor majority Tanzanians. It was quickly noted that capitalist integration would subordinate the national economy to the interests of foreign capital. The third reason why Tanzania opted for the state economy was the fact that by the time Tanganyika attained its independence, the private sector was very small and therefore could not act as an engine of economic growth. It was therefore necessary to create organs of the state to spearhead the country's growth while the private sector was being nurtured.

Another apparent reason why Tanzania decided to build the state economy under African Socialism was to charter its own course against the two major antagonistic blocks of that time, the Capitalist block under the auspices of Europe and the United States of America on the one hand and the Union of Soviet Socialist Republics - Russia (USSR) and its allies on the other. It is equally argued that socialism was adopted out of the need to find a suitable ideology for effective decolonisation in Africa. The socio-political ideology branded as African Socialism was for Tanzania the only way to keep its non-aligned position clear and unequivocal (Afisi, 2009). For Tanzania, socialism meant a process of transforming the inherited structures of underdevelopment into a new system of production and distribution that aimed at meeting the basic needs of the majority of its population and eradicating inequality based on class and other forms of privileges (Epstein, 1993). The said transformation was done by strengthening communal rather than the private ownership of the productive forces in the economy, and accompanied with some level of planning of economic decision-making in lieu of exclusive reliance on the market for allocation of resources.

Under the state economy philosophy, the state embarked on efforts to control economic development and it became the service provider and controller of almost the entire economy. Under that philosophy, the government became a huge patronage machine which administered the all-encompassing rules and regulations (Shapiro, 2003). In February 1967, at the beginning of the implementation of the policy, Tanzania nationalised all major pillars of the economy and put them under the aegis of the state. All strategic commercial activities in the country were put under the state hegemony (Mkocha, 2008).

Shapiro (*Ibid.*) goes on to elucidate that when the state becomes heavily involved in the economy, many special interests from the state bureaucracy, businesses and consumer groups come to rely on the state benefit. As Tanzania embarked on implementing the state economy, most of the goods and services to mention but a few like education, health and transport were provided by the state either free of charge or were highly subsidized.

It was hoped that on building the state economy, public enterprises would perform in an environment of market accountability, management autonomy and incentives for efficiency. Implementation of this self-reliance policy recorded achievements in the social sector as the economic growth was recorded at 5 percent per annum between 1967 to 1976 (Reed, 1996).

The recorded achievements did not last long due to a number of reasons. Afisi (2009) pointed out that African Socialism did not succeed to build a strong economy because it undermined the true nature of the human being which is clothed with self-consciousness, urge to avoid pain, desire for a purposeful life, freedom from external interference, passion for distinction, and most importantly the desire to acquire personal property. African Socialism was opposed to personal ambitions which are exemplified in the market driven economy.

Furthermore, right from its inception, the concept of *ujamaa* faced a lot of resistance from within and from without. There was also strong resistance from within by those who considered independence as the gateway to self-enrichment. Besides the self-enrichment syndrome, there was also the peer-pressure factor that existed as ordinary

people or those in authority looked at their counterparts in Kenya and Uganda ((<http://kenya740.tripod.com/nyerere.html>: 3/12/2010 at 17:34hrs). This acted as a serious setback during the implementation period right from the beginning. Nevertheless Nehru (1982) argues that socialism is not a mere way of life but a scientific approach to social and economic problems. He further argues that if socialism is introduced in a backward underdeveloped country, it does not make it any less backward.

With due respect to Nehru's school of thought on the subject matter hereinbefore, the socio-political economy built under the socialist ideology, besides having been introduced in a backward and underdeveloped country, was engulfed by an economic downturn which was caused by a combination of factors ranging from poor knowledge of market patterns to regional events, notably the breakup of the East African Community, the Kagera War and the subsequent two severe droughts. Another reason which probably might be the root cause of the economic downturn was the government's over excessive intervention in the economy which resulted into over emphasis on industrial production at the expense of agriculture.

Much effort was directed at controlling the economy instead of production, marketing and distribution which resulted in the failure to improve the social welfare of the country and, consequently led to the collapse (Reed, 2001). Shapiro (2003) attributes this failure to the *modus operandi* used by the economic system. He asserts that the system created "avaricious elites accountable to no one, who used labyrinthine controls and regulations to enrich themselves and further the interests of

their own ethnic groups or professional class at the expense of national economic health and well-being”.

Lack of competition was another factor which contributed to the economic downturn in Tanzania. This led to underperformance in the market as demand exceeded supplies and resulted in market failure. Reed (1996) argues that lack of competition which brought about underperformance had adverse impact on real purchasing power which declined by 90% in the 1980s. As a consequence, Tanzania became the second poorest country in the world, with over 60% of its population living below the poverty line. Despite the above mentioned shortcomings and pitfalls, the 1967 Arusha Declaration's philosophy and policy remain pertinent though implementation of the same met several hindrances. Its values and ideology as articulated by the 1967 Arusha Declaration remains a milestone in Tanzanian's history today.

The nationalised enterprises and those which were established later on proved a total failure. The failure was inevitable due to the dysfunctional institutional arrangement. As a result, production of goods and services did not meet the demand of the market in terms of quality and availability. As stated earlier on, the economy was highly characterised by central planning. To achieve set targets, the Government established parastatals to spearhead economic growth. These parastatals were established in different sectors to meet the country's production demand for various products (Robert *et al.*, 2001).

The government remained at the centre financing some of the production costs for a number of parastatals through annual subventions and subsidies (Mkocha, 2008).

Parastatals were tasked to develop their distribution networks, and to prepare Plans and Budgets. It is worthy to note that wherever the market is controlled, production tends to be monopolistic by nature. A monopolistic market always restricts production in order to drive prices up. As a result, a Price Commission was set up in 1973 with the responsibility of fixing prices of all products produced and distributed by the parastatals (Kahama, 1995).

This control mechanism suffocated the market as it hindered innovation and creativity due to lack of competition. Consequently, production did not match consumption which led to deficiency in production and consumption patterns. As a result, Tanzania experienced a short-run growth and a long-run economic downturn due to failure of economic patterns being in place (Reed, 2001). Eventually, by 1980s two decades after independence, most of the parastatals were operating at a loss.

Moreover, the country's GDP declined steadily between 1975 and 1982 while the annual growth rate dropped from 2.1 percent to 0.6 per cent (Reed, 2001). For example, in 1987 the loss made by parastatals was Tshs. 2.563 million; in 1988 the loss was Tshs. 13.865 million and in 1989 the loss was Tshs. 9.037 million (Kahama, 1995). In 1992 alone parastatals in agricultural sector made a loss of Tshs. 2.2 billion. Most parastatals were mismanaged and therefore operated at losses as stated herein above. A long litany of internal factors why the parastatals failed have been cited ranging from inadequate capital, limited foreign exchange, lack of proper technology and government intervention (Kahama, 1995).

2.8.2 Efforts to Reform the Economy from 1980s

The genesis of economic reforms was forced by the 1980s debt crisis which swept economies of most African as well as Latin American states. The growing economic difficulties in the above mentioned third world countries made it easier for western donor countries to impose on them market oriented policies from the early 1980s as conditions for economic assistance. In Tanzania, this conditionality by western donor countries coincided with the change in political leadership in 1985 whereby Mwalimu Julius Kambarage Nyerere - who had resisted neo-colonialist reform packages advocated by the International Monetary Fund (IMF) and the World Bank (WB) - decided to step down and handed over leadership to the second president of the United Republic of Tanzania, Mr. Ali Hassan Mwinyi, who quickly accepted the World Bank and the International Monetary Fund reform package (Gould, 2005).

The combination of these two factors, that is, the debt crisis and the political leadership change in Tanzania paved way for the International Monetary Fund and the World Bank to come on the scene. Further to the foregoing, IMF and WB capitalised on that opportunity by quickly penetrating and dictating terms under the guise of offering loans as bail outs of the torn down economy. These financial institutions came up with a programme branded as Structural Adjustment Programme (SAP). The SAP aimed at reforming loan recipient countries' economic systems to reflect the dominant vision of market driven economies rather than state led development (Thomas, 2000).

That approach went beyond their original mandate of providing short-term balance of payments support. To achieve this goal, they thus institutionalised the Structural

Adjustment Programme (SAP) under the pretext of promoting global economic integration along free market lines. Thomas (2000) further noted that structural and institutional reforms drew a new social as well as economic map which reversed the relationship between the state, market and citizen.

In order to qualify for a badly needed loan from the IMF or the WB in the 1980s a country was expected to adhere to all IMF and WB conditions. The key components of the IMF and the WB loan package included privatisation of public services and public assets; liberalisation of trade; finance and production, deregulation of labour and environmental laws; and destruction of state activism in the public realm. Based on that philosophy, the IMF and the WB directed that the market and not the state, be the motor of economic growth in countries where the two provided support (Thomas, 2000).

Subsequently, it is correct therefore to argue that the reforms made in the 1980s were a result of political pressure exerted by the western donor countries to the countries whose economies were torn up, Tanzania inclusive. The Government had no option other than accepting the IMF guidelines in order to secure loans which were badly needed at the time to boost the economy from a serious economic crisis. The government thus started a long-term journey of reforms which were aimed at nurturing the private sector. Any meaningful economic reform was supposed to ensure that innovations and creativity, production and distribution decisions were to be left to individuals interacting in the market. However, it should be noted that free markets do not exist as some economists argue. What actually is in place, is mixed economies where goods and services are allocated by a combination of economic

forces in the markets, regulations and other forms of collective control (Robert *et al.*, 2001).

To attain the goal of economic reform, the famous Arusha Declaration which nurtured African Socialism principles was set aside and replaced by the Zanzibar Declaration in 1991 (Kaduma, 2004). The Zanzibar Declaration is therefore regarded as the point of no return in the country's economic policies. It marked an historical change of social, political and economic magnitude from a quasi-government controlled economy to private or semi-market economy. Reed (2001) argues that the economic reforms programme sought to supplant the state from its commanding position in organising production of goods and services.

The government was wholly committed in principle to the market economy policies, though to date it has not articulated its national development vision (Reed, 2001). It was noted by one observer that if the reform process had been guided by any vision, it was that of the international community (Reed, 2001). This observation is fully supported by the Tanzania Vision 2025 as it states that economic reform measures were taken in response to the worldwide economic crises, and the government realizing that earlier development policies and strategies were not in consonance with the principles of the market economy and the technological developments occurring in the world (Tanzania Development Vision, (1995).

Affirming the above observation, the Vision further stated that the government and the society at large felt losing direction in plans for the long term development due to the quick economic reforms. However, it does not mean that there was no national

support for the reforms; only that the acceptance fell short of the definition of a new set of clear national goals to replace those articulated in the Arusha Declaration (Reed, 2001).

Regardless of the fact that the economic reforms lacked a national development vision, they can correctly be termed as the renaissance of the private sector in Tanzania. Nevertheless, the government embarked on reforms without defining their dimensions and proper direction. In other words, the desired reforms were not provided with comprehensive legal framework to cement them. In the course of implementing the stated reforms, the Government slowly withdrew from the direct provision of economic goods and services which were left to the private sector to offer.

Certainly the private sector the world over has one prime aim, and that is to make profit in its operations. Sometimes, therefore, the private sector tends to produce poor goods and services but offer them at high prices in order to reap super profits. In Tanzania upon the government's withdrawal from offering services, its control and regulatory functions in the market were not well defined. As a result, fear of anarchy in the market place and economic failure gripped the Government (Mkocha, 2007). The vacuum which existed was not filled up until early 2001 when regulatory authorities were established to regulate utilities, infrastructure firms and the commerce. The philosophy behind the establishment of these regulatory authorities, therefore, stems from the need to protect long-term interests of investors so as to create national and international investors' confidence, while at the same time

protecting the government and consumers' interests. Regulatory authorities were therefore established to protect public interests in the first place (Carson, 1987).

In addition to the foregoing, regulatory authorities were intended to monitor the growth of the private sector by fostering competition and setting rules and regulations to govern the newly introduced market economy. It was further envisaged that they would win international and local investors' confidence at the same time widen the investment base which would provide a broader choice for the consumers through increased competition in the market. Essentially, the government saw the need to ensure that the market produced high level quality goods and services at reasonable and affordable prices.

Tenenbaum (2009) highlights that effective regulation was seen to be key to infrastructural reforms and attracting private investment. He explains that it was hoped that regulation would insulate the setting of tariffs from opportunistic political intervention. He further contends that some people argued that regulators were actually exacerbating the problems they were meant to solve. They argued that regulators lacked true independence, were unaccountable and made non-credible and inconsistent decisions.

This could be achieved through a regulated industry which is entitled to receive reasonable prices and a fair rate of return on capital. This concept can correctly be defended that regulatory authorities were the logical outcome of the need to improve market conditions in certain sectors of production; in particular those in which

natural monopolies tend to develop. Regulatory authorities were opted for in order to maximise benefits of both consumers and the affected sector (Carson, 1987). That desire was clearly spelt out in a speech by the then President of the United Republic of Tanzania, Hon. Benjamin William Mkapa, while addressing Parliament in Dodoma on 30 January 2002 as quoted below in Kiswahili:

“...Leo napenda nihusishe utawala bora na maendeleo yetu katika mazingira ya uchumi wa soko. Maana uchumi wa soko hauwezi kustawi bila kuongozwa na taratibu zinazoleta ushindani wa haki, na uthibiti unaolinda maslahi na haki za wateja, wananchi na Taifa. Haki za kumiliki mali lazima zilindwe. Mikataba itekelezwe na kuheshimiwa; na pale hoja ya kuibadili inapojengoka, mabadiliko yafanywe kwa mkondo wa sheria. Lazima uwepo pia mfumo unaohakikisha kuwa matatizo yote ya kisiasa, kijamii, na kiuchumi yanamalizwa kwa amani na maelewano, na hivyo kuondoa uwezekano wa vurugu.

Katika miaka ya 1990, tulifanya mageuzi mengi ya kisiasa na kiuchumi yaliyopanua sana mipaka ya haki za raia, na uhuru wa kisiasa na kiuchumi. Lakini mageuzi ya aina hiyo, hasa yakifanywa kwa kasi, hudhoofisha taratibu za mifumo ya uthibiti.....Siwahukumu wafanyabiashara, lakini najenga hoja kuwa jinsi tunavyozidi kuelekea kwenye uchumi wa soko ndivyo inabidi uwezo wa udhibiti wa Serikali uongezeke. Bila hivyo kutakuwa na fujo, na haki za walaji na maslahi ya taifa vinaweza kuathirika... “ (Mkocha, 2008:6-7).

English translation

“...Today, I wish to associate good governance with our development in the realm of the market economy. The market economy cannot flourish without regulations which safeguard fair competition, consumer interests, the citizenry and the nation at large. Property rights have to be protected. Contracts must be implemented and respected, and where the need arises to amend them, amendments should be done in the spirit of the law. There should also be a system which ensures that all political, social and economic problems are dealt with amicably, hence eliminating the possibility of chaos...In the 1990s, Tanzania made many political and economic reforms which widened the spectrum of social rights, and the political and economical freedom. But such reforms, especially if done in a hurry, may suffocate regulatory systems...I am not allotting blame on business people, I am only putting an argument that with an advent of the market economy, government’s regulatory capability ought to increase. Short of that, there will be chaos, whereby consumer rights and the nation’s interests may be in jeopardy...”

Mr. Benjamin William Mkapa, the third president of the United Republic of Tanzania, contends that although the market economy, and particularly the private sector being an engine of economic growth, cannot be left to drive market patterns on its own. Stressing the need of having a regulatory framework in place, Mkapa is of the opinion that letting the market economy to move alone could result in anarchy.

He therefore calls for strict regulation as the market economy grows in Tanzania. Mkapa's speech embodies the importance of this study as it is a result of this particular speech which laid the foundation for the establishment of regulatory authorities in Tanzania. What remains a paradox is, regulatory authorities were established to nurture the market economy without incorporating these two concepts into the constitution of the United Republic of Tanzania.

Mkapa's speech reiterates the role of regulation in the Tanzanian economy by noting that regulation is to safeguard special interests of the nation, the citizenry and competition itself. Robert *et al.* (2001) supports the speech of Mkapa as he argues that in modern economies, allocation of goods and services is influenced by a combination of the free market, regulations and other forms of collective control. The emphasis is however put on regulation of the market in order to ensure market patterns work in the interests of the government, the public and the market itself. He asserts further that the said reforms entailed liberalisation of the economy whereby the private sector was expected to dominate the market. With this new development, the establishment of the market support institutions to oversee the performance of the emerging market economy was inevitable. OECD (2006) is of the same view that the institutional basis of the regulatory authorities is sometimes limited, even though they could play a key role in the development of a balanced market while at the same time ensuring that socially desirable objectives are respected.

2.9 Establishment of Regulatory Authorities

The Government being pressurized by western donor states, hurriedly enacted several laws to establish three regulatory authorities mainly in sectors with natural

monopoly to regulate the market forces by setting tariffs, controlling the entry and access to goods and services. Admittedly, the government hurried to enact laws establishing regulatory authorities without formulating a well thought out policy on the desired legal framework. The omission to draft a regulatory policy was not an oversight, rather might have been by design.

A policy is a government's strategy or plan which may be short or long term addressing public concerns or issues. The policy provides the means for citizenry to hold their government accountable for its actions concerning issues of public interests. Professor Rassie Malherbe, of the University of Johannesburg, argues that "laws that arise out of problems are simply a one legged stool and enacting laws without a policy behind it puts that nation in shackles". The absence of a regulatory policy in Tanzania makes a regulatory legal framework susceptible to a possible meaningful legal challenge.

Without formulating a policy, the government proceeded to enact various laws establishing Regulatory Authorities, Fair Competition Commission and Fair Competition Tribunal. Sectors with sufficient competition were left to run by the dictum of market forces with close monitoring by the Fair Competition Commission. As result, the following Regulatory Authorities were established to manage the market forces in various sectors of the economy.

- (i) Energy and Water Utilities Regulatory Authority Act, Act N0. 11 of 2001
- (ii) The Surface and Marine Transport Regulatory Authority Act, Act N0. 9 of 2001
- (iii) The Tanzania Communications Regulatory Authority Act, Act N0. 12 of 2003

Regulatory Authorities were thus established to foster regulatory roles in economic development in the transformed economy. The establishment of the Regulatory Authorities in the early 2000s raised expectations not only to investors and consumers but also to the government. It was believed that having regulatory authorities in place would create market freedom, investors protection, cost effectiveness, regulatory neutrality and flexibility, business ethics and compliance to rules and regulations set to manage the market.

2.9.1 The Legal Framework of Regulatory Authorities in Tanzania

The need for having regulatory authorities in place was necessary after the introduction of economic reforms. The establishment of regulatory authorities had to fit in the existing legal framework in order to ensure enforcement and compliance of the laws and regulations. It is important to note that a legal framework is an instrument used to foster a desirable activity by limiting the opportunity for abuse or fraudulent activities in the market and also to encourage predictability in order to ensure market integrity, transparency, Consumer Protection and investor protection (Tanganyika Law Society Journal, Vol. 1, N0. 1 of 2006). Shapiro (2003) further defines a legal framework as an instrument that stimulates the development of the market economy. That instrument must be made not only by stable rules governing society, but also a fair and predictable application of laws administered by a judicial system which is free of corruption. Shapiro contends further that it is a legal structure which replaces officials' whim with the rule of law; combined with a system of property rights and property enforceable contracts, facilitates the development of market economy.

Regulatory Authorities were hurriedly established by Acts of Parliament based on an old legal framework without taking trouble to harmonise it with the established legal framework. One observer commented that “if the reform process was guided by a vision, was that of the international community” (Reed, 2001). That observation was also echoed by Mwandosya (2005) during the occasion of the National Transport Week (3rd – 7th October 2005) in his opening remarks when he noted that it was necessary to review relevant legislations so as to create a conducive atmosphere for fast sector growth. When the amendments were made, they did not take into account the existing competing legislation in the transport sector. Mwandosya’s remarks were in reference to the National Transport Policy (2003) which states that in order for the policy to be implemented, it was imperative to review the existing legislations and where necessary new rules and regulations would have to be developed to foster investment, safety and security.

The National Trade Policy (2003) highlights that the country’s medium and long term plans were that the Government would expedite reforms of the legal and regulatory framework, and encourage self-regulation by the private sector as part of measures to enhance the enabling business environment so as to stimulate higher FDI flows and increase domestic investment. The reforms to the regulatory framework are therefore of paramount importance.

The reforms should be holistic if the government intends to make a real impact. Meaningful amendments should touch the foundation of the legal framework, that is, the constitution of the United Republic of Tanzania which is the supreme law of the land. Any amendment of the legal framework which does not incorporate the market

economy in the Constitution of the United Republic of Tanzania will have no meaning at all.

The Surface and Marine Transport Regulatory Authority, for example, is entirely entrusted with the national regulation of Surface and Marine Transport, but has neither the mandate to set standards of vehicles operating in the market, nor the mandate to issue roadworthiness to vehicles offering public transport in the country. This phenomenon causes undesirable consequences to the sector as the regulator does not set the required standard of the vehicles and does not command safety as far as road transport is concerned.

CUTS International (<http://w.w.w.cuts-international.org/cdrf-abstract2.htm>, as accessed on 10/09/2009 at 14) noted that most of the emerging and least developed countries have at least passed through a stage of contemplating whether they should have competition or other regulatory laws. Eventually the debate on the matter has been on how to restructure their laws, and how best to implement an effective enforcement system.

2.9.2 The Constitution of the United Republic of Tanzania 1977

It is trite law that legislation in any country draws its mandate from the constitution of the land which is commonly known as the Supreme Law. It is unfortunate that the current Constitution of the United Republic of Tanzania, which is the supreme law of the land, does not embrace the economic reforms that have been undertaken since the 1990s. To date, paragraph 3 of the preamble to the constitution as well as Article 3 (1) of the constitution of the United Republic of Tanzania articulates that Tanzania is

a democratic and socialist state as paragraph 3 reads “*kwa hiyo, basi, katiba hii imetungwa na Bunge Maalum la Jamhuri ya Muungano wa Tanzania, kwa niaba ya Wananchi, kwa madhumuni ya kujenga jamii kama hiyo, na pia kwa ajili ya kuhakikisha kwamba Tanzania inaongozwa na Serikali yenye kufuata misingi ya demokrasia na ujamaa*”. It is translated as “now, therefore, this Constitution is enacted by the Constituent Assembly of the United Republic of Tanzania, on behalf of the People for the purpose of building such a society and ensuring that Tanzania is governed by a Government that adheres to the principles of democracy and socialism” (translation is mine). Similarly, Article 3 (1) of the Constitution reads that: “*Jamhuri ya Muungano ni nchi ya kidemokrasia na ya kijamaa, yenye kufuata mfumo wa vyama vingi vya siasa*”. It is translated as “the United Republic is a democratic and socialism state which adheres to multi – party democracy”.

It is important to note that having two contradicting legal doctrines was not by accident, it might be by design. Recalling the words of Shapiro (*ibid*) once again, that any meaningful economic reform encounters formidable political obstacles particularly from the bureaucrats who fear that the reforms would diminish their power and influence.

From the articles of the constitution of the United Republic of Tanzania, as cited hereinabove, it needs no philosophical inquiries on the policy governing the country. It is crystal clear that it is a socialist policy which by principle nurtures a centralised economic system which is totally opposed to competition, and to some extent is opposed to the private sector. Any socialist state promotes centralisation of economic powers in the hands of the state whereby it determines production, distribution and

marketing patterns. It propagates equal distribution of properties among all citizens. Contrary to the socialist policy articulated by the Constitution of the United Republic of Tanzania, section 3 of the Fair Competition Act sets out that its objective is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout the country in order to:

- (a) increase efficiency in the production, distribution and supply of goods and services,
- (b) promote innovation,
- (c) maximise the efficient allocation of resources, and
- (d) protect consumers.

Similarly Section 5 (1) of the Tanzania Communication Regulatory Authority states that it is the duty of the authority to promote effective competition and economic efficiency in the regulated market. Likewise, Section 6 (1) of the Energy and Water Utilities Regulatory Authority Act states that it is the duty of the authority to promote effective competition and economic efficiency in the regulated market.

Section 5 (1) of the Surface and Marine Transport Regulatory Authority Act states that it is the duty of the authority to promote effective competition and economic efficiency in the regulated market.

Further to the foregoing herein above, Section 5 (2) (a) & (b) of the Fair Competition Act, Act N0. 8 of 2003, defines competition as the process whereby two or more persons supply or attempt to supply the same or substitutable goods or services to the

persons in the same relevant geographical market; or acquire or attempt to acquire the same or substitutable goods or services from the persons in the same relevant geographical market.

Looking at the Competition Laws and Regulatory Legal Framework, promotion of competition is primary to each Act. Looking further at the four Acts in relation to paragraph 3 of the Preamble and Article 3 (1) of the Constitution of the United Republic of Tanzania, the two legal doctrines are incompatible. The Competition Laws and Regulatory Authorities' laws on one hand and the Constitution of the United Republic of Tanzania on the other, contradict each other. This is a real snag to the entire regulatory legal framework in Tanzania which is supposed to promote decentralisation of economic powers in favour of the private sector whose principle drive is competition. These are two opposing sides which cannot easily be compromised.

It is a cardinal principle that any law which contravenes the Constitution of the land is "void ab initio". It suffices to state therefore that since the regulatory legal framework contravenes paragraph 3 of the Preamble and Article 3 (1) of the Constitution of the United Republic of Tanzania, it should be regarded as "void ab initio". In other words, the entire regulatory framework and competition laws in Tanzania which are purported to promote the market economy concepts contravene provisions of paragraph 3 of the Preamble to the Constitution of the United Republic of Tanzania and are null and void.

This glaring contradiction echoes Shapiro's assertion that any meaningful economic reform meets formidable political obstacles, particularly from the bureaucrats who

fear that reforms will diminish their power and influence. In Shapiro's own words, he states that "the process of reform is greatly complicated by egalitarian ideologies that deprecate private success while justifying public privileges, and by the pervasiveness of the state which distorts the reward patterns and makes it easier to get rich by politics rather than by industry, by connections rather than by performance". This quotation substantiates what happened 1992. The Constitution of the United Republic of Tanzania was amended to allow the multi-party system of Government but the concept that Tanzania was a Democratic and Socialist State was left intact.

The same contradiction is similarly noted by Mwandosya (2013) as he states that the executives, to wit ministers hesitate to give regulatory authorities the opportunity to be independent as they think that by doing so diminish their administrative empire diminishes. Therefore they struggle to put regulatory authorities under their administrative domain by reducing them to the status of government agencies.

This state of affairs supports the observation made by one observer as stated earlier that the economic reforms made by Tanzania were not guided by any Tanzanian vision, but by that of the international community. Van Arkadie (1995) as quoted by Reed (2001:42) states that Tanzania's economic reforms attracted national support, but the acceptance of the same fell short of the definition of a new set of clear national goals to replace those articulated in the Arusha Declaration. The evidence is borne by the entire disharmonised legal system under which the reforms have been made. A disharmonised legal framework has a significant impact on today's socio-economic patterns.

2.9.3 Policy on Competition and Regulatory Authorities in Tanzania

Policy is defined as a proposed course of action of a person, group or government within a given environment providing obstacles and opportunities which the policy was proposed to utilise and overcome in an effort to reach a goal or realise an objective or a purpose (Fredrich, C. J. as quoted by Otieno, C.A. 2010, Training and Development, Handouts). Policy is further defined as a basic principle by which a government is guided while undertaking its governance duties. It is declared objectives which a government seeks to achieve and preserve in the interests of national community (<http://www.businessdictionary.com/definition/policy.html>, as accessed on 25/1/2011 at 16:45hrs).

Also, policy is a deliberate and careful decision that provides guidance for addressing selected public concerns or problems. It is a decision-making process to address identified problems, concerns or goals for the benefit of the public. Policy is therefore a statement of intent for achieving an objective aiming at solving a public problem or concern. It is a deliberate statement aiming at achieving a specific objective.

From ongoing concerns, policy arises from a critical situational analysis which leads to problem identification. The latter leads to formulation of policy objectives, vision and mission which form policy statements, context, prescriptions, and implementation arrangements and finally sets out monitoring and evaluation mechanisms. Policy can be initiated by government, government authorities/agencies, social groups, civil societies or individual persons.

In principal, law making starts with a policy which sets out goals and activities to achieve the goals. The law is enacted to put in place the necessary institutional and legal frameworks to enforce implementation strategies of the planned activities emanating from the goals set out in the policy document. In the law making process, therefore, it is the policy which outlines what the government intends to achieve. It is the policy that states the methods and principles to be used by the government to achieve its objectives. It is therefore of paramount importance to note here that it is the policy which states the goals of the government. It is further important to note again that the policy document is not a law but rather identifies new laws needed to achieve its goals.

Essentially, any good law must be enacted basing on policy which articulates the problem and sets out what the intended law should address. It is through the policy process that the public and those who may be affected by the intended law are given an opportunity to air their concerns. In any democratic law making, the following criteria are vital and hence need to be taken into consideration, namely receiving inputs, exchange of information, transparency and interaction with the government and the parliament with civil society.

The regulatory legal framework which is in place in Tanzania was enacted in the absence of a policy. In the absence of a policy document it suffices to state that no critical situational analysis which ought to have led to problem identification was made. Furthermore, it is evident that no formulation of policy objectives, vision and mission which form policy statements, context, prescriptions, and implementation

arrangements and finally sets out monitoring and evaluation mechanisms were actually made. Consequently, the legal framework was not guided by any policy document. Malherbe, R. (2006) argued that laws that arise out of problems are simply like one legged stools, and enacting laws without a policy behind them puts that nation in shackles.

To take this point further, one could equally argue that the regulatory legal framework put in place in Tanzania is not guided in case of misinterpretation because it lacks a policy which plays the role of a road map. The absence of a policy is not accidental but rather by design. As stated earlier, the regulatory framework was hastily formulated to meet donor requirements for loan consideration by the International Financial Institutions, namely the IMF and the WB. It can equally be termed as the donor syndrome legal framework which has no feel for the actual precepts of the regulated market. A similar position was held by Alaverdyan, L. (2009), Member of the Organization for Security and Co-operation in Europe (OSCE) Parliamentary Assembly, Member of the National Assembly of the Republic of Armenia, who argues that experience has shown that simple carbon-copies of model foreign laws, however effective they are in their country of origin, do not have the desired effect once transplanted in emerging democracies. Such an approach, often dictated by the will to hastily comply with international commitments, is likely to fail due to the lack of enforcement mechanisms, and the absence of public awareness campaigns or the discriminatory application of laws in practice, among other reasons. Another problem of emerging democracies is the lack of systematization of legislation.

The current legal framework does not articulate the *modus operandi* because the problem was not, in the first place, addressed properly in the related sector. Consumer International in its journal, a guide to developing consumer protection law, First Edition, April 2011, states that, a notable shortcoming of the best practices approach to regulation is that it creates regulatory solutions without first conducting the fundamental analysis of the existing legal frameworks, or indeed relating to the needs of consumers in a given context.

The quoted paragraph indicates that in setting a legal framework, a baseline study ought to have been conducted in order to carry out the analysis of the problem. That would have included public participation putting forward its concerns during the formulation of the policy, which in turn would have led to law formulation. Failure to follow the proper channel brings about what Malherbe equates to leading the nation to shackles.

2.9.4 Sector Legislation

In Tanzania the legislation of sectors is not part of the regulatory framework. However, some of sector legislation recognise the existence of the regulators and their powers, whereas some do not. What is important, though, is the philosophy behind sector legislation. Section 35 (2) of the SUMATRA Act provides that where there is sector legislation, in case of inconsistency between the SUMATRA Act and the sector legislation, the provision of the sector legislation prevails.

This provision is more poisonous to the regulatory framework than the cobra's venom to the human being. The executives shall always capitalize on provision to

circumvent the regulatory framework in order to meet their own objectives. A good example is the Electronic and Postal Communications Act, Act N0. 9 of 2010. In the first place, it is absurd that this sector legislation is used as a hideout for the executives to sabotage the Fair Competition Act and the TCRA Act. Section 60 of the Act intervenes the powers of Fair Competition Mandates.

2.10 The Role of Regulatory Authorities in the Market Economy

Regulatory Authorities in Tanzania were created by Acts of parliament, and were vested with immense powers by their respective legislation which established them. At the moment, three Regulatory Authorities have already been established and are operational. As noted earlier, all the laws have almost the same wording. Hence, the powers of these authorities are almost a replica of each other and are vested with the following powers:

- (i) Promoting effective competition and economic efficiency
- (ii) Protecting the interests of Consumers
- (iii) Protecting the financial viability of the efficient suppliers
- (iv) Promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers
- (v) Enhancing public knowledge, awareness and understanding of the regulated sectors including:
 - (a) The rights and obligations of consumers and regulated suppliers
 - (b) The ways in which complaints and disputes may be initiated and resolved
 - (c) The duties, functions and activities of the authority.
- (vi) Taking into account the need to protect and preserve the environment

The powers so vested with the regulatory authorities clearly reflect the liberalisation process of the economy initiated by the government targeting to build the market economy in Tanzania. As pointed out earlier, the transport sub-sector plays an important role in building the market economy. Basing on the latter premises, Mwalusaka (2010) argues that there was a need to have a regulatory environment within which all entities involved in the transportation of people, goods and services be strictly regulated without compromising safety and timely deliveries.

The powers vested with these regulatory authorities were intended to make the Authorities free to issue opinion, set out rules, monitor and inspect, enforce regulations, grant licenses and permits, set prices and settle disputes (OECD, 2006). These powers enable the Regulatory Authorities to regulate their respective markets up to the desired framework with the regulators balancing the interests of both the providers of goods and services on one hand, and the interests of consumers of regulated goods and services on the other hand.

2.10.1 Promotion of Competition

Regulatory Authorities were established to prevent the abuse of economic power in the monopoly sectors such as energy, communication and transport. The underlying principle of establishing regulatory authorities was to open the investments of state owned enterprises to the market economy through privatisation of the same. The philosophy behind being that the regulatory authorities' role would remain primarily to be the protection of consumers, promoting economic efficiency through lowered production costs and technological changes and innovations (OECD, 2006).

2.10.2 Granting Business License

In the process of regulating the market, regulators were tasked to grant business licenses. Granting business licenses or the cancellation of business licenses is part of economic regulation the regulator is endowed with so as to ensure a smooth entry into or exit from the market and acceptable business ethics. In Tanzania, all three regulatory authorities are endowed with the licensing power. It is worth noting that although all regulatory authorities have the licensing power, that power is curtailed when it comes to granting business licenses or the cancellation of business licenses having a term of five or more years.

In the case of the SUMATRA Act, 2001, Section 6 (3) requires the regulator to consult with the Minister responsible for transportation in discharging its core functions. This, certainly poses critical legal questions on the independence of the regulator. All in all, in 2009, SUMATRA issued 16,560 licenses for passenger vehicles against 12,124 licenses for trucks and lorries. (Sekirasa, 2009).

2.10.3 Inspection, Surveillance and Sanctioning

In 2009, SUMATRA carried out 36 inspections whereby a number of vehicles were penalised due to non-compliance of licensing requirements. Arising out of the inspections in question 28 passenger vehicles providing upcountry transport services and 36 passenger vehicles providing urban transport services were suspended for non-compliance (Sekirasa, 2009).

2.10.4 Price Regulation

The power to regulate prices is a fundamental function of the regulator where the market is characterised by historical operators holding monopolies or a significant

market share (OECD, 2006). All three regulatory authorities in Tanzania are vested with powers to regulate prices and set tariffs. It sounds rather nasty in a market economy environment but it works well where market forces alone fail to function. The market economy in Tanzania is still young, hence fragile and therefore susceptible to scrupulous service providers who intentionally tend to utilise the fragility of the market to inflate their financial gain.

Initially, the Energy and Water Regulatory Authority was not vested with price regulation. It was thought that the energy market being so competitive could regulate itself. This was a misconceived notion as the truth became clear that the market was so fragile and easily manipulated. This was especially experienced during the escalation of fuel prices at the world level which led to an economic crisis worldwide, and more so in developing countries. Tanzania was badly hit by high prices of fuel in 2008 with pump prices skyrocketing day after day.

Although later on fuel prices at the world market declined, partly due to the economic recovery in early 2009, fuel prices in the Tanzanian market remained unnecessarily high. EWURA had no power to intervene at the time but only urged fuel dealers to reduce fuel prices in order to give relief to consumers and enable the market to thrive. This was a real challenge to EWURA on its effectiveness to regulate the market when it had no mandate to do so. It was not clear whether the omission of the mandate was an oversight of the legislature or was intentional. This awkward situation forced the government to rethink on how to deal with the fuel market. In August 2009, The Parliament amended the Petroleum (Conservation) Act (Cap. 393) and the Energy and Water Utilities Regulatory Authority Act (Cap. 414)

whereby EWURA was given economic regulatory functions on downstreaming the petroleum (importation, marketing and distribution) sub-sector (EWURA Newsletter June 2009). This amendment of the EWURA Act empowered EWURA to set indicative prices of fuel from time to time to avoid the market failure.

SUMATRA has the mandate to set tariffs under section 18 of the SUMATRA Act, Act NO. 9 of 2001. The model used to set tariffs is a co-regulation system whereby either service providers or consumers can file an application to the regulator to review tariffs of any mode of transport. Upon receipt of such application, the regulator studies the application and when satisfied same, conducts a stakeholders meeting where the applicant presents his application with evidence and calculations verifying the application. The other party may challenge or accept the presentation made. After listening to both parties, the regulator issues an order which has powers of a High Court judgement. Such order becomes an operating principle of the market whose validity can be challenged by either party at the Fair Competition Tribunal. Tariff regulation in the transport sector is highly influenced by fuel prices in the market. The fuel prices instability in 2008 and 2009, for instance, forced SUMATRA to review bus fares twice in August 2008 and March 2009 (Sekirasa, 2009).

2.10.5 Dispute Settlement

Dispute Settlement is another important aspect of the Regulatory Authority's functions to enhance the market economy. Regulatory Authorities were enshrined with powers of quasi-judicial organs to settle all disputes within their respective areas of specialisation. The essence of this power is to expedite all sorts of disputes which would occur in the course of operation. The idea was good basing on the

nature of the legal system, in particular that of ordinary courts of law, which is slow and expensive, but its consequences are great in the market.

All regulatory authorities have now set up dispute settlement mechanisms through enacting regulations. It should be noted, though, that dispute settlement mechanisms in all regulatory authorities face critical performance setbacks. All regulatory authorities have headquarters in Dar es Salaam and hence their dispute mechanism units are based in Dar es Salaam. Looking at the geography of Tanzania, a person living in a small village say Rutenge or Mulela Village, Nshamba Ward, Muleba District in Kagera Region which is 1468 kilometres (TANROADS 2011) from Dar es Salaam, has to travel all the way to follow up one's case.

2.10.6 Development of Regulations

All regulatory authorities have mandates to develop regulations setting out principles that guide the market in different areas of specialisation. The regulations set out by regulatory authorities range from safety to consumer protection. Although Regulatory Authorities have powers to set up regulations, these regulations become operational only after being signed by respective ministers. Some of the regulations are spelt out through individual regulatory decisions which bind all players in the market. This altogether pose critical questions on the cardinal principles of natural justice, as regulatory authorities have been empowered to draw general rules which they implement as both judge and jury.

2.11 Mandates of Regulatory Authorities to Stimulate the Market Economy

It is worth noting that out of the three regulatory authorities already established, two will be taken as examples, namely SUMATRA and EWURA. It is further important

to note that some duties attributed to EWURA have adverse effects on SUMATRA's duties. The rise in fuel prices in the home market affects transportation costs which require SUMATRA to act accordingly. Furthermore, fuel adulteration pushes costs of transportation high and in turn has a critical bearing to the entire economy of the country.

2.11.1 Surface and Marine Transport Regulatory Authority (SUMATRA)

Like the other Regulatory Authorities, the Surface and Marine Transport Regulatory Authority (SUMATRA) was established under an Act of Parliament, Act N0. 9 of 2001 (Cap. 413), section 4 (1) as a multi-sector regulatory authority. Section 5 of the said Act, establishes the functions of SUMATRA as already enumerated.

SUMATRA's realm of regulation comprises marine, road and railway transport. The transport sub sector regulated by SUMATRA plays a crucial role in contributing to socio-economic development of the country. Mwalusaka (2010) comments on the remarkable contribution of transport to economic development by highlighting that the Government of the Republic of Zambia, in its Fifth National Development Plan, identified transport as a catalyst for the economic development of Zambia. His argument is based on the fact that transport cuts across all sectors of economic development, namely agriculture, tourism, mining, education, health etc as it facilitates people and resources to move and perform to their full potential.

Foerster *et al.* (2005), in their research entitled Liquids Biofuels for Transportation in Tanzania: Potential and implications for Sustainable Agriculture and Energy in the 21st Century, contends that the transport sector in Tanzania is underdeveloped but its

growth is encouraging due to government efforts and the private sector investment in the sector. They further argue that the transport sector has been growing at an encouraging pace, citing an example that in 2004 the sector grew at the rate of 6.2 percent as compared to 5 percent in 2003. Mwalusaka (*ibid*) elucidates further that to a country's development the significance of transportation in its many forms, cannot be over emphasized.

The National Transport Policy (NTP) (2003) admitted that “the transport sector in Tanzania was characterised by high costs, and low quality services due to various reasons. Such reasons included the existence of high backlog of infrastructure maintenance and rehabilitation; inadequate institutional arrangements; laws, regulations and procedures which are not consistent or compatible with each other to create a conducive climate for investment and hence growth of the sector; inadequate capacity caused by the low level of investment in resources; and a low level of enforcement of safety, environmental sustainability and gender issues”. The NTP therefore called for an effective regulatory framework which could coordinate the transport sector to perform accordingly. In order to realise the contribution of the transport sub-sector to the economy of the country, the sector needs nurturing. Hare (2008), for example, asserts that transportation had been a critical component of Canada's economic and political development. For more than 100 years, regulatory agencies had shaped the environment for transportation users and providers.

Further to the foregoing, Sekirasa (2007) points out that the responsibilities that had been thrust on SUMATRA were immense and extremely challenging. He goes on to state that the sub-sectors which the authority has statutory responsibility over are

vital and crucial to the nation's development. Three years later, Nyqvist (2010) the former Managing Director of Scania Tanzania, was interviewed by Samuel Kamndaya, a journalist writing for *The Citizen*, 2 December 2010 on page 18, commented that the country's traffic system was not conducive for economic growth. He called for a lasting solution to traffic jams as they were a drain to the economy of the country. He concluded that the decongestion of Tanzania roads was vital for economic growth.

Roger (1995) argues that in order to establish business ethics in any firm, be it transport or utilities, the Government has to set up rules, or regulations, that business firms would abide to. Such regulations have to become part of the economic landscape. Nalitoela (2007) looking at SUMATRA's role points out that the involvement of the private railway operator in Tanzania necessitates the introduction of new roles for the regulator, in terms of making regulations, since a private operator, by nature, tends to prioritise achievement of financial goals to the detriment of externalities such as safety and the environment.

A paper on "Regulatory Roles of SUMATRA" presented at the Second Joint Infrastructure Sector Review (8 – 10 October, 2008), points out that the restructuring process, among other things, sought to shift the provision of services to the private sector. As a result, the Government withdrew from its previous role as owner, operator and regulator. The need for establishing a sustainable regulatory arrangement that would safeguard independence, professionalism and credibility with investors and the general public was inevitable so as to ensure efficiency and quality service to the public.

Ndulu and Mutalemwa (2002) maintain that Tanzania's transport infrastructure and systems remain key constraints to the exhaustive exploitation of the economic potential. They argue that in order to attain economic growth, the development of the transport infrastructure must be given priority.

The National Transport Policy (2003) highlights reasons why the transport sector is in a poor state. It clearly states that the transport sector is mismanaged due to the lack of regulatory regimes that should have been equipped to spearhead competition, fair operational practices and clear operation regulations. Olvera *et al.* (2003) notes that the gap between transportation needs and the provision of same is seriously widening day after day in the major cities of Tanzania. On the other hand Mbogoro (2000), comments that trade is an engine of growth for Tanzania and therefore to effect this all strategies and policies made must aim at the facilitation of trade regardless of the level of the said trade.

Pendakur (2005) contends that Tanzania, like in other African countries, road transport is the dominant transport mode. Railway as well as Marine transport which is intended to transport bulky consignments at low cost has been, unfortunately, on the decline. No substantial investment has been made in the railway and marine transport sector since the 1980s. While transport facilities have been on the decline, the population has been on the increase. From 1950 to 2005 the population rate of growth has been at an average rate of 3.61% annually (WUP 2005). As a consequence of this unproportional increase between transport facilities and the population, transport facilities have become inadequate, which in turn has resulted into traffic congestion and road accidents. These two happenings are detrimental to

the country's economy and an increasingly negative environmental impact. Hook (2006) substantiates that point further that the time and money spent by the poor meet their basic mobility needs represent a significant constraint on the ability of low-income families to accumulate assets that would allow them to lift themselves out of poverty.

2.11.2 Evolution of the Transport Sub-sector in Tanzania

As noted earlier, Tanzania Mainland attained independence in 1961. It is not easy to analyse the evolution of transport systems in Tanzania without looking at the evolution of transport in Dar es Salaam. To put issues in their historical and geographical perspective, the Dar es Salaam metropolitan area is located on the eastern part of Tanzania between 6°34'S and 7°10'E along the western Indian Ocean coastline. Prior to western colonialism, Dar es Salaam was established by Sultan Seyyid Majid of Zanzibar in 1862 as a port and trading centre. The Sultan brought labourers and slaves from Zanzibar to carry out its construction. Buildings and streets were made of stone. After the death of Sultan Majid, eight years after the establishment of the town, the development projects were abandoned and the town was left to decay (Kanyama *et al.*, 2004).

When the Germans invaded Tanganyika, at first they settled at Bagamoyo, hence the first seat of the German rule was at Bagamoyo. Later on, the Germans taking into consideration Dar es Salaam's great harbour and other strategic advantages, decided to move their government's seat from Bagamoyo to Dar es Salaam in early 1891 (*ibid*). The status of Dar es Salaam as the capital city was maintained by the British colonial administrators when they took over from the Germans after the First World

War in 1919, and it continued to be the capital city after independence in 1961. It was in 1973 when the government decided to move the national capital from Dar es Salaam to Dodoma, 458 kilometres (Source of Distance, TANROADS) inland to the west of Dar es Salaam. However, Dar es Salaam has remained the commercial centre of the country.

The arguments that were advanced for the transfer of the capital were that Dar es Salaam was growing rapidly into a primate city with limited economic expansion and congested transport facilities (URT, 1976). The shifting of the capital to Dodoma was partly aimed at decongesting Dar es Salaam and promoting other growth centres in upcountry regions.

The history of public transport in Tanzania, Dar es Salaam in particular, dates back to the British Colonial era. (Kanyama et al. 2004) notes that in 1949 the first private British transport company known as the Dar es Salaam Motor Transport Company (DMT) was registered to provide public transport in the city. Kanyama claims that the DMT offered reliable transport services up to the 1970s when it was nationalised in line with the then socialist ideology. All major pillars of the economy were nationalised as part of an implementation of the Arusha Declaration. The DMT was nationalized in 1970 and out of its assets three transport companies were established, namely “*Shirika la Usafiri Dar es Salaam* (UDA) literally meaning “Public Transport in Dar es Salaam”, KAMATA (Kampuni ya Mabasi Tanzania: Tanzania Bus Services), and National Road Haulage. All these three companies were managed by the National Transport Corporation, a holding company to manage all transport companies established nationwide. UDA was jointly owned by the Dar es Salaam

City Council, with 51% of the shares, and the National Transport Corporation (a government agency which held 49% of the shares). The company, as a sole provider of the bus service in Dar es Salaam, operated fairly satisfactorily as it had sufficient assets it acquired from the DMT. It inherited good quality buses that were comfortable and well situated to the city's public transportation. It also inherited the DMT's basic transport planning skills among its staff, namely planning the bus route networks, number of routes, route length, bus terminals and principal bus stop locations.

UDA started to operate under the auspices of the government and therefore the bus fare levels it set had to get government approval. Consequently, bus fare levels were regulated according to what the government thought could be affordable to the majority of the people with no investigation or consideration of actual operating costs (Kanyama *et al.*, 2004). The pricing did not follow any scientific pricing methodology, such as the rate of return on investment or price cap methodology. The bus fares were set on ad hoc basis by the government, which more often than not were too low to cover the actual operating costs. Worse still, the government was not in a position to cover the financial gap which occurred and, therefore UDA's performance started to decline.

Moreover, as UDA's performance continued to deteriorate, demand for transport was on the increase as the population was also increasing. Pendakur (2005) points out that the growth of African cities, Dar es Salaam inclusive, has been too rapid such that local governments have not been able to match the growth rate with the required

social amenities, such as urban transport infrastructures. He further notes that the youngest segment in these fast growing cities, accounts for more than 50 percent of the total urban population. With that demographic distribution of the population, the young generation in particular, posed heavy transport demands which could not be met by UDA. Kahama (1995) notes that urban passenger transport facilities effectively collapsed in the 1980s. He points out that UDA's actual need at that time was 250 buses to operate its services but had only 65 buses in 1989. This caused unmanageable queues at bus terminals, and the scramble to board buses was the order of the day.

Due to the scarcity of buses, the demand for buses was so high that thousands of workers walked in excess of 20 kilometres a day to and from their places of work. Pendakur (2005) writes that about 45 percent of the population walked due to the lack of accessibility to buses. Since the demand was not met, illegal and speculative private transport operators emerged to fill the gap in the late 1970s and early 1980s. These illegal operators charged 5 shillings instead of the 1 – 1.5 shillings charged by UDA. Their buses were consequently christened “*dala-dala*” because of the exchange rate of five shillings to one US dollar at that time. Since then “*daladala*” became a term used to refer to all privately owned buses providing public transport services in the city.

In 1983 the government of Tanzania legitimised private operators of “*daladala*” in order to solve the city's chronic transport problem. The legitimisation of “*daladala*” was partly to comply with the Economic Reforms Programme (ERP) and partly due to the persistent public transport problem in Dar es Salaam. With the legitimisation

of *daladala*, the government was compelled to set up a formal system of supervising the operations of *daladala* buses. As a result, the Central Transport Licencing Authority (CTLA) was established as a department within the Ministry of Communication and Transport whose responsibility to licence all vehicles operating countrywide.

Later on, CTLA proved failure in managing the *daladalas*, hence the then Dar es Salaam Regional Commissioner took over the management of *daladala* from the CTLA. In 1999 the Regional Commissioner formed an agency – the Dar es Salaam Region Transport Licencing Authority (DRTLA) - which was entrusted with the responsibility of licencing of commuter buses plying in Dar es Salaam Region.

2.11.3 Nature of Transport in Tanzania

The Surface and Marine Transport Regulatory Authority Consumer Consultative Council in its report released in 2005, highlighted the fact that the Dar es Salaam City's transport systems were chaotic. The Council further stated that almost 90% of the buses offering transport services in the city did not qualify for the undertaking. For a bus to be allowed to offer city passenger services it is required by law that it must have two main doors (in and out), an emergency door and two rear axles. Most buses currently plying city roads do not meet these criteria and yet they are licensed. The Council further noted that unlike in many cities and towns abroad, where transport is provided by established companies, transport services in Dar es Salaam are provided by three groups of categories of people, namely, some leaders (Government, Forces, TRA etc.), retired employees and ordinary citizens who want to try their luck.

Pendakur analysed transport in Dar es Salaam and pointed out that the road transport services were inadequate, leading to congestion and road accidents which jeopardised the economy of the country and the environment at large. Cosmas Takule (Chief Executive, Dar es Salaam Rapid Transit (DART)) when interviewed by the *Mtanzania* Newspaper, March 31 2010, on the impact of traffic jams, conceded that traffic congestion in Dar es Salaam has a serious impact on the economy of the country. He elaborated that due to the traffic congestion, the city was incurring a loss of about 4 billion shillings a day calculated basing on the time spent in long traffic jams, fuel spent by the vehicles in traffic jams, air pollution and the social impact as most commuters leave their families early in the morning and return home very late at night.

Takule further elaborated that the congestion was a result of poor traffic management in the city. He told the press that Dar es Salaam city has a total of 7,000 commuter buses (daladala) which offer transport services to 43 percent of the city's population. Besides daladala, there were 120,000 private motor vehicles which carry only 6 percent of the city's population. Those who can afford opt for the use of private motor vehicles. It is lack of proper traffic management which makes other people to use privately driven vehicles and thus bring about terrible road congestion, and above all, economic daily loss of about 4 billion shillings. SUMATRA, as a regulator, has no mandate to intervene in this problem because it has only economic regulatory powers.

With regard to road transport, the enforcement of safety and traffic rules is vested in the police force. Another economic set back in road transport is the number of road

accidents which are on the increase day after day. A report by SUMATRA-BICO 2007 establishes that the major causes of accidents in Tanzania Mainland are three; namely the human factor which contributes 76.4 percent, the vehicle factor contributes 16.3 percent and the road factor contributes 7.3 percent. These accidents cost the economy heavily. SUMATRA, though a regulator of the surface and marine transport, is as toothless as a newly born baby. The safety enforcement role in the road transport sub-sector was deliberately taken away from SUMATRA's mandate, hence making it superficial in the entire regulatory framework.

According to the 1994 survey done in Tanzania, road accidents cost the nation 15 billion shillings annually which was calculated in terms of loss of labour and actual money spent on medication of the injured. According to the report on the study of road accidents in Mainland Tanzania (SUMATRA, 2007), it is revealed that in 2006 alone, Tanzania lost US \$446 million which was 3.4% of the GDP. In that particular year BOT had estimated the GDP to be US \$ 13.13 billion. The basis of the calculations was pain, grief and suffering imposed on the victims; loss of output of the victims and those who care for the survivors, administrative costs and loss of property.

2.11.4 The Role of the Transport Sub-sector to the Economy of Tanzania

Just like in other countries, the transport sub-sector plays a significant role in contributing to the social and economic development of the country. The transport infrastructure links centres of production and markets in economic sectors such as agriculture, industry, mining and tourism. Besides direct production, transport infrastructures form a nexus in access to employment, health, education, holidays,

recreation and other social services. The transport system plays a great role in determining the prices of goods and services. A properly functioning transport system reduces transport costs hence driving down prices of goods and services in the market. It is therefore essential to have a transport sector that is efficient and effective to enable the economic sectors contribute optimally to socio-economic development. To attain this, the transport sector has to be well managed and regulated so that it grows and supports other important economic sectors.

In Tanzania, the transport sub-sector has continued to grow despite the little investment made by the government in transport infrastructure improvement and the private sector involvement. This is evidenced by the fact that Tanzania has approximately 85,000 km of road networks, of which only 5% is paved. In spite of the minimal investment made in the transport infrastructure, the transport sub-sector grew by 5.0 per cent in both 2003 and 2004 and by 6.2 per cent in 2004. The transport sub-sector contributed 5.4 per cent of the GDP in 2004 (Foerster *et al.*, 2005). This growth rate has been attributed to an increase in investment in the telecommunications sector, construction industry, improved transport infrastructure and establishment of regulatory agencies.

2.11.5 Service Providers' Compliance to Transport Rules and Regulation

Bearing in mind the importance of the transport sub-sector, SUMATRA made 17 Regulations which intend to bring order in the sector in order to increase efficiency. However, SUMATRA is not vested with powers to enforce some of the regulations particularly in road transport. Enforcement of these regulations can be done by the police force who are not responsible to the regulator.

The police force, road traffic department, may or may not opt to enforce the regulator's regulations. This gives room to service providers to provide transport services in their traditional way; and in the manner they want. Consumers of the regulated goods and services are complaint and receive the services in the way the service providers want them to receive them.

Regulators need to be more innovative and capitalise on mass education strategies to ensure that service providers and consumers understand their roles. Service providers as well as consumers need to build trust in the regulators before they start thinking of compliance. This has not been done and where it has been done, it has been done in the spirit of creating friendship between the three groups. The regulatory framework is a three legged stool; the regulator, service providers and consumers. The three have to speak the same language to create economic harmony in the sector. Discipline and professionalism are therefore of paramount importance in the sector. Both service providers and consumers ought to comply to rules and regulations whereas the regulator needs to devise healthy monitoring strategies which comprises regulatory substance.

According to Kelly (2010), in his paper "Sharpening the focus on Voluntary Compliance" presented at the Transport for Elderly and Disabled persons (TRANSED 2010) held in Hong Kong (2 – 4 June 2010), holds the view that there are many advantages of using voluntary codes rather than regulations. As codes are less restrictive, service providers can use innovative ways to meet standards within their unique operating frameworks. He further explains that any regulatory framework – whether codes of practice, regulations, or otherwise – requires effective

oversight and monitoring. However, codes of practice and regulations differ in how they ensure compliance.

The Authority's role remains that of conducting periodic monitoring of transportation service providers' compliance with the codes. Monitoring encourages compliance because of two reasons: first, the monitoring results must be published and transportation service providers want to avoid adverse publicity; second, if monitoring shows that compliance is lacking, the Authority can always look at imposing the code provisions by regulation, something that the transportation industry generally wants to avoid. It is not certain whether SUMATRA does monitoring of the transport sector. If it does, the findings remain secret to the authority and the government. In Tanzania some report documents are stamped confidential, this approach creates a non-performing and non-compliance culture on the institutions' responsibility and accountability to the public.

In 2009, the SUMATRA Consumer Consultative Council received 266 complaints from different regions. 150 or 56.4 percent of the complaints were about consumers being overcharged fares beyond limits set by SUMATRA. This is a clear indication that non-compliance to the regulator's regulations and orders is alarming. In trying to curb the alarming situation, SUMATRA contracted Majembe Auction Mart to enforce rules and regulations. The contract was received with mixed feelings to wit constant riots or threats to strike by service providers. At times the government had to intervene to ensure that service providers did not strike. The regulator as well as the government insisted that whoever went on strike the regulator would cancel the service provider's licence. SUMATRA contracted Majembe Auction Mart, a mere

court broker, to enforce transport regulations without proper training. Most stakeholders in the transport sub-sector questioned the rationale and criteria which SUMATRA used to delegate its regulatory powers to Majembe. It was reported in the *Guardian Newspaper*, issued on 14 December 2010, that the then country's traffic police chief, Mohamed Mpinga, questioned Majembe's capability to monitor public transport services in Dar es Salaam. The same paper reported that the chairman of Tanzania Bus Owners (TABOA), Mr. Mohamed Abdullah, complained that SUMATRA had failed to oversee effective implementation of rules and regulations. TABOA questioned the competency of Majembe Auction Mart to undertake the contracted functions.

Besides service providers, there is gross non-compliance by the regulator of its own rules and regulations, to wit laws. As stated earlier on, the Transport Licencing Act, Cap. 317 and the Transport Licencing (Road Service Vehicles) (Prescribed Conditions) Regulations 1973, Section 2 (C) provides that every person who is under the apparent age of sixteen years but over the apparent age of three years, shall be entitled to travel at a reduced fare equivalent to one half of the full fare chargeable in respect of an adult for the same journey.

Furthermore, the Transport Licencing (Road Passengers Vehicles) Regulations, 2007, issued vide Government Notice 218, which are the product of SUMATRA itself, Regulation 26 provides for the fare of children and students to be one half of the full fare chargeable in respect of an adult for the same journey. On the contrary SUMATRA does not comply with its own regulation by compelling commuter buses to charge children and students Tshs. 100. It was difficult to justify the fare of Tshs.

100 for all students across countrywide. If the authority does not comply with its own regulations, how can the same authority compel service providers to comply with its regulations?

2.11.6 Energy and Water Utilities Regulatory Authority (EWURA)

The Energy, Water and Utility Regulatory Authority (EWURA) was established by an Act of Parliament (Cap 414). EWURA officially commenced its operations in June 2006 vide Government Notice N0. 19 dated the 10th day of February 2006. EWURA is an autonomous multi-sectoral Regulatory Authority responsible for regulation of electricity, water, petroleum and natural gas. The four are important sectors, which in a nutshell, complement the transport sector.

Looking closely at the sectors regulated by EWURA, it is easy to establish a clear link between SUMATRA and EWURA. The activities of the two are so interlinked such that they interrelate in many aspects. While SUMATRA regulates water transport, EWURA also regulates water, mainly for domestic and industrial consumption. Petroleum products are transported by ships via water from foreign countries to the port of Dar es Salaam, both regulated by SUMATRA. Some utilities such as gases and petroleum are again conveyed by pipeline from Dar es Salaam to various destinations; for example TAZAMA Pipeline, which is under the domain of SUMATRA.

When EWURA commenced its operations in June 2006, the authority had no economic regulation powers over the petroleum sector. It was taken for granted that there was sufficient competition in the sector, therefore market forces could determine prices of the petroleum products. That assumption was short-lived as the

year 2007 experienced high prices of fuel at international markets and hence at domestic markets. Although the prices dropped at the international markets, from \$147 to \$50 per barrel by the end of 2008, the prices at the domestic markets kept on shooting unreasonably up to Tshs. 2,000 per litre at the pump (EWURA Newsletter, Vol. 1).

Other factors, such as the tax increase imposed on fuel in the Government Budget for 2007/2008 led to what was considered as unwarranted price increase in petroleum products (EWURA Newsletter, Vol. 1). The Government tasked EWURA to see to it that petroleum prices were regulated to curb indiscriminate increases in fuel prices in the future. The Government went a step further whereby in August 2007, Parliament amended the Petroleum (Conservation) Act, (Cap. 393) and the Energy and Water Utilities Regulatory Authority Act, (Cap. 414) thereby giving EWURA economic regulatory powers on downstreaming the petroleum (importation, marketing and distribution) sub-sector.

The made amendment empowered EWURA to intervene when deemed necessary by providing a price cap regulation whereby the regulator sets indicative fuel prices. In December 2008, for example, before the price cap regulation was implemented, most of the filling stations in the city were selling petrol at an average price of Tshs. 1,593 per litre, while diesel was being sold at an average price of Tshs. 1,758 per litre. In February 2009 after the implementation of the price cap regulation, the indicative price published by EWURA for a litre of petrol in Dar es Salaam city was Tshs. 1,224 with the cap price being fixed at Tshs. 1,316. The indicative price for diesel was Tshs. 1,295 per litre, the cap price being fixed at Tshs. 1,392.

2.12 Summary and Conclusion

It has been noted that shortly after independence Tanzania chose African Socialism which was branded as “Ujamaa” in Kiswahili, as its socio-political path towards building a self-reliant nation. The Ujamaa policy was articulated in the policy document entitled the Arusha Declaration. Under that policy document, Tanzania opted to build an economy whereby all major pillars of economic activities were Government controlled. Some of the major economic ventures, hitherto privately owned, were nationalised. The government became the manager of these enterprises through parastatals which were formed for that particular purpose. Due to a number of reasons emanating from within and without, the economic performance of the country deteriorated forcing a rethink of the economic path being pursued.

Consequent economic reforms started in the mid 1980s where the point of departure was to reverse socio economic and political policy decisions that were made shortly after independence. As a result the Arusha Declaration was unpacked; the ujamaa policy with its command economy policies was set aside, a new policy on the market economy was adopted. Hence, market doors were widely opened under the famous statement of “*Ruksa*” meaning permission. The government divested itself of companies involved in production, planning, marketing and distribution. The government remained mainly with one role of policy making to ensure that the market was properly guided. Regulatory authorities, particularly in areas with monopolies, were established to ensure that business ethics and principles of the market were adhered to. The private sector was thus entrusted with the production and distribution of goods and services.

The Regulatory Framework plays an important role in shaping the economic growth in the market driven economies. The establishment of regulatory authorities was a safeguard against possible market failure should the market forces be left on their own. This chapter has presented views from different authors and their analysis of the economic development of Tanzania in various perspectives, to wit economic reforms and the role of the regulatory framework in the country. It should be noted that many authors stressed on the importance of the independence of regulatory authorities in discharging their obligations.

On the other hand, other authors pointed out that inappropriate laws and institutional set up may hamper regulatory authorities' performance in the market. The quoted authors did not create a synergy on the regulatory performance vis-a-vis a current legal framework within which the regulatory framework operates in. No single author made a critical analysis of the performance of the regulatory authority in light of the legal framework in order to establish the relevancy of the regulatory authorities in Tanzania.

It is therefore essential to make a critical analysis of the performance of regulatory authorities in light of the existing legal framework in order to establish performance appraisal and therefore the relevancy of these regulatory authorities in the Tanzanian market. This study, therefore, establishes a clear link between the performance of regulatory authorities and the existing legal framework in Tanzania. The study further establishes whether the current legal framework is ideal for the regulatory framework in spearheading market economy in Tanzania.

CHAPTER THREE

3.0 A CRITIQUE ON THE COMMAND ECONOMY AND THE REGULATORY AUTHORITIES LEGAL FRAMEWORK IN TANZANIA

3.1 Introduction

It is an historical truth that shortly after independence, Tanzania, unlike its neighbours, Kenya and Uganda, decided to pursue “Ujamaa” which was branded as African Socialism as its socio-economic and political ideology which could spearhead the economic development of its people.

Unlike its neighbours Kenya and Uganda, Tanzania under the trusteeship of the United Nations after the first world war, hence the British who were entrusted to take care of Tanganyika at that time did not invest much in the economic sector. As a result, at the time of independence in 1961, the private sector was very small. The Government would not rely on it to develop the economy of the nation. It was on that premise that the government chose “ujamaa” as its socio-economic and political path.

Notwithstanding a small private sector in place at that time, the choice to pursue “ujamaa” was a well thought out venture to avoid siding with either of the then two strong socio-economic and political blocks of Western Capitalism and Eastern Scientific Socialism or rather Communism. Tanzania chartered out its own path by inventing its own socio-political ideology which made her unique in the socio-political antagonism of that time.

“Ujamaa” as a socio-economic cum political ideology recorded success in the 1960s to the early 1970s. Essentially, it was during that particular period that the import

Substitution Basic Industrialisation Strategy (BIS) was adopted. It was through the BIS strategy that many industries with high input-import content were established. Indeed, that period experienced heavy investment in infrastructure (transport, communication and power), education, health and water supply services by 1975. It is further worthwhile noting that it was during this period that the country created a large state owned parastatals structure to nurture economic development in various economic sectors (Maje, 1992). Conversely the recorded successes were short lived as in the 1980s economic decline and macroeconomic imbalances were severely felt. The impact of economic decline and consequently macroeconomic imbalances had adverse effects on Real GDP which started to shrink year after year from the 1980s.

It ought to be noted that the said economic decline was not peculiar to Tanzania alone. Many developing economies went through such economic turbulences. Nevertheless, it is equally important to note that in Tanzania, the economic turbulences were triggered partly by internal tight economic policies, external shocks and other natural calamities which had enormous adverse economic consequences between the 1970s and the 1980s.

In 1973 for example, oil prices in the world market hiked and at the same time a severe drought hit the country in 1973-74. The sudden rise in the price of oil aggravated by imported food costs led to increased total imports by 55 percent. At the same time domestic bank borrowing as a percentage of total borrowing rose by 70% and 74% during the years 1973 and 1974 respectively (Maje, 1992). This undesirable economic downturn coincided with another catastrophe, the breaking up of the East African Community in 1977 which disrupted trade totally. The situation

was further fueled by the Kagera War with Uganda in 1978/1979. The totality of all these undesirable events culminated in an economic downturn which led to a deterioration of the country's economy (Mans, 1993).

The economic turbulences were too heavy for the Tanzanian weak economy to withstand without external intervention. For a long time Tanzania, under Mwalimu Julius Nyerere's leadership, had strongly and openly resisted western financial assistance offered by the World Bank (WB) and the International Monetary Fund (IMF) under their stringent terms. Nyerere strongly opposed the Bretton Woods Institutions on the simple reason that Tanzania had inherited colonial political systems which were sustained by the colonial economy whose interests were nurtured by the Bretton Woods Institutions under the brand of post-modern colonialism (WB & IMF). These Bretton Woods Institutions camouflage under moral responsibilities to protect poor countries while siphoning their economies.

Socialism as an economic system did not satisfy the expectations of Tanzanians, on the contrary frustrated the majority. Most of the economic institutions set up failed to support the government's policies on social economic development. The root cause of that failure has been attributed to external factors. It is important to note that the failure of the said economic system was due to a legal system which was put in place but did not respect the human being's nature as expressed in his urge to avoid pain; the desire for a purposeful life and for freedom from external interference; the passion for distinction and, most importantly, the desire to acquire personal property (Afisi, 2009).

3.2 The Concept of the Command Economy and its Institutions of Policy

Implementation

As already stated, Tanzania developed its socio-economic ideology which was branded as African Socialism, christened as “*Ujamaa*”. The *Ujamaa* concept’s philosophy revolved under two principles, referring to the extended family of African Communalism and secondly referring to the creation of agricultural collectives known as *Ujamaa* villages (http://www.marxists.org/subject/africa/rodneywalter/works/ujamaa_andscientificsocialism.h)...as accessed on 8/3/2011 at 16:24 hrs.

The *ujamaa* philosophy was firmly built on Principles of African Communalism based on three tenets namely joint production, egalitarian distribution and the universal obligation to work. To implement these three tenets the government needed to articulate a decisive socio-political ideology which would go in line with the above named principles. In 1967 the government promulgated a famous policy document, the Arusha Declaration, which elaborated in black and white the theory of *Ujamaa*. It is important to note that the above named policy document put emphasis on rural development. (http://www.marxists.org/subject/africa/rodney-walter/works/ujamaa_andscientificsocialism.h)..as accessed on 8/3/2011 at 16:24 hrs.

The government nationalised several entities of the “commanding heights” of the economy such as major commercial and financial institutions, landed properties, major private companies and some private agricultural estates (Mans, 1993) and put them under government control and management. Most of the foreign-owned properties were appropriated through the Acquisition Act 1971. A few of those

nationalised were: Barclays Bank, Standard Chartered Bank, Tanganyika Planting Company (TPC), Kilombero Sugar Company, Kagera Sugar Company, Dar es Salaam Motor Transport (DMT) etc. The Acquisition Law formed the basis for the formation of state enterprises popularly known as parastatals, which managed the nationalised properties. It is worth noting here that all the nationalised properties were adequately compensated.

The established state institutions, popularly known as parastatals, were commissioned to oversee planning, production, distribution, marketing and controlling market patterns. These parastatals, being government enterprises, were meant to regulate production, distribution and prices in the market. Admittedly, to understand the current regulatory legal framework, it is imperative to understand the socio-political paradigms in their historical perspectives. It is therefore significant to establish a link between the command economy institutions and the current regulatory authorities.

Although the nationalisation trend was not properly recorded, we learn that all financial institutions that were nationalised formed the National Bank of Commerce (NBC), some of the assets formed the Tanzania Housing Bank (THB), the Tanzania Investment Bank (TIB), the Tanzania Rural Development Bank (TRDB). Besides commercial banks, transport companies and agricultural companies were also nationalised.

As stated earlier, the Dar es Salaam Motor Transport (DMT) a private company offering Dar es Salaam city transport and up country transport, was nationalised in

1970. Its assets and liabilities were vested in the National Transport Corporation, a state corporation established to oversee, manage and regulate road transport services in the country. Certain assets of DMT were used to establish Shirika la Usafiri Dar es Salaam (UDA), Kampuni ya Mabasi Tanzania (KAMATA) and the National Road Haulage Company. Railway transport was managed by the Tanzania Railways Corporation (TRC) which commanded and networked railway as well as transport in inland lakes. The State Trading Corporation (STC) which was an amalgamation of the nationalised trading and commercial organisations managed marine transport.

The petroleum sector was managed by private companies, to mention but a few, Shell International, Esso International, Caltex etc. In 1964/65 Tanzania entered a joint venture with Italy which invested in a fuel refinery factory at Kigamboni in Dar es Salaam which became popularly known as TIPER (Tanzania-Italy Petroleum Refinery). In the mid 1960s and early 1970s, TIPER was importing crude oil, processed it and distributed to private fuel dealer companies which in turn distributed to retail stations. Importation of crude oil had a number of advantages; firstly, importation of crude oil is cheap, its price does not vary as refined oil, one can enter into a long term agreement with crude oil supplier countries but more importantly, the country could order bulk quantities which could sustain requisite needs for 4 months or so. It is equally important to note that the fuel refined by TIPER had purity recognised internationally. Above all, TIPER employed 450 employees and about 650 casual labourers, hence its contribution to the economy was substantial.

In 1970 the Tanzania Petroleum Development Corporation (TPDC) was formed to manage the importation of crude oil which was processed by TIPER at a fee. From

the inception of *ujamaa* as a policy, the command economy was emphasised along with a smallish private sector, coexisting along major state owned enterprises. In order to ensure that its economic policy succeeded, the government made sure that rural development was given priority and traditional cooperatives were given exclusive marketing rights, replacing private traders (mainly Asians). This went hand in hand with the establishment of institutions which were tasked to implement the policy.

Nyerere's conviction was that the Bretton Woods Institutions were in the forefront sustaining dependency of the developing countries on industrialised countries in Europe and North America. It should be borne in mind that Real GDP was shrinking year after year from the 1980s. Economic decadence was further accelerated by low productivity, poor implementation of production and marketing strategies and natural calamities. This state of affairs brought about a serious economic downturn and its consequences which could not be averted by the economic base of Tanzania. Under these circumstances, the country had no alternative but to turn to the IFM and the WB for rescue of its crumbling economy.

In 1984 the Government slowly started liberalisation of its import policy under a special import scheme (Mans, 1993). This was the beginning of the economic reforms which later ushered in regulatory authorities in Tanzania. It is important to note that the advent of regulatory authorities in Tanzania was not a state of art scenario developed by Tanzanians to draw a road map of their economic growth. It can be well argued that Tanzania jumped into an already sailing ship as there were no other alternatives for it to reform its economy. Consequently it is unfortunate that

the legal framework so adopted was hurriedly developed to meet the conditionality set out by the International Monetary Fund and the World Bank.

3.3 The Transition from the Command Economy to the Market Economy

Having decided on a change of course, the transition from the planned economy to the market economy had to be done. The driving forces behind this transition were extensively dealt with in chapter 2.4.2. The reasons for the economic reforms were outlined as the 1980s economic crisis which had dismantled the economies of most developing countries, Tanzania inclusive. As stated earlier, the growing economic difficulties in Tanzania were capitalised on by western donor countries to impose market oriented policies from the early 1980s.

It was happy of coincidence that the bait on the hook by western donor countries coincided with the change of political leadership in 1985 whereby Mwalimu Nyerere, who had resisted that neo-liberal reform package advocated by the International Monetary Fund and World Bank, decided to step down and handedover leadership to the second president of the United Republic of Tanzania, Mr. Ali Hassan Mwinyi, who quickly accepted the World Bank and the International Monetary Fund reform package (Gould, 2005)

The combination of these two factors, that is the debt crisis and the changeover of the government in Tanzania, opened up an opportunity for the International Monetary Fund (IMF) and the World Bank (WB) to come in. The IMF and WB utilised that opportunity by quickly penetrating and dictating terms under the guise of offering loans to bail out the torn down economy. These international financial institutions

came up with a programme branded as the Structural Adjustment Programme (SAP). This programme was aimed at reforming loan recipient countries' economic systems, to reflect the dominant vision of market driven economies rather than state led development (Thomas, 2000). That concept meant the donors were going beyond their original mandate of providing the short-term balance of payments support. To achieve this goal, they institutionalised the Structural Adjustment Programme (SAP) under false pretence of promoting global economic integration along free market lines. Thomas (*Ibid*) further elaborates that structural and institutional reforms drew a social as well as an economic map that reversed the relationship between the state, market and the citizenry.

In order for a country to qualify for a loan from the International Monetary Fund and the World Bank which was highly needed in the 1980s by all ailing economies; a country had to adhere to all International Monetary Fund and World Bank conditions. The key components of these loan package conditions included privatisation of public services and public assets, liberalisation of trade, finance and production, deregulation of labour and environmental laws and destruction of state activism in the public realm. It was based on these conditions that the IFM and the WB directed that the market, not the state, be the motor of economic growth in those countries it extended loans to (Thomas, 2000).

Subsequently, it is correct therefore to argue that the reforms made in the 1980s were a result of the political pressure exerted by the western donor countries to countries whose economies were in shambles, Tanzania included. The Government had no option other than accepting the IMF guidelines in order to secure loans which were

badly needed to rescue the economy from a serious economic crisis which was impending. The government started a long-term journey of reform which was aimed at nurturing the private sector. Any meaningful economic reform had to ensure that innovations and creativity, production and distribution decisions were to be left to individuals to interact in the market. However, it should be noted that free markets do not exist, as some economists argue, what actually is in place are mixed economies where goods and services are allocated by a combination of economic forces in the markets, regulations and other forms of collective control (Robert *et al.*, 2001).

3.4 The Concept of Regulatory Authorities in Tanzania

Regulatory Authorities in Tanzania are a new concept and therefore not much has been written on their ability to regulate the market. The only available information on Regulatory Authorities in Tanzania is found in reports, newsletters and newspapers but no book has been published, or academic research like this one been done.

Regulatory authorities are a product of the socio-economic ideology change from the Command Economy to the Market Economy. During the Command Economy era, the government had established parastatals which planned production patterns and distribution channels. Pricing of the products, goods and services was done by the Price Commission. Prices of goods and services were determined by the Commission depending on the cost of production and distribution. For reasons that have already been expounded the implementation of the command economy policies did not yield the expected results.

The economic reforms carried out led to the abandonment of the Arusha Declaration and the enactment of the Zanzibar Declaration (Kaduma, 2004). The Zanzibar Declaration aimed at building a market economy whereby the private sector would play a major role in the production and distribution of goods and services instead of the government. The government's role in the market would be formulation of appropriate economic policies. The production and distribution of goods and services would be left to the private sector. As a result of this shift in policy, the government withdrew from the production, distribution and supervision of most goods and services.

During this reform period, most of the parastatals were privatised and sold out to private individuals and companies, mainly multinationals, from the West. The government assumed the new role of regulating, monitoring and evaluation of privatised parastatals. It was through this new role that the government resorted to the establishment of the Regulatory Authorities in order to manage the new development in market patterns (Mkocha, 2009).

Consequently, three regulatory authorities were established in areas of the market which had natural monopoly. The Surface and Marine Transport Regulatory Authority (SUMATRA) was established vide Act N0. 9 of 2001 (Cap. 413); The Energy, Water and Utilities Regulatory Authority (EWURA) was also established vide Act N0. 11 of 2001 (Cap. 414) and finally the Tanzania Communication Regulatory Authority was also established. The Tanzania Civil Aviation Authority has always been wrongly regarded as the fourth regulatory authority. Besides licencing, setting standards and setting tariffs, a regulator is vested with quasi-

judicial powers to adjudicate on any unfair practices in the market. In that regard, a regulator is a referee between service providers and consumers of the regulated goods and services. According to section 6 (6) of the TCAA Act, TCAA provides air navigation services such as control towers in the regulated sector. However, the fact that control towers are managed and owned by TCAA, disqualifies TCAA from being a regulatory authority. Being a regulator and at the same time a service provider, in that particular sector, amounts to a gross violation of regulatory norms to wit cardinal principles of natural justice, in particular, the rule against bias “*nemo judex in causa suo*”.

3.5 The Mandate of Regulatory Authorities

The regulatory authorities were established by the Acts of Parliament with specific mandate. The first regulatory authorities were established to manage economic areas which have infrastructure and which are monopolistic by nature. It is important to note here that all three Acts of the Parliament establishing SUMATRA, EWURA and TCRA have similar mandate to wit wording of that mandate. It is not certain whether having similar mandate and wording was by coincidence or by design. It is further important to note that of the four Acts, three Acts, the SUMATRA Act, the TCRA Act, have mandates provided by Section 5 while in the EWURA Act the Mandate is provided by the Section 6.

3.6 An Overview of the Regulatory Authorities Legal Framework in Tanzania

The idea of having regulatory authorities in place let alone at whose interest was pertinent. Regulatory authorities are tools which are used by government to regulate the market by ensuring fair play ground. To attain that objective, regulatory

authorities need to be transparent and with sufficient independence to guarantee freedom in decision making even if that decision is a thorn in the neck of the executives. Regulatory authorities therefore can only operate in a fair and harmonized legal framework.

Looking at the regulatory legal framework set out in Tanzania, one quickly notices that the entire legal framework is not coherent enough to guarantee the regulatory authorities enough space to act comprehensively. The institutional set in the transport sub sector for example is a clear evidence of the above contention. The transport sub sector is managed by six (6) Ministries, namely Ministry of Transportation, Ministry of Works, Ministry of Home Affairs, Ministry of Finance, Ministry of Regional Administration and Local Government and Ministry of Industry, Trade and Marketing.

These six ministries each play key roles without a clear demarcation of the roles played by each ministry. Each ministry plays its role independent of other ministries. This has adverse impact on the regulatory authority as well as the development of the transport sub sector in the country. This is the first cause which makes the transport sub sector remain undeveloped for lack of proper policy direction. As a result the country has experienced a decline in the sector leading to, poor infrastructure of roads, air ports, rails and marine, poor transport services and the like.

Ministry of Home Affairs, Police Force, Traffic Police Department play an important role in road transport safety. The traffic police, road traffic department is the custodian and enforcer of the Road Traffic Act, Act N0.30 of 1973 (Cap. 168).

Section 73 of the Road Traffic Act (Cap.168) confers enforcement of the act by the police force. Section 73 reads as follows:

Section 73. Without prejudice to any powers or duties of the police under this Act or any other written law it shall be the duty of the police:

- (a) to regulate all traffic and to keep order and prevent obstruction in all roads, parking places, thorough fares, or other places of the public resort;
- (b) to divert traffic temporarily, to close and deny public access to any road, parking place, thorough fare or other place of public resort;
- (c) where any emergency or other event appears to render such a course necessary or desirable.

Under the given circumstances it is difficult to predict whether the regulatory legal framework established to regulate transport sub sector will guarantee a vibrant economic growth of the sector and the economy at large.

There are ten (10) legislation which provide for transport in Tanzania namely Surface and Marine Transport Regulatory Authority Act, (Cap. 412), Tanzania Civil Aviation Authority Act, Road Traffic Act, Roads Act, Railway Act, Tanzania Ports Authority Act, Ferries Act, Local Government Act, Environment Act, Tanzania Bureau of standards Act.

Of all the above mentioned legislations, it is only two legislations which have been amended to provide for regulatory powers by SUMATRA. These legislations are Railway Act and Tanzania Ports Authority Act. Sections 22, 24 and 27 of the

Railways Act, 2002 establishes SUMATRA's regulatory mandate on national railway transport systems. Section 22 (f & g) of the Act establishes SUMATRA's economic regulatory powers in respect of the rail transport sub sector and section 27 of the same Act provides for SUMATRA's social regulation in particular Safety Regulation of rail transport systems in the country. Section 24 provides for regulatory licensing mandate over rail transport in the country.

Roads Act, Act N0. 13 of 2007 takes cognizance of SUMATRA's role vide Section 9 of the Act. Section 9 (2) (b) (vi) requires the Authority to be represented in TANROADS Board established by section 9 (1). It is that board that advises the Minister on the performance of TANROADS. The Authority through this board has a grip of the road construction industry and can use regulatory powers to influence the policies on road construction in the country which in turn play a vital role in the development of the country.

Transport Licensing Act, [Cap. 317] regulates commercial transportation of goods and passengers. This Act was amended and its mandates were transferred to the SUMATRA Act. Basically SUMATRA drives its mandate from the Transport Licensing Act. What was peculiar in this Act, was that Section 28 imposed an obligation that before a license for any motor vehicle was provided, the said motor vehicle had to have a roadworthy certificate created by Section 39 (1) of the Road Traffic Act, Act N0. 30 of 1973.

While some legislation were amended to accommodate the regulatory legal framework the Local Government (Urban Authorities) Act, Act N0. 8 of 1982, was

not amended to accommodate SUMATRA's mandate on the transport sub sector. Section 55 (1) (n) provides that Municipal Councils have mandate to regulate the use and conduct of public vehicles plying for hire and their fares, to regulate the routes and parking places to be used by such vehicles, to appropriate particular routes, roads, streets and parking places to specified classes of traffic, and when necessary to provide for the identification of all licensed vehicles. It is important to note here that section 55 (1) (n) of the Local Government Act contradicts section 6 (1) (b) (i), (ii) & (iv) of the SUMATRA Act.

As result of this apparent contradiction, some of Municipal Councils powers were transferred to SUMATRA without taking the trouble of amending the two Acts. Worse enough, the functions that remained within the mandate of the Municipal Councils such as regulation of the route is not done. This vacuum has been filled by bus commuters who definitely choose routes which are lucrative to them.

It was under such state of affairs that Mwandosya (2005) made a well calculated remark during the occasion of the National Transport Week 3rd – 7th October 2005, in his opening remarks that it was necessary to review relevant legislations so as to create conducive atmosphere for fast sector growth. He went further by agreeing that the amendments made in the legal framework did not cross check the existing competing legislation on the transport sector. Mwandosya's remarks were in reference to the National Transport Policy (2003) which stated that in order to implement it, it was imperative to review the existing legislations and where necessary develop new rules and regulations in favour of investment, safety and

security. Consumer International in its Newsletter entitled “A guide to Developing Consumer Protection Law, 1st edition, April 2011, on page 17 states that a notable shortcoming of the best practices approach to regulation is that it creates regulatory solutions without first conducting the fundamental analysis of the existing legal frameworks, indeed relating to the needs of consumers in a given context.

The regulatory framework established was therefore established in disregard of the existing legal framework as well as the economic, social and political context which existed (*Ibid.*). This resulted in having regulatory authorities which cannot discharge their objectives for lack of political will and more often than not for lack of legislative clarity. The SUMATRA is a victim of the above stated situation. SUMATRA discharges its duties amid tight institutional and legal framework, where there are many laws contradicting each other.

From that mandate, the police are the custodian of road transport safety issues ranging from designing and implementation of safety strategies. Needless to state therefore, SUMATRA as regulator does have safety mandate on road transport. As per the provisions of Section 39 (1) of vehicle inspection to establish the vehicle's road worthiness is conducted by the police. However, vehicle road worthiness report is a condition prior to any service provider being licensed by SUMATRA. SUMATRA's role here is limited to licensing public motor vehicles only. This means therefore that SUMATRA as a regulator licenses a motor vehicle which it has not inspected and consequently has no option but to license it or not because the requirement a prior licensing has been met. This works well where the system is well organized and bound by the same code of conduct. But this is not the case here.

It was rumored that most of bus commuters were owned and operated by the individuals employed by the Police Force. On the 24th day of March 2011, Mwananchi Newspaper reported on page number one “Polisi Vinara wa daladala mbovu”. “Police Officers own defective bus Commuters”. That statement was reported to be issued by the Director General – SUMATRA, Mr. Israel Sekirasa. He told the president that police are the source of violation of traffic laws and regulation because they own and operate daladala, the majority being out of use. Sekirasa criticised the police as stated in Kiswahili:

“Polisi ni ndiyo wasimamisi wa sheria na kanuni za usalama barabarani, lakini akasema licha ya kubeba jukumu hilo, wanamiliki magari ya usafirishaji, hivyo jukumu hilo la kuzisimamia kuwawia vigumu...kuna changamoto nyingi zinzoikabili SUMATRA kubwa ikiwa ni usimamizi wa sheria kuwa na ubinafsi katika utendaji wao wa kazi (conflict of interests)”.

Translation;

“Traffic police officers are the enforcer of road traffic laws and regulations, but he said, instead of discharging that obligation, they own commuter buses, hence making enforcement of the law difficult”.

In connection with what Sekirasa stated above, in 2005 SUMATRA CCC (Council, 2005) released a report entitled Daladala Fares in Dar es Salaam. The report noted that there were problems in the management of the commuter buses in Tanzania. The Council noted that this was due to the fact that the buses were owned by private individuals unlike in most cities and towns elsewhere where public transport is provided by established companies.

SUMATRA Act, Section 10 requires the Authority to adopt a code of conduct and Section 11 (4) of the same Act addresses the question of conflict of interests among regulatory authority employees. The two provisions are not found in the Road Traffic Act. This gives leeway to the traffic police to own and operate commuter buses and at the same time enforce traffic laws and regulations thus violating cardinal principles of natural justice, the rule against bias. Lack of code of conduct in law enforcement is a greatest mischief in any country as it leads to a judge becoming judge of his own case, using a Latin Maxim "*Nemo judex in causa sua*".

Another legal framework paradox existed in area of setting standards of regulated goods and services. On one hand Standards Act, Act NO. 2 of 2009, under Section 4 (1) (g) vested Tanzania Bureau of Standards (TBS) mandates to prepare, frame, modify or amend National Standards. Section 3 (2) stated clearly that the Bureau was the custodian and an overseer of observance of the standards in Tanzania.

On the other hand SUMATRA under Section 6 (1) (b) (iii) of the SUMATRA Act was vested with more less the same power to establish standards for the regulated goods and services. Both laws did not establish limits to each other. Experience shows that SUMATRA has no control on the standards of the vehicles that have to be imported in the country. This is another impediment on regulatory authority to set standards in Transport Sector. Transport Canada Agency for example sets standards of the vehicles that are licensed in Canada.

The Ferries Act (Cap. 173) is another law providing for water transport. The Act provided for the public ferries be owned and operated by the government. This Act,

under Section 3 in particular vests regulation of public ferries under the Minister responsible for Work. Section 11 of the same Act empowers the Minister to make regulation on how to maintain the safety and efficiency of the services to be provided by public ferries by the holders of licences under this Act.

The Minister is further empowered to prescribe fees which may be charged for conveyance of passengers or cargo of any description over any public ferry. Basically under the Ferries Act, the Minister does license, sets tariffs and sets standards for the public ferries.

3.7 The Legal Base for Regulatory Authorities in Tanzania: Policy and Law

As stated earlier on it is unfortunate that the establishment of the regulatory authorities in Tanzania was made without having an appropriate policy in place. The absence of the policy has had great repercussions in the implementation of the law. Any law that is established to sort out a particular problem cannot be sustained as it lacks foundation. Lack of policy document which set out direction and road map in addressing the problem the law was enacted to enforce puts enforcement of that law at cross roads.

3.8 Consumer Protection Legal Framework

Tanzania has no clear Consumer Protection legal framework in place. There are many separate pieces of legislation scattered in different laws providing for some consumer consumer rights. The absurdity of these scattered pieces of legislations stems from the fact that they do not provide for a distinctive Consumer redress system. The experience drawn from South Africa reveals a need to have a

comprehensive consumer protection legal mechanism. According to an Audit of Consumer Protection Measures in South Africa, it was found out that consumer protection provisions were spread across numerous pieces of legislation in South Africa...It was therefore decided that there was no rationale for promulgating laws and establishing new series of committees to engineer consumer protection if the majority of the citizens of the country were not effectively taught their rights and how to safeguard those rights.

Consumer protection is founded on democratic values, social justice and fundamental human rights (Audit of Consumer Protection Measures in South Africa, page 2). In any Country with a balanced legal system, the system must reflect a three tier legal framework that is Competition Authority, Regulatory Authorities and Consumer Authorities. The three are interdependent of each other. Porter (*ibid*) argued that point further saying that any country that has no strong consumer protection legal framework can hardly improve its technology and innovations because consumers consistently demand for improved products hence driving technological improvement and innovations ahead of the agenda. Nwaizugbo (2008) argued that when consumers do not stand up against manipulations of the market allow trade malpractices and defective products to take control of the market which in turn would not encourage manufacturers to face global challenges of producing world class standard products. Consumer International in its Publication on Consumer and Competition 2007 supported Porters' reasoning by stating that competition to attract customers can create economic efficiency, innovation and better quality products at lower prices. Consumer International argued further that

where this becomes the case, consumers – and the economy – win. However Mr. Gilliard Ngewe, the Chairman of SUMATRA CCC argued that in Tanzania local consumers have developed a tendency of purchasing imported products after learning that local products were of inferior quality (The Gurdian, March 8th 2011).

Admittedly, the present consumer protection model was a mockery of consumer rights in Tanzania. There is need for a comprehensive consumer protection legal framework which would provide for consumer rights and a clear redress system. Currently there are pieces of legislation scattered in different laws. On the other hand the Fair Competition Commission Act is a composition of two acts, Consumer Protection Act and Merchandise Act. It is worth acknowledging that over 60 percent of the Act is all about Consumer Rights. However, the Fair Competition Commission's role is to promote competition in the market. Essentially the Fair Competition Commission is vested with quasi-judicial powers to adjudicate on any unfair practices and other related practices. Acting in that capacity can in no way be deemed as a proper consumer protection body as that contradicts cardinal principles of natural justices, the rule against bias in particular.

Further to the foregoing, combining competition law and consumer protection law under one authority, the Fair Competition Commission contradicts the three tier principle which requires having competition authority, regulatory authorities and consumer authority as separate entities. The Fair Competition Commission law is a replica of Australian Competition and Consumer Commission. This model applies well in countries whose markets have developed to the extent that they abide to

voluntary compliance rather than in fluid and young markets where it is necessary to exert some form of government control.

From the above reasoning, there is no doubt that the Act does not set up a proper consumer redress system. The Fair Competition Act for example does not address the question of redress to consumers whose rights have been violated by service providers or by manufacturers. Part 6 & 7 of the Act directs that any aggrieved party should seek remedy in court of law with competent jurisdiction. In practice, legal system in Tanzania is so cumbersome, that many people shy away from litigation citing reasons that it is time consuming and expensive.

Consumers prefer a system which is prompt, quick and short. Mr. Oscar Kikoyo speaking to senior editors of different media institutions at Millennium Hotel in Bagamoyo, argued that the dispute settlement machinery set out by the law is unnecessarily long and confusing. He further argued that the process to access justice is cumbersome as an ordinary person living up country has to travel all the way to Dar es Salaam to seek redress (The Guardian, 25 April, 2007).

Mr. Juma Fimbo, however, speaking at a Press Conference organized by the Tanzania Consumer Forum, (Daily News March 8th 2010) stated that research shows that in Europe, in every 10 consumers who are denied their rights, only one has the courage to complain, but in Tanzania, in every 10 consumer who are denied their rights none has the courage to complain. Fimbo attributed the Tanzanians docility to seek their right to previous social economic history whereby the culture of demanding one's right in command economy did not exist and secondly the socialist

economic legacy and bureaucracy which made claims take too long in terms of time to address.

The Audit of Consumer Protection Measures in South Africa, carried that point of docility further by adding that even where consumers are aware of their denied right and complained against the “wrongs committed against them and accordingly sought redress, they were often faced with a string of overlapping, fragmented and confused system”. Similarly, Acting Director, for Fair Competition Commission, Mr. Gregory Ndanu, held that lack of proper policies to protect consumers was a major factor contributing to the mistreatment of clients in financial institutions (Guardian March 8 2010).

The regulatory legal framework established consumer protection model within a regulated sector. Just as there are three regulatory authorities, each established by a separate Act of Parliament there are three five Consumer Consultative Councils. Each Act establishing a regulatory authority also established a Consumer Consultative Council along with Regulatory Authority. That being the case, there are five Consumer Consultative Councils namely SUMATRA Consumer Consultative Council, EWURA Consumer Consultative Council, TCRA Consumer Consultative Council, TCAA Consumer Consultative Council and National Consumer Advocacy Council.

The above named Consumer Councils though established by different acts of parliament, their objectives are replica of each other. They stand for the following objectives:

- (a) To represent the interest of consumers by making submissions to, providing views and information to, and consulting with the Commission, regulatory authorities and government ministries;
- (b) To receive and disseminate information and views on matters of interest to consumers,
- (c) To establish regional and sector committees and consult with them,
- (d) To consult with industry government and other consumer groups on matters of interest to consumers,

These Consumer Consultative Councils though many serve one and the same Consumer. The consumer, who boards a daladala from Mbagala, on his way to Posta – City Centre, uses a Mobile Phone to communicate with his immediate supervisor of his delay because of adulterated fuel. One transaction revolves around three Councils.

The set up of these Consumer Councils leaves much to be desired to wit their modus operandi. Each Consumer Council has distinct channels of communication and different approach to address consumer issues of its regulated goods and services. It is not clear whether if having five consumer councils in place was a well thought out consumer protection idea. What is certain is that having them in place was not a mistake but rather by design. The apparent legal framework gives little emphasis on the role of consumers in the market economy. Essentially, consumers have been neglected while the emphasis was given to service providers. The reason for this marriage between service providers and the government is obvious, the service providers and the government have an agent master relationship in taxes collection.

The above contention is echoed in the establishment of the Consumer Council and the financing system of the Councils. It is important to note here that the finances available to Consumer Councils are inadequate yet the Council is financed through the Regulator. Such legal arrangement is equivalent to putting a rope in neck of the Council and letting it fall apart leaving Consumers stranded.

Importantly, it is estimated that 11% percent of Tanzanians have access to electricity. That means those have access to TV, Radio, Internet etc through out, the rest can have access to information through newspapers, but yet circulation these newspapers is limited due to poor infrastructure. The only means to reach our consumers is through awareness campaigns and door-to-door consumer education. This needs adequate funding.

SUMATRA Consumer Consultative Council for example was established under Part V of Act NO. 9 of 2001. This Part V of the SUMATRA Act, contains only 3 Sections, namely Sections 29, Section 30, and Section 31. Section 29 of the Act established the Council, modality of nominating Council Members and qualification of Council Members. Section 30 (1) of the Act provided for the functions of the Council while Section 30 (2 -6) provide for the modus operandi of the Council. Section 31 of the Act provided for the funding of the Council. The SUMATRA Act is composed of 1X parts, out of which only one part, part V provides for the Consumer Council. Further to the foregoing, the SUMATRA Act contains 53 sections, only 3 sections provide for the Council's functions. The Council's provisions cover only 5.6% of the SUMATRA Act. This is an indication that

Consumers have not been given due importance. Another area which leaves a lot to be desired is the funding of the Council. Section 31 (1) (a – c) and (2) provide for the funding system of the Council. For easy reference, the wording of the entire Section 31 (1) and (2) reads as follows:

Section 31 (1) The funds and resources of the Council shall consist of:

- (a) such sums as may be appropriated by Parliament for the purposes of the Council during the first three years of the existence of the Council.
- (b) such sums as may be appropriated from the funds of the Authority for the purposes of the Council.
- (c) grants, donations, bequests or other contributions.

31 (2) The Council shall prescribe procedure for enabling members of the business community and organizations representative of the private sector to contribute to and budget for all meetings and transactions of the Council. The Council's funding system is a real snag to consumer protection in the country. The government funded the Council at the establishment stage, during the first three years, and after that period the government withdrew. The Regulator going by the provisions of Section 31 (1) (b) is at liberty to fund the Council because the word used is "may" which does not establish legal obligation. Neither does it establish the amount the Regulator has to provide to the Council. Grants, donation, bequests and contributions are not certain. What remains at the disposal of the Council is prescribing procedure for enabling members of the business community and organization representatives of the private sector to contribute to the budget for all meetings and transactions of the Council.

It is again absurd that the Act does not define business community as well as the private sector. The omission to define the term business community poses another problem to the Council's mission. The Council is entrusted with many responsibilities mainly to represent interests of the entire body of consumers in all matters which affect their rights and interests, educate the Consumers on their rights and obligations, dissemination of information which affects consumers' rights and interests and establishment of regional consumer committees. Honesty impels one to state that without a well thought, reliable and adequate funding of the Council, for it to achieve its objectives remains merely academic speculations.

The law vests the Regulator in this case SUMATRA, powers to collect levy from service providers through licensing process and other services provided by the Regulator to service providers. It is a matter of common sense that the service providers do not pay the levy imposed on them by SUMATRA, but rather passes them on to the consumers. Service providers remain mere agents of collecting the levy from consumers on behalf of SUMATRA. It is true to say that SUMATRA is financed by the Consumers and therefore it would be difficult for the Council to request the same consumer to raise funds to run the Council. Doing so would be like asking the consumers to contribute twice for the same cause.

Another apparent danger from this arrangement which threatens the interests of Consumers is the possible collusion between the regulator and service providers against Consumers. The Council which represents the interests of consumers is likely to be plunged into that collusion. For want of more funds, the Regulator could compromise with service providers over the question of tariff. Service providers pay

to the regulator 1 percent of their annual revenue for the service rendered by the regulator. It suffices to say therefore that the higher the tariff the higher revenue payable to the regulator. In such circumstances, the Council would not likely be opposed to the scheme because funding of the Council comes from the Regulator. Worse still, the amount paid to the Council is determined by the Regulator depending on the circumstances and goodwill of the Director General.

3.9 Executives Perception of Regulatory Authorities

As stated earlier, regulatory authorities are a new concept in Tanzanian social economic patterns. For a long time, activities under different ministries were being carried out by government agencies which worked under specific directions of the Permanent Secretary of a particular Ministry. The advent of regulatory authorities which legally are independent in their decision-making process posed administrative confusion.

According to Mwandosya (2013) ministries under which these regulatory authorities report tended to regard regulatory authorities like agencies of times past and hence issued orders which sometimes tended to erode the essence of the regulatory authorities themselves. In their regulatory functions, the Ministries felt that the decisions made by the Regulatory Authorities affected the undertakings of the specific Ministries and hence threatened the powers of the Ministries concerned.

EWURA would be cited as a good example to indicate executives' struggle to control decisions by the regulatory authorities. According to Kapama *et al.* (2013) during the enactment process of the EWURA Act, it was recommended by the World

Bank that EWURA be answerable to a government ministry with no direct relationship to any of the sectors it was to regulate. That proposal was strongly challenged by the ministry of water and ministry of energy respectively. Finally it was compromised, and therefore EWURA was set to be answerable to ministry of water. As stated earlier, EWURA regulates energy and water utilities. More than 75 per cent of its regulatory duties fall under energy sector, that is, electricity, fuel and gases. EWURA reports to the ministry of water and irrigation as its parent ministry.

By the virtue of the fact that EWURA reports to the ministry of water and irrigation, the Ministry which is responsible for appointments of the Director General and Members of the Board of Directors, the Ministry of Energy and Minerals felt the Regulator was frustrating its efforts in the sector especially where the Regulator had to make decisions which were not in its favour. The Ministry of Energy and Minerals therefore threatened to form its regulatory authority which would report directly to the Minister responsible for Energy and Minerals which would therefore adhere to executive orders. Mwana HALISI, a weekly newspaper, published in Tanzania in Swahili language, on 20 -26, July 2011 at page 6, released a copy of the letter expressing those grudges.

3.10 SUMATRA's Social Economic Impact on the Regulated Market

The Surface and Marine Transport Regulatory Authority (SUMATRA) is established by the Act of Parliament, Act N0. 9 of 2001. Although the Act establishing it was enacted in 2001, SUMATRA came into existence in 2005. It was established to regulate transport sub-sectors namely road transport, marine transport and railway transport. Its duties were provided for under section 5 of the Act as follows:

- (i) promoting effective competition and economic efficiency;
- (ii) protecting the interests of consumers;
- (iii) protecting the financial viability of efficient suppliers;
- (iv) promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers;
- (v) enhancing public knowledge, awareness and understanding of the regulated sectors including as to:
 - (a) the rights and obligations of consumers and regulated suppliers;
 - (b) the ways in which complaints and disputes may be initiated and resolved
 - (c) the duties, functions and activities of the Authority
 - (d) taking into account the need to protect and preserve the environment.

The key functions of the Authority are provided for under section 6 (1) (a), (b) and (c) of the Act as follows:

- (i) to perform the functions conferred on the Authority by the sector legislation
- (ii) subject to sector legislation:
 - (a) to issue, renew and cancel licences;
 - (b) to establish standards for regulated goods and services;
 - (c) to establish standards for the terms and conditions of supply of the regulated goods and services
 - (d) to regulate rates and charges
 - (e) to make rules
- (i) to monitor the performance of the regulated sectors including in relation to:-

- (a) levels of investment;
- (b) availability, quality and standard of service
- (c) the cost of services and
- (d) the efficiency of production and distribution of services

SUMATRA regulates the most critical sector which touches the life of every citizen. Transport is crucial to everyone, poor or rich and this puts SUMATRA ON focus of everyone in the country. Its effectiveness plays a great role to social economic life of the people and the economy of the country at large.

SUMATRA regulates Surface and Marine Transport; that means, it regulates road transport, railway transport and marine transport. Looking at the sectors regulated by SUMATRA, one easily notices that railways and ports are owned and are run by the Government through the Ministry of Transport. It is the same ministry SUMATRA reports to. According to the Act establishing SUMATRA (as amended), section 13 (1) empowers the Minister responsible for Transportation to appoint the Director General of SUMATRA. Before the amendments referred to herein, the Minister had no such powers. Appointment was done by the Board of Directors in consultation with the Minister responsible for transportation. Under the same vein, section 7 (2) empowers the Minister responsible for transportation to appoint members of the Board of Directors except the Chairman who is appointed by the president. As stated earlier on, the amendment made on SUMATRA act is an indication of the political encroachment on regulatory authorities' independence and their sustainability. Mwandosya (2013) in his words wrote:

“Uzoefu uliopatikana kutokana na bodi ya SUMATRA haukutarajiwa wakati Bunge likipitisha sheria zilizoanzisha mamlaka za udhibiti. Kwa mfano, aliyekuwa mwenyekiti wa bodi ya SUMATRA, Ndugu Peter Bakilana alifariki tarehe 10 Aprili 2010 akiwa katika muhula wake wa pili na wa mwisho (Mwenyezi Mungu aiweke roho ya Marehemu mahali pema peponi). Ilipofika Januari 2013, nafasi ya Mwenyekiti wa SUMATRA bado ilikuwa wazi. Mkurugenzi Mkuu Mwanzilishi wa SUMATRA, Ndugu Israel Sekirasa alimaliza muda wake wa uongozi wa Mamlaka hiyo tarehe 31 Machi, 2011. Ilipofika Januari 2013, nafasi ya Mkurugenzi Mkuu wa Mamlaka hiyo ilikuwa bado iko wazi. Kama hayo hayatoshi, pamoja na mihula ya wajumbe wa bodi kupishana ili pasitokee wakati ambapo Mamlaka haina bodi, nafasi zote za wajumbe wa bodi ya SUMATRA zilikuwa wazi ilipofika tarehe 11 Januari 2012. Hata ilipofika Desemba Desemba 2012, SUMATRA ilikuwa bado haina Mwenyekiti, haina bodi, wala Mkurugenzi Mkuu! Uhai wa bodi ya SUMATRA ni mfano wa jinsi ambavyo, pamoja na nia nzuri ya Bunge kupitisha sheria, watendaji katika wizara za Serikali wanaweza kudhoofisha dhana ya udhibiti bila kuwajibika.”

English translation

“The experience obtained from the tenure of the board of Directors of SUMATRA was not expected when the parliament was enacting the laws that established regulatory authorities. For example, the former chairman of the board of Directors of SUMATRA, Mr. Peter Bakilana

who passed away on the 10th April 2010 while on his second and last term in the board (his soul may rest in peace). Till January 2013, the posit of the Chairman of the Board of Directors of SUMATRA was vacant. The first Director General of SUMATRA, Mr. Israel Sekirasa finished his tenure of leadership of the Authority on the 31st Machi 2011. Till January 2013, the posit of the Director General was vacant. As if that was not enough, apart from the fact that tenure of Board of Directors is different with the view that there should be no time when the authority has no Board of Directors, all posits of Board of Directors of SUMATRA were vacant as of 11th January 2012. In December 2012, SUMATRA had no Chairman of the Board of Directors, had no Board of Directors, and had no Director General! The tenure of Board of Directors of SUMATRA is an example of how executives in different ministries frustrate regulatory process in the country without being accountable”.

Mwandosya’s observation has remained the same. As of June 2014, SUMATRA had no Chairman of the Board of Directors, has no Board of Directors. The Director General was appointed in June 2014. It is worth noting that SUMATRA’s regulatory duty and functions have enormous impact on social economic life of the people when regulatory principles are adhered to. Her functions aim at creating conducive atmosphere for both service providers and consumers of the regulated goods and services. The primary duty entrusted to SUMATRA just as is the case with other regulatory authorities in Tanzania is to promote effective competition and economic efficiency which in turn create buyers market.

The duties assigned to SUMATRA have a direct impact on the market. The legal framework within which SUMATRA is to discharge the stated duties has a lot of undesirable predicaments. Looking at the current legal framework one can easily note a lot of flaws. SUMATRA operates under the Ministry of Transport as its parent ministry. By the virtue of the fact that it operates under the Ministry of Transport, appointments of the Director General and Members of the Board of Directors are also appointed by the Minister responsible for Transport.

At the same time the Board of Directors has to regulate the transport industry under the appointing Minister. Such legal arrangement creates room for speculations on matters of ethics and professional discharge of regulatory duties. Nxele and Arun (2005) noted that “critics point to the Minister in the appointment of Directors and Director General as a potential source of compromise to the independence of the regulator”. The evidence is not far fetched. Railway transport which is under the Ministry of Transport was managed by Tanzania Railways Limited a joint venture between RITES of India owning 51 percent of shares and the Government of the United Republic of Tanzania owning 49 percent of shares as per Concession Agreement, 2007. Looking at railway operation, passenger transport services in particular, one wonders if they are regulated. The report by the Council on the “State of Tanzania Railways Transport 2008” pointed out that the railway stations were in poor state, there were unnecessary delays and rescheduling of the journeys, overcrowding of passengers in third class coaches, lack of lights in the cabins, lack of water in the cabins, lack of fumigation, poor seating facilities in the cabin and lack of communication systems at in some stations.

The report was submitted in 2008; to-date the train is operating under the same conditions and even worse. In a subsequent report by the Council entitled “Quality of TRL Services; the Council’s opinion and recommendations”, were among others:

“...the role of the regulator is to protect the interests of the consumers and service providers. The philosophy behind this noble duty is to remind the Regulator to stand for availability and accessibility of the regulated services. The Council notes that this has been overlooked by the regulator as far as TRL is concerned....the Regulator has been tough on road transport, as it has established transport regulations which have been signed by the Minister. Although there are implementation problems, but the rights of passengers have been articulated. In railways transport, however, no rights of passengers have been spelt out by the Regulator as a guiding principle to both consumers and service providers”.

Another similar report by SUMATRA itself entitled Joint Inspection Report by Railway Safety Inspectors Kigoma and Mwanza, Safety Audit Report for Quarter ending 30th June 2009, page 5 of that report revealed that most of the locomotives, motor trolleys, wagons and coaches in operation were susceptible to technical failures and accidents due to deferred maintenance.

Furthermore on page 9 of the report, it was stated that there was telecoms and signaling equipment defects at Mpanda – Kaliua line which could result in train collision due to inability to coordinate train movements. Due to inability of the Regulator to take a regulatory action as it deemed fit, activists namely Chama cha

Kutetea Abiria (CHAKUA) took the matter to a Court of law vide Civil Case N0. 152 of 2009, CHAKUA Vs TRL where CHAKUA requested the Court to compel TRL to pay compensation to passengers for unprecedented delays and rescheduling of its journeys at the eleventh hour. On the other hand, SUMATRA has been effective on road transport and its impact is felt. Incidentally road transport is run by private individuals, a few companies and one public company namely UDA hence the regulator regulates it free of executive pressure.

Table 3.1: Complaints Received by the Council 2009

Type of Complaint	Number of Complaints	Percentage
Consumers being overcharged the approved fare	150	56.39
Consumer Education	14	5.26
Denied Bus Ticket	12	4.51
Routes short circuiting	12	4.51
Loss of lagguges	12	4.51
Delays in Insurances Payment	11	4.14
Passenger humiliation	11	4.14
Complement to Council's works	8	3.01
Overspeeding	7	2.63
Abusive language by bus crew	6	2.26
Rescheduling of trips	5	1.88
Bus breakdown	4	1.50
Failure to follow approved schedules	3	1.13
Corruption practices	3	1.13
Poor vehicle inspection	3	1.13
Unqualified drivers	3	1.13
Fuel adulteration	2	0.75
TOTAL	266	100.00

Source: SUMATRA Consumer Consultative Council's Complaints Data Base (2009)

On this area SUMATRA has developed a number of regulations namely (Transport Licensing (Road Passenger Vehicles) Regulations, (GN No. 218 of 2007) and the SUMATRA (Technical Safety and Quality of Service Standards) (Passenger Vehicles) Rules, 2008 (GN. No. 14 of 2008). These regulations intend to protect the interests of both, service providers and the Consumers respectively. Although regulations have been developed, their enforcement has been difficult due to institutional set up. Records of the Council indicate that there is no compliance of SUMATRA's regulations and orders. In 2009 the Council recorded 266 complaints as indicated in Table 3.1 and Figure 3.1 respectively.

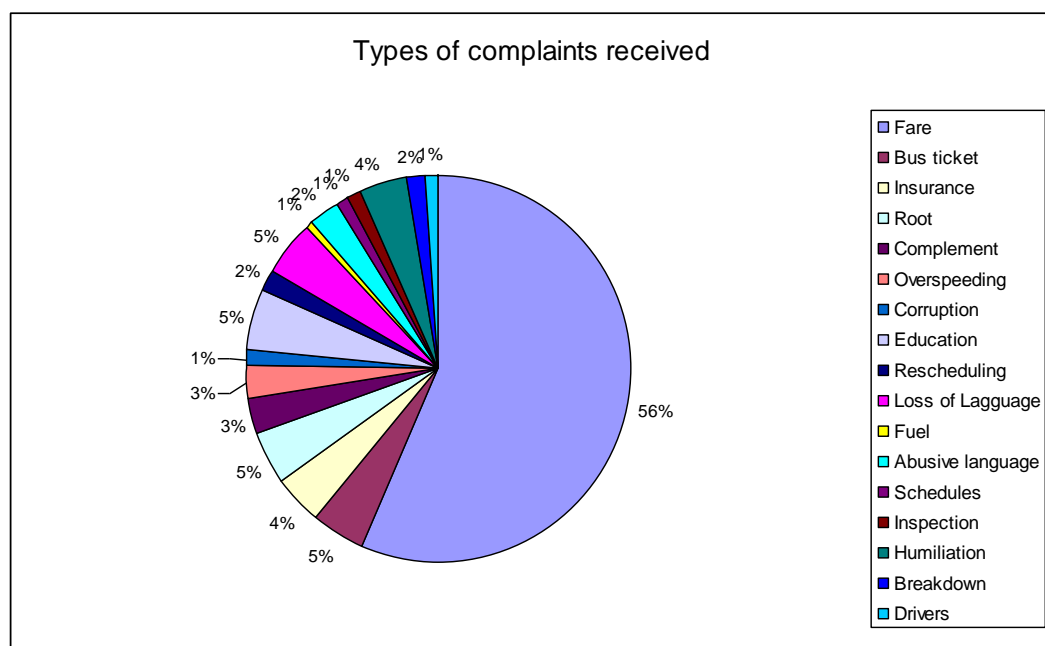


Figure 3.1: A Pie Chart Representing Consumer Complaints by Percentage

Source: SUMATRA Consumer Consultative Council's Complaints Data Base (2009)

3.11 Conceptual Framework

The main purpose of the study was to analyze the impact of the legal framework on Regulatory Authorities' performance in Tanzania. Regulatory authorities' performance has an impact on social economic life of people and the economy at

large. Kapama *et al.* (2013) noted that regulatory impact is a consequence of regulatory governance and regulatory substance. The study established the correlation between the impact of legal framework and the performance of Regulatory Authorities in Tanzania, the Surface and Marine Transport Regulatory Authority [SUMATRA] in particular. To establish this, Positive and Normative Regulation Theories were used.

The Public Utility Research Center (University of Florida) developed two regulation theories namely Positive and Normative Regulation Theories. Normative theories require regulators to encourage competition where feasible. The underlying philosophy is to minimize the costs of information asymmetries by obtaining information and providing operators with incentives to improve their performance. The regulator can achieve this by providing price structures that improve economic efficiency, and through establishing regulatory processes that provide for regulation under the law which provides adequate regulatory independence, transparency, predictability, legitimacy, and credibility for the regulatory system. (Annotated Reading List for a body of knowledge on infrastructure Regulation, 2008).

According to Positive theories, regulation occurs because the government is interested in overcoming information asymmetries with the operator and in aligning the operator's interest with the government's interest. Both, operators and Consumers need regulator to address their desires which are quite different in nature. Customers desire protection from market power when competition is non-existent or ineffective. Similarly operators' desire protection from rivals, or operators' desire protection from government opportunism (*Ibid*).

The 2005 principles issued by the Organisation for Economic Co-operation and Development (OECD) stipulate the need to assess regulatory instruments and institutions on the basis of performance basing on components of quality regulatory authorities which are independence of regulatory authorities, transparency and access to information, clarity of decision, consistency and predictability of decisions.

The British Regulation Task Force's (BRTF) Five Principles of Good Regulation state that regulation should be proportionate, accountable, consistent, transparent and targeted. BRTF also recommends that regulators should prepare regulatory impact assessments for all major policies and initiatives and consult on all major issues. Holding open meetings helps to involve stakeholders in discussing all aggregate issues playing role in regulatory framework and regulatory processes which is an indication of regulatory transparency.

This study, therefore tries to establish whether the performance of Regulatory Authorities is adversely affected by the legal framework within which they operate in order to regulate the market. The study also established variables, namely dependent variables, independent variables, moderating variables and intervening variables to assist in drawing a healthy conclusion of the results. Variables are defined as any aspect of a theory that varies or changes as part of the interaction within the theory (<http://allpsych.com/researchmethods/definingvariables.html>, 2010). In a nutshell, variables are anything which influences or affects the results of a study.

3.11.1 Dependent Variables

Regulators' performance is the main focus of this research and therefore is treated as a dependent variable. This variable is highly affected by other related working

agents such as the legal framework, the government and other key players who guide its operation. It needs no philosophical justification to draw an inference that the regulators' performance is adversely affected by the legal framework which provides for regulatory independence, transparency, access to information, and predictability on one hand and the Government, Service providers, Consumers and other key players in the specific sub-sector on the other hand.

3.11.2 Independent Variables

In circumstances where legal framework is susceptible and fragile to socio political set up, regulators' performance cannot be guaranteed. This study analyzed the tenets of regulatory governance which includes regulatory independence, transparency, and predictability, clarity of decision, information accessibility and credibility. Therefore in this study, legal framework is an independent variable and it is categorized in four sub variables.

3.11.2.1 Independence

There is a relationship between regulators' performance and the independence the regulator enjoys in her operation and therefore regulatory independence is a sub – variable of the independent variable of the legal framework.

3.11.2.2 Transparency

This is another category of the independent variable which influences regulatory authorities' performance. Transparency has a direct repercussion on the performance of the regulatory authority. Transparency wins a regulatory authority credibility and hence legitimacy from the regulated market.

3.11.2.3 Predictability

Predictability is important to the regulatory authority as it provides to the regulated market a focus on the future changes needed timely and effectively. Regulation process must allow predictability and certainty to all players in the regulated market in order to win their confidence.

3.11.2.4 Clarity of Decision

Clarity of the decision is a corner stone of any regulator. Good regulatory decisions attract investment in the regulated market and vice versa.

3.11.2.5 Institutional Arrangement

Most regulatory authorities are set up in an institutional arrangement which limit their operations. Some activities which require regulatory attention fall under the purview of other institutions which have no regulatory powers. As few examples here include social regulation on road transport which falls under the Ministry of Home Affairs, Police Force Department, Social as well as Economic Regulation of Government Ferries fall under the Minister of Works. Such arrangement may be an advantage to regulatory authorities if there is proper coordination among the said institutions that play a key role in the said sector.

3.11.3 Extraneous Variables

These are defined as variables other than the independent and dependent variable that bear effect on the dependent variables. Extraneous variables are many and play a great role on how goods and services are managed, supplied and consumed. They therefore range from customer care during provision of the services, price of the

services, compliance to rules and regulations, safety of the regulated goods and services and service delivery mechanisms. Extraneous variables can be controlled by regulations with close follow up to ensure compliance so as to bring efficiency in the regulated market.

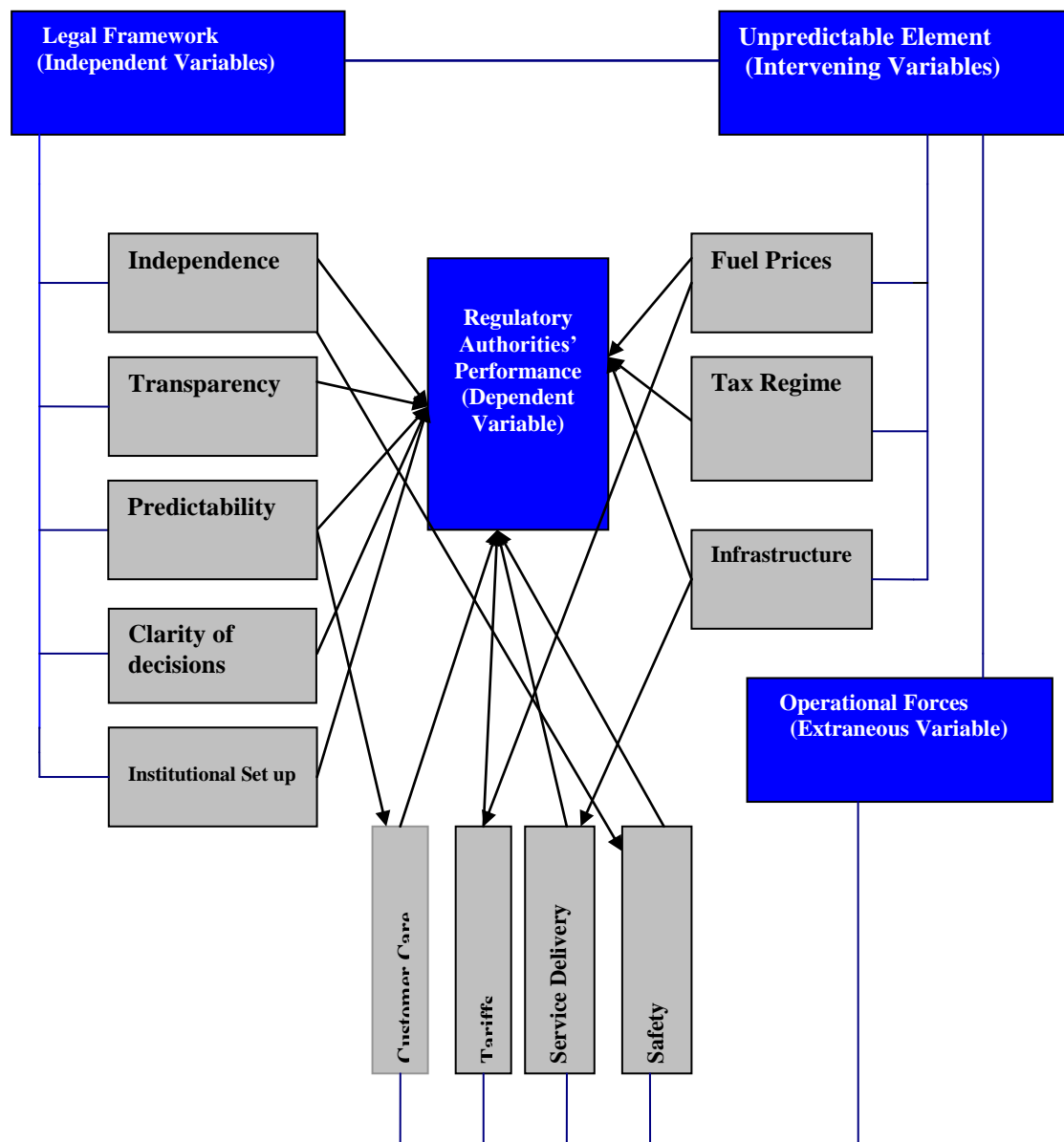


Figure 3.2: Schematic Diagram of the Conceptual Framework adopted from Public Utility Research Center (University of Florida)

Source: Field Data (2012)

3.11.4 Intervening Variables

These variables are sometimes difficult to predict and therefore difficult to control. These are fuel prices, government taxes and state of infrastructures which are far beyond regulatory authorities' control but affect their performance.

3.12 Summary and Conclusion

The institutional and legal framework within which regulatory authorities worked in needed to be harmonized to ensure smooth operation of the regulated goods and services. Having many institutions and laws managing one sector just as it was the case in the transport sub sector leads to operational conflict which cost the economy heavily. Harmonization of the legal framework and institutional set up is of paramount importance for the regulatory work and hence growth of the transport sector. The vivid example is the road transport where institutional set up and legal framework are not harmonized with each institution playing its own role in disregard of other institutions. The result needs no academic research as it is clearly elucidated by poor traffic management which leads to traffic jams and port congestion which costs the economy heavily. Further to the foregoing, it has created un-modal transport instead of building integrated transport systems which increases efficiency and growth of the economy. Lack of harmonization of Tanzania Ports Authority Act, Railway Act and Roads Act, SUMATRA Act, TCAA Act and EWURA Act and Fair Competition Act is a serious mistake which continue to affect the economy efficiency of the country. This current legal framework has an adverse impact on SUMATRA and other regulatory authorities that are supposed to spearhead market economy in Tanzania.

CHAPTER FOUR

4.0 CONCEPTUAL AND METHODOLOGICAL ISSUES

4.1 An Overview of Conceptual and Methodological Issues

This chapter deploys research design strategies, population and sampling procedures. It elaborates the geographical area of the research and the reasons for its choice. This chapter further elaborates the variables and measurement procedures, data collection and analysis of the collected data.

4.2 Research Methodology

Before one ventures into research methodology it is important to understand the concept itself. In common language, research refers to a search for knowledge. Research is further defined as a scientific and systematic search for pertinent information on a specific topic. (Kothari, 2004). Research Methodology therefore is a science of studying how research is done scientifically (Ibid). It provides for a set of steps and methods that guide the researcher in his/her research problem in order to develop logical analysis and finally logical conclusion on the researched topic.

It is important to note that there are many research methodologies one can use in order to develop logical analysis and a logical conclusion respectively. This study used a case study because it is more flexible, cost effective and gives room to the researcher to use one or more research methods depending on the circumstances. In order to develop a logical analysis and a logical conclusion, the researcher used in depth interviews, unstructured questionnaires, documentary review and various reports to gather necessary information required for the research.

4.3 Description of the Study Area

This research was conducted in seven regions, namely, Dar es Salaam, Mwanza, Arusha, Tanga, Kigoma, Kagera and Mtwara. These regions were chosen purposely taking into consideration many factors including; geographical disparity of our country, presence of regulatory authorities' offices and population of the chosen region. Dar es Salaam was chosen, for example, because it is a seat of all regulatory authorities, but again it has a high population. Mwanza and Arusha have been chosen basing on the fact that both regions are seat of three regulatory authorities namely, SUMATRA, TCAA and TCRA. Another reason is that both regions are highly inhabited and enjoy strong economy after Dar es Salaam Region. It was envisaged that the seven (7) regions would represent a fair picture of the population of Tanzania.

4.4 Research Design

A research design is defined as “a plan outlining how information is to be gathered for an assessment or evaluation that includes identifying the data gathering methods, and the instruments to be used in collecting data” (<http://www.mandofacto.com>, 2009). It deals with logical problems and not logistical problems (<http://www.sportsci.org/jour/0001/wghdesign.html>, 2010). Research design is regarded as glue that holds all elements in a research project together. Claire Selltiz and others, as quoted by Kothari (2004) define research design as “the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with the economy in procedure”. Kothori (*ibid*) further defines research design as a conceptual structure within which research is

conducted; it constitutes the blueprint for the collection, measurement and analysis of data.

This research was a case study designed to find out and analyse the impact of legal framework on regulatory authorities, in particular the Surface and Marine Regulatory Authority (SUMATRA) in spearheading market economy in Tanzania. A case study was preferred because it is a fairly exhaustive method which enables the researcher to study deeply and thoroughly on different aspects of the performance of the regulatory authorities in Tanzania (Kothari, 2005). Kothari (2005) further argues that a case study is more flexible, cost effective and gives room to the researcher to use one or more research methods depending on the circumstances. For example, a researcher is at liberty to use in depth interviews, questionnaires, documents, study report of individuals and the like. The researcher may use interviews, open ended and closed questionnaires, documentary review and various reports to gather necessary information required for the research.

The selection of the case study was made carefully following the nature of the study. This research intended to study a single situation as it explored the impact of legal framework on regulatory authorities' performance to spearhead market economy in Tanzania, taking the case study of the Surface and Marine Transport Regulatory Authority (SUMATRA). Furthermore, the case study was preferred because it takes both qualitative and quantitative approach. This research was therefore intended to explore in depth the performance of regulatory authorities in Tanzania to enhance market economy. In studying Regulatory Authorities, a special dedication was given

to SUMATRA while making references to other regulatory authorities and institutions which play important roles in the transport sub-sector. Surface and Marine Transport Regulatory Authority (SUMATRA) was chosen as a case study due to a number of reasons:

Firstly SUMATRA regulates Road, Rail and Marine Transport sub sector, a very important sector which has a remarkable impact on the day-to-day lives of Tanzanians, rich or poor and hence the market. It is important to note here that transport plays a significant role in development process of nations. Transport plays a linkage role in delivery of inputs to farms, marketing, agricultural products, annexing forests and mineral wealth. Further to the foregoing, transport plays an important role in the distribution of raw materials and facilitates the expansion of trade (Kahama, 1995). Transport plays an important role in social economic lives of the people (Olvera *et al.*, 2003). A well-regulated transport sector brings efficiency in economic growth and social opportunities in terms of affordability and accessibility to markets and investments. From the reasoning hereinabove it is therefore correct to argue that transport is the blood of an economy system.

Secondly, SUMATRA has a wider network in terms of operations up country as compared to other regulatory authorities in Tanzania. Currently SUMATRA operates in fourteen (14) regional offices. This means, its presence is felt in 14 regions out of twenty five (25) regions of Tanzania mainland. These include; Dar es Salaam, Dodoma, Mbeya, Mwanza, Tanga, Mtwara, Kigoma, Kilimanjaro, Rukwa, Mara, Kagera and Arusha, Tabora and Morogoro. This network gives SUMATRA 56 percent of coverage of Tanzania Mainland. Tanzania Communication Regulatory

Authority (TCRA) has its offices in five (5) regions, namely, Dar es Salaam, Mwanza, Arusha, Dodoma and Mbeya. This network gives TCRA 20 percent of the Coverage of Tanzania Mainland. Similarly Tanzania Civil Aviation Authority (TCAA) has presence in 5 regions, namely, Dar es Salaam, Mwanza, Kigoma, Arusha, and Mbeya.

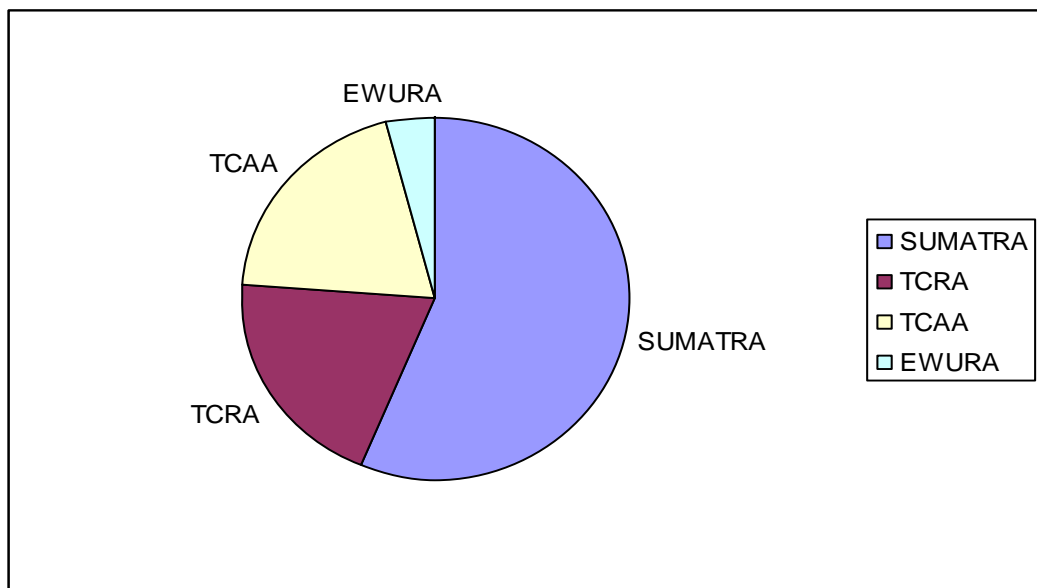


Figure 4.1: A Pie Chart representing Regulatory Authorities' Physical Presence in Regions in Tanzania Mainland

Source: Field Notes (2012)

This makes TCAA enjoy coverage of 20%. EWURA enjoys presence in one region, that is, Dar es Salaam, hence covering only 4% of the country. SUMATRA's strategic network remains an asset as far as regulatory authorities operations is concerned but again of paramount importance in collecting and interviewing respondents who already interacted with the authority in their day to day operations in different regions of Tanzania. This coverage can be presented graphically on Figure 4.1. Thirdly, SUMATRA was the first regulatory authority to become operational in 2004 hence enjoying more experience than its sister authorities.

4.5 Population and Sampling Procedures

4.5.1 Population of the Study

The population of this study was all stakeholders involved in regulatory operations countrywide. These included Regulatory Authorities staff, Services Providers and Consumers of regulated goods and services.

4.5.2 Sampling Techniques

Sampling techniques provide a range of methods that enable a researcher to reduce the amount of data available to him/her due to restriction of time, money and often access (Saundeers *et al.*, 2006). Taking into account of the nature of the research, sampling was preferred as it saves time and organization of data is manageable since fewer people were involved. Furthermore, sampling was preferred because it was flexible and allowed the researcher to collect data from the entire population but analyzed only a sample of the data collected. It is argued that sampling makes possible a higher overall accuracy than a census (Saundeers *et al.*, 2006).

A sample was taken by using purposive and judgmental sampling technique. Judgmental sampling technique was opted because it provides avenue for generalization about the population. It further provides a wide range of alternative techniques based on researcher's subjective judgment. Basing on the above qualities, judgmental sampling is commended for business research, such as market survey and case study as it is my case.

From sampling point of view, the selected population was from corporate key players in the regulated sectors including regulators, service providers and

consumers. From the mentioned groups of players, the researcher produced a sample of people who responded to questionnaires and some of them were interviewed. From Energy and Water Utilities Regulatory Authority (EWURA), Tanzania Communication Regulatory Authority (TCRA) and Fair Competition Commission (FCC) five employees from each were selected quasi-randomly from the operations departments.

Furthermore, twenty five service providers were selected quasi-randomly and were interviewed from the five regulated sectors on the predictability of the regulators and the role regulators play in the market. Thirty five consumers of regulated services, selected randomly were interviewed on the openness of the market. Fifteen people selected randomly from groups of people with special needs were interviewed on the quality of services in the regulated sectors. Most of the data, that is, 93.92 per cent of the data were collected by the researcher using unstructured questionnaires, interviews and key informants. This method was opted due to a number of reasons.

One of the advantages of this approach is that, it enabled collection of both qualitative and quantitative data through open-ended and closed-ended questions. Furthermore, the methodology was found effective as it is free from the bias of the interviewer because answers to the questionnaires are in respondents' own words (Kothari, 2004). The open-ended questions were expected to provide a useful mechanism for increasing the content validity of numerical variables obtained from closed-ended questions. Two hundred (200) open-ended/closed-ended questionnaires were distributed to two hundred (200) respondents.

The sampling unit included individual male and female adults chosen randomly from Dar es Salaam, Mwanza, Tanga, Mtwara, Kigoma, Arusha and Kagera. These regions have been chosen on a number of reasons as stated above. The distribution of the questionnaire in the above mentioned regions was done randomly as displayed on Table 4.1.

Table 4.1: Distribution of Respondents in Seven Regions

Name of Region	Population	Sample	Sampling Technique	Reasons for Sampling
Dar es Salaam	2,487,288	60	Quasi - random	The variation is wide
Mwanza	2,929,644	35	Quasi - random	-do-
Kagera	2,028,157	30	Quasi - random	-do-
Arusha	1,288,088	20	Quasi - random	-do-
Kigoma	1,674,047	20	Quasi - random	-do-
Mtwara	1,124,481	20	Quasi - random	-do-
Tanga	243,580	15	Quasi - random	-do-
Total	11,531,705	200		

Source: Formulated by researcher (2011) using data from Population Census (2002)

Apart two hundred respondents who responded to questionnaires, thirty (30) respondents were directly interviewed. Thirty respondents were carefully selected from Regulatory Authorities, Competition Authorities, Service Providers, and Consumers who have direct contact with Regulatory Authorities' operations. Face to face interviews were conducted in Dar es Salaam, Mwanza and Arusha. Twenty (20) respondents were interviewed in Dar es Salaam, five (5) respondents were interviewed in Mwanza and five (5) were interviewed in Arusha. This made a total of

two hundred and thirty (230) people who responded to both researcher's questionnaire and face to face interviews.

Out of 200 respondents who responded to questionnaires, 139 questionnaires (69.5 per cent) were filled in and returned to the researcher. Sixty one (61) respondents (26.52 per cent) did not return questionnaire to the researcher. The number of two hundred and thirty (230) respondents which was chosen by the researcher fairly represents majority opinion. Their opinion represented a fair opinion of most of Tanzanians.

4.6 Data Sources

4.6.1 Secondary Data

Secondary data are data that have already been collected for some other purpose (Saunders *et al*, 2006). In any research, secondary data provide a useful source of information from which one answers research questions. Secondary data are categorised as raw data and published materials such as Minutes of the meetings, resolutions, orders, letters, operation reports, newspapers etc.

During research period therefore, journals, newsletters, regulations, minutes of the meetings, operation reports and orders issued by regulatory authorities were read and important information relevant to this research was extracted and analysed accordingly. SUMATRA's literature and other regulatory authorities' literature which were accessible and contained relevant information for this study were analysed too. Legal framework of regulatory authorities in Tanzania was scrutinised to gather important information which were analysed. The secondary data provided

empirical evidence on the legal framework in which regulatory authorities operate and its contributions to regulatory authorities' performance.

4.6.2 Primary Data

Primary data deals with what people do. An obvious way in which to discover this is to watch them do it. Primary data is therefore defined as systematic observation, recording, description, analysis and interpretation of people's behaviour (Saunders, *M et al.*, 2006). In a nutshell, primary data is data observed or collected directly from first hand experience (<http://www.businessdictionary.com/definition/primary-data>).

Primary data is important for all areas of research because it is unvarnished information about the results of an experiment or observation. It is like the eye witness testimony at a trial which is admissible as evidence. No one has tarnished it or spun it by adding their own opinion or bias so it can form the basis of objective conclusions. Primary data is preferred because it provides eye witness testimony of the research topic from the people who interact with regulatory authorities more less every day in their day to day business. Primary data were collected so as to answer the research questions. Several methods such as face-to-face interviews were conducted. Equally questionnaires were developed and administered accordingly.

4.7 Data Presentation and Analysis Techniques

Data analysis is a practice in which raw data is ordered and organised so that useful information can be extracted from it (<http://www.wisegeek.com/what-is-data-analysisihtm>). Data analysis is key to understanding what the data does and does not contain.

The data were collected, organized, presented and then processed using a Software Package for Social Sciences (SPSS version 17) for analysis of data to make them meet the objective of the study aiming at drawing constructive conclusions and recommendations. The package was preferred due to its extensive analytical capability. It is powerful and it provides actual results and it is easy to administer. Further to the foregoing, due to quantitative and qualitative nature of the data which were collected, various descriptive methods, namely, tables, descriptive text, flow charts and bar charts were used to present findings of analysed data.

4.8 Concluding Remarks

The study methodology adopted was a case study whereby SUMATRA was chosen as a case study. Apart from SUMATRA the study also analysed other established regulatory authorities in Tanzania due to complexities of the regulated market.

The study used both secondary and primary data collected from seven regions, Tanzania mainland. In order to collect primary data, 200 questionnaire were distributed and thirty (30) in – face to face interviews were conducted. The data collected were analysed using a Software Package for Social Sciences (SPSS version 17) which made them fit in the research objectives. Due to the nature of the study, qualitative and quantitative methodology was used during the analysis and presentation of the data collected.

CHAPTER FIVE

5.0 RESEARCH FINDINGS AND DISCUSSION

5.1 An Overview

The information was derived from the collected data that has a bearing on the objectives of this study. The data collected for this study has revealed significant information on the legal impact on the regulatory authorities to spearhead market economy in Tanzania as will be noted. The data for this research were collected through open ended and closed ended questionnaires, as well as interviews with people who regularly interact with regulatory authorities and reading various reports issued by regulatory authorities and in particular Surface and Marine Transport Regulatory Authority.

All data that was collected were processed using a Software Package for Social Sciences (SPSS Version 17) from which relevant information to this research work has been derived. The information has been presented in various forms ranging from graphs to tables as shown throughout this work.

This chapter further provides an analysis of the research findings. The researcher provides a thorough analysis of the findings while establishing a link between concepts and facts adduced in chapters 2 and 3 in order to create a synergy and synchronization of the concepts and findings. Based on the created synergy and synchronized concepts and findings, the researcher advances his own opinion on whether regulatory legal framework has had adverse impact on the regulatory authorities in spearheading market economy in Tanzania. This will be done through

analyzing the findings according to the research questions as set out in Chapter 2. In a nutshell, the analysis ventured into whether the regulatory authorities were relevant and competent to regulate market economy in Tanzania. It also analysed the extent the legal framework holds back regulatory authorities to spearhead market economy and the visibility of regulatory authorities in the day-to-day lives of the people.

5.2 The Competence, Relevance and Visibility of Regulatory Authorities in the Process of Regulating the Market

It is important to note that three regulatory authorities were established to regulate key sectors which are monopolistic by nature. For the past eight years these authorities have been in operation, this period should have given them clear visibility and relevancy in the market. The foregoing contention stems from the fact that the said regulatory authorities regulate day to day commercial activities which affect daily lives of the people, that is, transport, water, electricity, gases, television, radio, internet, mobile phone etc. The nature of the goods and services regulated by these regulatory authorities are of great concern to people, rich or poor. Therefore the regulatory authorities' competence in the market was expected to give them relevancy and high visibility in the regulated markets. The three components of good regulatory governance which are competence, relevancy and visibility, separately or jointly act as a measure to determining the effectiveness of any organization in the market.

The study results (Figure 5.1) show that 50 percent of the respondents stated that regulatory authorities had requisite competence in the market they regulate while 45 percent stated that regulatory authorities lacked competence in the market they

regulated and 5 percent were not sure. This question was not properly answered by respondents. It was only 20 respondents out of 139 respondents who responded to it. It was only 14.38 per cent of the total respondents who responded to it. The questionnaire was administered to service providers and consumers of regulated goods and services.

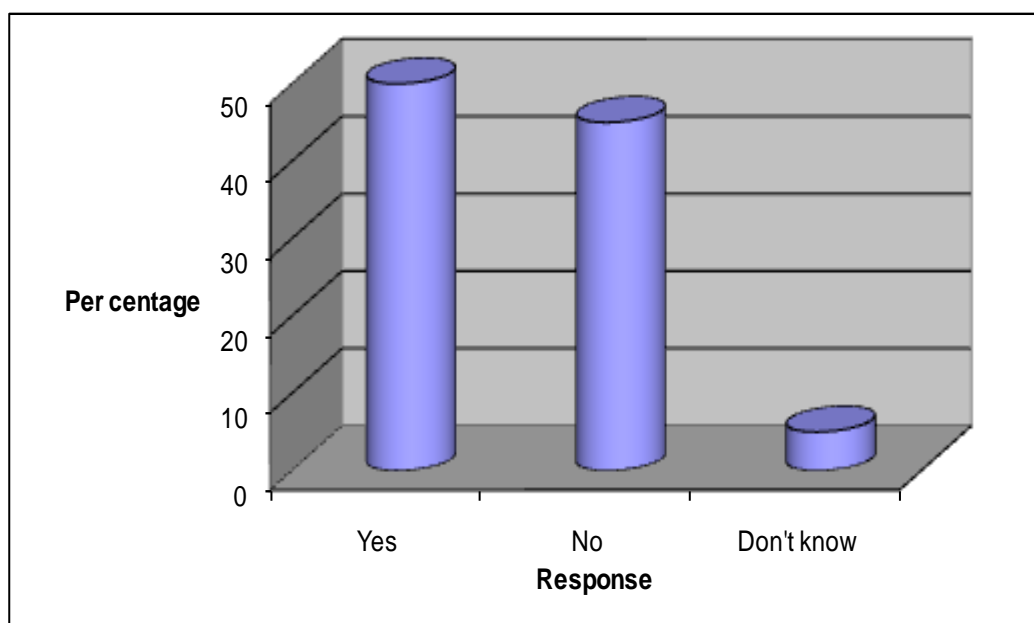


Figure 5.1: Respondents' Response on Competence of Regulatory Authorities in Tanzania to Regulate Relevant Markets

Source: Field Data (2012)

The reason why 85.62 per cent of the respondents shied away from answering this question has been attributed to the complexity of the issue itself. Competence of an organization has taken a new turn from the traditional tangible assets to intangible asset base therefore the new approach has a bearing on the management which has to deploy and leverage the shifting mix. This shift has complicated the issues of measuring competence in its new shifting mix and that may be the reason why only 14.38 per cent of the respondents attempted it.

In an interview with Hon. Haruna Songoro, the former Director of Legal Affairs SUMATRA, now a Judge of the High Court of Tanzania on the 26th day of October 2010, he was of the opinion that “50 percent score on competence was attributed to the fact that regulatory authorities started from the scratch, and this reality helped them to make a rapid impact on the market. He elaborated that SUMATRA for example, made the first remarkable achievement by bringing on board the scattered 7,000 commuter buses operators under one roof in the country”.

Later other regulatory authorities came up with regulations which set principles for fair play in the market. Hamza Johari, the Executive Secretary Tanzania Civil Aviation Authority Consumer Consultative Council concurs with Songoro’s opinion by adding that “although regulatory authorities’ legal framework was paradoxical yet they have done commendable work”. He went further by noting that “primary legislation and regulations had been put in place”. On the other hand Adam Mambi, Deputy Director, Law Reform Commission was of the opinion that “regulatory authorities lacked competence as they had no experts, properly trained for regulatory jobs and therefore their impact would hardly be felt in the Tanzanian market”.

Another respondent one Sabri Mabruk, the Chairman of Dar es Salaam Commuter Buses Owners Association (DARCOBOA) held the view that “SUMATRA had not indicated its competence in road transport regulation because road transport has not grown for the past five years”. He cautioned that “regulatory authorities’ legal framework was copied from developed economies but the applicable modus operandi in those countries was not copied also”. He noted that “while in those countries transport facilities were offered by well-established companies the situation in

Tanzania was different and SUMATRA had totally failed to establish such system in Tanzania”.

Similarly, Juma Fimbo, Chairman of Tanzania Civil Aviation Consumer Consultative Council and lecturer at the National Institute of Transport, like Mabruk held the view that “regulatory authorities were not competent enough because they operate under limited resources”. He cited the case of SUMATRA as an example where knowing that it was understaffed, it decided to outsource enforcement of road transport regulation by commissioning Majembe Auction Mart. He was of the opinion that “the country was too big for the regulator’s impact to be felt, and therefore the logical option would be stretching their regulatory powers through relevant institutions with relevant skills”. The results (Figure 5.2) show that 86 percent of the respondents found these regulatory authorities relevant in their day-to-day lives.

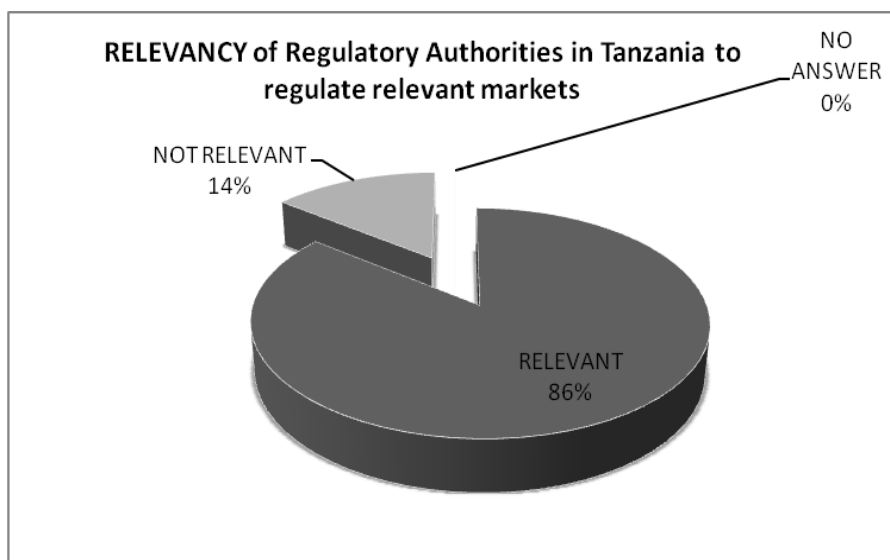


Figure 5.2: Respondents’ Response on the Regulatory Authorities’ Relevancy to the Regulated Markets

Source: Field Data (2012)

It was only 14 percent of the respondents who responded that regulatory authorities were not relevant to their day-to-day lives. Looking at those findings from demographic point of view, it is interesting to note that younger people ranging from 1 -45 years found these regulatory authorities relevant.

In an interview with Mr. Juma Fimbo, he felt that “regulatory authorities were relevant to people because they regulated what was fundamental to their day-to-day lives”. He stated that “ordinary people needed safe transport, adequate fuel, mobile phones etc”. One respondent, Joseph Kajumulo was of the view that “regulatory authorities had helped to keep prices of the regulated goods and services stable”. Another respondent, Hamisi Juma stated that “because of having regulatory authorities in place he had lived to see bus fares being slashed by 11 percent upon an application filled with SUMATRA by SUMATRA Consumers Consultative Council in 2009”. He further stated that “if these regulatory authorities had not been in place, operators would have raised tariffs indiscriminately in order to make huge profits at the expense of consumers”. He further held the view that “it was fortunate that regulatory authorities had been established to act as moderators to business people who seek profits without regard to quality of services they provide to Consumers”.

The results (Figure 5.1) revealed that 50 per cent of the respondents were satisfied that regulatory authorities were vested with the required competencies to regulate the market, while 45 per cent of the respondents responded to the contrary. The difference between those who found regulatory authorities competent and those who did not was negligible although it cannot be taken as insignificant. Regulatory authorities are a new phenomenon in the Tanzanian market which for a couple of

decades could have been regarded as a sellers market. There is no comprehensive study made on the satisfaction of the said consumers in the sellers market but it has been assumed that people were suffocated with the system while others were not.

Shapiro (2003) argued that a rigid and highly regulated business system that puts much power in the hands of the state made it difficult to adapt to a changed environment which in turn led to economic stagnation. That assumption was further supported by the reasoning advanced by Hon. Judge Haruna Songoro in an interview when he stated that “the 50 percent score on competence was attributed to the fact that regulatory authorities started from the scratch a fact that gave them rapid impact in the market”. Songoro’s contention was fully supported by Hamza Johari who was of the opinion that “Regulatory Authorities did ground work by preparing regulations”. What Hamza tried to drive at was the fact that all regulators had laboured in developing regulations. It is important to note that regulations are the working tools of regulators in regulating the market.

A regulator has the mandate to regulate the market through setting standards and regulations which service providers as well as consumers of the regulated goods and services have to abide to. It is important to note that to service providers such regulations and standards are regarded as limiting their operations, hence to them regulators are not regarded positively while the consumers feel protected by the regulations and standards hence they feel that the regulators are competent in that regard.

It is important to reflect on the issue of competence critically and objectively in order to craft a constructive conclusion. Competence is a product of critical training on a

subject matter with appropriate related technology. International Atomic Energy Agency in its paper “Training the Staff of the regulatory body for nuclear facilities: A competency framework, IAEA, 2001” admitted that recruitment of competent regulatory staff is difficult in many countries. Also, replacement of retiring staff members requires active efforts from the management of regulatory bodies for establishing staff qualification and training programs.

The author went further to define competencies as groups of related knowledge, skills and attitudes needed by a person to perform a particular job. Knowledge represents the depth and breadth of absorbed and retained information by the mental faculty of a person that would enable that person to deal with different situations, changes, and the unexpected. Skills are the demonstrated abilities and expertise of a person to perform a task to prescribed standards as judged by an evaluator. Attitude is the appreciation and the practiced behavior of a person to perform a job or a task with due diligence.

The above quoted definition of competence presents a shift from traditional tangible assets to intangible assets. Traditional definition of competence highly attached success of the enterprises on the deployment of tangible assets such as property, plant and equipment. Managerial competencies and strategies must be built upon achieving economic, operational effectiveness, scale and market place dominance. With the shift from asset based definition of competence to intangible assets such as intellectual capital assets like brands, intellectual property, corporate reputation, and knowledge, new and different managerial competencies become the order of the day (loose materials collected from un known source).

From the on going concerns it is important to note that competence is no longer solely determined by tangible assets but also intangible assets which bring in asset mix. It is estimated that today's organizational success depends more on intellectual and systems capabilities than traditional assets. "It would follow then that organizations that possess the most productive knowledge workers are most likely to win in the market place" (loose papers on Knowledge management). Regulatory concepts being new phenomena in our markets have not been incorporated in our schools curriculum. To date, regulatory issues have not attracted academic attention to penetrate the academic arena in Tanzania.

As noted earlier, during an interview with Adam Mambi, he was of succinct view that "regulatory authorities lacked relevant competencies to regulate the market". He felt that "some of the regulated sectors were sophisticated such that regulation of the same needed highly qualified personnel in those areas". He cited "the example of the telecommunications industry whereby service providers were given conversion licenses which used sophisticated technologies too expensive for the regulator to afford". Mambi's observation were supported by Juma Fimbo "who argued the same point from a different angle that regulatory authorities were not competent because they operated under limited human resources".

He stated that "under the given circumstances, regulatory authorities in Tanzania could discharge their regulatory duties competently if they delegated some of their regulatory functions". This position was further supported by Mabruck who is the Chairperson of Dar es Salaam Commuter Buses Owners Association (DARCOBOA) when he stated that "regulatory authorities, SUMATRA in particular, had not shown

competence in regulating road transport”. Basing on results (Figure 5.1) and the information gained from the interviewed stakeholders, it was evident that regulatory authorities lacked necessary competencies in dealing with the markets they regulate. The point that regulatory authorities did not have relevant competencies need not be overstretched. For the purpose of this research paper, the question at hand is why the established regulatory authorities did not have those competencies. During the interview with Mabruck, he felt “that SUMATRA had not shown its competence in road transport regulation because road transport had not improved in terms of quality of the services for the past five years”. He held the view that “SUMATRA’s failure was partly attributed to the current legal framework it operated in”.

As noted earlier, Mwandosya once made a remark way back in 2005 that “during the establishment of the regulatory legal framework, amendments of laws were made; unfortunately those amendments did not cover the existing competing legislations on the transport sector”. To date, 2011, existing competing legislation have not been amended to suit regulatory authority legal framework.

It was further highlighted by the National Transport Policy that the transport sub sector in Tanzania was characterized by high cost and low quality services due to various reasons including the existence of extensive backlog of infrastructure maintenance and rehabilitation, inadequate institutional arrangements, laws, regulations and procedures which are not consistent or compatible with each other. Under such legal arrangement it was not easy for the regulatory authority, SUMATRA in particular, to demonstrate competencies. This scenario was in conformity with Shapiro’s argument that in principle, bureaucrats will always

frustrate regulatory efforts so as to maintain the status quo. Such intentions can only be hidden in a legal framework put in place to protect such interests. These interests hurt regulatory efforts to the extent of rendering them useless and hence affecting the entire economy.

Mabruck's contention that SUMATRA had not so far shown competence and that road transport had not improved was well founded. Taking road transport as an example SUMATRA plays three minor roles of licensing, tariff setting and enacting regulations under a dubious legal arrangement. Vehicle inspection is done by the police force which establishes motor vehicle roadworthiness, the basis of which SUMATRA was required under the law to license such motor vehicle. It was the same police force which had to enforce road safety laws and the related rules and regulated some developed by SUMATRA. Principally, SUMATRA's role in road transport was licensing, tariffs setting, establishing standards and regulations which unfortunately SUMATRA had no mandate to enforce. With all these bottlenecks yet SUMATRA was portrayed as a sole regulator of road transport, something which was a misrepresentation of the actual truth.

From the above observation, if regulatory authorities are not competent, it is difficult to establish their visibility in the market they regulate. The results (Figure 5.3) show that 55 per cent of the respondents stated that regulatory authorities were not visible. This finding can be argued from two directions. One can rightly argue that regulatory authorities are not visible because they are not competent enough. Similarly one can also argue that they are not visible because they are city/town based. Both sides of the argument will marshal important information to this research paper.

This research paper will confine itself to the fact that since it has been extensively argued that regulatory authorities were not competent and that the lack of competence has been attributed to poor regulatory legal framework, it is of great concern that regulatory authorities were not visible because they were not competent enough to regulate the market. Ordinary people expect to see changes in their day-to-day lives and if they cannot see any changes, then to them regulatory authorities remain purely academic venture. It is easy for the regulators to sit in their posh offices, draft regulations; conduct inquiries with the same group of people around them at Karimjee Hall instead of really regulating and nurturing the regulated sectors countrywide.

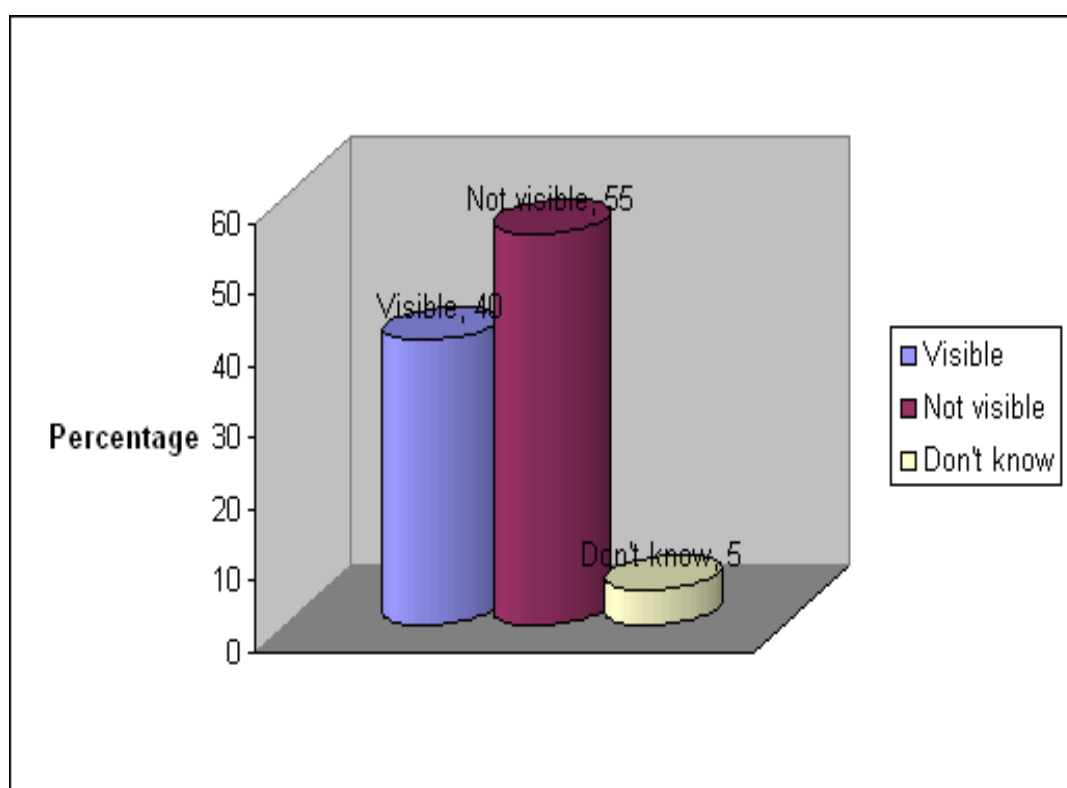


Figure 5.3: Respondents' Response on Visibility of Regulatory Authorities in Regulated Markets in Tanzania

Source: Field Data

Regulatory authorities in Tanzania have fallen under that trap where complacency has been given the upper hand. This is reflected in many ways. In 2009, SUMATRA Consumer Consultative Council received 266 complaints, 56.39 per cent of those complaints were coming from consumers who were overcharged approved fares (SUMATRA Consumer Consultative Council's complaints data base 2009).

The situation was caused by lack of compliance on one side and lack of enforcement on the other hand. Putting things in their proper perspective it is imperative to apprehend invariable truth that having tariffs set on one hand and enforcement of the approved tariffs on the other hand are two different things. Ordinary people demand both from the regulators. Experience shows that the regulator is concerned with tariff review and leaves the enforcement to the market itself. Lack of enforcement strategy is what makes ordinary people critical of regulatory authorities' competence hence reducing their visibility in the market they are intended to regulate.

This point was supported by Fimbo, that "regulatory authorities' impact cannot be felt unless they delegated some of their regulatory functions so that they may be able to go down to the grass roots". That is where they are meant to be. Regulatory authority's visibility can only be established by standing to principles and enforcing the good regulations and decisions for the benefit of the entire community.

What has been discussed above was the role of independent variables. Besides independent variables, there are intervening and extraneous variables which have adverse effect on the regulatory authorities' visibility and competence. It should be born in mind that the current fuel price hike in the world market which was reflected

in the local market had direct impact on EWURA and SUMATR regulatory functions.

Although ordinary people find regulatory authorities relevant to their day-to-day lives yet the established bodies were viewed not competent in discharging their regulatory obligations and they were also deemed not visible. This state of affairs supported Malherbe's reasoning that laws that arise out the problem are simply one legged stool and enacting laws without the policy behind it puts that nation into problems. This was further supported by Sekirasa's report led on the 23rd March 2011 to the President of the United Republic of Tanzania, Jakaya Mrisho Kikwete that SUMATRA's operations were difficult because traffic police officers who are entrusted with legal obligation under Road Traffic Act to enforce traffic laws, own commuter buses hence making enforcement of the law difficult...he further stated that there were many challenges facing SUMATRA, the main one being enforcement of laws and regulations which is dominated by selfishness and conflict of interests.

5.3 Effect of Legal Framework on Performance of Regulatory Authorities to Spearhead Market Economy in Tanzania

The results in Figure 5.4 show that 37.12 percent of the respondents stated that they knew the applicable regulatory legal framework while 34.85 percent of the respondents said that they did not know the applicable regulatory legal framework in the country. It is important to note again that 28 percent of the respondents did not have the answer to the question. This means that only 37.12 percent of the respondents knew the applicable legal framework on regulatory authorities while 62.88 percent of the respondents did not know the applicable legal framework.

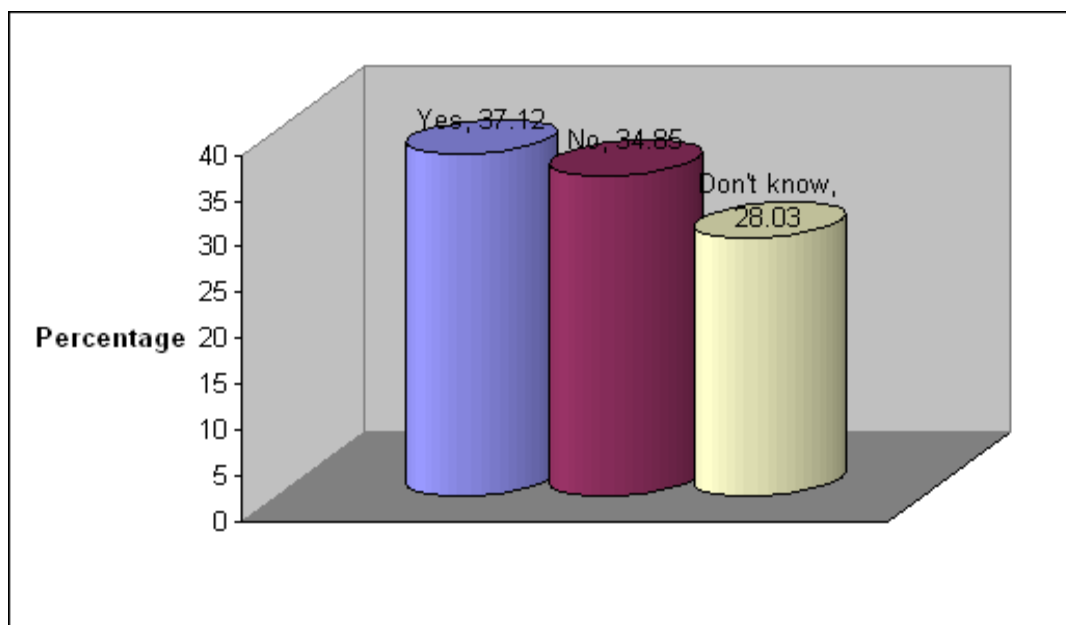


Figure 5.4: Respondents' Knowledge of Legal Framework Applicable in Tanzania

Source: Field Data

Looking at that results in Figure 5.4 from demographic point of view, the younger generation knew the applicable Regulatory Authorities legal framework than the older generation. The results in Figure 5.5 indicate that 31 per cent of the respondents who responded to the question ranged between 26 – 35 years old while 24 per cent of respondents ranged between 36 – 45 years old. Results in Figure 5.5 further show those respondents whose age ranged 56 years and above were only 6 per cent of the total respondents.

Demographic analysis revealed that Regulatory Authorities and their legal framework was well understood to younger generation whose age range between 1 - 45 years because that was an active and production age and therefore interact with the market on day to day basis and therefore Regulatory Authorities affect them in one way or the other.

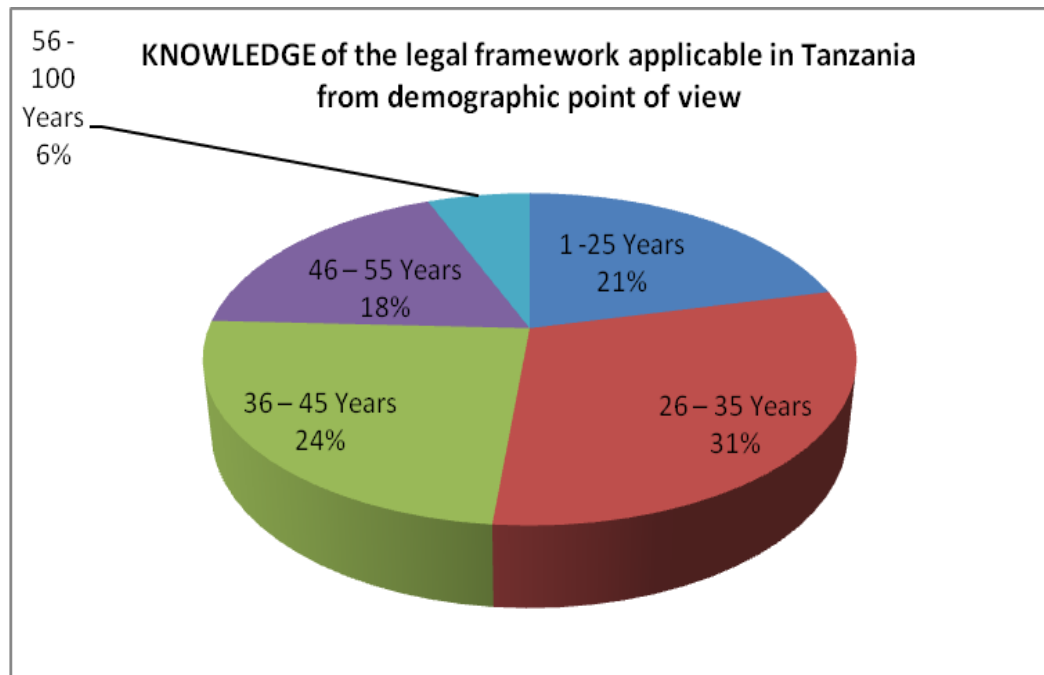


Figure 5.5: Respondents' Knowledge on Legal Framework for Regulatory Authorities Tanzania from Demographic Point of View

Source: Field Data

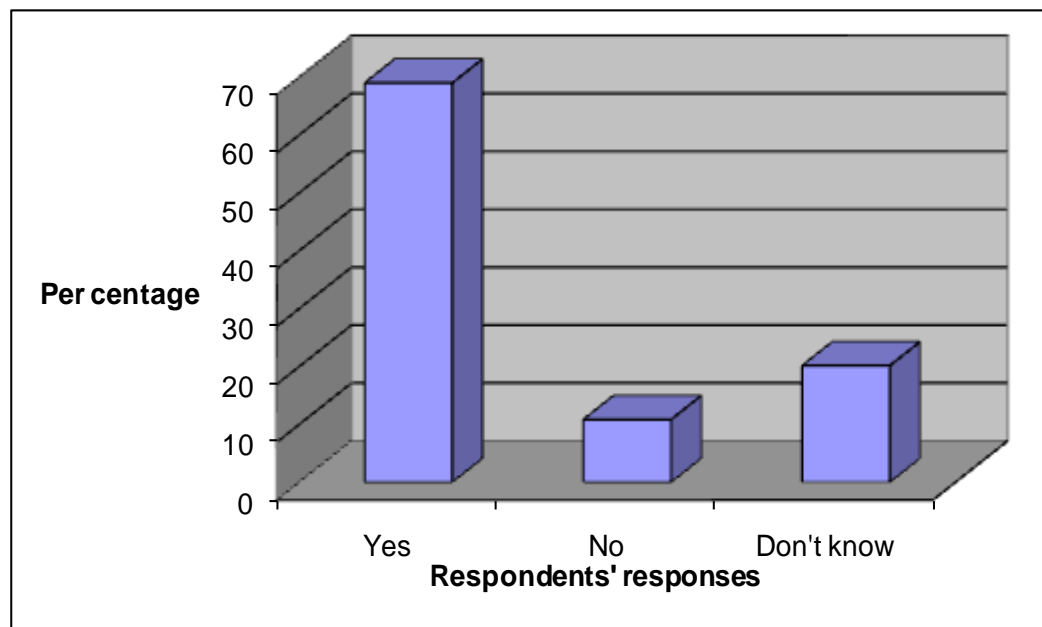


Figure 5.6: Respondents' Knowledge of Reasons for Establishment of Regulatory Authorities in Tanzania

Source: Field Data

It is a rule of thumb that any corporate body which intends to make an impact on the market strives for winning market confidence. To attain this, its existence in the market is of paramount importance. The results (Figure 5.6) indicate that 68.99 percent of the respondents knew why regulatory authorities were established in Tanzania while 10.85 percent of the respondents stated that they did not know and 20.16 percent of the respondents were not certain with the answer.

In an interview with Songoro, he elaborated that “the legal framework was put in place to fill the gap after the Government had withdrawn from giving services”. Regulatory authorities therefore started from scratch, aiming at improving the sectors they were established to regulate. Similarly one senior officer from SUMATRA held the view that “regulatory authorities were established as part of the economic restructuring which started in mid 1980s”. He further noted that their establishment was necessary to provide an oversight role.

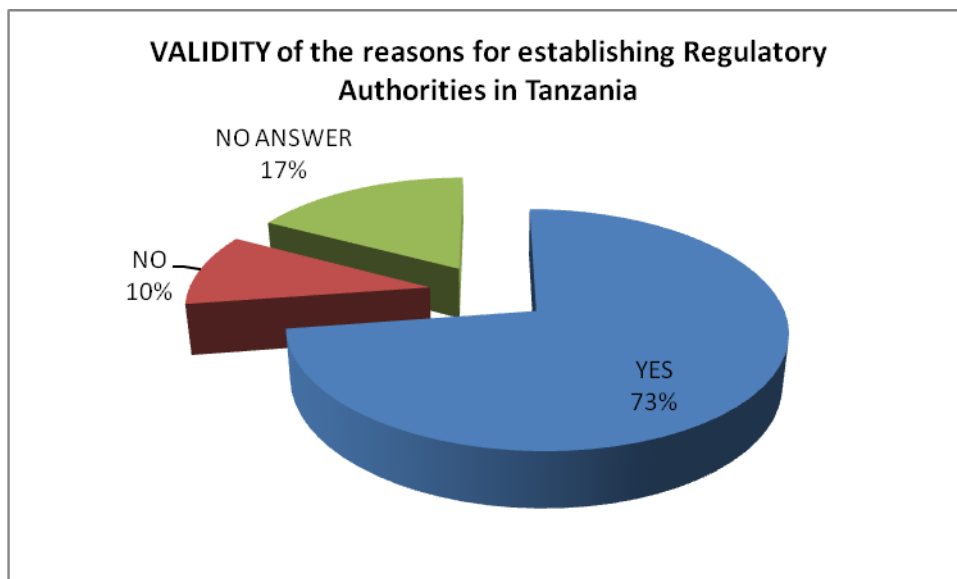


Figure 5.7: Respondents' Response on the Validity of the Reasons For Establishing Regulatory Authorities in Tanzania

Source: Field Data (2012)

The results (Figure 5.7) indicate that 73 per cent of the respondents stated that the reasons for establishing regulatory authorities were still valid while 10 percent of the respondents said that the reasons for establishing regulatory authorities were no longer valid and 17 percent of the respondents did not know whether they are still valid or not.

From a demographic point of view, the youth and younger people find more prospects in Regulatory Authorities in Tanzania than the older generation. Doing analysis of this question basing on age group, 25 respondents which is 19.53 percent of all respondents who attempted this question belonged to age group ranging 1-25 years, the group comprising pupils and students. Out of 25 respondents in this age group, 20 respondents responded to the question in the affirmative, while 2 respondents responded that reasons for establishing Regulatory Authorities were no longer valid and 3 respondents had no answer. Similarly 40 respondents, which is 31.25 percent of all respondents who responded to that question belonged to the age group ranging between 26 – 35 years, which is the group comprising of young entrepreneurs who interact with the market more often. Out of the 40 respondents, 29 respondents (72.5 per cent) in this age group responded in the affirmative, while 5 respondents stated that reasons are no longer valid and 6 respondents did not know an answer. The age group ranging between 36 – 45 years, 32 respondents responded to this question whereby 22 respondents responded in affirmative while 1 respondent stated that they were no longer valid and 9 respondents did not have the answer. The age group 46 – 55 years, 23 respondents responded to the question out of which 18 respondents responded in affirmative while 2 respondents stated that the reasons

were no longer valid and 3 respondents stated that they did not know. Finally the old generation only 8 respondents responded to the question.

Overall the respondents still see the importance of having regulatory authorities and call for necessary amendments to sustain them. One senior official from EWURA was of the view that regulatory authorities were established as part of economic restructuring which started in mid 1980s.

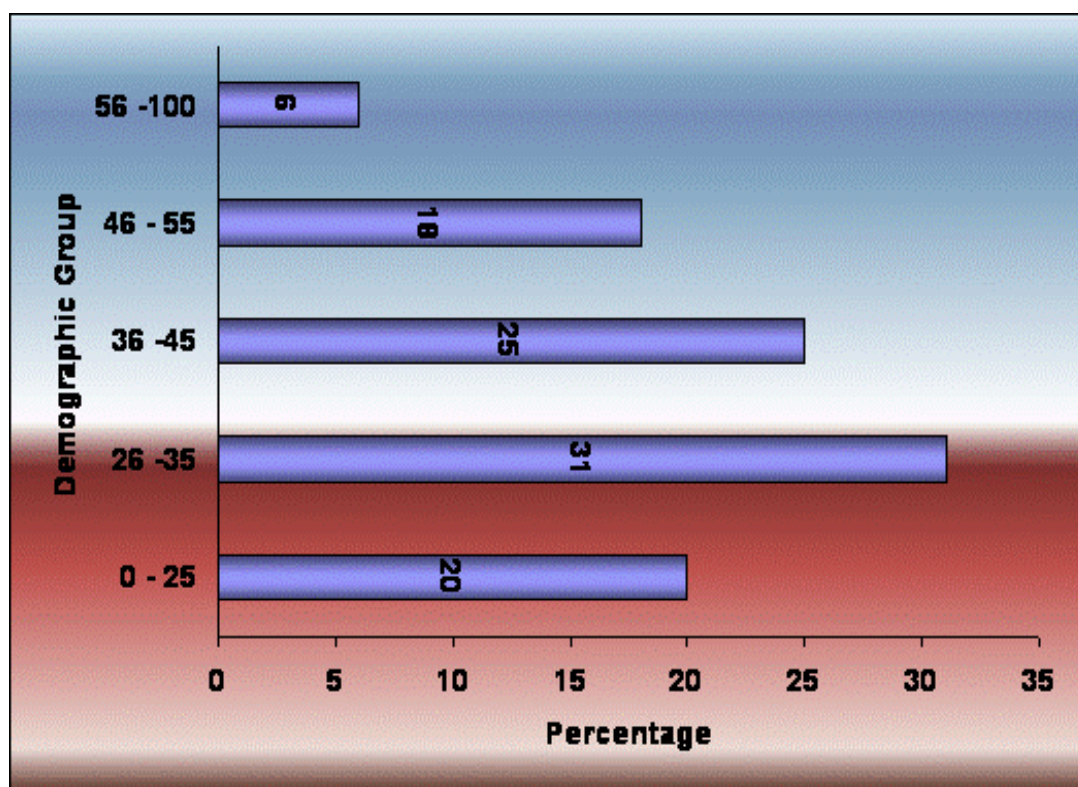


Figure 5.8: Respondents' Response on Validity of Reasons for Establishing Regulatory Authorities Basing on Demographic Point of View

Source Field Data

He held the view that their establishment was necessary to provide an oversight role for the smooth functioning of public utilities. He concluded that regulatory authorities are therefore important in ensuring the success of the economic restructuring. Another officer from EWURA held the view that the reasons of

establishing regulatory authorities were valid, he was of the view that the challenge ahead was to maintain that validity and to make sure that they went along with technological developments taking place globally so as to cope with varied situations. Another officer from SUMATRA noted that the reasons were still valid but those reasons needed to be refined through amendments of the laws to address new challenges.

The results (Figure 5.9) show that 40.32 of the respondents stated that the regulatory legal framework adopted in Tanzania was not conducive to the regulatory authorities to spearhead market economy in the country. The results (Figure 5.6) further show that 24.19 per cent of the respondents said the regulatory legal framework was conducive for regulatory authorities to spearhead market economy in Tanzania.

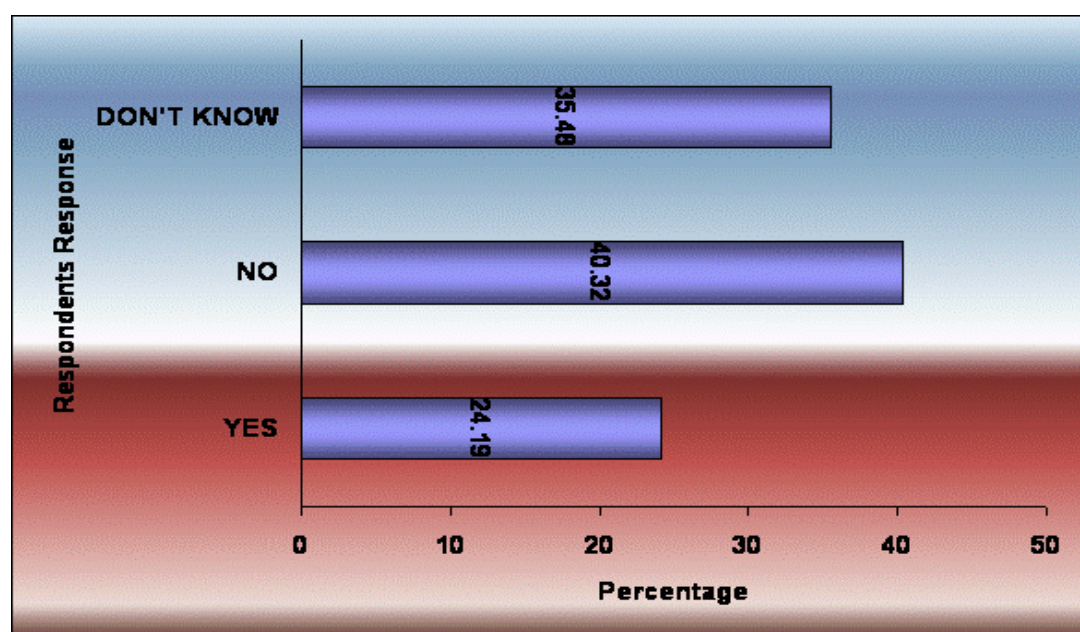


Figure 5.9: Respondents Response on Conduciveness of the Current Regulatory Authorities Legal Framework to Spearhead Market Economy in Tanzania

Source: Field Data (2012)

The results (Figure 5.9) indicate that 35.48 percent of the respondent did not know whether it was conducive or not. In a nutshell the majority of the respondent 40.32 percent explicitly stated that the current regulatory legal framework is not conducive. Mr. Juma Fimbo held the view that “the current regulatory authorities’ legal framework was not conducive for regulatory authorities to spearhead market economy because the entire legal framework was fragmented”. He pointed out that “the functions carried out by SUMATRA and TCAA were highly related and highly uncoordinated”. He cited the example of a business man from Kigoma who parks his fish for export according to railway standards of packing, but has to un pack his consignment so as to meet air transport packing regulations.

Fimbo further noted that “there were gray areas in the regulatory authorities’ legal framework”. He elaborated that because of the said gray areas, there are areas which are not regulated at all. He pointed out areas that were not regulated to be at the airports in particular at the air side. He elaborated that if a person was involved in an accident by a vehicle at the land side, traffic rules applied but if the person was involved in an accident at the airside it was presumed that air traffic regulations would take care of it while they did not. There was no particular law which was applicable to such circumstances in cases of accidents or injuries. He cited another example to be that of Platform Scales at the check points at the air ports that did not fall under the ambit of Weights and Measures Agency and were therefore not inspected by any competent authority to ensure their quality.

Mr. Fimbo stated further that “there was an unhealthy overlap within the legal framework”. He cited an example of a tanker transporting fuel being subjected to

regulations of SUMATRA because it was plying on the road, but the same tanker was subjected to EWURA regulations because it transported fuel. The same tanker was subjected to the Chief Chemist because it was transporting hazardous chemicals and it was subjected to National Environmental Management Council. The danger in such arrangement, he stated, would be for each authority to presume that the other authority would take charge and at the end, the tanker went through un regulated. He pointed out as an example that the United States of America had in such cases of over-lapping system, decided to form the Department of Transport as an umbrella organization to take care of all transport regulations which were compiled as Section 49 Code of Federal Regulations (49 CFR).

Results (Figure 5.10) show that 46.09 percent of the respondents stated that regulatory authorities were not independent in discharging their day-to-day obligations. Results (Figure 5.10) indicate that 32.03 percent of the respondents said that regulatory authorities were independent in discharging their duties while 21.88 percent of the respondents were not certain whether they were independent or not.

Responding to the independence of regulatory authorities, one senior official from SUMATRA held the view that “the government exercised an indirect control over the regulatory authorities particularly when the Government officials felt that their interests might be jeopardized. Another senior officer from EWURA felt that “regulatory authorities were not free from political interference as far as decision-making was concerned, because their decisions were sometimes interfered with by the government”. He cited an example of SUMATRA in the process of tariff review, where there law stated clearly that students would pay half of the fixed fare, but

SUMATRA persistently enforced a fare of Tshs. 100 which had no legal support. He further held the view that regulatory authorities faced interference from Government officials and politicians at national level as well as world economic forces on global level.

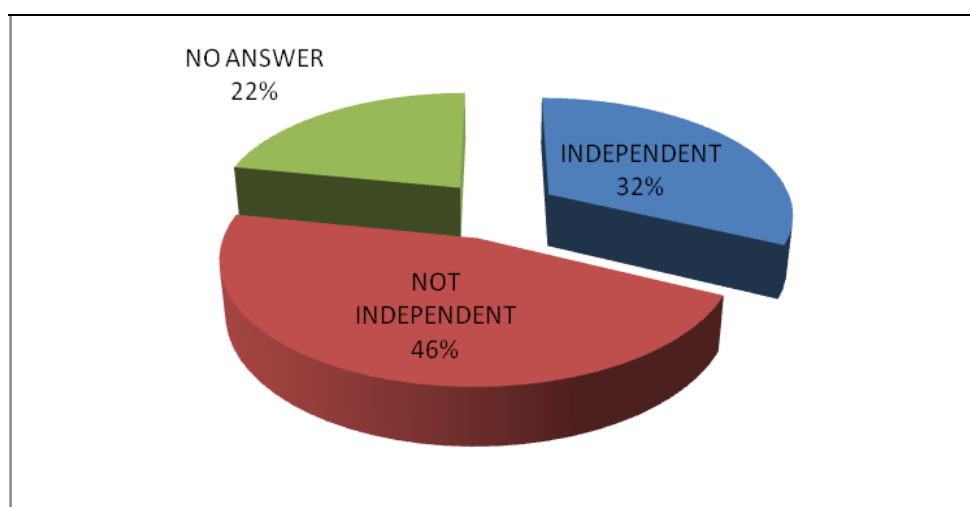


Figure 5.10: Respondents’ Response on Independence of Regulatory Authorities in Tanzania

Source: Field Data

In an interview with Adam Mambi, Deputy Director, Law Reform Commission, on the independence of the regulatory authorities in Tanzania, he was of the view that “regulatory authorities were not independent at all”. He felt that “political intervention with regulatory authorities was vividly seen although it cannot be quantified”. Mwandosya (2013) confirms Mambi’s contention as he states that the tenure of the SUMATRA’s Board of Directors is a good example on how executives in ministries frustrate the concept of regulatory authorities without being accountable. One senior official from SUMATRA felt that “the question of regulatory authorities’ independence was uncertain because, it was guaranteed on

one hand and taken away by the other hand”. Nxele and Arun (2005) states clearly that “a regulator has to pass the test of legitimacy by being seen to be independent by its stakeholders and those it regulates. By and large, legitimacy is not conferred by law, but earned by the regulators themselves through the manner it executes its regulatory functions”. Under the circumstances, it was difficult to speak with certainty that regulatory authorities were independent especially in their day-to-day operations. This concern was supported by Dr Celestine Muzo a retired officer from public service, who worked with the Ministry of Foreign Affairs, who felt that “it was difficult to have in place an independent regulatory legal framework before attaining total political and economic decolonization”.

Similarly, Frank Mdimi, Public Relations Officer, Fair Competition Commission (FCC) held the view that “regulatory authorities were not independent enough in regulating the market”. He noted that there were glaring indications that the government gets involved in regulatory processes and therefore influences their decision making process. He gave an example of the government turning regulatory authorities into tax collectors on behalf of the Government as they were required to submit to the Treasury 1% of their annual revenue. Another respondent, Hamza Johari supported the contention that “the current legal framework did not guarantee independence of regulatory authorities”. He elaborated further that “the Government officials had invisible hands in the day-to-day operations of the regulatory authorities”.

Similarly, Fimbo noted that “looking at the Acts establishing regulatory authorities one was tempted to believe that regulatory authorities were independent but in actual

fact they were not”. He felt that “the Government officials interfered with decisions of the regulatory authorities by citing the example of the Regional Commissioner of Dar es Salaam who interfered with the contract between SUMATRA and Majembe Auction Mart”.

Mkasimongwa had a different view on the independence of the regulatory authorities. He held the view that “the current legal framework provided for independence of the regulatory authorities”. He further stated that “to date there was no Government Officer who had questioned the immense independence these regulatory authorities enjoy”. He felt that “if the performance of these regulatory authorities was affected by lack of independence, then the problem had to be rooted in management rather than in the legal framework”. He was of the opinion that “if the management of these regulatory authorities stood firm on the principles establishing them, Government officials were likely to leave them alone to carry out their responsibilities without interference”. He further noted that “independence of the regulatory authorities was threatened when the regulatory authorities were managed by people who lacked confidence in themselves” and pointed out that another issue which threatened independence of regulatory authorities was the fact that “the majority of Tanzanians tended to act politically, even when professionalism and critical thinking was required”.

Mkasimongwa’s line of argument was supported by Azim Jamal, Author of the Corporate Sufi and co-author of the Power of Giving (The Citizen, Thursday, 21st April 2011) when he wrote that corporate vision would be grounded in principles and ethics. He went further by arguing that “a tree that is freshly rooted can be easily

plucked. A tree that is firmly grounded cannot be removed even by trucks” He argued that any organization if grounded in principles has a foundation and cannot change with tides.

To be firmly grounded in principles and values depended on the type of Corporation’s Board of Directors that were in place. Davies (2008:365) wrote that the Board of Directors was the most important decision making body within the corporation. The first Principle of the Combined Code on Corporate Governance stated that; “Every company should be headed by an effective Board of Directors, which is collectively responsible for the success of the company”

The results (Figure 5.11) show that 44 percent of the respondents stated that regulatory authorities were not transparent in the process of regulating the market. The results further indicate that 36 percent of the respondents said that regulatory authorities were transparent and 20 percent of the respondents stated that they did not know whether regulatory authorities were transparent or not.

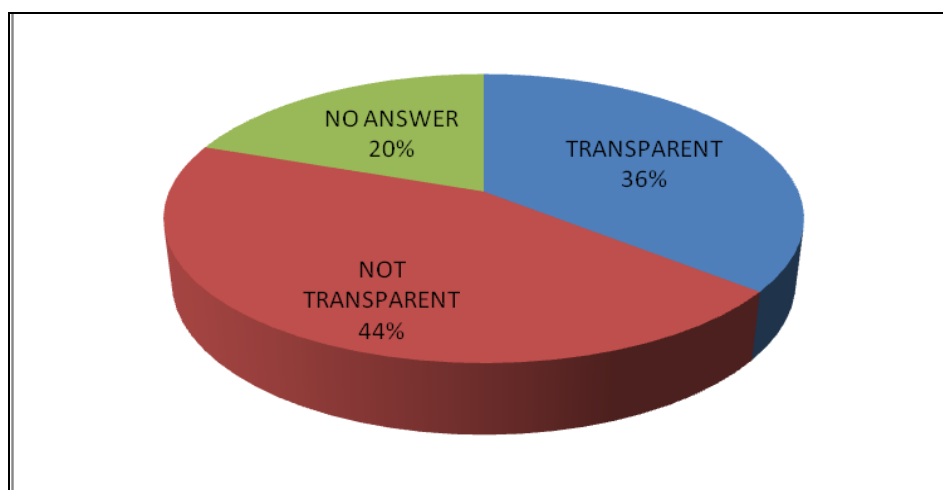


Figure 5.11: Respondents’ Response on Transparency of the Regulatory Authorities in Tanzania

Source: Field Data

One Council Member from TCRA CCC was of the view that “regulatory management failed to adhere to basic regulatory principles thereby affecting the regulatory authorities’ decisions on crucial issues”. She went further by stating that “where politicians had interests, regulatory work became just academic”. Certain times regulatory authorities did not act when it was vivid that they ought to have acted. Sometimes Regulations and Tariffs were discussed but there were no feed back on their implementation. Wilson Mashaka, legal adviser, CHAKUA gave an example of SUMATRA where tariffs for lorries, trucks and bajaj were discussed in 2008 but to date no order has been issued worse nothing had been communicated to the public.

On the other hand Wilbard Mtenga (Secretary, Tanzania Bus Owners Association TABOA) felt that “SUMATRA was regulating the market using political dimensions and as a result it had compromised regulatory principles, ethics and values due to political whims”. Under that scenario one cannot speak of either regulator’s independence or transparency. He asserted that “lack of transparency made the authority loose its credibility and justification before the market it regulated”. As a result, the regulator, operators and consumers of the regulated goods and service become enemies instead of being partners.

Manfred Mtitu, General Secretary, Tanzania Freight Forwarders Association (TAFFA) was of the opinion that “regulatory authorities were doing police work”. He asserted that “wherever a regulatory authority or any other organization starts doing police work it was a clear indication of lack of transparency”. He attributed that “to the tendency of the regulatory authorities’ management keeping on

safeguarding their positions instead of opening up to new challenges”. He felt that “it was a clear sign of lack of clarity of purpose and clear vision which retarded the regulatory authorities’ growth”.

Similarly Hamza Johari noted that “it was not easy for a regulatory authority which was not independent to be transparent”. He stated that “it was independence and confidence which could guarantee transparency”. From Hamza’s contention, one can therefore conclude that asking transparency from an independent regulatory authority was equivalent to looking for an apple from a mango tree.

Frank Mdimi concurred with Johari’s position by stating that “regulatory authorities lacked this important ingredient of independency”. Similarly Muzo also held the view that “regulatory authorities were just like umbrellas sheltering the minority rich at the expense of the majority poor”. He felt that “it was difficult to have a transparent regulatory authority in an economic system which was manipulated from outside the country”. He gave an example of corporations like Vodacom, Tigo and Airtel which are either international or global companies with main offices outside Tanzania. He felt that ‘in an economic system where those pulling the string, pull from outside, above all, in countries with advanced technologies which poor economies like Tanzania cannot afford one can hardly expect independency”.

He concluded that “looking for regulatory transparency in such an economic system was next to impossible just as it was impossible to look for a bride in the Women’s Medical Ward”. He further concluded that we Tanzanians are managed by changes instead of managing the changes. His position was further supported by Adam

Mambi who noted that “corporations in the communication industry were adopting new technologies which were difficult to manage and use in developing countries”.

The results (Figure 5.12) indicate that 37 percent of the respondents stated that regulatory authorities in Tanzania were not predictable. The results further show that 32 percent of respondents said that regulatory authorities in Tanzania were predictable while 31 percent of the respondents stated that they did not know that regulatory authorities were not predictable or not.

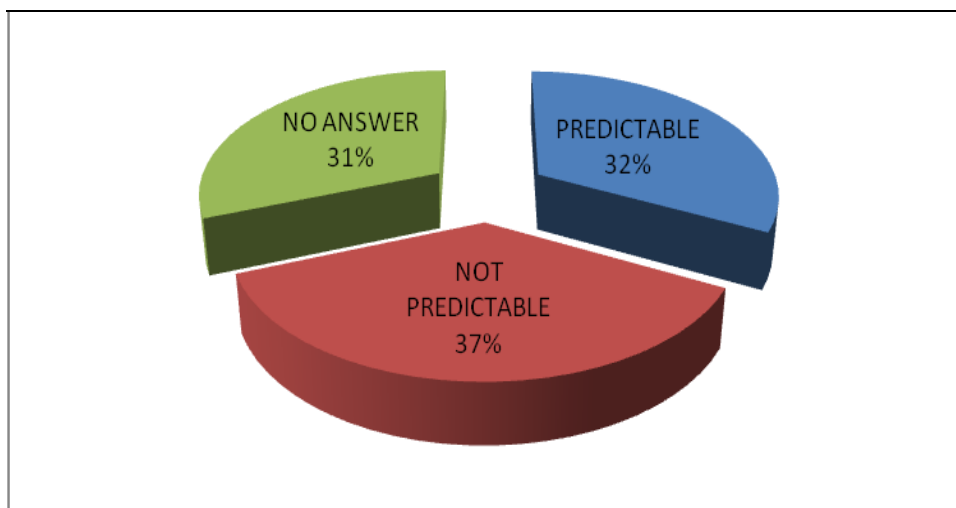


Figure 5.12: Respondents’ Response on Predictability of the Regulatory Authorities in Tanzania

Source: Field Data (2012)

Investment decision as well as marketing decision is highly affected by political – legal environment of a given country. Kottler (2004) stated that business legislation has three main purposes; protecting companies from unfair competition, protecting consumers from unfair business practices and protecting the interests of the society from unbridled business behaviour. To strike the balance of the three components mentioned above, a conducive legal framework is of a paramount importance.

The role of a conducive regulatory legal framework on regulatory authorities in Tanzania is of paramount importance. Due to this importance, the legal framework was taken as an independent variable with regard to endeavours of regulatory authorities to spearhead market economy in Tanzania. Before going into the essence of the subject matter, it was necessary to find out if respondents really knew the kind of legal framework for regulatory authorities Tanzania had adopted.

The results (Table, 5.1) show that 37.12 percent of the respondents stated that they were conversant with the legal framework adopted by Tanzania while 34.85 per cent of the respondents said that they did not know the legal framework adopted in Tanzania.

Table 5.1: Respondents' Knowledge on Regulatory Authorities' Legal Framework Adopted in Tanzania

Age	Yes	No	Don't Know	Total
1 - 25	10 (7.58)	11 (8.33)	7 (5.30)	28 (21.21)
26 – 35	11 (8.33)	21 (15.91)	8 (6.06)	40 (30.30)
36 – 45	12 (9.09)	8 (6.06)	12 (9.09)	32 (24.24)
46 – 55	15 (11.36)	3 (2.27)	6 (4.55)	24 (18.18)
56 and above	1 (0.76)	3 (2.27)	4 (3.03)	8 (6.06)
Total	49 (37.12)	46 (34.85)	37 (28.03)	132 (100.00)

Source: Field Data (2012)

Note: Numbers in brackets are percentages 132 (100.00)

On the other hand, 28.03 per cent of the respondents had no answer. What does this imply? The findings speak volumes! In summary, one can therefore argue that 62.88 per cent of the respondents do not know the legal framework for regulatory authorities Tanzania had adopted. The fact that 62.88 per cent of the respondents did

not know the regulatory legal framework adopted by Tanzania supported what was stated earlier that regulatory legal framework was enacted in the absence of policy. The absence of policy therefore denied people opportunity to take part in the process of law making which by which would have given them knowledge of the existing legal framework. This supported the argument that the current regulatory authority was a carbon-copy of a model based on foreign laws.

That was clear evidence that the regulatory legal framework was adopted in the absence of policy. It is always through a policy process that the public, those who are likely to be affected by the intended law, would be given an opportunity to air out their concern. The public participate in law making process through policy formulation where their inputs and exchange of information would be put forward. This is the democratic way of law making process. Mabruck in an interview held the view that regulatory laws were copied from foreign countries save for the modus operand.

The fact that the subjects the law was intended to serve did not know it, it could not make a positive impact on them. That was what Malharbe was putting forward that “a law that emerges out of problems was simply a one legged stool and enacting laws without the appropriate policy behind them bound such nation in shackles”. Due to the fact that 62.88 per cent of the respondents did not know the legal framework adopted was a result of the current institutional set up in the transport sub sector. It is the same ignorance of the applicable legal framework that leads to poor traffic management which cost the economy in terms of traffic congestion, safety, infrastructure and tariffs.

Looking at the results (Table 5.2) from a demographical angle, 30.30 percent of the respondents belonged to a group age between 26 – 35 years. In this age group, 8.33 per cent of the respondents knew the regulatory legal framework adopted in Tanzania while 15.91 per cent said that they did not know the adopted regulatory legal framework in Tanzania. On the other hand, 24.24 percent of the respondents fall on the age group between 36 – 45 years.

The results (Figure, 5.13) show that 28.80 percent of the respondents were aware of the shortcomings of the existing legal framework while 33.60 per cent of the respondents were not aware of the shortcomings of the existing legal framework. The results further show that 37.60 per cent of the respondents did not know any thing on the subject matter.

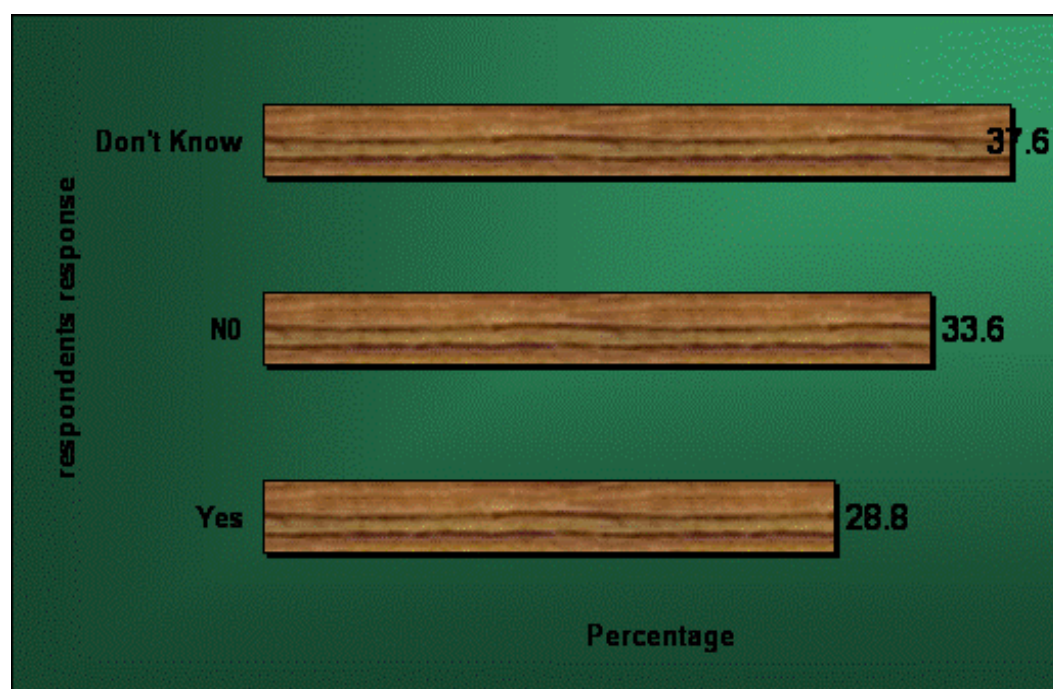


Figure 5.13: Respondents' Knowledge of Shortcomings of the Existing Regulatory Authorities' Legal Framework

Source: Field Data

These findings further supported the previous results (Table 5.2) which showed that 34.85 per cent of the respondents did not know the legal framework applicable in Tanzania. It is therefore logical that if respondents (Table 5.2) did not know the existing legal framework would not know the shortcomings of the same legal framework. It is on that basis that the results (Figure 5.11) show correlation with the results on Table 5.2.

On the other hand, the results (Figure 5.14) show that 40 per cent of the respondents stated that the legal framework was not conducive to regulatory authorities in spearheading market economy in Tanzania. It was only 24 per cent of the respondents who said the legal framework of the regulatory authorities in Tanzania was conducive and 36 per cent had no answer. The results (Figure 5.14) further show that 35.48 percent of the respondents did not have the answer.

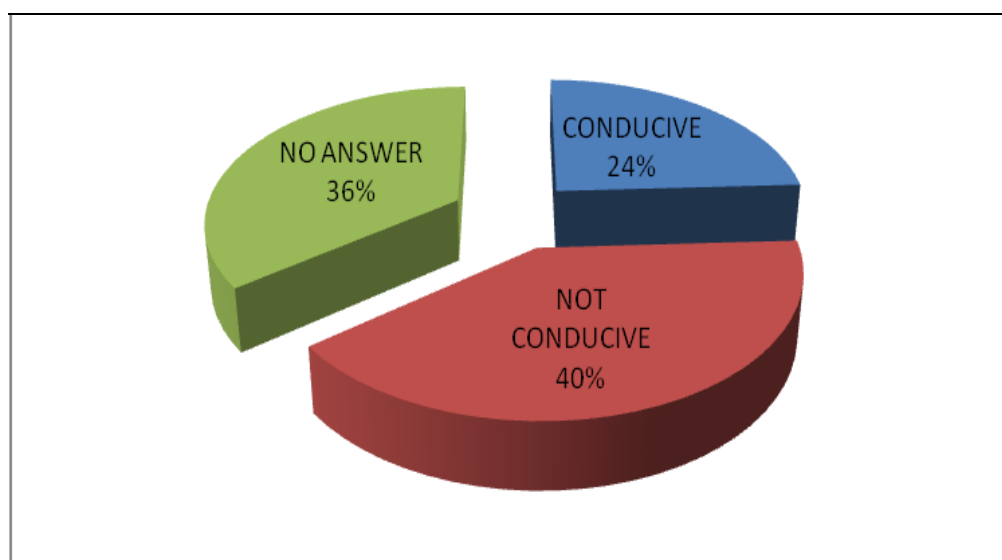


Figure 5.14: Respondents' Response on Conduciveness of Regulatory Authorities' Legal Framework in Tanzania

Source: Field Data (2013)

As argued earlier, first and foremost these regulatory authorities lack legitimacy before the eyes of the law to wit the constitution of the United Republic of Tanzania. It is trite law that any law that contravenes Articles of the Constitution of the United Republic of Tanzania is void *ab initio*. Paragraph 3 of the Preamble to the Constitution and Articles 3 (1) clearly articulates the policy for Tanzania as a democratic and socialist state. Based on that fact, competition laws and regulatory legal framework are rendered a nullity and therefore cannot spearhead market economy which is contrary to socialist economic philosophy.

In an interview with Mkasimongwa on the legality of regulatory authorities, he stated that “they are an oversight of a sound legal system susceptible to any legal challenge”. In such fragile legal arrangement regulatory authorities cannot spearhead market economy for want of legitimate legal framework. Besides legal legitimacy, these regulatory authorities lack important aspect of independence (Figure 5.9) in their operations which is basic to any regulatory authority. Precisely, if regulators cannot act independently then their regulatory role remains purely academic. These two aspects together with many other factors argued earlier crippled regulatory authorities from playing their regulatory role to spearhead market economy in Tanzania.

Although there is no empirical evidence, by assumption of all the regulatory authorities, SUMATRA may be the badly affected by the legal framework as the sector it regulates and its placement did not give it room to discharge its regulatory roles under the ambit of the law establishing it. As argued in chapter 3, SUMATRA

could be regarded as new wine in an old bottle. It has been entrusted to regulate the transport sub sector amid fragmented laws and tight institutional and legal framework.

5.4 The Relevance of Regulatory Authorities in Day-to-Day's Lives of Ordinary People in Tanzania

The results (Figure 5.14) show that 85.71 percent of the respondents stated that regulatory authorities were relevant to consumers and service providers of the regulated market. The results further show that it was only 14.29 percent of the respondents who said that regulatory authorities were not relevant to them.

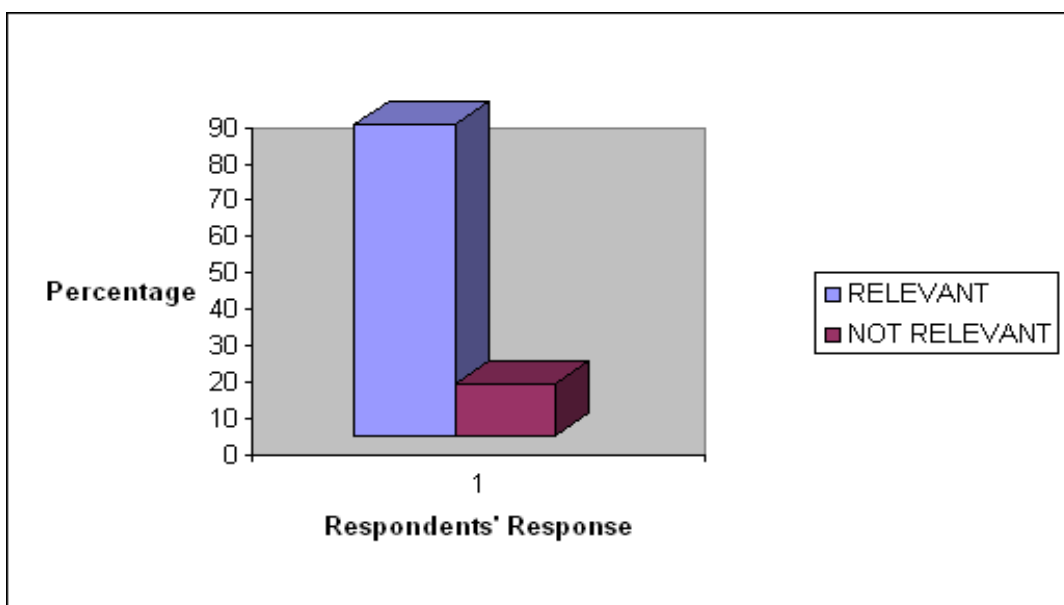


Figure 5.12: Respondents' Response on the Relevance of Regulatory Authorities in the Regulated Markets in Tanzania

Source: Field Data (2012)

Looking at this concept of regulatory authorities in Tanzanian market, the researcher was eager to know whether respondents knew how services, namely transport, water, energy, electricity, phones etc were managed in terms of accessibility, quality and

pricing. The results (Figure, 5.14) show that 52.31 percent of the respondents said that utilities were regulated by various regulatory authorities which ensure accessibility, quality and pricing. The results further show that 20 percent of the respondents said that they did not know how utilities were managed in the market. The results indicate that 27.69 percent of the respondents did not have an answer at all.

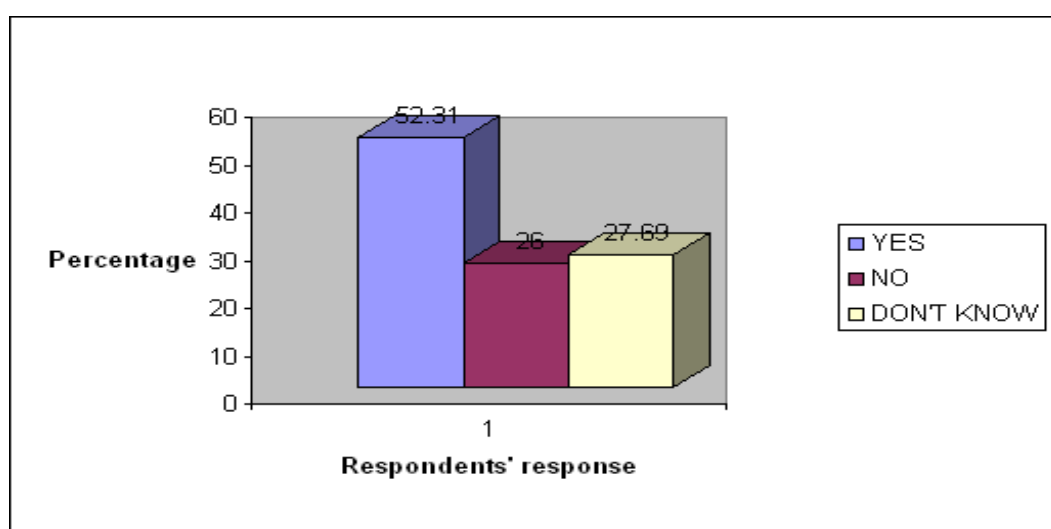


Figure 5.13: Respondents' Knowledge on how Utilities are Managed in Terms of Accessibility, Affordability, Quality and Pricing in the Market in Tanzania

Source: Field Data (2012)

According to the results (Figure 5.1) and (Figure 5.3) it is evident that regulatory authorities in Tanzania were neither competent and nor visible. Although regulatory authorities are not competent and are not visible, that is, are not performing to the expectation of the regulated market, yet results (Figure 5.13) show 85.71 percent of the respondents stated regulatory authorities were relevant to their day to day lives. The results on Figure 5.13 is further supported by the results (Figure 5.14) which show that 52.31 per cent of the respondents were aware how utilities were managed in terms of affordability, accessibility, quality and pricing. It is important to note that

utilities are fundamental aspects of life, therefore their availability and quality is critical to consumers. This is what makes regulatory authorities relevant to consumers.

The results (Figure 5.13) has a close relationship with results (Figure 5.6) where 68.99 percent of respondents stated that they knew why regulatory authorities were established. The 85.71 per cent score was a clear indication that people knew the role which regulatory authorities were expected to play in their day to day lives in the process of regulating the market.

The results (Figure 5.7) had shown that 72.66 per cent of the respondents had stated that the reasons for establishing regulatory authorities were still valid. The results (Figure 5.7), (Figure 5.13) and (Figure 5.14) complement each other on the importance of regulatory authorities in the market. Juma Fimbo supporting the above findings held the view that “regulatory authorities were key institutions in the lives of ordinary people”. He further argued that “regulatory authorities regulated fundamental services which people use on day-to-day basis. Ordinary people need safe transport, safe and adequate fuel, electricity, mobile phones etc”. These are pertinent issues that played a great role in the day to day lives of people and that were what made regulatory authorities relevant. One respondent, in responding to an open ended questionnaire stated that “regulatory authorities had helped to keep regulated market prices stable”. Another respondent one Hamis Juma stated that “the presence of regulatory authorities had made it possible for him to see bus fares being slashed by 11.6 per cent upon an application filed by SUMATRA Consumer Consultative Council to SUMATRA in 2009”. He was of the view that “if of

regulatory authorities had been absent operators would have been raising fares anyhow in order to rip off huge profits at the expense of consumers”. In spite of legal framework shortcoming, regulatory authorities were meant to act as moderators in the market. Their role as stated earlier was to protect companies from unfair competition, protecting consumers from unfair business practices and protecting the interests of the society from unbridled business behaviour. All these services were done on behalf of ordinary people who are the consumers of the regulated market. It is important to note that regulatory authorities if given space to play their role, without political interferences they perform for the wellbeing of an ordinary citizen.

5.5 The Performance of the Surface and Marine Transport Regulatory Authority Regulating the Transport Sub-Sector

The Surface and Marine Transport Regulatory Authority has been on the front page of news papers due to the nature of goods and services it regulates. The results in Table 5.3 show that 90.91 percent of the respondents knew SUMATRA and its operations.

Table 5.2: Respondents’ Knowledge of SUMATRA and its Operations

Age Group	Yes	No	Don’t Know	Total
0 - 25	20 (16.53)	1 (0.83)	3 (2.48)	24 (19.83)
26 – 35	34 (28.10)	1 (0.83)	1 (0.83)	36 (29.75)
36 – 45	28 (23.14)	0 (0.00)	2 (1.65)	30 (24.79)
46 – 55	23 (19.01)	0 (0.00)	1 (0.83)	24 (19.83)
56 and above	5 (4.13)	2 (1.65)	0 (0.00)	7 (5.79)
Total	110 (90.91)	4 (3.31)	7 (5.79)	121 (100.00)

Source: Field Data (2012)

Note: Numbers in brackets are percentage 121 (100.00)

It was only 3.31 percent of the respondents who stated that did not know SUMATRA and its operations and 5.79 percent of the respondents stated that they were not certain with their answers. The results (Figure 5.17) show that 74 percent of the respondents stated that SUMATRA was not regulating the market efficiently while 26 percent of the respondents said that SUMATRA was regulating the market efficiently.

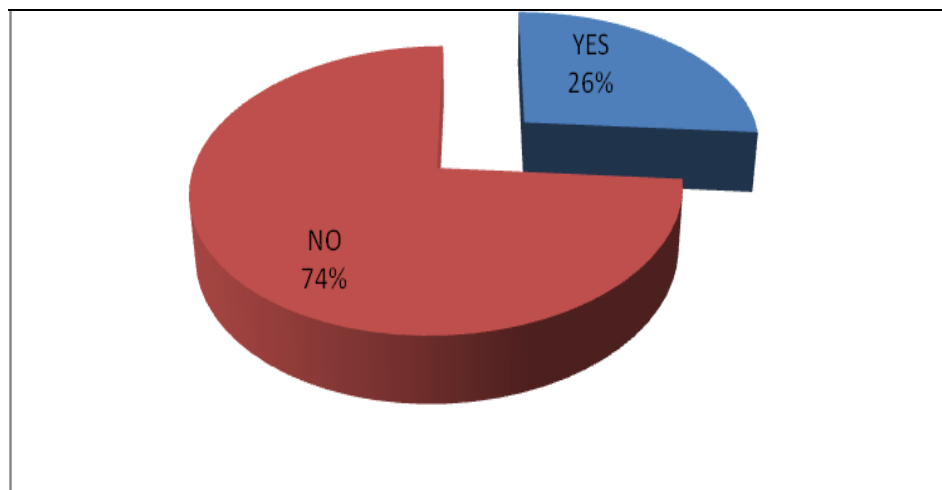


Figure 5.14 Respondents' Response on SUMATRA's Performance on Regulating Transport Sub-Sector

Source: Field Data (2012)

In an interview with Hon. Judge Haruna Songoro on the 26th day of October 2010, he expressed his concern that “the current legal framework had no coherency”. In order to make SUMATRA regulate the industry effectively there were many areas which needed changes. Songoro pointed out one of the areas that needed urgent changes as being the process of drafting regulations and enforcement of the same. He felt that “drafting of regulations was crucial to any regulator. The current procedure of drafting regulations was long and regulators had no control of the process”.

The process involved Government officials, namely Attorney General Chambers and the Minister responsible for transport, all of whom may not have interest in the process. The process is therefore encompassed with bureaucracy which should not be part of the regulatory system. The regulations are expected to bring in changes and improvements in the regulated sectors. The system which intends to bring in changes need be free because bureaucracy paralyses the implementation of the process. Songoro pointed out another problem affecting the current legal system as being the participatory approach the law requires the authority to use.

Participatory approach is good so long as did not compromise safety. When this happens then participatory approach ought to be revisited. Therefore involving operators in the drafting of regulations on safety was a real set back. For operators, safety measures are a cost while for consumers they are a requirement. According to Songoro, safety regulations should involve experts rather than stakeholders who at the end of the day fight for personal gains. It was on those premises that there were not enough regulations to regulate the sector efficiently and effectively. Efforts must be made to draft more regulations to regulate the sector.

Songoro further pointed out that “sector legislation which were enacted during the period when the government was in control of almost everything have had adverse effects on SUMATRA’s performance in regulating the market”. The law provided for SUMATRA to work with the Police Force, Road Traffic Department on regulating road transport. This situation has caused polarization of the operations in road transport in general due to conflict of interests.

Songoro was of the view that “it was imperative to amend the law in order to establish a clear cut of the roles and obligations each institution carries out on road transport”. Songoro was of the opinion that “according to the current regulatory legal framework now, SUMATRA was over dependent on the police to regulate road transport. The decision of the police on the road worthiness of any vehicle was final and conclusive with SUMATRA not being able to challenge that decision. The role of the regulator thus remaining the licensing of the vehicle without questioning the quality of the licensed vehicle on the road worthiness report issued by the police”.

Songoro was of the opinion that routes management was not SUMATRA’s role. It only came to SUMATRA as a licensing procedure. Routes indication and drop bays are managed by local authorities. Due to the weakness of local authorities, operators by pass them and go direct to SUMATRA requesting for routes of their own choice which were lucrative. As a result, transport services offered in the country did not meet the needs of the residents.

The current routing system has remained purely traditional due to lack of creativity on the part of local authorities thereby costing passengers heavily in terms of time and money. People have to walk almost a kilometer from their residence to the main road to board a daladala to town. What that means is that one walks a kilometer to the main road, and there he/she has to wait for a couple of minutes, before boarding a daladala which is later held up in traffic jam for two hours or more. The time wasted has adverse impact on production patterns as well as market economy principles.

Celestin Muzo argued that point further by noting that “SUMATRA’s performance hardly impressed people because the transport sector has been in pathetic situation

since the mid 1980s". He was of the view that "since the mid 1980s Tanzania was turned into a grave yard of old vehicles imported from Europe and Asia to the detriment of the country's economy and environment". This was further elaborated by Sabri Mabruk who argued that "for a long time operators had persistently requested the government to give them exemption of custom duty and value added tax (VAT) on new vehicles imported for public use and their spare parts".

As the government continues not to heed to their request the operators opted to buy second hand vehicles for public service use. Worse still other operators opted even to buy Lorries whose chassis were converted for bus use. One officer from DARCOBOA felt that "SUMATRA was moving at a slow pace in regulating the transport sector especially surface transport". He was of the opinion that "there were massive inefficiencies in the delivery of services by surface transport operators and SUMATRA had not taken decisive action".

Further to the foregoing Mzahula Davis a student at St. Augustine University (SAUT) attributed "SUMATRA's failure to regulate the transport sector to the fact that the sector had remained totally disorganized a factor which was caused by lack of transparency on commuter buses ownership and their agents. Due to this state, enforcement of laws and regulations remained difficult".

The Surface and Marine Transport Regulatory Authority was perceived to be the most popular regulatory authority in Tanzania. SUMATRA regulates road, railway and marine transport which are critical areas of social economic wellbeing of the society. The regulated market touches the life of every Tanzanian, because people

generally are always on the move. The ancient philosopher Heraclitus of Ephesus put it in his famous statement “all things were in flux” ‘panta rei’ the statement portrayed mobility of things, people inclusive. People are always on the move from point A to point B. People’s mobility is facilitated by transport.

As stated earlier, transport cuts across all sectors of economic development namely agriculture, tourism, mining, education, health etc and enables people and resources to move to their full potentials. It was on that premises that Mwalusaka (2010) stated that “the significance of transportation in its many forms, to a country’s development, the importance of an efficient transport system, both inter and intra modal, cannot be over emphasized”.

The results on Table 5.3 showed that 90.91 percent of the respondents knew SUMATRA and its operations in the market. This was true because of its regulatory role which it plays in the market. Again, what was probably important was that in its efforts to regulate the market, SUMATRA quickly made its presence felt in many regions by starting its operations up country. That move gave it more visibility in the regulated market. It is important to note that high visibility alone does not necessarily reflect performance of its regulatory functions.

The truth of this contention is not far fetched. The results (Figure 5.11) showed that 73.77 per cent of the respondents stated that SUMATRA was not regulating the market efficiently. At this juncture we may not be interested in these arithmetic Figures but rather the rationale of the same. Looking at the transport sub-sector, road, railway and marine one could not expect a different kind of the answer.

The reasons were apparent that SUMATRA has not been able to regulate the market to bring in transport efficiency. From the administrative point of view, SUMATRA was misplaced ministerial. SUMATRA regulated railway and marine transport which were under the Ministry of Transportation and SUMATRA itself is under the same Ministry. This administrative arrangement in itself is a clog to SUMATRA. SUMATRA cannot act against the wishes of the Minister because it was the same Minister who determined its fate. Under such administrative arrangement SUMATRA, sometimes has to compromise its regulatory functions for convenience's sake.

Besides administrative hindrances, SUMATRA faces legal framework set backs ranging from the institutional set up to the transport management itself. As stated earlier, transport in Tanzania is mainly by road supplemented by rail. Tanzania's road traffic represents 70 per cent of freight and 90 per cent of the passenger transport market share (National Road Safety Policy, 2008) Going by statistics, road transport plays a great role in the transport sub sector yet SUMATRA's regulatory role is limited. Regulatory functions are directed to railway and marine where basically transportation activities are limited.

As stated earlier, the Ferries Act (Cap. 173) curtails SUMATRA's regulatory authorities' role on ferries run by the Ministry of Works. Section 11 of that Act empowers the Minister of Works to make regulations on how to maintain the safety and efficiency of the services to be provided by the Public Ferries by the holders of licenses under that Act.

5.6 Summary and Conclusion

The analysis of the collected data has revealed pertinent information on the impact of the current legal framework on the Regulatory Authorities in Tanzania. The findings have revealed that the Regulatory Authorities are capable of regulating and spearheading market economy in Tanzania. The findings have further revealed that the regulatory legal framework was not conducive to the authorities to spearhead market economy as they lack necessary independence in their decision-making processes. It has been found out that the current legal framework is characterized by conflicting legislations which in turn create unpredictability in the operation of the laws and regulations. From the findings, it was difficult to expect Regulatory Authorities to spearhead market economy in Tanzania due to the legal framework they operated in.

The findings have revealed that the market has trust in the Regulatory Authorities. The findings have vividly indicated that the Regulatory Authorities are relevant to the day-to-day life of consumers. Basing on the findings it was necessary to amend the current legal framework in order to give Regulatory Authorities exclusive powers in areas of their competencies. The proposed amendment will only be meaningful if it went hand in hand with amendments of the constitution of the United Republic of Tanzania so that it recognized that Tanzania was now a market driven economy. Further to the foregoing, it was important to harmonize institutional set up in order to accord Regulatory Authorities clear roles. Finally, the three tier regulatory framework should be established, that is, Competition Authorities, Regulatory Authorities and Consumer Authorities.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATIONS

6.1 An Overview

This chapter dwells on the conclusion of the analysis done in Chapter Six and recommends necessary measures which ought to be taken to enhance regulatory legal framework to enable it to spearhead market economy in Tanzania. Finally the chapter identifies knowledge gaps which may need future study to fill in that gap.

6.2 Summary of the Study

This study has scrutinized the impact of legal framework on regulatory authorities to spearhead market economy in Tanzania. The study has elucidated the socio economic evolution Tanzania has gone through so as to establish the base for the establishment of the regulatory authorities in Tanzania. An overview on command economy was made, and the reasons for its failure were tabled and why the current regulatory legal framework was put in place. This chapter therefore concludes the study by recommending what should be done to enhance regulatory legal framework so that the same may spearhead market economy in Tanzania.

Through the study, it has been noted that Tanzania whether on its own will or by pressure from outside the country had no option but to reverse its previous socio political and economic policies by putting aside the Arusha Declaration and replacing it with the Zanzibar Declaration of 1985. The Zanzibar Declaration was a turning point of the economic policies of the country. It was the Zanzibar declaration which sowed seeds for the future introduction of regulatory authorities in Tanzania.

Consequently various laws establishing regulatory authorities were enacted in 2001 although the first regulatory authority, the Surface and Marine Regulatory Authority was established in 2004. Eventually the Government slowly withdrew from regulating the market and its place was taken up by these regulatory authorities. In undertaking their responsibilities, Regulatory authorities were meant to act as moderators in the market on one hand, and cultivating competition in the market on the other hand.

The arrangement was tempting to the extent that adopted it immediately without taking into consideration basic and fundamental legal issues necessary for regulatory authorities to operate in Tanzania. This is why this study was undertaken to explore whether the legal framework put in place had any adverse impact on the regulatory authorities to discharge their regulatory roles. Admittedly, the study could not analyse all three regulatory authorities in detail and so SUMATRA was taken as a case study while making reference to the other authorities where circumstances dictated so.

The findings in chapter five and the subsequent analysis in chapter six have proved beyond doubt that the regulatory legal framework put in place has had adverse impact on the regulatory authorities in their role of spearheading market economy in Tanzania. Needless to say, the regulatory authorities' legal framework has been found to have no legitimacy as it contravenes the constitution of the land. It is therefore necessary to rectify this shortcoming during the constitutional review process and overhaul the regulatory legal framework by harmonizing the institutional set up and other competing legislations.

Further to the foregoing, the findings in chapter five and the analysis of the findings in chapter six have shown that regulatory authorities were relevant in the market. It is important therefore to empower regulatory authorities in terms of harmonizing their legal framework and cultivating their competencies so that they serve the market in a professional manner.

The Surface and Marine Transport Regulatory Authority has been deemed by the respondents that it was ineffective in the market it regulated. It has been indicated that SUMATRA has been crippled by institutional set up and unprecedented legal arrangement. It was therefore been noted that there was a dire need to harmonize the institutional set up and amend the Road Traffic Act to suit the Regulatory Authority's framework.

6.3 Conclusions

6.3.1 The Competence, Relevance and Visibility of Regulatory Authorities in the Process of Regulating the Market

From the findings, it has been established that Regulatory Authorities were not competent enough to regulate the market. It was further established that Regulatory Authorities were not visible to the regulated market. This fact has been partly attributed to the novelty of the concept of regulatory authority and partly to lack of functional independence, transparency and predictability. As a result these regulatory authorities, more often than ever, have been accused of doing police work in the market instead of regulating the same. It has however been suggested that since regulatory authorities were not fully equipped with competent human resource, delegating some of its regulatory role so as to harness competencies lying outside its

ambit would be advantageous. This would solve complacency problems which face many organizations.

6.3.2 The conduciveness of legal framework on performance of regulatory authorities to spearhead market economy in Tanzania

The findings have also revealed that the current legal framework has adverse impact on the regulatory authority's legal framework and therefore regulatory authorities cannot effectively spearhead market economy. The findings clearly supported the literature in chapters 2, 3 and 6. In nutshell, from the precepts of the law, it is settled that any legal system draws its legitimacy from the Constitution of the land contrary of which such legal system remains a nullity. It has been established that the regulatory authority's legal framework contravenes paragraph 3 of the Preamble, and Article 3 (1) of the Constitution. It is therefore important to note that Regulatory Authorities' legitimacy was not properly established and therefore the regulated market cannot create confidence. Regulators' important role of monitoring the level of investment in the regulated market remains unattainable if the market has no confidence in the regulator. This is vividly seen, in the case of SUMATRA where there is been no substantial investment that has been made in the market sector it regulates. It has been further established that regulatory authorities are not independent when regulating the market. As the result, service providers regard regulators as like another police department.

As noted earlier, regulatory authorities lack relevant competencies in terms of human resources and the law does not, in clear terms, allow them to delegate some of their regulatory functions. On the other hand, the institutional set up was a real snag, as it

was not coordinated with each institution playing its role in disregard of other institutions.

6.3.3 Meeting Qualities of Functional Regulatory Authorities in Tanzania?

The findings in chapter five have revealed that regulatory authorities in Tanzania do not meet qualities of functional regulatory authorities. Findings revealed that regulatory authorities in Tanzania are not independent. It was further revealed that regulatory authorities were not transparent and were not predictable. Independence, transparency and predictability are key qualities of any functional regulatory authority. Independence of regulatory authority is fundamental in regulation process. The essence of a regulation is based on independent economic and social decisions the regulatory authorities have to make.

Absence of these factors renders a regulatory authority not functional therefore they become just like any other government agencies. This has been attributed to the legal framework which established them and within which they operate. As indicated hereinabove in 6:3:2, the legal framework within which they operate is not conducive to them to discharge their regulatory duties independently, transparently and predictably.

6.3.4 The Performance of Surface and Marine Transport Regulatory Authority in Regulating Transport Sub-Sector

The findings revealed that SUMATRA was not regulating the market efficiently. Those findings concur with the literature in chapters 2, 3 and 6. It was pointed out

that SUMATRA was just like a new wine in an old bottle. It was further pointed out that SUMATRA operated within a fragmented legal set, characterized by uncoordinated institutional set up. Worse still the regulator had been portrayed as a regulator of road, marine and railway transport while other regulatory roles were carried out by other institutions.

On one hand SUMATRA's regulatory roles in Marine transport are limited by Ferries Act which curtails SUMATRA's mandate over government ferries. On the other hand, road transport which commands 70 per cent of freight and 90 per cent of passenger transport market share is partially regulated by SUMATRA. Road transport is basically regulated by police officers, road traffic department. It looks awkward but this is legal arrangement. It was established that SUMATRA had only full regulatory role on railways transport whose operations were dwindling.

Road Traffic Act was not amended to suit in regulatory legal framework, therefore, it empowers police force to regulate safety aspects through carrying out vehicle inspection, providing vehicle roadworthiness certificates, testing drivers who apply for driving licenses and enforce road safety regulations. SUMATRA's role as a regulator was licensing the vehicle after conditions of licensing were determined by the police force. What is important to note here was the fact that police force and SUMATRA were two different entities under different Ministries working together on an important sector like transportation without a proper and legally binding coordination.

Another artificial role SUMATRA played on road transport was developing regulations which in a way would not enforce. To enforce its regulation heavily

depended on good will of police force. In such legal arrangement there was no way SUMATRA could adhere to regulatory norms to regulate road transport which remains the major means of transport as compared to other modes of transport. This is in line with Mwandosya remarks that amendments of the laws were made without taking trouble to review other competing legislations.

6.4 Recommendations

The recommendations of this study are the following:-

- (i) The Constitution of the United Republic of Tanzania of 1977 should be amended to accommodate the market economy concept in order to provide legal legitimacy to regulatory authorities.

- (ii) The current Fair Competition Act, Act N0.8 of 2003 and Regulatory Authorities Acts, namely The Surface and Marine Transport Regulatory Authority Act, Act N0. 9 of 2001, The Energy and Water Utilities Regulatory Authority Act, Act N0. 11 of 2001 and Tanzania Communications Regulatory Authority Act, Act N0. 12 of 2003 should be reviewed to harmonize competing legislations and institutional set up. It is further recommended that the review should aim at creating a regulatory trilogy legal framework that is Competition Authority, Regulatory Authorities and Consumer Authority in order to increase consumer power in the market for the purpose of creating a balanced and well functioning market. The role of the Competition Authority and Regulatory Authority should provide an oversight role on demand side in the market while Consumer Authority should deal with supply side in the market.

- (iii) The transport sub sector is crucial for economic development in any country and that is why it is regarded as blood of the economic life. Basing on that premise SUMATRA should be placed under the Presidents Office just as it is in the United State of America to enable the state exercise close touch with development in the transport sub sector which in turn stimulates economic growth. SUMTRA was under the Ministry of Transport, the same Ministry which also oversees Railway and Marine Transport which are regulated by SUMATRA.
- (iv) Road, Marine and Railway Transport should solely be regulated by SUMATRA so as to create accountability in one institution than was case for the purpose of creating transport management which will increase competitiveness in the sector. In this regard, SUMATRA should have its own unit to develop standards and implementation of the same.
- (v) Regulatory authorities should be empowered to attain the required competencies so that their visibility is raised and seen in the market they regulate in order to create confidence in the regulated goods and services.
- (vi) A proper communication channel must be set up, improved and coordinated among regulatory authorities who regulate interdependent goods and services such as SUMATRA, EWURA and other regulatory authorities.

6.5 The Proposed Legal Framework for the Regulatory Authorities in Tanzania

The findings revealed that regulatory authorities were established to provide an oversight role in market economy. The findings further revealed that regulatory

authorities were not independent due to the fact that they were reporting to the Ministry they were regulating. This study showed that while regulation was given high priority consumer protection was neglected and hence making regulation work difficult. It is therefore proposed that Tanzania should establish a regulatory trilogy legal framework by establishing independent Competition Authority, Regulatory Authorities and Consumer Authority in order to strike a balance in the market. It is further proposed that the proposed legal framework should report directly to Presidents Office rather than reporting to different Ministries more often the regulated Ministries. Finally it is proposed that regulatory authorities should be fully equipped in terms of powers to discharge their functions rather than depending on other institutions which are not part of the regulatory systems as it is the case for SUMATRA and Police Force in enforcing transport regulation on road transport.

6.6 Areas for Further Research

The researcher suggests that further research be done on how the proposed Regulatory Legal Framework (trilogy regulatory legal framework) acts as a catalyst of market economy, technological innovations and quality industrial products in Tanzania.

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APPENDIX

Appendix I: Questionnaire

THE IMPACT OF LEGAL FRAMEWORK ON REGULATORY AUTHORITIES TO SPEARHEAD MARKET ECONOMY IN TANZANIA

Questionnaire No.....

**PLEASE ANSWER ALL QUESTIONS BY TICKING THE APPLICABLE
ANSWER OR AS DIRECTED OTHERWISE**

PERSONAL PARTICULARS

1. State where the interview was carried out:

Region.....

District.....

Sex: Male [] Female []

2. Indicate by ticking which of the following age groups represent your age:

(i) 18 - 25 []

(ii) 26 – 35 []

(iii) 36 – 45 []

(iv) 46 – 55 []

(v) 56 and above []

3. Indicate by ticking your position in the society

(i) Executive Director []

(ii) Manager []

- (iii) Senior Officer []
- (iv) Officer []
- (v) Supporting staff []
- (vi) Driver []
- (vii) Conductor []
- (viii) Student []
- (ix) Other (Please specify).....

4. What is your academic qualification?

- (i) Primary School Education []
- (ii) Secondary School Education []
- (iii) Diploma []
- (iv) Advance Diploma []
- (v) First Degree []
- (vi) Masters degree []
- (vii) PhD []
- Other (Please specify).....

5. How often do you use the following social services at your work place or at home?

- Water, (i) [Every day] (ii) [Once a Week] (iii) [Once a Month] (iv) [Not at all]
- Phone, (i)[Every day] (ii)[Once a Week] (iii)[Once a Month] (iv)[Not at all]
- Electricity, (i) [Every day] (ii) [Once a Week] (iii)[Once a Month] (iv) [Not at all]

- Transport, (i) [Every day] (ii) [Once a Week] (iii) [Once a Month] (iv) [Not at all]

6. Do you know how the above mentioned social services are managed in the market in terms of accessibility, quality, pricing, affordability etc.

- (i) YES, (ii) NO (iii) DON'T KNOW

7. If the answer in question 6 hereinabove is **YES** please explain how are they managed in terms of accessibility, quality, pricing, affordability etc

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8. Do you know the existing Legal Framework for Regulatory Authorities Tanzania has adopted?.....(i) YES, (ii) NO (iii) DON'T KNOW

9. Is the existing Legal Framework conducive for all Regulatory Authorities to spearhead market economy in Tanzania? (i) YES (ii) NO

(iii) DON'T KNOW

10. If the answer in question 8 and 9 hereinabove is YES, please explain briefly on the suitability of the Legal Framework for Regulatory Authorities in Tanzania.....

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11. Are you conversant with the Centralized Economy Legal Framework in Tanzania? (i) YES (ii) NO (iii) DON'T KNOW

12. If the answer in question 11 hereinabove is **YES**, do you think there is harmonization between centralized economy legal framework and regulatory legal frame in Tanzania:

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13. Do you think there is harmonization between Acts establishing Regulatory Authorities and Sector legislations?

(i) YES (ii) NO (iii) DON'T KNOW

14. Please briefly explain:

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15. How many regulatory authorities do you know?

- One []
- Two []
- Three []
- Four []
- Five []
- Many []

16. Do you know why these regulatory authorities were formed?

(i) YES, (ii) NO (iii) DON'T KNOW

17. If the answer in question 16 above is **YES**, briefly, explain the essence of establishing them and highlight primary objectives of establishing the same

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18. From the reasoning in question NO. 17 hereinabove, do you think the Reasons for establishing Regulatory Authorities are still valid?

(i) YES (ii) NO (iii) DON'T KNOW

19. If the answer in question 18 above is **YES** please substantiate your answer

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20. Do you think regulatory authorities have achieved or are on a right track to achieve the primary objective of their establishment?

(i) YES (ii) NO (iii) DON'T KNOW

21. If the answer in question 20 above is **YES** briefly explain how

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22. Do you think these regulatory authorities are relevant to the day to day lives of ordinary people?

(i) YES (ii) NO (iii) DON'T KNOW

23. Do you think these regulatory authorities are competent enough to regulate the markets they are entrusted with?

(i) YES (ii) NO (iii) DON'T KNOW

24. Do you think these regulatory authorities are visible in day-to-day lives of ordinary people?

(i) YES (ii) NO (iii) DON'T KNOW

25. Are you aware of any shortcoming of the existing Legal Framework and how it is likely to hinder Regulatory Authorities to spearhead market economy in Tanzania?

(i) YES (ii) NO (iii) DON'T KNOW

26. If the answer in question 25 hereinabove is **YES** will you explain how the existing Legal Framework hinders Regulatory Authorities to achieve their goals in the market they serve.

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27. Are Regulatory Authorities **independent enough** to discharge their responsibilities in the market they serve?

(i) YES (ii) NO (iii) DON'T KNOW

28. If the answer in question 27 hereinabove is **NO** please explain briefly how and give examples of scenarios which indicate interference into Regulatory Authorities operations by the government or stakeholders

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29. Are Regulatory Authorities in Tanzania **Transparent enough** while discharging their responsibilities in the market they serve?

(i) YES (ii) NO (iii) DON'T KNOW

30. If the answer in question 29 hereinabove is **NO** please explain briefly why and give examples of scenarios which indicate that they are not transparent

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31. Are Regulatory Authorities in Tanzania **Predictable Enough** while discharging their responsibilities, **DECISION** making in particular in the market they serve?

(i) YES (ii) NO (iii) DON'T KNOW

32. If the answer in question 31 hereinabove is **NO** please explain briefly how and give examples of scenarios which indicate Unpredictability of the Regulatory Authorities in decision making process

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33. Do you know Surface and Marine Transport Regulatory Authority?

(i) **YES** (ii) **NO** (iii) **DON'T KNOW**

34. If the answer in question 33 above is **YES** explain how do you know the same

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35. Do you think SUMATRA is regulating the market it is established to regulate efficiently?

- (i) YES (ii) NO (iii) DON'T KNOW

36. If the answer in question 35 hereinabove is **YES** briefly explain how

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37. If the answer in question 36 hereinabove is **NO** please briefly explain why

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38. Are you aware of Institutions/Ministries that play an important role in transport sub-sector in Tanzania?

- (i) YES (ii) NO (iii) DON'T KNOW

39. If the answer in question 38 hereinabove is **YES**, how many institutions/Ministries play a key role in Transport Sub-sector?

- (i) **Two** (ii) **Four** (iii) **Five**

40. Do those Institutions/Ministries play a regulatory role to supplement SUMATRA's regulatory roles?

- (i) YES (ii) NO (iii) DON'T KNOW

41. How regularly do you use public transport facilities?

- Every day []
- Five days per week []
- Twice per week []
- Fourth per month []
- Twice per month []
- Once per month []
- Very rarely []

42. How would you rank the Surface and Marine Transport Regulatory Authority role in Transport Sub Sector?

- (i) Very poor []
- (ii) Moderate []
- (iii) Good []
- (iv) Very good []

43. In any choice of the above please provide your opinion on how you have arrived at your answer

44. What do you see as the challenges facing the Regulator of Surface and Marine Transport sub- sector

45. What do you think could be the root cause of the above mentioned challenges?

46. What do you think should be done to address the challenges facing the regulator?

47. Do you think service providers/transport businessman and transport consumers understand where to file their complaints when they face legal problems related to transportation issues.....

(i) YES (ii) NO (iii) DON'T KNOW

48. Do you understand SUMATRA's role and responsibilities

(i) YES (ii) NO (iii) DON'T KNOW

49. In any choice of the above please give reasons to substantiate your answer hereinabove

50. Do you think Service Providers and Consumers of the Regulated Goods and Services by SUMATRA understand the importance of having a regulator in transport sub sector?

(i) YES (ii) NO (iii) DON'T KNOW

51. In any choice of the above please give your opinion on how you have arrived at your answer

52. How do the following Institutions supplement SUMATRA's regulatory role in transport sub sector?

(i) Tanzania Revenue Authority,

(ii) Traffic police,

(iii) Tanzania Bureau of Standards (TBS),

(vi) Tanzania Ports Authority.

.....

(v) Local Government.

.....

53. Do you see any conflict of roles and responsibilities between SUMATRA and other institutions mentioned above

(i) YES (ii) NO (iii) DON'T SEE ANY

54. If the answer above is **YES**, please provide details

55. How many laws do you know that provide for transport sub sector? Please enumerate them

(i) -----
 (ii) -----
 (iii)-----
 (iv)-----
 (v) -----

56. Do you think SUMATRA has exclusive jurisdiction on transport matters over other Institutions?

(i) YES

(ii) NO

(iii) DON'T KNOW

57. In any choice of the above please give your opinion on how you have arrived to your answer

58. What would you call achievements of the current SUMATRA legal framework?

59. What would you call as the failures of the current SUMATRA legal framework?

60. The following activities are conducted by all regulatory authorities/SUMATRA in Tanzania Mainland; to what extent do you think regulatory authorities/SUMATRA fulfills these activities?

None =0 Poor =1 Good =2 Very Good =3 Excellent =4

No	Activities	0	1	2	3	4
1.	Licensing service providers					
2.	Promoting Competition in the Market					
3.	Enacting Regulations					
4.	Setting tariffs of the regulated goods & services					
5.	Enforcement of its Orders pertaining to tariffs & regulations					
6.	Surveillance & Sanctioning					
7.	Protecting viable service providers					
8.	Protecting Consumers					
9.	Enforcement of safety on regulated sectors					
10.	Having Disputes Settlement Mechanism in Place					
11.	Interpreting laws relating to transport matters to the public					