

**REGULATORY IMPACT ASSESSMENT IN DEVELOPING AND
TRANSITION ECONOMIES: A SURVEY OF CURRENT PRACTICE
AND RECOMMENDATIONS FOR FURTHER DEVELOPMENT**

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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

While the role of an effective regulatory regime in promoting economic growth and sustainable development has always been a major concern of researchers and policymakers, the particular meaning attached to regulation and its translation into public policy have shifted over time. This evolving understanding and interpretation of the role of regulation as an instrument of public policy is particularly evident in the changing focus of regulatory policy in developing and transition countries, as part of the broader shift from the positive or interventionist state towards the regulatory state (Majone, 1994,1996, 1997)¹. In the 1960s and 1970s the majority of developing countries promoted industrialisation through import substitution, where the state played a primary role as a regulator of both domestic and external trade and as a direct investor in industry and agriculture. In what are now the transition economies of Central and Eastern Europe, state planning and state ownership dominated reflecting communist ideology. In the 1980s, following the apparent successes of privatisation and market liberalisation programmes in developed economies, including Europe and North America, the failure of central planning and evidence of state-led development failures (World Bank, 1995), market liberalisation and deregulation became the prevailing orthodoxy. But by the mid to late-1990s, the market liberalisation model was seen to have failed to bring about a sustained improvement in the development trajectory of low-income economies.² This has led to a further shift in development strategy, where the state plays an important role in sustaining the regulatory framework for the operation of what are often imperfect or missing markets.³

Appropriate state regulatory structures are needed to tackle market failures, which in developing and transition countries can take the form of pervasive externalities in market transactions, monopoly abuse, underdeveloped or missing markets, and information asymmetries (Parker, 2002). Privatisation has been widely promoted as a means of improving economic performance in developing and transition countries. However, the policy remains controversial and the empirical evidence on the impact of privatisation on economic performance suggests that if privatisation is to improve performance in the longer-term, it needs to be complemented by policies that promote competition and effective state regulation (Parker and Kirkpatrick 2003a). General dissatisfaction with the experience of privatisation has focused the attention of policymakers on the need for an effective economic regulatory framework, particularly in the utilities infrastructure field, where natural monopoly

conditions can prevent the emergence of competitive markets (Parker, 2002). At the same time, state regulation can lead to economic inefficiencies including investment disincentives, corruption and cronyism and bureaucracy (Blundell and Robinson, 2000). A recent publication by the World Bank highlights the lack of regulatory reform in many lower income economies and the burdensome effects of government regulation (World Bank, 2003a).

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 (Parker and Kirkpatrick, 2003b; World Bank, 2002; DFID, 2000a; Pargal, 2003). Empirical analysis has confirmed that the quality of the regulatory regime has a significant impact on economic performance and that the effectiveness of supporting regulatory institutions will be an important determinant of how well markets function (Jalilian et al., 2003). A recent survey of potential foreign investors in electricity power in developing countries for the World Bank found that a consistent, transparent and enforceable regulatory system was the key requirement to promote investment (Lamech and Saeed, 2003). If, therefore, state regulation is to promote economic and social welfare, it needs to be both *effective* and *efficient*. Effective in the sense of achieving its planned goals, and efficient in the sense of achieving these goals at least cost, in terms of government administration costs and the costs imposed on the economy in terms of complying with regulations. There is, therefore, a compelling case for the systematic appraisal of the positive and negative impacts of any proposed or actual regulatory change. This appraisal should encompass the likely economic, environmental, social and distributional consequences, thereby providing a comprehensive analysis of regulatory impacts on sustainable development in lower-income economies.

Regulatory impact assessment (RIA) is a term used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation.⁴ At the beginning of 2001, 20 OECD countries were applying regulatory impact assessment, although the extent of its use appeared to vary (Jacobs, 1997, 2002; Radaelli, 2002). By contrast, there has been little analysis of either the actual use or potential for using RIA in lower-income countries in the design and formulation of development policy. This is despite the considerable interest in measuring the impact of development policy and in the design and implementation of regulation measures (Stern, 2002; World Bank, 2003b). While there is a limited amount of empirical evidence on regulatory practices in developing countries

(Djankov et al, 2002, Jalilian et al., 2003), there is an absence of even rudimentary data on the use of regulatory impact assessment procedures in most developing and transition countries, in spite of a recognised need to build regulatory capacity (DFID, 2000b; World Bank, 2001). The main published information on RIAs in the context of development relate to Mexico and South Korea, which are middle-income developing country members of the OECD (OECD 1999, 2000). The approaches adopted in these countries have followed the OECD principles and guidelines but problems have been highlighted. In Korea an OECD (2000, p.29) review identifies a significant “implementation gap” and notes that “the level of RIA sophistication achieved in practice is, as yet, quite low” and that “the bulk of the RIA is still being conducted at a low level of sophistication”. In part, this is attributed to the lack of an adequate skills base among government officials. In Mexico the OECD report (1999, p.159) comments: “The biggest problem for the Costs and Benefits Section of the RIA is that the quality of data is generally poor and thus a quantitative analysis of proposals is virtually impossible. Regulatory authorities are not asked to produce net benefit estimates for fear of creating additional incentives to distort already inadequate data”. There has been some interest in the in the RIA concept among APEC members (APEC- OECD, 2001), seemingly influenced by the OECD experience, but in Africa, Latin America and much of Asia there is a little or no evidence on the adoption of RIA by policymakers.⁵

In an earlier paper we discussed the possible advantage of using RIAs in lower-income economies (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 next section of the paper discusses the principles to address in countries wishing to apply RIA that led to the questions included in the questionnaire. This is followed by an assessment of the awareness and use of RIA in developing and transition economies, drawing upon the answers from 68 respondents in forty countries. The conclusions for the future application of RIA in lower-income countries and for future research are then discussed. The overall aim of the paper is to draw to the attention of a wider audience, in developing and transition countries and donor agencies, the extent of knowledge of RIA with a view to improving regulatory design and practice in low and middle-income countries.

Principles of Regulatory Impact Assessment

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 (Blundell and Robinson, 2000). 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.

There are two dimensions to a “good” regulatory system (Ogus, 2001). The first relates to the instruments or legal forms selected to achieve the desired outcomes, which will be defined by the objectives. The second relates to the procedures or processes by which the instruments are formulated and applied. RIA can contribute to both the *outcome* and the *process* dimensions of national objectives. The outcome contribution of RIA can be assessed against the goals of economic, social, environmental and sustainable development. The process contribution of RIA can be assessed in terms of the principles of “good governance”. There is a broad consensus that these principles encompass consistency in decision making to avoid uncertainty, and to ensure accountability for regulatory actions and outcomes and transparency in decision-making (Haskins, 2000; Parker, 2002). The latter goal should avoid arbitrariness and promote accountability in regulation.⁶

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.⁷ A properly conducted RIA systematically examines the impacts arising or likely to arise from government regulation and communicates this information to decision makers. RIA encourages public consultation to identify and measure benefits and costs and thereby has the potential to improve the transparency of governmental decision-making. It can promote government accountability by reporting on the information used in decision-making and by demonstrating how the regulation will impact on society. The result, when used appropriately, should be an improved and more consistent regulatory environment for both producers and consumers.

Guidelines on undertaking appropriate RIAs and issues to cover exist in a number of OECD countries.⁸ Radaelli (2002) reports that RIA guides are used in nine countries, namely

Canada, Mexico, USA, Australia, UK,⁹ Denmark, France, Germany, and the Netherlands. There are variations in the national guidelines, reflecting differences in legal, legislative and administrative traditions or systems, but most follow a broadly similar approach (Mandelkern Group, 2001; OMB, 2001). However, it is important to recognise that RIA, even when operated well, is not a tool that substitutes for decision-making. Rather it should be seen as an integral part of the policy making process within government, which aims to raise the quality of debate and therefore the quality of the decision-making process.

The ways policy makers make decisions on regulations have been classified as *expert*, where the decision is made by a trusted expert; *consensual*, where political representatives make the decisions based on political priorities; *benchmarked*, where the decision is based on an outside model; and *empirical*, where the decision is based on fact finding and analysis that defines the parameters of action according to established criteria (OECD, 1997, pp.14-15). RIA is an empirical approach to decision making. It has the potential to strengthen regulation by systematically examining the possible impacts arising from government actions and communicating this information to decision makers in a way that allows them to consider (ideally) the full range of positive and negative effects (benefits and costs) that are associated with a proposed regulatory change. Equally, RIA has the potential to improve the monitoring of existing regulatory policies (SIGMA, 2001). This might lead to revisions to an existing regulation to improve its performance. RIA may also help to constrain economically damaging regulatory discretion and expose cases of regulatory conflict (e.g. between agencies).

The principles and criteria for “good” RIAs, described in the preceding paragraphs, should be viewed strictly as a guideline rather than as a summary of what are necessarily best practice standards. The notion of benchmarking RIA practice against international best practice implies a “one size fits all” approach to policy, which is contrary to the purpose of RIA (Radaelli, 2002). Hence, where RIAs are used the precise form they take can be expected to vary between countries. Equally, we should expect that the government policy decisions to which it is applied and the pace of adoption both to vary. At the same time, however, a number of principles seem to be universal. Firstly, RIA needs the development of skills within the government machinery, including skills in enumeration and valuation of costs and benefits. Generally, qualitative effects will involve much judgmental or subjective evaluation and physical units introduce serious problems of aggregation. There may be a temptation,

therefore, to diminish the RIA to include only an evaluation of measurable financial costs and benefits. Or, the assessment could be reduced to looking solely at the cheapest way of achieving the regulatory outcome (in effect providing a *cost effectiveness* study only) in which the benefits are taken as given. This lesser form of RIA risks ignoring important differential benefits from differing forms of regulation.

Secondly, RIA requires the extension of consultation procedures to ensure that appropriate information is collected and analysed in reaching a view on the regulatory impact. There may be little tradition of consulting widely in a country before undertaking regulation, or those chosen for consultation in the past may not have been representative of the relevant stakeholders. Thirdly, the need to consult and evaluate can be time consuming and resource heavy within hard stretched governments. RIAs may involve multiple stages with each new regulation facing an initial RIA, another RIA after consultation and redrafting, and a final RIA on the legislation as passed by the legislature.¹⁰ A sensible approach to minimise these costs is to prioritise where detailed RIAs should be undertaken, by using a screening procedure to identify when a regulation is likely to have major effects on the economy, society or the environment. It is important, however, that the decision on when to use a RIA is not made simply on the grounds of political expediency or administrative convenience because of the threat, which will always exist, that RIAs are used simply to substantiate a decision already made. Fourthly, RIA will need to be championed across government if it is to be used consistently and become a normal feature of regulatory policy making. It therefore needs clear and powerful political support within government if it is to overcome bureaucratic and political inertia.¹¹

Fifthly, RIA must also confront the possibility of “regulatory capture”. In practice, the nature and content of regulation can be “captured” by special interest groups, who have the time, resources and incentives to invest in influencing the regulatory process. In market economies resources flow to where the perceived returns are highest and this is no less true in the shaping of regulation policy. There will be constant pressure from external groups and their spokespersons within the legislature and government to advance regulations that promote their members’ economic rents. For this reason regulatory policymaking may not be the objective and rational process that RIA ideally requires, with its emphasis on fact-finding and a disinterested analysis of the evidence. But equally, it should be recognised that RIA can help to control rent seeking activity within government by promoting wider consultation and

by requiring the explicit identification and evaluation of costs and benefits. RIA, by making the regulatory process more transparent and accountable, provides a means of weakening regulatory capture. Finally, RIA may require a cultural change within government, involving more open policy-making as part of a broader process of governance reform.

These principles surrounding the introduction and operation of RIAs led to the formulation of a number of questions that were included in a questionnaire sent to 311 departments 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.¹² The questionnaire was distributed by post in the spring and early summer of 2003. 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%. 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 here.)

The appendix to the paper reproduces the RIA questionnaire distributed. The questionnaire has 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, drawing from the above discussion of the principles of RIA, relate to:

- existing familiarity with RIA as a concept and the 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.

In the next section of the paper, the questionnaire results are reported.

The Questionnaire 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 here.)

While some form of regulatory assessment is being applied to some extent 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. 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 regulations. 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 in all 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 here.)

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 (World Bank, 2003c; UNEP, 2003). 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 here.)

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 benefits and costs, 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 (Stern and Holder, 1999; Parker and Kirkpatrick, 2003a). 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 the majority 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 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.

Conclusions

RIA is a policy reform that has the potential to improve government regulatory practices and outcomes. By its use to appraise new, proposed regulations and as part of the monitoring process for existing regulations, RIA can increase regulatory accountability, transparency and consistency and therefore contribute to improved regulatory governance within countries. When properly applied, it systematically examines potential impacts arising from government regulation and communicates this information effectively. RIA is also a policy that can improve the nature and outcome of regulation, leading to higher economic growth and poverty reduction. Most OECD countries have adopted the principle of RIA in recent years and a number of studies have appeared looking at its use in these countries. By contrast, there is little published evidence on its use in low and middle-income countries.

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, although as noted, there are a number of qualifications and caveats to be attached to the findings and to any policy conclusions that might be drawn. Forty percent of the countries sampled returned completed questionnaires and RIA is being used in the majority (75 per cent) of these countries. The coverage of RIA, both in terms of types of regulation and number of regulation proposals appears, however, to vary widely between countries, and 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 the majority of cases. In the remaining countries RIA appears to have been adopted on a “stand-alone” basis.

Our research findings lead to the conclusion that there is a need to improve understanding and practice of RIA in lower income economies, including many which already claim to use the practice. In this context, while the OECD “best practice” guidelines provide some pointers to how a RIA framework for lower-income countries might be developed, they are unlikely to be a complete template or model for transfer and adoption in countries with very different conditions and objectives. The OECD guidelines need translating to reflect the particular issues that arise when regulating in developing and transition countries, including issues to do with regulatory capacity, poverty reduction and development goals. This should be a priority for donor agencies.

The fundamental goal of development policy is poverty reduction and the aim of regulation policy in developing countries should be to change private sector behaviour in ways that are consistent with the goal of raising the income levels of the poor. Whilst the impact of economic growth on poverty reduction is the focus for continued empirical investigation, it is generally agreed that the benefits of growth will not necessarily “trickle down” to improve the income levels of the poorest. Regulation, therefore, has a potentially important role to play in ensuring that the benefits of more efficient market processes are distributed in accordance with society’s social preferences. This implies a wider range of objectives for regulation policy beyond those that lie at the core of the OECD guidelines, namely promoting market efficiency (Kirkpatrick, 2001, Clarke and Wallsten, 2002). If the positive and negative impacts of regulation in terms of, for example, prices and job opportunities and access to credit are to be properly recognised, a RIA must specifically address the social effects of regulatory changes. It may be appropriate, therefore, for RIAs to be “pro-poor” by placing an explicitly heavy weighting on poverty reduction and skewing the assessment in favour of regulatory changes that assist the poor.

At the same time, RIA may face certain methodological and operational difficulties when applied to decision making in developing and transition countries. The application of RIA needs to reflect the level of expertise, resources and information available in a country. It should not demand expertise, resources and information that go well beyond the capability of government departments to furnish. For example, governments in some low and middle-income countries may lack the capacity to collect the necessary data to undertake a meaningful RIA. Equally, RIAs can be “captured” by elite interests leading to highly normative evaluations of the data gathered. For example, ex ante RIA will involve risk assessment in which probabilities must be applied to possible outcomes, including, for example, risks to safety or health. The valuation of probabilities in a highly politicised decision-making environment can be manipulated to bring about the result initially desired by the policy makers. In developing and transition countries with underdeveloped conventions and rules on probity within government, RIA will need protecting from such rent seeking behaviour.¹³ Difficulties and dangers will be compounded when benefits and costs are problematic to quantify with any accuracy. In developed economies “shadow prices” are sometimes used to reflect such costs and benefits, but in developing economies there may be no obvious prices to use as proxies. Also, while the adoption of econometric techniques and engineering studies to estimate costs, and surveys of what people are willing to pay for a regulatory change to assess benefits, are relatively well developed in industrial economies, this is seldom the case in lower-income countries. The role of the “institutional endowment” or the pre-existing legislative, administrative and judicial arrangements of a country, in the design of effective regulatory arrangements, is now well recognised (Levy and Spiller, 1995). Regulatory capacity constraints are likely to occur in most low-income economies and any RIA guidelines that are developed specifically for lower-income economies will need to recognise these constraints.

In addition to designing RIA guidelines specifically for developing and transition economies, there are two areas of research that could be usefully developed based on our questionnaire findings. These are concerned with:

- What is happening in terms of regulation and regulatory governance in particular countries and what lessons can be learned? Our review of the available literature and current practice has shown that while familiarity with the concept of RIA in countries is

increasing, where it is used its application is often inconsistent or uneven. If the problems of inappropriate policy transfer are to be avoided, there is a pressing need to undertake more detailed studies of experience in those lower-income countries where procedures do exist for assessing the impact of regulatory measures. Research is already under way into practice in particular countries, based on a number of detailed country case studies.¹⁴ The first written, on Sri Lanka, suggests that in this country respondents to the questionnaire in regulatory offices tended to over-estimate the degree of public consultation that they undertake (Knight-John et al., 2003).

- What procedures already exist in countries to monitor the performance of regulation? Monitoring and ex post evaluation of regulation are important stages of the RIA process and contribute to both transparency and accountability. Evaluation of outcomes can also contribute to improving the quality of the ex ante RIA, where the assessment is informed by past experience. For RIA to be adopted as a process that includes useful appraisal, monitoring and evaluation will require a high-level of commitment within government (McCourt, 2003) building on existing regulatory capacity.

In summary, there is a pressing need to extend knowledge of the current use of regulatory practice in developing and transition economies and the problems encountered and to utilise this knowledge in developing a RIA framework that is appropriate for these countries. The World Bank (2001, p.72) has commented that: “Better regulation does not always mean less regulation”. To date, however, it does not appear that donor agencies have been particularly active in promoting better regulation by initiating processes that lead to effective RIAs, comparable to the OECD’s efforts for its members. This contrasts with the heavy emphasis that these agencies have put on privatisation and market liberalisation and broader institutional reform, including the establishment of government agencies to regulate newly privatised, monopoly markets. Thus, while regulation is now acknowledged to be a key component of development policy, comparatively little attention has been given, so far, to the monitoring of the effectiveness of regulation in the promotion of development in lower-income countries. This paper contends that RIA provides a method for improving both the consequences of regulation and regulatory governance. Although institutional reform including regulatory capacity building is inevitably a deeply political act, the discussion in this paper has proceeded on the view that effective development policy requires the promotion of appropriate methods to improve regulatory practice.

Appendix 1 : The Regulatory Impact Assessment Questionnaire

Centre on Regulation and Competition
Institute for Development Policy and Management
University of Manchester, UK

1 Paper versions of the completed questionnaire should be faxed or mailed to:

Yin-Fang Zhang
Centre on Regulation and Competition
Institute for Development Policy and Management
University of Manchester
Harold Hankins Building, Precinct Centre
Oxford Road
MANCHESTER M13 9QH
UK
Fax: +44 161 2750808

2 Electronic versions of the completed questionnaire should be emailed to:

RIA@man.ac.uk

3 For queries on the interpretation of questions or completion of the questionnaire, please contact:

Colin Kirkpatrick
Email: RIA@man.ac.uk
Fax: +44 161 2752808

or

Yin-Fang Zhang
Email: RIA@man.ac.uk
Tel: +44 161 2750804
Fax: +44 161 2750808

4 Definitions of key terms used in the questionnaire are as follows:

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).

Please answer the following questions

A Country covered by this questionnaire (please name your country):

B B.1 Please indicate the nature of the organisation for which you work.

Industrial Ministry ()

Regulatory Office/Agency ()

Other (please specify)

B.2 Please indicate the sector(s) for which the organisation you work for is responsible (e.g. telecommunications, electricity, transport, environment etc).

.....

C Please indicate your management rank.

Director-general or equivalent ()

Senior administrator below rank of director-general or equivalent ()

Middle management e.g. sectional head ()

Other (please specify):.....

D Prior to receiving this questionnaire, were you familiar with the concept of Regulatory Impact Assessment (or Regulatory Impact Analysis)?

Yes, fully aware and familiar with OECD guidelines on undertaking RIA ()

Yes, fully aware but not familiar with OECD guidelines on undertaking RIA ()

Yes, but only have a vague idea of its meaning and significance ()

Not aware of the concept ()

1 Assessment of Regulatory Impacts

1.1 Is RIA undertaken before a new regulation is adopted:

- in all cases? ()

- in some cases? ()

- never? ()

- don't know? ()

If 'in all cases' or 'some cases':

- is RIA required by law?

Yes () No () Don't know ()

- are there explicit, published guidelines or criteria for the selection of regulations requiring RIA?

Yes () No () Don't know ()

1.2 Is RIA applied in the following areas?:

- economic regulation

Yes () No () Don't know ()

- social regulation

Yes () No () Don't know ()

- environmental regulation

Yes () No () Don't know ()

1.3 What proportion of regulations in the following areas has been subject to RIA during the last five years?:

	All	Most	Few	None	Don't know
economic regulations	()	()	()	()	()
social regulations	()	()	()	()	()
environmental regulations	()	()	()	()	()

1.4 Are there Guidelines on how RIA should be undertaken?

Yes () No () Don't know ()

1.5 Where RIAs have been undertaken:

- have they assessed the costs (only) of regulation?

Yes () No () Don't know ()

- have they assessed the benefits (only) of regulation?

Yes () No () Don't know ()

- have they assessed both the benefits and the costs of regulation?

Yes () No () Don't know ()

- have they assessed the impacts (positive and negative) on different segments of society?

Yes () No () Don't know ()

1.6 Where benefits or costs are assessed:

- Are benefits quantified?

Not at all () Sometimes () Always () Don't know ()

If they are quantified, is this in:

Value terms Yes () No ()
Physical terms eg. numbers affected Yes () No ()
Both value and physical terms Yes () No ()

- Are costs quantified?

Not at all () Sometimes () Always () Don't know ()

If they are quantified, is this in:

Value terms Yes () No ()
Physical terms eg. numbers affected Yes () No ()
Both value and physical terms Yes () No ()

1.7 Is RIA used:

- to assess (ex ante) regulation proposals (ie. new, proposed regulations)?

Yes () No () Don't know ()

- to evaluate (ex post) regulation outcomes (ie. the impact of existing regulations)?

Yes () No () Don't know ()

1.8 Are RIA documents publicly available?

Yes () No () Don't know ()

1.9 Is RIA used to provide a high level of detailed analysis of costs and benefits?

Yes () No ()

In your view, when RIA is used does it provide an adequate assessment of the costs and benefits?

Yes () No ()

If "No", please briefly explain the main deficiencies.....

2 Consultation and Participation

2.1 Is public consultation a part of the process of making new regulations?
In all cases of proposed new regulations

Yes () No () Don't know ()

In some cases of proposed regulators

Yes () No () Don't know ()

If yes in some or all cases:

- Is consultation required by law?

Yes () No () Don't know ()

- What forms of public consultation are used? (tick all that apply):

- informal consultation ()
- public notice and invitation to comment ()
- public meeting ()
- Don't know ()

- Who are involved in consultation? (please tick all that apply)

- Experts in relevant areas ()
- Representatives from other government departments upon which the proposed regulation has effects ()
- Representatives from small and medium enterprises (SMEs) ()
- other (please specify)
- Don't know ()

- At what stages in the regulatory process is consultation undertaken?:

- prior to outline proposals being made?
Yes () No () Don't know ()
- prior to detailed proposals being made?
Yes () No () Don't know ()
- after detailed proposals are made?
Yes () No () Don't know ()

- Are the views of participants in the consultation process made public?

Yes () No () Don't know ()

- Please give recent examples below of where consultation has been used for proposed regulations

.....
.....

3 Overall Strategy for Regulatory Reform

3.1 Is there an explicit, published policy promoting government-wide regulatory reform or regulatory quality improvement?

Yes () No () Don't know ()

If yes:

- does it establish explicit objectives of reform?
Yes () No () Don't know ()
- does it set out explicit principles of good regulation?
Yes () No () Don't know ()
- In what year was the policy introduced _____

3.2 Are there explicit published policies promoting regulatory reform or regulatory quality improvement in specific sectors?

Yes () No () Don't know ()

If yes:

- Have there been any independent regulators? Independent regulators are those appointed by the legislature/government but which work at arm's length from government and are free from day-to-day political control.
Yes () No () Don't know ()
If yes, please specify in which sector(s) _____

3.3 Is there a dedicated body (or bodies) responsible for encouraging and monitoring regulatory reform or regulatory quality in the national administration?

Yes () No () Don't know ()

If yes:

- Can this body(ies) conduct independent and expert analysis of regulatory impacts?
Yes () No () Don't know ()
- Does this body(ies) monitor progress made on reform by individual ministries?
Yes () No () Don't know ()

- Is this body routinely consulted as part of the process of developing new regulation?
Yes () No () Don't know ()

3.4 Is there a specific Minister/Ministry responsible for regulatory reform?

Yes () No () Don't know ()

If yes:

3.5 Which Minister/Ministry is responsible for regulatory reform? _____

3.6 Are you familiar with the OECD guidelines on RIA?

Yes () No ()

- Is your country's approach to regulatory impact assessment modeled on the approach recommended by the OECD:

Yes () No () Don't know ()

- Is your approach to RIA modeled on any particular country's approach

Yes () No () Don't know ()

If yes, which country

3.7 Is RIA used by regulators in the utilities sector (electricity, water, telecommunications, transport)

Yes () No () Don't know ()

If yes, please state in which utilities

If yes, please identify how it is used

Ex ante (for proposed new regulations) ()

Ex post (to assess the impact of regulations already introduced) ()

Both ex ante and ex post ()

4.0 Name and Address

This is required so that we can send you the results of our research. You may, however, wish to leave this blank for confidentiality reasons.

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Table 1: Countries from which Completed Questionnaires were Returned

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

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

Region	RIA Applied to All or Most 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

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

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

	Number of Countries
Applying RIA	30
Assessing costs only	
Assessing benefits only	2
Assessing benefits and costs	18
Inconsistent responses	5
Don't know	5

Endnotes

1. Regulation can be broadly defined as a government measure which is intended to affect individual or group behaviour and market outcomes. The OECD defines regulation “to include the full range of legal instruments by which governing institutions, at all levels of government, impose obligations or constraints on private sector behaviour” (OECD, 1996).

² Assessing the market liberalisation reform period, the World Bank notes that “At times, however, reform programmes have failed to deliver as much as expected – and at times reforms have failed entirely”. “Not surprisingly, case studies of reform episodes show that market-friendly reforms have uneven costs and benefits – especially in the near term – with the costs concentrated on particular groups and the benefits spread broadly over the economy as a whole... The costs remind us that success or failure is not measured only by changes in average incomes” (World Bank, 2001: 64, 66).

³ “Effective governments are needed to build the legal, institutional and regulatory framework without which market reforms can go badly wrong at great cost – particularly to the poor” (DFID, 2000b: 24).

⁴ Alternatively referred to as “regulatory impact analysis”.

⁵ Lee (2002: p.30,40 – 44) provides a valuable compilation of various OECD RIA guidelines, together with an initial assessment of which elements of this “best practice” guidance are most likely to be readily adaptable to meet developing country needs and which may require greater modification.

⁶ Additional process criteria relating more specifically to “good policy”, would include *targeting* of regulation to ensure it achieves its goals at the least cost, and *proportionality* to ensure that no regulation is on a scale disproportionate to the perceived social, economic or environmental problem (Haskins, 2000).

⁷ The purpose of a RIA is to “explain the objectives of the [regulatory] proposal, the risks to be addressed and the options for delivering the objectives. In doing so it should make transparent the expected costs and benefits of the options for the different bodies involved, such as other parts of Government and small businesses, and how compliance with regulatory options would be secured and enforced” (NAO, 2002, p.51). Increasing attention is being given to the *ex ante* appraisal, monitoring, and *ex post* evaluation of development policies; while methodologies for economic, environmental and social impact assessment are well established and are being applied by governments and international agencies (Lee and Kirkpatrick, 1997; World Bank, 2002; George and Kirkpatrick 2003). The impact assessment approaches have similarities to RIA and can provide some lessons on the transferability of assessment tools developed in the context of the advanced OECD economies, to lower-income countries.

⁸ Details of the approaches to RIA adopted in a number of these countries can be found in Lee (2002, pp.12-14).

⁹ For example, following the publication of the OECD guidelines, in the UK from August 1998 all new regulations with a potentially significant impact on business, charities or the voluntary sector have to be accompanied by a RIA and as far as possible costs and benefits should be quantified and expressed in monetary terms. As from October 2000 the responsible minister must certify that the RIA has been read and that the expected benefits will exceed the costs (Owen and Courtney, 2002, pp.5-6). In the USA, since 1995 the Office of Management and Budget has been required to report on the costs and benefits of government regulations and in 2000 published guidance on how to conduct RIAs. So far five final reports on the costs and benefits of state regulations have been published by the OMB, but the approach adopted has been criticised (Hans and Layburn, 2003).

¹⁰ The issues a RIA in UK government is expected to address include: discussion of the purpose and intended effects, risks analysis (risk assessment should be part of a RIA and involves assessing the probability of detriment or harm), an identification of intended benefits and likely costs, problems of securing compliance with the regulation, the likely impact on small business (promoting small enterprises is a particular concern of the UK government), the extent of public consultation, and the need for monitoring and evaluation (Cabinet Office, 2000, p.3).

¹¹ In the UK, RIAs go through various stages as a regulatory proposal is being developed, culminating in a final RIA submitted to ministers in Parliament.

¹² The sample was not random but based on contact details already held for regulators in developing and transition countries.

¹³ Djankov et al. (2002) argue that the cross-country evidence on regulation costs associated with entry of new firms is consistent with the public choice view that entry regulation is used to benefit politicians and bureaucrats. For an informative study of the impact of the political process on the outcome of electricity privatisation in Malaysia and Thailand, see Smith (2003).

¹⁴ This research is being co-ordinated by the authors and is taking place within the Centre on Regulation and Competition at the University of Manchester and its partner institutions. More details can be obtained from the authors.