



PUBLIC PROTECTOR  
SOUTH AFRICA

**THE CONSULTATION MEETING FOR THE SUB-REGION MEDIATORS IS TO BE HELD FROM 26 TO 27 JULY 2016 IN LIBREVILLE**

**SESSION 2: MANAGING SOCIAL TENSIONS RELATED TO ISSUES OF ECONOMIC AND SOCIAL DEVELOPMENT, WHAT ROLE FOR MEDIATORS?**

**OBJECTIVE: TO REVIEW PROGRESS MADE IN MEDIATION ON SOCIOECONOMIC ISSUES AND OBSTACLES FACING THE MEDIATORS AND EFFORTS TO IMPROVE THEIR CONTRIBUTION TO THE REGULATION OF TENSIONS RELATED TO ECONOMIC GOVERNANCE. IT WILL ALSO IDENTIFY STRATEGIES TO STRENGTHEN THE ROLE OF THE MEDIATOR ON SOCIAL AND ECONOMIC ISSUES.**

# AFRICA'S POPULATION

IS PROJECTED TO *GROW* FROM 1BN IN 2010 TO 3.5BN IN 2100

EGYPT HAS  $\frac{1}{4}$  OF THE ENTIRE CONTINENT'S ARMED FORCES BY MANPOWER

EACH WOMAN IN NIGER GIVES BIRTH TO 7 CHILDREN ON AVERAGE IN HER LIFETIME



$\frac{1}{8}$  Of Africa's electricity is lost in transmission and distribution

**CHAD:** THE COST OF *RESOLVING* INSOLVENCY IS 60% OF THE ESTATE

**60M** TOURISTS VISITED AFRICAN COUNTRIES IN 2011



72,396 NEW BUSINESSES WERE REGISTERED IN NIGERIA IN 2011



THE CENTRAL AFRICAN REPUBLIC SPENT \$18 PER PERSON ON HEALTH IN 2011

IN ETHIOPIA, ONLY 7% OF BIRTHS ARE REGISTERED

**KENYA** RECEIVED \$934M IN REMITTANCES (2011)



AFRICA'S MOST URBANISED COUNTRY IS GABON, AT 86%

IN 2010, THE DRC SPENT JUST \$18 PER PRIMARY SCHOOL PUPIL



ANGOLA'S food production **doubled** from 2000-2011



NO AFRICAN COUNTRY COUNTS A MANUFACTURED PRODUCT AMONG ITS TOP 3 EXPORTS

BETWEEN 2005 AND 2012 THE NUMBER OF LANDLINE TELEPHONES PER PERSON DECLINED, WHILE MOBILE PHONE PENETRATION INCREASED ALMOST FIVE-FOLD



Real GDP per capita in BOTSWANA became over 18 times greater from 1960 to 2011



39% OF MOZAMBIQUE'S MPs ARE WOMEN

MADAGASCAR, 2010: 81% LIVE IN EXTREME POVERTY



18 OUT OF AFRICA'S 20 LARGEST COMPANIES ARE SOUTH AFRICAN



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## **2. INTRODUCTION**

Democracy again took centre stage in Africa's political life in 2012. After the fall of autocratic rulers in Egypt, Libya and Tunisia in the latest wave of democratic transitions that have swept the continent since the 1990s, all African countries – except Somalia and Eritrea – can now choose their governments through a vote. Yet democratic consolidation remains fragile. Elections are essential, but more is needed to build strong democratic roots and institutions.

African policy makers increasingly acknowledge the need for “quality” economic growth. According to the IMF economic activity in sub-Saharan Africa in 2015 slumped to its lowest level in some 15 years. Output expanded by 3.4 percent, just a little above population growth, down from 5 percent in 2014 and the still higher growth rates that was customary in recent years.

The slow average growth rate (5%) of the annual gross domestic product (GDP) for the past decade has not created enough jobs for the young Africans coming on to labour markets and the pace of poverty reduction in most countries is falling short of the original Millennium Development Goals (now Sustainable Development Goals)

Experts have noted that the protests in North Africa focused mainly on political reforms, followed by government harassment and unemployment. Over 50% of protests in sub-Saharan Africa were primarily to demand wage increases or complain about the cost of living. Better political representation and government harassment came second.

## **3. GOOD GOVERNANCE AS AN ESSENTIAL CONDITION FOR THE ADVANCEMENT OF SUSTAINABLE DEVELOPMENT AND DEMOCRACY**

Institutions such as the Commonwealth Secretariat view governance as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. From the literature on the subject and practices in other democracies good governance has been identified as an essential condition for the advancement of sustainable development and democracy, and as a fundamental right of all people.

Good governance is based on the following principles or pillars, which together form the foundation for creating sustainable public value:

- **Constitutional compliance and the rule of law**
- **Participation**
- **Accountability**
- **Checks and balances that include constrained and diffused power**
- **Transparency, backed by freedom of the media**
- **Equality and inclusiveness**
- **Attention to human development**
- **Integrity with no tolerance of corruption in dealing with state resources.**

Each of these principles is linked and mutually reinforcing. For example, without transparency it is unlikely that citizens can fully participate, hold officials to account or operate within the rule of law. Similarly, accountability is related to participation, and is the “ultimate safeguard of predictability and transparency”. If the system lacks capacity, the ability to deliver in any of the other areas is severely compromised.

Good governance is a fundamental requirement for a nation’s progress and general well-being, be it a poor, an emerging or a developed country, regardless of the level of social and economic development. Corruption, which undermines development, is generally an outcome or a symptom of poor governance and, thus, countries are encouraged to develop national strategies to promote good governance and eliminate corruption.

These strategies require strong political will at the highest level of governments if they are to succeed. Promoting good governance cannot be externally imposed: they must be internally driven, championed and owned, based on the specific concerns and circumstances of each country. National governance strategies in every country need to be comprehensive in bringing about transparency and accountability in all sectors by empowering and strengthening all the key institutions involved in ensuring good governance and combating corruption. Countries’ efforts should therefore be

geared towards the establishment and the strengthening of oversight institutions that will create transparency in official transactions.

**The Rule of law** is described by some experts as the exercise of state power using, and guided by, published written standards that embody widely-supported social values, avoid particularism, and enjoy broad-based public support

Ironically, Rule of law does not mean under the rule of law because any state, even corrupt and repressive regimes can after all, can legislate at will and enact laws. Genuine Rule of law, by contrast, requires harmony between the state and society, and is an *outcome* of complex and deeply rooted social processes. Wrongdoers face not only legal penalties, *but also social sanctions such as criticism in the news media, popular disapproval, and punishments from professional and trade associations*. An approach that relies solely upon detection and punishment may work for a time, but will do little to integrate laws and policies with social values, or to create broader and deeper support for the system.<sup>1</sup>

**Transparency** means that official business conducted in such a way that substantive and procedural information is available to, and broadly understandable by, people and groups in society, subject to reasonable limits protecting security and privacy

Michael Johnston of the Department of Political Science, Colgate University put it in simple terms that a transparent government makes it clear what is being done, how and why actions take place, who is involved, and by what standards decisions are made. Then, it demonstrates that it has abided by those standards.

**Accountability** refers to the obligation to provide an explanation or justification, and accept responsibility for individual and institutional events or transaction and for individuals and institutional actions in relation to events or transactions.<sup>2</sup> It is fundamental to the democratic system of governance that those, to whom powers and responsibilities are given, exercise them in the public interest justifiably and according to the law, and more importantly, are answerable to the public for the actions of government.

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<sup>1</sup> **Good Governance: Rule of Law, Transparency, and Accountability**, by Michael Johnston Department of Political Science, Colgate University

<sup>2</sup> *Strengthening the governance structures in order to enhance transparency, accountability and oversight in the public sector* 2011 APAC Conference: 1st and 4th of October 2011 in Northern Cape.

Experts also agree that accountability is partly a matter of institutional design: formal checks and balances can and should be built into any constitutional architecture. But accountability requires political energy too: people, interest groups, civil society, the courts, the press, and opposition parties must insist that those who govern follow legitimate mandates and explain their actions. The same is true *within* governments.

From a philosophical point of view, “democracy” is based on the premise that those elected to form a government shall govern “*so long as they can protect the interest of the people or the trust the people have placed in them*”<sup>3</sup> This is how the concepts of democracy, rule by consent, and good governance came into existence in the theory and practice of government.

In a **Constitutional democracy**, the framework of Constitution and law exemplifies essential elements of good governance and accountability by, inter alia -

- a) Prescribing the powers of government and the procedure of exercising powers.
- b) Ensuring equal treatment and equal protection of law.
- c) Guaranteeing protection against arbitrariness of government and excess of administrative powers.
- d) Creating accountability mechanisms for the exercise of powers and formulation of policies to the people/ representatives of the people
- e) Ensuring procedural transparency of exercising all administrative powers.
- f) Providing remedies against any kind of mal-administration and injustice done to the aggrieved citizens, as well as institutional mechanisms to redress grievances.

#### **4. ON THE RELATIONSHIP BETWEEN DEMOCRACY, GOOD GOVERNANCE AND ACCOUNTABILITY**

Professor, A.T.M. Obaidullah, of the Department of Public Administration University of Rajshahi, Bangladesh stated that “bad governance” occurs when government, whatever its form, cannot protect life, liberty and property of citizens, and human dignity, which the state is meant for. “Democracy”, in his view “*is a system of government, which vows to guarantee these cherished objectives of the citizens and*

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<sup>3</sup> G. Sabine, *History of Political Theory*, NY: Holt, Rineheart & Winston, 1961, p. 94

*can ensure good governance*". In a democratic system of government, the Rule of law, accountability, transparency, human rights and dignity constitute the inputs, geared to producing what Professor Obaidullah describes as the *cherished output* - 'Good Governance', which "*find its proper manifestations through the institutional mechanisms of representative legislature, ombudsman, impartial and accessible judiciary, and also impartial and free press*".<sup>4</sup>

Even in a democratic system, public liberties may be jeopardized *if excess of power is indulged in and administration is allowed to operate under the veil of secrecy.*" For democratic government to be capable of attaining the objectives of good governance, a constant control, both political (parliament) and legal (the courts), are imposed on the functionaries of the government. Political control (is exercised by and legal control by.

But the traditional democratic avenues of accountability -both in respect of ensuring accountability, and providing remedies to the aggrieved persons commensurable to the volume of irregularities - have become increasingly inadequate with the growth of state activity, expansion of government bureaucracy and the points of contact between citizen and the state. To keep up with the pace of citizens' needs and to ensure fair play and good administration, the institution of the Ombudsman emerged - first in the Scandinavian countries in 19th century and later, in the United Kingdom, New Zealand and in other countries in the second half of the twentieth century.

The Ombudsman as a control mechanism aims at restricting administrative excess and ensuring fair play in the exercise of administrative powers. Usually he<sup>1</sup> has the power to investigate, criticize, and publicize administrative actions, but cannot reverse them"<sup>2</sup>. He is an independent and impartial arbiter between government and

## **5. CHANCES OF OMBUDSMEN TO INCREASE ACCOUNTABILITY IN AFRICA**

Former President Nelson Mandela explained the thinking behind the creation of the Public Protector to the Africa Regional Workshop of the International Ombudsman Institution in 1996, as follows:

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<sup>4</sup> *Democracy And Good Governance. The Role Of Ombudsman. A.T.M. Obaidullah . The UN Charter states, (Article 101)*

"We were mindful from the very start of the importance of accountability to democracy. Our experience had made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our Constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution.

Public awareness and participation in maintaining efficiency in government within the context of human rights are vital to making a reality of democracy.

There is general consensus amongst Ombudsman institutions that office of the **Ombudsman** is not only a permanent fixture on the administrative law landscape, but **a fundamentally important part of the network of accountability agencies that play a vital role in maintaining and promoting the integrity of Government and the public service** – the Ombudsman has become recognised as a central pillar in this integrity framework.

## 6. AOMA

At the Technical Meeting on the *African Governance Architecture*, 15th to 17th March 2010 (Banjul, the Gambia), Mr. Chrysantus Ayangafac (Political Affairs, AU Commission) through a presentation, introduced the *African Governance Architecture* as the overall political and institutional framework for the promotion of governance in Africa.

A significant focus of the partnership with the AU centres around the AU shared values as those ideals, norms, standards and practices that are reflected in the legal and political instruments of the AU and found in the common and individual actions of the AU members.

During our recent engagement with the AU during the Good Governance Summit it was reiterated that despite the existence of norms, values and standards, the biggest challenges for the AU relates to implementation. There is consensus that while the mandate of AOMA is different, subscription to all AU values will assist Ombudsmen and Mediators to perform their functions effectively.

As AOMA cannot ratify and domesticate AU legal and Political instruments, its contribution will have to be focussed on monitoring of compliance, including by means of reports to Parliament to bring a perspective from the level of the AU Governance Platform.

AOMA is already part of the AU Governance Platform and Structure. 4 of the 5 clusters converted in the Platform fall within the mandates of AOMA members:

- a. Protection of Rights
- b. Anti- corruption
- c. Administrative Justice,
- d. Rule of Law and Constitutional Order

Apart from monitoring compliance, AOMA members also contribute directly to the promotion of governance norms and standards in these clusters, as well as to the popularisation of these values.

## **7. PRIVATE SECTOR**

"While all these are important, it is critical to mention that it should not be left to the state to ensure good governance. It must also be understood that development should be the pursuit of everyone with the state primarily acting as an enabler and regulator. However, as a developmental state our state must directly engage in the delivery of basic needs such as water, health, education, infrastructure and to a limited extent, housing."

I am a strong believer that good governance requires an engaged citizenry and an engaged public sector.

*Worldwide there is increasing recognition that citizen involvement is critical for enhancing democratic governance, improving service delivery, and fostering empowerment. "Demand for Good Governance" (DFGG) refers to the ability of citizens, civil society organizations and other non-state actors to hold the state accountable and make it responsive to their needs. DFGG encompasses initiatives that focus on citizens as the ultimate stakeholders and include activities relating to - information disclosure, demystification and dissemination; beneficiary/user participation and consultation; complaints handling*

Civil society ought to play a greater role in bringing pressure to bear on governments and sectoral organizations to allow for and encourage the establishment of ombudsmen. The active participation of civil society in this effort would help to ensure that the protection of civil and human rights remains the focus of the ombudsmen's work, thereby enhancing the moral authority underpinning his or her office.

Citizen and human rights groups should work diligently to ensure that ombudsmen offices are established autonomously, owing no allegiance to any other organizations or authorities than citizenries. Furthermore, ombudsmen offices should be established in non-profit or charity-based contexts that allow them to be financially self-sustaining.

An ombudsman can only represent the people in a genuinely autonomous manner if he or she owes nothing to the government or any societal sector that he or she is intended to monitor. Citizen and human rights groups should work to ensure that nominations of ombudsmen are not achieved through political compromise since this would undermine their autonomy. Efforts should be made to ensure that ombudsmen are established at all levels of government and society.

This is particularly applicable in diverse societies and decentralized political systems, and will enhance citizens' ability to ensure that their rights are protected against unfair government policies and decisions.

The establishment of ombudsmen at all levels of society means sector-specific ombudsmen, such as those in labor unions, education, and law enforcement, among others. Prior to passing legislation creating an ombudsman office, it is necessary to define its specific functions and competencies relative to those of officers of the mainstream judiciary. - See more at: <http://www.wmd.org/assemblies/second-assembly/reports/topical-workshops/role-ombudsmen-securing-transitional-justice#sthash.CWulavAf.dpuf>

## **8. KEY FACTORS THAT SEEM TO CONTRIBUTE TO GOVERNANCE FAILURE INCLUDE THE FOLLOWING:**

Governance failures include "inadequate connect between those that govern and the power givers" with the problem being (in the case of for example the e-toll debacle)

communication. "Government says it consulted and the people say it didn't. The truth is they are both right. There was consultation but it was not specific". Others are poor planning, corruption, leadership and skills deficit, and a fragmented state resulting in "left-behind" communities.

**1. Inadequate or distorted accountability to shareholders/citizens with an increasing trust deficit**

Part of the problem lies in failure to appreciate, internalise and institutionalise the values underpinning a constitutional democracy, including human dignity, the achievement of equality, freedom and constitutional supremacy.

**2. Inadequate skills, knowledge and values**

**3. Inadequacies in the regulatory framework particularly at enterprise or organisational levels**

**4. Poor or inconsistent enforcement mechanisms**

**5. Lapses in leadership and leadership ethics or integrity**

Conflict of interest has become a major issue whether we are designing policies, enforcing policies or executing core business processes. When the decision-maker finds himself or herself serving two masters something Personal interests are not only financial, they may include political has to give.

The interests of the organisation and shareholders or citizens are more often than not abandoned in favour of personal interests. Personal interests transcend financial interests.

**6. An Animal Farm leadership Ethos instead of Batho Pele Ethos**

In this setting, the people are liberated and they choose to have a few among them to manage resources on their behalf and regulate their lives instead of a situation whereby everyone does as they please. As in the book, Animal Farm, those chosen to manage the affairs of the people and regulate their lives, start dedicating resources to their own comfort instead of the people. When asked why, they say "*we are eating for you.*"

## **7. Emerging culture of lack of respect for the rule of law**

Annual Conference of the Black Management Forum, 2013 Professor Heinz Klug referred to what he called “*declining legal continuity*”.

This is when the interpretation of laws is overtaken by expediency and not public or organisational interest. The rule of law also requires that no one is above the law. But in organisations and the state we often confront a culture of some are more equal than others. Not knowing the law is a problem too

## **8. Power mongering and endless power struggles, often exacerbated by external influences**

Power struggles within organisations are counter-productive and compromises governance in a sense that tend to people sabotage one another because they do not to see their boss or colleagues shine.

## **9. A fragmented integrity sector that does not operate seamlessly**

## **9. UNRESOLVED**

### **Levels of tolerance.**

What can we do to improve good governance? Among other things, business can:

1. Refrain from offering or agreeing to provide bribes or other forms of gratification;
2. Refuse to form part of cartels and report invitations to participate in such, including illicitly sharing tenders ( I'll scratch your back if you scratch mine and price fixing;
3. Refrain from using power and connections to influence the issuing of unnecessary tenders or getting tenders they do not qualify for
4. Operate ethically taking into account the need for sustainability, including knowing that having Islands of affluence in a sea of poverty is not a sustainable approach to business.

A huge part of the human element that is critical for promoting good governance involves the values of the community within which we seek to fight corruption. In my view there are three dimensions to the human element. These are the values of each individual, community values and political will at all levels of leadership. It is particularly important that the community's understanding of corruption and consensus on what is inappropriate

## **10. TAKING GOOD GOVERNANCE TO NEXT LEVEL**

In this regard, it is essential that a group of democratic states establish a coalition to monitor the level of democratization. Either within a sub-regional or continental framework, such axis of democratic states should also be at the forefront of applying sanctions to undemocratic regimes. Such effort should complement already existing frameworks at the sub-regional and continental levels aimed at enhancing governance.

These include the African Peer Review Mechanism (APRM), New Partnership for Africa's Development (NEPAD) and the African Charter on Democracy, Elections and Governance (ACDEG).

## **11. CONCLUSION**

*Good governance involves far more than the power of the state or the strength of political will. The rule of law, transparency, and accountability are not merely technical question of administrative procedure or institutional design. They are outcomes of democratizing processes driven not only by committed leadership, but also by the participation of, and contention among, groups and interests in society—processes that are most effective when sustained and restrained by legitimate, effective institutions.*<sup>5</sup>

The reality though is that ending corruption in our societies and our continent lies in our own hands. It is our countries, our people and our continent that are victims of the underdevelopment that is caused by corruption and our people that suffer poverty and other preventable maladies as a consequence. We cannot deny that

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<sup>5</sup> **Good Governance: Rule of Law, Transparency, and Accountability**, by Michael Johnston Department of Political Science, Colgate University

corruption is behind a lot of the underdevelopment in our countries and continent. It causes, among others, poor quality goods and services, lack of efficiency, excessive costs, and ineffective public programmes. Corruption basically destabilises societies. In many instances corruption also endangers the security of our states.

Thank you

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