TOWARDS BETTER REGULATORY GOVERNANCE?

REGULATORY REFORM IN SELECTED DEVELOPING

COUNTRIES OVER THE PERIOD 2003-2007

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January 2009

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Abstract

This paper looks at regulatory reform in selected developing countries in Asia and Africa, based on the data collected through two questionnaire surveys conducted in 2003 and 2007 respectively. It is found that regulatory reform in these countries has not shifted from making ad hoc improvements to regulatory structures to taking a systematic view of regulatory governance and the means of promoting and enhancing it. For regulatory reform to improve regulatory governance, changes should be brought to both formal and informal institutions. Regulatory reform should also be integrated into the general reform of the public administration.

Key Words**: regulatory reform, regulatory governance, regulatory decision making, developing countries.**

Introduction

The particular meaning attached to regulation and its translation into public policy have changed over time. After the Second World War, regulatory inflation was a general phenomenon in western countries. From the 1970s, 'deregulation' gained momentum in most industrialised economies. By the mid-1990s, under the notion of 'regulatory governance', governments in many developed countries have moved beyond the narrow objectives of deregulation towards 'better regulation' and 'good governance'.

In developing countries, the change in the role of government and of regulation has largely been associated with policy prescriptions promoted by international donor agencies. From the 1980s, with the arrival of what is referred to as 'the Washington consensus' and evidence of state-led development failures (World Bank, 1995), many developing countries introduced liberalisation reforms as part of the Structural Adjustment Programme. From the mid- to late-1990s, international donor agencies shifted their emphasis in less-developed countries towards regulatory reform with the objective of establishing an effective regulatory framework and improving regulatory quality.

The need for effective regulatory structures to sustain the process of economic growth has now been widely recognised. Institutional environment and the quality of regulation which affect markets and business activities have increasingly been viewed as a factor of competitiveness that influences investment decisions of both domestic and foreign investors. Governance is a core element of the transition from a state-led development to one rooted in resource allocation through markets. In the search for

better governance, regulatory reform is critical (Kirkpatrick, 2006). It is most true of developing countries where regulatory rule-marking is weak and there is a lack of accountability, transparency and consistency in policy formulation and implementation. Foreign investors, and domestic ones alike, are discouraged from investing in countries where the regulatory regime falls well short of 'good governance'.[1]

However, more and bigger difficulties and challenges can be expected in developing countries when they reform their regulatory regime. It is problematic to transfer to these countries 'best practice' models rooted in different economic, social and political contexts of developed countries. A reality gap between ideas of best practice and the actual legal, administrative, political and economic processes that exist in low- and middle-income countries means that a 'one size fits all' approach is likely to produce perverse outcomes, or what is called 'fatal remedies' (Hood, 1998, p.208). Lack of essential institutional underpinnings for effective regulatory reform presents another challenge. In particular, there are constraints in regulatory capacities: most less-developed countries are in short of resources and expertise required for regulatory reform. Regulatory reform and improvement of regulatory governance also requires a change in culture within government administration systems. However, cultural change towards an open and transparent process of decision-making is incremental and more difficult than just introducing formal rules and establishing formal structures. In addition, regulatory reform and policy in developing countries needs to consider a wider range of objectives beyond just promoting market efficiency. It is important for regulatory policy and governance in less-developed countries to be 'pro-poor'.

Given the importance of regulatory governance and potential challenges faced by them, there is a need to collect and analyse empirical data on how developing countries have been reforming their regulatory regime. Regulatory reform in developed countries have been well documented, but there is still a need to accumulate empirical evidence of the experience in less developed economies. In particular, there is a devoid of literature on how far regulatory reform has been progressing over time in low- and mid-income countries. This paper looks at regulatory reform in selected developing countries in Asia and Africa, based on the data collected through two questionnaire surveys conducted in 2003 and 2007 respectively. Comparison of regulatory practice at the two time points is made to see how far the countries have been on their way of improving regulatory governance. The rest of the paper is structured as follows: after the introduction, a discussion on the concept of regulatory governance is made from an institutional perspective as well as on the basis of the OECD model. The methodology and data are discussed in the next section. The following section compares regulatory practice of the countries between the years 2003 and 2007, accompanied by a discussion which assesses the progress made by the countries in relation to the institutional perspective and the principles of the OECD model. Conclusions are drawn in the last section.

Regulatory Governance

Over the last thirty years, the nature of regulatory management and reform has undergone profound and rapid change. Early notion of 'deregulation' gave way to the idea of mixing de-regulation and re-regulation, which gave way in turn to the concept

of regulatory quality management. Nowadays regulatory governance has been put in the centre of regulatory reform agenda in developed countries. In this section, regulatory governance and the reform aiming at improving it are discussed from an institutional perspective and then on the basis of the OECD model.

From the institutional point of view, Levy and Spiller (1994) see regulation as a design problem. It has two components: a governance structure of a regulatory system and the regulatory incentive structure. The former involves 'the mechanisms that societies use to constrain regulatory discretion and to resolve conflicts that arise in relation to these constraints' (ibid, p.205); while the latter comprises the rules applied to the regulated. Both of them are important because the quality and the effect of the rules depend, to a large extent, on the framework for and the governance structure of rule-making system.

Regulatory frameworks provide an institutional design. North (1990) classifies institutions into three elements: informal institutions, formal institutions and enforcement. Formal institutions can only function as designed and be effectively enforced when they are compatible to and supported by informal institutions such as the culture, norms and accepted social behaviours. Each of the elements can change, but institutional changes tend to be incremental (ibid.). Change in informal institutions tends to be much slower and more difficult in comparison to that in formal rules and structures. However, without change in informal ones, any change made in formal institutions cannot be sustained (ibid.). With an aim to improve regulatory governance, it is therefore important that regulatory reform should be able to bring

changes in formal regulatory mechanisms and structures as well as in the culture within the regulatory system.

One of the objectives of regulatory reform is to establish a regulatory framework that provides an effective institutional design. However, any regulatory framework is embedded in a wider institutional context (Granovetter, 1985). That is, any regulatory regime is embodied in the specific institutional context of a country as reflected in its formal and informal rule. Two formal institutional elements which are important in determining a country's regulatory design are the legislative and executive institutions, and the judicial institutions (Levy and Spiller, 1994). Customs and other informal but broadly accepted norms of behaviour are also important in shaping the constraints and incentives faced by those who regulate and those who are regulated. In addition, the administrative capabilities of a country present another element of institutional endowment which can influence the overall efficiency and effectiveness of the regulatory design.

In a broader sense, OECD (2002) define regulatory governance as a concept which covers both the design and implementation of instruments and the methods for assessing the impact of regulation, and the governance principles such as transparency, accountability, efficiency, adaptability and coherence. In this sense, both the outcome and process dimensions are important in regulatory governance. According to OECD (2002), regulatory reform aiming at improving regulatory governance involves three elements: regulatory policies, tools and institutions. Transparency and accountability are goals as well as means of a successful regulatory reform.

Regulatory policy is the systematic development and implementation of government-wide policies on how government use their regulatory powers (ibid.). The experience of OECD countries suggests that it should be adopted at a high political level in order to lend authority and aid transparency. The principle here is to establish explicit responsibility for the policy at both political and administrative levels and the adoption of standardised appraisal systems for regulation-making and regulatory review processes.

A wide range of anecdotal and analytical evidence suggests that state regulation can produce both 'goods' and 'bads'. The major tools employed in OECD countries to improve the efficiency and effectiveness of regulation include regulatory impact assessment (RIA),[2] the systematic consideration of regulatory alternatives, and public consultation. RIA is a tool and process of systematically assessing the benefits and costs of a new regulation or an existing one. It can contribute to both the outcome and process dimensions of national objectives. Emphasizing on both *ex ante* assessment of regulation proposals and *ex post* evaluation of existing regulations, RIA contributes to better regulatory decision-making through the systematic assessment of the impact of a regulatory measure, and the adherence to the principles of accountability, transparency and consistency (Kirkpatrick, *et al*, 2004). Consultation is a vital support for analytically based decision making as well as providing information on issues such as the acceptability of different policies (OECD, 2002). Five consultative mechanisms which have been used in developed countries are: informal enquires, circulation of proposals for public comment, public notice, hearings, and advisory groups. Due to their advantages and disadvantages and their suitability to different

stages of the regulatory process, there is an evolving tendency to adopt different forms of consultation in combination, to improve its overall performance.

The tools for improving regulatory decision-making and transparency are mutually reinforcing. They are most effective when applied in combination as part of a structured system. By integrating RIA and consultation, the provision of additional information prior to consultation commencing can assist consultation in serving the goals of accountability and transparency, as well as help it fulfil the RIA related function of improving the empirical basis for decision-making. Quite often in developed countries, RIA requires identifying and weighing regulatory alternatives and even non-regulatory options before applying formal benefit-cost assessments.

The implementation of regulatory policies and the usefulness of regulatory instruments depends on the existence of a right set of institutions. They include regulatory oversight bodies and independent regulators in addition to other key contributors to regulatory quality. Promoting regulatory reform and improving regulatory governance require the allocation of responsibilities and powers to agencies across the whole of the public administration. It is widely agreed among OECD countries that the primary responsibility for quality regulation and reform should be at the level of the ministry or independent regulators where the expertise lies and policies are formulated (ibid.). Meanwhile, there has been a tendency to establish central regulatory co-ordination and management capacities (regulatory oversight bodies) and a shift in the location of these units toward the centre of government.

The main elements of regulatory governance, described in the preceding paragraphs, are drawn from the experience of OECD countries. It is clear that a 'one size fits all' approach should be avoided when promoting regulatory reform and the concept of regulatory governance in developing countries. However, a number of principles underlying the concept may still be relevant and can serve as a guideline or framework for regulatory reform. Firstly, regulatory policy should be adopted at and regulatory reform should be endorsed by a high political level. Secondly, tools to improve the outcomes and processes of regulation should be introduced and systematically applied in order to improve regulatory quality and governance. Thirdly, there must be essential and supportive institutions to drive regulatory policy and ensure regulatory implementation. Overall, the success of regulatory reform for improving regulatory governance is based on an integrated approach to these three mutually supportive elements. On the basis of these principles, the rest of the article examines changes in regulatory practice in selected Asian and African countries between the years 2003 and 2007. The aim is to see whether and to what extent regulatory reform has made progress in improving regulatory governance in these countries, and to try to identify issues and challenges faced by them in designing and implementing coherent and better regulatory strategy.

Methodology and Data

There is growing empirical evidence on regulatory practices and reform in developing countries. Among others, World Bank (2003) looks at business regulations in developing countries and measured the impact of development policy. Stern and Holder (1999) assesses the performance of regulatory systems in relation to economic

regulations in infrastructure industries in Asian countries. Neither of them, however, directly examines how less-developed countries reform their regulatory regime. A collection of case studies on institutional reform in developing countries was published in Minogue and Carino (2006). However, the cases were either concerning with a particular sector or focusing on a specific aspect of regulation. The main published information on regulatory reform and regulatory governance in developing countries relate to Mexico and South Korea, which were reported in OECD (1998, 1999 and 2002).[3]

Efforts were also made by the Centre on Regulation and Competition located in University of Manchester, UK, to collect empirical information on regulatory reform in less-developed countries. Among them, two questionnaire surveys were conducted in 2003 and 2007 respectively. The 2003 survey focused on the use of RIA as a tool to improve the outcomes and processes of regulation, and the results were reported in Kirkpatrick, *et al*. (2004). The 2007 one collected data on the adaptation and application of regulatory policies, tools and institutions used to improve regulatory governance in 11 developing and transition economies. The results were presented in Zhang and Thomas (2008).

The two papers reporting the results of the surveys provide useful snapshots of the regulatory landscape in less-developed countries at the two points in time. Despite the different focuses, the two surveys did ask some common questions, therefore allowing comparison to be made in regulatory practice between the two years and any change and progress to be tracked over the period in the countries which responded to the both surveys. The questions asked by both of the surveys cover regulatory policy and procedures to improve regulatory quality and promote regulatory reform, supporting

institutions for implementing regulatory policy and tools, and the application of two regulatory tools – RIA and public consultation. Seven countries participated in the both surveys, with five in Asia and two in Africa. They are listed in table 1, alongside the number and distribution of the respondents.

(Table 1 here)

Based on the responses from the two surveys, regulatory practice in each of the regulatory areas is compared between the two years, followed by a discuss on the change and progress (if any) made by the countries in improving regulatory governance, from the institutional perspective as well as against the principles of the OECD model.

Regulatory Reform from 2003 to 2007 in Participating Countries

Regulatory Policy and Supportive Institutions
As discussed earlier on, regulatory policy for improving regulatory quality and governance should be endorsed by and adopted at a high level of government in order to lend authority and help signal commitment to reform. Questions were asked in this respect in both of the surveys. The responses indicated that, by mid 2003, none of the countries had introduced an explicit, published programme to promote government-wide regulatory reform or regulatory quality improvement, although there were measures in promoting regulatory reform in selected sectors most of which were introduced after the year 2000. The results of the 2007 survey showed no marked improvement in this aspect: there still lacked a policy for improving regulatory quality

government wide in spite of the increasing number of sectors which had introduced sector-specific policy to promote regulatory reform.

Improvement of regulatory governance also requires the right set of institutions, which include independent regulators and central regulatory co-ordination and management capacities (OECD, 2002). The 2003 survey reported that in all the countries 'independent' regulators were established, mainly in the public utilities sector. In fact, most of the respondents to the 2003 and 2007 surveys were from such regulatory bodies. As far as central regulatory co-ordination bodies are concerned, the 2003 survey revealed that only one country - Pakistan - had by then established a dedicated, permanent body for encouraging and monitoring regulatory quality in the national administration. It was the Cabinet Committee on Regulatory Bodies, chaired by the Prime Minister with the functions of considering overall framework of regulatory bodies, their functions and performance, and related policy issues. The 2007 Survey showed that one more country had set up such a body by the time the survey was done. It was Ghana, where a ministry for public sector reform was established in 2005. It was claimed that this ministry was consulted in the process of developing new regulation, had the power to scrutinise regulations issued by other ministries or regulatory agencies and monitored their progress made on reform, and could initiate reform actions. It seemed that in all the other countries no progress had been made in this area.

As one of the two dimensions of a regulatory policy, reform of regulatory appraisal of new regulations is important (OECD, 2002). Responses to the question on rule-making asked in the 2007 survey indicated that there were established administrative

procedures for making draft regulations in all the countries, although some of them may be sector specific. At the institutional level, it is essential that the substantive appraisal of new regulations is reviewed by a public body that is independent of the regulator proposing the regulation and ideally located at the centre of government (ibid). In the 2007 survey, the existence of such a body was claimed by only one country - Ghana. It was the drafting division of the Attorney General in Ghana. It was reported that in all the other countries the ministry or regulator which proposing new regulations also acted as the agency for monitoring compliance with the procedures. The residence in the same agency of both the responsibility for proposing regulations and that for reviewing the appraisal process may compromise independence of the reviewing process.

Use of Regulatory Impact Assessment (RIA)

By the time of the 2003 survey, the use of RIA or some less formal assessments for making new regulations in selected sectors was claimed by the respondents from the five Asian countries. However, the number of the sectors which applied RIA or other forms of regulatory assessment was very limited, and that of the sectors with sector-specific guidelines on how to conduct RIA was even smaller. None of the respondents from the African countries reported the use of RIA by mid-2003. The results from the 2007 survey indicated that the two African countries (Ghana and Nigeria) had joined the Asian countries in applying RIA. However, in all the seven countries its use was still not widespread and only limited to a few regulatory activities. It was claimed that, among the tools for improving regulatory quality and transparency, RIA was much less commonly used than administrative simplification, public consultation and plain language drafting. In none of the countries uniformed

guidelines for the use of RIA were established. Another weak area revealed by the 2007 survey was that regulators were rarely required to identify and assess alternatives to regulation in the process of RIA and/or in that of rule-making in general.

The experience of OECD countries shows that accompanying the increasing popularity of RIAs has been a call for audits on their quality from an external perspective. Some developed countries have established procedures and dedicated government agency to review RIAs and ensure their quality (Ladegaard, 2006; Humpherson, 2006; Deighton-Smith, 2006). The responses from the 2007 survey indicated that such procedures and government body existed in none of the countries. This is not surprising given the relative novelty of RIA and methodological challenges involved in applying RIA in developing countries.

RIA, as a policy tool which contributes to both the outcomes and processes of regulation, should be used for both ex ante assessment and ex post evaluation. The 2003 survey revealed that, where RIA was applied, it was predominantly being used for ex ante appraisal rather than for monitory or ex post evaluation purpose. The results from the 2007 survey showed no marked difference in this aspect. In all the seven countries, the use of RIA was still concentrated on appraising proposed regulations.

Interest in widespreading the use of RIA was expressed by respondents in the 2007 survey. When it comes to the assistance required for implementing RIA, capacity building/training and resources were identified, in order, as the most needed.

Public Consultation

Public consultation is important for improving regulatory transparency when used on its own or in combination with other tools like RIA. Questions were asked in both of the surveys about the use of consultation in the process of regulatory decision-making. The responses to the 2003 survey indicated that in the countries public consultation was only used in some cases of making new regulations. The limited use of consultation in rule making may be due to the fact that its use was mandated only in some sectors. Where consultation was applied, there appeared to be an emphasis on the use of public notices. Few countries made the views of participants in the consultation exercise public, suggesting scope for improved regulatory transparency.

The results from the 2007 survey indicated that progress had been made in some of the countries in terms of applying consultation on a more formal and wide-based basis. The respondents from Ghana, Nigeria, Sri Lanka and Pakistan claimed that consultation was systematically used in rule making even in some areas it was not mandated. They also reported that stakeholder groups could volunteer or require participating in consultation, suggesting greater openness and accessibility of the process. In the other three countries, namely India, Malaysia and the Philippines, it seemed that systematic use of consultation was still not applied government-wide and practice varied across sectors.

As far as the forms of public consultation are concerned, informal consultation, a mechanism which lacks transparency and accountability and is prone to capture by interest groups, was claimed as the most preferred in Malaysia in the 2007 survey. Public notice was still the most frequently used in India, Pakistan, Sri Lanka and the

Philippines. In theory, public notice is more open and inclusive than other mechanisms. However, it may turn out that levels of participation are still low in practice, in particular in countries where interest groups have established special relations with government officials (OECD, 2002). Participation is also dependent on the effectiveness of the notice process and the quality and nature of the information provided to the public, both of which require certain level of regulatory capacities. It is therefore likely that the potential openness and inclusiveness involved in public notice cannot be achieved in the above four countries because of pervasive cronyism and the constraints in regulatory capacity. It appeared that in both Ghana and Nigeria different mechanisms of consultation were used in a rather equal frequency. The 2007 survey revealed that the opinions of consultation participants were made publicly available on a slightly more often basis. However, this still suggests that much more can and should be done in making the process more transparent.

Discussion

Comparison of the results of the two surveys in the areas of regulatory policy, supportive institutions, and the use of RIA and public consultation is summarised in table 2. It is clear that, by mid 2003, regulatory reform in the countries was at most at the stage of changing regulatory structures, although there were tentative efforts to improve regulatory quality through the limited use of public consultation and RIA in some countries. At large the focus was on reforming the regulatory structure by, for instance, establishing 'independent' regulators in some sectors, notably public utilities.

(Table 2 here)

By the time of the 2007 survey, not much progress had been recorded, although a couple of the countries had moved a bit forward in some of the areas of regulatory reform. According to the principles of the OECD models, the success of regulatory reform for improving regulatory governance is based on an integrated approach to the three mutually supportive elements – regulatory policies, institutions and tools. In terms of regulatory polices, none of the countries had made any marked progress in introducing an explicit, overarching programme to promote government-wide regulatory reform or regulatory quality improvement. The OECD model also suggests the focus being put on two dimensions of regulatory activity: regulatory appraisal of new regulations and evaluation of existing ones. By the time of the 2007 survey, the majority of the countries had introduced administrative procedures for making draft regulations. However, a body for reviewing the appraisal of draft regulations which is independent of the regulator proposing the regulations was non-existent in six of the seven countries. This may reflect resource constraints faced by the government. Nevertheless, independence is likely to be compromised because of the practice of putting the responsibility for proposing regulations and that for reviewing the appraisal process onto the same agency. Although the surveys did not ask explicit questions on evaluating existing regulations, the responses to questions on RIA did suggest that even less attention and resources were dedicated to keeping regulation up to date.

According to the OECD model, supportive institutions are required for implementing high quality regulation. The 2007 survey found that this was another area of weakness. Despite the establishment of independent regulators, a dedicated body for encouraging and monitoring regulatory quality in the national administration was still

absent in five of the seven countries. Although resource constraints may be one of the reasons, the non-existence of such a central body in most of the countries may suggest that the focus of regulatory reform has not shifted from improving the business environment by removing 'unnecessary' or 'excessive' regulation to a broad conception of regulatory quality and a dynamic approach to regulatory management and governance.

Limited progress was made in the use of the two regulatory tools – RIA and public consultation. It was found from the 2007 survey that the two African countries joined the five Asian countries in applying RIA. However, scope of coverage remained patchy in all the countries. Limited adoption in combination with the absence of uniformed guidelines indicated that RIA was most of the time applied to single regulations rather than the regulatory regime as a whole. Another problem with the application of RIA was its concentration on ex ante assessment. This may reflect a lack of resources within governments to undertake evaluation of existing regulations, or alternatively, there may be reluctance on the part of governments to dwell on whether previously introduced regulatory measures have achieved their desired results. None of the countries had established a body to review RIAs. Although this may be due to the novelty of RIA and methodological issues involved, the introduction of such a body can present a step further after the adoption of RIA become more widespread and systematic.

Progress were reported by some of the countries in making public consultation more widespread, accessible and systematically applied. However, in most of the seven countries different forms of consultation were not effectively combined to offset the

strengths and weaknesses of the different strategies. There was also suggestion for scope of further improvement in transparency by making consultation results more publicly available.

Overall, very limited and partial progress was made by the countries over the period from 2003 to 2007. The patchy progress reported by the countries has not amounted to a marked shift in approaches and objectives from making ad hoc improvements to regulatory structures to taking a systematic view of regulatory governance and the means of promoting and enhancing it.

As discussed earlier, if regulation is seen as a design problem and regulatory governance provides an institutional design, regulatory reform should bring changes in formal regulatory mechanisms and structures as well as in the culture within the regulatory system. Comparison of regulatory practice between the two years shows that only limited progress has been made in introducing changes in formal rules and structures. Significant progress in introducing government-wide regulatory policy and establishing a structure with a central co-ordinating body has not been made in all or the majority of the countries. The most notable advancement is probably the introduction of administrative procedures for making draft regulations. Even in this area, practice still fell short in terms of the absence of a dedicated body to review the appraisal process in six of the seven countries.

At the most fundamental level, it seems that regulatory reform in the countries has not brought about much change in informal institutions such as culture and the way of doing things within the regulatory system and the national administration in general.

The culture changes among rule-makers and rule enforcers that are required to support a regulatory system which systematically generates high quality and which is fully integrated with the governance agenda are essential for sustain any changes brought about in formal rules and structures. However, such changes have not yet to be seen in the countries. This is reflected, for instance, by the limited progress in the adoption of RIA, the rare use of considering regulatory alternatives in regulation-making process, and the reluctance of making consultation results public. Conversely, the lack of cultural changes may explain why progress has been so slow in widespreading the use of RIA as well as in introducing other mechanisms to improve transparency. However, change in informal institutions tends to be very slow and old habits die hard. In particularly, embeddedness of the regulatory framework suggests that cultural changes are needed not only within the regulatory system but also across the whole government administration.

In summary, regulatory reform in the countries has not made much progress in making a shift to improving regulatory governance by the time the 2007 survey was done. This means that reforms are needed to bring changes to both formal institutions like regulatory policy and structure, and informal ones like culture. Because the regulatory framework is embodied in the institutional context of a country, regulatory reform aiming at improving regulatory governance cannot succeed without being integrated into the reform of the public administration as a whole. Also because of regulatory embeddedness, variation can be expected in regulatory design. Countries should pursuit the design that involves an integrated approach to the three mutually supportive elements of regulatory governance and at the same time fits in with their institutional endowment.

Conclusions

The role of the state has been changing over time. Nowadays, emphasis has shifted to the notion of regulatory state. Under this notion, Western countries have changed the focus of regulatory reform from de-regulation and re-regulation to improving regulatory governance. In developing countries, regulatory reform has been shaped or influenced by policy prescriptions promoted by international donor agencies. Overall, there has been wide recognition among less-developed countries of the importance of establishing an effective regulatory framework and improving regulatory governance.

This article compares regulatory practice in seven developing countries between the years 2003 and 2007, by using the data collected through the two surveys conducted by the Centre on Regulation and Competition. The comparison reveals that only limited and partial progress has been made by the countries. The patchy progress has not marked a shift in regulatory reform from making ad hoc improvements to regulatory structures to taking a systematic view of regulatory governance and the means of promoting and enhancing it. From an institutional perspective, little changes have been introduced to formal institutions like regulatory policy and supportive structures. Lack of changes in informal institutions like culture and the way of doing things within the regulatory system makes the use of regulatory tools 'add-ons' rather than as integral part of the policy development and management process. Constraints in regulatory capacities present another challenge for implementing regulatory policies, establishing supportive institutional structures, and effectively applying regulatory tools. Therefore, for regulatory reform to improve regulatory governance, changes should be brought to both formal and informal institutions, and

administrative capacities should be enhanced. Furthermore, regulatory reform should not be treated in isolation; it needs to be integrated into the reform of the government administrative. At the same time, it should be recognised that, in search for improved regulatory governance, different countries may come up with different regulatory designs to reflect their institutional endowment.

The findings reported in the article should be treated with qualifications. A word of caution is in order because the number of the countries and the coverage of the areas of regulatory reform are limited. This is due to the fact that the data used are drawn from two existing surveys which had different focuses and were administrated in different ways. Another related limitation is associated with the possible sample bias in both of the surveys: there was indication that the participated countries may be relatively more established in regulatory practice. The findings based on what happened in the countries which participated in the both surveys may therefore show a brighter picture, even though there progress made through regulatory reform was limited and patchy. Further research can be done by surveying a larger sample of countries on more or less the same set of questions which cover the main dimensions of each of the elements of regulatory governance, at different points in time.

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Table 1. Countries Participated in Both of the Surveys

Country	Number of respondents in the 2003 survey	Of which, respondents from national (federal) level of government	Number of respondents in the 2007 survey	Of which, respondents from national (federal) level of government
India	2	1	6	1
Pakistan	5	3	2	2
Malaysia	9	5	25	19
The Philippines	7	4	19	16
Sri Lanka	3	3	7	7
Ghana	2	2	8	8
Nigeria	2	1	5	5

Table 2. Comparison in Regulatory Practice between the Years 2003 and 2007

		India	Pakistan	Malaysia	The Philippines	Sri Lanka	Ghana	Nigeria
Published programme to promote government-wide regulatory reform	2003	No	No	No	No	No	No	No
	2007	No	No	No	No	No	No	No
Established procedures for making draft regulations	2003							
	2007	Yes	some sectors	Yes	Yes	Yes	Yes	Yes
Supportive institutions: a body to review new regulation appraisal	2003							
	2007	No	No	No	No	No	Yes	No
Supportive institutions: independent regulators	2003	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors
	2007	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors	Some sectors
Supportive institutions: central regulatory co-ordination bodies	2003	No	Yes	No	No	No	No	No
	2007	No	Yes	No	No	No	Yes	No
Use of RIA	2003	Some cases	Some cases	Some cases	Some cases	Some cases	No	No
	2007	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines	Some cases, no uniformed guidelines
The body of reviewing RIAs	2003	No	No	No	No	No	No	No
	2007	No	No	No	No	No	No	No
Use of public consultation	2003	Some cases of regulation-making	Some cases of regulation-making	Some cases of regulation-making	Some cases of regulation-making	Some cases of regulation-making	Some cases of regulation-making	Some cases of regulation-making
	2007	Some cases of regulation-making	More systematic	Some cases of regulation-making	Some cases of regulation-making	More systematic	More systematic	More systematic

[1] Jacobs (2003) lists five characteristics of modern regulatory system: security, transparency, legitimacy, efficiency and expertise. The Better Regulation Task Force in the UK published five 'principles of good regulation': transparency, consistency, proportionality, targeting and accountability (BRTF, 2003)

[2] it is also know as 'regulatory impact analysis'.

[3] Empirical information on regulatory reform in transitional economies in eastern and central Europe can be found in the publications under the SIGMA programme, a joint initiative between the European Union and the OECD.