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## Tertiary Education Reforms in Ghana: Implications for Executive and Regulatory Governance of Public Universities

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### **Abstract:**

*This article is the result of an exploratory research on regulation and corporate governance and developments in the tertiary education sector of Ghana. The materials reviewed included the legislations establishing public universities and oversight agencies and the draft bills for the reforms in the sector. The findings were qualitatively analysed. The governance and regulation of public universities in Ghana is currently going through reforms- reforms that promises sweeping changes not only in the executive governance of the universities and the regulatory agencies, but also fundamentally, in the regulatory governance of the tertiary education sector. The piecemeal individual university Acts will give way to a single universities Act and consequently, harmonised universities statutes. This has implications for the autonomy of public universities in terms of institutional, academic and financial independence. The tertiary education oversight bodies, the National Council for Tertiary Education and the National Accreditation Board will also be merged into one oversight agency – Ghana Tertiary Education Commission. This article examines the current executive and regulatory governance of public universities and the oversight agencies and concludes that public universities under the status quo enjoy a high degree of institutional and academic independence. It is however posited that this will be eroded in the emerging regime. It further reveals that the present regulatory governance framework lacks both formal and de-facto independence resulting from lack of financial autonomy and tenure insecurity. Consequently the regime lacks credibility. Conversely, the emerging regime both in terms of the executive governance of the universities and regulatory governance are tainted with insecurity of tenure, lack of institutional and financial independence. This will undermine policy and regulatory credibility with negative implications for academic freedom.*

**Keywords:** Academic, autonomy, governance, regulation, tertiary education and universities

### **1. Background**

A public university in Ghana is a tertiary education institution so described (Education Act, 2008) which is funded from public funds which are “money from the Consolidated Fund, the Contingency Fund and other funds under the authority of an Act of Parliament” (National Accreditation Board Act, 2007).

The Tertiary Education Sector in Ghana is currently undergoing reforms. The rationale for the reforms is to harmonise sporadic and piecemeal developments in the sector. This is happening through a range of institutional and legal restructuring for a “comprehensive, coherent, well-articulated and holistic” system capable of meeting the effective and sustainable needs of a desired learning society and knowledge-driven economy. The reforms include proposals for the following: harmonisation of Acts of Public Universities; establishment of a Ghana Tertiary Education Commission; Centralised Placements system; National Research and Innovation Fund; Tertiary Education Management Information System; splitting of the University for Development Studies into UTAS and UBIDS; establishment of a University of Media, Arts and Communications; conversion of Colleges of Education into University Colleges; establishment of a National University of Skills and Entrepreneurial Development; establishment of an Open University of Ghana; outsourcing of student halls of residence in public universities; and the requirement for lecturers teaching in universities to have postgraduate certification in teaching. These reforms were validated by stakeholders in January 2019 and approved by Cabinet on May 9, 2019 (Prempeh, 2019).

These reforms are rolling out at a time when there are reported governance crisis in some public universities in the country. One of such universities is the University of Education, Winneba (UEW). Basically, the crisis had to do with the continuous stay in office of the Governing Council of the University after its tenure had lapsed. This led one Supi Kofi Kwayera to sue the University. He argued that the tenure of the incumbent Governing Council which was appointed in

2009 lapsed in November 2013 but the Council continued to make decisions as if it were properly constituted (Adjei, 2017).

He further argued that, the defunct Governing Council appointed the Vice-Chancellor and the Finance Officer and therefore prayed the court to nullify the appointments on the basis that the appointing authority then – the Council, had no mandate to do so since it was not properly constituted (Allotey, 2017). The Court ordered the officers to step aside until the final determination of the case and gave the Ministry of Education fourteen days to reconstitute the Governing Council of the University (Adjei, 2017).

However, the University Teachers Association of Ghana will not accept the order. The association argued that the decision of the court was an infringement on academic freedom, and argued the directive of the court was politically motivated (Allotey, 2017). They warned of a nationwide strike if the situation persisted (Joynews, 2017).

The University was, thus in a crisis in terms of governance and leadership and so on the orders of the Court, a newly constituted Governing Council was inaugurated. The Council immediately proceeded to resolve the tussle before it by constituting a fact finding committee and upon receipt of the final report of the Committee, the former decided to appoint the incumbent Pro-Vice-Chancellor as Acting Vice-Chancellor. In doing so, the Governing Council, noted that the temporary appointment was done to avoid a breakdown of administration of the University “until the/a substantive Vice-Chancellor [was] reinstated or appointed by the Governing Council” (UEW, 2018).

Just when some semblance of sanity was apparent in the UEW brouhaha, heat was mounting in the Kwame Nkrumah University of Science and Technology (KNUST). A brawl between Management of the University and students on a directive decided by the governing Council led to the closure of the University and a directive from the National Council for Tertiary Education (NCTE) for the Vice-Chancellor to step aside. The directive dated October 25, 2018 and signed by the Executive Secretary, stated in part that ‘... the Minister of Education, on the authority of His Excellency the President, has dissolved the Governing Council of the KNUST and appointed an Interim Council in its place (Joynews online, 2018).

Some stakeholders of the tertiary education front viewed the move by the NCTE as an abrasion on the law because, neither the law establishing the KNUST, nor the one establishing the NCTE gave the President the authority to do what was done. They argued that, the approach was a subtle move by government to manipulate the governance system of the university and thus, government was called upon to end the illegality and reinstate the properly constituted Governing Council (Lartey, 2018).

The Association of University Teachers of Ghana (UTAG) felt obliged to join the discourse. Its local chapter in the KNUST condemned the government’s decision and wondered why the latter “failed to resort to the existing Act and Statutes in resolving the issue” (Ansah, 2018). Similarly, the Ghana Association of University Administrators (GAUA) responded to the development. Its KNUST local chapter declared an indefinite strike to register their disapproval of the decision by government (Nyabor, 2018). The raging heat of the disturbances soon reached the Legislature and the Minority caucus in Parliament disagreed with the slant adopted by the Government for the handling of the issue. They were of the opinion that the government was politicising university governance and warned such a stance by the government would open public universities to political manipulation which will be inimical to academic freedom (Adogla-Bessa, 2018).

It took the intervention of the Asantehene, Otumfuo Osie Tutu II for the Vice-Chancellor to be reinstated (Awuah, 2018). After a lengthy back and forth, government which initially stated that no old member of the dissolved Council would return, rescinded following the intervention of the Asantehene who also doubles as Chancellor of the University. The Council was thus reinstated but with replacement of the six government appointees (Frimpong, 2018).

Directly following this altercations, government announced sweeping reforms in the education sector including tertiary education under which the universities fall. While it may be well intended, its timing after the perceived failed attempted government takeover of the sector is problematic. Be that as it may, it is within the ambit of government to shepherd reforms if need be. It is therefore important that stakeholders make their views counted for comprehensive reforms relevant to the current needs of the country.

In the light of the forgoing this article in contributing to the discourse seeks to draw attention to the corporate governance implications of two reform areas: the harmonised single legislation for public universities; and the establishment of a single regulator for the sector. Both reforms have implications for governance and academic freedom of public universities.

The harmonisation of the Acts of the various public universities and the establishment of the Ghana Tertiary Education Commission will lead to the promulgation of single legislation applicable to all public universities in contrast to the current arrangement under which each university is established by a separate legislation. Similarly, a Ghana Tertiary Education Commission (GTEC) would be established by merging the National Council for Tertiary Education (NCTE) and the National Accreditation Board (NAB).

### 1.1. Objectives

This article examines the arrangements both in terms of executive governance at the university level and regulatory governance of the tertiary education sector. Both regimes would be examined to ascertain the extent to which they are in accord with the principles of good corporate and regulatory governance. Therefore, the general objective is to survey the implications of the policy proposals on the governance of public universities. The specific objectives are:

- To evaluate the effect on administrative independence;
- To examine the status of institutional autonomy; and
- To assess the sustenance of academic freedom in these institutions.

## 2. Methodology

The study employed an exploratory literature review approach on the institutional and regulatory governance of public universities in Ghana. The materials reviewed included primary and secondary legislation and, draft bills of parliament. The findings were then qualitatively discussed.

## 3. Findings/Observations

### 3.1. Current Executive Governance of Public Universities in Ghana

The need for good corporate governance practices in the management of organisations gained global attention partly because of the corporate scandals that hit the UK in the early 1990s (e.g. Mirror group Newspapers) and the USA in early 2000s (e.g. Euron and Worldcom in 2001/2002). Governance refers to the processes which serve as the medium for rule making, interpretation and decision making in any human endeavour (Sweet, 1999). This means that it constitutes the set of constraints in a relationship involving the interplay of authority, direction and control (Zingales, 2000). Therefore, corporate governance is "the system by which companies are directed and controlled" (Cadbury, 1992). Therefore, public university governance is the system of rules and procedures established in legislation, statutes and policy, the application of which is carried out through standard processes for the achievement of the objectives of the university.

For the achievement of the goals of the company, and in the case of public universities in Ghana, the members of the Governing Councils have the onus of leading the building and maintenance of "successful relationships with a wide range of stakeholders" (Financial Reporting Council, 2018). According to (Freeman, 1984), a stakeholder is any person or group of persons who are either influenced by the company or able to influence the attainment of organizational goals. Eden and Ackerman (1998) cited in (Bryson, 2004) identifies stakeholders as persons or groups who wield the ability to directly influence the future direction of an organisation. Thus, the quality of the Higher Education Institution's dedication to different stakeholder groups (beyond keeping a list of contacts) underscores the role higher education plays in the society (Jongbloed, 2009). It denotes a conscious effort to involve stakeholders with a view to appreciate their perceptions of the organization's offerings and how these can be improved. According to (Burrows, 1999), stakeholders in a typical higher education institution include the governing entities, administration, employees, clientele, suppliers, competitors, donors, communities, government regulators, non-governmental regulators, financial intermediaries and joint venture partners. (Honu, 2008), views the main stakeholders of higher education to be the shareholders who fundamentally include the chief executives, teaching and non-teaching staff, students, alumni and the regulator included on the governing board. This will bring together a 'combination of executive directors, with their intimate knowledge of the business, and of outside, non-executive directors, who can bring a broader view to the company's activities, under a chairman who accepts the duties and responsibilities' (Cadbury, 1992). They collectively constitutes the determiners of the strategy for growth and development in the universities (Swedish International Development Cooperation Agency, 2017). Their inclusion on the governing Councils will therefore promote effectiveness and promote good governance (Hampel, 1998). While this should not be construed to mean the absence of governance failures, it nevertheless is a panacea to the minimisation of the sins of commission or omission, be it in the areas of strategy, performance or oversight (Higgs, 2003).

In the light of this, university governance should involve faculty and other stakeholders in the field of education, both internal and external because "when people are involved in developing a plan, it creates a sense of belonging, ownership and commitment that minimises conflict and increases the willingness of individuals to contribute their talents to accomplish the task" (Honu, 2008).

However, this is a challenge in higher education management in Africa (Jowi, et al., 2013). Universities in Africa are still bedevilled with 'student disturbances, harassment of academic staff and widespread academic corruption' because they operate in weak governance systems (Oaanda, 2016). In search of solution to the challenge of university governance, the NCTE organised a Board Leadership Development Conference in 2016 at which it was noted that there were 'no prescribed solutions' to the issue but that learning from best practices could be a panacea (Fritteli, 2016).

It has therefore become imperative for universities in Africa and for that matter Ghana, to embrace corporate governance practices and abandon the traditional self-governing and collegial governance system which is characterised by acquired leadership by mere progressing from 'headship of department, through deanship/directorship to positions such as Pro-Vice-Chancellorship and Vice-Chancellorship' and allow the inclusion of broader but relevant stakeholders (Effah, 2018).

In relation to the foregoing, it is significant to note that the current crop of public universities in Ghana were established at various stages of the country's development in response to the needs of tertiary education at the particular time. The piecemeal approach meant that the focus of each university was dictated by the exigencies at the time of their establishments. This has had resulted in the development of unique mandates for these institutions. The fact that these institutions were established under different political regimes; some under military governments and others under democratically elected governments with different political persuasions, their executive governance and internal organisation though similar, vary slightly especially in terms of the composition of their governing Councils. Thus, it is significantly necessary to examine them for an appreciation of their conformity with principles of good corporate governance. This will be indicative of the justification for reforms.

#### 3.1.1. Governing Councils

As incorporated statutory corporations, public universities have governing boards referred to as Councils, which are required to be in tune with principles of good corporate governance for optimal delivery of the good public education (Prempeh, 2019). The governance of corporations like the universities is the responsibility of the governing

boards(Cadbury, 1992).The role of the government as one of the stakeholderof these universities is to appoint the Councilsand ensure they operate within an appropriate governance system(Cadbury, 1992).

The Councils generally comprise of the stakeholders of tertiary education: representatives of the Senior High Schools whose products are the raw material of the universities; the alumni who are the products of the universities and therefore their ambassadors and link to industry; the faculty and staff of the universities; the regulator; and the government to whom the sovereign mandate of the people of Ghana resides.

While constituents of the Councils are largely constant in all the public universities, it is also true that there are variations as to the number of representatives per stakeholder. For instance, in the area of employee representation, there are discrepancies in the senior member level representations as in some universities, Convocation has one representative on the Council, while other universities provide for two Convocation representatives; one from the professorial ranks and the other from the non-professorial ranks. The implication of this arrangement is that the employee influence in governance is varied across the universities. It is also the case that most often, the convocation representation is unrepresentative of its composition. Where it is not explicit that the non-professorial rank representative should be a non-teaching Senior Member, it is the practice that both representatives will be drawn from among the teaching members of Convocation. The non-teaching members who are mostly the main line administrators are therefore largely not represented on the Councils.

An important stakeholder of the universities – the cadre of pensioners who have devoted their lifetime energies into the growth and development of these universities is left out of its governance. Even the University of Ghana which is the only public university to specify the members of the university to include pensioners(University of Ghana Act, 2010), nevertheless failed to expressly provide for their inclusion on Council.

The foregoing deficiencies in the current governing Council compositions notwithstanding, the Council membership spread are in consonance with the principle of good corporate governance which provides that ‘the board should include an appropriate combination of executive and non-executive (and in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board’s decision-making’(Financial Reporting Council , 2018).The challenge though, has to do with the mode of appointment of the non-executives. This is because in majority of tertiary education systems especially in Europe, “the government continues to partly or completely control the appointment of external members” to governing Boards but this is usually “seen as a way for the State to gain greater influence over internal decision-making processes, thus reducing institutional autonomy, or conversely as a practical way to clear potential subsequent hurdles”(Pruvot & Estermann, 2018).

This is because on an average of thirteen members on the Councils, the government appointees who form the majority group averaging four persons including the Chairman are outnumbered by the aggregation of the other stakeholders. This means that no single stakeholder can dominate the Councils in decision-making. Whether this will be sustained in the ongoing reforms is a matter for determination. This contrasts with current trends in higher education in that whereas it is recognised that there is “the need to increase the efficiency, save resources and minimise the administrative burden” in tertiary education management, it is also the case that new reforms are offering “greater freedom from the state and, in most cases, goes hand in hand with increased participation of external members in the University governing bodies”(Pruvot & Estermann, 2018).

### 3.1.2. Authority of the Councils and Internal Organisation

The Councils have formal authority ‘to do or provide for any act or thing in relation to the University which the Council considers necessary or expedient’(University of Ghana Act, 2010, 2010)(University of Professional Studies Act, 2012)(University for Development Studies Law, 1992).In this regard, their functions are unfettered as they are generally responsible for the management and administration of the finances and properties and to determine the strategic direction and monitor and evaluate policy implementation of these universities. This allows for the internal organisation of the universities by the Councils acting in most cases on the recommendations of the Academic Board but without recourse to any other authority except when any such action is inconsistent with the Constitution of Ghana or at variance with approved regulatory standards.

### 3.1.3. Determination of Principal Officers

The determination of who constitutes the principal officers of public universities has implications for cost. More importantly, it has implications for certainty in terms of administrative direction. Intriguingly, whereas in some universities the principal officers are spelt out in the establishing law to be the Chancellor, Chairperson of the Council and the Vice-Chancellor,(University of Ghana Act, 2010, 2010)(University of Professional Studies Act, 2012) it is not provided for in other universities(University for Development Studies Law, 1992).

In other universities including those for whom their Acts are silent on the matter, the principal officers include an extensive list of the Chairman of Council, the Vice-Chancellor, Pro-vice-chancellor, Registrar, Finance Director, Librarian and Director of Works and Physical Development. This has huge cost implications for the universities involved as the public purse is used to provide accompanying privileges for the officers so determined. This must be one of the targets for the reform to reduce administrative cost in university governance.

### 3.1.4. Appointment of Officers

The public universities under the status quo have the independence to appoint and promote their employees without external influence. Appointments of Principal Officers and other officers of professorial rank are approved by the

Governing Councils on the recommendation of the respective Appointments and Promotions Boards of the Academic Boards of the universities. All other staff are appointed by the Vice-Chancellor on the authority of Council on the recommendations of the respective Appointments and Promotions Boards.

### 3.1.5. Tenure of Council

The tenure of Councils of the public universities vary from two (2) to three (3) years subject to reappointment for another term only. In view of the recognition that the Councils provide leadership and direction for the universities, the short terms of 2 and 3 years are inimical to policy focus.

### 3.1.6. Relationship between Council and Academic Board

The Councils determine policy and strategic planning direction. In this regard, the Academic Boards formulates the academic policy of the University for the Approval of Council, and also advise the Council on the appointment of academic staff and the admission of students and related matters. There is no third party between the Council and the Academic Board, save Constitutional barriers and regulatory norms.

### 3.1.7. Allowances of Councils

Except in the case of the University of Ghana whose allowances are determined by the Council, (University of Cape Coast Law, 1992) allowances for Council members of the other public universities are subject to the approval of the Minister of Education in consultation with his counterpart for Finance. This also affects other public universities whose establishing laws make no reference to the payment of allowances. However, notwithstanding the foregoing arrangements, it is the case that, of recent, all public universities have been included in the omnibus allowance structure for boards and agencies of the government of Ghana. The current dispensation therefore shreds the authority of Governing Councils to determine allowances for the performance of their functions. This is a fetter in the independence of Councils. The application of corporate governance principle on remuneration would provide for the Councils to independently determine their allowances without political interference in line with the principle that 'a formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established' (Financial Reporting Council, 2018).

## *3.2. Current Regulatory Governance of Public Universities in Ghana*

Regulation connotes control of the conduct of persons or groups or an activity (Ogus, 1994). The control should be suitably focused under the direction of a communal authority for the achievement of the objectives of the community (Baldwin, Cave, & Lodge, *The Oxford Handbook of Regulation*, 2010). In another breadth, it refers to the 'promulgation of an authoritative set of rules, accompanied by some mechanism, typically a public agency, for monitoring and promoting compliance with these rules' (Baldwin, Scott, & Hood, *Regulation*, 1998). Accordingly, it is the purposive ordering and influence of activity and participant conduct for the delivery of desired goals (Parker & Braithwaite, 2003) (Baldwin & Cave, 1999) (Black, *Decentering Regulation: Understanding the role of regulation and self-regulation in a "post Regulatory" world*, 2001) (Black, 2002).

Regulatory governance therefore refers to how regulation takes place within a framework of institutions and legal provisions having regards to 'the independence and accountability of the regulator, the relationship between the regulator and policymakers; the process—formal and informal—by which decisions are made; the transparency of decision making; the predictability of decision making; and the organizational structure and resources of the regulator' (Brown, Stern, Tenenbaum, & Gencer, 2006).

Coming from the point that regulatory governance revolves around an institution conveniently known as the regulator, it is imperative now to understand the character of any such body. Regulator bodies are specialised independent administrative authorities performing their functions independently of the control of government ministries and departments (Majone, 1999). In some instances, such bodies serve as protectors of the public interest with the mandate of 'setting standards, issuing licenses' among others in their specialised areas (Thatcher, 2002). Caution is therefore required in classifying these agencies because some are just appendages of government ministries and agencies performing only executive and advisory roles (Maggetti, 2009).

In contrast, there are others classified as independent regulatory agencies (IRAs), performing specialised functions, deriving authority from the state through legislation by the representatives of the people in parliament, but are not politicians and are not hierarchically controlled by politicians. However, they are not separated from Cabinet influence by constitutional convention (Law Reform Commission of Canada, 1980). Consequently, they are agents, and the elected politicians are principals, but this agent-principal relationship is one in which the agent is organisationally separate from the principal, but invariably accountable to the principal—legislature and judges (Thatcher, 2002).

That notwithstanding, "intervention by the Cabinet or the responsible Minister has sometimes appeared to be arbitrary and proved to be worrisome to applicants or other participants in proceedings before regulatory agencies" (Law Reform Commission of Canada, 1980). But "[t]o the extent that there is no Minister actually responsible and accountable before Parliament for the operations of a government agency, one can say that there has been an investiture of power in the agency by the legislature, rather than a mere delegation of authority" (Law Reform Commission of Canada, 1980). In contextualising the foregoing, it is instructive to note that there is difficulty associated with giving a one-fit-all definition to IRAs as their character differ according to the particular sector they provide oversight for (Thatcher, 2002).

In Ghana, there are institutions which provide oversight in some public service areas known as Independent Constitutional Bodies (ICB) "including the National Commission for Civic Education (NCCE); the Electoral Commission (EC); the Commission on Human Rights and Administrative Justice (CHRAJ); the National Media Commission (NMC); the Office of the Auditor-General (and the Audit Service); and the Public Services Commission (PSC). Apart from these, there are other institutions of governance, which, while not expressly listed as independent, may yet require a high degree of autonomy to execute their respective constitutional mandates. These are the Bank of Ghana and the Office of the Government Statistician (and the Statistical Service)"(Constitution Review Commission, 2011).

The world over, the strength or weakness of the regulatory process is directly related to the strength or weakness of the legal and parliamentary architecture(Stern & Holder, 1999).But usually it is jurisdictions with weak legal and parliamentary systems that have regulatory reputational challenges and therefore require robust regulatory processes because the reputation of the regulator is as 'sound as their last [regulatory] decision' and so, 'it can take only one or two partial decisions or government interventions to seriously undermine a good regulatory reputation'(Stern & Holder, 1999).

The tertiary education sector in Ghana currently has two oversight bodies, the National Council for Tertiary Education (NCTE) and the National Accreditation Board (NAB). Public tertiary education institutions are therefore responsible to the Ministry of Education through these bodies(Education Act, 2008).To the extent that the NCTE and NAB don not fall under the category of independent Constitutional Bodies, is early warning that it is should not be expected to find in them any semblance of autonomy from government – political interference.

This section of the article therefore examines the functions of the regulators and the degree of their independence from partisan political control and also from the very institutions they regulate.

### 3.2.1. National Council for Tertiary Education (NCTE)

The National Council for Tertiary Education is one of the national oversight bodies for tertiary education. The Council functions as both an executive and advisory agency to the government. The generality of its functions include advising the Minister of Education on the development and cost implications of tertiary institutions such as are related to recurrent expenditure and financial emoluments agreed with government including conditions of service; proposition and monitoring of the application of approved standard operating norms in the sector; provision of guidance for linkages between tertiary education institutions and relevant external agencies(National Council for Tertiary Education Act, 1993). The Chairman and members of the Council are appointed by the President in consultation with the Council of State and their salaries, facilities and privileges shall be determined by the President in accordance with article 71 (1) (d) of the Constitution(National Council for Tertiary Education Act, 1993).

Membership of the Council is made up of a Chairman appointed by the President. The rest include; two Vice-Chancellors of universities, one representative each from the Polytechnics, Association of Ghana Industries, National Development Planning Commission, Ministry of Finance, Ministry of Education, Ghana Academy of Arts and Sciences, Ministry of Employment and Social Welfare. The remaining are the chairpersons of the National Accreditation Board and the National Teacher Training Council, one person with extensive experience in university work and four other persons two of whom shall be women(National Council for Tertiary Education Act, 1993).The President is minded to appoint persons who are of high moral character and integrity and have considerable experience and expertise relevant to the advancement of the functions of the Council(National Council for Tertiary Education Act, 1993).

In the performance of its functions, the Council shall decide the procedure for its meetings and is required to meet at least once every three months and at its meetings, all questions proposed shall be decided by a majority of the votes of the members present and voting and where the votes are equal, the Chairman or the person presiding shall have a casting vote(National Council for Tertiary Education Act, 1993).

The tenure of the Chairman of the Council is four years subject to renewal for another term(National Council for Tertiary Education Act, 1993). The other members who are not ex-officio are appointed for three years in the first instance and may be re-appointed for another term but shall not serve for more two terms in succession (National Council for Tertiary Education Act, 1993).

Appointment of officers including the Executive Secretary of the Council are done by the President on the advice of the Council in consultation with the Public Services Commission(National Council for Tertiary Education Act, 1993).The arrangement of the consultative process for such a knowledge and expert based Council,the arrangement should rather be that the President makes this appointments in consultation with the Council but on the advice of the Public Services Commission.

The finances for the operation of the Council shall be funds annually allocated by Parliament and other funds the Minister of Finance may approve(National Council for Tertiary Education Act, 1993).The Council is required to submit an annual report of its activities to the Minister of Education who then presents it to Parliament within six months of the end of each financial year and the report shall include its audited accounts and the accompanying Auditor-General's report(National Council for Tertiary Education Act, 1993).

Legislative Regulations for the implementation of any part of the Act is the prerogative of the Minister of Education albeit on the advice of the Council(National Council for Tertiary Education Act, 1993).

While it is conclusive too that, the NCTE comprises the relevant stakeholders and therefore clothe with competence, it nevertheless suffers some setbacks. The Council lacks financial independence as it depends largely on annual funds approved by parliament. It also suffers tenure insecurity as the membership is part-time and for a short term of three years, one year short of the term of the President. The implication is that members other than the ex-officio ones can be

changed within the term of one President. The thought of failing to gain re-appointment is enough to align members to bidding of the appointing authority. This has the tendency of affecting the functional credibility of the Council as supported by its inability to seize the occasion to resolve governance challenges in the University of Education, Winneba and the Kwame Nkrumah University of Science and Technology, Kumasi.

### 3.2.2. National Accreditation Board (NAB)

The National Accreditation Board is an agency of the Ministry of Education with the mandate for the accreditation of public and private educational institutions either academic or professional and in so doing determine programmes and requirements for the assurance of standards in consultation with the institution. It is also the statutory authority in the country for the determination of equivalences of certificates of all levels from institutions in the country or from elsewhere. Additionally, the NAB is the statutory advisor to the President on the grant of Charter to private tertiary institutions (National Accreditation Board Act, 2007).

The membership of the Board captures the relevant stakeholders in the tertiary education sector of Ghana. The Chairperson and members of the Board are appointed by the President in accordance with article 70 of the Constitution with the following membership:

- Chairperson
- Two representatives of the public universities each not below the rank of a senior lecturer,
- One representative nominated by each of the following bodies:
  - The accredited private tertiary institutions,
  - The association of heads of public polytechnics,
  - The National Council for Tertiary Education,
  - The Public Services Commission,
  - The Association of professional bodies,
  - The National Board for Professional and Technician Examinations,
  - The West African Examinations Council,
  - The Attorney-General's Department not below the rank of Principal State Attorney,
  - The Executive Secretary, and
  - Two other persons nominated by the Minister, one of whom is a woman (National Accreditation Board Act, 2007).

The Board may on its own, or on the request of an institution conduct an accreditation exercise on the corporate institution or its programmes (National Accreditation Board Act, 2007). Accreditation exercises are conducted by panels appointed by the Board and consists of a chairperson and not more than eight persons whose professional, academic, industrial or commercial competence must be relevant for the particular exercise (National Accreditation Board Act, 2007). The Board in the performance of its functions has the power to request information from an institution and any such institution shall comply and provide the information or grant access to authorised officers of the Board to the relevant records or books (National Accreditation Board Act, 2007). It shall be an offence which attract a fine or imprisonment or both on summary conviction of a person who operates an uncredited institution and, or programme (National Accreditation Board Act, 2007). Sequel to the foregoing, the Board may close down non-conforming institutions and where cost is incurred by the Board in the enforcement of its directives, steps shall be taken to recover same from the institution involved (National Accreditation Board Act, 2007).

This Board is funded through annual allocations approved by Parliament and others drawn from grants, fees and charges, returns on investments as the case may be and donations or gifts. Reports relating to the functions of the Board and audited accounts are required to be submitted to the Minister who would then submit same to Parliament (National Accreditation Board Act, 2007). Similarly, whenever it is necessary for the making of regulations for the proper implementation of the functions of the Board, it shall make recommendations to the Minister of Education who may make the regulations by legislative instrument (National Accreditation Board Act, 2007).

It is conclusive from the preceding paragraphs of the NAB that its governing Board is dominated by representatives of the constituent stakeholders in tertiary education and therefore competently composed for the ascribed functions. Though a statutory corporation, the nature and form of the board is more self-regulatory within a shared governance framework.

Unlike the NCTE, the NAB has more financial autonomy because it is allowed to generate funds from fees and charges in the discharge of its functions. Notwithstanding that the Board generates revenue in addition to the annual allocations by Parliament, it lacks financial independence insofar as its allowances are determined by the Minister of Education.

It is also instructive to note that the loyalty of the members of the Board who are not *ex officio* will be aligned with the President than anything in so far as they have and insecure term of three years albeit with the eligibility for re-appointment (National Accreditation Board Act, 2007) – because any such re-appointment will depend on the degree of alignment of the member to the President and for that matter the government. This is a dent on the credibility of the decisions of the Board. Additionally, it lacks autonomy in the making of regulations as the making or otherwise of such is the prerogative of the Minister.

It is not surprising therefore to note that accreditation panel members may be compromised with financial incentives and other offers, the consequence of which is a lack of due diligence on staffing credentials of assessed institutions to ascertain the veracity or otherwise of claims by the latter (Fredua-Kwarteng & Oforu, 2018). The regulatory credibility of the Board is thus at its wits end. Confidence in the process could have been restored were there, a third party appeals body for the resolution of grievances from institutions which are subject of accreditation assessments (Fredua-Kwarteng & Oforu, 2018).

It is also important to note a discrepancy in the Board composition of the two bodies. Whereas some stakeholders are not represented on one or the other two bodies, some find space on both bodies. But it is even a waste of public funds to constitute two separate boards with almost the same representatives.

### 3.3. *Emerging Regime*

The foregoing has unearthed challenges in tertiary education delivery in Ghana. They include inconsistency at the executive governance level of the universities, role duplication between NCTE and NAB resulting in waste of regulatory resources, as well as regulatory fatigue on the part of the universities.

In recognition of these issues, the government has a justification pursuing the Tertiary Education Reforms to provide 'a comprehensive, coherent, well-articulated and holistic policy framework to respond effectively to the needs of the learning public (Ghanaian Times, 2018).

In this regard, two bills have been drafted and at various stages of validation for Parliamentary action. These are the Public Universities Bill 2019 (PUB) and the Education Regulatory Bodies Bill 2019 (ERBB). The PUB will merge and consolidate the piecemeal legislation establishing public universities to provide for harmonisation and the ERBB will merge the NCTE and NAB into a single regulator- the Tertiary Education Commission (TEC). The nature and form of these evolving entities is the subject of the next pages of this article.

### 3.4. *Executive Governance – Public Universities Bill 2019*

All the traditional public universities in Ghana were established by single Acts of Parliament. This piecemeal legislations has created different, although similar governance structures in these universities. The PUB when passed by parliament in its current form will replace these Acts and bring under its ambit, all the universities including new ones that will be established afterwards. Consequently, governance of public universities will see a dramatic change especially regarding institutional independence, tenure security, financial independence and ultimately academic freedom. The degree of autonomy of the governing council and the security of tenure of principal officers and management personnel will determine the level of independence of the university from external influence in terms of decision making. Similarly, the level of control over allocation of funds is significant for the assurance of independence. These factors together with degree of independence of the university to determine matters of academic growth and development will provide clarity on the level of academic freedom of the universities.

#### 3.4.1. Composition of Governing Councils

In the light of the foregoing, it is noted that the Universities Bill provides for the university to have a governing body referred to as the University Council which consists of nine members comprising a Chairman and four members including at least one woman nominated by the President. The rest are the Vice Chancellor and one representative of the following stakeholder groups: registered employee unions on a rotational basis; convocation, Student from among the student unions; and the National Council for Tertiary Education without voting right.

This composition gives the government a majority (5 of 8, since the NCTE representative is non-voting) stake in the event of a vote. This is notwithstanding the casting vote of the Chairman in the event of an equality of votes. It will make decision making to be influenced by the group of government appointees. In addition to this weakness, it is also noted that degree of influence of students on Council has been deflated. Unlike the current arrangements in the universities which allows both undergraduate and postgraduate students to be represent separately to bring on board the issues relevant to their constituents, the PUB requires both groups to be represented by one person. Also, Convocation which under the PUB will be represented by one person was mostly represented by two representatives; one each for the professorial and non-professorial classes. Furthermore, the employee unions (UTAG, GAUA, SSA, FUSSAG and TEWU will now be represented by one person.

One stakeholder, the second cycle institutions, from whom the universities draw their raw material – students, have been left out in the new arrangement. Another stakeholder which forms the army of ambassadors - the alumni – have been axed out of the governance of the university. Aside their role of providing feedback of the suitability of the products of the university, the alumni have forged very serious partnership with the former even in the provision of infrastructure.

Remarkably, even with the stakeholders who are provided governance slots, there is a difficulty of the representatives being in the position to articulate the concerns of the broadened stakeholder groups. The implication of this inadequate stakeholder involvement and the dominance of government on Council is that the Councils will become appendages of the government. Worse still, such Councils will lack the ingredients to foster effective stakeholder collaboration for the strategic development of the universities. This contrasts with the aims of the university as indicated in the PUB to 'promote inclusive, efficient, effective and transparent governance systems and practices and maintenance of public trust' (Public Universities Bill, 2019). It does appear that the government is focused on the economics of the management of public universities than the substance. It is also the case that government want to take full control of the universities 'as the business owner' (Ghana News Agency, 2019).

#### 3.4.2. Funding

The PUB provides that the Minister of Education shall make a prescription of the form and indicate the times for the submission of the revenue and expenditure of public universities. It is also provided for the public university to obtain prior approval from the Minister to expend beyond the approved estimates. The harmonisation and cost control spirit of



this provision cannot be underestimated. However, it provides a control tool by which the Minister could undermine the direction of the university regardless of how well intended the decisions of Council in that regard maybe.

#### 3.4.3. Allowances

Under this regime, the allowances of the members of council and committees of Council will be determined by the Minister of Education in consultation with the Minister of Finance (Public Universities Bill, 2019). While this will harmonise allowances drawn at the various public universities as is already the case, it will also create a challenge for the Councils in terms of the level of allowances to be drawn by ad hoc committees which may not be committees of council or even the academic Board. This is therefore a fetter in the mandate of the Council to establish committees especially ad-hoc committees since they will at each point require direction from the Minister on the appropriate allowances to be paid. Governance will therefore be stifled.

#### 3.4.4. Tenure of Council

The current regime is characterized by inconsistent tenure as the tenure of Councils vary from two to three years. The tenure of principal officers is also varied among the public universities. The PUB provides for these to be harmonised. Except the Vice-Chancellor, all members of the Council shall be appointed for three years and eligible for reappointment for another three years only (Public Universities Bill, 2019). This is an improvement on the existing Councils of some public universities, where the tenure of members of Council is for two years. This is because, it will ensure governance stability for long time planning in the public universities. The positive impact of this is however eroded from scratch since it is also provided that "the President may dissolve and reconstitute the Council in cases of emergencies, or appoint an interim Council to operate for a stated period" (Public Universities Bill, 2019). There will be as many opportunities for the President to dissolve the Council as there will be interpretations of what constitutes an emergency in the university.

#### 3.4.5. Officers of the University

Further incursions in security of tenure is demonstrated in the appointment of officers of the university – the Vice-Chancellor, Pro-Vice-Chancellor, Registrar and Finance Director. Each of these officers shall have an initial three year term with the eligibility for another term only. This political style appointments will make officers to play along the political party in power knowing that the Councils which are the so-called appointing authorities under the PUB are government dominated for the assurance of the renewal of their appointments. But more seriously, with three year terms for both Council and officers of the university, the propensity of wholesale changes in positions is high and can result in serious loss of institutional memory aside the possibility of governance crisis due to simultaneous vacancies at Council and executive Management levels.

#### 3.4.6. Academic Freedom

The PUB provides for academic freedom in public universities in elaborate language (Public Universities Bill, 2019). In contrast, the bill provides that "the Minister may from time to time give policy directives through the [GTEC] to the University and the University shall comply" (Public Universities Bill, 2019). Furthermore, the Bill gives the Minister a deciding authority in the establishment of campuses of the public universities. In this regard it provides that the establishment of campuses after approval by the Governing Council is subject to the approval of the Minister, whose approval shall also be subject to availability of funds (Public Universities Bill, 2019). In the light of the foregoing, timidity will become the norm among faculty and therefore lead to the suffocation of objective academic discourse. Academic freedom is further subdued under an insecure appointment regime, lack of both institutional and financial autonomy.

### *3.5. Regulatory Governance - Education Regulatory Bodies Bill 2019*

Considerably, the National Council for Tertiary Education (NCTE) and the National Accreditation Board (NAB) perform complimentary roles with duplication in some instances which has implications for regulatory cost and efficiency. It is the responsibility of the NCTE to advise the Minister of Education on the development of tertiary education institutions; the financial needs of such institutions; the recommendation of norms and standards relating to staff, costs, and accommodation and time utilisation; and on matters related to remuneration and conditions of service of the employees (National Council for Tertiary Education Act, 1993).

On the other hand, the NAB is fit out to determine the programmes and requirements of the institutions so developed for their proper operation and the maintenance of acceptable levels of academic or professional standards among others (National Council for Tertiary Education Act, 1993). The NAB conducts staff audits during accreditation and re-accreditation of programmes. In between, the NCTE also conducts periodic staff assessments. The dual regulatory oversight results to the spread of already inadequate regulatory resources both in terms of human and financial resources. For instance the assessments of both agencies cover the adequacy in terms of student-staff ratio and the adequacy and relevance of qualifications. Such an exercise could have been executed by an individual officer or unitary committee from either agencies. Material and financial resources such as stationery, vehicles and subsistence allowances are doubly applied both on the side of the regulators and the regulatee institutions.

The situation also results in regulatory fatigue on the side of the tertiary institutions, with the tendency to influence them to explore loopholes in responding to regulatory demands. Government, cognisant of the challenges of the twin regulators has taken steps to merge them to maximise regulatory resources and eliminate regulatory fatigue for

optimisation(Ghanaweb, 2019).The Ghana Education Regulatory Bodies Bill 2019 will therefore establish the Ghana Tertiary Education Commission (GTEC). Thus, the GTECwill combine the functions of the NAB and NCTE. Accordingly, it will have advisory, co-ordination, regulatory and accreditation functions.

### 3.5.1. Governing of Board Ghana Tertiary Education Commission (GTEC)

The governing Board of the Commission comprising eleven members shall be appointed by the President in accordance with Article 70 of the 1992 Constitution of Ghana. The Chairman and two others will be nominated by the President. The other members will be the Director-General of the Commission, the Director-General of the National Development Commission, and one representative each from the following stakeholder groups: the Vice-Chancellors of public universities; the heads of private chartered universities; National Commission for Technical and Vocational Education and Training; the Office of the Attorney-General not below the rank of Principal State Attorney; Ministry of Finance not below Director; and the Ministry of Education not below Director(Education Regulatory Bodies Bill, 2019). The Association of Professional Bodies and the Association of Ghana Industries will now not be part of this all important Commission even though they were represented on the NAB and NCTE respectively. How can such a Board deliver policy for education for a "knowledge driven economy" when the relevant actors are outside the decision making frame. The members of the Board are appointed on a part-time basis and therefore are required to for the business of the Commission at least every three months or in the case of an extraordinary meeting on the request of not less than one-third of the members(Education Regulatory Bodies Bill, 2019).

### 3.5.2. Tenure of Board

The tenure of members of the Board other than those who are members by reason of office shall be four years renewable for another term only and the appointment of a member can be revoked by the President through a letter(Education Regulatory Bodies Bill, 2019). This in addition that it is a part-time Commission will affect the commitment of members. It should have been given a tenure similar to the superior courts of judicature and the independent Constitutional Bodies to insulate it from political interference and safeguard the sanctity of its regulatory directives and decisions. But in its current state, coupled with the provision that the Minister may give policy directives to the Board of the Commission(Education Regulatory Bodies Bill, 2019), the Commission is at best a Ministerial agency at the beck and call of government. Insofar as such Ministerial directives will not exclude the regulatory functions of the Commission, it will be a legendary miracle if the Commission escapes political capture.

### 3.5.3. Funding of the Commission

The funds of the Commission shall include 'a levy of one percent of the internally generated funds of a tertiary institution' and funds from the following sources allocations by Parliament; fees and charges, returns on investments' donations, grants and gifts; and other funds the Minister of Finance may approve(Education Regulatory Bodies Bill, 2019). Unlike the arrangement under the previous regime, this emerging regime promises to ensure financial autonomy for the oversight body. This will strengthen it in terms of regulatory resources.

### 3.5.4. Appointment of Officers

The part-time nature of the Commission means that the day-to-day operations of the Commission is under the direction of the Director –General and other officers of the Commission who shall be appointed by the President in accordance with article 195 of the 1992 Constitution. The terms and conditions of their appointments shall be as stated in the individual letters of appointment(Education Regulatory Bodies Bill, 2019). This is problematic given that the tenure of officers will not be secured and the determination of other conditions of service could be a probable tool for their manipulation by the executive.

### 3.5.5. Allowances of the Board

Allowances of the Board and its committees shall be determined by the Minister of Education in consultation with the Minister of Finance(Education Regulatory Bodies Bill, 2019). This is inappropriate for a regulatory body. As the adage goes, he who pays the piper causes the tune. And in this instance, the Commission will be dance to the tune of the Minister as its financial independence cannot be guaranteed.

### 3.5.6. Functions

Its advisory functions will include; establishment and development of tertiary education institutions; their direction and general orientation for the achievement of a diversified and differentiated tertiary education system; the financial matters including needs, income generation and rates of personnel remuneration of tertiary education institutions; and the recommendation of standards and norms in the areas of governance, finance, academic programmes among others(Education Regulatory Bodies Bill, 2019).

The GTEC will also serve as a co-ordination body between external funding agencies and tertiary education institutions; provide platform for interactions between the academia and industry; and between tertiary education institutions and other levels of education in the country(Education Regulatory Bodies Bill, 2019).

As an accreditation body, it will ensure the maintenance of the following standards; physical infrastructure, governance system, human resources and financial sustainability, academic and professional standards. In the

performance of this function, the 'Commission shall take appropriate actions including sanctions against tertiary education institutions which act contrary to the norms and standards set by the Commission and the terms and conditions under which accreditation has been granted' (Education Regulatory Bodies Bill, 2019).

In furtherance of its regulatory function, it is mandated to give approval for the establishment of tertiary education institutions and inspect, monitor and evaluate these institutions for the purpose of compliance. Instructively, the Commission shall regulate the internal organisation of tertiary institutions through the "the approval of the establishment of new academic units in tertiary education institutions being mindful of cost-effectiveness and alignment with institutional mission and mandate and national development objective" (Education Regulatory Bodies Bill, 2019).

However, it is mandatory for the Commission in the performance of the regulatory function to consult the Minister of Education. In addition, at any time in the performance of its functions, the Minister of Education can give directives to the Commission and it shall comply (Education Regulatory Bodies Bill, 2019). This contrast with the approach in the United Kingdom where Ministerial involvement in regulation is in the form of guidance and not directives, and even at that, Ministerial guidance must have regard for the protection of the institutional autonomy of the regulatee (Higher Education and Research Act 2017 (UK)).

From the foregoing, there is no doubt that the emerging Commission will be saddled with a conflict of mission. While this is enough to affect its efficiency, its regulatory function is further particularly undermined by the requirement for it to consult the Minister of education in the performance of that function. The implication is for the wish of the government to prevail at all times especially that the establishment of new academic units by the universities must be approved by the Commission in consultation with the Minister.

#### 4. Conclusions

The objective of this article has been to provide insight into the internal governance of public universities and the regulatory environment within which they operate and, the merging changes coming on the heels of reforms in the tertiary education sector of the country. In the present, university Councils command credibility as the ride on the back of wide stakeholder presentations without any person or group having dominance at decision-making. The analysis also reveals that executive Management and other officers of public universities have a security of tenure. In addition, the internal organisation of public universities is independent of external directives. Thus, the current internal governance of public universities has a high propensity of promoting academic freedom.

In contrast, the emerging internal governance arrangements would eliminate some stakeholder groups from the governing Councils. It will also reduce the strength of representation of other groups. Furthermore, it will create power imbalance as the government have majority representation on Council in contrast to dictates of good corporate governance, that no individual or group should have absolute majority and control on the board. The Council will under that regime, be subject to Ministerial directives to which it must comply. The security of tenure of senior Management and other staff will also be eroded. Finally, the emerging regime would require that an important academic decision as the establishment of an academic unit be subject to the approval of the new regulatory Commission subject to the consultation of the Minister of Education. Academic freedom cannot be guaranteed under such a regime.

On the regulatory front, the present bodies; the National Council for Tertiary Education and the National Accreditation Board have been found to be advisory agencies of the Ministry of Education and for that matter the Government. Their governing Boards have been found to lack independence and therefore their regulatory decisions would most likely lack credibility.

The reforms will further dilute the scanty credibility of the regulator by the elimination of professional bodies who will further groom products of these institutions for the job market after the formal classroom room instructions. This very important stakeholder deserves a place on the Board. This credibility challenge is further pronounced by the authority given to the Minister of Education to give directives which the Commission shall comply with.

This article recognises the need for reforms to provide assurance to the taxpayer of the delivery of quality and relevant university education for the socio-economic development of the country. In doing so however, the autonomy of the very institutions that provide the education should not be degraded to the extent that they would retain no form. Significantly also, cost reduction should not be the overriding focus such that relevant stakeholders are not provided space on decision-making platforms. Finally, ministerial guidance rather than directives should be encouraged to avoid the destruction of academic freedom.

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