Gaining MOMENTUM

The state of regulatory best practice in Africa

SBP

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FOREWORD

REGULATORY BEST PRACTICE (RBP) captures the idea that the regulatory environment should be as favourable as possible for trade and investment. Recent research has shown that an appropriate regulatory and institutional environment is the single most important component of a country's economic growth strategy. Government's role must be to create an environment that is good for all business, from large corporations to small and medium enterprises, by ensuring that inappropriate legislation, regulations, and administrative requirements do not inhibit growth, or prevent markets from operating effectively.

The Commonwealth Business Council (CBC) and SBP have launched a joint project to raise awareness of the importance of RBP in Africa. More specifically, it is aimed at ensuring that RBP issues are placed firmly on the agenda of debates around economic growth, job creation, and the investment climate – in essence, making Africa a better place to do business.

The project is being funded through the 'Enabling Environment Window' of the Business Linkage Challenge Fund (BLCF). Established in 2001 by the Department for International Development (DFID), the UK government department responsible for promoting development and reducing poverty internationally, the BLCF is aimed at encouraging private investment in developing countries – a key objective of DFID's white paper entitled *Eliminating world poverty: making globalisation work for the poor*.

Gaining momentum summarises a desk-top survey of 12 countries undertaken by SBP to assess the current state of RBP initiatives in Africa, which provides a baseline for assessing progress as the project unfolds over the next few years.We would like to acknowledge DFID Southern Africa's financial support for these country studies.

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THIS report is based on a desktop scan of Regulatory Best Practice (RBP) in 12 African countries. It assesses the degree to which RBP has been accepted by the national governments concerned, to what extent it informs their policies, and how the RBP agenda can be advanced. The 12 countries are: Botswana, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Uganda, and Zambia. The general lessons are summarised here, together with some specific examples, particularly of promising cases.

WHAT IS REGULATORY BEST PRACTICE?

Governments create the environment within which business operates. This comprises policies, legislation, regulation and administration. RBP is the idea that this environment should be as favourable to trade and investment as possible – which in practice means both minimising compliance costs (red tape) for firms as well as ensuring that the administrative burden facing government agencies is within their capacities. RBP is intended to facilitate investment, the growth and development of established firms, the establishment of new enterprises, and the formalisation of informal businesses.

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The five principles of RBP are:

- **Proportionality**. Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountability.** Regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistency.** Government rules and standards must be joined up and implemented fairly.
- **Transparency**. Regulators should be open, and keep regulations simple and user-friendly.
- **Targeting.** Regulation should be focused on the problem, and minimise side-effects.

HOW IMPORTANT IS REGULATORY BEST PRACTICE?

A study of 10 developing countries in Africa and central Europe, conducted in 2002 by Bannock Consulting in association with SBP, concluded that ‘an appropriate regulatory and institutional environment is the single most important element in an economic growth strategy’. The research behind this study revealed that only one other factor – the levels of skills, especially technical skills, available in a given country – was anywhere near as strongly correlated with per capita growth.

RBP is indeed appropriately viewed as an element of overarching economic growth strategies. Moreover, properly conceived, RBP is not some kind of ‘add-on’ to macro stabilisation or structural adjustment programmes, but an integral part of such strategies. 'Best practice' implies that attention is given to achieving appropriate regulation, not after achieving macro stability and liberalisation, but as an integral part of the process. There is also the danger that growth and poverty reduction will be viewed as related only at an overarching conceptual level. But when a developing country simplifies regulations, this removes one of the major barriers that previously prevented the poor from gaining access to the formal market. RBP should thus be an integral component of any viable poverty reduction strategy.

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Inappropriate regulations impact on all businesses – but the impact is heaviest on small and medium enterprises (SMEs) which, in developing countries, means overwhelmingly indigenous firms. With the tendency of many developing countries to establish agencies tasked with smoothing the paths of foreign investors, indigenous SMEs, which very seldom enjoy such treatment, can be seen to be labouring under double discrimination when it comes to dealing with regulations. An awareness of the problem, and measures to deal with it, is thus a further component of RBP.

RELATIONSHIP TO DOING BUSINESS IN 2004: UNDERSTANDING REGULATION

The World Bank study *Doing Business in 2004: Understanding Regulation* appeared while the SBP study was being prepared. The two studies are very usefully seen as complementary; in fact, SBP researchers referred to the World Bank material on the case study countries (then available only on the internet) at a very early stage in their research. It must be noted, however, that, although both studies are concerned with appropriate regulation, they cover different aspects of the issue.

Doing Business in 2004 is a study of selected regulations as they currently exist around the world. The study quantifies ease of business entry, flexibility of (certain aspects of) labour regulation, ease of contract enforcement, the red tape

Table 1: Costs of entry (ie, the costs of registering a business)

	*Botswana	Ghana	Kenya	Malawi	Mozamb	SA	Namibia	Tanzania	Uganda	Zambia
GNI/capita (US$)	2 980	270	360	160	210	2 600	1 780	280	250	330
No of procedures	10	10	11	11	15	9	10	13	17	6
Time to register (days)	97	84	61	45	153	38	85	35	36	40
Cost (% GNI/capita)	36.1	111.7	54	125.4	99.6	8.7	18.7	199	135.1	24.1

* No data are available for Lesotho, Namibia, and Swaziland.

Source: The World Bank Group, *Doing business in 2004.*

Table 2: Selected comparisons

	UK	Latvia	India	N Zealand	Canada	Finland	Hong Kong	Sweden	US
GNI/capita (US$)	25 250	3 480	480	13 710	22 300	23 510	24 750	24 820	35 060
No of procedures	6	7	10	3	2	4	5	3	5
Time to register (days)	18	11	88	3	2	33	11	16	4
Cost (% GNI/capita)	1.0	14.7	49.8	0.2	0.6	3.1	2.3	0.8	0.6

Source: The World Bank Group, *Doing business in 2004.*

involved in accessing credit, and the complexity of bankruptcy procedures. While some important aspects of regulation have not yet been covered by the World Bank the study provides an excellent snapshot, and makes it possible to rank the countries studied. Table 1 reproduces the World Bank's figures for costs of entry, as these provide easily understood indicators of the scale of the issues facing some of the countries in our report. Table 2 includes some outstanding international examples of best practice, for comparative purposes.

Gaining Momentum is a study of what is being done, in the 12 countries under review, about the sorts of regulations analysed by the World Bank. *Doing Business in 2004* can be used to identify the key regulatory constraints. *Gaining Momentum* takes a step beyond this and explores the extent to which these issues are recognised as important by the governments of the case study countries. What exactly is recognised? How important is it perceived to be? How is it to be addressed? What partners and other agencies are involved? The study essentially provides an insight into the extent to which RBP is established in the 'hearts and minds' of the governments studied. Although the implementation of RBP is far more complicated and difficult than simply recognising the issue in policy statements, there can be no implementation without such recognition. Each implementation process is unique, with different political barriers to be overcome. But commitment is important, and *Gaining Momentum* provides insight into the level of awareness of the issue and the dedication to RBP of the 12 case study governments.

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RBP AWARENESS – AN OVERVIEW

- The countries with the highest levels of awareness of RBP are undoubtedly Kenya and Uganda. RBP appears to be entrenched in the public policy agenda in both these countries, with repeated references in the policy literature.

- Tanzania, Ghana, and Mozambique have made significant commitments to RBP. But the process is newer and patchier in these three countries. So, while there has been little implementation, the theme is at least on the agenda in these countries.
- Levels of RBP awareness are low in most of the other countries studied. Malawi, Namibia, and Swaziland appear to be least informed — although there may be processes within the civil services of these countries that we did not pick up through a desktop methodology. This does seem to be the case in Lesotho. In Zambia, political and economic distractions appear recently to have drawn attention away from RBP awareness.
- Botswana is an interesting and ambiguous case, with little RBP awareness in policy documents, but a capable government that may well be in the process of moving rapidly towards RBP as a part of diversification policy. The evidence for this is primarily statements around the recent commissioning of a FIAS administrative barriers report.

The government of Ghana has commissioned an update of the 1995 FIAS investment barriers report

- In South Africa there are many references to RBP in the public arena – but very few of these come from government. Civil society is a bigger and more autonomous policy role-player in this country than in any of the other countries studied, so this is not an insignificant observation. But government in South Africa appears to be rather complacent about its role in economic growth. This translates into a limited understanding of why South Africa's growth rate is sub-optimal, and why job creation is so limited – in other words, official ignorance of the role and potential of RBP.

PROMINENT EXAMPLES OF EMERGING BEST PRACTICE

The following three cases stand out as examples of high awareness of and commitment to RBP:

- **Ghana**. At his inauguration in January 2001, President John Kufuor proclaimed a 'golden age of business'. To implement the vision, a Ministry of Private Sector Development (MPSD) was established, based in the President's Office. RBP forms a fundamental part of the ministry's mandate, as indicated repeatedly in public speeches by Kwamena Bartels, the Minister occupying this portfolio. '[The MPSD is] charged with the responsibility of reducing the costs of doing business in Ghana,' he said in July 2003. RBP forms an important part of a Comprehensive Private Sector Development Strategy, which is currently being prepared by consultants. In the meantime, the Government of Ghana has commissioned an update of the 1995 FIAS Investment Barriers report. It has also adopted a policy of National Economic Dialogue (NED) which involves the private sector. At the third NED conference in May 2002, President Kufuor was reported as saying: 'It is hoped that the reduction of stifling bureaucratic practices [will] lead to an expansion of the formal economic sector.' In Ghana, it is early in the process. But key decision-makers in government have certainly started to say the right things about RBP.

- **Kenya.** Kenya's new government, elected in December 2002 and led by President Mwai Kibaki, has stated its desire to implement RBP policies. Kenya has some history of RBP, with the country's poverty reduction strategy strongly reflecting the approach, and with a DFID-funded regulatory project well established within the quasi-autonomous government think-tank, the Kenya Institute for Public Policy Research and Analysis (KIPPRA). The primary macro policy statement compiled by the new government is the Economic Recovery Strategy for Wealth and Employment Creation, 2003–2007 (ERS). In a foreword, President Kibaki writes of the 'need to create an enabling environment in order to encourage both domestic and foreign investors'. The document explicitly espouses RBP, and commits the Government of Kenya to establishing a commission to review all business-related regulations.
- **Uganda.** Uganda has built up as strong RBP record in recent years. Its approach is reflected in its Poverty Reduction Strategy Paper (PRSP); the creation of a (donor-funded) Deregulation Task Force housed in the Ministry of Finance, Planning, and Economic Development; and the activities of a core group of 28 Members of Parliament who actively promote RBP in the legislature. Among macro policy documents that reflect RBP in Uganda, the Medium Term Competitiveness Strategy (MTCS) of July 2000 is exemplary. Uganda's macro policies are well integrated with the MTCS and the Plan for the Modernisation of Agriculture, the two 'legs' of its poverty reduction strategy. The MTCS repeatedly returns to RBP themes in each section – micro finance, legal reforms, and institutional reforms. It is the only document in any case study country that explicitly links inappropriate regulation and corruption. Although assessing the implementation of RBP is clearly beyond the scope of a desktop scan, it can be suggested that Uganda has greater promise for RBP implementation than any other country in the study on the basis of the depth of RBP awareness and commitment (reflected in the documentation), and the degree to which major policy positions are integrated and consistent.

IMPORTANT THEMES

Poverty reduction

- Conceptually, RBP is only possible where a government is committed to playing a facilitative role in private sector-led development. In essence, RBP requires that governments must be prepared to get out of the way – to act in a way that makes them part of the solution, not part of the problem. In every case, it was possible to find some sort of public commitment to this idea, even though the frequency and profile of statements varied enormously. The problem, of course, is that governments often see themselves as having other responsibilities – notably poverty reduction – and that RBP is often (and incorrectly) not viewed as an integral aspect of this.
- Only three countries (Kenya, Malawi, and Mozambique) have poverty reduction strategies that emphasise RBP. In Ghana and Uganda, RBP is

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occasionally mentioned in a poverty reduction context. But Namibia, Tanzania, and Zambia do not appear to have drawn this connection. Botswana and South Africa do not have poverty reduction strategies of the sort that donor institutions have facilitated in the other case study countries. Both governments are involved with the problem. However, the link between RBP and poverty reduction could not be found in either case. Generally, there appears to be a strong tendency to regard poverty reduction as a matter of state provision – infrastructure, finance, welfare, and education – while RBP is viewed as something different and separate.

Consultation with business

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- A regular, structured, and serious interaction between government and business is integral to RBP. Ideally, organised business: 1) is a source of demands for RBP, thus raising its profile; 2) brings practical regulatory issues to the negotiating table; and 3) provides a political counterweight to the anti-RBP sentiments often found in the civil service.
- Business organisations often lobby not for RBP but for special favours that are often anti-RBP in implication, such as protectionism or local preference policies, both of which tend to increase administrative complexity. The study identified an element of this sort of local preference regulation in Botswana, Lesotho, Ghana, and South Africa (in the form of Black Economic Empowerment preferences).
- Even where they are committed to RBP, weak business organisations are ineffective lobbyists. They may even end up too close to government, as appears to be the case in Malawi and Lesotho.
- Business representation presents a chicken-and-egg problem. Strong economies tend to have strong and well-organised business lobbies – precisely the kind of lobbies that make for RBP and thus for economic growth. The question is, how to get there. The strongest business representatives identified in the study were in Kenya and South Africa. In the former, the Kenya Private Sector Alliance (originating in the need perceived by the private sector to provide collective input into the PRSP process) offers a potentially strong voice. And in the latter, the ethnic divisions that have plagued organised business may have been overcome with the recent formation of the united Chamber of Commerce and Industry of South Africa (CHAMSA), and a 'peak' negotiating organisation, Business Unity SA (BUSA).
- Foreign investors lobbies tend to be much stronger than indigenous business lobbies. Such lobbies can argue strongly for RBP – but there are dangers. One of the most prevalent is that RBP will be achieved for foreign-owned corporates while the struggle of indigenous businesses against red tape remains unaffected. This has arguably been the situation in Botswana and Tanzania, while Lesotho dramatically illustrates the case. The Lesotho National Development Corporation works hard to smooth the path for foreign manufacturers. At the same time, most trading licences are reserved for locals, but applications are subject to tremendous red tape and, among other disadvantages, the sector pays higher taxes.

- Donors can play an important role in funding private sector representation, such as the Business Forum in Zambia and the Investor Round Tables in Tanzania. Ideally, business representatives should arise autonomously and be locally funded, but this is not always possible. Donor funding is certainly preferable to state sponsorship.
- A trap to be avoided is easing regulations for foreign investment while effectively discriminating against local firms by subjecting them to comparatively more onerous regulations. The outstanding example in this respect was Uganda, where the 2000 Medium Term Competitiveness Strategy suggested 'refocusing the Uganda Investment Authority to play an advocacy role in improving the domestic investment climate'.

Supply-side emphases

- Far more typical than the idea that RBP is necessary to promote indigenous business are commitments by the case study governments to supply-driven measures, typically aimed at boosting entrepreneurship through the delivery of public goods such as training, mentoring, advice, investment incentives, and even the provision of finance. The warning signal here is typically a statement along the lines that '(x country) does not have a tradition of entrepreneurship'. The invariable recommendation that follows is for state intervention to create entrepreneurship.
- There is a role for supply-side measures in private sector development, and strong supply-side measures do not necessarily in and of themselves destroy RBP. But there are dangers. First, governments may believe that supply-side measures are all that is required of them and, in consequence, may ignore RBP. Second, supplying business inputs in the form of public goods distorts markets, and complicates the business environment even more. Where this happens, and where – as is usually the case – little attention is given to RBP, any existing RBP agenda can be completely undermined.
- A supply-side emphasis in policy might include tax incentives, grants, free or subsidised business support services, and cheap (subsidised) credit. All of these tend to generate greater regulatory complexity, and even barriers to investment. But RBP offers a way out. In Uganda, following the repeal of tax holidays (scrapped in terms of the Income Tax Act of 1997), a rigorous appraisal of potential foreign investors by the Uganda Investment Authority was no longer necessary. This meant that the licensing of foreign investors became more-or-less automatic, which greatly reduced the barriers to investment.
- SME policies offer an acid test of commitment to RBP. Most countries are tempted to expand the public goods on offer in an effort to boost local SMEs. Botswana and South Africa are examples of countries that have followed this route. From an RBP perspective, the best thing a government can do is to ensure that potential obstacles such as the business registration process, contract enforcement, and tax and customs compliance are as simple as possible, so as to burden fragile emerging firms as little as possible. Policy documents surveyed reveal a high level of commitment to this idea – but very little application in practice.

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The degree of commitment to RBP on the part of the 12 countries studied varies enormously. In every case, there is some sort of understanding that growth is desirable, and that this has to be driven by the private sector. However, making this happen requires giving attention to appropriate regulation. In several cases, the message has not got across. But even where it has, there is a long, hard road between accepting the idea and achieving full implementation. No country had advanced very far down this path, although Uganda's achievements thus far are laudable.

A major problem is that there are temptations in the policy world that can lead a country off the path to RBP. As a primary concern, poverty alleviation often leads to one such dead end. Policy-makers all too often think the solution to poverty is to give public goods to the poor. Of course, when destitution becomes life-threatening, such hand-outs are essential. But the sustainable solution is to make it possible for the poor to get into the market, either as entrepreneurs or employees. This means that the barriers to starting and growing businesses have to be lowered – and the barriers that are easiest to deal with, and produce the most dramatic returns, are the laws and regulations erected by the state itself. It is the poverty and low capacities found in Africa that seem to render this route less than obvious in the eyes of policy-makers. They need to remove their blinkers.

Sustained political will is needed if RBP is to be achieved in Africa, and help facilitate economic growth

Poor regulation leads to investor uncertainty. This happens because many regulatory frameworks demand official administrative capacity beyond what is available. The result is a combination of patchy implementation and non-compliance. Potential investors are simply not sure about where they and important associates such as indigenous suppliers and financial institutions stand. It becomes much more complicated to do business. It also opens avenues for potential corruption. So, paradoxically, the urge to regulate widely in order to make potential investors feel more secure ends up undermining that very sense of certainty. This can be avoided by implementing the RBP idea of matching regulation to government capacity. Governments should not attempt to implement a heavier regulatory system than their officials can deal with.

Sustained political will is needed if RBP is to be achieved in Africa, and help facilitate economic growth. The commitment to RBP is often too weak, as can be seen in several of the countries studied, where other demands assumed priority: political issues in Zambia, Malawi and Swaziland, the pre-election civil service pay hikes in Ghana, and the political importance of public bureaucracies in all countries. One can sympathise with political leaders who simply have far less leeway in the low-resource environments of African politics. But thus should not allow RBP concerns to be pushed into the background. In this regard, the title to this paper contains a message of hope. Progress is uneven – but RBP in Africa does seem to be gaining momentum.

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ABOUT THE SBP

SBP (the Small Business Project) is an independent specialist support and research organisation. Working in partnership with the private sector, its central objective is to develop and empower profitable small and medium enterprises (SMEs), and to promote a policy environment that supports private sector growth. Its programmes combine research, practice, and advocacy. SBP's approach is highly relevant to South Africa and other countries in sub-Saharan Africa, whose governments are inceasingly recognising that SME development is crucial to enhancing the economic participation of poorer communities, and thus for reducing poverty. Based on its success in South Africa since its establishment in 1997, SBP is currently expanding into a number of other African countries.