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Governance, trade and statehood in Africa

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1. Introduction

'The main reason why Africa's people are poor is because their leaders have made this choice.' This is the opening sentence in a recent book about poverty in Africa and what to do about it. The author argues, in a nutshell, that only political and institutional reforms will unlock Africa's potential in human and natural resources to bring about development, opportunities and hope.

This is not a new message. International institutions and commentators have been arguing for years that African nations have to reform their government institutions and policy procedures in order to be able to tackle poverty and under-development. Better trade governance is, for example, key to reaping the developmental benefits of trade liberalisation. Many African voices have echoed the same message about better governance, mostly with the more urgent plea for democratic rule at home and respect for human rights. Why then is it not happening – or at least not on a sufficient scale?

An editorial in The Economist once observed that Africa is so expensive because it is so poor. Part of the explanation for corruption and bad governance in Africa can be offered by way of the same reasoning. Poverty (especially if accompanied by ethnic divisions) inevitably directs the fight for scarce resources towards the institutions of the state. Politicians then use incumbency as an avenue to personal power, wealth and patronage; this will not be abandoned once acquired.

These are valid observations but more nuanced analyses are necessary when specific societies are investigated or particular policy areas are studied. Since the establishment of the World Trade Organisation (WTO) in 1995, trade governance has become a very specific challenge for African nations. Practically all of them are WTO members and have to implement the rules-based regime of this organisation. They have lost their non-reciprocal trade preferences under the Cotonou Agreement and now have to trade with the European Union (EU) and other nations on the basis of the applicable WTO rules. Their own regional trade arrangements have to comply with multilateral and local rules. The domestic technical capacity to do so may often be absent, but so may the will to implement obligations in international agreements, especially when national policy space is said to be curtailed. All these considerations involve governance issues.

It would be misguided to search for that one elusive factor which will provide the all-embracing answer for the governance problems faced by more than 50 different nations on the African continent. And it has to be recognised that there are many examples of improved governance in Africa – from elections which have brought popularly elected governments into power to legislative and constitutional reforms. The justification for emphasising good governance once again in the context of the present argument is because it is a prerequisite for effective administration and for achieving development goals. The Millennium Development Goals are a typical example and a demonstration of the direct link between development and governance.

The improvement of domestic governance and trade regulation remains one of the main challenges faced by African states. This is true of their multilateral obligations as well as their regional trade arrangements. No trade is conducted outside the realm of legal instruments. When African administrations complain about lack of technical capacity the explanation often has to do with their failure to adopt the legislation and to establish and staff the institutions required for implementing and enforcing standards, disciplines related to trade in goods, protection of intellectual property rights and regulation of services. These are areas of governance which all national administrations need to undertake in any case. This leaves such societies vulnerable to exploitation because of the absence of legal frameworks to protect vital interests, to comply with environmental, safety and technical standards and to provide remedies. They are then unable to reap the benefits associated with market access opportunities. Trade agreements do not create more trade; they only offer opportunities. These opportunities can, however, only materialise if tradeable goods are produced and transported competitively and if the applicable rules and requirements are complied with.

The governance debate is, in addition, a flexible and useful framework in the broader deliberation about how people are governed in a given society. It provides a context to understand the bigger picture as well as it parts. Governance is traditionally about the rule of law and how public institutions function but also offers benchmarks to scrutinise economic policies and outcomes. The track record of state institutions, the effectiveness of anti-corruption campaigns, the return on spending of public resources, the performance of judicial bodies and the availability of remedies when rights are violated can be examined and assessed. A governance matrix offers, in particular, a mechanism to identify lacunae.

Good governance makes sense. That is why most donors will emphasise the link between governance, economic opportunity and political stability. And it applies to all societies. The EU policy on support for societies in transition, for example, aims at how to 'mobilise all its instruments in a targeted and coordinated way to help countries in transition to achieve accountable government, political freedom, economic inclusiveness, decent jobs, social justice and equity'.

This paper does not address good governance issues as a mega discourse about how power should be exercised, human rights are protected or legitimate government is brought about. It has a more modest aim: to discuss trade governance in Africa and to point out some of the challenges and implications. This approach is based on the further assumption that although trade agreements and regional integration are motivated by better access to export markets, they are also catalysts for necessary domestic reforms to improve competitiveness. Practical examples from the multilateral and regional trade regimes will be mentioned while offering ideas on how reforms can be undertaken.

2. African optimism amidst the international financial crisis

Why debate the need for better governance when so many commentators are optimistic about Africa's economic future, at a time when most western economies are still in the grip of the international financial crisis? The obvious reason is that economic growth driven primarily by mining and extractive industries offers no guarantee that development will follow. Africa abounds with examples of corruption fuelled by oil concessions and the granting of mining licences. The fact that Africa now enjoys robust growth in several areas calls for more, not less, vigilance.

Another reason for considering governance requirements under present conditions is that it is too early to tell whether growth in China, India and Brazil will push demand for African commodities to long-term sustainable levels. And even if this does happen it remains vital to ensure that the general population will benefit and that long-term improvements in education, medical services and housing are implemented. The present boom may be another lost opportunity unless governments adopt sound policies and follow appropriate practices. There should be increased transparency and

accountability during the 'good times'; unless this happens they will remain good times for only the well-connected few.

The International Monetary Fund (IMF) forecasts sub-Saharan Africa's Gross Domestic Product (GDP) growth to reach 5.7% in 2013, while The Economist expects that seven of the top ten fastest growing economies in the global economy between 2011 and 2015 will be from Africa. All this good news can be undermined by corruption, political instability or if governments squander the opportunity. Commodity-driven growth comes with many governance caveats.

3. What is good governance?

The typical meaning ascribed to 'governance' holds that it is about the procedures and institutions by which authority is exercised in a given society. This includes the process by which governments are elected, monitored and replaced; the capacity of the government of the day to effectively formulate and implement sound policies and regulatory regimes; and the respect of citizens for the institutions and norms that govern economic, social, political and legal interactions among them. The latter element introduces notions about legitimacy too.

The essential feature of governmental action is that it concerns the exercise of state power. The key to the assessment of governance is to evaluate how this power is exercised, for what purpose and with what results. Ultimately 'good governance' will be a state of affairs where government structures perform optimally. Under such conditions state organs function in a transparent manner, respect the rule of law and can be held accountable. The more tangible outcomes will be reflected in the quality of service provided to the population, the effectiveness and comprehensiveness of regulatory regimes, the value and benefits obtained by the use of public resources, the opportunity for stakeholders to interact with policy makers, and the availability of effective remedies.

These are 'ideal' outcomes and many African governments lack the technical capacity to achieve such results in all areas. That is why technical assistance must remain on the development agenda and be focused on specific and relevant areas. In developing countries which produce meat or agricultural produce for export, major benefits can be attained if donors would provide abattoirs or laboratories (and trained staff) to ensure compliance with international food and safety standards. It

should, however, also be recognised that many good governance achievements are within the reach of most African states. More can be done to stamp out corruption among high officials and politicians; judicial remedies against abuse of power are possible if respect for the rule of law becomes more widespread; and if policies on regional integration become more realistic.

The international trade context introduces an important consideration for understanding the requirements of good governance in the contemporary world. Governments are not free to pursue domestic objectives as if unaffected by the outside world. Globalisation (the collective term describing how industrial production occurs and how the movement of goods, services and capital takes place) has direct implications national governments. They have to respond to these realities while they are simultaneously co-responsible for what the WTO Director-General Pascal Lamy calls 'global governance'. 'In the absence of a truly global government, global governance results from the action of sovereign States. It is inter-national. Between nations. In other words, global governance is the globalization of local governance'. His depiction merits repeating here (in summarised fashion) as a realistic sketch of the contemporary world and some of its governance challenges:

- We live in a world of ever-growing interdependence and interconnectedness. With the recent economic crisis we discovered that the collapse of one part of an economy can trigger a chain reaction across the globe: with the climate crisis, that our planet is an indivisible whole; with the food crisis, that we are dependent on each other's production and policies to feed ourselves; and with the flu epidemic, that speedy international cooperation is vital.

- Production chains have become truly global, with companies locating various stages of the production process in the most cost-efficient markets.

- Over the past 70 years we have constructed the legal and institutional framework to manage closer economic integration at the regional and global level. And, of course, the WTO is one part of this scheme with responsibility for the governance of international trade relations.

- The international system is founded on the principle and politics of national sovereignty: the Westphalian order of 1648 remains very much alive in the international architecture today. In the absence of a truly global government, global governance results from the action of

sovereign states. It is international, between nations. In other words, global governance is the globalisation of local governance.

- But it does not suffice to establish informal groupings or specialised international organisations, each of them being 'member driven', to ensure a coherent and efficient approach to address the global problems of our time. In fact, the Westphalian order is a challenge in itself. The recent [financial] crisis has demonstrated it brutally.

- We see the growing importance of values at the WTO itself. Rules are made less and less to protect producers; more and more to protect consumers. Issues such as trade and health and trade and environment, where values play an important role, have gained in visibility. As traditional obstacles to trade such as quantitative restrictions or tariffs are decreasing, regulatory discrepancies risk becoming an impediment to market opening and economies of scale.

4. Practical and regulatory challenges

The increased use of regulatory measures by governments creates specific governance challenges. This part of the paper is taken from the World Trade Report 2012. It examines why and how governments use non-tariff measures, including domestic regulation in services. Such measures can serve legitimate public policy goals, such as protecting the health of consumers, but they may also be used for protectionist purposes. The Report reveals how the expansion of global production chains and the growing importance of consumer concerns in richer countries affect the use of non-tariff measures. It also reports that such measures represent the main source of concerns for exporters.

The focus of the Report is on technical barriers to trade (TBT) regarding standards for manufactured goods, sanitary and phytosanitary (SPS) measures concerning food safety and animal/plant health, and domestic regulation in services.

While regulatory standards restrict trade in agricultural products, the Report finds, the existence of standards often has a positive effect on trade in manufactured products, especially in high-

technology sectors. Moreover, the harmonisation and mutual recognition of standards is likely to increase trade.

The Report identifies several challenges for international cooperation, and the WTO more specifically. First, the transparency of non-tariff measures needs to be improved. The newly created WTO database I-TIP (Integrated Trade Intelligence Portal) will help in improving transparency. Secondly, more effective criteria are needed to identify why a measure is used. Thirdly, the increase in global production chains calls for deeper integration and regulatory convergence. Lastly, capacity building is a vital element in improving international cooperation.

Non-tariff measures, such as TBT/SPS measures, are often the first-best instruments to achieve public policy objectives, including correcting market failures arising from information asymmetries or imperfect competition, and pursuing non-economic objectives, such as the protection of public health. While many NTMs are concerned with consumer protection, NTMs can also be utilised by political incumbents to protect domestic producers.

Economic, social and technological advances have resulted in higher consumer demand for food safety and posed new challenges in managing globally fragmented supply chains. Food safety measures have proliferated as a tool to respond to these challenges. As a consequence, various approaches to mitigate possible negative trade impacts, such as harmonisation of standards, equivalence, and commitment to a set of rules are receiving widespread attention.

Transparency is a major issue with regard to both NTMs and services measures. The relative scarcity of information on non-tariff measures is partly due to the nature of these measures, which are inherently more difficult to measure than tariffs. The WTO and other international organisations have undertaken substantial efforts and made good progress in classifying and collecting data on NTMs in recent years, and these efforts are starting to extend to services measures. However, more needs to be done to obtain a clearer and more complete picture of the trade policy landscape.

The Report notes that not all NTMs have a negative impact on trade. Public policy measures such as TBT/SPS measures and domestic regulation in services, in particular, do not unambiguously increase or decrease trade. TBT/SPS measures and domestic regulation in services affect not only how much two countries trade but also the number of countries with whom they trade. There is also some

evidence that conformity assessment is particularly burdensome. Negative effects on trade are mitigated by a reduction in policy divergence, whether through convergence to international standards, harmonisation or mutual recognition. If harmonisation and mutual recognition of standards occur at the regional level, there may be significant trade-diverting effects on outsiders and regulatory 'lock-in'. This appears to be the case especially for developing countries.

Traditional trade agreements contain provisions that focus on addressing the problem of tariffs being replaced by non-tariff measures. The changing nature of international trade and the use of private standards may prompt the need for deeper forms of institutional integration. Moreover, the growing number of reasons why governments resort to NTMs, including for health, safety and environmental considerations, creates a need to develop rules to facilitate cooperation in the identification of efficient and legitimate uses of NTMs.

The SPS and TBT agreements are 'post-discriminatory' agreements. Although they include non-discrimination obligations, they also contain provisions that go beyond a 'shallow integration' approach. They promote harmonisation through the use of international standards and include obligations that are additional to the non-discrimination obligation. This includes, for instance, the need to ensure that requirements are not unnecessarily trade restrictive. Some question the appropriateness of these 'post-discriminatory' obligations, arguing that the assessment of a measure's consistency with such requirements is difficult without WTO adjudicators 'second-guessing' a member's domestic regulatory choices.

A number of challenges are more specifically related to public policies. Addressing the adverse trade effects of TBT/SPS measures and domestic regulation in services requires regulatory convergence. Part of this convergence takes place at the regional level and part of it at the multilateral level, raising the question of the optimal level. The role of governments and of the WTO with regard to private standards also needs clarification. Negotiations on domestic regulation in services have turned out to be very difficult to conclude, mainly because of concerns with regulatory autonomy. Lastly, capacity building could make a more significant contribution to improving international cooperation on public policies.

5. Implementing trade agreements

International (and regional) organisations are established through the conclusion, by states, of an international agreement. This agreement then also becomes the 'constitution' and founding instrument of the organisation in question. It will contain all relevant provisions on membership, organs and their powers, voting, and entry into force as well as technical matters such as the accession of new members and withdrawal of members.

The members of an international organisation are, as a rule, states. States enjoy sovereignty. This has several legal consequences, such as the fact that states are not bound by international agreements unless they have ratified them or acceded to them. Once a state is a member of an international organisation, it is bound by the legal obligations contained in the agreement which established the organisation.

International agreements need to be implemented in order to achieve the objectives for which they have been concluded. This requires that the relevant international instruments have to be studied. They will reveal what obligations have been accepted and what steps need to be taken to ensure compliance. It will involve scrutiny of the applicable instrument and measuring domestic legislation dealing with the same substance matter against the agreement in question. Gaps in the domestic legal environment can then be identified and addressed.

What does the implementation of international agreements entail? Dictionaries define 'implementation' as the performance of an obligation. 'Compliance' refers to action (implementation) which is in accordance with the applicable rule or standard. Should the parties to an agreement disagree as to whether action by a particular government is in violation of the applicable obligation, the ideal solution involves adjudication by an independent forum with the power to interpret and apply the relevant law and to render a binding ruling.

A dispute settlement arrangement in an international agreement provides strong indications of the nature of the regime established by the parties and the intended manner of implementation. The effective settlement of trade disputes and the availability of remedies to private parties are critical indications as to the quality of the governance provided. Implementation of legal arrangements requires that the jurisdiction of the courts (national and regional) should be respected. It is a serious

governance failure to abolish tribunals, as happened recently in the Southern African Development Community (SADC). No dispute under any SADC legal instrument can presently be resolved through adjudication before the SADC Tribunal. This Tribunal has been suspended through a Summit decision adopted in August 2010 after a complaint by the government of Zimbabwe following rulings against it by the Tribunal. There were two cases before the Tribunal about human rights violations by Zimbabwe. The Summit then decided to investigate the jurisdiction and powers of the Tribunal and to launch an official study for this purpose. However, it has not been prepared to accept the outcome of the report on the correctness of the Zimbabwe cases nor any of the subsequent reports. It is generally expected that the Tribunal will only survive, if it does, with substantially diminished jurisdictional powers. It is not clear when, if ever, it will be restored.

The nature of the steps necessary for implementing an agreement depends on what the parties have agreed to. The text of the agreement and the substance of the matter it deals with will indicate how the agreement in question has to be implemented and what the obligations of the state parties are. Ultimately it is a matter of interpretation. International agreements 'shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

In some instances implementation may require formal actions only, such as respect for the status quo or diplomatic exchanges directly between the governments involved. In trade agreements, the obligations typically involve undertakings to grant most favoured nation and national treatment to goods originating in the other partner states. In other instances, the state parties may have to adopt active follow-up measures in order to ensure specific outcomes. This may include national measures of an executive or legislative nature or 'domestication' of the agreement in question. This latter procedure is, as a rule, only necessary when rather specific and coordinated outcomes are foreseen.

The implementation of regional trade arrangements does not, as a rule, entail one single step or activity. The ideal implementation programme should contain a comprehensive policy and a detailed plan of action. Domestic executive actions will usually be required as follow-up activities. They need an enabling national legal framework. The gains will not only relate to the benefits of regional trade and business; these will be building blocks to ensure that the national economy in question will be

integrated into the global economy. Sound administration is vital for good governance and a proper development strategy.

When it comes to domestic administration certain basic legal principles such as the ultra vires rule have to be respected. Executive acts are, in addition, subject to judicial review in terms of national administrative law rules. Constitutional principles such as respect for separation of powers and human rights may also apply and will pose benchmarks which have to be respected by executive bodies.

When it is necessary to undertake the incorporation of an international legal instrument into the law of the land it is done via a process referred to as the 'domestication' or incorporation of an international agreement. As a rule, international agreements are not self-executing. When their implementation requires action by national authorities for which a domestic legal basis is necessary, the agreement in question cannot provide such a basis, in particular not in countries with a dualist tradition. Domestication of the international agreement in question may then be necessary and will involve action by the national legislature. This will also ensure that the constitutional principle of the separation of powers will be respected and that the national executive (which normally negotiates and signs international agreements) will not 'legislate' via the direct domestic implementation of international agreements.

6. The governance implications of regional integration

The parties to an international agreement may establish intergovernmental bodies or regional structures such as secretariats or ad hoc agencies in order to facilitate the implementation of their commitments and achieving their objectives. This happens typically when the objective is to promote regional integration. Regional structures could then play a direct role in the implementation of the agreements in question since regional integration arrangements normally require follow-up action, closely coordinated national steps, monitoring of compliance and deliberate efforts to prevent fragmented outcomes. The implementation functions of regional structures will depend on their powers as granted by the agreements establishing them.

Regional integration involves the gradual movement towards uniformity in the member states in terms of policies, legal arrangements, and harmonisation of laws and outcomes. Experience has shown that the deeper the integration the higher the level of legal uniformity required. The governance implications will become more far reaching. In the most advanced regional integration example, the EU, this process has resulted in extensive powers for the Commission, which is described as a 'supranational' authority. It can exercise comprehensive powers, including legislative powers. It does so on behalf of the member states, which have transferred these powers to the European Commission. The 27 member states cannot take unilateral actions in these areas. The EU member states must, in addition, respect and comply with community law, including legislative enactments issued by the Commission. Some of the Commission directives are directly and automatically applicable in the member states. The European Commission exercises, amongst other things, all the powers pertaining to international trade and related matters.

African Regional Economic Communities pursue their own agendas of regional integration but cannot be compared to the EU. They have generally adopted formal decisions to form Free Trade Areas (FTA) among its members, to be followed by a customs union (CU). This has proved an elusive goal and deadlines are not met. One of the reasons is that the compliance governance has been lacking. Regional integration arrangements must comply with multilateral trade rules, while their own internal orders should ultimately be rules-based to provide for enforceability and certainty. The relationship between regional law (usually referred to as 'community law') and national legal regimes should be clarified and function in tandem.

The achievement of deeper integration in Africa is a difficult exercise. One of the reasons is that the region is so diverse. Results should nevertheless be measured in terms of real outcomes such as harmonisation of legal instruments, uniformity in application, enforceability and the availability of legal remedies when violations occur. The rights of private parties should also be secured when they engage in cross-border commerce. The private sector is ultimately a major driver of regional integration efforts.

When a detailed arrangement is foreseen on how a group of states want to coordinate or integrate their policies in order to promote economic development, trade and financial coordination, a whole range of implementation steps will be required. They may be sequenced in a particular manner or

may depend on certain conditions being established first. The exact formula depends on what the parties are prepared to accept as binding obligations. The acid test lies in the follow-up measures and meeting the governance challenges.

One of the biggest governance challenges faced by African states is the complications caused by overlapping membership of Regional Economic Communities (RECs). Practically all the member states of the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), and SADC belong to more than one REC at the same time. This state of affairs is apparently inspired by the idea that market access to several regional trade arrangements will be beneficial. There are several reasons why this is a flawed approach. It causes major legal complications, implementation burdens and even confusion. The first complication flows from the fact that all the RECs are to become customs unions. The EAC claims to be one already and COMESA has adopted decisions declaring the existence of a customs union. A customs union has a common external tariff and a single customs territory. It is therefore not possible to belong to more than one customs union at the same time unless these customs unions merge and the result is a larger customs union. This might be one of the objectives behind the planned Tripartite Free Trade Area but it will take a very long time to conclude that agreement and to resolve the many legal and practical challenges posed by this endeavour.

A brief description of the position in the EAC at present will demonstrate some of the complications caused by overlapping membership. The EAC is a customs union but four of the five members (Rwanda, Kenya, Uganda and Burundi) are also members of COMESA. Tanzania is a member of SADC. This results in different legal regimes (tariffs, standards, regulations, etc.) being applicable to trade in goods and services involving these countries. It makes matters more costly, slower and burdensome. It also discourages investors because of the duplication and additional burdens involved when required to simultaneously comply with different rules and legal requirements. Another major obstacle is caused by different rules of origin. The SADC regime for rules of origin differs fundamentally from those in COMESA and the EAC and is in fact very restrictive since it is based on product-specific criteria. The other two regimes employ different and more flexible criteria which encourage trade through flexible principles such as simple cumulation requirements.

7. The sovereignty issue

A substantial part of the public debate about deeper integration and related governance challenges in Africa tends to focus on the loss of 'sovereignty' for the states involved. Some commentators openly state their belief that integration will result in loss of state sovereignty. What they seem to fear is the effect of decisions and policies emanating from regional or multilateral organisations and that these will restrict the 'policy space' of governments in the member states.

These arguments about loss of 'sovereignty' contain an unintended admission; the real concerns are about the loss of control and about 'interference' with the powers of national governments. The distinction between state and government is frequently lost. Although sovereignty is technically a feature of states (the primary subjects of international law) and not of governments, the fact remains that governments act on behalf of their states.

Fears about threats to national sovereignty may be well founded in instances when supranational bodies act in an ultra vires manner or when they usurp powers over areas best left to legitimate national structures. Then the concern is in effect about a threat to popular sovereignty. This has been a long-standing debate in, for example, the EU where the European Commission enjoys extensive powers over areas which used to fall under national structures. However, we are light years away. Regional Economic Communities in Africa do not enjoy similar powers. Their dilemma is often the opposite: they have weak institutions, ill-defined mandates and vague powers. There are no clear voices speaking on behalf of the collective. The monitoring of compliance with community norms and laws is mostly very weak.

Regional structures do not enjoy inherent powers; they are the creatures of international agreements concluded and ratified by the very states which have come together in the belief that such bodies will improve trade, development and effective cooperation between them. They establish specific regional structures and grant them the powers necessary to fulfil their mandates.

The sensitivity about sovereignty is inspired by the fact that economic and financial policies involve sensitive national policy choices. The traditional view has been that the state exercises full control over all matters within its jurisdiction, including the movement of goods, capital and people across its borders. In a modern and interdependent world where no state can prosper in isolation this

cannot be an absolute truth – if it ever was. No government, not even of the strongest nations, can ignore the effects of global economic and related developments.

Sovereignty is best understood as a legal concept which protects territorial integrity under prevailing global realities. It is important to recall that it is an act of sovereignty to conclude an international agreement, which will not bind a particular state unless it has formally become a party. Once international legal obligations have been accepted (typically through the ratification of or accession to treaties) they have to be respected. A state cannot invoke its national law or its constitution as a justification for not complying with its international legal obligations. If that were true, there can be no international law and none of the benefits associated with legal certainty, predictability and remedies in case of the violation of obligations.

States are free to conclude or not to conclude international agreements. The reasons for joining such agreements have to do with the benefits, in their own estimation, to be achieved. In the absence of an international legislature, freely entered into international agreements constitute the mechanism for structured interaction between states and for certainty and predictability in their relationships. In order to prevent subsequent concerns about the protection of sovereignty, governments should ponder the effect of the agreements which they negotiate and accept. The texts of treaties should be drafted with care in order to reflect correctly what has been agreed. Once agreements have entered into force they have to be respected and implemented.

Technical capacity is required in order to give effect to specific obligations. If some of the parties lack the capacity to comply or to do so within a given period of time, they may be granted additional time or technical assistance. The text of the agreement in question should explain these aspects and whether some parties are entitled to special and preferential treatment. One of the consequences of sovereignty is equality. Unless special treatment is provided for, obligations apply to all state parties and in the same manner.

8. Concluding observations

Developing countries often adopt reforms to improve their administrations yet frequently fail to produce better governance. Why is it so difficult to implement more effective governance reforms? One explanation has to do with the manner in which such initiatives are conceptualised. If they are short-term measures or ad hoc in nature they will not bring about fundamental improvement. Better governance needs a plan.

Reform measures should be well designed and be linked to long-term objectives; while being implemented in an incremental fashion where and when necessary. And they should be realistic. Grand schemes such as those associated with ambitious regional integration agendas to form FTAs and customs unions among African nations within a given period are bound to fail. Regional integration must be accompanied by a rigorous investigation into the technical implications and implementation burden for individual governments. And legal instruments should be taken seriously, both when negotiated and when implemented. New realities or new trade opportunities are not created by ratifying international agreements; the real work starts after the signing ceremony. Compliance with the legal requirements which accompany rules-based trade and integration are ignored at their peril.

Broader issues of statehood are at stake here. The political will to see through reforms is a vital ingredient and requires the preparedness to tackle entrenched privilege. Reforms aimed at better governance are not universally popular. An obvious example is anti-corruption campaigns.

Open and robust public discourse should accompany reform efforts. They should be canvassed in advance and involve the general public. Mechanisms should be introduced to ensure that the voices of civil society and stakeholders are effectively heard. It should be clear what outcomes are foreseen and what new results are targeted. National parliaments often fail to become sufficiently involved in national reform initiatives.

Successful reforms require patience, dedication and resources. There should be benchmarks along this road in order to measure how the stated goals are achieved or not achieved and how the lessons learned can be implemented. Someone or a specific institution with the necessary mandate and authority should drive the programme. These efforts should be supported at the highest levels and

national cabinets should be fully behind the effort. Experience has shown that fragmentation is often built into reform programmes from the outset. This happens as a result of the failure to conceive them in a comprehensive and sound manner. They are bound to fail.

Lack of resources and insufficient technical capacity are the standard responses to explain failures in this area. True as this is for the more sophisticated challenges and the mega projects, it remains to be pointed out that there are many practical steps which will bring about improved governance. To mention just two examples: many African governments still follow the tradition inherited from colonial times (in particular under the common law tradition) to channel all legal services of the state through one single government office, the Attorney General. This will inevitably result in the absence of specialists who can provide the government with the required technical advice. There should be specialists in ministries such as those responsible for trade-related matters, intellectual property and specialised disciplines. Another example is staff development policies. Government officials given the opportunity to hone their skills in a particular area and under the certainty of well-designed staff development and promotion policies will inevitably become specialists in their areas of work. Technical capacity answers are not necessarily always about mega schemes and expensive programmes.

What remains to be added is the old-fashioned truth about respect for the law of the land. Businesses, including foreign investors, will circumvent the law to protect their interests if government is corrupt. Asked what he considered to be the most significant contributor to economic growth, Alan Greenspan, the former chairperson of the United States Federal Reserve, responded: 'The rule of law'.

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