

GOOD GOVERNANCE: THE WAY FORWARD

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”Getting politics right is different from getting policy right in that it calls for a restructuring of the polity itself”.¹

Introduction

Good Governance has been variously defined, often to suit different purposes. In the African Development Bank's Good Governance Policy, adopted by the Board in December 1999, Good Governance is defined as "a process referring to the manner in which power is exercised in the management of the affairs of a nation, and its relations with other nations". In other literature, Good Governance has been defined as "the traditions and institutions by which authority in a country is exercised for the common good".²

To define Good Governance in terms of a process or the instruments for exercise of authority is pragmatic but needs some qualification in order to be useful. I would prefer here to add that the use of the "power" or authority given must be legitimate and must be used to manage the countries' resources for social and economic development. I would thus define Good Governance as the legitimate use of political authority in the exercise of control over a society and management of its resources for social and economic development of its people.

It is my view that stable political conditions can be achieved through well directed institutional reforms: reforms which ensure the respect of human rights, instill a respect for the rule of law and promote political inclusion and tolerance of diversity. Such reforms require a re-assessment of existing administrative and legal structures, mostly inherited at independence from the former colonial masters, and replacing them with institutions built on best practices of our traditions and more attuned to the needs and aspirations of the majority of the population.

Africa and Good Governance

The urgency for reform of the political structures to instill good governance in Africa cannot be underestimated because the number of countries in conflict situations and those, which have experienced violent changes of Government in Africa, is staggering. At the dawn of this millennium, much of sub-Saharan Africa is devoured by warfare. Currently almost two-thirds of its countries are embattled and paralyzed. There are, at least, 18 countries engaged in one armed conflict or another, or experiencing civil strife (Category 1); 13 countries under severe political crisis and turbulence (Category 2), if you add to this list two previously stable countries (Zimbabwe and Côte d'Ivoire). This leaves only 17 countries enjoying relative stable political conditions (Category 3).

However, 12 of these have at one time or another been classified under either Category 1 or 2. Furthermore, a large number of all the countries listed in all three categories have at some point undergone a violent change of Government. As is well known, without stable political conditions there can be no meaningful development.

On the economic front, the World Bank, in its World Development Report 1999/2000, reports that nearly 1.5 billion people live on \$1 a day and nearly 2 billion people live on \$2 a day. It is not surprising that the majority of these live in Africa.

The hopes raised by the emergence of the African people from five or more decades of colonialism have been dashed in the face of diminishing standards of living, widespread civil strife and war, the ravages of preventable diseases and persistent high levels of illiteracy. In the decades following independence the former colonial powers and other industrialized countries poured billions of dollars in development projects, both directly through bilateral aid and, indirectly, through multilateral institutions. These investments, mostly in infrastructure projects, hydroelectric power plants, bridges and roads did little to usher in the expected, and often promised, level of development.

Following years of neglect and disuse, mostly as a result of mismanagement, most of these structures, especially in conflict countries, stand as empty monuments of misdirected efforts at development. Many more lie in a heap of ashes, having fallen victim to unending civil wars and civil strife, resulting from disillusionment with the leadership, often consumed by unrestrained pursuits for power and a selfish desire to accumulate vast amounts of personal wealth.

It is remarkable that after so many years, Africa cannot boast of the equivalent of a Massachusetts Institute of Technology (MIT) or Harvard Business School. It has been said that the success of countries in Asia, such as India, to tap into the current Internet revolution is traceable to established technical institutes, such as the esteemed Indian Institute of Technology established by Nehru in the 1950s.

There is no disputing that currently there exists a general lack of technicians, inventors and entrepreneurs to usher Africa from a producer of raw materials to the industrial age, and the modern era of innovative information technologies. Dependence on raw materials, such as minerals, cocoa and coffee has resulted in diminished incomes, in the face of falling prices, due to diminished consumption or discovery of cheaper substitutes.

In addressing priorities, in the effort to promote Good Governance, one could start with reforms, which address the core elements of Good Governance identified in the Introduction. These may be summarized under the headings: accountability and responsibility; checks and balances (capacity building of core power centres: legislature, executive and judiciary); devolution of powers or decentralization (to include civil society in policy formulation and implementation), sustainable development.

In designing programs, it is essential to bear in mind that reforms in the area of Good Governance touch upon the core political institutions of a State, such as the legislature,

the judiciary and civil service. For these reforms to be successful, they must win the acceptance of, not only the Government but also the people at large, and therefore require the widest possible consultation before being implemented. There must be a sense of ownership of the reform programs by the country as a whole.

Accountability

Accountability, in the context of a Government, means the responsibility of the institutions, which constitute the Government, to discharge their mandates under the Constitution for the benefit of the people at large without fear or favor or discrimination. From this generalization flows the responsibility of public officials to the State for their actions in the discharge of their duties. Various studies have identified corruption as a main cause for the failure of Governments to meet their responsibilities to the people they lead. Corruption damages economic development, hinders the growth of democratic institutions, and impedes the ability of developing countries to attract foreign investment.³

There have also been concerted efforts by both international and regional institutions to draw up anti-corruption measures. The OECD initiated the OECD Anti-Corruption Treaty, mainly, to address corruption by transnational corporations, which operate in developing countries, aimed at stamping out the practice of bribing officials to win contracts and avoid taxation. The European Union has actively conditioned its assistance on evidence of strong anti-corruption measures by Governments and the World Bank and the IMF routinely require borrowers to enact anti-corruption legislation, among others, requiring disclosure of assets by public officials, as a condition for loan disbursements. The OAU, like the OAS before it, is promoting a Draft African Convention to combat corruption, and the International Commission of Jurists has promoted codes of conduct to combat corruption in the public service and in the Judiciary.

Civil Service Reforms

The reform of the civil service is important, because in many countries, civil servants control the registration and licensing of businesses and the collection of revenue, both of which have a great impact on the economic and social fabric of the state. It is worth noting that, anti-corruption measures, however important, are not by themselves sufficient to build a responsible public service. The root causes of official corruption must also be addressed.

The important role played by public servants, in countries where the private sector is in its infancy, must be reflected in the level of remuneration paid to them. There is such a marked dichotomy between the salary of a civil servant and a self-employed businessman, that corruption becomes an irresistible means for the businessman to secure favors and the civil servant to oblige. The remuneration paid to public servants should perhaps not only be reflected in monthly salaries. The experience in developing countries with high inflation and constant fluctuation of currencies had shown that the pension structure left in place by the colonial powers is no longer an adequate after service social

security. There are no mechanisms for cost of living adjustments or for fluctuations in currencies. It is not uncommon for a civil servant to realize that after some thirty years of work, his/her pension is no more than 1% of current income. The selection and promotion process for civil servants must also be addressed. The process must be transparent, through an independent Civil Service Commission. In addition, civil servants of all grades that are found to be corrupt must be prosecuted and punished to the full maximum permitted by law. This would require the establishment of Codes of Conduct for public servants and the judiciary, and enactment of clear and enforceable anti-corruption statutes.

Rule of Law

In its most restricted sense, the rule of law is a legal principle which provides that "decisions should be made by the application of known principles or laws without the intervention of discretion in their application."⁴ In more general terms, however, the rule of law also denotes that those entrusted with State power exercise it with justice, fairness and equity. It also presupposes the acceptance of the constitutional theory of the separation of the executive, legislative and judicial powers. This separation ensures checks and balances and guarantees that laws passed can be tested in the courts for their conformity with the constitution, executive actions can be challenged to ensure their legality and the judiciary can function without interference from either branch of Government. As a consequence, the institutions, which guarantee the basic human rights and liberties, under the constitution, and which assure the rule of law, need to be supported and strengthened.

The constitution is a 'social compact' between the people and their Government and among themselves. It is regarded as the basic law by which Government exercises its functions for the benefit of the People.⁵ In recent past, donors have supported many countries in the drafting of their Constitutional documents and funded elections as a means to establishing democratic rule. However, Constitutions and elections are no panacea and are definitely no guarantors for the Rule of Law. Constitutional reforms need to be supported by strong institutions, such as: a free press - to ensure free speech; multi-party democracy - to ensure freedom of association and an independent judiciary - to guarantee the administration of justice under law.⁶ Elections are useful to ensure public participation in the selection of leaders but have proved illusory in Africa, where invariably they are preceded by alignments that arouse sectarian and tribal animosities. In order for democracy and democratic institutions to survive in Africa, there is a need to raise the literacy rate by investing in education. It is unacceptable that, at the dawn of the third millennium, every other child in most African countries cannot find an education of his/her choice, when compulsory education has been the order of the day for half a century in most developed countries. If any investment is to be made at all, it should start in instituting free and compulsory primary education in all African Countries.

Law and Social Change

The Law and the Judiciary can be very powerful tools in the struggle for economic and social change and the associated efforts at poverty alleviation. Underdevelopment reflects the interactions of complex institutional machinery that, together, manufacture poverty and repression. Policies aimed at eradicating the perceived social, political, or economic difficulties associated with underdevelopment need to be translated into enforceable tools for the benefit of the people, through state power. Such state power translates into law, which can only be enforceable by the courts. Development-related policies, for example, usually proclaim desired changes in resource allocations. Since government cannot directly reallocate resources, it does so indirectly, by modifying behavior through legislation. To control inflation, in which too many dollars chase too few goods, for instance, government can neither command the number of dollars to decrease nor command goods to multiply. It can only try to change the behaviors of those that print or spend dollars or produce goods. Law constitutes government's principal tool to achieve the desired social and economic change.

The power of law as an instrument for economic and social change cannot be underrated. Land reform, according to all evidence, played an unusually crucial part in the high growth rates and shared economic expansion in east and Southeast Asia, from Japan, Korea and Taiwan all the way to the very dissimilar economies of China and Thailand. Another interesting example is India's sudden and rapid success in the development of computer software (India has become the second largest software producer in the world, behind only the United States). This process has been facilitated not only by the earlier expansion of technical education in India, but also by the comparatively flexible legal arrangements that govern these businesses compared with the much more rigid regulations that apply to more traditional commerce and industrial production, in which progress has been much slower.

Many more examples can be given, where law has been used as a tool to achieve economic and social advancement. It has been said, for example, that capitalism did not emerge until the evolution of law and order and the legal and practical acceptance of property rights had made an ownership-based economy feasible and operational. The efficiency of exchange could not work until contracts could be freely made and effectively enforced, through legal as well as behavioral reforms. Economic expansions are hard to plan without the needed trust in each other's plans and announcements and the required confidence that agreed arrangements can be relied upon. Investment in productive business could not flourish until the higher rewards from corruption were controlled through anti-corruption legislation.

Furthermore, to the extent that a free, vigorous and responsible press is required to guarantee economic security, political pluralism, human rights, and greater accountability, legal and judicial guarantees are required to protect it. In this, innovative legal arrangements, such as public interest litigation and class action suits, can serve as a catalyst for promoting neglected human liberties. Finally, mention should be made of the rights of women, which are important not merely for gender equality, but also for the benefit of all; for example, through reduction of child mortality and diminution of high fertility rates. Recent research has brought out the far-reaching role women play in

society, which influences nearly every aspect of economic, social, political and legal development of a country, and which calls for legal and judicial reform aimed specifically at attaining gender equality and justice for women.

Legal and Judicial Reform

In supporting Law Reform and Judicial Reform programs, it is important to avoid the danger of importing legislation without regard to local conditions. The law must be geared to the social and economic conditions of the people it is intended to serve, and therefore there must be genuine ownership of the reform process. The examples provided above were intended to demonstrate the utility of law as a tool for development. However, for this tool to be of any function, the institutions, which make the laws and enforce them, need modernization in order to be effective. The Legislatures must be representative of the people and must have access to meaningful empirical research before laws are enacted.

The Judiciary must be independent and constituted of judges of the highest caliber who can administer justice without fear or favor. All this requires training and investments in improvement of employment conditions. Donors can make a difference in funding programs, which enhance the efficient functioning of the legislative and judicial institutions, and the program outlined at the joint seminar of the African Development Bank and the International Commission of Jurists held at Abidjan, Côte d'Ivoire on 9-12 March 1998, goes a long way to meet some of these concerns..⁷

Laws, Justice and the Poor

It has been said that some of the laws and procedures forming the basis for the administration of justice, inherited at independence, were designed to discourage the poor from tort litigation - the main avenue for recovering compensation for injury or loss. The fees charged for lodging such tort actions are most often in excess of the earning capacity of most litigants and prohibit free access to justice by those most in need. Furthermore, the rules as to bail in criminal cases often favor the wealthy who can post bail while the very poor, however reliable, remain on remand for years due to inordinate delays in fixing trial dates.

Land reform, mentioned above, is another area needing attention. There is the danger of viewing land reform as the replacement of communal land tenure, which is the prevalent form of traditional land use in Africa, by wide scale introduction of freehold titles. Land ownership in perpetuity has led to massive abuses in many parts of Africa, where large tracts of land are fenced off sometimes by absentee landlords, without being fully utilized. Such tenure systems are resented by the peasant communities, which often find themselves rendered landless, without the resources to convert their customary tenures. Thus, while land titles are attractive, as security for obtaining development loans, they however tend to favor the rich more than the poor and tend to create a landless class that is often condemned to perpetual poverty.

The communal land tenure, prevailing in most peasant communities in Africa, guarantees availability of land to all that are able to use it. The root title is vested in the state in trust

for present and future generations and allocation is made on basis of need and ability to develop the land. Tanzania carried out an experiment years ago, for allocation of rights of occupancy for a specified period subject to a five-year development condition. These rights of occupancy are registered like any other title and can be mortgaged or otherwise disposed of, for value. The challenge is to devise additional legal tools for pledging the interests owned by the customary tenant and to institute a system of establishing proper demarcations and evidence of such ownership.¹

There is also a fundamental need to temper the effects of the adversarial dispute resolution mechanisms, through institution of alternative dispute settlement mechanisms that borrow from the best of the ancient African traditions, of mediation, reconciliation, accommodation, compromise and peaceful co-existence.² It is these latter qualities of individual and social interface that are characterized as "Ubuntu" in the recently adopted South African constitution.⁸

Electoral Reforms

There is an urgent need to review the models for the Government structures, which have hitherto been adopted by many development African countries since independence. There is always the temptation to copy existing models in Europe and elsewhere, when designing the structure of the executive, legislative and judicial branches during the constitutional process. The Westminster model of parliamentary rule, for example, whereby the majority party selects the Prime Minister and head of Government, is unique for Britain but has proved totally inadequate in many former colonies. In practical terms, in many African countries, this has meant that the Prime Minister is assured of a majority in Parliament and the opposition is relegated to a marginal role in policy formulation and governance as a whole.

Equally, the corresponding executive presidential model, whereby the elected president is also the chief executive, with a free hand to form his government from within or outside parliament, thus concentrating all power in a single person, has also proved unsuitable. In countries where there is hardly a free press or strong non-governmental institutions to act as checks and balances, such a system has proved unworkable. The absence of strong institutions to provide needed scrutiny of Government action, has meant that once elected the party in power governs unchecked, without regard to opposing views, and quite often uses all the state's machinery to maintain itself perpetually in power.

The other model which has been adopted foresees a directly elected President or Prime Minister, with discretionary seats in parliament to ensure a majority of his party. Again, this means that the President or Prime Minister is assured of passage of his/her program in Parliament without regard to opposing views, however constructive. The process has

¹ For a further discussion, see: Ssekandi, F.M. "Social Political and Equity Aspects of Land Property" at: www.worldbank.org.

² The "Gacaca" courts now in operation in Rwanda introduce an element of criminal justice most closely aligned to traditional values of reconciliation and may offer an alternative to imported models.

tended to lead to autocratic rule, since Ministers, including the Prime Minister, serve at the pleasure of the Head of State and Government.

Variants of both models, which have been tried, involve the creation of Governments of national unity. In such a model, the winning party forms a Government, selected from both the ruling party and the losing parties. Many of the experiments, such as the failed Angolan attempt to incorporate Savimbi and his supporters in Government, have floundered for lack of a will to accept defeat at the polls and compromise. The French model, which separates the Head of State from the Head of Government, would seem unique for France, since it would be difficult to envisage this system of so-called “cohabitation” operating successfully in any African country.

The traditional allocation of power among clans and other members of society in proportion to their power, is attractive for ensuring inclusiveness. The traditional ruler wielded power tempered by the council composed of the various clans, families and religious groups, exercising authority in their own right. Furthermore, chiefs of all other ranks were selected from all shades of the kingdom.

In a way, the proportional representation model adopted by South Africa, is derived from this traditional model. Proportional representation works at two separate levels. On the one level, representation in parliament is based on the number of votes each party obtained during the election. In this system the electors vote for a party based on its slate of candidates, and the party then selects the representatives in parliament based on the percentage of votes won. The winning party then forms the Government. This method assures the selection by the party of its strongest candidates to represent it in Parliament. This model can further be refined, on the second level, by introducing proportional governance, whereby the Government, to be formed after elections, consists of ministers selected, by the head of the winning party, from among all participating parties in proportion to their strength in Parliament. Such a system ensures that other parties will have a voice in the running of the affairs of the State, proportionate to the size of the electorate they represent in the country. In order to ensure that the ministers so selected retain a base of authority, they should remain sitting members of Parliament. I refer to this model as “Proportionate Governance”.

Proportional representation is mandated by the Constitution of Namibia and the Constitution of South Africa, but proportionate governance was adopted in South Africa and Namibia upon independence as a means of ensuring inclusion of other parties.. These experiments can be analyzed and refined to suit different countries, it being appreciated that in countries where the State enjoys a virtual monopoly of power, different shades of the society must be represented in Government in order for their voices to be heard. Such a Government of inclusion bodes well for our fractured societies and is needed to restore political stability. It has to be appreciated, however, that the path to Institutional Reforms is a long-term investment with few immediate returns, but it remains the only option, if Africa is to be pulled out of the cycle of coups and wars.

Decentralization

There is a continuing interest in decentralization of Government functions to the local level to better provide services to the majority of the rural poor. This should include drafting legislation for devolution of administrative and fiscal authority, and in general the rationalization of revenue sharing between different governmental levels. In some countries, for example, hospitals have been authorized to levy charges from patients, in very minimal amounts, perhaps no more than CFA 100, as additional revenue for hospital maintenance. These amounts, levied on a daily basis, could prove sufficient to enable hospital administrators to maintain necessary cleanliness of patient wards and provide food to patients or their attending relatives. Sometimes, the local funds have proved sufficient to carry out needed expansion. Subventions from Government, which are often inadequate to cover maintenance costs, would then be devoted to procurement of medical supplies and personnel remuneration. In addition, local administrations should be able to shoulder certain security arrangements, at the sub-county level, as well as exercise minimum judicial authority, to resolve minor disputes arising from land and family relations. They should also take charge of funding education services at the lower levels.

Environmental Protection

It has been said that poverty alleviation is intrinsically linked to environmental and social sustainability. Africa suffers from soil degradation, forest destruction, and fisheries depletion at an alarming scale. Many areas are experiencing massive rates of deforestation, an activity which leads to the extinction of thousands, perhaps millions of species, intensifies flooding and droughts, increases erosion, and clogs downstream rivers and hydroelectric reservoirs. Most of the rural poor lack access to a safe and reliable water supply, and approximately one in two lack sanitation services. Solid waste generated in the urban areas is sometimes not collected at all, and even sewage collected is, in the main, discharged without receiving any treatment. As a result, waterborne diseases and infections are responsible for many deaths. All these problems become more severe as population pressures grow. The World Bank states in its 1999 Report, that in the social realm, the links between economic and social well-being are becoming daily more clear. Inclusion in economic growth and development is critical to promoting stability in a society, to conflict prevention, and to national reconstruction in post-conflict situations. As a consequence, strengthening efforts to promote environmentally and socially sustainable development is essential to promote Good Governance.

Information Technology

Donors have the opportunity to take the initiative in the area of reinforcing the dissemination and publication of legal and other materials, through the support or introduction of modern information technological advances in African countries. There is a deplorable dearth of reading materials, especially legal materials in Africa; legislation passed is not freely available even to legal practitioners; judgments in cases decided cannot be easily traced and general legal research is just a nightmare.

There are presently a number of institutions, which have already demonstrated expertise in the dissemination of legal materials such as Westlaw and Lexis. But, all these are Internet-based and access to the Internet is a precondition to their use. Governments will need to accelerate the introduction of modern information technologies, by supplying computers widely to schools, courts, community centers and offices, to leapfrog technologically into the information age.³

Two other services, also internet-based, have are GLIN and DIAL. Such services can assist African countries to put their laws in electronic format and have them disseminated through the Internet. There is a subscription fee to be paid for each participating country and donors could identify a number of countries, to be assisted with the subscription fee. The exercise will benefit donors, other institutions and investors wishing to research laws and legal materials in Africa. The World Bank seems to have now made GLIN part of its search engine providers for member country laws, including a few African Countries. This can be accessed at: <http://www1.worldbank.org/legal/legal.html>.

Good Governance and the Private Sector

The issue of good governance has now assumed center stage in the global arena. The reason is simple. If the management of the economic and social resources for development is efficient, and there is transparency, accountability and popular participation in the government, private sector investments inflow into the country will be high, as the business community will be assured of a level playing field. The political stability and proper management of public resources are also fundamental factors, which contribute to economic growth and sustained development. The final result is improvement in social standards and poverty reduction. While the role of the government in establishing and maintaining governance structures has long been recognized, the role of the private sector is only now coming to the fore. A country's capacity to achieve sustainable prosperity - progressive economic growth and social development over a prolonged period of time - largely depends on strategic decisions made about the allocation, investment and utilization of resources. With economic liberalization, globalization, privatization and market centered reforms, the private (market) sector has been identified as the engine of growth increasingly responsible for the creation and production of wealth, generation of employment opportunities and the provision of goods, services and infrastructure.

Corporate Governance

Corporate governance refers to the establishment of an appropriate legal, economic and institutional environment that facilitates and allows companies to grow, thrive, restructure and exist as institutions for advancing long-term shareholder value and maximum human

³ An online law reporting service funded by international financial institutions would go a long way to bridge the existing gap.

centered development while conscious of their other responsibilities to stakeholders, the environment and the society generally.

Corporate Governance has thus become an issue of worldwide importance. The Corporation, which is the principal organ through which business is transacted, has a vital role to play in promoting economic development and social progress. It is the engine of growth internationally, and increasingly responsible for providing employment, public and private services, goods and infrastructure. The efficiency and accountability of the corporation is now a matter of both private and public interest, and corporate governance has, thereby, come to the head of the international agenda.

The globalization of the market place, within this context, has ushered in an era where the traditional dimensions of corporate governance defined within local laws, regulations and national priorities are becoming increasingly challenged by circumstances and events having an international impact.

- Good Corporate Governance is necessary in order to: Attract investors - both local and foreign - and assure them that their investments will be secure and efficiently managed, and in a transparent and accountable manner, etc.
- Create competitive and efficient companies and business enterprises.
- Enhance accountability and performance of those entrusted to manage corporations.
- Promote efficient and effective use of limited resources.

Without efficient companies or business enterprises, the country will not create wealth or employment. Without investment, companies will stagnate and collapse. If business enterprises do not prosper, there will be no economic growth, no employment, no taxes paid and invariably the country will not develop. The country needs well governed and managed business enterprises that can attract investments, create jobs and wealth and remain viable, sustainable and competitive in the global market place.

Good corporate governance, therefore, becomes a prerequisite to national economic development.

Pillars of Good Corporate Governance

The four pillars on which good governance is framed, consist of the following:

- a) There must be an effective body responsible for governance separate and independent of management to promote :
 - Accountability (leadership that must be ready to account)
 - Efficiency and effectiveness (hence leadership for results)
 - Probity and integrity (hence leadership that is honest, faithful and diligent).

- Responsibility (hence leadership that is capable, responsible, representative and conscious of its obligations).
- Transparent and open leadership with accurate and timely disclosure of information relating to all economic and other activities of the corporation.

(b) There must be an all-inclusive approach to governance that recognizes and protects the rights of members and all stakeholders - internal and external.

(c) The corporation must be governed and managed in accordance with the mandate granted to it by its founders and society and take seriously its wider responsibilities to enhance sustainable prosperity.

(d) The corporate governance framework should provide an enabling environment within which its human resources can contribute and bring to bear their full creative powers towards finding innovative solutions to shared problems.

However, Good Corporate Governance requires that the State puts in place and maintains an enabling, fair and equitable regulatory environment in which efficient and well managed companies can thrive. It is therefore expected that companies jointly and severally will continue to play their part and encourage dialogue between the public and private sectors in promoting good public governance and an enabling and conducive business environment.

It is the responsibility of the owners of the corporation to elect competent directors and to ensure that they govern the corporation in a manner consistent with their stewardship.

Good corporate governance dictates that the Board of Directors govern the corporation with integrity and enterprise in a manner which maximizes shareholder value, is accountable and in the best interests of society. It is neither in the long-term interests of the business enterprise nor of society to short-change customers, to exploit labour, to pollute the environment or to engage in corrupt practices à la Enron, Tyco, Merck and WorldCom.

Corruption

One factor that has been identified as a major stumbling block to the achievement of good governance is corruption. The economic costs of corruption are numerous. To mention just a few:

Corruption undermines the economic development by introducing distortion and inefficiency in the economy. Corruption is also an obstacle to poverty alleviation as it widens the gap between the rich and the poor who are marginalised and are completely powerless as the financial costs of fraud and corruption are passed down the supply chain reducing their purchasing power.

In the private sector, corruption restricts the growth of small businesses, as they are unable to pass on the costs of corruption to consumers in a competitive environment. Foreign investors are also scared off due to the costs of corruption; creating a non-level playing field, due to over-regulation and lack of predictability in the legal system.

One area where corruption has been identified to be endemic is the area of procurement i.e. in the award of contracts for supply of goods, services and works. In the public sector a high percentage of government expenditure is in procurement. A weak procurement institutional framework and disregard or lack of understanding of procurement systems has created many loopholes resulting in mega corruption.

The suppliers can also introduce corruption in the bidding process by colluding among themselves to fix bid prices or by creating improper interference in the evaluation work. Again during the performance phase of the procurement corruption may be perpetrated when the purchaser:

Good Procurement Practices

Having noted how endemic corruption is in the area of procurement and what disastrous effects it is having on the economy, the question is how can the supply side of corruption and bribery be tackled?

Firstly, there is a need for a unified procurement code giving detailed rules and regulations providing for a transparent and competitive procurement process so as to seal most of the loopholes currently being exploited.

Secondly, there is need for self-regulation through integrity surveys within each organization to review existing internal control systems and decision-making process so as to identify weaknesses, which are potential loopholes to corruption, fraud and manipulation and set up control mechanisms to enhance transparency and accountability.

Thirdly, standards of enforceable codes of professional/business ethics must be established and adopted within the organization and also within the industry as a whole. Umbrella organizations such as chamber of commerce and association of manufactures, etc., must mobilize the business community to maintain firm and united stand against all forms of exploitation through corruption, extortion or bribery. An anti-bribery pact between the companies should be encouraged where the companies or suppliers agree not to pay bribes and to disclose any commission paid. Any company or supplier participating in the same should be blacklisted and alienated.

Fourthly, there is need to go beyond the national borders as corruption in procurement has now seriously invaded the international market. This has been perpetuated by the legal systems of some countries, which seem to turn a blind eye on the bribery of foreign government officials and, in fact, recognize it as an accepted business practice, by allowing bribes to foreign officials as tax deductible expenses. The United States set the pace when it passed the "Foreign Corrupt Practices Act" which prohibits United

States companies from bribing foreign government officials. Twenty members of the Organization for Economic Cooperation and Development (OECD) have now followed suit and by signing an anti-corruption treaty which outlaws the payment of bribes to foreign government officials.

It is time to support such global efforts, and continue to advocate passage of laws which will prohibit developed countries from providing "safe haven" to illegally acquired wealth and harboring wanted criminals and suspects fleeing from justice in developing countries. Perhaps an African or regional equivalent of the OECD anti-corruption treaty would be an appropriate starting point.

The Corporation as a Good Citizen

Finally, the private sector must work with the government to reduce bureaucratic controls and to increase the level of private sector involvement in public activities. The private sector must also participate in the monitoring of public expenditure and the implementation of economic reforms and support public awareness and education campaigns if the menace of corruption is to be tamed.

Corporate Good Governance is as important as Good Governance in the public sector. In many developed countries, licensed developers are required, as a condition for obtaining a building license, to contribute to construction of social development projects. The multilateral finance institutions could initiate a partnership with major transnational corporations seeking to invest in Africa, and participate not only in the financing of infrastructure projects that generate profits and improve the investment climate, but also support programs that benefit the rural poor. Such actions would promote good corporate governance. The social programs should include investment in health and education, to fight against disease and illiteracy, and contribute to the growth of human resources, which are not only necessary for a successful private sector, but also vital in uplifting the standard of living of the majority of the population.

Conclusion

In drawing up a program for institutional capacity building to advance Good Governance, it is essential to differentiate among countries according to the level of development of their institutions. Countries in conflict situations: Angola, Somalia, Sudan, Democratic Republic of Congo, Congo (Brazzaville), Liberia and Sierra Leone, have also fallen in arrears. These countries require Emergency Recovery Assistance (ERA) to support ongoing peace building efforts to rebuild basic Government infrastructure. As an African institution, the Bank cannot afford to be a bystander and just watch while these countries descend into the abyss of debt and human suffering. It is in times of need that your "savings bank" comes to the rescue. There must be a mechanism for debt consolidation and rescheduling for those countries to nurse them back to good health. Most of these countries are rich in mineral wealth. A form of barter can be organized whereby for the coming 10 to 20 years, a percentage of sales from these minerals goes to relieve past debt. Countries like Egypt, Cuba did this with their primary crops, cotton and sugar to

obtain badly needed assistance from the Soviet Union to construct needed infrastructures. The Marshall plans adopted after the Second World War for Japan and Germany were structured on similar lines.

The second category of countries represents the bulk of Sub-Saharan Africa, excluding Nigeria, South Africa and Botswana, which though plagued by the same ills of poverty, disease and illiteracy, enjoy a higher per capita income than the rest. The Category of countries dependent on ADF only resources, need technical assistance and resources to invest in foreign experts in schools, colleges and universities and to create cottage industries.

Modern computer and Internet technology have ushered in opportunities that never existed before, to promote long-distance learning and discoveries of medical cures through gene sprucing. Many companies are seeking partners to build factories to produce modern equipment with relatively inexpensive labor. Africa can tap on talented pupils who specialize in subjects like mathematics, biology and chemistry to join Internet and biotechnology companies willing to relocate industries in Africa. We have to convince these companies that in at least a few selected success countries, in Africa, such industries can prosper.

Finally, for the more advanced countries with an already established industrial base such as Egypt and Morocco or those with tremendous resources such as Nigeria and South Africa, the financial institutions must devise new techniques aimed at maximizing the utilization of their natural and human resources. These countries need partnerships and not new debts. The bond issue initiated by the Development Bank of South Africa with guarantees from the African Development Bank is a good beginning. The proposed partnership with banks in Egypt to maximize financial resources for industrial development is another. Morocco has initiated a program for review of its laws, and established training programs in new forms of infrastructure project finance techniques.

The multilateral financial institutions and bilateral development aid institutions need to be equipped with the knowledge and personnel that can respond quickly to requests for assistance from recipient countries. Many firms are ready to work with these institutions as partners in advancing social programs. A team of lawyers, economists and engineers should be identified to act as a think-tank to examine ways of responding to the constantly changing needs of developing countries. The teams should visit the countries, study their requirements, devise strategies and make recommendations. The idea here is to harness private sector resources for the benefit of countries, which are in a position to borrow on market rates.

The aid institutions could also initiate partnerships with private sector companies and local Banking institutions to fund projects in the industrial sector, which maximize employment opportunities and promote advancement. The UN target, to halve poverty by the year 2015 is an ambitious one, but it may very well be attainable, if countries dedicate themselves to reverse the dependence on foreign aid and concentrate on attracting private capital in-flows. However, capital, like a laser beam, moves fast in

search of a hospitable environment but will be equally fast in flight to find better pastures.⁴ Good Governance must be sustainable to create a hospitable environment for capital growth, and to prevent capital flight, which is said to have reached 23.5 cents for each net dollar of inflow, according to a UNDP study of 16 countries.⁹

References

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1 Goran Hyde in : African Reckoning by Francis Deng

2 World Bank research by Daniel Kaufmann, Aart Kraay and Pablo Soido-Lobation. See also: "Good Governance: The Old, The New, The Principle, and The Elements" by Francis N. Botchway. 13 Fla.J. Int'l L. 159.

3 See Corruption: an Impediment to Development in Economic Perspectives: Electronic Journals of the U.S. Information Agency, Vol. 3, No. 5 November 1998 at <http://www.usia.gov/journals/journals.htm>; see Also: Ssekandi, F.M. in "Liber Amicorum: Ibrahim F.I. Shihata, at Page 791.

4 Black's Law Dictionary - Sixth Edition.

5 Kelsen's The Nature of Law. See also: Ssekandi and Gitta: "Protection of Fundamental rights in the Uganda Constitution" [1994] 26 Columbia Human Rights Law Review 191 at Page 211.

6 By independence of the Judiciary we mean freedom to decide cases on the basis of law as interpreted by the Judges, exercising accepted canons of legal interpretation and application, without fear or favour. Such independence is not compromised by the fact that judges are appointed by the Chief Executive or that their salaries are levied by the legislature, provided that the appointment of judges follows recommendations from an independent judicial services commission and the salaries of judges once fixed cannot be reduced at will by the legislature or executive.

7 See Report of the Regional Seminar on Economic, Social and Cultural Rights, ICJ- March 1998, paper presented by Ssekandi, F.M. entitle: "Relevance and Applicability of Governance Issues in Borrowing member States of the African Development Bank".

8 see. Ubuntu and the law in South Africa by Justice Yvonne Mokgoro 4 Buff. Hum. Rts. L. Rev.15

9 Statement by Mark Malloch Brown, UNDP Administrator, in AFP Report of 11 August 2000

⁴ Milton Friedman is quoted as having admitted in 2001 that his prescription for development "privatize, privatize, privatize" was wrong, that is not enough. "It turns out, that the Rule of Law is probably more basic than privatization. Privatization is meaningless if you don't have the rule of law", he said. Actually privatization is stealing, if you do not have the rule of law. See Investors Daily (A18) of Tuesday, July 9, 2002. See also: "Economic Freedom of the World", published by "Economic Freedom Network." Its author Robert Lawson has said: "If you asked me 10 years ago, when I started this project, what's the most important thing when it comes to economic freedom, I probably would have said taxes. My answer to-day would not be taxes. Giving people property rights and the ability to settle disputes peacefully and fairly, that is the No.1 thing that matters.