

ABSTRACT

SUB-THEME A: Prerequisites for, and domestic approaches to sustainable reform-
regional, continental and international perspectives.

Topic: International, African and Southern African instruments and institutions
driving and inhibiting reform

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A number of international institutions and instruments are both driving and inhibiting reform. United Nations conventions play an important role in creating a moral framework for reform. However, ratification is mostly a slow process and the enforcement of provisions is discretionary and inconsistent. The World Bank took the first steps to exclude companies that were found guilty of corruption, from tenders. Financial support to developing countries to bring corrupt companies to court will strengthen the World Bank's contribution. The Council of the Organisation for Economic Cooperation and Development provides much needed access to a powerful database on corruption and good governance. The World Trade Organisation is indirectly supporting corruption by not enforcing the reduction of subsidies, that cause an unlevelled playing field. The International Monetary Fund can become a clearinghouse for allegations of corruption. The Millennium Development Account gives countries that qualify for financial support a say in aid-funded programmes and hold them accountable for achieving results, paving the way for increased accountability towards good governance. The International Chamber of Commerce is concerned about the provisions in the United Nation's Convention Against Corruption that is discretionary, and hampers development of binding and consistent international rules. These concerns need to be turned into action.

Focusing on African and Southern African instruments and institutions, the existing role of the African Union, African Charter, New Economic Partnership for Africa's Development and the Southern African Development Community is assessed against the role that it should play in reducing corruption in public services. Based on international indices such as Transparency International, qualitative and quantitative indicators on good governance and corruption should be developed for public institutions. Such indices can provide a useful tool for reducing corruption in public services.

1. Introduction

International institutions and instruments are both drivers and inhibitors of reform of public services in developing countries. On the regional front, institutions and instruments do not receive adequate member state and international support to make a longterm impact on reform of public services of the Southern African Development Community (SADC). This paper assess the role of international and regional institutions

and instruments in reforming public services of SADC to comply with international best practices on good governance; effective anti-corruption measures and instruments; and in effect sustainable public services.

The role of the following institutions and instruments are discussed: United Nations, World Bank, Council of the Organisation for Economic Cooperation and Development, World Trade Organisation, International Monetary Fund, Millennium Challenge Account, International Chamber of Commerce, Organisation of the African Union and African Charter, the New Economic Partnership for Africa's Development, the African Peer Review Mechanism, the Southern African Development Community, and international indices on good governance and corruption.

2. United Nations

The United Nations (UN) adopted two important conventions. In 1996, the UN General Assembly adopted the UN Declaration against Corruption and Bribery in International Commercial Transactions. This Convention was the first worldwide anti-corruption treaty, governments that for decades denied the prevalence of corruption are revealing the enormous cost of embezzlement, collusion and 'accounting errors'. The revelations are exactly what the UN Convention Against Corruption, being signed by leading officials from around the globe, was designed to accomplish: Uncover corruption; detect illicit funds; and return funds to countries from which they were stolen. The treaty requires governments to enact laws against corruption; protect whistle-blowers; and assist other countries in detecting illicit funds. The General Assembly also negotiated the UN Convention on Transnational Organised Crime, which was enforced in September 2003. The latter Convention gives too little guidance to the Conference of States Parties on what forms of monitoring should be adopted, Transparency International, Global Corruption Report (2004: 111-114).

The UN transformed the United Nations Development Programme (UNDP) to address corruption. UNDP Management Development and Governance Division developed a Programme for Accountability and Transparency (PACT). This programme aims to build and strengthen capacities to improve accountability and transparency in the financial, political and administrative areas that could create an enabling environment for good governance. The programme does work closely with stakeholders in

accountability. Interventions take place at global, regional and country level, with focus on “Supporting key international networks and professional institutions and building alliances among critical stakeholders; analysing, synthesising and developing new strategies and approaches for stronger and more effective accountability systems; and pilot-testing innovative tools and packaging best practices in accountability, transparency and integrity improvement”, United Nations Development Programme (1999).

3. World Bank

Due to a problem with project financing and project management corruption at the World Bank, the latter executed an investigation into the problem of corruption in World Bank projects. Many lessons can be learned from the study of the World Bank with reference to the causes of corruption such as culture, history, economic and social conditions. An unanswered question from the study of the World Bank is: Will it carry out a “vigorous policy or only seek to mollify its loudest critics through symbolic gestures”?, Rose-Ackerman (1999: 197). Before the World Bank’s various publications on corruption, it published only one very diplomatic written report. However other studies made reference to rent seeking, aid diversion and similar terms, Riley as cited by Hope and Chikulo (2000: 139).

The World Bank’s International Centre for the Settlement of Investment Disputes (ICSID) resolves disputes under contracts where it is the forum of choice. A problem is that the ICSID is not a court and does not have jurisdiction in contract cases. Reform is needed to “...be invoked as part of a broader anticorruption effort”, Rose-Ackerman (1999: 193-194). In 1993 the World Bank established an independent Inspection Panel that is a useful step to handle complaints from citizens’ groups and non-profit organisations. Tribunals also exist in the fields of human rights, international labour and nuclear energy. NGO’s can bring complaints before tribunals and participate in the presentation of evidence. These tribunals can play a constructive role in addressing international review processes to curb corruption. This applies especially to countries that are not members of the OECD or does not have the power and influence to take on large multinational companies with the financial muscle to make threats and or bribe.

Two types of criticism against the World Bank exist. The first criticism against the World Bank is that the bank failed to recognize the full significance of initiatives of African countries that made a concerted effort to improve public integrity and reduce the more debilitating effects of corruption. These countries are, for example: Botswana, Tanzania and Uganda, Riley as cited by Hope and Chikulo (2000: 151). The second criticism is referenced by Pinnock (2002: 283) who stated that there is "...a growing suspicion that the World Bank could be using the leverage of vast sums of money to finance Third World dams in order to conduit funds to First World construction companies. The dams, it seems, may be incidental". Even if such allegations are untrue, the motivation for such allegations is of importance. The World Bank's credibility is at stake if such allegations are able to cultivate.

The World Bank can fulfil an enforcement as well as a financial supportive role in future. In the Lesotho Highlands Water Project (LHWP), companies that bribed officials of the Lesotho parastatal are: Schneider Electric SA, Impregilo, Lahmeyer International and Acres International. The World Bank revised its guidelines to state that corruption and fraud would be grounds for cancelling contracts. Cancelling will apply if the borrower has not taken up appropriate action as in Section 6.03 of the General Conditions Applicable to Loan and Guarantee Agreements that was expanded to allow for cancellation as mentioned, Rose-Ackerman (1999: 180). The World Bank excluded Acres International for a limited period from tendering for World Bank projects. This is the first time in history that the World Bank took such a punitive step. A consistent application of such punitive measures will challenge the World Bank's commitment in future, Dembowski (2003: 359). A test that the World Bank failed, was to refrain from contributing financially to Lesotho as promised right from the start of Lesotho's endeavours to get the corruptees in court, the South African Institute of International Affairs (2004: 1-5). The World Bank should contribute financially to developing countries to take legal action. The Lesotho case was the opportunity for the World Bank to start changing perceptions of developed countries and multinational corporations about these corporations' contribution towards international corruption and reform. The World Bank took the first steps; it needs to be followed up with frequency and consistency.

4. Council of the Organisation for Economic Cooperation and Development (OECD)

The OECD signed the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 that requires signatories to outlaw overseas bribery of foreign officials. The basic goal of the treaty is "...to extend the principles of the United States Foreign Corrupt Practices Act to the international business community", Rose-Ackerman (1999: 185-186). This require from signatories to ratify the treaty and to pass legislation criminalizing overseas bribery. The Convention broadly defines 'bribery' and 'foreign official' and requires 'mutual legal assistance and adequate sanctions'. The main weakness is that the treaty excludes payments to political parties and party officials.

The OECD recommended that members states, "...re-examine the tax deductibility of bribes to foreign public officials, with the intention of denying this deductibility in those Member countries which do not already do so", Rose-Ackerman (1999: 186). Enforcement of the convention should be a top priority, according to Transparency International as cited by Heimann in the Global Corruption Report (2004: 131). The focus of the convention is on the supply side of corruption. However, success will be hampered if the demand side is not addressed. The OECD and its members can take steps to help countries to resist extortion. Voluntary compliance by companies is needed to establish a moral framework that makes law enforcement effective, Heimann (2004: 133-134). The OECD should enforce the convention with improved monitoring of the implementation and by creating a moral framework for voluntary compliance of the law.

The OECD created one of the world's largest information centres on corruption and bribery, the OECD Anti-Corruption Ring Online or AnCorR is available at: <http://www.oecd.org/daf/nocorruption/>, OECD (2003: 25). This site contains more than 3000 references to books, journals, papers and articles; that also include anti-corruption documentation such as laws, international conventions and anti-corruption strategies. SADC members are not members of the OECD and will not be able to become members of this exclusive club in the near future. However, the convention, access to

information and assistance can have a positive impact on the state of public services reform in SADC.

5. World Trade Organisation (WTO)

The WTO can play a more prominent role in enforcing the reduction of subsidies on products that are developed in industrialised countries and exported to developing countries. Subsidies paid by governments in developing countries are twice the amount of aid that is channelled to developing countries. While developed countries preached that developing countries should not subsidise their industries, they subsidise their farmers with billions of US\$, making it impossible for developing countries to compete, Stiglitz (2002: 244). The unlevelled playing field encourages corruption and poverty indirectly in developing countries. The WTO is the forum where the elimination of these subsidies should be addressed.

The WTO developed an international procurement code that came into force on 1 January 1996. Some commentators urged the WTO to develop a more limited code that focuses only on corruption in the hope that more countries will participate, Rose-Ackerman (1999: 186).

6. International Monetary Fund (IMF)

The IMF does have the potential to become a clearinghouse for allegations of corruption, however it is not meeting this expectation. The IMF requires reform in a country's public sector institutions and "...in the transparency of its procedures in order to limit corruption and improve the effectiveness of IMF financial assistance", International Monetary Fund as cited by Rose-Ackerman (1999: 189). One method of checking the effectiveness of a country's policies would be to allow firms that are pressurised for bribes to report it to the IMF. However, the IMF does not investigate individual complaints but a pattern of reports could "...induce the IMF to reopen negotiations", Rose-Ackerman (1999: 189). Reports of top and senior government officials who are pressurised to participate, for example in bribery, can be passed on to the World Bank. SADC members need to make use of the opportunity of using the IMF as a clearing house for corruption because political power and financial muscle can halt most allegations about corruption.

The IMF pushed policies such as capital market liberalisation, which increased global instability; and its bailout policies failed (for example in Kenya), contributing to instability and hampering reform in developing countries. The IMF worsened the East Asian crises and brought the world "...to the verge of a global meltdown", Stiglitz (2002: 89-132). The IMF needs to limit itself to its core area, managing crises, and should no longer be involved in development or the economies of transition, Stiglitz (2002: 229- 233).

7. Millennium Challenge Account (MCA)

The Bush administration created a new government corporation, the MCA. The administration divided developing countries in groups. The recipient countries set priorities, propose specific activities and establish benchmarks for measurement. The approach place responsibility for developing programmes with the recipient country. In return for greater ownership, generous funding and flexibility, the MCA demands greater accountability, Radelet (2004: 136). The basic idea of the MCA is to select "...a relatively small number of recipient countries based on their demonstrated commitment to sound policies, provide them with large sums of money, give them say in designing aid-funded programmes and hold them accountable for achieving results", Radelet (2004: 135-136).

The first step in the selection process was to determine the group of low-income countries eligible to qualify for the MCA. During the first year, 2004, all countries with a per capita income of less than U\$ 1425 that are eligible for finance from the World Bank's International Development Association (IDA), qualify. Eleven countries qualified during 2004. In the second year, 2005, the criteria dropped to 87 eligible countries and during the third year 2006, included another 28 countries with per capita incomes between U\$ 1435-U\$2975. Most SADC countries qualify.

Eligible criteria for the MCA are: Ruling justly which include, political rights, civil liberties, control of corruption, government effectiveness, rule of law and voice, and accountability; investment in people which include immunisation rates, health expenditures, primary education expenditures, and primary education completion; economic reform, which include regulatory quality, credit rating, days to start a

business, trade policy, inflation, and fiscal policy, Millennium Challenge Corporation (2004: 1-2).

The MCA is a step in the right direction, because aid allocation is done on the basis of the recipient country's commitment towards development policy and countries with a stronger commitment to better governance and fighting corruption. The strategy included appropriate incentives for countries to reduce corruption whilst giving them technical and financial support needed to implement a programme that can make a difference. Based on the success of the MCA, other donors should follow suit.

8. International Chamber of Commerce (ICC)

The rules of the Chamber prohibit bribery for any purpose, Rose-Ackerman (1999: 186). The ICC supported the development of the 1997 OECD Convention to Combat Bribery of Foreign Public Officials and worked for its ratification. The ICC also participated in the follow-up monitoring of the OECD Working Group on Bribery; and conducted a detailed study of the laws dealing with private commercial bribery in OECD countries, that assisted the OECD Working Group, International Chamber of Commerce (2004: 2). The ICC supported also the UN Convention Against Corruption, which addressed serious shortcomings with regard to mutual legal assistance, and asset recovery, two key issues in combating international corruption that can be strengthened through comprehensive worldwide efforts. The ICC is rightly concerned about the number of provisions in the UN Convention that is discretionary in nature, which hampers the development of binding and consistent international rules. Such voluntary and inconsistent provisions cause international businesses to deal with a 'patchwork of differing laws and regulations'. A number of the provisions are also 'loosely' worded. The ICC mentioned specific Article 18, 20 and 35, ICC (2004: 3).

9. Organisation of the African Union (OAU) and African Charter

The OAU Convention on Preventing and Combating Corruption and Related Offences was inspired by the African Charter and other declarations. The objectives of the Convention emphasise cooperation between signatories, encouraging them to "...promote and strengthen the development ...mechanisms required to prevent, detect, punish and eradicate corruption and related offences in Africa", and to ensure the effectiveness of the mentioned measures. The convention concentrates on the following

approaches to combat corruption: Prevention, punishment, cooperation and education as cited by Transparency International, Global Corruption Report (2004: 118). The African Charter covered human and peoples' rights and that of children. The part on human and peoples' rights include 15 articles, OAU (2004).

10. New Economic Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM)

NEPAD, is a plan for Africa about the future of the continent, how to achieve economic growth and to overcome poverty, Nepru (2003: 1). In 2001, heads of state and governments of SADC adopted an anti-corruption protocol. The protocol covers a range of preventative measures including codes of conduct, access to information and whistleblower protection; and requires governments to criminalise the bribery of foreign public servants, Lodge (2003: 250).

Most SADC members do recognise NEPAD, however with reference to the APRM, most SADC members are spectators and not actively contributing. Namibia executed its country study but did not join the Peer Review. SADC members can establish a baseline for Africa on good governance and corruption because some members do have the qualities of good governance. Political stability is becoming entrenched as the 'only game in town'. With reference to corruption, the corruption ratings of Botswana, South Africa and Namibia in terms of international indices such as Transparency International (TI), is consistently amongst the least corrupt countries in Africa.

The APRM can be the first successful African attempt in tackling the continent's corruption. SADC members such as Botswana, South Africa and Namibia should play a leading role in the African Peer Review Mechanism.

11. Southern African Development Community (SADC)

SADC adopted a draft anti-corruption instrument of which the protocol defines corruption in both public and private sectors that makes provision for the seizure of property and proceeds acquired in a corrupt manner, this instrument is known as the SADC Protocol Against Corruption. The sluggishness portrayed by SADC members in ratifying the Corruption Protocol does not say much for the intentions on good governance since the African Union adopted NEPAD, Molefe as cited by Hansohm, Peter-Berries, Breytenbach,

Hartzenberg, Maier, and Meyns (2002: 113). SADC is an important vehicle for the implementation of good governance and regional economic integration. A worrisome trend is that corruption in SADC member states is increasing. Of twelve SADC countries, only Mozambique achieved a reduction in the level of corruption (Transparency International Index), Hansohm, Breytenbach, Hartzenberg and McCarthy (2004: 238). However, the least corrupt member states of SADC can provide advice to other SADC members about prevention of corruption and creating institutional structures to this effect.

12. International Indices on Good Governance and Corruption

If indices such as TI can measure countries' corruption in terms of aspects such as good governance, democracy and the role of the media (to mention a few), similar quantitative and qualitative indices can be developed for public institutions. For quantitative indicators a baseline of validated information of at least five years is needed. In the absence of quantitative indicators, qualitative indicators can be developed. Development of institutional indicators will require funding and global standardisation. International institutions with financial muscle that need to consider such funding can include the OECD, World Bank, IMF and the European Union (EU). A coordinated effort will be required to get global agreement amongst the most important international institutions to ensure credibility, validity, reliability and mutual exclusiveness for developing design parameters for qualitative and quantitative indicators.

13. Synthesis

International institutions and instruments are both driving and inhibiting reform. UN conventions play an important role in creating a moral framework for reform. However, ratification is mostly a slow process and the enforcement of provisions is discretionary and inconsistent. The World Bank needs to provide financial support to developing countries to bring corrupt companies to court. The OECD provides access to a powerful database on corruption and good governance. The WTO is indirectly supporting corruption by not enforcing the reduction of subsidies that causes an unlevel playing field. The IMF can become a clearinghouse for allegations of corruption. The MCA give countries (that qualify) for financial support, a say in aid-funded programmes and hold them accountable for achieving results. The ICC is concerned about the provisions in the UN Convention Against Corruption that is discretionary, hampers the development of binding and consistent international rules. These concerns need to be

turned into action. The OAU adopted a convention that needs to be enforced by member states. The least corrupt member states of SADC should play a leading role in the APRM. Based on international indices such as TI, qualitative and quantitative indicators on good governance and corruption can be developed for public institutions. Such indices can provide a useful tool for reducing corruption and reform of public services.

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