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NOTES ON GOOD GOVERNANCE

*Maru Bazezew**

Introduction

After the end of the cold war, good governance has become a topical issue. The influence of the international community and international organizations such as the World Bank and the International Monetary Fund (IMF) has enhanced the momentum towards good governance thereby enabling it to become an important concern of the international community at large especially with regard to the emerging democracies and developing countries like the ones in Africa. In some cooperation programs good governance is indeed the prerequisite for allocation of funds and financial aid.

In the political arena, the concept of good governance presupposes political pluralism, and the end of the cold war has led onto an epoch of democratization owing to the fact that the international community is cognizant of the obsolescence and pitfalls of one-party political systems. This is related with good governance because, the exercise of constitutional rights and freedoms like freedom of expression, assembly, formation of political parties, etc. facilitates the forum of popular participation in the political process that becomes a necessary setting for good governance.

Moreover, good governance is among the key instruments towards sustainable economic development. It enables resources to be used effectively and efficiently. And, economic decisions are made on the basis of grass-root needs and priorities. Corruption and abuse of power, that are detrimental to economic development, are also addressed under commitments and efforts of good governance. To this end, the United Nations and African Union have introduced draft resolutions to combat corruption.

Good governance might have different features. For example, the United Nations Economic and Social Commission for Asia and the Pacific has identified eight features of good governance: These are Accountability, Transparency, Responsiveness, Equitability and Inclusiveness, Effectiveness and Efficiency, Rule of Law, Participatory practices and Being Consensus Oriented. According to Wikipedia, the Free Encyclopedia, the characteristics

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are Decentralization, Public Participation, Transparency and Accountability[1]. And according to a conference conducted (in 1996) by the Danish government and EDI of the World Bank, the elements identified were: Decentralization, Public Participation and Integrity i.e., Transparency and Accountability.

Some of the characteristics identified by UNESCAP seem to be overlapping. If there is transparency and accountability, there could be effectiveness, efficiency and responsiveness. similarly if there is decentralization and public participation, the system is more or less equitable, inclusive, effective, efficient and consensus oriented. Thus this paper shall focus on the following elements:-

- Decentralization
- Public participation
- Transparency
- Accountability
- Independent Judiciary (Judicial Independence)
- Rule of Law
- Public Sector Reform

Decentralization

Decentralization means giving some of the powers of the central government, an organization, etc. to lower level organizations around the country.[2] It is against concentration of power at the central or organizational level; and requires the empowerment of local administrative bodies and/or organizations. The more power is decentralized, the greater would participation of the society at large be enhanced.

Decentralization further requires governments to focus on policy issues at macro levels and avoid the role of being sole providers of goods and services by sharing these tasks with other smaller organizations and/or the private sector. Such decentralization is believed to have multifaceted advantages such a quick service delivery, wider options to consumers, lesser queues and minimal abuse of power and corruption.

Public Participation

The literal meaning of democracy is the rule of the people. Meaning the public is to be administered or governed by its own elected representatives. The

[1] Good Governance, Wikipedia, The Free Encyclopedia

[2] Oxford Advanced Learner's Dictionary, 6th Edition

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quality of the democratization process shall impinge on how the process is participatory. In other words, the decision making process should involve the public. Good governance requires governments to adhere to the needs and serve the interest of citizens. This applies not only in the context of acts and policies but also with regard to the participation of the public in decisions affecting its interests

The participation of the public might also be through civic organizations which may play their part in promoting democracy and good governance. Their role may range from organizing/mobilizing the society to influencing policy makers.

Transparency

Transparency is the basic pillar of democracy. Good governance guarantees the right of the public to know what is being done by its government. Since governments and their officers assume public office or public responsibility on behalf of the public, their mandate has the corresponding requirement of being open to the public.

To reiterate the words that the writer recalls from a public statement "*public office is a public trust*." The officers are the trustees; and both the trust and the trustees are created for the benefit of the public. Since public servants are acting as trustees, good governance requires them to disclose what is being done on behalf of the public.

Accessibility to the *media* is another important aspect of transparency. The media is expected to serve as a bridge between the public and the government. Through the media, the public will be able to know what is being done by those institutions that are entrusted with public trust and by the trustees, i.e the persons in charge. The public responsibility of the media is thus to avoid the extreme pitfall of being a mere public relations forum of governments, and equally avoid the other extreme of a non-constructive or nihilist stance. Every media that adjusts information in tune with what government officials would like to hear and read in fact misinforms both the government and the public thereby breaking the bridge between them.

Article 12 Sub-Article 1 of the FDRE Constitution clearly stipulates that "The conduct of affairs of government shall be transparent." This constitutional provision is mandatory and does not make any exception. Any information requested by citizens must thus be given by public officers, unless the information is inherently confidential such as personal (in contrast public)

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information. Unfortunately, however, public officers tend refuse to disclose information under the guise of confidentiality. It is thus essential to minimize the scope of information which can be considered confidential, so that unconstitutional restrictions can be avoided. For example, if an individual applies for a license, and his/her application is not accepted or rejected, the public institution in charge has no valid reason to refuse stating the grounds of its decision.

Accountability

Accountability is the other cornerstone of good governance, and it holds public officers or political decision makers responsible for their decisions, deeds, acts that apparently includes omissions. In other words public officers are not allowed to act as free riders. The principle of accountability could also be related to acts of citizens or their elected representatives. In the latter case, accountability might be considered as political responsibility.

Accountability promotes the principle of checks and balances. In Sweden, for example, the government is responsible to the parliament. If the parliament declares that the Prime Minister or any other Minister no longer enjoys its confidence, the speaker shall discharge the Minister concerned [3]. In France, when the National Assembly carries a motion of censure, or where it fails to endorse the programme or a statement of general policy of the Government, the Prime Minister must tender the resignation of the Government to the President of the Republic[4]. In the Federal Republic of Germany, there is what is called constructive vote of no confidence. Where the Bundestag lacks confidence on the Federal Chancellor it may be entitled to request the President of the Republic to dismiss the Federal Chancellor. [5]

In the writer's opinion, although reporting to the elected representatives may be one of the mechanisms to ensure the accountability of a government, it does not actually reflect the political responsibility of the government. It may simply help to know what is being done by the government and question the same. Compared to the aforementioned legal systems, reporting to the legislative organ may not secure the political responsibility of the government.

According to Article 12(2) of the FRDE constitution, any public official or an elected representative is accountable for any failure in official duties. The

[3] Swedish Constitution Ch. 1 Art. 6 and Ch. 6 Art. 5
[4] French Constitution, Art. 50
[5] German Basic Law, Art. 67

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accountability is limited to the failure of discharging official duties. But what will happen if a certain public official is found committing an offence? Does it mean that he/she will not be held responsible? For example, in United States of America if the President, Vice-President, and all civil officers of the United States are found committing treason, bribery or other offences and misdemeanours, they shall be impeached by the Senate and ousted from his/her office.[6]

Article 12(2) of the FDRE Constitution does not state to whom public officials are to be liable or responsible. But when it is read in conjunction with Article 72 (2) of the Constitution, the Prime Minister and his cabinet members are responsible to the House of People's Representatives. However, when compared with the aforementioned legal systems, the responsibility is not clearly identified. It simply says that these officials are responsible to the House. The Heads of the Governments in France, Germany and Sweden (and the President, the Vice-President and other civil officers in USA) are responsible to the respective legislative organs and their responsibility is unequivocally stated.

Independent Judiciary (Judicial Independence)

Every organ of a human being has its own function. The heart plays a vital role. When the heart collapses, the function of the human body will also collapse. Accordingly, judicial independence is the heart of rule of law . When there is no independent judiciary, it is hard to think of rule of law and good governance. An independent judiciary is also the bedrock of separation of powers or checks and balances. An independent judiciary is indeed essential for the very existence of the government itself[7].

Judicial independence may be classified into individual and institutional independence. The independence could be either internal or external. Rule of law requires judges to be independent internally from their colleagues and from the influence of superior courts, and externally from the executive and the legislative organs of the state. They should also be insulated from any internal and external pressure while discharging their judicial business. Judges should be bound only by the constitution and the law.

According to the principles of good governance, the administration of internal affairs should be left to the courts themselves. In this context, it seems appropriate to cite a decision rendered by the Canadian Supreme Court which reads as follows:-

[6] United States Constitution, Art. 2, Sec. 4 | [7] Article 104a of Bahrain Constitution

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> (One of the) essential condition(s) of judicial independence is the institutional independence of the tribunal with respect to matters of administration bearing directly on the exercise of its judicial function. Judicial control over such matters as assignment of judges…has been considered the essential or minimum requirement for institutional independence[8].

In addition to procedural independence from the executive upon appointment, crucial issues such as merit, experience, integrity and remuneration schemes determine the extent to which judges are independent from all forms of internal and external influence including the litigants themselves.

Rule of Law

Rule of law is one of the core components of good governance. However, it is the most said, but the least practiced. It is to be noted that *Rule of law* should be distinguished from *rule by law* and *rule of persons*.

Rule of law ensures the subjection of governments to the law. No one including government officials is to be above the law. Max Weber called it *legal domination*. The government must act according to law. But it is not possible to think of legal domination or prevalence/supremacy of law simply by having written laws. Having formal written laws alone may not thus secure rule of law, because the content of the law, the composition of the law makers and the law making process are crucial.

BoLi gives three important meanings to rule of law, namely in its role as regulatory of government power, in view of its function as guarantor of equality before the law (a concept endorsed by Dicey as well), and rule of law as formal and procedural justice.[9]

In its function as regulatory of government power, rule of law controls abuse of power, and it plays a pivotal role towards ensuring limited government. This is also an essential feature of constitutionalism as expounded by Barnett. For example, governments may not abuse their discretionary powers, and may not change laws whenever they want to unless the situation so warrants. To this end, law requires formal law making procedures. It should also be pre-fixed and pre-announced thereby rendering *ex post facto* laws impermissible. To illustrate, an act which was not considered as an offence at the time of the commission cannot be retroactively criminalized by a new law.

[8] Waller Valente v. her Majesty the Queen, Canada Supreme Court, file number 17583, decided in 1985

[9] www.oycf.org/perspectives/5-043000/what_is_rule_of_law.htm

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Equality before the law is the second meaning of rule of law. The law does not distinguish between persons on the basis of status, gender, religion, social position, wealth, or any other ground. And as stated above, *Formal and Procedural Justice* is the third meaning of rule of law. According to BoLi formal and procedural justice embodies the following principles. These are, a complete set of prefixed and pre-announced decisional and procedural rules that are fair accompanied by the transparency and the consistent application of these decisional and procedural rules.

Public Sector Reform

Reform of the public sector is instrumental to the achievement of the elements of good governance mentioned here-above. It is, however, to be noted that public sector reform does not mean retrenchment or down sizing, but making the public sector more efficient and effective, accountable, transparent, customer oriented and responsive. The writer would like to acknowledge the efforts that are being made by the Ethiopian government to reform the civil service. The extent to which the paper works put in place and the commitments declared are put to practice will determine the pace of Ethiopia's achievements in the path of good governance. ■

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