

**THE PROMOTION OF GOOD  
GOVERNANCE AND  
DEMOCRACY  
IN THE CONTEXT OF  
REGIONAL INTEGRATION IN  
AFRICA**

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Dissertation presented for the approval of Senate in part fulfilment of the requirements of the LL.M degree in Commercial Law in approved courses and minor dissertation. The other part of the requirements for this qualification is the completion of a programme of courses.

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July 2011



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I hereby declare that I have read and understood the regulations governing the submission of LL.M dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

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Patrick Rwinkoko

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Date

## **DEDICATION**

This dissertation is dedicated to my wife Uwambayingabire Claudine and my sons Muganwa R. Lionel and Mugabe R. Ariel.

You are priceless.

## **ACKNOWLEDGEMENTS**

This dissertation was not just a requirement to finish my Master's degree in Commercial Law at the University of Cape Town; it represents a personal achievement for me to finally contribute something significant to the study of my continent.

There are many people that I owe a great deal of gratitude for having helped me to complete my programme and my dissertation, successfully! First and foremost, I am most grateful to Professor Evance KALULA who supervised this research. His knowledge, guidance and friendship have been invaluable. His comments and advices helped me to reflect on my work and to adapt it in order to enhance its quality.

My studies at the University of Cape Town would not have been possible without the scholarship awarded to me by the Students Financing Agency of Rwanda (SFAR).

On a personal note, I would be remiss not to acknowledge the support and caring of my brothers and sisters during the period of my studies.

Finally, both my wife and my sons have always been understanding and encouraging of my academic pursuits. It is for their respect and pride that I will continue to work hard. All of my future success is owed to their unwavering love and support. I am lucky to have people in my life who readily share the burdens of my successes and my failures.

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## **LIST OF ABBREVIATION AND ACRONYMS**

AEC: African Economic Community  
AfDB : African Development Bank  
APRM: African Peer Review Mechanisms  
AU: African Union  
AUC: African Union Commission  
CEWS: Continental Early Warning System  
COMAIs: Conferences of African Ministers in Charge Integration  
DRC: Democratic Republic of Congo  
EU: European Union  
FY: Former Yugoslavia  
GDP: Gross Domestic Product  
GNP: Growth National Product  
ICT: Information Communication Technology  
IFI s: International Financial Institutions  
IMF : International Monetary Fund  
MIP: Minimum Integration Programme  
NEPAD: New Partnership for African Development  
NGOs: Non- Governmental Organisations  
OAU: Organisation of African Unity  
OECD: Organisation for Economic Cooperation and Development  
PSC: Peace and Security Council  
RECs: Regional Economic Communities  
SADF: South African Defense Forces  
SAP : Structural Adjustment Programmes  
SIGA: Special Initiative on Governance in Africa  
UN: United Nations  
UNDP: United Nations Development programme  
UNECA: United Nations Economic Commission for Africa  
USA: United States of America  
USAID: United States Agency for International Development  
WB: World Bank

## ABSTRACT

Africa is one of the continents of the world that has embraced the democratisation process. In the last century when the rest of the world moved towards democracy and development, Africa remained a predominantly military or semi military-controlled continent ruled mostly by non-democratic and dictatorial governments.

The formation of the Organisation for (OAU), now the African Union (AU) was the first step towards promoting continental unity. The adoption of the Constitutive Act was a decisive step, showing that African states were not only conveniently changing the name of their continental organization, but indeed giving it a radically new vision and mission, and a set of clearly defined objectives and responsibilities.

Some of the AU objectives are to accelerate the political and socio-economic integration of the continent, promote peace, security, and stability on the continent and the respect for democratic principles, human rights, the rule of law and good governance. These led to the creation of different Regional Economic Communities (RECs) as role players in the process of the unification of the continent, but more particularly the way of promoting principles of good governance and democracy and the respect of the rule of law.

If the rule of law is a universal principle, then supporting the rule of law is not necessarily imposing foreign ideas on a society. The challenge is to find ways in which a society may govern itself under the rule of law, using an approach that reflects the values and norms of that society.

## Chapter I

### INTRODUCTION

#### 1. Statement of the problem

Africa is one of the continents of the world that has embraced the democratisation process. In the last century when the rest of the world moved towards democracy and development, Africa remained a predominantly military or semi-military controlled continent ruled mostly by non-democratic and dictatorial governments. The effect of autocratic government in the continent is poverty.<sup>1</sup>

The quality of life for most African people appears to have either regressed or improved depending on the case. In the early 1960's soon after independence, the leaders settled down to rule their people as though they were inheritors of the former colonial authority. The leaders separated themselves from the suffering people they were fighting for, engaged themselves in self aggrandizement and most of them have become insensitive to the desires of their people for basic economic and social facilities.<sup>2</sup>

For this reason, most African people live below the poverty line<sup>3</sup> with little or no food, shelter, medical and educational facilities.<sup>4</sup> In each case, the oppressive conditions in which they lived led these people to evolve gradually into a class of discontented citizens desperate for change. In almost all cases, the military provided the answer by way of a *coup d'état* that deposed these political overlords. Usually, such military governments professed to have come in as corrective regimes that would stay for only brief periods within which they would put things in order before handing over to duly elected democratic governments. The so-called 'remedial regimes' knew in advance that the best way of leading others could come from election. The electoral process is

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<sup>1</sup> M L Seymour and J Lakin *The Democratic Century* (2004) 23.

<sup>2</sup> E E Emome 'Democratic Governance and Development in Africa: Challenges of African Union' (2007) 14:3 *Journal of Social Sciences*, 205 at 206.

<sup>3</sup> The international poverty line was originally set to roughly \$1 a day.

<sup>4</sup> Supra note 1.

considered as one of the key roles for good governance. However, as ‘absolute power corrupts absolutely’<sup>5</sup>, these military governments often ended up establishing themselves in power. In fact, most of them demonstrated all the traits of the much vilified early leaders and even more.<sup>6</sup>

To correct this, some civilians or military backed by civilians resorted to rebellion which in most cases led to a protracted civil war. This was the case in countries such as Sierra –Leone; Burundi; Liberia; Rwanda with its consequences of Tutsi genocide; Sudan with the separation of the south from the north through referendum; DRC with the different group of militia in the east and Somalia which is still a failed state.

Civil wars in Africa have killed a lot of people, depriving the continent of critical human resources. These wars have led to famine, the abandonment of the education sector because of the insecurity, and in some cases school facilities are destroyed or converted into military use. Young adults or children are forced to join the army either on the side of the government or that of the rebels.<sup>7</sup> Military spending is so high that in some countries, the military budget tops the list of government priorities and there is evidence that African leaders either borrow huge sums of money or use foreign development assistance to finance domestic wars.<sup>8</sup> Civil wars in Africa undermine the continent’s productive capacity, destroy or severely weaken social structures, distort economic policy, pollute the value-systems of the people and perpetuate poverty.<sup>9</sup> To overcome all these problems, African leaders decided to revamp the Organisation of African Unity (OAU) (resulting in it being renamed the African Union (AU)) so as to promote greater unity among Africans and the respect for democratic principles and the rule of law as the basic values of good governance.

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<sup>5</sup> Supra note 2.

<sup>6</sup> A E Ikpi ‘Democratic Governance and Development in 21st Century West Africa’, in J. K. Olayemi and A E Ikpi (eds.) *Governance and Development in West Africa: Perspective for the 21 Century*. Arlington: Winrock International (1997) 18.

<sup>7</sup> Supra note 1.

<sup>8</sup> Ibid.

<sup>9</sup> J Elu ‘Human Development in Sub-Saharan Africa Analysis and Prospects for the Future’ (2000) XVII: 2 *Journal of Third World Studies*, 60.

## 2. Objects and purpose of the research

The objective of this thesis is to explore and analyse if good governance and democracy through regionalism are the effective mechanisms for achieving sustainable human development. It is well known that this continent has abundant natural resources but remains the poorest continent in the world. The foregoing discussion thus leads to the following overarching research question: 'Does regional integration contribute to the promotion of good governance and democracy in Africa?' The following sub-questions, which will be addressed in this thesis, will serve to answer this research question:

- What constitutes good governance and democracy in international and African context?
- What do we need to improve the quality of welfare of the African citizens?
- Can Regional Economic Communities (REC's) help enhance democracy and good governance among the member-states?
- Can good governance and democracy exist where there is no rule of law?

The intention of doing this research is based on the promotion of welfare of the all Africans. The same idea goes with the promotion of democracy in the continent as it is enshrined in the AU's objectives. Some of the AU objectives are to accelerate the political and socio-economic integration within the continent,<sup>10</sup> promote peace, security, and stability on the continent<sup>11</sup> and the respect for democratic principles, human rights, the rule of law and good governance.<sup>12</sup> These led to the creation of different RECs as role players in the process of the unification of the continent, but more particularly the way of promoting principles of democracy and good governance and the respect of the rule of law principle. Thus, some countries have emulated other member-states in the same community in terms of good governance and respect of the rule of law. Others are cooperating in the process of peace and security through the regional Interpol and standby brigades. However, a lot remains to be done in all these processes.

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<sup>10</sup> Article 3(c) of the Constitutive Act.

<sup>11</sup> Ibid, Article 3(f).

<sup>12</sup> Ibid, Article 4(m).

### **3. Chapter Synopsis**

Apart from the introduction and conclusion, this dissertation has three main chapters. The first chapter deals with the research question. The second part deals with the conceptual framework for good governance and democracy. It discusses the linkages and challenges between democracy, governance and economic development. The third chapter examines the role played by the RECs in promoting good governance through AU peace and Security Council, the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM). The fourth chapter deals with the foundation of the rule of law and not the rule by law in the context of good governance and democracy. It analyses the essential elements of the rule of law and justice institutions and actors in the process of good governance. The sub-questions are answered in part by means researching existing source materials. This research is composed of a literature study covering mainly books, reports, journals, laws and other materials related to good governance and democracy and the rule of law. In this regard, the research question is answered through an analytical process where the rulers have to face and accept criticism if they seek support in case of a democratic elections.

## Chapter II:

### THE CONCEPTUAL FRAMEWORK FOR GOOD GOVERNANCE AND DEMOCRACY IN AFRICA

#### 1. Definitions

The terms, democratisation, democracy and governance have become universal phrases used by the supporters of good governance especially to describe the tendencies of current political developments in third world countries. However, what exactly do these terms mean? Do they fully capture what we seek to describe or analyse? And what is the synergy between these concepts?

Democratisation is a process through which the institutional infrastructure relevant to the construction of a democratic polity is established (such as parliament, impartial judiciary, electoral institutions and police, independent media etc.); civil liberties are codified and guaranteed; the rule of law suffices; and a process of constitutionalism is established.<sup>13</sup> It involves the creation and expansion of the political space for multiple actors to interact, negotiate, compete and seek self-realisation within set and permissible rules.<sup>14</sup> It is not a once-off event, but a continuous process through which democracy evolves. Democratisation is a uni-linear process, but one that is relative, incremental and variegated.<sup>15</sup> Though, the end product is to establish a democratic order for all.

While the concept of democracy has been largely appropriated in the literature as a synonym for liberal democracy, the latter is not the only form of democracy possible; neither does it

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<sup>13</sup> S Adejumobi 'Africa and the Challenges of Democracy and Good Governance in the 21<sup>st</sup> Century' Addis Ababa (2000) 19.

<sup>14</sup> *Ibid.*

<sup>15</sup> E E Osaghae 'Democracy and National Cohesion in Multiethnic African States: Nigeria and South Africa Compared', *Nations and Nationalism*, (1999a) 5:2 259 at 267.

appropriate the concept of democracy in its classical sense.<sup>16</sup> There are social, socialist and liberal democracies. Although liberal democracy is related to the concept of democracy, they do not mean the same thing. Democracy is the concept of classical sense. It is a concept that is unusually defined. It simply denotes popular power. It is not about delegated authority, or representative governance, but about popular expression of power by the people.<sup>17</sup> Liberal democracy on the other hand is about government by the consent of the people. Hence, it is a political system in which there is the choice of political leaders by the people through competitive elections, a guarantee of expressive civil and political rights, the rule of law and public accountability.<sup>18</sup> Although liberal democracy shares some affinities with the concept of democracy like the notion of formal political equity, rule of law, they are, nevertheless, markedly different. Ake contents that:

‘Instead of collectivity, liberal democracy focuses on the individual whose claims are ultimately placed above those of the collectivity. It replaces government by the people with the government by the consent of the people. Instead of sovereignty of people, it offers the sovereignty of law. In the final analysis, liberal democracy repudiates popular power.’<sup>19</sup>

Connecting liberal democracy with democracy in the classical sense is to devalue and trivialise the concept of democracy. While democracy in its traditional sense seeks the realisation of human potentialities through active participation in rulership, liberal democracy offers only protection. In the former, freedom is positive and activist while in the latter, is a passive acceptance of immunity. The former enables and empowers; the latter prevents and protects.<sup>20</sup>

The parallel of liberal democracy with democracy has been a logical outgrowth of the nature of the historical developments in Western societies in which private property and market society were created, accentuated by the dynamics of industrial and technological revolution.<sup>21</sup> The challenge for a fledgling market economy and society was to engineer a political infrastructure

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<sup>16</sup> Ibid.

<sup>17</sup> C Ake ‘The Feasibility of Democracy in Africa’ CODESRIA (2000) 7.

<sup>18</sup> M. Bratton and N. Van de Walle *Democratic Experience in Africa* (1997) 89.

<sup>19</sup> Supra note 16 at 10.

<sup>20</sup> Ibid 14.

<sup>21</sup> Supra note 17.

and mode of polity that will service and protect the base of society—the economy. As such, most of the literature on democratic theory supports the compatibility of liberal democracy, with a market economy. As Ake pointed out, the values of the market are the same core values of liberal democracy: egoism, property, formal freedom and equality; both also share faith and commitment to limited government.<sup>22</sup>

The synergy between a market economy and liberal democracy has been well played out in the current drive for democratisation in Africa. The emphasis as propagated by the international community (donor nations, international organisations like the World Bank (WB) and the International Monetary Fund (IMF) is that there is no substitute to a free market economy and liberal democracy.<sup>23</sup> Both must go hand in hand. This is the basis of the Structural Adjustment Programme (SAP) and supports the democratic reforms as a siamese project in Africa. What many African countries are therefore trying to achieve with the current processes of democratization, is liberal democracy, a prototype of Western political economy instead of democracy in classical sense.<sup>24</sup>

Liberal democracy as a political practice has institutional, procedural and behavioural dimensions. The institutional dimension involves a complex network of institutional mechanisms that includes the executive, the legislative and the judiciary.<sup>25</sup> The procedural dimension involves adherence to rules, procedure and norms of democratic practices—rule of law, due process, electoral processes, and constitutionalism etc.<sup>26</sup> The behavioural dimension is the attitudinal disposition supportive of democracy.<sup>27</sup> This is the social capital of democracy that involves what Larry Diamond calls shared norms of political trust, tolerance, willingness to compromise, belief in democratic legitimacy, loyal opposition etc.<sup>28</sup>

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<sup>22</sup> Supra note 16 at 23.

<sup>23</sup> Ibid.

<sup>24</sup> Supra note 17.

<sup>25</sup> L J Diamond *Prospect for Democratic Development in Africa* (1997) xvii-xviii.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

The functional elements of liberal democracy are those operational variables through which democracy subsists. These include: a functional state that is able to regulate conduct, set rules and create strong institutions; a political society that is well organized to conduct the business of political power; a civil society with a mosaic network of interests and pressure group politics; a usable bureaucracy that is able to deliver public goods and; an economic society with a virile private sector that is able to facilitate the increase of capitalism, production and the economy.<sup>29</sup>

Similarly, the concept of governance, like democracy, is also a contested one. As Jon Pierre and Guy Peters observed it, is a concept that is notoriously slippery, frequently used by social scientists and practitioners without a concise definition.<sup>30</sup> However, the range of definitions that have surfaced on governance can be subsumed into two broad categories. On the one hand are those who view governance in a technical sense.<sup>31</sup> In this case, the concept borrows directly from its usage in the corporate world. It implies the efficient management of state institutions. Issues of public accountability, transparency in government procedure, rule of law and public sector management procedures are emphasized. This is the restricted view of governance adopted by the World Bank.<sup>32</sup> The essence of this governance approach is to control the state and its institutions for economic purposes. As Gerry Stoker noted, 'governance is the acceptable face of spending cuts'.<sup>33</sup>

Conversely, the second conceptual perspective to governance is a holistic one that exceeds the state and its institutions. Governance is seen as the process steering state and society towards the realisation of collective goals.<sup>34</sup> It points to the dynamic but problematic and often times contradictory relationship between the state and society. In this vein, a meeting of experts convened by the United Nations Economic Commission for Africa (UNECA) defines governance as a process of social commitment between the rulers and the ruled in a political

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<sup>29</sup> JJ Linz and A Stephan *Problems of Democratic Transition and Consolidation – Southern Europe, South America and Post-Communist Europe* (1997) 17.

<sup>30</sup> BG Peters & P Jon 'Is there a governance theory? Draft paper presented at the IPSA conference in Quebec' (August 1-5, 2000) 53.

<sup>31</sup> Ibid.

<sup>32</sup> Supra note 17 at 90.

<sup>33</sup> G Stoker *Public-Private Partnerships and Urban Governance* In J Pierre (ed.), *Partnerships in Urban Governance: European and American Experience* (1998) 39.

<sup>34</sup> Supra note 29 at 54.

society.<sup>35</sup> Its components include rule making and standard setting, management of regime structures with outcome as results of the social pact.<sup>36</sup> The United Nations Development Programme (UNDP) views governance as:

‘the totality of the exercise of authority in the management of a country’s affair’s comprising of the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights and mediate their differences. It encompasses the political, economic, legal, judicial, social and administrative authority and therefore includes; government, the private sector and the civil society.’<sup>37</sup>

While there are variations in this holistic conception of governance, there is compromise on the major actors or agency of the governance project. There are the state, the civil society and the private sector. The state, though under enormous attack in the regime of market economy, remains a major actor in the governance agenda.

The latter conception of governance, though broader, is not unproblematic. It also has an economic connotation, in which the private sector is deliberately emphasised. The essence is to promote and reinforce a market economy.<sup>38</sup> The rural population that constitutes the bulk of Africa’s population does not feature clearly in this conception of governance, whereas the civil society that is basically urban biased and the private sector that is small and limited in Africa, are prioritised. Governance in the present conjuncture is essentially a ‘post strong state’ market driven phenomenon.<sup>39</sup>

Good governance flows logically from the concept of governance. According to Mohideen, governance becomes ‘good’ when it operates in accordance with legal and ethical principles as conceived by a well-defined society.<sup>40</sup> In other words, good governance is a normative concept

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<sup>35</sup> UNECA Economic Commission for Africa and Africa: fifty years of partnership UNECA 3 ed. (1999) 23.

<sup>36</sup> Ibid.

<sup>37</sup> G C Shabbir ‘Corruption and Good Governance’ Discussion paper 3 UNDP (1997a) 9.

<sup>38</sup> Supra note 28 at 18.

<sup>39</sup> Ibid.

<sup>40</sup> A Mohidden ‘Stock Taking and Assessment of Democracy and Good Governance’ in Proceedings of the Development Policy Management Forum (DPMF) Conference on ‘Democracy, Civil Society and Governance in Africa’ (December 1-4, Addis Ababa, Ethiopia 1997) 30.

by which society seeks to provide a guide and direction to itself, through standards and norms embedded in the governance idea. The advice to guide state and society according to defined rules and procedures and ensuring that governance in its entire ramifications, serves the interest of the greatest number of people in society through a collective and participatory endeavour.<sup>41</sup>

## 2. Evolving Debates on Governance

Nowadays, governance occupies a central stage in the development discourse but is also considered as the essential element to be integrated in the development plan. However, apart from the universal acceptance of its importance, differences exist in respect of theoretical formulations, policy prescriptions and conceptualization of the subject itself. Governance as a theoretical construct, separate from the theory of state, is not only in an embryonic stage, but its formulation also differs among researchers depending on their ideological convictions.<sup>42</sup> Policy analysis based empirically on the historical experiences of governance gives prominence to government's failure to deliver, leading to propositions for downsizing or rightsizing, while policy prescriptions for good governance take an evolutionary view of the matter questioning relevance of public sector management of certain activities in a changed context.<sup>43</sup>

'Good governance' is the term that symbolizes the paradigm shift of the role of governments.<sup>44</sup> Moreover, governance is not only about the 'organs' or actors as affirmed by Hasnat Abdul Hye. More importantly, it is about the quality of governance, which expresses itself through elements and dimensions. Nevertheless, he stated that: 'Just as the dancer cannot be separated from the dance, the organs or actors executing governance in their respective spheres cannot be relegated to the background'.<sup>45</sup>

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<sup>41</sup> Ibid.

<sup>42</sup> A Hye Hasnat, *Governance: South Asian Perspective* (2001) 1.

<sup>43</sup> Ibid.

<sup>44</sup> M Holzer & K Byong-Joon (ed.), *Building Good Governance: Reforms in Seoul*, (National Center for Public Productivity (2002) Preface.

<sup>45</sup> Supra note 39 at 37.

According to Goran Hyden, governance was never allowed to become a conceptual straight-jacket but was expected to function as a rather loose framework within which each researcher could creatively explore political issues of significance. The problem that we encounter, therefore, is not the limitations stemming from the imposition of a confining concept, but rather the opposite: The challenge of making sense of the wide range of interpretations of governance that the authors bring to the agenda.<sup>46</sup> Hence, governance could be defined differently depending on the researcher, but at the end, there is a common denominator about the core factors of what makes good governance.

### 3. Elements of Good Governance

A number of multilateral organizations including the United Nations Development Programme (UNDP) and the WB have reflected on the elements of good governance and on its relation to development.<sup>47</sup> As the experiences of these organizations vary, so, too, do their perceptions of what constitutes good governance. In the UNDP's 1997 report, 'Governance for Sustainable Human Development', it acknowledges the following as hub characteristics of good governance: participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability and strategic vision.<sup>48</sup> Hence, the African continent as whole has engaged and enacted laws<sup>49</sup> in the process of good governance and democracy.

In so far as the WB is concerned, its interest in governance stems from its concern with the effectiveness of the development efforts it supports. From this perspective, sound development management, in the broadest sense of the phrase, is vital for ensuring satisfactory returns and efficacy of the programs and projects financed and for the WB's fundamental objectives of

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<sup>46</sup> G Hyden & D Olowu (ed.) *African Perspective on Governance* (2000) 6.

<sup>47</sup> Ibid.

<sup>48</sup> UNDP Report, *Governance for Sustainable Human Development* (1997) 22.

<sup>49</sup> Article 2 & 3 of the African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia, (30 January 2007).

helping countries reduce poverty and promoting sustainable growth.<sup>50</sup> Hence, the WB's emphasis in recent years has shifted from its own interventions to the overall country context within which those interventions take place.<sup>51</sup> In so doing, it has been guided by the nature of its operations and the opportunities for action that these offer. Accordingly, the key dimensions of governance identified by the WB are: public sector management, accountability, legal framework for development and transparency and information.<sup>52</sup> It has been found deeply necessary to see the interrelation among these components.

### 3.1 The Linkage between Democracy and Governance

The existing literature has developed various arguments that connect democracy to both greater and lower quality of governance. First of all, democratic systems allow populations to peacefully and regularly expel inept, ineffective and corrupt government administrations, while allowing people to keep more efficient, successful regimes, thus tending to make the quality of governance on standard higher in the long run.<sup>53</sup>

On the other hand, authoritarian regimes may randomly provide high-quality governance, but if they do not, they can only be changed by force, which may take years or decades longer than under democratic institutions. In considering the effects of democracy relative to authoritarian regimes, Sen says:

'We have to consider the political incentives that operate on governments and on the persons and groups that are in office. The rulers have the incentive to listen to what people want if they have to face their criticism and seek their support in elections.'<sup>54</sup>

Those who face criticism are state-parties which re-affirmed their commitment to regularly holding transparent, free and fair elections in accordance with the AU declaration on the

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<sup>50</sup> Supra note 47.

<sup>51</sup> S G Cheema 'Corruption and Good Governance' Discussion paper 3 UNDP (1997a) 9.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> A Sen *Development as Freedom* (2000) 152.

principles governing democratic elections in Africa<sup>55</sup> and not those holding only elections under the umbrella of democracy.

There is a high cost of sustaining poor government policies under authoritarian regimes. Goetzmann noted this in relation to dated financial crises:

‘Suppose bankers lend to a dictatorship, as some countries were ...suppose further that debt piles up and the government of the borrowing country cannot service its obligations.... Tens of millions of people in emerging markets have recently fallen back into poverty. Without a democratic voice, they had no control of the risks their governments assumed. Even more, without transparent political institutions and a free press they had no way to understand these risks...Some would call this taxation without representation. In fact, history is filled with examples of nondemocratic governments causing great harm to their citizens.’<sup>56</sup>

On the other side of the coin, Francisco noted that the proliferation of interest groups lobbying for power or for rents under democratic institutions may lead to policy deadlock, preventing the major decisions that are required in the development process. The most popular view concerns the Singaporean growth – one of the most remarkable over the last 30 years, which, it is agreed, would not have occurred without the severe restrictions on political and civil rights under that regime.<sup>57</sup> A connected issue is the great variability that electoral democracies display in effectively promoting grassroots, participatory decision-making. The fact that electoral votes can be purchased, may allow wealthy individuals or parties to control the electoral process in much the same way that an openly authoritarian regime would. As Piero Gleijeses observes of the situation in Latin America: ‘The box on the outside is labelled a democracy, but inside you have an authoritarian system’.<sup>58</sup>

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<sup>55</sup> Art. 17 of the African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia (30 January 2007).

<sup>56</sup> W Goetzmann ‘Democracy before Debt’ *The New York Times* (October 22, 1999) 18.

[As an illustration, the former Rwandan government bought materials to be used during the 1994 genocide. The total volume of machetes imported in 1993 weighed 581 175 kilos and cost US\$725 669. There was an estimated one new machete for every third male in the country to be used in killing Tutsi.]

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

Do most democracies allow their population to choose more effective policymakers or are they just used as a tool by specific classes and oligarchies to control political power and sustain ineffective, corrupt regimes? Indeed, democracy is not strictly essential for good governance, just as well as bad governance is quite possible under formal democratic structures.<sup>59</sup> However, it considers that free, fair and competitive elections do make it possible to remove bad or corrupt political leaders. Thus these elements encourage leaders to govern more effectively, in the public interest. Democracy also gives citizens non-electoral means associations, movements, the media to monitor officials and participate in policy-making. In addition, leaders in democracies have stronger incentives to explain and justify their decisions and to consult a broad range of constituencies before making decisions. Such participation and debate give the public a stronger sense of policy ownership.<sup>60</sup> As a result, policies are more sustainable and government is more legitimate. For these and other reasons, it is strongly in the interest of development assistance agencies to promote both democracy and good governance. None of them stands for another but rather a supplement. In this regard, it is not the obligation of the agencies to instruct the basic area to prop up instead they have to support where the rulers have identified as focal point for their citizen.

According to the United States Agency for International Development (USAID) report, the two are mutually reinforcing: when they develop together, resources are used to advance the public good.<sup>61</sup> Investment flows into the country, attracted by the low transaction costs associated with government transparency and legitimacy and the rule of law.

### **3.2 The Linkage between Economic Development and Governance**

Economic development in its basic sense, as observed by the WB relates to the qualitative change and restructuring in a country's economy in connection with technological and social

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<sup>59</sup> USAID, *Foreign Aid in the National Interest: Promoting Freedom, Security and Opportunity*  
Available at Available at <http://www.usaid.gov/fani/> [Accessed on 15 September 2010].

<sup>60</sup> Ibid.

<sup>61</sup> Ibid.

progress. The main indicator of economic development is increasing GNP per capita (or GDP per capita), reflecting an increase in the economic productivity and average material well-being of a country's population.<sup>62</sup> This concept is closely linked with economic growth yet by no means identical.<sup>63</sup> However, the WB insists that any notion of strictly economic progress must look beyond growth in per capita incomes to the reduction of poverty and greater equity, to progress in education, health and nutrition and to the protection of the environment.<sup>64</sup>

The challenge of development is to improve the quality of life, which generally calls for higher incomes. But it involves much more and includes, as ends in themselves: better education, higher standards of health and nutrition, a cleaner environment, more impartiality of opportunity, greater individual freedom and a richer cultural life.<sup>65</sup> According to the first Human Development Report of 1990 that was published by the UNDP, 'People cannot be reduced to a single dimension as economic creatures'.<sup>66</sup>

The central message of the report was that while growth in national production (GDP) is necessary to meet all essential human objectives, what is important is to study how this growth translates-or fails to translate into human development in various societies. Some societies have achieved high levels of human development at modest levels of per capita income. Other societies have failed to translate their comparatively high-income levels and rapid economic growth into adequate levels of human development.<sup>67</sup>

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<sup>62</sup> The World Bank 'Beyond Economic Growth: Meeting the Challenges of Global Development,' Available at <http://www.worldbank.org/depweb/beyond/global/chapter1.html>. [Accessed on 23<sup>rd</sup> November 2010]

<sup>63</sup> *Economic growth*: Quantitative change or expansion in a country's economy. Economic growth is conventionally measured as the percentage increase in gross domestic product (GDP) or gross national product (GNP) during one year. Economic growth comes in two forms: an economy can either grow 'extensively' 'by using more resources (such as physical, human, or natural capital) or 'intensively' 'by using the same amount of resources more efficiently (productively). When economic growth is achieved by using more labor, it does not result in per capita income growth. But when economic growth is achieved through more productive use of all resources, including labor, it results in higher per capita income and improvement in people's average standard of living. Intensive economic growth requires economic development.

<sup>64</sup> The World Bank 'The World Development Report 1991, The Challenge of Development' (1991) 41.

<sup>65</sup> *Ibid* at 14.

<sup>66</sup> *Ibid*.

<sup>67</sup> The Human Development Report 1990 Oxford University Press (1990) iii.

Thirteen years later, the World Development Report of 2003 came to support the above and to add that 'ensuring sustainable development requires attention not just to economic growth but also to environmental and social issues. Unless the transformation of society and the management of the environment are addressed integrally along with economic growth, growth itself will be endangered over the longer term.'<sup>68</sup>

Unlike in the 1960's-1980's, today's governance debates grew out of concerns with the implementation of economic reform programmes that were part of an overall economic liberalization agenda in developing countries. However, in many respects, this good governance agenda has become too narrow for the purposes of achieving the goals of the Millennium Declaration, which has a broader agenda.

On the economic front, the agenda is not economic growth but more directly aimed at improving human well being of the poor, in other words, human development.<sup>69</sup> Economic growth is a means; a priority challenge today as many poor countries where poverty is concentrated have not had adequate growth in the last decades. Over 60 countries had a lower per capita GDP in 2000 than in 1990.<sup>70</sup> But economic growth is clearly not enough because the benefits of growth may not be channelled to the poor, or to expanding their social and economic opportunities. One may ask: is democracy associated with greater economic development or vice versa? And what is the direction of such a relationship (positive or negative)? Before proceeding, one ought to identify the term and the implication it brings.<sup>71</sup>

However there remains conflicting views on the causal linkages between democratic governance and economic growth. That is why the international donors have made provisions for the support in developing countries not only in the interests of leaders in power themselves but the entire populace.

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<sup>68</sup> The World Bank, World Development Report 2003, Sustainable Development in a dynamic world, Transforming Institutions, Growth and Quality of Life (2003) 12.

<sup>69</sup> S Fukuda-Parr and R Ponzio Governance: Past, Present, Future setting the governance agenda for the Millennium Declaration, (Background paper on the HDR 2002).

<sup>70</sup> The World Bank, World Development Report 2003, Sustainable Development in a dynamic world, Transforming Institutions, Growth and Quality of Life (2003) 12.

<sup>71</sup> Ibid.

## 4. Conditionality and Aid Effectiveness

### 4.1 Development Assistance

Aid strategies are undergoing fundamental reassessment. In recent years, the strengthening of good governance in developing countries has become both an objective and a condition for development assistance. However, combining these two aims in aid policies represents a daunting challenge for development institutions.<sup>72</sup> This is the WB's efforts at strengthening good governance in developing countries and improving the effectiveness of aid. It focuses on the relationship between good governance and aid effectiveness in providing a critical assessment of the Bank's approach to governance reform in developing countries.

The wide range of issues under 'governance' occupies centre stage in the development debate on the agenda of the IFIs. The concept of governance captures 'the manner in which power is exercised in the management of a country's economic and social resources for development'.<sup>73</sup> Devesh Kapur and Richard Webb attest that '[f]or the IFIs, the new mandate is a boost to their importance, but one fraught with peril. The new mission arrived at a moment when growing doubts regarding the purpose and effectiveness of the IFIs seemed their funding and even their continued existence'.<sup>74</sup>

However, the approaches used to strengthen good governance in developing countries remain prominently similar to those used to promote economic reform. Aid conditionality, i.e. conditioning aid on a number of prerequisites and promises of reform, has been extended from the economic realm to the political arena. During the 1980s and 1990s, the scope of these conditionalities both widened and deepened as IFIs attempted governmental and social re-engineering.<sup>75</sup>

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<sup>72</sup> C Santiso 'International Co-operation for Democracy and Good Governance: Moving Toward a Second Generation?' *European Journal of Development Research* 13(1):154-180 (2001) 163.

<sup>73</sup> World Bank *Governance and Development* Washington, DC: The World Bank (1992) 1.

<sup>74</sup> World Bank *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy* World Bank: Public Sector Group, PREM Network (November 2000b) 18.

<sup>75</sup> World Bank *The Quality of Growth* New York: Oxford University Press (2000a) 39.

The WB has significantly extended its policy frontiers by endorsing 'good governance' as a core element of its development strategy. Since 1996, the Bank has initiated over 600 governance related programs and initiatives in 95 countries and is involved in supporting significant programs of governance and public sector reform in 50 countries.<sup>76</sup> Some argue the new governance agenda is merely, a smorgasbord of economic and political prescriptions for development and a 'fig leaf' hiding renewed conditionalities.<sup>77</sup> Nevertheless, introducing the concept of good governance has resulted in a broadened understanding of development and has significantly changed the agenda of IFIs. More basically, it has affected what they do and how they do it. Assessing the World Bank at the Millennium, forthright former Bank Chief Economist Joseph Stiglitz argues that 'views about development have changed in the World Bank, as they have in the development community.'<sup>78</sup>

The introduction of the concept of governance in the development agenda reflects growing concerns over the effectiveness of aid whose ultimate aim is to reduce poverty and human suffering. Confronted by declining aid budgets and increased inspection by civil society, the WB has given greater consideration to the pervasive effects of mismanagement and endemic corruption. Furthermore, the Bank's involvement in governance work has also upset the traditional division of labour between the UN agencies and the IFIs, questioning their respective roles in global governance.<sup>79</sup> This has resulted in considerable encroachment on other organisations' traditional institutional territory (a trend commonly referred to as 'mission creep'). The reform of multilateral development finance is thus an integral component of current efforts at reforming the international financial architecture.<sup>80</sup>

Furthermore, the WB's understanding of good governance continues to reflect a concern over the effectiveness of the state rather than the equity of the economic system and the legitimacy of the power structure. Openly criticised by NGOs, its main stakeholder the United States and its most

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<sup>76</sup> Development Committee of the World Bank *Note from the President of the World Bank* Prague, Czech Republic, DC2000-21 (September 18, 2000) 42.

<sup>77</sup> Ibid.

<sup>78</sup> World Bank *Beyond the Centre: Decentralizing the State* Washington, DC: World Bank Latin American and Caribbean Studies (1999) 87.

<sup>79</sup> Ibid.

<sup>80</sup> World Bank *World Development Report of 2000/2001: Attacking Poverty* Washington DC: OUP for World Bank (2000c) 16.

respected economists,<sup>81</sup> the WB is at critical juncture in its history. It plays a central role in global governance and its influence in the aid regime remains important. The WB has significantly shaped development thinking and ‘has acquired a quasi-monopoly on institutional knowledge in the field of economic development’.<sup>82</sup> ‘The Bank does not just lend money and produce ideas: it packages the ideas and the money together’, combining lending with conditionality.<sup>83</sup> On the contrary, it could lend money depending on the ideas or projects presented by the borrower and not both.

Therefore, the quality of governance is ultimately attributable to its democratic content. Thus, for the Bank to substantially improve good governance in borrowing countries and reinvent itself, it will need to explicitly address issues of power, politics and democracy.<sup>84</sup> Hence, aid conditionality is not the most appropriate approach for strengthening good governance in developing countries. What is needed is a more radical approach in which donors cede control to the recipient country, within the framework of agreed-upon objectives.<sup>85</sup> As the 16th Century French thinker Pascal said, ‘Unable to make what is just strong; we have made what is strong just’. For this reason, getting financial support from donors would confront at least the accomplishment of good governance and democracy proposed for and approved by the lender.

#### 4.2 The Challenges of Governance and Democracy in Africa

Beginning from the 1980s, there has been a gradual, but concerted attempt to reverse the trend of political despair and disillusionment, which hitherto characterised political life in Africa. This attempt manifests in the demand for political pluralism and democratisation. The long years of

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<sup>81</sup> W Easterly *The Elusive Quest for Growth: Economists’ Adventures and Misadventures in the Tropics* (2001) 47.

<sup>82</sup> B Hibou *The Political Economy of the World Bank’s Discourse: from Economic Catechism to Missionary Deeds and Misdeeds* (Paris: Etudes du CERI, 39 (2000) 3.

<sup>83</sup> G Christopher, A Powell and D Vines ‘Positioning the World Bank’ (1999) 109 *Economic Journal* 598-633 611.

<sup>84</sup> Ibid.

<sup>85</sup> Supra note 81

political misrule and of course bad governance exemplified by personalised political regimes and ruthless dictatorships left most African States politically demobilised and economically incapacitated with a population ravaged by poverty, illiteracy and disease.<sup>86</sup> Regrettably, Africa harbours the highest stock of the world's poorest people.<sup>87</sup>

The incapacitating poverty of the people accentuated by economic crises seems to have provided a basis and indeed, a common platform in the demand for democratic change by the people. Thus, the struggle for democratisation in Africa has relevance not only in liberalising the political arena and achieving civil and political liberties, but also to ensure better living standards and social welfare for the African people<sup>88</sup> in other words, achieving the object of good governance.

The demand for political participation and the involvement of the people in the choice of their leaders and decision-making which constitutes the critical hub of political democracy<sup>89</sup> is not a new phenomenon in Africa. The anti-colonial project was constructed and legitimised on this basis. As such, the current democratic effervescence in Africa could be regarded not as a process of 'democratic birth', but to use the words of Richard Joseph is a process of 'democratic renewal'.<sup>90</sup> Although the urge for good governance is implicit in this process of democratic renewal as we earlier noted, however, the conception and usage of the term 'good governance' in recent times came from the WB. Given the virulent political resistance which greeted the implementation of the SAPs in Africa and the growing concern with their apparent failure by the WB, there was a slight shift in strategy by the Bank towards domesticating the policy and finding an appropriate institutional and political framework within which to situate it in the domestic economies of African countries'.<sup>91</sup> The emphasis therefore shifted to 'good governance'.

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<sup>86</sup> J Isham, D Kaufman and L Pritchett 'Civil Liberties, Democracy and the Performance of Government Projects', (1997) 11(2) *World Bank Economic Review* 219 at 231.

<sup>87</sup> Ibid.

<sup>88</sup> S Adejumobi 'The Structural Adjustment Programme and Democratic Transition in Africa. Law and Politics in Africa, Asia and Latin America' (1996) 4, 416 at 422.

<sup>89</sup> G Sorensen *Democracy and Democratisation Colorado* (1993) 27.

<sup>90</sup> J Richard *Political Renewal in sub-Saharan Africa: The Challenge of the 1990s in African Governance in the 1990s: Objectives, Resources and Constraints* (1990) 47.

<sup>91</sup> World Bank *Sub-Saharan Africa: From Crisis to Sustainable Development* (1989) 32.

In the view of the WB, the market economic reform policies it recommends rarely work and have achieved very little because these policies fall on institutionally unproductive grounds and are stalled by internal bottlenecks and political ineptitude in terms of governance. In other words, the poor performance of SAPs is caused by a lack of good governance. To quote the WB:

'Underlying the litany of Africa's development problems is a crisis of good governance. By governance is meant the exercise of political power to manage a nation's affairs. Because countervailing power has been lacking, state officials in many countries have served their own interest without fear of being called to account. In self-defence, individuals have built up personal networks of influence rather than hold the all-powerful state accountable for its systemic failure. In this way, politics becomes personalised and patronage becomes essential to maintain power. The leadership assumes broad discretionary authority and loses its legitimacy, information is controlled and voluntary associations are co-opted or disbanded. The environment cannot readily support a dynamic economic.'<sup>92</sup>

The WB therefore argues that adjustment alone cannot put Africa on a sustained poverty-reducing path; such must be complemented with institution building and good governance.<sup>93</sup> Connected to the conception of good governance by the WB are the issues of public accountability of government officials, transparency in government procedure, rule of law and public sector management.<sup>94</sup> The process of evolving good governance in Africa according to the WB requires the lessening of the state and engendering support for non-state actors such as the Civil Society. Following the footpaths of the WB, the donor agencies multilateral and bilateral have incorporated the demand for good governance in their aid policies and development cooperation agenda in Africa. These include the OECD<sup>95</sup> and private agencies like the Ford Foundation<sup>96</sup> and the Carter Center<sup>97</sup> in the United States, with the emphasis of the latter too, on supporting civil associations and non-state actors in Africa.

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<sup>92</sup> C Santiso 'Good Governance and Aid Effectiveness: The World Bank and Conditionality' The Georgetown Public Policy Vol. 7 N0 1 (2001) 5.

<sup>93</sup> World Bank *Adjustment in Africa: Reform, Results and the Road Ahead* Washington DC (1994) 2.

<sup>94</sup> Nunnenkamp 'What Donors Mean by Good Governance: Heroic Ends, Limited Means and Traditional Dilemmas of Development Cooperation' *ids Bulletin* 26 (2) (1995) 33.

<sup>95</sup> OECD 'DAC Orientations on Participatory Development and Good Governance' OECD - Working Papers N0 2 Paris (1994) 57.

<sup>96</sup> Ford Foundation 'Annual Report 1989' Ford Foundation New York (1990) 11.

<sup>97</sup> Carter Centre of Emory University *African Governance in the 1990s: Objectives, Resources and Constraints* Atlanta Georgia Carter Centre (1990) 41.

Within the UN system, apart from it adopting specific resolutions on the question of democracy and good governance, some of its agencies like the UNDP have taken conscious steps and adopted policies to promote the cause. For example, the UNDP Regional Bureau for Africa has developed a special programme, called the SIGA aimed at improving the effectiveness of governance on the continent by addressing five major areas, which are: leadership building, transparency and accountability, civil society empowerment, political transition and peace and stability.<sup>98</sup> Indeed, it is estimated that the UNDP currently spends about 39 percent of its resources on governance related projects.<sup>99</sup>

However, it is the WB's position which provides not only the background to the current tide, but also the basis of the political economy of the 'democracy good governance' project in Africa, as it defines the economic context and the political framework and parameters of such projects. Two things are worthy of note in the WB's apostasy to good governance.<sup>100</sup> First, while the WB preaches good governance, rule of law and human rights in Africa, the SAPs it has improved, undermine those noble political ideas. Rather than empower the civil society, SAPs encourage its ruthless repression and dismemberment; rather than promote social security and welfare, is contracts them quite significantly; rather than encourage public ethics and accountability, promotes declining public morale and fraud with depressing low wages and salaries of public servants.<sup>101</sup> In addition, the deregulation policy relevant to SAP has weakened the capacity of the state to control corruption, while privatisation has created a host of opportunities for personal accumulation, especially in the area of financial deregulation, which has led to the emergency of what Morris Szeftel aptly described as 'political banks'<sup>102</sup>, engaged in nothing but currency speculation and money laundering.<sup>103</sup> SAPs reduce the capacity of the state to control and tighten

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<sup>98</sup> Supra note 12 at 4.

<sup>99</sup> Ibid.

<sup>100</sup> R Kiely *Neo-Liberalism Revisited? A Critical Account of World Bank Concepts of Good Governance and Market friendly intervention Capital and Class* (1998) 52.

<sup>101</sup> Ibid.

<sup>102</sup> M Szeftel *Misunderstanding African Politics: Corruption and the Governance Agenda Review of the African Political Economy* (1998) 568.

<sup>103</sup> P Lewis and H Stein 'Shifting Fortunes: The Political Economy of Financial Liberalisation in Nigeria' (1997) 25:1 *World Development* 367.

rules governing government corporate relations.<sup>104</sup> In summary, adjustment confuses the logic of good governance in Africa.

Secondly, the object of the WB 'good governance' project is mainly to provide an enabling political environment for the market to function properly and not because good governance is good in itself and deserved by the African people. Thus 'good governance' along with the instant crafting of democracy is often traded the same way IMF and the WB economists sell neo-liberal market solutions around the globe.<sup>105</sup> Admittedly, although the WB's good governance project with its emphasis on rule of law, transparency and human rights, is relevant to the African condition, however, the point being made is that it is a project enmeshed in serious contradictions and not grounded in the African intent, articulation and focus.<sup>106</sup> In a severe critique of the WB's 'democracy and good governance' project, Yash Tandon argues that it is a cause, which is self opportunistic and designed to serve the interest of capital within the context of neo-liberal economic ideology.<sup>107</sup> As he expressively puts it:

'Whose governance? It is certainly not governance on behalf of the common people. It is a governance on behalf of a couple of hundred industrial and banking transnationals who are draining Africa's natural resources at enormous profit for themselves, a couple of thousand African billionaires who have tucked away their ill-gotten in Western banks, a couple of million white settlers who still own farm lands, mines and tourist resorts in Africa and a couple of million black intermediaries who are acting on behalf of their foreign companies. That is the rough arithmetic of those who benefit from the rich resources of Africa.'<sup>108</sup>

This constitutes the league of class and social forces promoted and sustained by the 'invisible market' logic of structural adjustment and its governance agenda. In other words, what is good governance for the African people is not a complement to structural adjustment; rather, it is a

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<sup>104</sup> D Rodrik *Institutions for High-Quality Growth: What they are and How to Acquire Them?* Paper presented at the IMF Conference on Second Generation Reforms Washington DC (8-9 November 1999) 23.

<sup>105</sup> L Rudebeck and O Tornquist 'Introduction' in Lars Rudebeck and Olle Tornquist eds *Democratisation in the Third World*. Uppsala: The Seminar for Development Studies (1996) 8.

<sup>106</sup> Ibid.

<sup>107</sup> Tandon Yash 'African Conceptions of Democracy and Good Governance' Basic Documents Series, Harare; International South Group Network (1996) 27.

<sup>108</sup> Ibid.

normative political value, which negated SAPs and aims to reconcile state-society relations with the provision of social welfare and material betterment for the people.<sup>109</sup>

Besides the aim of good governance, a powerful debate centres on what form of political regime or system is compatible with and reinforces good governance. In other words, what is the linkage in theory, between democracy and good governance? Two major positions are marked in this regard. Prominent Africanist scholars like Goran Hyden and Richard Joseph perceive a symmetrical linkage between democracy and good governance. For Goran Hyden, good governance refers to the conscious management of regime structures with a view to enhancing the public realm.<sup>110</sup> It seeks to reconstitute politics from a high level frequency of zero sum calculation to a middle ground, where politics is a positive sum game characterised by reciprocal behaviour and legitimate relations between the governors and the governed.<sup>111</sup> The catch phrases or key properties of the governance realm are authority, reciprocity, exchange, trust and accountability, with each of these components emphasising or reinforcing democratic norms and practices in one way or the other.<sup>112</sup> For instance, authority seeks expression in the legitimate use of power in which the people elect and control their leaders, while the parameter of accountability is the extent to which the people can hold their elected or appointed officials responsible for their actions or inaction. Reciprocity refers to the nature and quality of the social interaction among members of a political community and its major indicator in the public realm is the extent to which individuals are free to form associations to defend and protect their interests.<sup>113</sup> Put differently, the emphasis of the governance realm is elections, political control and responsiveness, freedom of expression and plural politics, which are principles and nuances of liberal democracy. Along the same line, Gerry Stoker, contends that governance is primarily concerned with ordered rule and collective action, but one in which political power must be seen to be legitimate, there must be autonomous self-governing network of actors and a balance

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<sup>109</sup> Ibid.

<sup>110</sup> Supra note 45 at 7.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid. at 8.

between state and civil society.<sup>114</sup> It is when this is achieved in qualitative terms, that there may be good governance. Good governance is the case also comparable to liberal democracy.

According to Richard Joseph's argument, accountability is the most fundamental principle of good governance, which is assured through competitive elections in a democratic society.<sup>115</sup> As he puts it 'free and fair elections are the bedrock of any democratic society and the most important means of making government accountable to the citizenry'<sup>116</sup> Anyang Nyong'o<sup>117</sup> and Kofi Annan<sup>118</sup> also share this libertarian position on the linkage between democracy, good governance and development.

The extent to which elections ensure political accountability, hence good governance, as the liberal theorists claim, has been variously questioned.<sup>119</sup> Godfrey Alderman, citing the British experience, argues that elections serve only a ritualist function, which conceals the class domination of politics by the British capitalist class.<sup>120</sup> Thus, elections, according to him, are not about who governs or propitious to political accountability, but only a symbolic exercise in a democracy.<sup>121</sup> Given the class basis of politics, governance, as Robert Fatton points out, is not classless political exercise defined by a social pact imbued with sense of 'commonness', neither can political accountability in real terms, be a little more than a political myth, an enduring political cliché, which is characterised by a reciprocal unequal relations between the governors and the governed, the king and his subjects, a relationship characterised by collaborations, subordination, coercion and violence.<sup>122</sup>

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<sup>114</sup> G Stoker Governance as Theory: Five Propositions (March 1998) 155 *International Social Science Journal* 17-18.

<sup>115</sup> J Richard 'Political Renewal in sub-Saharan Africa: The Challenge of the 1990s in African Governance in the 1990s: Objectives, Resources and Constraints' (1990) 205.

<sup>116</sup> Ibid.

<sup>117</sup> P Anyang Nyong'o 'Political Instability and the Prospects of Democracy in Africa' (1988) 13:1 *Africa Development* 71-86.

<sup>118</sup> K Anann 'A New Era Beckons Africa' see (1997) 11:1 *Africa Recovery* 4.

<sup>119</sup> J Ihonvbere 'Economic Crisis, Civil Society and Democratisation: The Case of Zambia' Trenton New Jersey; Africa World Press (1996).

<sup>120</sup> G Alderman *British Elections: Myth and Reality* London B. T. Bastford (1978) 8.

<sup>121</sup> Ibid.

<sup>122</sup> R Fatton *Predatory Rule: State and Civil Society in Africa* Boulder and London, Lynne Rienner Publishers (1992) 454.

The contrary view to the libertarian argument is that good governance is not associated with any particular form of political regime or system. It is simply about effective and productive governance, which may be present in a democratic, dictatorial, totalitarian or socialist regime, depending on how the rulers manage political power and its results.<sup>123</sup> This perspective tends to share Alexander Pope's popular saying that 'for forms of government let fools contest, what is best administered is best'.<sup>124</sup> The concept of good governance is perceived to be holistic and consequential, rather than specific and procedural. It is not the process course of a political rule, but its effects. It is anti-ideological and is best defined ostensibly rather than by semantic prescriptions.<sup>125</sup> At the micro level, good governance denotes organisational effectiveness, that is, the capacity of an organisation to achieve tasks assigned to it, with rules and regulations put down by it and within the context of favourable environment conditions. At the macro-level, good governance derives essentially from the theory of utilitarianism.<sup>126</sup> That is, good governance is measured by the context to which a political regime can guarantee popular welfare and promote the greatest happiness of the greatest number of people in the society.<sup>127</sup>

While democracy is unquestionably good in itself and may augment good governance with the respect of the civil liberties it guarantees, however, it does not add up to nor is it organically linked with good governance. Constructing good governance in Africa will be determined by two factors. The first is the extent to which people will enter decisions which affect their lives or such decisions to reflect or aggregate the interests of the majority of the people.<sup>128</sup> The second refers to the extent to which their means of living wage are guaranteed.<sup>129</sup> Hence, countries have regrouped in different communities depending on the region where the end of product is the promotion of welfare of the people through good governance.

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Le Roy E. 'Good Governance on l'exigence d'autorités questionnaires 'in E. le Roy ed. *La mobilisation de la terre dans les stratégies de développement rural en Afrique noire francophones*. Association pour la promotion de Recherches entre les frontières en Afrique.

<sup>126</sup> Ibid.

<sup>127</sup> P Chabal *Power in Africa: An Essay in Political Interpretation* (1992) 53.

<sup>128</sup> A Mafeje 'Theory of Democracy and the African Discourse: Breaking Bread with my Fellow-travellers' in Eshetu Chole and Jibo Ibrahim (eds) *Democratisation Processes in Africa: Problem and Prospects* Dakar, CODESRIA (1995) 26.

<sup>129</sup> Ibid.

## Chapter III:

### THE PROCESS OF REGIONAL INTEGRATION IN AFRICA

#### 1. The Status of Regional Integration

Since the early years of independence, the question of Africa's regional integration has preoccupied many African leaders. Many have viewed it as a tool for promoting economic growth and sustainable development and improving the living standards of the African people. The overall strategic objective of regrouping African countries was to fight the impact of colonialism and build a united Africa by all means of good governance.<sup>130</sup>

It is indisputable that Africa's development will be achieved through the unity of its people. If Africans want to be developed, this cannot happen if people are not working together and are well governed. African leaders' quest for unity clearly demonstrates their commitment, which is evidenced by the formation of OAU in 1963.<sup>131</sup> The coordination and harmonization of the political and socio-economic integration policies between the existing and future RECs for the gradual attainment of the objectives of the Union remained the priority of the AU.<sup>132</sup> The African Union Commission (AUC), the United Nations Economic Commission for Africa (UNECA), the African Development Bank (AfDB) and the RECs are among the key players of regional integration.<sup>133</sup>

The formation of the OAU, now the AU was the first step towards promoting continental unity. The adoption of the Constitutive Act was a decisive step, showing that African states were not only conveniently changing the name of their continental organization, but indeed giving it a radically new vision and mission, a set of clearly defined objectives and responsibilities, perhaps

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<sup>130</sup> Supra note 126.

<sup>131</sup> Organization of African Unity Charter, OAU: Addis Ababa, Ethiopia, (25th day of May, 1963)

<sup>132</sup> Art. 2 (c) and (l) of the Constitutive Act, Lome, Togo, 11th day of July, 2000.

<sup>133</sup> Supra note 126.

'more teeth'.<sup>134</sup> This transformation has indeed expanded the sources of authority of the Organization: in addition to the Assembly of Heads of State and Government, a judicial pillar (the Court of Justice) and a democratic pillar (the Pan-African Parliament) have been created.<sup>135</sup> Since its inception, significant new efforts have been put in place. Nevertheless, Africa has comparatively few success stories to tell with respect to regional integration. The continent's slow pace towards this goal has been largely attributed to Africa's many extraordinary challenges, including inadequate financial resources, macro-economic instability, poor governance, conflicts and war, the prevalence of HIV and AIDS and numerous sub-groupings.<sup>136</sup> In addition, African member-states' multiple memberships to different RECs have contributed significantly to the slow pace of Africa's integration.

Recognizing the importance of regional integration to developing a strong, united Africa, the continent's leaders have established a number of initiatives, the most notable of which include the following:

- The Treaty Establishing the AEC, known as the Abuja Treaty, in 1991;
- The 2000 Solemn Declaration on security, stability, development and cooperation of the African continent;
- The AU programme of NEPAD in 2000; and
- The AU Constitutive Act of 2001.<sup>137</sup>

In 2009, the African Union Commission (AUC), in collaboration with the RECs, took steps to elaborate a Minimum Integration Programme (MIP). This followed decisions taken by various AU Conferences of African Ministers in Charge of Integration (COMAIs), which identified the urgent need to rationalize and harmonize REC activities and programmes, if the AEC were to become realized as it was conceived in the Abuja Treaty and the AU Constitutive Act.<sup>138</sup> This

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<sup>134</sup> Ulf Engel and João Gomes Porto *Africa's New Peace and Security Architecture: An Introduction* (2004) 2.

<sup>135</sup> *Ibid.*

<sup>136</sup> African Union Commission *Status of integration in Africa (SIA)*. AUC: Addis Ababa, Ethiopia (2009) 32.

<sup>137</sup> *Ibid.* at 33.

<sup>138</sup> AUC *Minimum Integration Programme* AUC: Addis Ababa, Ethiopia (2009) 42.

could not be achieved if there were no strong and committed institutions and mechanisms for better success.

## 2. The African Union's framework on Good Governance

The OAU was established to, among other things, accelerate the de-colonisation process of the continent and promote the development and cooperation among African states.<sup>139</sup> However, until its demise in 2002, the organisation left arguably a pathetically chequered record in the promotion of good governance. Against this background, high expectations have been placed on the AU, the successor of the OAU.

The AU and its accompanying development paradigm, the NEPAD, are premised on among other things, good governance now recognised as an essential precondition for development. The dual initiatives of NEPAD and the AU incorporated peer review mechanism, (APR), are processes by which African heads of state exercise some form of surveillance over their colleagues in a bid to ensure good governance.<sup>140</sup>

Hence, Africa is increasingly focusing on regional integration as a strategy for achieving sustainable economic growth as there is a consensus that by merging its economies and pooling its capacities, endowments and energies, the continent can overcome its daunting developmental challenges.<sup>141</sup> State Parties cooperate at regional and continental levels in building and consolidating democracy through exchange of experiences.<sup>142</sup> Deeper integration would allow it not only to achieve sustained and robust economic growth, but it will also ensure poverty alleviation, enhanced movement of goods, services, capital and labour, socio-economic policy

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<sup>139</sup> Organisation of African Unity *OAU Charter and Rules of Procedure* Addis Ababa: OAU (1992) 4.

<sup>140</sup> J K Akokpari 'The AU, NEPAD and the Promotion of Good Governance in Africa' University of Cape Town, South Africa *Nordic Journal of African Studies* 13(3): 243–263 (2004) 248.

<sup>141</sup> *Ibid.*

<sup>142</sup> Art. 16 of the African Charter on Democracy, Elections and Governance, Addis Ababa, Ethiopia (30 January 2007).

coordination and harmonization, infrastructure development, as well as the promotion of peace and security within and between the regions.<sup>143</sup> These are the traits of good governance as long as they are implemented with the will and in the welfare of the citizens.

As envisaged in the Abuja Treaty,<sup>144</sup> these efforts are expected to converge towards an AEC, in which the separate economic, monetary, fiscal and social policies applied separately by individual African countries of the continent would be fully harmonized and integrated into uniform policies common to them all.<sup>145</sup> The wider economic space created, will strengthen Africa's voice and bargaining power in its relations with the rest of the world as it is enshrined in the Constitutive Act.<sup>146</sup>

In spite of the inherent constraints in integration, commendable progress and the assessing good governance and democracy in Africa are dedicated to keeping track of the process.<sup>147</sup> A number of RECs have taken action to create free trade areas and customs unions. They have also introduced community passports to ease the movement of goods and persons and established macroeconomic convergence targets.<sup>148</sup> These help people to cross the borders for the widen market and learn from their neighbours. The cross border exists where there is peace and security in the region which is enhanced by the rule of law. Moreover, a number of the RECs have harmonised their business laws and vigorously pursued their implementation with the aim of promoting trans-boundary businesses and investments in Africa.<sup>149</sup> Significant steps have also been made to strengthen infrastructure and ICT development on the continent, through various programmes and initiatives at the national, regional and continental levels. Despite these impressive efforts and achievements, a lot remains to be done.

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<sup>143</sup> P Chabal *The Quest for Good Government and Development in Africa: Is NEPAD the Answer?* *International Affairs* 78(3): 447–462 (2002) 452.

<sup>144</sup> The Treaty Establishing the African Economic Community, Abuja, Nigeria 3<sup>rd</sup> June 1991.

<sup>145</sup> *Supra* note 142.

<sup>146</sup> Art.3 (d) of the Constitutive Act.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Supra* note 139.

<sup>149</sup> *Ibid.*

### 3. The African Union Peace and Security Council

By ratifying the protocol<sup>150</sup> of the Constitutive Act, the Peace and Security Council (PSC) of the AU was established on May 25, 2004. African leaders recognize that peace and security are, as the former chairman of the AU, believes, indispensable conditions for Africa's socio-economic development and good governance.<sup>151</sup>

According to the Protocol establishing the PSC this institution has wide-ranging responsibilities for prevention, management, resolution of conflicts, and post-conflict peace building.<sup>152</sup> The promotion of good governance, democracy, rule of law etc. are regarded as part of conflict prevention.<sup>153</sup> The Protocol also states that the Assembly can – with a two-thirds majority, as already mentioned decide to intervene 'in grave circumstances, namely war crimes, genocide and crimes against humanity'.<sup>154</sup> Furthermore, member-states have the right to request intervention by the AU, and sanctions against unconstitutional changes of government are made possible. In a longer perspective the AU aims at a common defense policy. Decision-making should ideally be by consensus, but if consensus cannot be reached a decision can be made by a two-thirds majority of PSC members.<sup>155</sup> The birth of the PSC means a reversal of one of the key principles of the OAU, sovereignty: in the words of AU Peace and Security Commissioner, Said Djinni, 'we are replacing the principle of non-interference with the principle of non-indifference'.<sup>156</sup>

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<sup>150</sup> Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Durban 9<sup>th</sup> July 2002. See Available at <http://www.africa-union.org/home/Welcome.htm> [Accessed on 24 November 2010].

<sup>151</sup> K Gottschalk & S Schmidt *The African Union and the New Partnership for Africa's Development: Strong Institutions for Weak States?* (2004) 144.

<sup>152</sup> Art.4 of the Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Durban 9<sup>th</sup> July 2002.

<sup>153</sup> In his report to the Millennium Session of the General Assembly, United Nations Secretary-General Kofi Annan noted: "Conflicts are most frequent in poor countries, especially in those that are ill governed and where there are sharp inequalities between ethnic or religious groups. The best way to prevent them is to promote healthy and balanced economic development, combined with human rights, minority rights and political arrangements in which all groups are fairly represented." See United Nations, *We the Peoples: The United Nations in the 21<sup>st</sup> Century*, Millennium Report of the Secretary-General of the United Nations, Executive Summary, Section IV, "Freedom from Fear," [www.un.org/millennium/sg/report](http://www.un.org/millennium/sg/report).

<sup>154</sup> Ibid. Art. 4 (J) of the Constitutive Act

<sup>155</sup> Ibid. Art.8

<sup>156</sup> Supra note 150.

The PSC is a permanent organ and has 15 members, 10 of which will serve for two years and five for three years, to strengthen permanence.<sup>157</sup> A chairperson, appointed on a monthly basis, will head the closed meetings. In March 2004 the AU appointed South Africa, Nigeria, Algeria, Ethiopia and Gabon representing all five regions of Africa to serve for three years.<sup>158</sup> In contrast to the UN Security Council, there is no right of veto. The protocol states that the PSC will be assisted by a 'Panel of the Wise', an advisory body of highly respected persons representing the different African regions that will be appointed by the Chairperson of the PSC.<sup>159</sup> In addition and more important a CEWS, an ASF, and a Special Fund for Peace-Keeping Operations are to be created.<sup>160</sup> The standby force was supposed to attain of 15,000 soldiers deployed at five regional bases by the end of 2010.<sup>161</sup>

The PSC is one of the most ambitious projects on the war-hit African continent. At the moment, however, it is ill equipped for its phenomenal tasks. There is an overall lack of resources. Whereas the UN has approximately 2.3 billion US dollars for peacekeeping which is even insufficient the AU had only six million US dollars in its Peace Fund in 2003.<sup>162</sup> It is therefore no surprise that the most important current missions – in the DRC, Burundi, and Sudan are underfinanced. Since the AU could raise only 23 million Euros out of the annual 123 million Euros needed for the Burundi peacekeeping mission, the UN had to take over the mission on the very same day that the PSC was launched.<sup>163</sup>

Despite its chronic lack of resources the AU has already started to intervene in the DRC and, most recently, in the Darfur conflict in Sudan. Reluctantly accepted by the Sudanese government, the AU has sent 270 troops from four African countries to protect the 120 members

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<sup>157</sup> V Kent and M Malan *The African Standby Force Progress and prospects* African Security Review 12(3) (2003) 74.

<sup>158</sup> *Ibid.*

<sup>159</sup> Theo Neethling *Realizing the African Standby Force as a Pan-African Ideal: Progress, Prospects and Challenges*, Stellenbosch University, South Africa Journal of Military and Strategic Studies, Vol. 8 Issue 1, Fall (2005) 13.

<sup>160</sup> *Ibid.*

<sup>161</sup> African Union, *Policy Framework for the Establishment of the African Standby Force and Military Staff Committee*, adopted by the African Chiefs of Defense Staff (Addis Ababa: Ethiopia, May 15-16, 2003) p. 3.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Supra* note 150 at 145.

of the AU Ceasefire Monitoring Unit.<sup>164</sup> This small force will not be capable of guaranteeing the security of the African population in the Darfur region, in which militias supported, pogrom style by the Sudanese government, are murdering people. The attacks, which have been categorized as ethnic cleansing or even genocide, have not only killed around 30,000–50,000 villagers but have also created a severe humanitarian crisis with around one million refugees in camps.<sup>165</sup> The AU has declared that in case of ongoing violence the number of troops could be increased to 2,000 but today it is up to 10 000 soldiers. Although the AU force is too small and the organization is dependent on external airlift capacities, the intervention in Sudan marks an important departure from the OAU's handling of such conflicts, which was characterized by inertia.<sup>166</sup> The AU's commitment to the Sudan crisis includes also mediation efforts between the Sudanese rebels and the government, which started in 2004. The end result of this was the separation of Southern Sudan to the North. This is another new challenge of the African unification where the State members are disintegrated.

Although the ongoing missions are relatively small there is a danger of overstretching the military capacities of the members, especially South Africa, the country with the most resources in this respect; the country currently has 3,000 troops on AU peacekeeping missions, mainly in Burundi and the DRC.<sup>167</sup> Due to the necessary six monthly rotations of troops, health problems with malaria, and HIV infection, the South African Defense Forces (SADF) are generally absent in experienced troops. Internal criticism is growing concerning the cost of foreign peacekeeping, particularly in light of the inadequate policing of the ongoing domestic crime wave and other enormous social challenges.<sup>168</sup>

The reaction of the donor community towards the AU and, especially, the PSC was cautiously optimistic. Most of the multi and bilateral donors officially welcomed the AU but expressed

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<sup>164</sup> African Union, *Policy Framework for the Establishment of the African Standby Force and Military Staff Committee*, adopted by the African Chiefs of Defense Staff (Addis Ababa: Ethiopia, May 15-16, 2003) p. 3.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

<sup>167</sup> E A Thorne, "The African Standby Force Takes Shape: An Observation of Needs and Necessary Actions", *African Armed Forces Journal* (July 2003) 26.

<sup>168</sup> Ibid.

concerns about realization of this ambitious project.<sup>169</sup> Ratification of the PSC protocol and its subsequent implementation was regarded as a major step forward. The donor community regards the spread of conflicts during the 1990s as a major reason for Africa's severe problems. Conflict prevention and management has therefore become one of the key priorities of the West. At the last summit, at Sea Island, Georgia, USA, the G-8 also made it clear that, in contrast to African leaders, they are not committed to NEPAD infrastructure projects.<sup>170</sup>

Both the EU and the USA emphasize the importance of African ownership: 'African solutions for African conflicts'<sup>171</sup> are the guiding principle. The only exception was the European mission to Eastern Congo. This intervention, named Operation Artemis, was on a small scale and of a temporary character and the mission has since been handed over to the UN. The 2004 last G-8 meeting pledged in the context of its Action Plan to finance the training and equipping of 75,000 peacekeepers, including police forces, up to 2010.<sup>172</sup> The participating African leaders were requested by the G-8 to give detailed information concerning their logistic needs. The EU offered 250 million Euros in support of African Peacekeeping in reaction to the founding of the PSC.<sup>173</sup> This amount was enough to finance only two years of the Burundi mission. In contrast to the EU, the US favours a bilateral approach. The most and leading support the US offered to equip and train two battalions of the SADF.<sup>174</sup>

Stronger and more comprehensive support for the new African institutions is not very likely as long as the AU remains silent about the ongoing violations of democratic principles and human rights, alongside economic meltdown (inflation is over 500 percent), in Zimbabwe.<sup>175</sup> African institutions with a strong human rights and democracy rhetoric in this way lose credibility in the West. In addition, the so-called 'quiet diplomacy' of the former South African President Thabo Mbeki has been sharply criticized by civil society representatives, opposition parties, and the

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<sup>169</sup> C de Coning 'Peacekeeping Trends', *Conflict Trends* 4 (2003) pp 30-31.

<sup>170</sup> "G8 to NEPAD: Brigades Not Bridges", *This Day* (the new South African daily newspaper funded by a Nigerian Business group) (June 16, 2004)

<sup>171</sup> Ibid.

<sup>172</sup> African Union, *Draft Framework for a Common African Defense and Security Policy*, p. 3.

<sup>173</sup> Ibid.

<sup>174</sup> C de Coning, "The Role of the OAU in Conflict Management in Africa", in *Conflict Management, Peacekeeping and Peace-building: Lessons for Africa from a Seminar Past*, Mark Malan, ed. (Pretoria: Institute for Security Studies, April 1997), pp. 20-21.

<sup>175</sup> Ibid.

media in Zimbabwe. Since no tangible results have been forthcoming the West perceives it as a failure.<sup>176</sup> So far, the situation in Zimbabwe has not been on the AU agenda. Indeed, the organization is trying to avoid any discussion<sup>177</sup> since this could lead to conflict within it; in any case, Zimbabwe could react by simply withdrawing from the AU.

At the last AU summit in Addis Ababa the organization seemed to take the first steps to alter its position on Zimbabwe. At the summit the African Commission for Human and Peoples' Rights handed to the AU Executive Council a report condemning human rights violations in Zimbabwe and criticizing the government for harassment of members of the opposition.<sup>178</sup> The government of Zimbabwe will have to respond to the report soon, at the latest within six months. Although the Zimbabwean government was able to prevent the report from being published and discussed at the meeting, developments could make it possible for Thabo Mbeki to alter his policy without losing the support of other African leaders.<sup>179</sup> It is characteristic of the diplomatic style at AU summits that, despite the human rights and democracy terms, it was left to UN General Secretary Kofi Annan to speak out clearly against long-standing dictators. Annan said that the 'days of indefinite one-man or one-party governments are behind us', and continued that African leaders should know 'when to pass the torch to a new generation'.<sup>180</sup> His speech, which avoided naming names, can be interpreted as a critique of such long-standing dictators as Omar Bongo in Gabon or Togo's President Eyadema, both of whom had been in power for 37 years by 2004. And both have been replaced by their sons as if their constitutions provided the replacement from father to son. This is a new trend in most African countries and which is causing unrest and in some cases, civil wars particularly in the Arab world at the beginning of the year 2011. As long as the AU continues more or less to ignore the situation in Zimbabwe and to turn a blind eye to the human rights abuses in other member-states, the West will be reluctant to increase support for Africa's new institutions.<sup>181</sup> The same goes for NEPAD, as a development program based explicitly on the principles of democracy and human rights.

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<sup>176</sup> O. Gerrit Is Thabo Mbeki Africa's Saviour? *International Affairs*, 79 (4): 815–28 (2003) 819.

<sup>177</sup> This day, July 7, 2004

<sup>178</sup> Ibid.

<sup>179</sup> Ibid. Robert Mugabe still enjoys much respect in Africa, particularly South Africa, partly because of his role in the struggle against apartheid.

<sup>180</sup> This day, July 7, 2004.

<sup>181</sup> Ibid.

#### 4. The Role of NEPAD in Accelerating Regional and Continental integration

NEPAD was born on October 23, 2001 in Abuja, Nigeria. Its progenitors had been different initiatives from Senegal, Algeria, South Africa, and Nigeria, which were now fused into one program. NEPAD was an initiative of a few powerful African heads of state. The long and detailed founding document gives the impression of an extensive shopping list since nearly all aspects of development are tackled. For instance, a list of sectoral priorities is given and the prevention and management of conflicts are prominent.<sup>182</sup> NEPAD urges governments to plan to attract foreign investment of 64 billion US dollars per year, while also mobilizing local capital.<sup>183</sup> Furthermore, it urges priority should be given to building a continental infrastructure of transport, ICT, energy, and water. Renewed investment in Africa would end the continent's marginalization and reintegrate Africa into the globalized world.<sup>184</sup> The objectives are a seven percent annual growth rate, a four percent share in world trade and as foreseen in the UN Millennium goals a reduction of poverty by half by 2015.<sup>185</sup> NEPAD can be interpreted as a comprehensive program addressing most of the impediments to Africa's development.

The economic and developmental goals seem to be over-ambitious. Set against the current state of African economies they seem unrealistic or even utopian. This step shows that Africans leaders know what they need for their people. Similar to the UN Millennium goal of reducing poverty by half by 2015, NEPAD's aims must be understood as a political commitment. The danger of both NEPAD and the UN is that expectations will be high and disappointment with results could negatively affect support. A new feature of the document is that it advocates a new partnership with the more developed world, but also stresses Africa's responsibility for development.<sup>186</sup> Although colonialism, unfair trade practices, or, more recently, globalization are identified as reasons for Africa's poor state of development NEPAD also recognizes that

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<sup>182</sup> The document can be downloaded from [www.nepad.org](http://www.nepad.org).

<sup>183</sup> NEPAD prioritized as its first economic project »Grand Inga«. This is a four-decade old engineering project to build on the Congo River the world's largest hydro-electric power station, delivering energy through a Continental grid. Should NEPAD persuade the corporate sector to build and operate this, it would be the single largest business opportunity for the world's energy industry. The same can be said of proposals to construct pan-African tarred highways from Dakar to Djibouti and from the Cape to Cairo.

<sup>184</sup> S. Mistry Perey 'Africa's Record of Regional Co-operation and Integration' (2000) 91:397 *African Affairs* 533 at 539

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

'failures of political and economic leadership in many African countries' have also hampered development.<sup>187</sup> The African leaders' determination to take the destiny of Africa into their own hands and self-criticism make NEPAD an exceptional document. Another major achievement of the NEPAD document is that it identifies respect for human rights, democratic principles, good governance, and peace as essential preconditions for development.<sup>188</sup>

#### 4.1 The priority areas of NEPAD

The NEPAD as a socio-economic programme of the Union, it has as its main objective to meet the challenge of eradicating poverty from Africa, through the establishment of a stable environment conducive to peace and security and the promotion of sustainable economic growth and development, in order to ensure the continent's full participation in the management of global political and economic affairs.<sup>189</sup> The NEPAD Secretariat does not take part directly in programme implementation. Its role is to draw up programmes, while the responsibility for programme implementation lies with the RECs, the individual countries, the private sector and civil society, in collaboration with the partners, and in full respect for the principle of subsidiarity.<sup>190</sup>

The main role of the NEPAD Secretariat is to, *inter alia*, facilitate the implementation of programmes at all levels, mobilize political and other forms of support, carry out advocacy and promotion campaigns, mobilize resources and promote institutional coordination in the implementation of programmes at all levels.<sup>191</sup> NEPAD had launched eight priority initiatives involving programmes that are currently at various stages of preparation and/or implementation and some of them are in the following areas.

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<sup>187</sup> The document can be downloaded from [www.nepad.org](http://www.nepad.org).

<sup>188</sup> *Ibid.*

<sup>189</sup> Alberto Chong, "Inequality, Democracy, and Persistence: Is There a Political Kuznets Curve?" *Economics and Politics* 16, no. 2 189-212 (July 2004) 193.

<sup>190</sup> *Ibid.*

<sup>191</sup> *Ibid.*

## 4.2 Initiative on peace, security, democracy and political governance

This initiative covers the APRM which constitutes a mutually agreed instrument for self-appraisal by participating governments and respect for values, codes and standards in the field of political and economic corporate governance. Some of the APRM initiatives are: Initiative on economic and corporate governance, to close the education gap, health.<sup>192</sup>

## 4.3 NEPAD's Achievements

In addition to accelerating the implementation of projects in the above mentioned priority areas, the NEPAD Secretariat works on multi-sectoral problems in the following areas, deemed crucial for the attainment of the NEPAD objectives: communication, popularization and establishment of partnerships.<sup>193</sup>

Moreover, one of the groundbreaking initiatives of the NEPAD is the APRM. The APRM aims at fostering the adoption of policies, standards, and practices that lead to high economic growth, sustainable development, and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practices, including identifying deficiencies and assessing the needs of capacity building.<sup>194</sup> Teams of African experts in various spheres assess and critique the countries' governance performance, based on a number of key indicators viz. political governance, economic governance, corporate governance and socio-economic development.<sup>195</sup> The peer review process aims to scrutinise all levels of government, parliament and the judiciary as well as the private sector. This is likely to lead to rapid poverty eradication and achievement of the objectives of the NEPAD programme and the MDGs.<sup>196</sup> APRM seems to be a concrete demonstration of African countries' commitment to

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<sup>192</sup> Daron Acemoglu and James Robinson, *Economic Origins of Dictatorship and Democracy* New York: Cambridge University Press (2005) 116.

<sup>193</sup> Ibid.

<sup>194</sup> David Stasavage, "Democracy and Education Spending in Africa," *American Journal of Political Science* 49, no. 2 (2005): 343-358.

<sup>195</sup> Ibid.

<sup>196</sup> Atul Kohli, *State-Directed Development: Political Power and Industrialization in the Global Periphery* (New York: Cambridge University Press, 2006).

addressing governance issues decisively and controlling their own destinies. However, after more than three years since the adoption of the APRM, only four countries have fully completed their review process, namely: Rwanda, Kenya, Ghana and South Africa<sup>12</sup>.<sup>197</sup>

There is still misunderstanding and misconceptions about APRM process at the national level; some stakeholders perceive the process as a vehicle to single out and criticize or attack the Executive whereas the process is supposed to be an all inclusive exercise aimed at addressing governance issues in all sectors of society.<sup>198</sup> All stakeholders should contribute to the design of a comprehensive 'Programme of Action' intended to help the country meet the challenges identified in the self assessment process.

The philosophy that established the NEPAD programme, as well as the priority programmes articulated around it, makes it necessary to recognize that the programme constitutes a real change of direction for the African people. But the obstacle is in this other question: Can NEPAD move from the drawing board to reality? The financial resources needed to implement the numerous projects contained in the programme are not yet mobilized. The African people who had seen in this programme as an African renaissance are beginning to lose hope. To avert despair, it is extremely urgent for the African leaders to combine the political will which led them to establish NEPAD with another political will which must lead them to find, at Africa's level, the financial resources needed for the implementation of this important programme.<sup>199</sup> An opposite attitude will lead NEPAD to suffer the same fate as the numerous programmes that preceded it.

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<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> F. Pagani 'Peer Review as a Tool for Co-operation and Change' *African Security Review*, 11 (4): 15-24 (2002) 18.

## 5. The African Peer Review Mechanism

The most innovative element of NEPAD is the APRM.<sup>200</sup> It is described by NEPAD as a voluntary self-monitoring system for AU member-states to ensure that policies and practices are in line with the principles agreed in the NEPAD document. A team of lesser than 10 eminent persons from African countries conducts the country assessment. The APR Forum, consisting of the heads of state and government of participating states, is the highest APRM institution. It is currently not identical with the NEPAD Heads of States and the Government Implementation Committee since not all states have signed the APRM document. Additional institutions are the Panel of Eminent Persons with oversight functions over the whole process and the secretariat providing technical support.<sup>201</sup> The review mechanism unfolds in five stages.<sup>202</sup>

1. A report based on documentation prepared by the APRM secretariat and various regional and international organizations is drafted and circulated. In response to this report the government of the country under review produces an action plan.
2. The APRM team visits the country and conducts background interviews with government officials, representatives of civil society, and political parties. It checks whether the action plan addresses the main challenges.
3. A draft report is discussed with the government of the country under review and its responses integrated into the report.
4. The report is handed over to different APRM institutions and finally discussed by the Heads of State and Government.
5. Six months later the report is discussed in AU forums, such as the Pan-African Parliament.

With respect to the findings of the APRM team, two scenarios are most likely: if the government under review is willing to reform, NEPAD promises assistance and will also urge donor agencies

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<sup>200</sup>J. Cilliers *A Guide to the NEPAD African Peer Review Mechanism*. Pretoria: Institute for Security Studies (2003) 43.

<sup>201</sup>Ibid.

<sup>202</sup>NEPAD distinguishes between four types of review; country review within 18 months of a country becoming a member of the APRM; periodic reviews every two to four years; review at the request of a country; crisis review.

and countries for support.<sup>203</sup> If a government refuses to change, a dialogue is begun, but it is left open whether more pressure will follow.<sup>204</sup> This is at some extent necessary as self-review is purely voluntary and there is no time to lose for anyone who is not ready to change. The absence of explicit punitive mechanisms for governments violating the NEPAD principles gives the impression of a 'velvet'<sup>205</sup> mechanism. Particularly the African proponents of NEPAD stress that the aim is a non-adversarial and collegial process, but should stipulate learning. This approach, as is often argued, is more in line with the African tradition of dialogue. This understanding of the APRM differs vastly from that prevailing among donor countries, which perceive the mechanism as an instrument for enforcing good governance.<sup>206</sup>

The APRM focuses on four areas: 1. democracy and political governance; 2. economic governance and management; 3. corporate governance; 4. socio-economic development.<sup>207</sup> The review of democracy and political governance (which includes human rights issues) will be oriented towards the various documents of the African institutions, treaties such as the Constitutive Act of the AU and various OAU documents signed by countries under review.<sup>208</sup> The indicators developed by NEPAD therefore refer to different standards, which are codified in the various documents and formulated in the form of a set of questions or 'indicative indicators'.<sup>209</sup> This checklist approach is a method generally used to assess the state of democracy and good governance. Although the detailed list of indicators is impressive, no weightings or levels which would allow clear judgment are given.<sup>210</sup> This is in marked contrast to most international comparative assessments and rankings which use qualitative (for example, 'fully or nearly realized', and so on) or quantitative (numerical), or a combination of both methods of judgment.<sup>211</sup> Indeed, it is questionable whether African politicians are really interested in receiving comprehensive and clear indicators and a final positive or negative

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<sup>203</sup> L. Diamond, 'Elections without Democracy: Thinking About Hybrid Regimes' (2002) 13:2 *Journal of Democracy* 21-36

<sup>204</sup> Ibid.

<sup>205</sup> T Carothers 'The Sequencing Fallacy' (2007) 18:1 *Journal of Democracy* 19.

<sup>206</sup> Ibid.

<sup>207</sup> See NEPAD 'Objectives, Standards, Criteria and Indicators for the APRM' (March 9, 2004) download: Available at <http://www.nepad.org/documents/110.pdf> [Accessed on November 16 2010].

<sup>208</sup> See Art.3 (g) of the Constitutive Act.

<sup>209</sup> R Rotberg (ed) *When States Fail: Causes and Consequences* (2003) 78.

<sup>210</sup> K Gottschalk & S Schmidt *The African Union and the New Partnership for Africa's Development: Strong Institutions for Weak States?* (2004) 145.

<sup>211</sup> Ibid.

judgment. If such criteria were available this could reduce the willingness to submit to review. It could also reduce the political leverage of the institutions.

In the wake of several NEPAD and AU meetings, the Heads of State and Government agreed at a high-level meeting that the APRM process on democracy and political governance would be guided and supervised by AU institutions. In contrast, the review of economic and corporate governance and development practices will be re-viewed by the NEPAD secretariat until appropriate AU institutions have been created.<sup>212</sup>

For the review of the three non-political or less political APRM dimensions, NEPAD will borrow technical expertise from international organizations with oversight experience. In the longer term, it is envisaged by the AU that the NEPAD secretariat should be absorbed into the Commission of the African Union.<sup>213</sup> The political dimension of the APRM therefore relies to a large extent on institutions that are not yet in place, or on existing but weak AU institutions such as the Pan-African Parliament which are in the process of establishment and will need years before they are fully effective.<sup>214</sup> It is difficult to imagine how the complex APRM process can work smoothly under these unfavourable institutional conditions. Besides the unfinished institutional structure the lack of resources is another obstacle: for instance, the NEPAD secretariat, modestly staffed with only 47 persons, was made only possible because a NEPAD Business Group seconded corporate staff to it. Whereas reviews as such will not require substantial resources, the reforms recommended by the review team will depend largely on external funding.

In June 2004, after months of delay, the first review panel under the leadership of Chris Stals started in Ghana. Besides Ghana, Kenya, Mauritius, and Rwanda were under review in 2004.<sup>215</sup> After the reviews have been completed and the results published in December 2004 the

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<sup>212</sup> Morton Halperin, Joseph T. Siegle, and Michael Weinstein, *The Democracy Advantage: How Democracies Promote Prosperity and Peace* (New York: Routledge, 2005) 39.

<sup>213</sup> J Cilliers 'A Guide to the NEPAD African Peer Review Mechanism' Pretoria: Institute for Security Studies (2003) 12.

<sup>214</sup> *Ibid.* at 8.

<sup>215</sup> M Halperin *et al* *The Democracy Advantage: How Democracies Promote Prosperity and Peace* (2005) 39.

following group of states, including South Africa, Mozambique, Nigeria, and Benin, were reviewed in 2005.<sup>216</sup>

## 6. Reactions and Critical Analysis

NEPAD has been criticized from different angles. From the political left it has been repeatedly argued that the project has 'sold out' Africa to neoliberal market ideology. Others criticize NEPAD for its lack of a coherent strategy and central leadership.<sup>217</sup> Another perspective views NEPAD as a top-down process, initiated by the Heads of State and Government without prior consultation with civil society.<sup>218</sup>

Donor countries and international institutions, on the other hand, initially reacted positively and enthusiastically to NEPAD. The German government even appointed a special NEPAD representative in the Ministry of Economic Co-operation and Development.<sup>219</sup> The donor countries and the G-8 welcomed NEPAD as an indigenous African initiative with the potential to treat and to some extent to cure the continent's chief evils. The APRM received the most attention. In contrast to vague statements from African leaders about possible consequences of the APRM, the donor community has already announced it will link APRM outcomes to the further payment of aid. The APRM reviews will therefore become like a new element of donor conditionality. This is also recognized by NEPAD itself. The Chairperson of NEPAD, economics professor Wiseman Nkhulu, stressed at the launch of the African Investment Initiative in November 2003 that investors and donors in general would penalize states with a poor human rights record and extensive corruption.<sup>220</sup> The supposed punitive reaction by the donor community is possibly one of the reasons why African leaders do not see the necessity of sanctions in case of a negative review outcome.

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<sup>216</sup> Ibid.

<sup>217</sup> D. Keet 'NEPAD and the African Union', *New Agenda*, no. 9: 112–33 (2003) 121.

<sup>218</sup> Ibid.

<sup>219</sup> See [www.isupportafrica.com/nepad/index.htm](http://www.isupportafrica.com/nepad/index.htm).

<sup>220</sup> This Day, November 20, 2003.

According to different research, NEPAD's greatest success so far is to have put Africa high on the international agenda. G-8 meetings have always had a strong focus on Africa since its birth. The G-8 leaders regularly discuss the situation in Africa with African leaders and pledge support. Six African leaders, including Thabo Mbeki and Olusegun Obasanjo, were invited to the 2004 last summit in Sea Island.<sup>221</sup> Although not all promises for increased aid have been kept, the financial support from developed countries increased between 2000 and 2002, from roughly 16 billion US dollars to 18.6 billion.<sup>222</sup> In contrast to the reluctance of most bilateral donors, international agencies are willing to fund NEPAD projects. The WB alone has pledged over 500 million US dollars for each of NEPAD's agricultural and infrastructural programs.<sup>223</sup>

Complaints from many African intellectuals about the reluctance of donors to support NEPAD more meaningfully and NEPAD's failure to attract more support are deceiving. Budget constraints in many European countries and a general perception of Africa as a 'lost continent' where aid fails to achieve results, lead to donor fatigue and reduce the ability and will to increase development aid. It is a major success of NEPAD to keep Africa on the international agenda and even attract additional funds.

Meanwhile, a more realistic view of NEPAD and sometimes even disappointment has characterized the views of donors. There are at least two reasons for this change in perception and the first is the unwillingness of NEPAD like the AU to deal with the human rights violations and the disregard for democratic principles in some African countries such as Zimbabwe, Somalia, Madagascar and Cote d'Ivoire. Although Zimbabwe was not made the 'litmus test' of NEPAD's stance towards democracy and human rights, NEPAD's inertia was widely perceived as wrong.

The second and main reason for scepticism was the decision by the Heads of State and Government to give AU institutions responsibility over the political dimension of the APRM,

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<sup>221</sup> Ibid.

<sup>222</sup> Cape Times, February 18, 2004.

<sup>223</sup> Ibid.

while NEPAD retained responsibility only over economic governance.<sup>224</sup> Due to the historical experience with the OAU and the strong position of Gaddafi in the AU, the decision was seen as watering down the APRM. The donor community was particularly afraid that the APRM would face a similar fate as the African Commission on Human and Peoples' Rights and become a 'toothless bulldog'.<sup>225</sup> The African Commission on Human and Peoples' Rights, based in Gambia remained ineffective due to the lack of political support from some heads of state and government.<sup>226</sup> Many states did not even send reports to the Commission.

Between the drafting of the NEPAD core document and 2003, NEPAD stagnated and the donor community's attention shifted more to the AU and security issues. It was not only the donor community which became more and more disappointed and impatient with NEPAD. Strong opposition came from within NEPAD, from the business community. Open criticism from the business side was articulated at the AU Maputo summit in May 2004 towards the AU's handling of the APRM. The NEPAD business group, chaired by the former chairman of South Africa's electricity giant ESKOM, Reuel Khoza, stated that business 'would be much happier with the mechanism being a little more robust'.<sup>227</sup> In various statements, members of the NEPAD business group have publicly criticized the APRM as toothless and pointed to the lack of clear indicators. They even threatened the AU that they would introduce their own rating system parallel to the APRM. Against the mounting criticism both from donors and from the business sector the AU summit 'expressed concern at the slow pace of implementing NEPAD's APRM'.<sup>228</sup>

The support of the donor and business communities strongly depends on the results of reviews and possible consequences. In case of negative findings, the willingness of the germane government to change its policy will be decisive for external support. If a government refuses to introduce reforms, it will most likely face a reduction of external aid and also (informal) market sanctions because private investors would shy away from it.<sup>229</sup> In some cases, especially when

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<sup>224</sup> J. Cilliers *A Guide to the NEPAD African Peer Review Mechanism*. Pretoria: Institute for Security Studies (2003)2.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Business Day, May 31, 2004

<sup>228</sup> Cape Times, May24, 2004

<sup>229</sup> Ibid.

countries do not have significant mineral or agricultural resources for export, the exclusion or isolation of these countries could result. In other words, these donors work with countries which are not much in need of them as they diminish aid for some and exclude for others. Conversely, countries with a positive review would most likely be 'rewarded' by increased aid and stronger political support.<sup>230</sup> The reviews could also create a dilemma for NEPAD in general: on the one hand, it is possible that clear results and recommendations, especially in case of a negative review, would dampen the willingness of countries to be reviewed; on the other hand, soft, ineffective, or meaningless reviews will undermine the credibility of NEPAD and the AU.<sup>231</sup> In the long run, the APRM could contribute to enhancing the emerging dividing line between good performers/willing reformers and bad performers/reform-averse states. To avoid all kinds of failure, AU has formed strong institutions as a channel of coordination among different regional communities. It has also established inter-connectivity between the AU and its building blocks institutions.

## **7. Institutions for Regional Integration**

### **7.1 Relationship between Regional Integration' Institutions**

Some researchers see institutions as the supplier of services, in particular law and order, good governance, social security and market regulation.<sup>232</sup> This implies that countries need to improve the efficiency of their services by reducing rent-seeking and corruption and increasing democratic control over institutions. Kahn notes that the concept of the state as a service provider is not entirely wrong because the state does indeed facilitate such services in developing countries.<sup>233</sup> But according to Kahn and other critics, this model falls short of providing a comprehensive picture of institutions; instead, it defines the state as a mere mechanism for supporting and facilitating market transactions.<sup>234</sup> For developing countries in particular, the

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<sup>230</sup> IMF 'World Economic Outlook April 2003: Growth and Institutions' Washington, D.C. (2003) 20.

<sup>231</sup> Ibid.

<sup>232</sup> World Bank 'World Development Report 2002: Building Institutions for Markets' Washington, D.C. (2001) 4.

<sup>233</sup> K H Mushtaq 'State Failure in Developing Countries and Strategies of Institutional Reform' Draft of paper for Annual World Bank Conference on Development Economics, June 24–26, Oslo (2002) 39.

<sup>234</sup> Ibid.

state is just as important in instigating and managing social transformations. Dynamic states have heavily intervened in property rights and devised rent management systems to accelerate the capitalist transition of economies and acquire new technology.<sup>235</sup>

Wade identifies four justifications for why government institutions need to take an active stance in governing the market, rather than simply being a service provider: scale and learning economies, capital market imperfections, externalities and market instabilities. He argues:

‘The popular belief that governments cannot ‘make winners ‘ rests on remarkably little empirical research into the record of different governments in selective industrial promotion...Research on this question has to balance the record of government failure against the record of failure by private business; and examine, too, what happens to economies where few transformation projects are attempted because the government declines to take an initiative and private business declines to take the risk.’<sup>236</sup>

Markets are social institutions themselves and consequently need to be moulded and regulated. Too often in debates on institutions and development, the empirically well documented argument that uncontrolled markets can create bad governance/outcomes, inequalities and disincentives is overlooked or ignored.<sup>237</sup> This has led to the widely held belief that institutions should simply be supportive of market based processes. But even neo-classical institutional theory rejects this interpretation and views institutions as a substitute for the market when the cost of using markets outweighs their benefits.<sup>238</sup> The internalization theory of the multinational firm is relevant here: far from being creatures of the market, multinational firms actually expand the bounds of the planning and administrative fiat in the economy.<sup>239</sup> They are the logical, rational reaction to market failure.

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<sup>235</sup> ECA ‘Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities’ Economic Commission for Africa (2006) 25.

<sup>236</sup> R Wade *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (2004) 356.

<sup>237</sup> Ibid.

<sup>238</sup> ECA ‘Assessing Regional Integration in Africa II: Rationalizing Regional Economic Communities’ Economic Commission for Africa (2006) 28.

<sup>239</sup> Chang, Ha-Joon *Kicking Away the Ladder: Development Strategy in Historical Perspective* (2002) 73.

The classic text of Polanyi provides one of the best examples of how uncontrolled markets can present as much of a problem as the absence of markets. He documents how the elimination of laws designed to protect poor people led to a dramatic increase in the vulnerability of poor people in 19th century.<sup>240</sup> Kay has also been argued that lack of appropriate regulatory laws and institutions resulted in some of the recent financial crises in developing countries. The world's worst ecological disaster caused by a private company in Bhopal India, similarly sprung from inadequate regulation of the Union Carbide chemical plant, causing an estimated 20 000 deaths and 200 000 injuries.<sup>241</sup>

The absence of adequate regulation can thus be as damaging as too much regulation. For example, while the WB considers competition important, it does not always give enough attention to strengthening regulatory controls on monopolies and oligopolies in national and international markets.<sup>242</sup> This is especially relevant to African countries because producers rely heavily on international markets and purchasing through multinational firms. But until the 1990s only 14 African countries had any competition regulators.<sup>243</sup> Strong regulatory control of monopolies is totally coherent with a market-based philosophy.

The same is broadly true of labour markets. In Western countries working conditions improved thanks largely to state regulation. However, some observers warn that the relaxation of state regulation and the renewed growth of labour flexibility threaten to undermine those achievements.<sup>244</sup> In most of Africa labour market institutions do not exist, even though in many sectors, such as textiles and agriculture, there is a striking need for regulation.<sup>245</sup> Some economists see any intervention at all in the labour market in a negative light and contend that intervention interferes with the natural market-clearing mechanisms to avoid unemployment.

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<sup>240</sup> K Polanyi *The Great Transformation: The Political and Economic Origins of Our Time* Boston, Mass: Beacon Press (2001) 33.

<sup>241</sup> J Kay 'The Truth about Markets: Why Some Nations Are Rich But Most Remain Poor' London: Penguin Books (2004) 61.

<sup>242</sup> Ibid.

<sup>243</sup> Singh, Ajit 'Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions' Paper presented at the meeting of the G-24 Technical Group, March 1-2, Beirut (2002) 18.

<sup>244</sup> Supra note 241.

<sup>245</sup> W Van Der Geest and R Van der Hoeven *Adjustment Employment and Missing Institutions in Africa: The Experience in Eastern and Southern Africa* (1999) 22.

But as Kay notes, 'The issue is not whether the labour "market" should be subject to social and legal regulation, but the nature and extent of such regulation. That is a matter for moral judgment, social values and empirical evidence.'<sup>246</sup>

Striking the right balance between regulating and adequately supporting the private sector is thus a key institutional challenge for African countries and by extension the regional economic communities. In practice, this is no easy matter. Take, for instance, the regulatory role of competition policy (an area in which African institutions are generally inactive). Textbook economic theory posits a monotonic relationship between competition and economic development, suggesting that the greater the degree of competition, the stronger the economic performance.<sup>247</sup> But Singh points out that modern economic analysis seriously qualifies that conclusion, suggesting that there is an optimum level of competition and that a suitable level of cooperation and competition is more likely to enhance societal welfare than competition alone.<sup>248</sup>

Developing a competent and professional civil service is thus one of the key challenges of today's poor developing countries. A key element in this is planting the seeds of a philosophy of public service. As Kay stresses:

'The integrity of an institution is not the product of its governance structure, but of the values of those who work within it. Many different value systems will be supported by adaptive, self-reinforcing behaviour. If institutions are designed on the assumption that individuals are self-interested, self-interested behaviour will be adaptive within them. If the premise is that people are not to be trusted, that expectation will be fulfilled'.<sup>249</sup>

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<sup>246</sup> D Rodrik *In Search of Prosperity: Analytical Narratives on Economic Growth* (2003) 38.

<sup>247</sup> Ibid.

<sup>248</sup> A Singh 'Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions' Paper presented at the meeting of the G-24 Technical Group, March 1-2, Beirut (2002) 29.

<sup>249</sup> World Bank 'World Development Report 2002: Building Institutions for Markets' Washington, D.C. (2001) 347.

## 8. Coordination between African Union and Regional Economic Communities

Coordination between the AU and RECs should involve adjusting and harmonizing policies, programmes and activities to achieve a common goal. By contrast, harmonization would involve adopting regional legislation—codifying, unifying and standardising laws that would be applied and enforced at the national level. But experience shows that harmonizing laws can be possible but difficult and it can take a long time for the improvement of its success.<sup>250</sup>

Coordination and harmonization are important because they eliminate duplicated, overlapping and conflicting programmes, which in turn, reduce resource costs. The Abuja Treaty lays out four main responsibilities in the relationship between the AEC and the RECs:

- The AEC will be established by coordinating, harmonizing and integrating the RECs.
- Members will promote the RECs' integration activities geared towards achieving the AECs objectives.
- Members will coordinate and harmonize their activities through their respective RECs. The AEC is responsible for coordinating, harmonizing and evaluating the RECs' activities.<sup>251</sup>

The rationalization process must thus safeguard these objectives. The coordination process must include shared information, periodic coordination meetings, a liaison office, common focal points and integrated programmes and strategies to ensure a smooth working relationship that advances the integration agenda.<sup>252</sup>

The current arrangements for coordination are based on a protocol that calls for two committees: the Committee of Secretariat Officials and the Committee on Coordination. The committees must meet regularly to be more effective. Implementing sectoral policies is the responsibility of member countries, but the regional economic communities exercise some influence by

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<sup>250</sup> UNECA 'Assessing Regional Integration in Africa 2004' Policy Research Report Addis Ababa (2004) 41.

<sup>251</sup> Art.88 of the Treaty Establishing the African Economic Community Abuja Nigeria (June 3<sup>rd</sup> 1991)

<sup>252</sup> Supra note 249

facilitating, advocating and lobbying for regional priority projects and programmes.<sup>253</sup> The rationalization process should strengthen coordination and harmonization at the sectoral level. The two coordination committees must push the integration agenda at the national level. Implementing policies is difficult but realizable because it requires a combination of effective and achievable national action plans, national working groups, national and regional institutions and regional review working groups.<sup>254</sup> To improve the coordination committees' effectiveness of the rationalization process must ensure that:

- All stakeholders agree on a common framework for coordination and harmonization; Coordination and harmonization of sectoral, national, sub regional and continental policies, programmes and activities are identified; National coordination offices are created to coordinate regional initiatives at the country level;
- Meeting dates are fixed for the coordination committees and announced at the beginning of each year. All members must be encouraged to attend and the agenda and background documents on the operational status of coordinated and harmonized policies, programmes and activities must be circulated before the meeting;
- A coordination office at the AU and focal points at the RECs liaison with the coordination offices of countries in each region to facilitate implementation of the committee's decisions.<sup>255</sup> This would also ensure the periodic exchange and update of vital information.

There is also a need to design regional and national action plans to implement coordinated or harmonized programmes. To ensure that this action is carried out:

The AU should encourage all the players in the integration process to prepare timely action plans with specific timetables on how to implement coordinated policies and programmes at the

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<sup>253</sup> Ibid.

<sup>254</sup> World Bank 'Global Economic Prospects: Trade, Regionalism and Development' Washington D.C. (2005) 85.

<sup>255</sup> Ibid.

country, sub regional and regional levels. These plans should include also the implementation of the NEPAD programmes.<sup>256</sup>

- RECs should submit reports by a specified date on the status of coordinated or harmonized policies, programmes and activities to the coordinating committees. The reports should also specify progress at the national level. An annual report with sectoral performance indicators should be published and widely disseminated to RECs, governments and influential national institutions, such as universities, to pressure lagging RECs and countries into action.<sup>257</sup>
- Coordination and harmonization efforts should be strengthened in such areas as transport, energy, trade, money and finance.<sup>258</sup> Implementing the recommendations made here would not be easy. It will require strong political leadership, especially from the AU. The harmonization of RECs laws should be applied at national level where the leaders are willing and the rule of law prevails.

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<sup>256</sup> NEPAD 'Implementing the Comprehensive African Agriculture Development Programme and Restoring Food Security in Africa: The Roadmap'. Midrand, South Africa (2005) 47.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

## Chapter IV:

### THE FOUNDATION OF THE RULE OF LAW IN GOOD GOVERNANCE' SYSTEM

#### 1. The Rule of Law and Governance

##### 1.1 Definition of the Rule of Law

The term 'rule of law' is used frequently in reference to a wide variety of desired ends. Neither scholars nor practitioners have settled upon an accepted definition. However, the term usually refers to a state in which citizens, corporations and the state itself obey the law and the laws are derived from a democratic consensus.<sup>259</sup> This is captured in a definition proposed by the UN. The report containing this definition then suggests certain characteristics of the rule of law, including adherence to the principles of supremacy of law, equality before the law, fairness in application, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.<sup>260</sup> The U.S. State Department's website similarly describes the rule of law as protecting 'fundamental political, social and economic rights' and distinguishes between rule of law versus rule by law in more authoritarian societies.<sup>261</sup>

Both descriptions of the rule of law point to a universality of the principle. The rule of law is not Western, European or American. It is available to all societies. States differ in terms of laws and the treaties they have signed with respect to human rights. Legal cultures differ depending upon history, with many countries basing their legal system on the civil law tradition and others on the common law tradition, while many countries include elements of both traditions and may

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<sup>259</sup> United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General* (August 23, 2004) 4.

<sup>260</sup> Ibid.

<sup>261</sup> Available at <http://usinfo.state.gov/products/pubs/principles/law.htm>

incorporate significant traditional, religious, or customary components.<sup>262</sup> In many countries, religious law provides the foundation for family and other laws. Societies differ in terms of the values they assign to law versus other means of social organization, such as personal or family loyalty.<sup>263</sup> Respect for specific laws and other norms vary depending upon the cultures and circumstances. The principle of rule of law, however, transcends all these differences.

This has important implications for practitioners. If the rule of law is a universal principle, then supporting the rule of law is not necessarily imposing foreign ideas on a society.<sup>264</sup> The challenge is to find ways in which a society may govern itself under the rule of law, using an approach that reflects the values and norms of that society. Indeed, countries which have successfully reformed their legal systems have owned their reforms by consciously borrowing from existing models, while introducing innovations where necessary.<sup>265</sup>

## 2. The Rule of Law in Democratic System

Unlike authoritarian states, which may be governed either by law or by personal power or loyalty, democracies require the rule of law. The rule of law is important to democracy because it establishes the foundation for certain conditions on which democracy depends such as the following:

### 2.1 Expression of the collective will

One characteristic of democracies is that law is a means by which the collective will of the people is expressed. An end result of the political process is laws that determine the allocation of public resources, empower public officials to act on behalf of society and set norms of acceptable and prohibited behaviour.<sup>266</sup> If laws are ultimately meaningless due to inadequate adjudication,

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<sup>262</sup> Ibid.

<sup>263</sup> T Carothers *Promoting the Rule of Law Abroad: In Search of Knowledge*, Carnegie Endowment for International Peace (2006) 66.

<sup>264</sup> United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General* (August 23, 2004) 5.

<sup>265</sup> L Hammergren *Assessments, Monitoring, Evaluation and Research: Improving the Knowledge Base for Judicial Reform Programs*, USAID, (1998) 56.

<sup>266</sup> J Stromseth, D Wippman and R Brooks, *Can Might Make Rights?: Building the Rule of Law after Military Interventions*, Cambridge University Press, (2006) 89.

enforcement, or compliance, then the purpose of holding elections and forming representative bodies to enact those laws fails to be achieved. A legal framework rooted in the collective provides the essential foundation for these laws to be implemented and enforced.<sup>267</sup> In many countries, the constitution is the highest level expression of this process. The constitution reflects the collective will of the people with respect to the organization and powers of their government and enshrines the basic human and civil rights that the people want protected. In many African countries, there is a big gap between the theory and practice of what is preserved in the constitution.

## 2.2 Monopoly on the legitimate use of force

Democracy depends on an effective state with a monopoly on the legitimate use of force.<sup>268</sup> The constitution and statutes, including criminal law, give the state the authority for a monopoly on the use of force, define when force is permissible and restrict the use of force by citizens to limited circumstances. Without such restrictions, force and violence rather than consensus and competition may determine who holds political power and those who pursue legitimate political activities may face intimidation or worse.<sup>269</sup> Where journalists, politicians and ordinary citizens fear to participate fully in the political dialogue, competition is limited and democracy is undermined. The marginalization or non-respect of the citizens' rights could lead to the removal of the rulers in power.

## 2.3 Equal Rights

Adherence to the rule of law levels the playing field in the political arena. Every citizen, regardless of his or her sex, race, class, or other characteristics, shares political rights and responsibilities that are recognized and protected equally under the law.<sup>270</sup> Most constitutions proclaim equality among citizens. Where the rule of law exists, all other considerations, such as class, gender, or ethnicity, are secondary. Where the rule of law does not exist, other

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<sup>267</sup> Ibid.

<sup>268</sup> W C Prilliman *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (2000) 84.

<sup>269</sup> Ibid.

<sup>270</sup> S Golub *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace, Rule of Law Series Number 41 (October 2003) 49.

considerations may prevail, leading to a society with 'second-class citizens' whose rights are not respected despite the recognized norm of equality.<sup>271</sup>

## 2.4 Social order

The rule of law provides a stable basis for democracy to develop. It ensures the protection of those rights critical to maintaining an orderly and productive society, creating the conditions that enable a democratic society to develop and flourish.<sup>272</sup> These rights are essential to maintaining basic social order and discouraging the resort to vigilantism, criminality and violence. They include effective protection of fundamental property and contractual rights, guarantees of freedom of association and civil liberties, ensuring compensation for wrongs, enforcement and regulation of social responsibilities and obligations, protection of individuals against predatory business practices, protection from economic and social discrimination and peaceful resolution of disputes.<sup>273</sup> Such rights are also essential to ensuring economic development and addressing poverty issues. Hence, as the rule of law establishes the pre-conditions for the foundations of democracy, it also requires some crucial elements to be in place for the triumph of the rule of law.

## 3. The Essential Elements of the Rule of Law

### 3.1 Order and Security

As the assessment framework points out, personal security is paramount to most people worldwide. In countries where public order breaks down or crime becomes epidemic, citizens may lose faith in their government. In the worst cases, they begin to take the law into their own hands. For example, lax law enforcement in urban slums and isolated rural areas has led to high rates of vigilantism in some sub-Saharan countries.<sup>274</sup> Similarly, climates of fear and frustration

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<sup>271</sup> Ibid.

<sup>272</sup> L Hammergren *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*, Carnegie Endowment for International Peace (June 2002) 92.

<sup>273</sup> Ibid.

<sup>274</sup> J K Nyerere 'Statement by J.K. Nyerere on Security, Stability and Development in Africa. 'In O.

with high levels of crime can lead to calls for draconian measures, like the suspension of human rights and to support for authoritarian leaders who can restore order.<sup>275</sup> Failure of the courts to protect property rights adequately and consistently, to facilitate the conduct of essential economic activity, or to resolve disputes in a fair and timely manner can also lead to social unrest and black or gray market activity.<sup>276</sup> It can also result in potentially violent self-help conduct, seriously undermining public order, safety and security. While the judiciary and legislature have important roles in preserving order and security, the executive branch has the immediate responsibility in this area.<sup>277</sup> An important and growing area for resolving disputes involve informal methods, such as mediation or arbitration and other forums to provide closure after conflicts, such as truth and reconciliation Commissions or committees which are lawful.<sup>278</sup>

### 3.2 Legitimacy

The perception of law as legitimate and worthy of adherence underpins the rule of law. The rule of law as a basis for democratic governance includes not only the supremacy of the law, but a democratic basis for law that makes the law legitimate<sup>279</sup> (where law represents the collective will rather than those of individuals). In societies where the rule of law is observed, virtually all citizens obey laws, even when doing so contravenes their personal interests. This willingness is not based solely on the threat of sanctions; it also arises from the citizens' recognition that laws are arrived at in a manner set out in a constitutional order and subject to social input.<sup>280</sup> Therefore, the laws represent the collective will emanating from the citizens' values. In that sense, they are 'fair' and approximate the common good. Hence citizens generally respect the authority of law. Legitimacy can be achieved through other means; for example, in theocratic or customary societies legitimacy can come from religions or traditional practices.<sup>281</sup>

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Obasanjo and F. Moshia (eds) *Africa: Rise to Challenge* (1993) 5.

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> W C Prilliman *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*, Praeger Publishers (2000) 84.

<sup>278</sup> D Reiling, L Hammergren and A Di Giovanni *Justice Sector Assessments: A Handbook*, The World Bank (2008) 203.

<sup>279</sup> Transparency International, *Combating Corruption in Judicial Systems: Advocacy Toolkit* (2008) 88.

<sup>280</sup> Ibid.

<sup>281</sup> K Polanyi *The Great Transformation: The Political and Economic Origins of Our Time* Boston (2001) 33.

The lack of legitimacy can stem for a variety of reasons. At the most fundamental level, when people have not reached a consensus on the basic boundaries or structure of the state, there is no legitimate constitutional order and the resulting laws have no authority.<sup>282</sup> The lack of legitimacy may also result when the process of proposing, reviewing and enacting laws is deeply flawed. A legislature may be controlled by an elite faction, or its members may be so patently corrupt that there is no effective social input and laws serve the interests of only a few rather than expressing the collective will.<sup>283</sup> In addition, in emerging democracies, there are often questions about the legitimacy of laws that have been imposed by colonial or foreign powers or inherited from non-democratic regimes.<sup>284</sup> This is the case of most of older African leaders who come to power by coup d'état and have legitimized themselves through the so called 'democratic elections' where they become successor for themselves. They imitate others in preparing and doing elections without democracy as the results.

### 3.3 Checks and balances

Countries in which the rule of law exists have a separation or diversity of governmental powers. Excessive concentration in any one branch, institution or level of government often leads to the arbitrary and abusive exercise of power. Separation (or at least independent decision-making, if not complete autonomy) provides the checks and balances needed to keep government contained. Checks and balances occur vertically among the different levels of government as well as horizontally.<sup>285</sup> When functioning appropriately, regional and local governments can provide a balance to central government authorities. Through monitoring and oversight, civil society also acts as a critical check on government at all levels.<sup>286</sup> It will be easy for the civil society to assess or criticize what the government is doing not as a component but as autonomous observer.

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<sup>282</sup> Transparency International, *Combating Corruption in Judicial Systems: Advocacy Toolkit* (2008) 88.

<sup>283</sup> D Reiling, L Hammergren and A Di Giovanni *Justice Sector Assessments: A Handbook* The World Bank, (2008) 203.

<sup>284</sup> Ibid.

<sup>285</sup> M J Trebilcock and R J Daniels *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (2008) 38.

<sup>286</sup> Ibid.

Checks and balances depend on all branches of government functioning appropriately. In many countries in which USAID works, however, it is the legislature and/or judiciary that needs support in order to reduce the excessive power of the executive.<sup>287</sup> This is the case of non-parliamentary government.

Checks and balances include the ability of the community to understand the proper functions of the different justice sector actors and to hold them accountable. This requires effective civic education initiatives and a degree of transparency in both the decision-making and administration of public resources managed by the justice sector.<sup>288</sup> Judicial branch accountability also runs vertically, with higher levels of authority holding subordinate levels accountable through the appeals and disciplinary processes. The independence and autonomy of the judicial branch demands self-discipline to curb abuses and minimize the need for external checks.<sup>289</sup> An independent and strong bar association may serve as a check on excessive judicial power. In emerging democracies, the judiciary often needs support in achieving self-discipline along with the capacity for self-governance.

### **3.4 Fairness**

This fourth constituent of the rule of law consists also of four sub-elements namely, equal application of the law, procedural fairness, protection of human rights and civil liberties and access to justice.

#### **3.4.1 Equal application of the law**

Democratic legitimacy derives from a consensus among citizens that laws, as administered, represent the collective will. That consensus fades unless laws are applied equally to all persons, regardless of their class, sex, ethnicity, or other characteristics.<sup>290</sup> The most common failing in

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<sup>287</sup> Ibid.

<sup>288</sup> United Nations Security Council, 'The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General' (August 23, 2004) 46.

<sup>289</sup> Ibid.

<sup>290</sup> F Upham 'Mythmaking in the Rule of Law Orthodoxy' (September 2002) 30, *Carnegie Endowment for International Peace, Rule of Law Series* 62.

the criminal area is the impunity of well-connected individuals. The privileged may include politicians, elected officials, high ranking military personnel, members of the dominant social class and wealthy elites.<sup>291</sup> Unequal application may also occur when the poor and the disadvantaged, including women, are victims or the accused. The legal system often does not give such cases the same attention as those cases in which elites are the victims or the accused. In addition, unequal treatment can occur in civil matters, such as land titling, debt collection, taxation, landlord-tenant disputes, mortgage foreclosures and enforcement of liens and security interests.<sup>292</sup> The poor and disadvantaged often have scarce possibility of winning civil cases against the well-connected. In many African societies, women are particularly vulnerable to unequal application of the law with some improvement of the current legislations.

The reasons why the laws are applied unequally are complex. Obvious flaws in the legal system (such as a lack of judicial independence, severe administrative failings, or corruption) are only symptoms. The underlying malady is the power of deep-rooted political and economic elites who benefit from a compliant legal system or ethnic or regional domination.

### 3.4.2 Procedural fairness

At its core, procedural fairness means that the government has established rules for legal proceedings, that those rules are fair and that the government follows the rules in enforcing laws, thus impeding arbitrary action by the government.<sup>293</sup> In the US, procedural fairness in legal proceedings is captured under the concept of 'due processes' as it is enshrined in the Fifth Amendment to the U.S. Constitution which provides that no person shall be 'deprived of life, liberty or property without due process of law'.<sup>294</sup> The framers of the Constitution took this concept from the Magna Carta, which contained a similar guarantee. Although the term 'due process' is a concept of the common law system, all legal regimes apply some version of procedural fairness.<sup>295</sup> The procedures to be followed in both criminal and civil cases are set

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<sup>291</sup> Ibid.

<sup>292</sup> Ibid.

<sup>293</sup> USAID, 'Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR and ANE', (November 2002) 98.

<sup>294</sup> Ibid.

<sup>295</sup> Ibid.

forth in criminal and civil procedure codes, which should conform to international standards for procedural fairness.

Generally, in the criminal area, procedural fairness guarantees the right of those accused of crimes to know the charges against them in a language they understand, the right to obtain or be provided advice, the right to present evidence in their defence, the opportunity to hear or review the prosecution's evidence, the opportunity to confront and cross examine witnesses (where oral proceedings exist) and the right to a speedy trial,<sup>296</sup> particularly in incarceration case.

Procedural fairness in the trial of civil matters (such as land title, debt collection, breach of contract and family law actions) ensures that all parties have a full and equal opportunity to be heard, to present evidence and arguments in support of their positions, to have notice of and an opportunity to respond to the case presented against them and to receive adequate and timely notice of all court proceedings.<sup>297</sup> Many countries have recognized a right to a trial within a reasonable period of time in civil matters.

Procedural fairness is indispensable in controlling abuse by police and other law enforcement authorities. Where a justice system incorporates and effectively enforces adequate procedural protections, police do not easily or consistently violate citizen rights.<sup>298</sup> The reverse is also true.

### **3.4.3 Protection of human rights and civil liberties**

Minimum standards for the treatment of all people and the preservation of their human rights and civil liberties have gained international acceptance. These are defined in various UN conventions and declarations,<sup>299</sup> as well as in regional agreements.<sup>300</sup> While the equal application

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<sup>296</sup> Article 14 of the International Covenant on Civil and Political Rights

<sup>297</sup> Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

<sup>298</sup> USAID, *Achievements in Building and Maintaining the Rule of Law: MSI's Studies in LAC, E&E, AFR and ANE*, (November 2002) 99.

<sup>299</sup> Relevant UN conventions and declarations include the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women

of the law ensures only that the laws, as enacted, are applied fairly; these standards apply to the substance of the laws themselves.

Some governments maintain that international human rights standards do not conform to the values of their citizens.<sup>301</sup> They contend that their legislation and institutions must be based on alternative standards of human rights and civil liberties. Determining whether a country meets the minimum standards involves a review of both the country's body of laws and the structure and performance of its legal institutions.<sup>302</sup> The rule of law as defined above exists only if the national legal system both recognizes essential human rights and respects those rights in practice by acceding to justice.

#### 3.4.4 Access to justice

Citizens have access to justice when they have the ability to prevent the abuse of their rights and obtain remedies when such rights are ignored. Access to justice allows citizens to enforce their rights against infringement by the state or powerful private interests. Although a variety of laws and institutions are designed to protect the rights of citizens, if these institutional mechanisms fail, citizens must also be able to bring direct action to limit executive power and hold the government accountable.<sup>303</sup> In many cases, the rights being violated are the rights to economic and social resources, such as land, title, permits and licenses. These infringements often affect the poor and vulnerable segments of society, including women, who have the least knowledge of and access to legal recourse.<sup>304</sup> The cost of initiating legal access, through judicial filing or

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(CEDAW); the Convention on the Rights of the Child; and the Convention Relating to the Status of Refugees. Additional UN statements of principles and guidelines include: the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Basic Principles for the Treatment of Prisoners; and the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment.

<sup>300</sup> Important multi-lateral regional requirements and standards include: the European Convention for Protection of Human Rights and Fundamental Freedoms; the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the African [Banjul] Charter on Human and People's Rights; the American Declaration of the Rights and Duties of Man; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture; and the Inter-American Convention on Forced Disappearance of Persons.

<sup>301</sup> Supra note 300.

<sup>302</sup> Supra note 301.

<sup>303</sup> United Nations Security Council, 'The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General' (August 23, 2004) 4.

<sup>304</sup> Ibid.

attorney fees, can also negatively affect access to justice. Access to justice further protects citizens, particularly the poor and disadvantaged, against the actions of powerful private interests that may bypass or penetrate the state.

For example, the DRC has a highly rural, broadly dispersed and mainly poor population. Surveys have indicated that the majority of disputes that are adjudicated in DRC are handled not by courts or government officials but by informal local actors such as village chiefs.<sup>305</sup> Also, much remains to be done in DRC to increase access to legal information such as statutes, government regulations and the judgments and orders of courts.<sup>306</sup> Very little of the body of DRC public laws and regulations is published electronically and the Supreme Court has not yet initiated its planned Internet publication of its significant decisions.<sup>307</sup> In Liberia, many citizens lack access to justice because they live in rural communities which are geographically distant from the courts and other justice-related institutions.<sup>308</sup> Access to justice is essential for citizens to support democracy. When the state fails to protect and provide for all citizens and segments of society lack the ability to obtain justice, there will be less support for democracy.<sup>309</sup>

Increasing access to justice is not always about quantity: more court rooms, more staff, or more justice houses that must be sustained over time. It is also about quality: well-prepared defence attorneys, changes in the legal framework to protect women, better information, and a computer terminal at the courthouse entrance that allows litigants or family members to see what is happening to their case, a more diverse and client-oriented court staff and more convenient hours of operation.<sup>310</sup> In many cases, it may be more appropriate to promote circuit-riding models where prosecutors, judges and defence counsel travel to inaccessible areas rather than spending millions of dollars to construct courthouses that people cannot reach. In Liberia for example, USAID has funded an 'itinerant justice of the peace project' whereby judges travel by

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<sup>305</sup> Ibid.

<sup>306</sup> Ibid. at 6

<sup>307</sup> G Mills 'Editor's Note' (2000) 7:1 *South African Journal of International Studies* 238.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> M J Trebilcock and R J Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (2008) 38.

motorcycle to rural communities to adjudicate disputes or perform civic legal education activities.<sup>311</sup>

Access to justice need not overburden state resources because it is a right held in reserve. Most citizens, including those from countries with robust justice institutions, rarely enter into a courtroom. Yet they enjoy access to justice in the same way as those with health insurance enjoy access to health care even if they never visit a hospital. If governance is sound in Africa and the rule of law is generally respected in society, then justice institutions can be used carefully for all and every one.

### **3.5 Effective application**

There cannot be a rule of law without application and the enforcement of laws. Even if laws are legitimately derived and equally applied, equality under the law will not occur unless the laws are consistently enforced and applied. Also, procedural fairness will not be possible since, by definition, it is about applying established legal rules to the government's proceedings.<sup>312</sup>

The judiciary is just one element of enforcement. The police are the first line for enforcement of criminal law. Fair and capable prosecutors must also be able to prosecute cases following arrest, which requires good coordination between police and prosecutors.

The executive branch agencies often have the lead role in applying and enforcing laws, through their regulatory and administrative functions. These laws and associated procedures apply to such functions as granting government pensions and other benefits, issuing business licenses and enforcing health, safety and environmental regulations.<sup>313</sup> However, even with administrative agency cases, when these laws are violated or disputes need to be resolved, the courts and law

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<sup>311</sup> United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General* (August 23, 2004) 5.

<sup>312</sup> Ibid.

<sup>313</sup> M Mwanasali 'War, Peace and Reconciliation in Africa. 'Paper presented at the Organization of African Unity–International Peace Academy Seminar on Peacemaking and Peacekeeping, , Addis Ababa (November 29–December 3, 1998) 90.

enforcement come into play. In civil matters between citizens that result in judicial decisions, either the judiciary or the executive branch is responsible for the enforcement of judgments, depending on the structure of the country's legal system.<sup>314</sup>

Compliance with laws rarely requires the judiciary's active involvement because relatively few cases actually proceed to court. However, the judiciary's role is much larger than the small number of cases would indicate. The fact that the judiciary and the other components of the system stand ready and able to enforce the laws serves as a deterrent and may be enough to promote compliance in a state governed by the rule of law.

#### 4. Cross-cutting issues: Efficiency and integrity

Efficiency and integrity are important issues that cut across all elements of the rule of law. Often uppermost in the minds of reformers, efficiency is a quality of institutional performance that can strengthen performance in all elements.<sup>315</sup> It is not a separate essential element but fortifies all essential elements. Similarly, increasing integrity and overcoming corruption are extremely important to almost all rule of law programs, but integrity is also a dimension of institutional performance, rather than a separate element.<sup>316</sup> Efficiency and integrity may determine whether or not an essential element of the rule of law exists in a given country context.

In many USAID assisted African countries, such as in Liberia and Sierra Leone, the courts are severely overloaded.<sup>317</sup> This affects access to justice and negatively affects the reasonableness of the duration of the trial and the right to a speedy trial particularly in criminal cases. The excess of criminal cases may lead to a high percentage of detainees awaiting trial and sentence and is often

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<sup>314</sup> T Carothers 'Promoting the Rule of Law Abroad: In Search of Knowledge' (2006) *Carnegie Endowment for International Peace* 66.

<sup>315</sup> A Kofi 'Durable Peace and Sustainable Development in Africa' (2000) 7:1 *South Africa Journal of International Affairs* 279.

<sup>316</sup> *Ibid.*

<sup>317</sup> *Ibid.*

one of the most serious human rights problems.<sup>318</sup> Backlogs of civil and commercial cases are also an obstacle to economic trade, investment and growth and may undermine the legitimacy of the justice system as a whole. Typical responses to increase efficiency include introduction of plea bargaining, support to alternative dispute resolution, establishment of special commercial or criminal courts, automation and improved court management.<sup>319</sup>

While ‘justice delayed is justice denied’, standards of efficiency are highly subjective and can be difficult to define through an international standard.<sup>320</sup> More important, inefficiency often disguises more serious deficiencies in the five essential elements: lack of access to counsel, arcane procedures that create backlogs in one part of the system, discrimination, executive interference or deliberate withholding of resources, or lack of security.<sup>321</sup> What is important is that a rule of law assessment and design consider efficiency within the entire framework of the rule of law and from the roots of the system—the essential elements—rather than treating it as the core problem.

With respect to integrity, high degrees of corruption are symptomatic of inadequacies in the essential elements. These inadequacies account for much of the phenomenon of corruption. They include insufficient independence, accountability and internal discipline (checks and balances); unequal application (fairness); or the presence of organized crime (order and security).<sup>322</sup> Should rule of law programs target corruption? Absolutely. But an anti-corruption or integrity program should address the underlying problems that manifest themselves in corruption, such as bribery, lack of transparency, or lack of accountability.<sup>323</sup> Problems of integrity in the judiciary are not fundamentally different from problems of integrity in other branches of government. Pressure from civil society or increased community participation can motivate institutions to address these

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<sup>318</sup> United Nations Security Council ‘The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General’ (August 23 2004) 7.

<sup>319</sup> M Mwanasali ‘War, Peace and Reconciliation in Africa’ Paper presented at the Organization of African Unity–International Peace Academy Seminar on Peacemaking and Peacekeeping, Addis Ababa (November 29–December 3, 1998) 90.

<sup>320</sup> Joint United Nations Programme on HIV/AIDS and WHO (World Health Organization (UNAIDS) *AIDS Epidemic Update*. Geneva (2002) 61.

<sup>321</sup> For example, anti-crime laws that augment the power of police by removing procedural protections can increase the backlog of detainees awaiting sentence.

<sup>322</sup> ‘USAID Anti-Corruption Strategy’ (January 2005). See also Transparency International, ‘Combating Corruption in Judicial Systems: Advocacy Toolkit’ (2008).

<sup>323</sup> *Ibid.*

issues. The AU member-states have agreed on the establishment of an anti-corruption authority or agency at national level in the process of combating what is stated in the convention.<sup>324</sup> To avoid all these weaknesses, each country has to build a strong justice sector with good laws and institutions but which the success will depend on committed actors.

## 5. Justice Sector System

### 5.1 The Framework of Laws

The preliminary proof of an obligation to the rule of law is the reflection of the five elements of rule of law in each country's framework of laws. Legitimacy is reflected in the approach used to develop and add to the framework when this approach involves a consultative, participatory process. Since many countries inherit their framework of laws from a non-democratic past, legitimacy is often problematic.<sup>325</sup>

An obligation to procedural fairness, access to justice and checks and balances is most often incorporated in some manner in a constitution and then defined more specifically in subordinate legislation. This legislation contains provisions for implementing these guarantees. Examples include criminal and civil procedure codes as well as laws on the judiciary. Criminal codes establish the primary basis for the preservation of order and security.<sup>326</sup> Laws establishing the authority for the judiciary, prosecutors' office and police forces lay the basis for the enforcement of criminal laws, whereas the laws setting forth the authorities for executive branch offices lay much of the basis for application of administrative laws.<sup>327</sup>

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<sup>324</sup> African Union Convention on Preventing and Combating Corruption, Maputo, 11 July 2003.

<sup>325</sup> M Ann Glendon *et al Comparative Legal Tradition*. West Group (1999) 125.

<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid.*

Most of the legal systems in Europe are based on the civil or Roman law, as are the legal systems of many developing countries in the world. The common law system is used in the US and England and in some other countries following the Anglo-American tradition. In civil law systems, the civil code itself is the foundation of the legal order. This is because, in theory, enacted law is the pre-eminent source of law. Secondary sources of law, such as court decisions, are not binding in subsequent cases, either on the courts that issue them or on the lower courts.<sup>328</sup> In contrast, under the common law system, constitutions and laws are pre-eminent, but court decisions are also treated as important and binding sources of law.<sup>329</sup> Over time, these two major legal systems are becoming more similar to each other by borrowing and combining elements and by adopting similar innovations. In addition, many systems include elements of both common and civil law.<sup>330</sup> However, some important differences remain which may affect the successful transfer of practices from one system to the other. In addition, many legal systems incorporate elements of traditional, customary, or religious elements, either in parallel or as an integral component of the core legal system depending on the case.

A good structure of laws will not ensure adequate rule of law in a country, but it does set the groundwork. A statutory base that reflects consensus around the elements of the rule of law enables progress on all those elements. Additionally, in many cases, implementing regulations or rules are needed to define the specifics and mechanics for effective, practical implementation of the elements. In many developing countries like in Africa, the absence of clear and complete rules and regulations is a very serious problem, often resulting in non-existent or poor implementation of the primary legislation.<sup>331</sup>

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<sup>328</sup> Ibid.

<sup>329</sup> S Golub 'Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative' (October 2003) 41 *Carnegie Endowment for International Peace, Rule of Law Series* 49.

<sup>330</sup> JK Nyerere 'Statement on Security, Stability and Development in Africa' In Obasanjo & F. Mosh, (eds) *Africa: Rise to Challenge* (1993) 47.

<sup>331</sup> Ibid.

## 5.2 Justice sector institutions and actors

Justice sector institutions and actors, public and private, governmental and non-governmental, make up the other component of the justice sector and the arena in which rule of law programs take place. Justice sector programs aim to reform and improve institutions as there is no any institution which can work out of the law. In some cases, this may involve strengthening institutions, while in others it may require moving in the opposite direction, to limit power. One example of the latter is limiting the power of the *procuracy* (institutions that combine police and prosecutor functions) in former Soviet countries by requiring warrants from a court for their actions.<sup>332</sup> The current and accurate example is the limitation of the President' power through referendum held in Egypt following the unrest which removed Mubarak on power.

The following describes considerations with respect to rule of law programming for key institutions and actors and also highlights special issues presented by post-conflict environments.

### 5.2.1 The Judiciary

If the judiciary is not operating effectively, it is highly doubtful that rule of law will prevail. The judiciary plays a key role in achieving all five essential elements of the rule of law. However, even if there are wholesale problems with the court system, it is highly unlikely that the judiciary is the only source of this dysfunction.<sup>333</sup> Therefore, it is important not to program exclusively for the court system, isolated from other actors in the justice system. If the head is sick, it seems that the whole body is likely sick. Capacity is often a secondary issue to political will. For this reason, training judges often a favoured first-line intervention is not the answer to all rule of law deficits where there is no real separation of power.

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<sup>332</sup> Ibid.

<sup>333</sup> 'Guide to Rule of Law Country Analysis: The rule of Law Strategic Framework' USAID (January 2010) 17.

### 5.2.2 Prosecutors

Throughout history, the role of the prosecutor has been very different in common law and civil law systems. The adversarial nature of the common law criminal system assigns a key role to the prosecutor. The burden is on the prosecutor to prove that the accused is guilty and the prosecutor has much of the responsibility for moving a criminal case forward.<sup>334</sup> In contrast, in the classic civil law 'inquisitorial' system, the role of the prosecutor either does not exist or is an appendage of the judiciary.<sup>335</sup> The judge is responsible for investigating the case, examining the evidence and making the final decision.

Many civil law countries have moved to a more adversarial system in recent years.<sup>336</sup> In those countries, the prosecutor plays a role similar to that in the U.S. However, the legal systems of countries still vary greatly. Strategic rule of law programming involving prosecutors requires an understanding of these historical differences and trends.

### 5.2.3 Defenders

Defenders, both public and private, play a critical role in ensuring application of the law, procedural fairness and access to justice. Unfortunately for many citizens in countries in Africa, legal defence is inaccessible because of either, a lack of resources, a lack of barrister or both.<sup>337</sup> A critical issue with regard to defenders is the quality of their services and who supervises quality control in the defence bar. A strong and independent bar association can play an important role in supporting judicial independence and legal reforms, strengthening the quality of defenders and providing a check on judicial power.<sup>338</sup> This is possible where there is of course a political will with convinced and devoted lawyers.

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<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

<sup>336</sup> UNECA 'Report of the Feasibility Study on the Establishment of Subregional Enterprise Development Centres for Women Entrepreneurs.' Addis Ababa (2000) 29.

<sup>337</sup> Ibid.

<sup>338</sup> Ibid.

#### 5.2.4 Police

Police are an integral part of a system of the rule of law for the preservation of security and the enforcement of law. However, in many African countries, police themselves have often threatened the rule of law by violating human rights, supporting non-democratic political structures, or engaging in corruption and illegal behaviour.<sup>339</sup> Donors are often reluctant to engage with the police and historically police have received significantly less donor attention than the judiciary or prosecutors, with the exception of post-conflict situations.<sup>340</sup>

The growing realization of the importance of security to the protection of democracy in steady states, together with the continued number of post-conflict interventions, is leading to increased attention to police reform by different supporters and other donors.<sup>341</sup> Until recently, legislative restrictions have largely limited for example the USAID from providing assistance to police.<sup>342</sup> ‘Community-based police assistance’ was authorized in Former Yugoslavia (FY) 2002 and legislation in 2005 considerably expanded the scope of permissible police assistance services ‘...to enhance the effectiveness and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, strategic planning and through assistance to foster civilian police roles that support democratic governance...’<sup>343</sup> Congress has renewed this authority in each subsequent Foreign Operations Appropriations Act. Assistance for Civilian Policing, USAID Policy Guidance provides policy guidelines and other information on police programming.<sup>344</sup> USAID is developing technical guidance for engaging with the police to promote the rule of law more particularly in African developing countries.

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<sup>339</sup> Ibid.

<sup>340</sup> M J Trebilcock and J D Ronald *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (2008) 39.

<sup>341</sup> Ibid.

<sup>342</sup> Ibid.

<sup>343</sup> Section 564(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act (FOAA) (2005).

<sup>344</sup> Ibid.

### 5.2.5 Prisons

Effective and safe prisons are essential to promoting the rule of law. The escape or release of prisoners due to inadequate facilities undermines the effectiveness of the courts and police and erodes the legitimacy of justice institutions. At the same time, ineffective or outdated prison systems may lead to serious human rights abuses such as torture or prolonged detention.<sup>345</sup> This could be avoided by creating a prison legal department which deals with the respect of law in the detention process as in many developing countries the illegal incarceration has become the rule.

### 5.2.6 Non-Governmental Actors

Supporting organizations, institutions and actors outside the government is often essential to addressing all elements of the rule of law. This could as well help these institutions and actors not to be always bound by the government decisions as their sponsor. Supporting legal professional associations like bar associations may strengthen the quality and effectiveness of individuals within the justice system. These and other non-governmental organizations can also provide citizen oversight over the justice system and serve as a powerful voice promoting the rule of law and maintaining reform momentum.<sup>346</sup> Bar associations, law schools and NGOs as well as the media, schools, business associations and other actors may also play critical roles in advocating for legal reform and providing legal services to poor or vulnerable populations to broaden access to justice and deepen public awareness and respect for the rule of law.<sup>347</sup> Donors should finance a successful civic legal education program involving young children in cooperation with the Ministry of youth and that of Education aimed at raising awareness of civic education and rule of law issues through a creative writing exercise on justice day.<sup>348</sup> Rule of law programs should consider how all actors might directly contribute to rule of law reform.

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<sup>345</sup> 'Guide to Rule of Law Country Analysis: The rule of Law Strategic Framework' USAID (January 2010) 18.

<sup>346</sup> Ibid.

<sup>347</sup> W C Prilliman *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (2000) 84.

<sup>348</sup> Ibid.

### 5.2.7 Non-State Justice Institutions

This term encompasses a wide range of traditional, customary and religious non-state justice and informal mechanisms that provide dispute resolution and justice-related services, sometimes with ties to the state and governed by an established legal framework.<sup>349</sup> Non-state justice systems are generally structured around community based institutions which may provide easily accessible participatory, efficient, flexible and culturally relevant justice.<sup>350</sup> At the same time, these systems may be based on complex and informal procedures, lack transparency and fail to uphold international human rights and equality standards, particularly with respect to women.<sup>351</sup> Nonetheless, the prevalence of these institutions, their popular legitimacy and their impact on the rule of law may make them worthwhile to engage. USAID for example is developing technical guidance on engaging with non-state justice institutions.<sup>352</sup> As we have seen above, the rule of law itself could not be successful if all institutions and actors do not work together for the better of those they represent.

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<sup>349</sup> M Ann Glendon et al *Comparative Legal Traditions* (1999) 125.

<sup>350</sup> Ibid.

<sup>351</sup> M J Trebilcock and J D Ronald *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (2008) 39.

<sup>352</sup> Ibid.

## Chapter V

### CONCLUSION AND RECOMMENDATIONS

After providing existing definitions of good governance, democracy and economic growth, this dissertation has listed the various viewpoints of how good governance affects long-run growth through its impact on the quality of governance of a country. This issue was explored both on the theoretical and empirical level, from different multilateral organizations and from scholars all throughout.

Democracy and economic development are the ends to be achieved in a sustainable way and this cannot be guaranteed without the greasing and conditioning process of good governance. This means, as Adel M. Abdellatif puts it, concentrating first and foremost on building a functioning judicial system press, free speech, economic reform, civic institutions and multiple political parties, all anchored in a constitution that has the support and input of the main political forces in the nation.<sup>353</sup>

In addition, it is necessary to sustain a state structure, which depends not merely on criteria for good governance derived from a certain single model, but on the deeply embedded social attitudes and cultures, which are needed to make such governance work. Significantly, democracy means several things and works in different ways, not only at different stages of economic transformation, but also in different societies with different structures and values. Therefore, we should not be preaching for the uniqueness of one model and its application on all societies regardless of the diversity of their composition, since while the characteristics of good governance are universally accepted, their application to different societies and nations should be seen in the context of local circumstances and according to local conditions.

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<sup>353</sup> A M Abdellatif 'Good Governance and Its Relationship to Democracy & Economic Development' (2003) *Governance, Democracy and Economic Development* 20.

Several contextual characteristics, may affect the type of governance and are more or less likely to have an impact: Cultural, religious and ethnic diversity and structures, indigenous values, networks and knowledge, the economy: its base, growth and type; financial dependence on external resources, including aid and debt; and degree of integration with the global economy, socio-economic indicators including education, access to basic needs and the role of women and civil society including NGO's.<sup>354</sup>

In the Millennium Declaration, the member-states of the UN resolved to create an environment that is conducive to development and the elimination of poverty. They stated that meeting this objective 'depends, especially, on good governance within each country and at the international level'.<sup>355</sup> Moreover, the UN system can play an important role within the new frontiers of governance policy advice and institutional strengthening, especially in areas such as democracy and economic development. The approach to governance by the UN organizations especially the UNDP will no doubt emphasize partnership rather than conditionality, since the former is at the heart of governance for human development.<sup>356</sup>

Revitalized regional integration offers the most credible strategy for tackling Africa's developmental challenges which may be internal and/or external. Because of the many weaknesses that overwhelm the limited capacities and resources of individual countries. Collective efforts, with dynamic political commitment to integration, can help overcome the daunting challenges.

Fortifying integration efforts will require a detailed assessment of integration performance at the national, regional and continental levels, taking into account new continental and global realities.<sup>357</sup> The assessment should evaluate progress, gauging the performance and capacity of national, regional and continental institutions for regional integration. The assessment should also evaluate policies on regional integration.

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<sup>354</sup> Ibid.

<sup>355</sup> W C Prilliman *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (2000) 84.

<sup>356</sup> Ibid.

<sup>357</sup> WHO 'The Work of WHO in the African Region' In *Annual Report of the Regional Director Geneva* (2000) 19.

Lessons from the assessment will guide future action plan for the better success of the integration. A relevant question is how much, if at all; regional economic communities have helped overcome the development challenges facing African countries. A key objective must be to expand opportunities for investment that increase African incomes and tap unexploited resources, reducing dependence on the outside world and creating conditions for self-sustained, autonomous development.<sup>358</sup> Such development may come about only by transforming Africa's production structures. As things stand, it is debatable whether RECs have contributed to these changes, to the socioeconomic transformation of African economies, to the reduction of mass poverty through sustained growth and to the creation of an African common market leading to an economic community.<sup>359</sup>

Understanding the role of cooperation and integration in meeting the challenges of African development also requires going beyond these issues to objectives not strictly covered by RECs. Peace and security, environmental issues and Africa's global commitments cannot be divorced from the concerns of regional integration. Good governance, integration and investment, the rule of law are all based on peace and security. In some parts of Africa conflicts and instability have delayed regional integration.<sup>360</sup> HIV/AIDS, malaria and other infectious diseases threaten to prevent integration in much of the continent.<sup>361</sup> And globalization poses enormous challenges to Africa's economic prospects.<sup>362</sup> All these issues must be included in an assessment of regional integration in Africa.

Africa, as a whole is conscious of the need for and urgency of regional and continental integration which she considers as a prerequisite for meeting the aspirations of the African people and the demands of global economic growth. What remains to be done, is to translate into action the commitments made in the field of integration and highlight the supremacy of community considerations over national self-interest. The AUC has the historic obligation to guide the African leaders in this process, by ensuring the harmonization and coordination of

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<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> WHO 'The Work of WHO in the African Region' in *Annual Report of the Regional Director Geneva* (2000) 22.

<sup>361</sup> Ibid.

<sup>362</sup> Ibid.

policies and strategies developed in that respect. Thus, it is extremely urgent to revisit the regional integration approach. The new integration approach, by giving more importance to the economic sustainability of the regional space, is capable of stimulating a strong and sustainable economic growth, a precondition for achieving the Millennium Development Goals, and improving significantly the competitiveness of regional and continental economies.

After taking a critical look at the problems of Africa, one may be tempted to say that the hope of attaining development in the 21<sup>st</sup> century is possible. Democratic governance requires the establishment and acceptance by a majority of the populace of certain key elements that are known to affect and guide political and administrative development. This could be achieved not because there are laws but if those laws are appropriate and everyone is in compliance with them including the leaders.

The experience of most African states is that they suffer from democracy deficit and weak loyalty from their citizens, which thereby create a crisis of legitimacy for most of existing state institutions.<sup>363</sup> Are African peoples themselves sufficiently sensitized and mobilized to support the AU? What difference has the AU made to the lives of the ordinary Africans? One of the mandates of the AU Charter has been to promote democratic principles and institutions, popular participation and good governance. In launching the AU summit meeting, President Mbeki of South Africa challenged his colleagues: 'through our actions, let us proclaim to the world that...Africa is a continent of democracy, a continent of democratic institutions and culture--indeed a continent of good governance, where the people participate and the rule of law is upheld'.<sup>364</sup> Proclaiming the rule of law and putting into practice should be the credence and ideal of every African citizen through good leadership.

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<sup>363</sup> P G Adogamhe 'Pan-Africanism Revisited: Vision and Reality of African Unity and Development' (2008) 2:2 *African Review of Integration* 21.

<sup>364</sup> Ibid.

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