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REGULATORY IMPACT ASSESSMENT IN DEVELOPING AND TRANSITION ECONOMIES: A SURVEY OF CURRENT PRACTICE

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REGULATORY IMPACT ASSESSMENT IN DEVELOPING AND TRANSITION ECONOMIES: A SURVEY OF CURRENT PRACTICE

Abstract

Regulatory impact assessment (RIA) involves a systematic appraisal of the costs and benefits associated with a proposed new regulation and evaluation of the performance of existing regulations. So far, most research has been concerned with the adoption of RIA in OECD countries. The purpose of this paper is to assess the contribution that RIA can make to "better regulation" in developing and transition economies. The results reported in this paper from a survey of RIA use in a sample of developing and transition countries suggest that a growing number of low and middle-income countries are beginning to apply some form of regulatory assessment, but that the methods adopted are partial in their application and are not systematically applied across government. The paper discusses the implications of the findings for capacity building and future research.

Key words: regulatory impact assessment, transition economies, developing countries, capacity building.

INTRODUCTION

State regulations can produce both "goods" and "bads". Regulation can both promote economic and social welfare and lead to significant economic and social costs. It is therefore unlikely that the case for or against state regulation of markets on grounds of "market failure" or "state failure" can be convincingly made from first principles or on an *a priori* basis. The underlying rationale for RIA is that regulations need to be assessed on a case-by-case basis to see whether they contribute to strategic policy goals.

This paper is concerned with the application of RIA in lower-income economies. Regulation is now recognised as an important instrument in the development policy toolkit, which, when conducted properly, can support market-led, pro-poor growth and development (DFID, 2000a; World Bank, 2002; Pargal, 2003; Parker and Kirkpatrick, 2004). The contribution of RIA to better regulatory decision-making rests on the systematic assessment of the impacts of a regulatory measure, and the adherence to the principles of accountability, transparency and consistency. In another paper we discussed the possible advantage of using RIAs in lower-income economies in detail (Kirkpatrick and Parker, 2004). In this paper we attempt to fill the gap in knowledge about the current use of RIAs in these countries. We report on the results of a questionnaire survey of the state of awareness and use of RIA in 40 developing and transition economies.

THE QUESTIONNAIRE STUDY

A questionnaire on the use of RIA was sent to 311 government departments and agencies with regulatory responsibilities in 99 countries. The recipients were chosen from a data bank on regulation in developing and transition economies held at the Centre on Regulation and Competition at the University of Manchester.[1] The questionnaire was distributed by post in the spring and early summer of 2003. A copy of the questionnaire can be obtained from the authors. In most cases the questionnaire was sent to more than one informant in each country, as a potential cross- check on the accuracy of the information received. The questionnaires completed and returned came from 40 countries – a country response rate of 40% - with more than one official in some departments replying. In total 68 useable questionnaires were returned, giving an overall response rate from government officials of 17%. Admittedly this is a low response rate but not unusual for this type of international study.

Table 1 provides a list of the 40 countries from which questionnaires were returned with details of the number of returns from each country. The regulatory activities covered included economic, social and environmental regulation, but with a bias towards economic regulation. The majority of the responses were from regulators of the network utilities, with 25 replies from the energy (electricity, gas, oil and alternative energy) sector, and a further 23 replies from the telecommunications sector. Twenty replies were from other government bodies. Among the 68 respondents, 23 held the position of director-general or equivalent, 22 were at senior administrative level, 12 came from middle management and 11 served as advisors or consultants to senior management in regulatory bodies. Where multiple responses were received for a country (for example, four responses were received from Mexico), these were compared but no important inconsistencies were noted.

Table 1: Countries from which Completed Questionnaires were Returned

Asia (9 countries)
India, Jordan, Korea, Malaysia, Oman, Pakistan, the Philippines, Sri Lanka, Thailand,
Africa (16 countries)
Algeria, Botswana, Cameroon, Gabon, Ghana, Guinea Bissau, Kenya, Malawi, Mauritius, Morocco, Nigeria, South Africa, Tanzania, Uganda, Zambia, Zimbabwe
Latin America and Caribbean (9 countries)
Barbados, Brazil, Colombia, Jamaica, Mexico, Nicaragua, Peru, Uruguay, Venezuela,
Transition Economies (6 countries)
Albania, Estonia, Georgia, Lithuania, Moldova, Romania,

The questionnaire had three main parts, covering RIA as an assessment method, RIA as a process, and RIA as part of a more general strategy for regulatory reform. The main questions were concerned with:

- existing familiarity with RIA as a concept and OECD guidelines;
- the existing use of RIA within the country;
- legal requirements to adopt RIAs and the existence of published RIA guidance within government;
- the form RIAs take when used;

- the processes used within government when undertaking RIAs;
- RIA transparency, in terms of published documentation;
- public consultation and participation in RIA exercises;
- RIA and wider regulatory reforms.

The following guidance was given on the first page of the questionnaire in an attempt to ensure consistent understanding of regulation and RIA by respondents.

> ***Regulation***: refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, orders and rules issued by all levels of government and by non-governmental bodies to whom governments have delegated regulatory powers. Regulations fall into three main categories: economic regulations, social regulations and environmental regulations.

> ***Regulatory Impact Assessment (alternatively referred to as Regulatory Impact Analysis)***: a systematic process for assessing the significant impacts (positive and negative) of a regulatory measure. The assessment may relate to likely impacts of a regulatory proposal (ex ante) or the actual impacts of an existing regulatory measure (ex post).

THE RESULTS

The questionnaire answers confirmed that there is some understanding of RIA and its principles amongst regulators in a number of developing and transition economies. At the same time, this understanding does not seem deep or widespread, with sometimes variations in knowledge between different agencies and government departments within the same country. The survey also found that the use of RIA is a legal requirement in ten of the 40 countries, namely Korea, the Philippines, Algeria, Botswana, Tanzania, Jamaica, Mexico, Albania, Lithuania and Romania. This is perhaps a surprisingly high number given the previous general perception that RIA was largely an OECD phenomenon. Moreover, respondents in a larger number of countries, 30 out of the 40, claimed that RIA was used in some form even though in most of these it was not a legal requirement. However, the coverage and formal status of regulatory assessment was found to vary considerably between countries.

On the subject of whether RIAs are used, Table 2 summarises the results according to the different regions surveyed. Taking Asia first, RIA is applied in eight of the nine countries that

responded, while in Africa, RIA seems to be used to some degree in 11 of the 16 countries for which replies were received. However, in only one of these countries was there a claim that RIA was being systematically applied to all new state regulations. This country was Tanzania. By contrast, in Latin America and the Caribbean the results suggested that RIA is being used to assess some or all new regulation proposals in six of the nine countries for which questionnaires were returned. This finding is perhaps relatively low given this region's longer and more developed operation of regulatory systems, especially in the utilities sectors (Pargal, 2003). Finally, for five of the six transitional economies that took part in our survey, respondents claimed that RIA is being applied in some measure to assess the potential impact of new regulation proposals – the exception is Moldova.

Table 2: The Use of RIA in Developing and Transition Countries

Region	RIA Applied to All or Some New Regulations	RIA Never Applied	Do Not Know
Asia (no. of countries)	8	0	1
Africa (no. of countries)	11	3	2
Latin America (no. of countries	6	3	0
Transition Economies (no. of countries)	5	1	0

While some form of regulatory assessment is being applied to some degree in the majority of countries that returned completed questionnaires, there are marked regional differences in familiarity with RIA principles. Three fifths of the replies from Africa reported little or no awareness, whereas the majority of respondents from Asia were fully aware of the concept. Only six of the respondents, however, were familiar with the OECD guidelines (OECD, 1995). In four countries respondents reported that guidance on how RIA should be undertaken had been prepared within their government. However, these countries included Mexico and Korea, both of whom are members of the OECD. None of the respondents from Africa claimed that their country had developed guidelines for the conduct of RIA.

RIA is a method for assessing the actual impact of existing regulations as well as the potential impact of proposed new regulatory measures. The questionnaire, therefore, sought to elicit information on the extent to which ex post assessment methods are being applied. Returns from nineteen countries reported using RIA to evaluate existing regulations. It seems that where RIA is being applied, it is mostly being used for ex ante appraisal, rather than for monitoring or ex post evaluation purposes. This may reflect a lack of resources within governments to undertake such appraisal or, alternatively, there may be reluctance on the part of governments to dwell on whether previously introduced regulatory measures have achieved their desired results. In OECD countries there is a similar relative lack of interest in publishing ex post assessments, probably on the grounds of "letting sleeping dogs lie"!

The questionnaire also attempted to gather information on the extent to which RIA is applied to economic regulation, social regulation, and environmental regulation proposals. Table 3 focuses on the 30 countries that reported that RIA was being applied to all or some of the new regulations. It shows the application of RIA across the three main forms of regulation but with a heavy concentration in terms of monitoring economic regulation. Twenty eight of the 30 countries in which respondents reported the use of RIA (Table 2) recorded its application to economic regulation. Respondents in only 14 of the 30 countries claimed that RIA was used in all three areas of regulation for some decisions. The questionnaire also attempted to obtain more detailed information on the application of RIA to economic, social and environmental regulation by asking what proportion of regulations in each area had been subject to RIA during the past five years. Here, some difficulties were encountered in interpreting the responses received, which for a number of the countries gave ambiguous or contradictory replies. For example, one respondent from Thailand claimed the use of RIA for all new economic regulations in the last five years, while another indicated that RIA had been applied only to "most" of the proposals. Similar differences in responses were noted for Barbados and Romania, confirming some uncertainty about the extent of the use of RIA amongst officials even in the same country. Overall, the results suggested that no country is applying RIA consistently to *all* major economic, social and environmental regulation proposals.

Table 3: Application of RIA to Economic, Social and Environmental Regulation in Developing and Transition Countries

Region	Economic Regulation	Social Regulation	Environmental Regulation
Asia (no. of countries)	8	8	5
Africa (no. of countries)	10	5	7
Latin America (no. of countries	5	3	5
Transitional Economies (no. of countries)	5	5	4

The concentration of RIA activity on economic regulation probably reflects the traditional focus of government regulatory activity in areas of market failure and natural monopoly, particularly in utilities services. It also reflects that fact that the majority of the completed questionnaires came from regulators of utilities. The incidence of RIA use found in the environmental and social sectors may reflect the current lack of common terminology in the literature on strategic level impact assessment. RIA has many similarities with some other forms of strategic level impact assessment that are applied to government plans and policies. "Strategic environmental assessment" and "social impact assessment" are increasingly being adopted in developing countries to assess the environmental and social impacts of policy proposals. Various forms of "integrated impact assessment" are also being used to appraise the economic, social and environmental consequences of development policy (George and Kirkpatrick, 2003a, 2003b). Therefore, the replies on the use of RIA in social and environmental regulation may reflect the adoption of not only RIAs in the strict sense but other types of impact assessment.

RIA can take a variety of forms, from simple financial cost estimates to a comprehensive economic and social cost benefit analysis. In the UK, RIA has evolved from a concern to minimise the perceived burden of regulatory "red tape" on business by reducing the number of regulations, to the assessment of the economic and social benefits and costs of regulation for both the private and public sectors (Blake 2002). In the United States RIA has gone through a similar process of development, from an initial requirement to assess the potential

impact of regulation on inflation, to the estimation of the potential economic efficiency benefits and costs of new regulation proposals (Morrall III, 2001).

The responses to our questionnaire indicated that in the majority of those developing and transition countries where RIA has been adopted, the assessments include both potential costs and benefits of the regulatory proposal (see Table 4). Of the 30 countries that reported using RIA, 18 countries claimed that both benefits and costs were estimated. Another two countries indicated that only benefits were assessed and replies from ten suggested uncertainty about the coverage. In five cases respondents replied 'don't know' and in another five countries inconsistent answers were received from different respondents, suggesting that practice varies across different regulated activities within the same country. None of the last five countries had adopted uniform guidelines for undertaking RIAs.

Table 4: The Analysis of Costs and Benefits of RIAs in Developing and Transition Economies

	Number of Countries
Number of countries applying RIA. Within these countries:	30
Used to assess benefits only	2
Used to assess benefits and costs	18
Inconsistent responses	5
Don't know	5

The replies to the questionnaire also revealed that a variety of practices exist for the quantification of costs and benefits. Of the countries that assessed both costs and benefits, only a minority quantified the estimated impacts in both physical and value terms; although in the four countries where guidelines are in place, quantification of benefits and costs is carried out using both measures. This finding is perhaps not surprising given the difficulties associated with the economic and social valuation of benefits and costs in the practice of impact assessment. The problems associated with valuation are reflected in the responses

received from the countries where RIA is being applied. When asked if, in their judgement, the application of RIA in their country had provided a "high level of detailed analysis of costs and benefits", respondents in only eight of the 30 countries replied in the affirmative.

The second part of the questionnaire was concerned with the process aspects of RIA in contributing to the principles of "good governance". The responses received indicated that in the majority of countries where RIA is applied to new regulations, public consultation does occur with a main emphasis on the use of public notices and invitations to comment on proposals. Consultation involves outside experts, government bodies and the private business sector. But consumer groups and other bodies representing civil society are less commonly included. In most cases (34 countries) consultation occurs either both before or after the government prepares detailed regulations. However, fewer countries (15) make the views of participants in the consultation exercise public, suggesting scope for improved regulatory transparency.

The final section of the questionnaire was designed to gather information on the role of RIA as part of a government-wide strategy for regulatory reform. The impact of regulatory impact assessment is likely to be enhanced where RIA is adopted as part of an overall strategy for regulatory governance reform and institutional capacity building (Kirkpatrick and Parker, 2004). Of the 40 countries for which replies were received, 22 were reported to have a strategy in place for promoting government-wide regulatory reform. The countries having a government–wide strategy in place were cross-checked with the 30 countries applying RIA. This confirmed that in many of these countries, 10 out of the 22, RIA is being applied as part of a broader programme of regulatory governance reform. An interesting area for further research investigation will be to assess the results of RIA where a wider programme of regulatory reform is underway against the results in countries where such reform is yet to occur.

Overall, the findings from the questionnaire study suggest that the level of awareness and application of RIA in developing and transition countries is perhaps higher than what might have been expected, based on the limited information previously available. This conclusion should be qualified, however, by acknowledging the possibility of sample bias. The questionnaire returns may be mainly from countries where regulatory practices are well established. The heavy concentration of responses from the utilities sector may be indirect

confirmation of this potential bias. The relatively high number of countries (59) from which no return was received may reflect the absence of any form of RIA in these countries. Also, although respondents were provided with definitions of regulation and RIA at the start of the questionnaire, the possibility that they used different definitions when completing the questionnaire cannot be ruled out.

CONCLUSIONS

RIA is a policy reform that has the potential to improve government regulatory practices and outcomes. This study has added to knowledge by reporting the results of a questionnaire survey of the use of RIA in developing and transition economies. The survey findings suggest that RIA is already being applied in a number of lower-income economies, but it is still at an early stage of development.

The results from the questionnaire provide a useful "snapshot" of the current status of RIA in developing and transition countries even though a number of qualifications and caveats need to be attached to the findings and therefore to any policy conclusions that might be drawn. Forty percent of the countries sampled returned completed questionnaires and it seems that some form of RIA is used in the majority (75 per cent) of these countries. However, the coverage of RIA, both in terms of types of regulation and number of regulation proposals included, appears to vary widely between countries. Few countries appear to be applying RIA consistently to regulatory proposals affecting economic, social and environmental policies. While there is a general recognition of the desirability of including benefits as well as costs in an RIA, methods of quantification are generally underdeveloped. Respondents identified this as a particular weakness in current practice.

If RIA is to contribute to economic development and poverty reduction, it is important that it is operated properly with due consultation and without "capture" of the process by special interests. RIAs that simply exist to impress outsiders, such as donor agencies, and rubber stamp all decisions made by the executive are not worth the cost and effort. Our study reports mixed results in this respect, but arguably there exists a basis for the successful application of RIA in a number of the countries surveyed. We have found that where RIA is being used, in most cases consultation has been incorporated as part of the process. At the same time, consultation has tended to be limited to government and the business sector, with consumer interests and other civil society interest groups being under-represented in the consultation

process. Few regulatory authorities in lower-income economies seem to make the results of their consultations public.

Finally, just over a half of the countries from which completed questionnaires were received appear to have engaged in a programme of regulatory governance reform and RIA has been part of this process in a number of cases. In the remaining countries, RIA appears to have been adopted on a "stand-alone" basis, which may limit its impact in terms of improving regulatory governance.

Notes

[1] The sample was not random but based on contact details already held for regulators in developing and transition countries.

References

Blake S. (2002) 'Setting up a Regulatory Impact Unit – the UK Experience', Second Workshop of the APEC-OECD Co-Operative Initiative on Regulatory Reform, Merida, Mexico, April.

DFID (2000) 'Making Markets Work Better for the Poor: A Framework Paper', mimeo, London: Department for International Development.

George C. and Kirkpatrick C. (2003a) *Strategic Impact Assessment: Methods and Tools* http://www.enterprise-impact.org.uk

George C. and Kirkpatrick C. (2003b) 'Assessing the Impact of the WTO Agenda on Developing Countries' in R. Stange and H. Katrak (eds) *The WTO and Developing Countries*, London: Palgrave.

Kirkpatrick C and Parker D (2004) 'Regulatory Impact Assessment and Regulatory Governance in Developing Countries', *Public Administration and Development*, vol.24, pp.1-12.

Morrall J. F. III (2001) 'Regulatory Impact Analysis: Efficiency, Accountability and Transparency', mimeo, Washington, DC: US Office of Management and Budget.

OECD (1995) *Recommendation on Improving the Quality of Government Regulation*, 9 March.

Pargal, S. (2003) *Regulation and Private Sector Investment in Infrastructure: Evidence from Latin America*, Policy Research Working Paper 3037, Washington DC: World Bank.

Parker, D. and Kirkpatrick, C. (2004) "Economic Regulation in Developing Countries: A Framework for Critical Analysis", in (eds.) P. Cook, C. Kirkpatrick, M. Minogue and D. Parker, *Leading Issues in Competition, Regulation and* Development, Cheltenham: Edward Elgar.

World Bank (2002) *Global Economic Prospects and the Developing Countries,* Washington DC: World Bank.