

***Better Regulation for Growth (BRG) -
Improving the Governance Framework
for Investment***

**Donor Committee for Enterprise Development
Africa Regional Consultative Conference on the Business
Environment
Accra, Ghana, 5 – 7 November 2007**

Tony Polatajko (DFID)
and
Peter Ladegaard (FIAS)

Contents

Executive Summary	3
Why systemic regulatory reform is important for Africa	4
Lessons of experience in regulatory reform	5
Purpose and rationale for the Better Regulation for Growth Programme	6
Activities and outputs	7
Governance structure	9
Knowledge dissemination	9
Implementation of BRG operational guidance in country programme activities	10
Box 1 – What is Regulatory Governance?	7
Box 2 – Outputs of the BRG Programme	8
Annex 1 – BRG Programme Themes and Outputs	12
References	15

Better Regulation for Growth (BRG) - Improving the Governance Framework for Investment

Executive summary

1. Badly designed and administered regulations impose major constraints to growth and productivity and create strong incentives for small businesses to remain in the informal economy. There is increasing awareness and commitment to regulatory reform by many African leaders, stimulated by the growing evidence base on the highly negative effects of poor regulation. However, a critical lack of appropriate regulatory tools and approaches adapted to the governance capacities of African countries hinders their reform aspirations and efforts.

2. This paper describes how the accumulating, yet still insufficient, international experience of regulatory reform and lessons learned, both globally and in Africa specifically, have been drawn upon to inform a new multi-donor initiative, the Better Regulation for Growth (BRG) programme, co-sponsored by the Dutch Ministry of Foreign Affairs, DFID and FIAS of the World Bank Group. The initiative will provide African governments with the tools and practical operational guidance to design and implement effective regulatory reform processes and organizational arrangements that lead to significant improvements in the business environment by reducing policy risks and regulatory costs for business.

3. Launched in April 2007 the BRG programme will have a particular focus on providing technical and policy support to improving regulatory governance. The BRG programme will address the current knowledge gap on many aspects of regulatory governance through the production of toolkits, guidelines and consolidation of existing knowledge. The primary target group is “nuts-and-bolts” reformers, i.e. government officials and external advisers designing and implementing regulatory governance reforms. Results and experiences of the BRG programme will be made publicly available and gradually implemented through operational projects in African countries.

4. The design of the BRG programme has been informed by international lessons of experience in regulatory reform, supplemented by FIAS and DFID Africa project case studies, and hence this paper is particularly germane to Theme 3 of the Africa Regional Consultative Conference: What have we learned and what are the ingredients of successful business environment reform in Africa and the processes and organizational arrangements that promote success? However, the subject matter of the paper is also relevant to other key themes of the Conference. These include barriers to enterprise establishment and growth, priorities for Regional Economic Communities, and supporting regulatory reform and competition in Conference Theme 1; and who is reforming in Africa, the role of various stakeholders in BE reform and sub-national and sectoral BE reforms in Conference Theme 2. The BRG programme detailed in the paper will also help address the Conference Hot Topics: business environment reform and the informal economy; dealing with corruption and clientelism when reforming the business environment; and business environment reform in conflict-affected countries.

Why systemic regulatory reform is important for Africa

5. The importance of regulatory reform has been highlighted on a global level since 2004 by the World Bank's annual Doing Business reports¹ and by the World Bank's 2005 World Development Report² on the investment climate. Country specific investment climate diagnostic studies by the World Bank Group³, UNCTAD, Commonwealth Business Council and others, have also highlighted regulatory and administrative barriers and policy inconsistency, instability and unpredictability, as being among the most significant impediments to both foreign and domestic investment. The G8 business conferences in 2005 and the report of the Africa Commission in 2005 also highlighted the key importance of this area for Africa's growth, investment and development.

6. A number of recent detailed surveys, including the World Bank's *Doing Business* series, have established important links between macro variables, such as growth, informality and poverty, with regulatory quality, and highlighted the fact that the potential for regulatory improvements are particularly significant in Africa. For example, in Australia it takes just two procedures and two days to start a business, whereas in Mozambique it takes fourteen procedures and 153 days. On average across Sub-Saharan Africa, it costs over 160% of GNI per capita to register a business. Better regulation can help to remove such obstacles to poor people doing business, helping economies to grow, which helps to reduce poverty.

7. However, a good investment climate takes more than removing immediate constraints. It is also about transforming the relationship between business and government to build confidence that improving the business environment will remain a central objective of future policy making: One-off regulatory reforms such as improvements in business registration, though beneficial in themselves, will rarely have a long-lasting impact on the confidence of the private sector to invest in a country. Perceptions are important. The private sector responds far more when they have confidence that the state will not reverse regulatory decisions or supersede them by future changes in policies. Successful regulatory reform is therefore not just about cutting the immediate red tape (i.e. tackling the "symptoms") but about making a good investment climate an on-going objective in future policy making.

8. The benefits and rationale for systemic regulatory reform in Africa are therefore clearly obvious. Yet the challenges facing reformers are immense and may often fail due to the strength of vested interests resisting change. The implication for donors and reformers is that they must improve understanding and awareness of what works and what are the knowledge gaps in order to better target and sustain regulatory policy interventions.

¹ Since 2004, the World Bank has published four annual surveys, now covering 175 countries, of the time and cost to business of complying with regulations that affect their day to day business operations. Regulatory areas covered currently include starting a business, dealing with licenses, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, and closing a business. See www.doingbusiness.org

² World Bank (2004)

³ See <http://www.enterprisesurveys.org/>

Lessons of experience in regulatory reform

9. There are no easy answers to the question of how to achieve successful regulatory reform. However, recent DFID and FIAS case studies of regulatory reform⁴, both in Africa and elsewhere, point to a number of lessons for successful regulatory reform. These include the following:

- Designing successful reform strategies requires a concrete understanding of the fundamental political economy issues which shape the drivers of change. It requires understanding the capacity of government and the private sector, the culture of government, how policy making currently happens and the extent to which institutions and mechanisms are in place for healthy dialogue and accountability with the private sector and others.
- Explicit and strong high-level political leadership of the reform process is essential
- Reform strategy must take a *systemic* approach – working to build effective policy making systems within and around government that the private sector have confidence in. Systemic reform is fundamentally about governance and the functioning of the state i.e. the process by which policies and decisions are made, who is consulted, the criteria on which policies are made, how transparent they are, and the accountability mechanisms with the private sector and wider civil society.
- An initial lead by an elite unit/champion, such as a Finance Ministry, should be quickly accompanied by gradual and broader stakeholder involvement. Broad stakeholder support for reforms in both the public and private sectors can be facilitated by (i) quantifiable and easy communicable targets, combined with (ii) strong public education and media campaigns on the importance of regulatory reform and private sector development to win over “hearts and minds”
- Priority should be given at an early stage (particularly by donor agencies) to strengthening public sector capacity to oversee and implement the reform process
- Institutionalising and mainstreaming regulatory best practice across government is immensely difficult, both technically and politically, and takes time. Reform action plans and strategies must therefore be realistically tailored to fit the particular country context and constraints – and no one size fits all!
- The pace of reform can be accelerated by institutionalising and strengthening reform drivers, including mechanisms for effective public-private dialogue and consultation on reform priorities, modalities and proposals
- There should be sufficient flexibility in the regulatory reform strategy to take advantage of windows of opportunity e.g. a political change towards a more reform-minded government. Rigorous sequence engineering doesn't work!

10. While a number of important lessons are emerging in country experience of designing and implementing regulatory reform, there remain significant knowledge gaps which need to be addressed. For example, what level of political stability and

⁴ See for example FIAS (2007), and Jacobs, Ladegaard and Musau (2007).

commitment is required before systemic issues can be tackled? How can the long-term issues be addressed alongside removing immediate bottle-necks? How can reform programmes work to build and support ‘champions’ and networks of reformers? What level of capacity and skills are required within the public administration before systemic reform is feasible? What are the different options for setting up institutional structures, processes and systems for reform? What are the most appropriate regulatory tools for developing countries? And how do we evaluate success and impact of reform?

Purpose and rationale for the Better Regulation for Growth Programme

11. The purpose of the BRG programme is to build upon and adapt existing international knowledge and experience of best practice in regulatory reform to develop policy tools which will help developing countries improve their regulatory management, institutions, and processes. Originally developed and implemented in OECD countries, a range of regulatory tools and practices are now promoted in developing countries, offering a more comprehensive approach to Regulatory Governance. The most frequently promoted solutions include reviews of existing regulation using Staged Repeal (aka the Guillotine), “Greenfield” and “Bulldozer” approaches, or the use of Regulatory Impact Assessment (RIA) and the establishment of Regulatory Reform Units to lead the forward-looking and more systemic aspects of regulatory reforms.

12. Experience in developing countries suggests that a) many of the tools and approaches of regulatory governance are misunderstood, b) that experience implementing these tools is at a very early stage of learning, and c) that additional policy thinking - learning from these early experiences – and providing guidance on how they can best be adapted and applied to developing country contexts is required.

13. Though an increasing volume of work and literature is directed towards regulatory governance in developing countries, there is still a gap in terms of adapting approaches used in advanced economies, in terms of providing operational guidelines to reformers, and in terms of making this knowledge available to reformers at a low cost. The multi-dimensional and systemic nature of regulatory governance is summarised in Box 1 below

Box 1

What is Regulatory Governance?

Regulatory governance in the context of the BRGP is firmly grounded in the wider concept of good governance and embraces governance issues such as transparency, accountability and efficiency. Regulatory governance briefly refers to the way governments use their regulatory powers in the pursuit of policy objectives. In practical terms Regulatory Governance can be broken down to a number of specific policies and tools such as

- I. An explicit **Regulatory Policy** setting out priorities and targets of reform
- II. Establishment or strengthening of **Regulatory Institutions**, i.e. drivers of reform such as Regulatory Reform Units in the centre of government
- III. Development of tools and procedures to develop **new regulation**, i.e. Regulatory Impact Assessment, public consultation mechanisms,
- IV. Development of mechanism to **streamline existing regulation** and to make information easy accessible, i.e. regulatory simplification techniques, one-stop shops, information campaigns, and
- V. Cross-cutting efforts to **build capacities** of regulators and public officials to use and prepare regulatory interventions according to principles of efficiency, transparency and accountability.

14. Outcomes of the BRG Programme may have particular relevance for future regulatory reform programs in Africa. The BRG will point to aspects of the regulatory management and reform agenda which are particularly conducive to “fast-track” and comprehensive reforms, but also to tools which may be too costly or complex to implement in a low-capacity environment. For example, recent studies of Regulatory Impact Analysis (RIA) systems in OECD Countries suggest that only a very limited number of RIAs correspond to the conceptual and procedural guidelines which they were supposed to mirror.⁵ This again suggests the need for a very cautious and pilot-driven adaptation of regulatory management tools in Africa. Experiences from recent and ongoing regulatory reform projects in Africa supported or implemented by FIAS, DFID and the Dutch Government will inform the BRG Programme in developing synthesized lessons and guidelines.

Activities and outputs

⁵ Radaelli (2007)

15. The expected outputs from the initiative will include (i) a standardised regulatory capacity review toolkit available to governments and reformers to assist in the diagnosis and assessment of government's current capacity in order to help shape regulatory reform programmes, (ii) a set of practical policy tools and implementation guidelines, adapted to the needs and circumstances of developing countries, to encourage and support systemic regulatory reform efforts and (iii) a knowledge dissemination programme to help governments incorporate key policy lessons and guidance into both existing and new regulatory reform programmes.

16. The programme focuses on three key themes of work, which will be implemented over a two-year period, 2007-2009. This will be accompanied by specific policy dissemination activities, particularly in the latter part of the programme.

Theme 1: Governance and regulatory capacity.

This work will focus on better understanding the context and issues that influence the success of regulatory governance reform. This will focus on understanding the interrelationship between regulatory governance tools and good government more generally – the political economy contexts which enable government reform to succeed and the extent to which regulatory reform is dependent upon political commitment in order to be successful and the extent to which these programmes can themselves be a vehicle to generate better governance. This work will also consider how reform programmes should assess the capacity of government and the existing levels of intra-government communication in order to determine the relevance and appropriateness of different tools and approaches.

Theme 2: Adaptation of regulatory tools.

This work stream will assess the various tools and approaches currently advocated within OECD countries, and determine where specific gaps exist and where tools need to be adapted to the specific circumstances of developing countries. Where relevant this theme will develop guidance on different options on how these tools can be implemented by governments with limited capacities and resources. The specific set of toolkits created will be determined by a gap analysis and feedback from current reform programmes and consultation with leading experts.

Theme 3: Measuring Regulatory Governance

At present the measurement of regulatory quality is confined to specific indicators of outcomes rather than how effective governments are in the way that they regulate. Work under this theme aims at developing a monitoring and evaluation framework that can be used to measure the impact of reform programmes in improving regulatory governance, whilst providing a baseline comparison between countries.

Expected outputs for each of the themes are summarized in Box 2 below. Annex 1 provides a more elaborate presentation of the individual activities and outputs.

Box 2

Outputs of the BRG Programme

1. Governance and regulatory capacity:

- Case studies drawing out lessons from developing country experience of regulatory reform
- Guidelines for designing and implementing regulatory governance programmes, including building appropriate institutional frameworks for regulatory reform

2. Adaptation of regulatory tools:

- Guidance on designing and adapting Regulatory Impact Assessment systems to different contexts
- Guidance on applying 'fast-track' tools to reform existing regulation e.g. Guillotine approach; Standard Cost Model

3. Measuring and evaluating regulatory governance initiatives:

- Review of M&E approaches and development of M&E framework for regulatory governance
- Regulatory quality standards for developing countries

4. A comprehensive policy dissemination programme:

- Regional workshops in Africa and Asia for governments, donors, the private sector and other stakeholders
- Creation of a dedicated website to pull together available resources on regulatory governance
- Outputs of the BRG will be made available to and wherever possible integrated into country programmes and projects, including regulatory reform programmes supported by DFID, FIAS and/or the Dutch Government in Kenya, Uganda, Tanzania, Sierra Leone, Ghana, South Africa, Bangladesh, Afghanistan and India.

Governance structure

17. The BRG programme is led by a Steering Committee composed of two officials from each of the participating organizations.⁶ The Committee oversee all activities related to the project. FIAS of the World Bank Group is responsible for the management and implementation of the project, including the in-house development of many of the project's deliverables. An Expert Advisory Panel of leading international consultants, academics and organisations provides input and will scrutinize work as it develops. The Expert Advisory Panel met for the first time in May 2007.

⁶ The Steering Committee is composed of two members appointed by DFID, two members from the World Bank Group (FIAS and the Doing Business project), and two members appointed by the Dutch Ministry of Foreign Affairs (a MoFA representative as well as a representative from the Ministry of Finance). Swedish SIDA is participating in the Committee as an observer.

18. The operation and governance structure of the BRG programme is in many respects innovative. First, there is a close cooperation between the two bilateral donors and FIAS/World Bank Group on many of the technical aspects of the programme. Second, the fact that many deliverables are fully or partially prepared “in-house” by FIAS reduces transaction costs and increases flexibility compared to what may have the case under a traditional set-up using external consultants for most deliverables. Third, the use of an external advisory group of experts and practitioners will assure continuous feedback to draft products, and facilitate dissemination.

Knowledge dissemination

19. An important component of the programme will be to ensure that key policy messages are well understood by all stakeholders who are critical to regulatory reform. “Nuts-and-bolts” reformers working actively on preparing, designing and implementing regulatory governance reforms will be the primary target group of dissemination efforts.

20. More broadly, the target groups of the dissemination effort will include:

- Developing country governments – both senior government and also those officials working on reform programmes
- Donors and donor supported facilities
- Academics teaching regulatory reform and governance
- International organizations and consultancy companies advising on reform programmes
- Private sector agencies engaged in policy dialogue with government

21. These stakeholders will be consulted throughout the process of implementing the BRG programme, including through the Expert Advisory Panel. In addition to utilising existing relevant conference/workshop events, the programme will convene two major workshops/conferences – one in Africa and one in Asia, bringing together key government officials, reform programme managers, the private sector, and donor agencies.

22. It is expected that all materials will be pulled together in a compendium of resources that will also be updated and placed online. This will include all case studies, publications, toolkits, guidance and potentially base-line data and indicators tracking and benchmarking reform programmes.

Implementation of BRG programme findings and recommendations in country programme activities

23. BRG programme outputs will be made available on an on-going basis, available on demand to any agency, together with BRG experts, to support their country level regulatory reform programmes.

24. DFID, FIAS and the Netherlands are already engaged in regulatory reform work in a number of countries, including: Nigeria, Sierra Leone, Lesotho, South Africa, Uganda, Kenya, Tanzania, Ghana, Rwanda, Mozambique, Pakistan, Bangladesh, India, Madagascar, Albania, Croatia, Bosnia and Macedonia.

24. The BRG Programme in its current set-up is exclusively focussed on developing and disseminating knowledge about regulatory reform in developing countries. Possible extension of the BRG Programme into operational work could include program and agency partnerships along the following lines:

- Active engagement in country programme and projects through piloting some of the approaches being developed, such as Regulatory Capacity Reviews. This could help inform the design of new reform programmes or strengthen ongoing programmes.
- One-day workshops to present and discuss regulatory issues with donors and government. This could be an entry point to expanding the scope of ongoing programme, or building support for a Regulatory Capacity Review.
- Participation by all stakeholders in regional conferences on regulatory governance to be organised under the auspices of the BRG programme during 2008 (one in Africa and one in Asia).
- Encouraging government awareness/participation in BRG programme through linking key officials involved in regulatory governance into a 'network of reformers'.
- Joint distribution list developed by the BRG programme, so that interested parties could receive deliverables and updates on the progress of the BRG programme and provide feedback on draft outputs (where of interest) as they are produced.

Annex 1: BRG Programme Themes and Outputs

Theme 1: Understanding Regulatory Governance and Building Reform Capacities

- Building and Strengthening Existing Institutions for Regulatory Reform. Successful processes of regulatory reform are sustainable only if supported by an appropriate institutional framework that helps mainstream regulatory quality practices into the overall *modus operandi* of government. Work under this component will examine the issues and challenges in developing effective institutional frameworks for regulatory reform in low-capacity countries;
- Linking Competition Policy and Regulatory Reform. Regulatory reform and competition policy interact in several ways; ideally they should be mutually supportive in assuring pro-competitive markets based on transparent and accountable policies. In many countries, however, competition policy and regulatory reform are poorly linked. Work under this component will seek to clarify the respective roles and interaction of competition policy and regulatory reform, and suggest how the responsible institutions can be better aligned;
- “Networks of Reformers” as a Driver for Reform. Networks of reform-minded policymakers and regulators from different parts and levels of government have been recognized as a key driver for reform. Equally, international networks of national regulatory authorities have provided both effective peer pressure and exposure to international best practices to members, and ultimately helped advance the regulatory governance agenda of national governments. Work under this component will explore the conditions under which networks of reformers can accomplish the reform agenda and avoid the risk of becoming a futile institutional exercise;
- A regulatory capacity review toolkit. Many commendable regulatory reform initiatives in developing countries often fail as a consequence of a poor assessment of the government’s capacity to implement and sustain reform. Work under this component will help minimize this source of failure of reform programs by developing an analytical toolkit available to governments and reformers to assist in the diagnosis and assessment of governments’ current capacity to implement regulatory reform programmes. The regulatory capacity review toolkit will also provide a consolidated overview of key regulatory constraints hampering the investment climate, and it will offer specific recommendations for the strategy, pace, and sequencing of reforms to reduce regulatory costs and improve government capacities for high-quality business regulation;

Theme 2: Developing and Adapting Regulatory Management Tools

- Regulatory Impact Assessment (RIA) Systems for Developing Countries. RIA has been promoted as one of the most essential tools of good regulatory governance. Despite a good track record of RIA in developed countries, experiences in transition and developing countries are mixed. Anecdotal evidence suggests that the RIA approach has much to offer for low-capacity countries. The challenge is to adapt and balance RIA with other tools to reduce regulatory risks and costs. Work under this component will seek to i) carry out case-studies to learn from recent failures and mixed successes, ii) collect basic information about RIA systems with a view to establishing a global data base of RIA practices, and iii) develop recommendations for if, when and how RIA can be adapted to middle and low income countries.
- “How to get started”: Fast-track Tools to Review and Streamline Regulation. There is mounting evidence that successful and sustainable regulatory reform starts with “front burners” delivering tangible and easy-to-communicate results (although not necessarily addressing the underlying structural problems). The benefits of such approaches are obvious. The potential down-side, however, is also significant, including a backlash or medium-term halt of reforms. Work under this component will further develop and specify conditions under which fast-track tools to review existing regulation can be applied. Focus will be on tools such as staged repeal (a.k.a. the guillotine approach), scrap-and-build, “listing”, and process reengineering.

Theme 3: Measuring Regulatory Governance

- Review of Best-Practice M&E Frameworks on Regulatory Quality. There is very limited experience with systematically monitoring and evaluating the many tools and approaches to regulatory reform. This partially reflects the novelty of regulatory policy and governance and the fact that reformers are still struggling with establishing a solid basis for assessing regulatory governance initiatives. In recognition of this, work under this component aims at generating new knowledge on best practices in monitoring and evaluating regulatory policies that are relevant to developing and transition countries.
- Regulatory Quality and Regulatory Governance Indicators – including Baseline Measurement Methodologies. The capacity to credibly measure and track reform progress is essential. A baseline measurement allows reforms to communicate and target efforts, and for other stakeholders to keep authorities accountable. Good Business Enabling Environment (BEE) baseline measurements must be linked to what governments can effect through their policies, they must be representative or at least indicative of the business environment, easy to communicate, and technically feasible. Work under this component will assess different approaches to base line measurements. As part of this, work will explore the Standard Cost Model (SCM) and its possible added-value to traditional approaches to baseline measurements. Work under this component will also explore how to improve

existing governance indicators, which do not fully capture the regulatory quality dimension in their current formulation;

- Regulatory Quality Standards for Developing Countries. This activity will seek to develop a set of normative standards of regulatory quality applicable for less developed countries. OECD's 1995 Regulatory Quality checklist has been tremendously influential in guiding regulatory reform and peer pressure in OECD Countries. It is also increasingly used as a benchmark and reference point for regulatory reforms in developing countries. Although generally relevant, the OECD standards may be adapted to better fit the challenges and capacities in developing countries. Recent collaborative attempts between the OECD and APEC in developing an integrated checklist of regulatory reform represent a positive step in this direction.

References:

FIAS (2007): Regulatory Reform: Case Studies and Synthesis Report (forthcoming)

Jacobs, Scott, Peter Ladegaard and Ben Musau (2007): “Kenya’s Radical Licensing Reforms, 2005-2007: Design, Results, and Lessons Learned.” Paper for the Africa Regional Consultative Conference “Creating Better Business Environments for Enterprise Development: African and Global Lessons for More Effective Donor Practices”. November 2007, Accra

Ladegaard, Peter, Simeon Djankov and Caralee McLiesh (2007): “Review of the Dutch Administrative Burden Reduction Programme.” World Bank, Investment Climate Department, Washington, D.C. (www.doingbusiness.org)

Radaelli, Claudio (2007): “Desperately Seeking Regulatory Impact Assessments: Diary of a Reflective Researcher” Paper delivered to the ENBR (European Network for Better Regulation) workshop on “Policy Processes”, Lisbon, 5 July 2007.

World Bank (2004): “World Development Report 2005: A Better Investment Climate for Everyone.” World Bank, Investment Climate Department, Washington, D.C.