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## **GOOD GOVERNANCE A HUMAN RIGHTS APPROACH**

*[This document is based on the report of a Panel Discussion organized by the office of the United Nations High Commissioner for Human Rights, Geneva, Document A/HRC/31/28, 21 December 2015, Human Rights Council, Thirty First Session, Agenda items 2 and 3]*

### **Introduction**

In his opening statement, the Director of the Human Rights Treaties Division observed that good governance in every aspect of the public sphere was a core mission for every State. Human rights and good governance were intrinsically interlinked and interdependent. A human rights-based approach to good governance required States to guarantee non-discrimination and equality in the provision of public services. Good governance also served as a strong driver of public confidence, peace and sustainable development. When State-run processes and mechanisms were transparent, accountable to the people, operated efficiently and effectively, and respected the rule of law, public confidence was strengthened, public grievances diminished, public well-being enhanced, and economic and social progress improved.

Nevertheless, multiple challenges to good governance persisted, including austerity policies, untamed privatization, corruption, conflict and violence. Failure to provide important public services, or reductions in the quality of these services, resulted in a loss of legitimacy, inability to sustain development, social unrest, insecurity and migration. Human rights obligations and core principles such as non-discrimination, participation and accountability should inform governance efforts. Human rights treaty bodies had provided the archived webcast of the guidance relating to good

governance, for example the Committee on Economic, Social and Cultural Rights, in its general comment No. 12 (1999) on the right to food, had stated that “Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.”

### **Privatization Trend**

The growing trend towards the privatization of public services had potential negative consequences for human rights. Reference was made to a recent report of the Special Rapporteur on the right to education (A/HRC/29/30), which described how opening up the education sector to privatization and commercialization might result in a failure to ensure universal access to education and undermine the right to education. Where public services were privatized or provided by way of public-private partnerships, States must therefore ensure compliance with human rights and put in place effective quality control, accountability and monitoring mechanisms. III. Summary of the proceedings

In her opening remarks, Ms. Peters introduced the panellists. She referred to the OHCHR report on the role of the public service as an essential component of good governance in the promotion and protection of human rights (A/HRC/25/27) and noted that the panel was premised on the idea that analysing the public service through a human rights lens could yield policy benefits. The mutually reinforcing links between human rights and a well-governed public service were reaffirmed. The human rights of ordinary citizens came into play when they interacted with the public service of their State or region. The human rights of public officials were also affected, notably their right to be selected, hired and promoted without discrimination; only civil servants who were remunerated properly, and whose human rights were respected, would be willing and able to perform their tasks without resorting to corruption.

### **Public Service**

The moderator explained that the terms “public service” or “public administration” were used interchangeably to cover the entire machinery funded by the State budget and in charge of the delivery of State functions

undertaken by the various branches of government, namely law-making, the application of those laws and, finally, the enforcement of the laws. Throughout history, different cultures and political systems have had, and continued to maintain, diverging views about which functions the State should fulfil; how intensely; and with what level of priority. Accordingly, the analytical question of what belongs to the “public service” could be divided into the following sub-questions: (a) what must be done in the general interest of a given society (“for” the public); (b) by institutions funded and installed directly or indirectly by the public?; and (c) which services should be “public”, as opposed to being left to the realm of the private, individual and business sphere? The political choices made by States ranged from the very lean and minimal State and public administration, at one end of the spectrum, to a broader, full-fledged welfare State, at the other.

The human rights perspective was useful for identifying both the substantive content of the public services, as well as the process through which they should be offered. A State that had ratified the International Covenant on Economic, Social and Cultural Rights, for example, was ultimately responsible for securing some type of health system to realize the right to health. While this did not prohibit privatization of the health system, the State was still required to be the ultimate guarantor of the relevant right. Good governance was generally regarded as encompassing transparency, accountability, openness and participation;<sup>2</sup> as well as integrity, non-discrimination, equality, efficiency and <sup>2</sup> Human Rights Council resolution 25/8. A/HRC/31/28 <sup>4</sup> competency;<sup>3</sup> and responsiveness to the needs of the people.<sup>4</sup> Given the partial overlaps between these elements, it was suggested they be subsumed by the three-pronged formula established in the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (transparency, participation and access to justice).<sup>5</sup> Examining these three pillars through a human rights lens could assist in filling the elements with content adaptable to different cultures and contexts.

The moderator then invited the panellists to make their presentations.

### **The Role of NGO's**

Mr. Mumuni focused on two issues: firstly, the role of non-governmental

organizations (NGOs) in initiating legal action against corruption where anti-corruption institutions failed to do so; and secondly, advocacy for the establishment of an international anti-corruption court to try grand corruption cases and facilitate repatriation of stolen funds to victim States.

NGOs could play a key role in combating corruption by ensuring the effective enforcement of anti-corruption legislation and the United Nations Convention against Corruption, and by pushing anti-corruption institutions, through legal actions, to properly investigate and prosecute corruption cases so as to deter future misconduct. They could contribute to prevention, for example, by persuading Governments to enact legislation including whistle-blower protection laws. Given that grand corruption (and impunity of perpetrators) was inimical to the public interest, NGOs could also initiate “public interest litigation”, pursuing corruption cases where anti-corruption institutions failed to do so or that otherwise would not be subject to scrutiny. It was thus important to relax locus standi requirements and encourage courts to accept public interest litigation and class action lawsuits in corruption cases. In addition to the need for a conducive legal and judicial environment, it was noted that NGOs needed to acquire the necessary expertise and resources to effectively use public interest litigation.

He suggested that the establishment of an international anti-corruption court would be a way to probe allegations of grand corruption. It was observed that, in a context where many had lost faith in the ability of national courts and Governments to combat high-level official corruption, an international anti-corruption court could serve to erode the widespread culture of impunity and address the challenges undermining the effective repatriation of stolen assets to victim States. Grand corruption was a complex problem causing severe human suffering and required novel solutions. Parallels were drawn with the International Criminal Court and it was suggested that its track record offered hope for a well-functioning anti-corruption court.

### **Good Governance**

Mr. Taekyoon elaborated upon the links between good governance and the Sustainable Development Goals. These Goals went beyond the Millennium Development Goals, which did not include significant governance aspects. Recalling Council resolution 25/8, the panellist noted that deepening good

governance practices at all levels was a prerequisite for the full realization of human rights, including the right to development. 3 Human Rights Council resolution 19/20. 4 Commission on Human Rights resolution 2000/64. 5 Meeting of the Parties to the Convention on Access to Decision-making and Access to Justice in Environmental Matters, decision II/4 on promoting the application of the principles of the Aarhus Convention in international forums (ECE/MP.PP/2005/2/Add.5). A/HRC/31/28 5

Despite good governance being essential to achieving successful development outcomes, it was unclear how it could, or should, be reflected in the Sustainable Development Goals. The Secretary-General's High-Level Panel of Eminent Persons on the Post-2015 Agenda had argued that governance would be best positioned as a stand-alone goal. 6 However, an alternative approach would be to integrate governance into issuespecific goals. Another option would be to link governance considerations to questions of "means of implementation" and development financing in the Sustainable Development Goals, possibly in the form of a set of principles or guidelines attached to the articulation of these "means." Good governance had a close connection with Sustainable Development Goal 16, which referred to, inter alia, the building of effective, accountable and inclusive institutions at all levels.

Good governance became a controversial term because of its usage in the realm of international development assistance. Developing countries were concerned about the use of good governance targets and indicators as a form of aid conditionality. The Sustainable Development Goals could be seen as an opportunity to creatively construct new targets and indicators that took such concerns into account. The establishment of common principles by the international community would enable customization in the selection of targets and indicators based on national and local contexts. The logic of good governance should be adapted to suit developing countries with differing rates and patterns of development.

### **Challenges and Opportunities**

Ms. Pavey spoke about the main challenges to implementation of the good governance agenda at the national level. She pointed to the gap between ratification of human rights treaties and their national implementation, citing

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several examples. Dominant deep-rooted cultures can prevent the effective integration of international norms into national and local landscapes. While reforms were sometimes adopted to please international public opinion, political authorities in certain countries allowed bad practices and policies to continue. When tradition clashed with human rights, it was suggested that one had to go beyond tradition in order to protect rights and freedoms.

Ms. González Guyer elaborated on the challenges and weaknesses of good governance from a gender perspective. She noted that a focus on gender was inherent in a human rights perspective. It was important to mainstream a gender perspective across different dimensions of governance in a cross-cutting manner, while overcoming the view of women as a vulnerable group. Modifying gender perceptions on the basis of good governance and public service, ensuring equal treatment of men and women, and making progress in terms of access to and enjoyment of rights, all constituted a challenge but also presented opportunities. Access to public services was essential but not sufficient to ensuring women's full enjoyment of all human rights.

Institutions were a part and a product of a wider gender gap, and this permeated their laws and norms, features, administrative practices, informal mechanisms and the positions occupied by women and men within them. It was therefore necessary to review discriminatory practices in government institutions. The relationship between gender and governance had not been sufficiently addressed by theoreticians or by empirical studies. Women had transformed processes of governance with their participation in different State institutions, at executive, legislative and judicial levels, as well as in civil society organizations. Since the beginning of the century, there had been a particular focus on the participation of women in forums for the design of new governance systems, a factor 6 "A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development. The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda". Available from [www.post2015hlpinstrumental](http://www.post2015hlpinstrumental) in building good governance. If good governance and public service ignored gender inequalities, they would not ensure genuine citizen participation and key principles of accountability, non-discrimination, equality, transparency and access to information and enforceability of rights.

Mr. Pastwa focused on the potential and limits of law in respect of good

governance in public administration. He indicated that legislation was a *sine qua non*, but was insufficient by itself to ensure the realization and pursuit of human rights by a State's public administration. The concept of a human rights-based approach to good governance presented an opportunity to effect real change. Reference was made to the 21 Gdansk demands formulated in August 1980 by the Gdansk Shipyard workers, seeking equal rights to access public office for all members of the public and citizens, and demanding that an open and accessible Government lead the country in order to effect change in citizens' lives. Awareness and positive attitudes among public officials were critical factors, without which legislation alone would not suffice. Human rights served as a good basis for changing the mindsets of public officials from a "cold professionalism approach" of just managing problems to a "hot professionalism approach" focused on caring for people and understanding and meeting their aspirations.

### **A Pragmatic Approach**

Mr. Pastwa spoke regarding the realization of good governance in public administration and emphasized the need to adapt the measures to be taken to the goals to be achieved. A pragmatic approach to realizing good governance required an appropriate legal framework and budget, together with sufficient leadership from those involved in implementation. It was important to set good examples and identify and exchange good practices. Regarding the public service's role in delivering the Sustainable Development Goals of the post-2015 agenda, he held that public service could open itself up to external stakeholders and invite them to participate widely in governance and policymaking, also bearing in mind the volume of issues raised in Goal 16. They could also strengthen partnerships in this process. States should ensure access to justice by making available the necessary budgetary, organizational and technical means. Training for members of the public service was needed, while citizens should be educated on how to exercise their rights. It was stressed that enhancing transparency and access to information was an invaluable investment and required an adequate budget. The use of digital means was recommended to significantly reduce costs in this regard. Practical examples of how corruption harmed individuals and society should be provided. It was also important to provide training to members of the public service on how to break the vicious cycle of corruption and avoid a corrupt organizational culture.

Mr. Mumuni addressed the question of how to prevent corruption and the diversion of public funds by high-ranking officials. Grand corruption showed the need to establish an international anti-corruption court to handle corruption cases that domestic courts were reluctant or unable to take up. Such a court would serve as a deterrent to those wishing to use public office for personal enrichment. He shared his views about how to make the public administration more responsive to citizens' general interests. It was acknowledged that, in certain contexts, corruption was the main reason why people did not benefit from public service and a strict and even-handed enforcement of the rules applicable to civil servants was needed in cases of violations. Contrary to the suggestion that lack of political will was a reason for ineffective human rights promotion and protection, strong institutions were essential to ensure that no individual, regardless of their power, would be able to subvert the system.

Mr. Taekyoon spoke about how to promote synergies between international financial institutions and the United Nations concerning policies on good governance and public administration. Synergies could be enhanced through a common memorandum to set the highest standards of public services and increase the sharing of information and best practices. He commented on questions relating to creating an international environment conducive to improving the public service and about concrete international mechanisms to assist countries with financial limitations. It was noted that development financing was critical in implementing the Sustainable Development Goals and other international developmental goals in the recipient countries. Three different levels of support were referred to in this context: (a) reform of the domestic tax system to grant access to hidden funds otherwise controlled by the informal sector, and enabling citizens to hold Governments accountable for how taxes were spent; (b) at the international level, through official development assistance and foreign direct investment; and (c) innovative solutions such as a solidarity tax.

### **Role of HRC**

Ms. González Guyer responded to a question on how the Human Rights Council could further promote good governance in the public service. She pointed out various avenues, for instance, the universal periodic review and

follow-up to recommendations by the treaty bodies, through which the Council could exert influence. NHRIs also had an important role to play in this regard given their public, yet autonomous, institutional status. Hence they should be strengthened and cooperate closely with civil society to enhance their efficacy. NHRIs served as oversight mechanisms to ensure State compliance with human rights and could also prepare independent reports for various treaty bodies. Additionally, NHRIs and ombudspersons could contribute to standard-setting internationally, while simultaneously enforcing standards domestically. Regarding the role of private enterprises in governance, there was a need to pay particular attention to the increasing trend towards privatization of public services such as water, education and health. The State must serve as a guarantor and carry the ultimate responsibility for ensuring respect for all human rights. The potential of e-government and new technologies was highlighted with regard to the realization and monitoring of human rights, in particular in terms of access to information. However, it was stressed that e-government and access to information were not, by themselves, guarantors of a human rights approach.

Ms. Pavey outlined the most common challenges arising from the outsourcing of public services and highlighted the need for greater transparency in shaping public policy. Austerity and privatization redefined roles and the market economy brought in new values and policies that became part of official policy in many countries. There was thus a need to invest in cultural transformation rather than merely in legislative change. Responding to a question regarding access to and participation in public services by persons with disabilities, she noted that the core human rights principle of non-discrimination was essential for achieving good governance; public services should be made inclusive and accessible to persons with disabilities. The resistance of the dominant culture was cited as one of the main reasons for limited access and participation. In densely populated countries, lack of resources created further resistance to the sharing of services between persons with disabilities and those without disabilities. The importance of education, awareness-raising, training for public servants and sharing of best practices was highlighted in this context. ■