Getting to Better Regulation: Lessons from East Africa

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Global Lessons for More Effective Donor Practice
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### List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>BEST</td>
<td>Business Environment Strengthening Programme Tanzania</td>
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<tr>
<td>BRELAD</td>
<td>Business Registration and Licensing Agency (Tanzania)</td>
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<td>BRRU</td>
<td>Business Regulatory Reform Unit (Kenya)</td>
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<td>CICS</td>
<td>Competitiveness and Investment Climate Strategy (Uganda)</td>
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<td>DFID</td>
<td>(UK) Department for International Development</td>
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<td>KEPSA</td>
<td>Kenya Private Sector Alliance</td>
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<td>JLOS</td>
<td>Justice Law and Order Sector Programme (Uganda)</td>
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<td>LSTF</td>
<td>Legal Sector Task Force (Tanzania)</td>
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<tr>
<td>MDA</td>
<td>Ministry/Department/Agency</td>
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<td>MTCS</td>
<td>Medium Term Competitiveness Strategy (Uganda)</td>
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<td>NGSPR/MKUKUTA</td>
<td>Tanzanian National Strategy for Growth and Poverty Reduction</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>PEAP</td>
<td>Poverty Eradication Action Plan (Uganda)</td>
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<td>RBP</td>
<td>Regulatory Best Practice</td>
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<td>RCCs</td>
<td>Regulatory Compliance Cost Study</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<td>TPSC</td>
<td>Tanzania Public Service College</td>
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Executive Summary

1. There is a growing emphasis within donor circles on “better regulation” as a key ingredient in business enabling environment reform. There is also a parallel recognition among key stakeholders in East Africa including governments, the private sector and civil society that an effective better regulation agenda must be grounded in wider economic environment reforms at the macro, sectoral and micro levels of the economy.

2. The East African Community countries Kenya, Tanzania, and Uganda\(^1\) are currently undertaking varying levels of better regulation interventions with donor support. However reform of legal and regulatory environments in East Africa is not new. For 10 to 15 years, each of the three countries covered by this paper has experimented with a variety of legal and regulatory reform initiatives of varied scope and depth as part of wider efforts to improve their business enabling environments and support private sector led development. DFID, the World Bank and other development partners have been instrumental in supporting these reform initiatives.

3. Initial approaches to legal and regulatory reform in East Africa in the 1990s focused on deregulation and regulatory simplification, including commercial law reforms. The pace and tempo of reform implementation has been varied across the three countries. Over the last several years, Kenya has witnessed an energetic pace of regulatory reform implementation anchored around the Business Activity Licensing Reform initiative. However, the country remains at the initial stages of elaborating and implementing a long-term better regulation strategy that addresses the flow and quality of regulations as well as the regulatory management framework. Tanzania has opted for a phased multifaceted reform effort whose ultimate objective is to address outstanding regulatory governance issues. The initiative, coordinated by the BEST Programme in the Ministry of Planning, Economy and Empowerment, combines both deregulation and regulatory simplification and also aims to address regulatory quality issues and ultimately the country’s overall regulatory management infrastructure. Uganda has perhaps gone furthest along the better regulation path having successfully achieved partial institutionalisation of regulatory best practices and regulatory impact assessments in government policy and law making processes. This initiative was coordinated by the DFID funded Regulatory Best Practice Programme in the Ministry of Finance, Planning and Economic Development and the Ministry of Tourism Trade & Industry.

4. This paper utilises case studies to assess the quality of government regulatory reform policies and commitment, the capacity and commitment of institutional drivers to lead the reform effort and the choice and applicability of reform tools. Based on these findings, the paper draws lessons for the future design of approaches and tools for achieving better regulation.

5. The paper recognises that successful regulatory reform is not only about implementing formal government policy commitments but often entails recognising, understanding and managing a complex mix of societal realities and challenges including norms, traditions, approaches, interests, power relations and others. The paper therefore attempts to go beyond identifying policy initiatives, actions and their resulting outcomes and impacts to take a look behind the scenes and understand what has worked and why, and what has worked less well and why, in practice. The paper concludes by proposing recommendations for both designing new ‘better regulation’ activities and initiatives, and deepening and strengthening existing efforts.
Chapter 1: Context Setting – The trajectory of legal and regulatory reform in East Africa

1.1 Introduction
6. This chapter explores the emerging trends in the understanding and appreciation of the relationship between legal and regulatory reform and better business environment among key economic stakeholders in East Africa including governments, the private sector and civil society. The chapter highlights the early efforts to address regulatory constraints in the business environment and demonstrates how these efforts have evolved into a more holistic approach to regulatory reform, described here as “better regulation.”

7. The next section gives a brief definition of better regulation. This is followed by a focus on the wider reform context in East Africa and the significance of economic reforms in building momentum and providing a strong energy source enabling implementation of better regulation initiatives.

BOX 1: Defining better regulation
Better regulation initiatives aim to establish simpler, more appropriate, sustainable regulatory environments for businesses and at the same time protect essential public interests. The initiatives focus on both the quality and quantity of regulation and seek to influence the way governments develop, implement and evaluate regulations by championing evidence-based approaches and practices. Better regulation initiatives encompass both regulatory quality improvements and elimination of unnecessary regulations, and as such involve an emphasis on regulatory governance.

1.2 Wider economic reform context
8. Comprehensive political social and economic reforms geared towards deepening and broadening the role of market forces in economic development in the three East African countries have provided a major impetus for the emergence of better regulation initiatives. These economic reforms have been prompted by the need to improve the quality of life of the majority of the region’s citizens. The reform imperative in East Africa has also been a response to the new global social, political and economic realities, the internal development dynamic and external development partner support and encouragement.

9. East African countries have implemented far reaching donor supported economic reform programmes since the early 1990s. In Uganda, the ongoing phase of the country’s economic reforms has been pursued under the Poverty Eradication Action Plan (PEAP) framework which was launched in 1997. The current phase of economic reforms in Tanzania can also be traced to the early 1990s and is currently being implemented in the context of the National Strategy for Growth and Poverty Reduction (NSGPR), popularly known in Kiswahili as MKUKUTA and the Vision 2025. The change of Government in Kenya in December 2002 heralded the launch of the Kenya Economic Recovery Strategy for Wealth and Employment (2003-2007). The Strategy has been Kenya’s blueprint for development up to the end of 2007.

10. In the context of the region’s broad economic reform agenda, there is growing appreciation and understanding of the positive impacts of better regulation reform initiatives on business environments and private sector development more generally. This positive perspective has been informed by consistent donor interest and support for regulatory reform and a growing body of knowledge, including the World Bank’s Doing Business series, demonstrating the strong link between better regulation and the quality of the business environment.

1.3 The evolution of legal and regulatory reform in East Africa
11. East African countries have attempted to achieve legal and regulatory reform by initially fast tracking review and simplification of existing commercial laws and undertaking other deregulation initiatives. Initial efforts have focused more on addressing regulatory bottlenecks and less on the flow of regulations through the policy and law making machinery of government.

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3 Getting to Better Regulation: Lessons from East Africa, DAI Europe Ltd
12. In Kenya, apart from a series of reforms to facilitate import and export business activity undertaken in the first half of the 1990s, the Government focused on deregulation, i.e. removal of regulatory and administrative barriers to market entry and to enterprise growth. In 1996, a DFID supported business licensing reform initiative, under the Kenya Deregulation Project, was launched. A key outcome of this reform effort was the introduction of the local government Single Business Permit in 2000⁹. Characteristic of most reform processes in Kenya at the time, this reform lacked a strong push for reform by the private sector which has been described as “fragmented, politicised and pursuing narrow interests.”⁹

13. Absence of private sector ownership, the stagnant economy and the difficult political environment in Kenya meant that the objective of tackling central government licensing was not realised at the time. This changed in 2003 with the formation of Kenya Private Sector Alliance (KEPSA), which provided a focal point for private sector advocacy for licensing reform⁸. Other reform efforts in Kenya include the commercial law reform under the Governance, Justice Law and Order Sector Reform Programme. There is evidence that these reforms have been constrained by institutional weaknesses reinforced by the previous Government’s reliance on ad hoc task forces to spearhead reforms⁹.

14. In Uganda, the Justice, Law and Order Sector Programme (JLOS) in part aimed to revise, simplify commercial laws and ensure improved access to commercial justice¹⁰. In addition, a DFID funded deregulation project was implemented in 2000 with the launch of the Deregulation Programme under the Ministry of Finance, Planning and Economic Development. The programme aimed to facilitate MDAs to assess the impacts of proposed new laws on businesses, demonstrate the positive impact of policy reforms on business activities, simplify and rationalise specific legislation and generate initial support for institutionalisation of regulatory best practices in law and policy making. It resulted in the award winning local government trade licensing pilot reforms¹¹.

15. In Tanzania the current drive to reform business environment can be traced to the Hassan Mwinyi Government in the early to mid 1990s. It gained momentum under the last Benjamin Mkapa Government. The Legal Sector Reform Programme, designed by the Legal Sector Task Force (LSTF) in 1993, in part sought to improve access to commercial justice as well as revise, update and simplify the country’s commercial laws. A commercial court system was established in 1999 as part of this initiative. More recent reform efforts include the GTZ supported Advancement of the Legal and Institutional Framework for the Economic Development Programme¹². In addition, moves to reform business activity licensing and registration reforms, including the formation of an executive business registration and licensing agency, BRELA¹³, were initiated in the late 1990s.

1.4 Growing focus on regulatory governance issues

16. Much of the legal and regulatory reforms initiated in East Africa in the 1990s were ad hoc and piecemeal in nature, focused on eliminating specific bottlenecks within the business environment. In recent years, there has been a strong convergence in the region towards reforms that address the quality of regulation by focusing on the flow of regulations through Government’s policy and law making processes and systems. There is strong evidence to suggest that this focus on regulatory governance issues is driven by a growing interest among governments, private sector and the donor community for reform solutions that address the structural and institutional regulatory system constraints¹⁴. This perspective has been advanced in the belief that initial regulatory reforms in East Africa, including deregulation and commercial law reform initiatives, have not significantly and sustainably addressed business environment constraints such as, poorly designed and executed regulations, the mushrooming of new regulations¹⁵ and poor enforcement.

17. The growing emphasis in East Africa on improving regulatory governance can be traced to good practices developed by the OECD in 1995 which promoted principles of “Regulatory Best Practice”¹⁶. The initial momentum for applying Regulatory Best Practice was subsequently taken up by many of the countries within the OECD, including the UK, Netherlands, Denmark and Australia, who all have developed reform initiatives focused on improving policy and law making processes. It is perhaps no coincidence that the individual experiences of these countries in promoting regulatory reform have subsequently become reflected in their bi-lateral technical assistance programmes to assist developing countries in reforming their business environments.
18. In Uganda, the long-term regulatory improvement strategy has been elaborated and launched under the umbrella of Government’s Medium Term Competitiveness Strategy (2002-2005) and its successor initiative, the Competitiveness and Investment Climate Strategy (2006-2010)\(^7\). The strategy aims to consolidate institutionalisation of regulatory best practices within Government’s policy and law making processes and systems. This includes an emphasis on consolidating implementation of regulatory impact assessment (RIA) as a tool for policy development and review, improving the capacity and efficiency of regulatory systems and processes, strengthening public – private consultation and policy dialogue and ensuring that the processes are Ugandan-owned and driven. The Ugandan approach to better regulation is underpinned by an emphasis on establishing a central reform coordinating institution, capacity building in MDAs to regulate better, and introducing a formal requirement for RIAs as a basis for policy development and review.

19. In Tanzania, the Business Environment Strengthening Programme (BEST) has defined and started implementing a long term strategy that is aimed at strengthening the business environment by firstly, reducing regulatory and administrative constraints, and secondly improving quality of services provided by the Government to the private sector, including commercial dispute resolution. A third element of the strategy includes a focus on regulatory governance, involving a phased, step-by-step approach to RIA implementation and an emphasis on establishing the right institutional structures to address the stock and flow of regulation. Tanzania, which has got off to a late start on the better regulation bandwagon, shows strong promise with regard to effective implementation of better regulation initiatives.

20. The Kenya Government’s ongoing business activities licensing initiative has been championed by the Working Committee on Regulatory Reforms for Business Activity in Kenya. The Committee has recommended a strategy to government that aims to sustain the business reform momentum by, among others, developing principles of regulatory quality, improving regulatory systems and processes, building capacity in MDAs and adopting RIA. There is a widely shared belief in Government and among stakeholders that the current approach to licensing reform has succeeded in creating strong interest and momentum in support of further reforms. However, the country has some way to go in terms of adopting and implementing a long term regulatory reform strategy and tackling regulatory governance issues. The December 2007 elections present a risk to the maintenance of the current reform momentum. Table one below highlights better regulation reforms in East Africa.

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Tanzania</th>
<th>Uganda</th>
<th>Kenya</th>
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<tbody>
<tr>
<td>o Deregulation, regulatory simplification, etc</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Commercial justice reform</td>
<td>✓ Commercial justice reform pursued since the early 1990s under the Legal Sector Reform Programme umbrella</td>
<td>✓ Commercial justice reform pursued since the late 1990s under the Justice Law and Order Sector Programme</td>
<td>✓ Commercial justice reforms pursued since the late 1990s (Governance, Justice Law and Order Sector Programme)</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>✓ Recent business activity licensing reform (since 2005)</td>
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<tr>
<th>Initiative</th>
<th>Tanzania</th>
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<th>Kenya</th>
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<tbody>
<tr>
<td>Regulatory governance initiatives</td>
<td>- Regulatory improvement strategies</td>
<td>- Regulatory improvement strategies</td>
<td>- Regulatory improvement strategies</td>
</tr>
<tr>
<td></td>
<td>✓ Long term strategy for the regulatory environment under preparation</td>
<td>✓ Long term strategy for a better regulatory environment launched, being implemented</td>
<td>✓ Long term strategy for the regulatory environment under preparation</td>
</tr>
<tr>
<td></td>
<td>✓ RBP concept introduced</td>
<td>✓ RBP concept introduced</td>
<td></td>
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<tr>
<td>- Regulatory Best Practice</td>
<td>✓ RIA concept introduced, RIA capacity in MDAs being built</td>
<td>✓ RIA concept introduced, RIA Guidance issued, RIA capacity in MDAs built, RIA partially institutionalised</td>
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<td></td>
<td>✓ Electronic registry installed</td>
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<tr>
<td>- Regulatory Impact Assessment</td>
<td>✓ Regulatory management and quality assurance framework partially institutionalised</td>
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<tr>
<td>- Policy consultations</td>
<td>✓ Partially effective, stakeholder consultative mechanism in place</td>
<td>✓ Partially effective, stakeholder consultative mechanism in place</td>
<td>✓ Highly effective policy consultation, strong consultative mechanism in place</td>
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<tr>
<td>- Measuring regulatory burdens that impact businesses</td>
<td>✓ Regulatory Compliance Cost Surveys (RCCs) undertaken</td>
<td>✓ RCC undertaken</td>
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Chapter 2: The East African Experience of Better Regulation

2.1 Analytical framework

21. In this chapter, we delve deeper into the experience of legal and regulatory reform in East Africa using three different entry points for investigation including, government policies and commitment, institutional drivers, and regulatory tools. Two case studies focusing on the recent efforts to adopt Regulatory Impact Assessment (RIA) in Uganda and Tanzania and the application of the Regulatory Guillotine process in Kenya are presented. The case studies are intended to facilitate; i) assessment of the type, clarity, strength and weakness of government policy commitment to better regulation and commitments of other key stakeholders, ii) identification of the lead and support reform institutions, the key institutional and process changes instituted and capacity building efforts undertaken and assessment of sustainability and long term viability issues, and iii) identification of the wide array of reform tools applied, including Regulatory Impact Assessments, policy communication initiatives, review of existing regulations, and consideration of alternatives to regulation and others.

BOX 2: What is RIA?

DAI Europe Ltd defines Regulatory Impact Assessment as “a methodology for designing precise, targeted regulations that achieve legitimate policy aims with the minimum of burden on those affected. It is a tool that provides a framework for a high quality, participative policy development process, guiding users through a series of steps designed to address the main stages in the development of high quality policy”. RIA is therefore a tool that enables evidence based policy making by systematically and consistently examining potential impacts of government regulatory interventions and communicating this information to decision makers and other stakeholders. Armed with this information, decision makers are able to evaluate the full range of benefits and costs associated with a regulatory intervention. RIA provides an important avenue for stakeholder input into public policy decisions. Proper implementation of RIA creates the necessary space and opportunities for other stakeholders to influence policy decisions, it reinforces the quality of the policy debate and makes the policy processes transparent and comprehensible.

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2.2 CASE STUDY 1: Implementing RIA in Uganda and Tanzania

22. Uganda’s Poverty Eradication Action Plan (PEAP), the country’s overarching development framework, recognises that a high quality, low cost regulatory environment critical to the emergence of a strong and vibrant private sector driven economy able to compete in regional and international markets.

23. In support of PEAP implementation, the DFID funded Regulatory Best Practice (RBP) Programme (2004-2007), sought to establish a simpler and more appropriate and suitable regulatory environment in Uganda by fundamentally changing the way government conceived, drafted, implemented and enforced regulation as a policy instrument. Although this ambitious Programme, was implemented in the context of highly challenging transitional political environment, it achieved most of its objectives and its impact has been felt beyond improvements in the business environment to provide a platform for achieving reforms within Uganda’s social sectors.

24. A key component of the RBP programme was an emphasis on introducing RIA as a policy tool for applying regulatory best practices in policy and law making processes in Uganda. The programme adopted an ambitious ‘big bang’ approach18 to RIA implementation. Key achievements of this approach have included:

- Establishing a Regulatory Impact Assessment unit in the Cabinet Secretariat, Office of the President, as the focal point with regard to institutionalisation of RIA across government including monitoring and policing the quality of RIAs.
- Securing formal Presidential endorsement of the new RBP guidance with a call by the President for immediate implementation throughout government.
- Securing formal cabinet endorsement for RBP principles as the basis for regulation.
- Developing a methodology for RIA that has been tailored to the needs of the Uganda context.
- Building capacity across government to apply RIA in the design and review of regulation.
- Building capacity among private sector and civil society organisations to use RBP and RIA principles for more effective policy advocacy.
- Creating local training capacity to deliver RIA as a mechanism for sustaining RIA in Uganda after the programme has concluded.
- Providing advice on institutional arrangements to support RIA.
- Providing ongoing mentoring, training and assistance to officials as RIA takes hold within the system, including training in micro-economic methods for calculating the impact of proposed regulations.

25. In Tanzania, adoption and implementation of Regulatory Impact Assessment (RIA) is a key objective of the BEST Programme19. Unlike Uganda, Tanzania is adopting a phased, step-by-step approach20 to RIA implementation. At present, the regulatory system in Tanzania is not yet backed up by an institution with a mandate to assure quality, although this is under consideration. The following has been achieved so far:

- Stakeholder education and awareness raising:
  - Initial steps to introduce RIA as a tool for better policy making focused on sensitisation training with an emphasis on principles of RBP and RIA. This targeted Government, civil society and private sector audiences and aimed to raise their awareness, understanding and appetite for RIA.
  - Dedicated training, targeting members of technical working groups under the BEST Programme, was delivered in 2005. The aim was to equip participants with the skills necessary to carry out more substantial RIAs as part of their work proposing reforms to business regulation.
  - Training for technical cadre in MDAs, members of parliament and the cabinet secretariat was delivered in 2006.
  - Training for permanent secretaries and ministers has also been scheduled.
- Further capacity building, RIA implementation and adoption of an embedding strategy:
  - BEST is working to establish local capacity to support the adoption of RIA on a sustainable basis by creating a Tanzanian RIA training capacity. The Tanzania Public Service College (TPSC) has been a key partner in this endeavour.
o Completion of an institutional assessment to determine how best to institutionalise RIA in Tanzania.

o Preparation of an RIA Action Plan which envisages rolling out RIA training in both central and local government, supporting RIA pilots within government and taking forward plans for the institutionalisation of RIA.

2.2.1 Experiences gained in Implementing RIA in Uganda and Tanzania

**Government policy and commitment**

26. In both countries, government policy documents clearly articulate a commitment to the improvement of the investment climate and the need to apply relevant approaches and tools, including RIA, to realise this objective. In Uganda, this policy commitment at a higher level has not consistently been supported by follow on enabling policy guidance and actions in a timely manner. To illustrate this point, while government clearly expressed commitment to adoption of RBP/RIA in Ugandan policy making as far back 2003, formal cabinet endorsement for this position was only secured in March 2006. In Tanzania, information from stakeholders\(^2\) indicates that phased approach has been partly occasioned by delays in pushing through the enabling laws and policies than a weak policy design\(^2\). Tanzania’s challenge stems from a public sector mindset that is yet to fully support business private sector competitiveness. Competitiveness is not yet mainstreamed across government and is often seen as an issue for the Ministry championing the BEST programme.

**Policy consultation and dialogue frameworks**

27. RIA cannot be successfully implemented unless policy dialogue mechanisms are well elaborated and operating efficiently. Uganda’s framework for policy consultation and dialogue is not well established and accepted as cross cutting and there are a number of gaps in the dialogue framework at sectoral and local government levels. Inadequate consultation and dialogue infrastructure has therefore been a major handicap to RIA institutionalisation. Policy consultation is still dominated by informal networks and the attendant constraints. In Tanzania, there is no widely accepted and effective national cross sector dialogue mechanism for consultation and dialogue bringing together the public and private sector stakeholders. The agenda of the Tanzania National Business Council\(^2\), which is intended to be the apex national dialogue platform, is seen as government-driven and sanctioned and its secretariat is government funded. The challenges affecting the policy consultative mechanisms in both Uganda and Tanzania remain a strong constraint to successful implementation of RIA. Stakeholders, including key elements among the private sector, do not have strong faith in the ability of existing consultation and dialogue mechanisms to deliver effective and sustainable better regulation policy outcomes.

**Competing policy priorities, policy inconsistency and weak planning**

28. Competing reform priorities are a particular challenge for Uganda. RIA has had to compete for attention and resources with other public sector policy management and efficiency improvement tools being implemented such as Results Orientated Management (ROM)\(^2\). A multiplicity of reform initiatives and lack of effective Government harmonisation has meant competition for the limited resources, capacities and staff time.

**Institutional champions**

29. Implementation of RIA especially in Uganda, but also in Tanzania, has significantly depended on a limited number of key institutional champions which have become important strategic allies in the course of reform implementation. The Ministries of Finance in both countries have been instrumental in pushing for better regulation initiatives including the introduction of RIA. In addition, Tanzania’s Ministry of Planning, Economy and Empowerment has been an important energy source ensuring strong reform coordination. However, many MDAs have tended to sit back with the expectation that the coordinating institution is wholly responsible and accountable for implementation. This poor reform ownership has, on occasion, slowed down the pace of reform.

30. In both countries especially in Tanzania, institutional norms, practices and culture pose considerable challenges to RIA implementation. In Uganda, choice of lead reform coordinating institutions at the design stage has been challenging with many prospective lead institutions pegging their engagement on expected access to programme resources for other uses. While both central and

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\(^2\) Getting to Better Regulation: Lessons from East Africa, DAI Europe Ltd
local governments in Uganda have been enthusiastic about RIA implementation, the situation in Tanzania is likely to prove more challenging. There is a widely shared view among key stakeholders that Local Governments in Tanzania are a difficult partner in business environment type reform initiatives due to negative perceptions about private sector led development. Although the implementation of RIA in Tanzania has not progressed to the local government level, there are strong indications that this is likely to be very challenging.

**Understanding and appreciating RIA as a strong and flexible Policy Tool**
31. In Uganda, the application of RIA as a regulatory improvement tool has been especially welcomed by technical audiences in Government, Parliament and the private sector. Policy Analysts in ministries, parliamentary support staff, including researchers and clerks and policy analysts and advocacy specialists within private sector representative organisations have all been very enthusiastic. Although initial expectations were that RIA is yet another bureaucratic requirement for management and technical teams to overcome, most partners quickly realised that RIA builds on, accommodates and reinforces other policy analysis approaches such as poverty impact assessment, social impact assessment, cost benefit analysis, etc. Many MDAs have been excited by the versatility of RIA in terms of accommodating and reinforcing other analysis tools and impact assessments.

**Converting support for RIA into the use of RIA in day to day policy-making**
32. The challenge in Uganda is to convert this initial support and interest in RIA into the consistent preparation of RIAs as a routine part of the regulatory process within line Ministries. As a result of the facilitative support provided by the RBP Programme, a number of RIAs are already being produced within key private sector facing line Ministries. The RIA Unit within the Cabinet Secretariat is also using an RIA based tool to evaluate the stock of existing key regulations. Nonetheless it is important to recognise that RIA as an integral part of policy and law making remains in its infancy. Formal endorsement of RIA by the President and Cabinet coupled to the creation of the RIA Unit within Cabinet Secretariat has gone a long way to deepening the use of RIA by MDAs, but much work remains to be done.

**Improving the quality of RIAs over time**
33. The initial batch of RIAs produced in Uganda have understandably been of a low quality relative to those countries in the OECD which have an established tradition of using RIA in the policy process. Initial findings suggest that RIAs will need to be strengthened in the areas of problem definition (particularly in terms of using risk assessment), assessing the costs and benefits associated with different policy options, and ensuring a realistic approach to compliance and enforcement. There also needs to be a more consistent and holistic approach to consultation within the RIA process. Despite this room for improvement, it is important to recognise that introducing RIA is an iterative process and the complexity and depth of analytical rigour can be developed over time. In its most basic form, the initial feedback from Uganda suggests that RIA brings much needed added value to policy formulation because of the emphasis on systematisation, considering alternative policy options and promoting stakeholder consultation. The policy guidance developed in Uganda, and the training capacity established in both Uganda and Tanzania should allow for more in depth RIA capability to be developed over time.

### 2.3 CASE STUDY 2: The regulatory guillotine process in Kenya

34. In 2005, the Kenya government initiated reforms aimed at streamlining business activities licensing by eliminating, rationalizing and simplifying the large body of business activity licenses. This initiative was part of the broader Kenya Economic Recovery Strategy launched by the Mwai Kibaki Government in 2003. The licensing reform initiative was spearheaded by an inter-institutional Working Committee on Regulatory Reforms for Business Activity in Kenya, strongly supported by the Ministry of Finance and the Ministry of Industry and Trade. Kenya applied the regulatory guillotine process which is a reform tool that is suitable for environments characterised by vast and systemic regulatory problem and where application of isolated and marginal reforms must be replaced by broad-scale and systematic reforms that extend across the public sector. During implementation, regulators were tasked to justify why regulations or licences were necessary and whether or not they met the set reform criteria including, necessity, efficiency and business
friendliness. According to the committee’s final report, the guillotine process has enabled Kenya to fast-track regulatory review and eliminate unnecessary regulations with minimal legal action. Through this process, over 1300 licenses were identified and over 400 recommended for elimination\textsuperscript{17}. There is a broad consensus among stakeholders that the business activities licensing reforms have achieved their initial objectives including:

- Comprehensive review of all regulations related to business activity licensing.
- Identification of individual business licenses and assessment of their continued relevance and justification.
- Making recommendations to government with regard to licenses to be eliminated, licenses to be simplified or amended and licenses to be retained.
- The committee was also mandated to consult widely within and outside government, and prepare a medium term regulatory reform strategy.

2.3.1 Experiences gained in Implementing business activity licensing reforms in Kenya

Reforming a licensing regime geared towards revenue maximisation
35. Kenya’s business activities licensing regime has been characterised by minimal focus on the regulatory dimension of business activity licensing with more attention given to revenue maximisation. During the course of this reform, it was confirmed that business licensing in Kenya has been largely revenue driven. The situation in Kenya mirrors that in Uganda. This was also confirmed during the recent implementation of the trade licensing reform pilot initiative in a number of local governments in Uganda\textsuperscript{11}. Many MDAs, especially local governments, often ignore the core licensing objective of regulating business activity and instead focus on short term revenue maximisation. In Kenya, the Working Committee also unearthed a dense network of institutions at central and local government level with a mandate to issue licenses and with little oversight scrutiny. The committee found widespread incidence of discretionary and often unchallenged issuance and administration of regulations.

Benefits of strong stakeholder consensus and donor facilitation
36. Most stakeholders agree that the reform initiative has benefited from cross-sector consensus. There has been strong backing from both the Ministry of Finance and the Ministry of Trade & Industry and active private sector participation championed by KEPSA. According to one senior official in the Ministry of Planning and Economic Development, the reform measures were arrived at by consensus and no directives were issues to cooperating MDAs in order to make them comply. Donor support was also instrumental in facilitating the execution of the reforms.

Need to guard against the dangers of re-regulation
37. The business activity licensing reform was a deregulation initiative not primarily designed to address regulatory quality issues. Securing and sustaining the positive outcomes of this reform therefore requires a deeper and more challenging reforms designed to minimise opportunities for re-regulation by tackling regulatory quality issues. Unless the reforms are safeguarded, Kenya faces a danger of re-regulation. Safeguarding the reforms would entail putting in place the appropriate framework and capacity for MDAs to adequately scrutinise all new regulations to ensure conformity with regulatory best practice. The creation of adequate quality control capacity within the policy and law making system is critical hence the need to fast track the establishment of support initiatives including establishment of an e-registry, a fully functioning reform coordination unit and implementation of the Committee’s medium term regulatory reform strategy recommendations.

Post-reform institutional capacity and coordination challenges
38. A Business Regulatory Reform Unit (BRRU) has been set up in the Ministry of Finance and charged with assuring the quality of all new licences. There have been some initial concerns expressed by stakeholders with regard to the institutional structuring of the BRU. According to these voices, the new Unit, with its cross government mandate in terms of regulatory quality assurance, has had a challenging start. The Unit does not sit well within the Finance Ministry’s structures and has to compete for resources and decision making space with other specialised Units in the Ministry. Its set-up and staffing has been described by one stakeholder as hasty with staff haphazardly transferred to the Unit. Questions have been raised with regard to the sustainability of the reform process once the
donor support for the programme ends and the reforms are mainstreamed. According to a member of the Working Committee, donor facilitation has been the key to reform fast tracking because of transparency, easy access to committed resources and consistent support for the process. Once mainstreamed, there is a danger that these cross government reforms will be encumbered by the constraints and challenges of operating within the confines of the Ministry’s under resourced, bureaucratic and hierarchical decision making structures and processes.

Potential for Institutional Resistance
39. The speed of reform implementation seems to have taken many MDAs by surprise leaving little room for resistance. However, there is evidence of emerging resistance among some mandate holders questioning the basis and suitability of some reform recommendations. It is also too early to assess with any measure of certainty whether or not the new Electronic Registry will succeed in preventing the mushrooming of new regulations and guidelines, especially among local governments, unless the momentum associated with the initial reform, including strong consensus among key drivers, is maintained. Experience elsewhere in the region suggests that an attempt to ensure cross government coordination by a strong champion ministry, such as that of Finance, in areas considered non-core to its mandate is usually resented and resited by other MDAs.

Benefits of wider reform effort and a growing economy
40. There is no doubt that the reform has benefited from strong economic performance, the wider economic reform momentum and Kenya Government’s commitment to ensuring private sector development. The strong economic turn around has helped cushion costly aspects of the reform including loss of licensing revenue by government. The reform initiative has been championed by key government institutions and has benefited from a strong dialogue infrastructure bringing business and Government together.

Chapter 3: Lessons Learnt
41. This chapter identifies the lessons learnt from more than a decade of legal and regulatory reforms in East Africa. An important theme developed in this paper is that early efforts to reform the legal and regulatory environment in East Africa have been limited in terms of having a long-term impact due to their piecemeal and ad hoc nature. Learning from this experience, governments in the region (encouraged by their development partners) are increasingly turning to an approach that has been described here as “better regulation”. The extent to which each of the individual countries covered by this paper have been able to move towards a better regulation approach are influenced by a number of factors that are discussed below.

Anticipate and appreciate the full impact of political environment constraints at the design stage
42. The success or failure of legal and regulatory reform initiatives and other reforms pursued in East Africa has depended on the suitability of the political environments, especially political stability and predictability. Although Uganda has enjoyed a measure of political stability for two decades or so, the recent transition from single party to multi party politics was associated with a level of policy uncertainty. The political agenda dominated Government’s actions while economic policy management related issues and decisions were given secondary priority during this period. This handicapped the reform process and slowed down implementation. In Tanzania, the stability enjoyed since independence has not necessarily afforded the country a superior political environment within which better regulation reform can be pursued. While good will for reform exists, there are simply too many officials in government who do not fully appreciate the implications of private sector led development. This is especially so at local government level. As a consequence, the roles of individual champions in propelling reform forward have been critical.

43. It is therefore important for reform design to anticipate the political environment specific issues such as the country’s political calendar and attempt to build in risk mitigating measures including appropriate timing and sequencing of reform activities. Negative political impacts may be mitigated by steering clear of political controversy, choice of issues on which to engage, and the profile and visibility assumed in pursuing these issues. Building a strong network of reform champions among senior civil servants whose interests and mandates cut across political transitions is also important.
However the ‘political mapping’ of allies must be done in a broad manner. Experience in Tanzania has shown that involving Parliamentarians early in the process has helped build ‘visible’ momentum, while in Uganda the engagement of Parliamentary clerks has added to a more ‘covert’ momentum in the regulatory reform agenda. And finally the knowledge and ability of using potential champions external to government structures cannot be underestimated in navigating through the local political constraints. These considerations must be taken into account at the design stage of better regulation initiatives.

**Understand country specific and complex social, economic and political realities**

44. Recent approaches to better regulation in the region have to a large extent been designed to suit the specific context in each country hence the limitations in making the claim than one approach is better than the other. What is clearly evident is that in each country, the reform experience has strengths and weaknesses. Broadly, Kenya has a much stronger institutional base and management capacity when compared with Uganda and Tanzania. Tanzania has a strong culture of consensual politics while the level of public awareness and scrutiny of government activities is very high in Uganda. One instructive finding from recent training delivered by DAI Europe in Tanzania is that participants in RIA training wanted joint training for public and private sectors rather than separate events. The history of consensual policy-making in Tanzania meant that participants felt that separate training hinted at a more confrontational future relationship between public and private sectors, something that was perceived as an unwelcome development. This points towards the need to take account of contextual factors when approaching the institutionalisation of RBP and RIA. These and other country specific attributes have significantly influenced the reform processes in the region.

45. Often there is not a clear enough understanding on the part of the programme design teams of the institutions, culture, incentives, political economy and systemic capacity of governments not only to regulate well, but to put in place a high quality business environment – sometimes this leads to setting more ambitious targets than are realistically possible. Better regulation initiatives are about changing the way Government approaches policy-making, the way it uses regulation as an instrument to implement policy, and the way it measures and accounts for its successes. This is a bold and long-term agenda involving enormous lobbying, awareness and capacity building efforts. International experience shows that embedding and integrating international best practices into systems of government and broader policy and law-making requires a lengthy and sustained effort. It also important to note that all too often, the time allowed for reform implementation is too short in the country contexts often characterised by weak and inefficient and highly politicised policy management infrastructure.

**Importance of stakeholder input, ownership**

46. Adequate and exhaustive consultations with key stakeholders during the reform design stage will help ensure better reform focus and a reform programme that anticipates and minimises the negative impacts of political environment constraints during implementation. In order to secure broad support among key constituencies and ensure broad ownership of the reforms, it is often important to premise the reforms on ongoing country driven reform dynamic. However, in all the three countries, and especially in Uganda and Tanzania, government dialogue with the private sector and civil society organisations on policy review and development has not reached a sufficient stage of regularity and formality to become transparent and inclusive. Informal special interest dominated consultative networks still provide a strong avenue for consultation on policy and legal issues affecting the private sector. This reality is further reinforced by inadequate private sector skills and capacity to effectively advocate meaning that limited evidence based input into policy and law making from outside government is available.

**The importance of goal based regulations and need for public education and awareness**

47. The approach to regulatory reform in the region tends to take the form of detailed process oriented rules other than outcome focused requirements. Part of the reason this regulatory situation has persisted is that key stakeholder have not been educated and empowered to demand and support goal based regulations which give stakeholders leeway in deciding on the most optimal approaches to comply with regulatory requirements. Building capacity to sustain reforms must therefore be predicated on strong and imaginative public education information programmes and hearts and minds.
awareness campaigns. There is also a need to accommodate the low starting point in terms of the understanding of business environment issues, the appropriate role of the state, private sectors etc in the design of reform initiatives. This seems to be most critical in Tanzania given that country’s socialist history and the widely held belief in public led development.

**Limitations of formal government policy endorsement**

48. Securing formal government endorsement for better regulation initiatives is an important first step on the long and difficult reform implementation journey. Holding governments and other stakeholders accountable for delivery has often turned out to be a much more challenging preposition. Because accountability systems in the public service are rudimentary at best, officials will only take on the extra work involved in regulating better if they believe in it for themselves, and the appropriate incentives are in place. Better regulation reforms in East Africa have often been more about winning hearts and minds of individual champions than having officials respond to a formal directive from above. In Kenya, the implementation of business activities licensing reforms has proceeded on the basis of strong consensus and championship among lead implementers and stakeholders.

**Need to align more closely the many ongoing reform initiatives**

49. In many cases, reform efforts supported by different development partners are not properly aligned, which reduces the potential for efforts to be reinforcing and can result in one effort undermining another. For example, In Uganda, regulatory best practice was not recognised in higher government policy frameworks (such as PEAP and MTCS) as being a cross-cutting initiative involving systemic reform across Government, and was associated with a one-off licensing and commercial law reform efforts. Considerable resources had to be devoted to bringing the initiative onto the MTCS (now CICS) agenda. Neither was RIA a component of the commercial law reform programme, which meant that numerous key commercial laws were drafted without a supporting cost/benefit analysis.

**Keep a sharp focus on the underlying message**

50. To ensure achievement of initial reform objectives and ensure sustainability, stakeholders must fully understand the link between good regulation, business growth, wealth creation and improved living standards. Although all governments have acknowledged that ‘the private sector is the engine of growth,’ the understanding of this concept, and more importantly its implications for the role of government, is very limited indeed. In all three countries, especially in Uganda and Tanzania, competitiveness is far from being mainstreamed across government. There is still a common tendency to see the need to improve the business environment as the concern of the reform coordinating institution especially the Ministries of Finance in the three countries and the reform coordinating institutions such as the BEST Programme in Tanzania. There is also a widespread belief, especially in Uganda, that a focus on business environment strengthening advantages foreign investors at the expense of domestic businesses and the social sector. Improving the wellbeing of the majority of citizens in the region through better regulation, business competitiveness and wealth creation is not an easily appreciated message. Most citizens expect improvements in peoples well being to come through social protection of the vulnerable not via business strengthening and better employment opportunities.

**Chapter 4: Regulating Better in the Future**

52. Building on the lessons learned in Chapter 3, this chapter recommends approaches and tools for future Better Regulation initiatives in East Africa and in similar countries and highlights the challenges that will need to be addressed.

**Start with an understanding of the local political economy**

53. Before commencing any better regulation reform initiative, it is important for development partners to take the time to understand the local political economy in which regulatory reform will need to take root. The experiences of Uganda, Tanzania and Kenya suggest that such a review should at a minimum encompass the following issues:
• The level of political commitment to reform at different levels of government (senior decision-makers/ middle management/policy analysts/central government/local government/executive/legislative/judiciary).
• Identification of potential institutional champions both within the public and private sectors that can drive and manage the reform process.
• Identification of other relevant donor and government programmes to maximise synergies and minimise duplication and overlap.
• Understanding of institutional drivers, incentive structures, legal tradition, history of policy-making, cultural factors and other local conditions that are likely to have a bearing on the reform effort.
• Assessment of the absorptive capacity and systemic conditions within government to adopt reform measures.

Set realistic objectives and time frames and a strong accountability mechanism
54. The findings of the political economy review should shape the design of a better regulation reform initiative. The reform design should be informed by targeted consultations involving key stakeholders and driven by the main reform sponsors. These consultations will present opportunities to discuss and propose solutions to potential challenges and risks, including political economy specific constraints, likely to constrain successful reform implementation. These consultations will enable reform designers, working with key partners, to set realistically achievable goals and targets and to ensure that stakeholders clearly understand the level and magnitude of their commitments towards delivery of successful reform outcomes. It is also important to ensure that as far as possible, clear, easy to monitor and time bound performance benchmarks are agreed upon at the reform design and approval stage.

Build momentum for reform through quick wins in the business environment
55. The importance of issue specific, high impact deregulation efforts should not be underestimated with regard to generating quick wins and softening the ground for further reforms. Quick wins help build momentum and appetite for comprehensive long term reforms aimed at achieving a sustainable shift in the quality of the regulatory environment. Application of reform tools and approaches, such as Uganda’s local government trade licensing reform pilots implemented since 2003 and Kenya’s more recent application of the guillotine process, have demonstrated the benefits of successful high impact and issue specific reforms including wider and growing support for deeper reforms among key stakeholders and society in general.

Develop a partnership approach to reform between the public and private sectors
56. Kenya’s experience with KEPSA and the Working Committee for Regulatory Reforms in establishing a strong and dynamic public-private dialogue underscores the importance of ensuring that the reform process is owned by all key stakeholders. At the policy level, this means introducing strong mechanisms for public private dialogue that can keep political commitments in the spotlight and make key government officials accountable for results. This approach also enables the private sector to play an active role in the reform process by assigning roles and responsibilities to private sector representatives within the dialogue.

57. A partnership approach to reform can also be achieved by extending capacity building opportunities to both the public and private sector institutions at the same time. In both Uganda and Tanzania an important approach has been to deliver RIA training to public officials, civil society and private sector representatives. This has helped to establish a common language between the public and private sectors, and to make it more likely that policy advocacy will more effectively inform the policy process.

Establish and enable institutional structures to manage the flow of regulation and ensure effective scrutiny of the regulatory process
58. The shift from piecemeal regulatory reform efforts, including deregulation initiatives, towards regulatory quality assurance implies that a strong regulatory management capacity must be established and sustained. Establishing and equipping a central government level coordination unit and RIA units in MDAs is a critical factor in ensuring effective management of the flow and quality
dimensions of the regulatory process. Institutional harmonisation is also important in the sense that the government agency under which the central coordinating unit falls (the Presidency in case of Uganda) should, where possible, also serve as parent agency for RIA units in the MDAs. A strong institutional link connecting the central coordination unit and the support units in MDAs will enable harmonious and effective reform implementation. This will be achieved by ensuring strong commitment and accountability for reform outcomes along the entire reform implementation chain. It will also enable easier and timely identification of implementation constraints and blockages along the entire chain and ensure that appropriate solutions are found. Strong institutional linkages should also be buttressed with high level coordination mechanisms (i.e., inter-ministerial steering committees) to ensure effective oversight.

59. Another important dimension with regard to institutional structures is the need for basic technical and managerial capacity building in government and private sector institutions. There are many instances where reform designers wrongly assume the existence of basic technical and managerial capacities within implementing institutions and initiate reforms whose implementation is then constrained by these challenges. Basic technical and managerial capacity in MDAs, coupled with staff performance motivation systems, is critical to successful reform implementation. This suggests a need to align better regulation reforms closely with major public service reforms, currently being undertaken in the three East African countries, aimed at improving the delivery of civil servants generally. To give an example, this alignment could entail ensuring that individual staff qualifications in RIA are recognised and incorporated in career progression plans for civil servants.

60. Capacity building efforts should also recognise the Government – Parliament continuum in regulatory development and implementation. Accordingly, the technical arms of Parliament and parliamentary support staff should be enabled to understand and utilise the reforms approaches and tools. The awareness and appreciation of reform initiatives among parliamentarians should be raised to ensure their sustained support.

**The role of development partners in promoting and sustaining reforms**

61. The experiences from East Africa emphasise the importance of development partner support to Governments in promoting and sustaining better regulation initiatives. First development partners must help translate high level political commitment to reforms of the regulatory regime into tangible results and improvements in the business environment. As this paper has demonstrated, a high level commitment to reform can become diluted by the political and institutional environment in which the proposed reforms must take root. Second development partners must stay the course with their support to government, and in doing so coordinate and harmonise their interventions with their other development partners. An emphasis on a harmonised approach will discourage the tendency for governments to trade off development partners in order to escape rigorous scrutiny of their performance during reform implementation. Effective harmonisation will also serve to lessen the burden on institutional structures where absorptive capacity is already relatively low. Third development partners must adopt a flexible approach to their reform interventions in order to accommodate changes during the implementation stage, especially those contextual changes occasioned by other reform efforts. Finally development partners must work together to support and facilitate strong stakeholder coalitions, involving the private sector and civil society, which are aimed at holding governments accountable for their commitments to reform. This will ensure that initial reform gains do not dissipate in the face of political expediency and institutional challenges.

62. In order to achieve these goals, there are a number of complementary modalities for development partners to draw on in providing effective support to better regulation initiatives. The experience of Tanzania and Uganda demonstrates that a programme approach, employing a programme management mechanism to coordinate and sequence the reform process, is a vital tool in establishing the initial momentum and appetite for reform. The programme management unit should ideally serve as an independent change agent working to identify and support institutional champions, and capable of bringing in outside expertise to assist the process of institutional capacity building. Experience has shown that programme management units work best when they draw on highly skilled and committed local staff supported by effective oversight mechanisms. Embedding the programme within government structures, by identifying strong institutional champions, can also go a long way to promoting government ownership of the reform process. Development partner programme support
also needs to recognise that establishing the initial appetite for reform takes time and as such programme support should go beyond their traditional time horizons of 3-5 year programmes.

63. Development partners can also make use of trust funds and challenge funds to sustain the interest in reform and embed local ownership of reforms after programme support has come to an end. Through this mechanism public institutions and private sector representatives can be empowered to directly access resources necessary to broaden and deepen the capacity building interventions made available through programme interventions.

64. Finally, the Kenyan experience has demonstrated how the use of targeted technical assistance to enable the design, implementation, monitoring and evaluation of reform programmes can be very effective where there is already a strong appetite for reform and high levels of local ownership of the reform process. Perhaps an important message from Kenya is that development partners should tailor the level of their support according to the political environment in which the reforms will take place.

65. The overall lesson from East Africa to date for governments and donors alike is that piecemeal, ad hoc reforms to the legal and regulatory environment are not always effective. Instead effective reform of the business environment must encompass a holistic approach to regulatory reform that is rooted in an understanding of the local political economy and which tackles both the quantity and quality of regulation. Development partners can add value to this “better regulation” approach by helping to translate initial political will into tangible results and by empowering local ownership of the reform process through capacity building and change management initiatives. If however development partners get it wrong, then it is likely that the effects of their intervention will at best only serve to maintain the status quo.
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Endnotes

1 Rwanda and Burundi which joined the East African Community as full members on June 18th 2007 have not been included in this assessment.

2 The Poverty Eradication Action Plan (PEAP) is Uganda’s national planning framework first launched in 1997, first revised in 2000 and again in 2005. The purpose of the PEAP is to provide an overarching strategic framework and to guide public action to reduce poverty.

3 Tanzania’s National Strategy for Growth and Reduction of Poverty (NSGRP) popularly known as MUKUTA is the country’s overall development policy framework. The strategy is informed by the aspirations of Tanzania’s Vision 2025 which include private sector economic development.

4 The Kenya Economic Recovery Programme (2003-2007) was launched in June 2003 by the current government and sought to ensure rapid economic growth, strengthen institutions of governance, rehabilitate and expand national infrastructure, invest in the human capital of the poor, and build an enabling business environment for private sector led development.

5 World Bank’s Doing Business studies and other investment climate surveys have contributed to the growing understanding and appreciation of the relationship between better regulation and quality of business environments among governments, private sector and other stakeholders.

6 The 1996 DfID supported reforms in Kenya aimed to promote business start-up and growth of MSEs by improving the legal and regulatory environment for business through domestic deregulation. Phase II of these reforms aimed to increase self employment and employment opportunities for poor people through the improvement of legal and regulatory environment for MSEs and businesses generally. They also sought to ensure that the regulatory environment provided for equal opportunities for men and women in business. The reforms resulted in the launch of the Single Business Permit (SBP) by the Ministry of Local Government replacing the existing multi trade licensing system. The SBP become mandatory from 1st January 2000.


8 The Kenya Private Sector Alliance (KEPSA) is an umbrella organisation for over 200 private sector organisations in Kenya formed in early 2003. The organisation enjoys tremendous goodwill from the current Government which recognises it as providing the institutional framework for Government – Private Sector Partnership.

9 According to the Kenya Law Reform Commission (KLRC), the practice of conducting law reform through ad hoc task forces has seriously undermined the reform process. From 1991 about fifteen Task Forces were appointed to recommend changes to various laws independent of the Commission. The majority of these task forces produced only reports that have never translated into law. The Task Forces further undermined the work of the KLRC in that senior officers of the Commission were all seconded to the Task Forces either as Chairpersons, Members, Joint Secretaries or Researchers and thus abandoning or neglecting their law reform projects at the Commission.

10 According to the DfID funded Commercial Justice Sector Study of 1999, a major weakness of the Uganda’s commercial justice reform initiative was that it lacked a sector wide approach. It was focused on improving the legal environment and ignored the reform of legal institutions leading to blockages in the making and enforcement of commercial contracts.

11 Under the Deregulation Project, business licensing reforms were successfully piloted in Entebbe Municipal Council and further demonstrated in 3 towns and municipalities. The reforms showed that licensing process rationalisation and simplification can deliver tangible benefits to both government and the private sector. As a result of the Entebbe Pilot, time to secure a licence in the Municipality was down by 90%; compliance costs to firms down by 75%, administration time spent by the Municipality spent on licensing down by 25%, voluntary compliance up to 47%, revenues to Entebbe up by 40%. Reforms were recognised by the Ministry of Local Government’s Local Government Finance Commission (LGFC) as ‘Best Practice’ in revenue enhancement. Entebbe pilot reforms attracted international recognition, winning the Africa 2004 Investor Award for Smart
Regulation, and were showcased in the World Bank’s 2005 World Development Report. This helped generate momentum in other local governments and stronger support from central Government and has been followed by phased nationwide rollout of the reforms to 10 additional local governments funded by the World Bank. The phased rollout, still ongoing, is coordinated by the Ministry of Local Government and supported by local and urban authorities’ representative bodies including the Uganda Local Governments Association (ULGA) and the Urban Authorities Association of Uganda (UAAU).

This Programme aims to promote legal certainty, in particular for economic transactions. It is assisting institutions responsible for the reform of commercial law promote the systematic and coordinated reform of laws and regulations for the economic sector.

Tanzania’s Business Registration and Licensing Agency (BRELA) is a semi autonomous agency under the Ministry of Industry, Trade and Marketing responsible for business facilitation and regulation. It was established in 1997 and formally launched in 1999.


Initial trade licensing reforms implemented under the deregulation project in Entebbe Municipality led to positive benefits in terms of greater compliance and lower compliance costs. One of the challenges encountered upon replication of the success story is that in a number of local governments, constraints imposed by the reforms in terms of licensing fee hikes are addressed through new levies called operational licences. This is because the Local Government Statute 2007 allows local governments wide powers to levy and collect fees from business activities.

In 1995, the OECD Council approved a checklist for regulatory decision making. These were the first internationally accepted set of principles on regulatory quality and included the following: i) Is the problem correctly defined?, ii) Is government action justified?, iii) Is regulation the best form of Government action?, iv) Is there a legal basis for regulation?, v) What is the appropriate level(or levels) of government for this action?, vi) Do the benefits of regulation justify the costs?, vii) Is the distribution of effects across society transparent?, viii) Is the regulation clear, consistent, comprehensive and accessible to users?, ix) Have all the interested parties had opportunity to present their views?, and x) How will compliance be achieved?

The Competitiveness and Investment Climate Strategy (CICS) which covers the period 2006 -2010 replaces the Medium Term Competitiveness Strategy (MTCS) which was implemented over the period 2000-2005. The CICS is Uganda’s new medium term framework that aims to operationalise pillar two of Uganda’s Poverty Eradication Action Plan (PEAP) – Uganda’s strategic development framework which focuses on enhanced production, competitiveness and incomes.

The ‘big bang’ approach to RIA implementation in Uganda has entailed simultaneous implementation of major policy process reforms across government with special focus on MDAs that impact businesses the most. The focus has been on building support at the centre of government, but also trying to build capacity across most line Ministries to undertake RIA. This has been facilitated by the existence of Policy Analysis Units (PAUs) in most Government ministries which are an important resource supporting evidence based policy development. On the other hand, Tanzania has pursued a phased approach with an initial focus on sensitisation, education and building local capacity to deliver training.

Business Enterprises Strengthening for Tanzania (BEST) Programme, which is coordinated by the Better Regulation Unit under the Ministry of Planning, Economy and Empowerment, is a multi sectoral business environment strengthening programme which, among other objectives, aims to reduce the burden of doing business in Tanzania by implementing better regulation initiatives including RIA.

Tanzania’s phased approach has been informed by the realities of its political, economic and social environments. The country’s long association with socialist policies has resulted in strong belief in public solutions to economic development challenges hence the need to engage stakeholders using a measured, step by step approach. This approach minimizes occasions for misunderstanding reform intentions and stakeholder opposition and allows for a deeper engagement with key stakeholders.

Outcome of recent discussions in Tanzania between the authors of this paper and stakeholders in Government, private sector and the donor community.

Getting to Better Regulation: Lessons from East Africa, DAI Europe Ltd
Although key elements of the business licensing and registration reform initiative were launched in 2004, the passing of the Business Activities registration Act (BARA) was only achieved in February 2007.

The Tanzania National Business Council, the public – private dialogue mechanism bringing together Government and the private sector was finally launched in 2001. The idea to establish TNBC was first mooted in 1995 but its set up process was affected by lengthy delays.

Results Oriented management (ROM) is a new management concept introduced under the Uganda Civil Service Reform Strategy. This is a concept of management that aims at achieving results and emphasizing frugal use of scarce resources with a view to establishing and entrenching a performance management culture in the civil service. It focuses on tangible results or outputs in service delivery and provides for continuous improvement of performance and enhancement of transparency and accountability.

Outcome of recent discussions in Tanzania between the authors of this paper and stakeholders in Government, private sector and the donor community.

See Jacobs and Associates Inc., Revised January 2006, Effective and Sustainable Regulatory Reform: The Regulatory Guillotine in Three Transition and Developing Countries. The Regulatory Guillotine is designed to “reverse incentives in the reform process and so overcome some of the barriers that have slowed or blocked broad based regulatory based reforms in the past……; create a sustainable process for future quality control and legal security ……..and; create an institutional structure for continuous and effective regulatory reform implementation.”

See Working Committee on Regulatory Reforms for Business Activity in Kenya, March 2007, Final Report Submitted to the Minister of Finance and the Minister of Trade & Industry.

According to KEPSA, an elaborate consultative mechanism has been elaborated and is fully functions and involves continuous engagement with 23 central government MDAs.

Better regulation initiatives represent a more holistic approach to regulatory reform and involve a twin focus on regulatory quality improvements and elimination of unnecessary regulations. Improving regulatory governance lies at the heart of this better regulation agenda.

To take example, the emergence of a strong public - private consultative forum in Kenya, resulting in the formation of KEPSA in 2003, found its roots in the intense and close cooperation among lead private sector institutions during consultations on the Poverty Reduction Strategy Paper (PRSP) in 2001. With Kenya Governments endorsement of private sector leadership role in the implementation of the Economic recovery Strategy, the unified private sector voice has been a strong partner in propelling the business activity licensing reform initiative since 2005. This contrasts with the situation in Tanzania where the private sector is still seen as marginal to reform because of its capacity constraints and its non-proactive approach towards consultation and engagement with the public sector.

In the words of one senior official in the Ministry of Planning and Economic Development, ”strong institutional coordination and stakeholders participation have proceeded on the basis of consensus and there has been minimal reliance on government directives to secure implementation”.