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**ASSESSING AND ASSISTING DEMOCRATIC
GOVERNANCE REFORM: A FRAMEWORK**

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I. GOVERNANCE AND DEMOCRACY

Increasingly, it is apparent that most of sub-Saharan Africa is poorly governed. Poor governance fails to protect human rights, fails to maintain civil peace among groups in society, and fails to provide the minimal conditions for sustainable economic development. Many African societies are also undemocratic, dominated by unaccountable elites who preside over unresponsive bureaucratic regimes, or they are, at best, fragile and immature democracies engaged in the very beginnings of a democratic transition. Poor governance and weak democracy are closely and directly related. Improvements in the performance of democracy and governance depend on reform, just as, earlier, improvements in economic performance were found to depend on reform. As in the case of economic reform a decade and a half ago, international donors have begun to support democratic reforms intended to improve governance.

A. What is Governance?

"Governance" refers to a process that is at once broader and narrower than the total set of governmental activities. It is broader because it embraces many activities that fall outside the scope of government *per se*. It is narrower because the most visible and concrete governmental activities occur at an operational level that, like many private activities, depends on the performance of key governance functions:

- Keeping the peace, both among individuals and among organized groups, within the framework of civil society.
- Maintaining a condition of equal or common liberty among the members of society, including the protection of basic human rights, subject to equal or common obligations to act in ways respectful of others.
- Defining property rights and enforcing contracts, fairly and effectively, in order to establish an enabling environment conducive to economic production and exchange.
- Resolving conflicts that develop among individuals and groups.
- Raising revenue, equitably and efficiently, in order to make provision for public goods and services.
- Providing for national security in ways that do not seriously threaten the integrity of public institutions with corruption by force of arms.

These functions specify what governance is supposed to accomplish--why governance is needed and the public purposes that it is intended to serve. All of these functions depend on the use of *rules*--rules that specify rights and duties while allowing important liberties. The use of rules depends on four, distinctly different, dimensions of governance:

- The first is the process of *prescribing* a rule, expressing it in general terms so as to apply to a series of similar but not identical cases that lie in an uncertain future. Prescription is usually done by means of some sort of authoritative legal instrument, such as a constitution, law, or decree. Prescription alone, however, produces words on paper, nothing more.
- Following prescription, a rule must be *invoked* by the intended parties in relevant circumstances. Un-invoked rules are effectively non-rules. If the relevant parties, especially those whose relationship a rule is intended to regulate, do not invoke the rule, then the rule as prescribed will not be applied. The effective rule becomes either what the parties agree to or, much worse, what one party can impose on the other. This applies as much to relationships between legislatures and executives as between any two parties who "settle out of court."
- Once invoked, a rule must be *applied*, that is, someone must decide whether the general rule of law properly fits the specific circumstances of a particular case. Application is usually deemed to be the work of courts, although it may also, at least in the first instance, fall to bureaucratic agencies.
- Finally, the application must be acted upon, supported if necessary by the use of coercive sanctions; that is, the rule must be *enforced*.

Governance entails all four processes. Each one is necessary. This means that governance is a *multi-dimensional* process. Improving governance requires change in all four dimensions. Moreover, both governmental officials and citizens can and should contribute to each dimension. This is why governance is bigger than government. Prescription should be informed by and responsive to citizens; many if not most rules should be invoked directly by individual citizens; citizens should participate in the proceedings used to apply rules; and citizens should be able to obtain the enforcement of rules as needed.

B. How are Governance and Democracy Related?

The purpose of democracy is to see to it that governance serves the interests of the governed. Because governance is a multi-dimensional process, democracy too must be multi-dimensional. Democratic institutions can be viewed as *sources of discipline*--as institutions designed to discipline the process of governance along all four dimensions: prescribing, invoking, applying, and enforcing rules. The democratic disciplines consist of rules and procedures that expose political decision-makers to a range of possible consequences, negative and positive, for their actions and inactions. It is not enough to discipline rule

prescription because prescriptions alone consist of promise without performance. *Multiple sources of discipline* are required in order to expose decision-makers in *each governance dimension* to appropriate consequences for their actions and inactions.

From an instrumental standpoint, democracy is desired not for its own sake but for the quality of governance that it produces. Democracy should not compete with good governance but serve as its instrument. Yet this relationship cannot be taken simply as an article of faith. Democracy is not achieved simply by placing trust in some generic set of procedures; rather, it depends on a complex set of institutional arrangements designed to fit a particular society. Good governance can only be achieved on the basis of careful institutional design. Efforts to introduce and strengthen various elements of democracy should be viewed as no more nor less than efforts to improve the governance of society. No useful purpose is served by treating democracy and good governance as separable goals, for the *quality of governance* is, at bottom, what democracy is all about.

If governance is primarily concerned with supplying the rules that apply to civil society, what rules apply to governance itself? What are the rules for making rules? More precisely, what are the rules for prescribing, invoking, applying, and enforcing rules? If the organization of civil society depends on a set of rules, so does the organization of government. Government must also be governed, that is, *the process of governance must apply to government as well as to civil society*. Governance must include rules that apply to government. Who prescribes, invokes, applies, and enforces this second order of rules?-- these are among the basic questions of democracy. The quality of governance depends on the degree to which government itself is well governed.

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James Madison specified the whole task of governance in *Federalist 51*: "[Y]ou must first enable the government to control the governed; and in the next place oblige it to control itself." This is not an observation specific to American institutions; it is a universal problem. The puzzle is that the maintenance of peace in civil society requires that governmental authorities have recourse to force and violence, the very instruments used to breach the peace. More, the protection of common liberties among the members of society depends on the enforcement of common duties--a diminution of liberty. Still more, the ability to resolve conflict and do justice entails the ability to exacerbate conflict and do injustice. Madison, again, summed it up well in *Federalist 41*: "...in every political institution, a power to advance the public happiness involves a discretion which may be misapplied and abused." Discretion misapplied and abused is the immediate source of poor governance in Africa. Yet governance and the discretion it entails are necessities of life in both government and civil society. Democracy seeks not to eliminate discretion in any dimension of governance but to discipline discretion in each dimension--prescribing, invoking, applying, and enforcing rules.

When governance is without discipline, it degenerates into the exercise of power for private and personal ends, failing to serve its essential functions in the organization of civil society. The use of coercive power, although required to govern, must be strictly disciplined

if it is to serve the interests of the governed--those exposed to coercion and its destructive potential.

C. Why Do the Rules Matter So Much?

Historically and philosophically, there have been various answers to the question of how to govern government. Plato sought an answer in the education of a ruling class; others, in their religious faith. At least since the Enlightenment, however, the solution has been sought primarily in institutions (which is not to exclude either education or religion). The complex empirical phenomenon called democracy results from centuries of effort to guide and direct the process of governance through well-crafted institutional arrangements.

Democratic discipline depends on institutional design, and institutions are created from a configuration of rules. This means that the rules matter. Good governance depends on the rules that apply to the governance process. Yet, rules do not directly produce the outcomes associated with good governance because governance depends on discretion. To govern is necessarily to exercise authority and therefore to use discretion, and rules cannot substitute for the discretion needed to govern. What the rules do is to *distribute discretion*, by allocating authority among various actors, both governmental and nongovernmental. Each actor has discretion, but the discretion available to others exposes each actor to consequences. In this way, the distribution of authority affects individual *incentives*, and incentives shape the way discretion is used. Rules work through the incentives they create. Anticipating the incentives that follow from alternative rules is the heart of institutional analysis. Because institutions are composed of multiple rules that work in combination, the resulting incentives are not always immediately clear. *Getting the rules right* is the work of institutional design. It becomes a major preoccupation in the effort to introduce democratic discipline. Democratic reform becomes a struggle over rules.

D. Governance and Change

Governance problems vary with the economic, social, and political circumstances of different countries as well as through time. The culturally accepted traditions of a country provide both a source of common knowledge and practice on which new institutional arrangements can be built and, in some cases, a source of habits and customs that must be overcome to undertake reform. No two countries can follow exactly the same path to democracy and governance reform. Over the long-term, governance depends on democratic adaptability--the ability to adjust the governance process to changing circumstances. A governance structure so well adapted to present circumstances that it cannot adapt to change is one that is not sustainable. Adaptability is one of the essential attributes of good governance.

II. THE DEMOCRATIC DISCIPLINES

Monarchy is a simple idea. It provides an easy answer to the question, "Who governs?" Democracy is not so simple. Complexities arise because *democracy is not monarchy turned upside down*. Democracy is instead an effort to discipline the process of governance so that it will serve the interests of the governed. Neither governance nor democracy is a one-dimensional idea. Rather, multiple dimensions of democracy provide discipline for the various dimensions of governance. Good governance depends on subjecting the use of political power to multiple sources of discipline, each one operating through a different set of constraints. Each discipline is exerted through a distinct set of institutional arrangements.

The basic democratic disciplines are (1) constitutional discipline, (2) electoral discipline, (3) deliberative discipline, (4) judicial discipline or a rule of law, (5) the discipline of an open public realm, constitutive of civil society, and (6) the concurrent practice of democratic governance at multiple levels.

A. Constitutional Discipline

Constitutional discipline subjects the whole process of governance to a set of fundamental rules. To be meaningful, constitutional limits must satisfy three conditions: *First*, the fundamental rules must be sharply distinguished from the ordinary rules used to govern civil society. *Second*, the process of making and altering the fundamental rules must be separate and distinct from the process of making and altering ordinary rules. *Third*, the fundamental rules have to be enforceable against officials of government. These three conditions can be met with a variety of institutional arrangements. There is no "one right way." Constitutional discipline allows the process of governance itself to be governed. The discretion used in governance is not then unlimited but is instead exercised within constitutional boundaries.

Some degree of constitutional discipline is probably a necessary condition of democracy. Robert A. Dahl (1990: 17) notes that virtually every system of governance considered to be democratic is subject to limitations that place some matters beyond the reach of simple majorities. A constitution functions as a social contract or covenant that establishes boundaries around the ordinary political process, reflecting terms and conditions broadly acceptable to civil society. Governance takes place within those boundaries, redrawing the boundaries only through extraordinary procedures that require a substantial, though not unanimous, consensus.

1. Why Are Constitutions Important?

First, a constitution is a basic instrument of civil peace. It affords the members of a society the opportunity to make "mutual guarantees" to one another (Dahl 1990: 16-21). The

constitution is an enforceable contract that specifies the terms and conditions on which the members of a society are willing to enter into and remain in peaceful association. This is why a constitution erects extraordinary legal boundaries around the political process, declaring some possible political outcomes out of bounds. In order to serve this basic purpose, a constitution must derive from an inclusive process of negotiation and deliberation, one that represents all major social groups, and must reflect a substantial consensus. In the absence of constitutional discipline that has emerged from a basic political settlement, the governance process may function in a way that creates civil strife--even civil war--rather than civil peace.

Second, a constitution is the principal instrument for establishing and sustaining the other democratic disciplines. It provides a means for designing and iteratively redesigning the institutional arrangements through which democratic discipline is exerted on the governance process. Constitution-making is the principal method of reform for modifying the process of governance. A separate and distinct procedure for constitution-making creates a capability to reform the process of governance by changing its fundamental rules. Such reform is the primary vehicle of democratization.

Democracy and governance reforms inevitably involve constitutional issues. The central task of a constitution is to specify the basic authority structure for carrying out the process of governance; changing the process depends on changing the authority structure. If governance is to be reformed in fundamental ways that introduce greater democratic discipline, the main instrument of reform is necessarily a constitution. No program of governance reform can afford to ignore or take for granted the constitution of the country.

2. How Does Constitution-Making Work?

Constitution-making is necessarily a difficult and time-consuming process. Constitutional provisions have to be based on both (1) a sense of institutional design (what works and what doesn't) and (2) the negotiation of differences among the groups that compose a civil society. Inevitably, then, constitutions reflect a mixture of democratic principle and political compromise, containing both an institutional *design* and a basic political *settlement*. Blending the two strands of the constitutional fabric in a way that will hold together over time is the principal challenge faced by constitution-makers. Although particular institutional components can be borrowed from other constitutional arrangements, the task of putting it all together is highly specific to each country. Negotiations must determine what it is that a constitution needs to accomplish, but only a process of institutional design can arrive at constitutional provisions that will actually work to achieve the intended results.

Constitution-making is also an iterative process, one that needs to be repeated from time to time. The method (or methods) of iterative constitution-making is the most fundamental component of the constitutional design, for it creates a capability for maintaining the constitutional settlement over the long term, as well as for modifying the constitutional

Democratic Settlement

design in light of experience and changing circumstances. Innumerable institutional designs for the process of "constitutional amendment" are possible.

The institutional formula for amending the U.S. Constitution is, for example, a somewhat restrictive model. Not only is the U.S. Constitution difficult to amend, a necessary feature of constitutional discipline, but it is also difficult to initiate the process of constitutional deliberation. Although the U.S. Constitution has been amended 27 times, a constitutional convention--the institutional vehicle used to write the original constitution--has never been reconvened. Indeed, calling a new constitutional convention in the United States has become something of a national political phobia. As a result, the initiative for amending the U.S. Constitution has rested almost entirely with the Congress--a maker of ordinary law for the federal union--albeit according to procedures that are "separate and distinct" from those for making ordinary law. Thomas Jefferson would have crafted the constitution-making process according to a different design--providing for regular constitutional conventions on a 20-year cycle, still followed by state ratification.

Nevertheless, the U.S. Constitution does not commit the error of allowing Congress to monopolize the prerogative of constitutional amendment. The states are allowed to petition the Congress to call a constitutional convention, and on two occasions these petitions have come close to the required two-thirds majority. On the first occasion Congress finally proposed an amendment shifting to direct election of U.S. Senators. The second matter is still unresolved--a balanced budget amendment. The new constitution of Mali, by contrast, provides no alternative procedure if the national legislature declines to amend. This creates a monopoly on constitution-making that will make it much more difficult to enact reforms that adversely affect the specific short-term interests of legislators.

Developing nations may want to consider an approach more akin to Jefferson's. By requiring the constitutional-level review of institutional performance at regular intervals, such a design would create an institutional capacity to monitor the "play of the political game" and periodically modify the "rules of the game" when it is not being played as intended. At a minimum, no single decision-structure should be allowed to monopolize the power to amend the constitution. Governance reform is one of the major institutional capabilities supplied by constitutional discipline: the ability to reshape the governance structure if it fails to work in the intended manner. Constitutional discipline builds an error-correcting capacity into the design-process used to craft basic political institutions.

3. How Does a Constitutional Settlement Work?

The process of constitution-making must be separate and distinct from ordinary law-making so that the participants can step back from the immediate issues involved in particular policy questions and consider the broader, long-term advantages and disadvantages of a set of institutional arrangements. In a constitutional convention not only the rules and procedures are different but so are many of the participants. There must be some way of making the constitutional process more inclusive--the U.S. ordinarily does this through the process of

ratification by state legislatures. The "national conferences" that have recently emerged in Francophone Africa would appear to satisfy the criterion of inclusiveness, although such a large gathering would also require a smaller subgroup to draft a document. Some sort of two-stage procedure for proposal and approval seems a reasonable and likely arrangement in any event.

The basis for a constitutional settlement is usually some constraint on the set of possible policy outcomes. The constraint may be entirely procedural (e.g., in the U.S., equal representation of the states in the Senate). Or it may be substantive, in which case constitution-makers must also think about procedural rules that will be consistent with the substantive outcome. For example, if the constitution requires that the national civil service reflect a minimum degree of ethnic heterogeneity (perhaps no more than 30 percent from a single tribal background), there must be workable procedures for observing the constraint, including effective recourse if the limit is exceeded. In general, however, it is easier for constitution-makers to agree on procedural rules than substantive outcomes. This is why a constitution should not try to determine outcomes beyond declaring that some outcomes are out of bounds. The best basis for settlement is *not* abstract agreement on broadly stated objectives. The effort to achieve such agreement can lead to endless, unproductive debate. The aim of the constitution-making process is to arrive at a minimal set of constraints on policy outcomes--the minimal set needed for settlement--and to design procedures that will support the application and enforcement of those constraints.

4. How Does Constitutional Design Work?

Constitutional settlements are not self-implementing. They depend on institutional arrangements specifically designed to make a constitutional settlement work. This always involves devising some *distribution of authority*--assigning discretion within limits among a set of decision-makers--consistent with the policy constraints that form the basis for settlement. James Madison wrote in *Federalist 48* that "parchment barriers," that is, words on paper, are insufficient to maintain a constitutional distribution of authority over time. Simply saying it in the constitution does not make it so. This is why the mere declaration of abstract objectives in a constitution serves a purpose that is more rhetorical than institutional and practical. A workable distribution of authority must exhibit *incentive compatibility*, that is, each type of political actor (legislator, judge, cabinet member) must have a strong incentive to use and protect the authority assigned to them. This also tends to keep others within the limited scope of their assigned authority. The distribution of authority is then sustainable over time. In the absence of incentive compatibility no governance structure, even if enshrined in a constitution, is sustainable.

Constitution-making must therefore proceed on two tracks, which ultimately converge. One track is the route to a constitutional settlement; the second is an effort to design incentive-compatible arrangements. In the end, both must come together if a constitution is to serve its basic purpose.

5. How Does a Constitution Exert Discipline?

Constitutions, of course, are not political actors; they are legal instruments used by political actors. Therefore, a constitution exerts discipline in the process of governance only through its distribution of authority among political actors. The distribution of authority must include capabilities to invoke, apply, and enforce the rules prescribed in a constitution. Otherwise, constitutional limits are mere "parchment barriers," in Madison's words. If there are no effective procedures for invoking, applying, and enforcing the rules of governance contained in a constitution, the constitution cannot function as fundamental law--it is not controlling. Therefore, individuals must be able to invoke the rules of governance, that is, they must be able to obtain application of those rules, where appropriate. And the rules must be enforceable against officials of government. No official should be free to determine his or her own constitutional authority, without recourse. Usually, this means that courts must be free to apply the fundamental law in all cases that come before them. Constitutional discipline is exerted as a form of legal discipline--an extension of the rule of law, discussed more fully below, so that it covers government as well as civil society.

B. Electoral Discipline

Constitutional discipline places one sort of boundary around the process of governance, while electoral discipline creates a different sort of boundary. In *Federalist 51* Madison referred to a "dependence on the people" as essential to "republican form"--representative democracy; however, he also argued the need for "auxiliary precautions." Elections are the principal instrument for keeping the conduct of government within popular limits--the more variable limits defined by public opinion. Elections are so commonly identified with democracy that it is important to point out that they are not the only source of democratic discipline. Elections are a *necessary* condition of democratic governance, but not a *sufficient* condition. Therefore, in assessing the overall extent of democratic discipline in a society, it is important to understand both the limits and possibilities of elections.

Elections are necessary to create an incentive on the part of government officials to take into account the interests of ordinary members of the voting public on a regular basis. At the same time, however, elections have inherent weaknesses, derived either from information costs or from the limited nature of the choices that can be presented on a ballot. The principal limitation of electoral discipline is the relatively high cost and low expected payoff of voter information (Downs 1957). Individual voters have little incentive to invest in costly information-gathering when an individual vote has only a negligible expected impact on the election outcome. This limits the usefulness of elections as a source of policy guidance. Instead, elections tend to focus on conditions--economic or social--of concern to voters. Elected officials who fail to respond adequately to conditions of concern to voters face potential defeat at the polls. This creates a political incentive to be responsive to voter concerns, even though the electoral process does little to generate specific policy instructions

for elected officials to follow. Notwithstanding the limitations, the incentives created by elections are necessary and fundamental to democratic governance.¹

Electoral systems can be designed on the basis of various concepts of representation. One widely shared concept views the representative body as a "photocopy" of society-- reduced in size by the electoral process. This becomes the basis for a system of proportional representation. All major shades of opinion, often including extremes, are entitled to representation in the representative body. The other major concept of representation views the representative process as one based on inquiry. The elected representative is necessarily concerned with the interests of all of his or her constituents and must inquire into those interests (see Muir 1982). This concept can be associated with single-member-district/plurality-winner electoral arrangements. Elections reward those representatives who inquire effectively into the interests of constituents and represent those interests; constituent service is a major representative function in these systems. While proportional representation tends to generate multi-party systems, single-member-district/winner-take-all arrangements tend to generate strong two-party systems. Strong two-party systems tend to exclude extreme points of view from representation. In general, different electoral systems create different patterns of representation, each with advantages and disadvantages to be considered by constitution-makers in view of the terms and conditions of constitutional settlement in a specific country.

Mali's new electoral system includes a large proportion of multi-member, winner-take-all districts. The winner-take-all feature has apparently created significant interest on the part of legislators in constituent service. However, all winner-take-all arrangements exaggerate somewhat the representation of the majority party. Multi-member districts greatly magnify this distortion. In Mali's case, this means that the largest minority party is artificially transformed into a majority party in the legislature. At the same time, local elections are organized through proportional representation, which encourages a multiplicity of political parties, inhibiting the emergence of a viable opposition party in national elections. Such a system is probably not sustainable.

Electoral discipline is maintained in part by constitutional disciplines related to suffrage and the freedom to contest elections. To exert discipline, elections must be competitive. In general, elections tend to be more competitive in the context of larger constituencies. By contrast, representation by means of constituent inquiry and service is better served by smaller constituencies. One advantage of a bicameral legislature is the ability to draw on constituencies of differing sizes. By the same token, one advantage of directly electing a president or other executive officers is the greater competition that usually attends a nationwide contest.

¹In addition to elections held to fill offices (or to "recall" an elected official), electoral discipline can include provision for a direct popular vote on selected issues through institutional arrangements such as initiative and referendum.

C. Deliberative Discipline

The conduct of governance through free and open deliberation among elected representatives is also a distinct democratic discipline. Madison argued in *Federalist 10* that representative democracy produces better governance than direct democracy because the process of representation "refines and enlarges" public opinion. However, it is not electoral discipline alone that is said to achieve this result; it is electoral discipline plus representative deliberation. Masses of people can participate in elections, but only a manageable number of representatives can effectively deliberate among themselves.

A deliberative process must therefore be added to elections as yet another source of democratic discipline. What elections lack by way of opportunities for discussion and acquisition of information, deliberation supplies. Deliberation elucidates information and develops alternatives. The process disciplines governance by requiring that policy proposals be defended in open debate and exposed to the scrutiny of public discussion. In this way, the deliberative discipline reduces the ability of those who govern "to fool most of the people most of the time," paraphrasing Abraham Lincoln--and even to fool themselves.

Deliberation also provides the civil society with an authoritative forum for the discussion and settlement of divisive issues. Conflict resolution is one of the basic functions of governance, and conflict resolution, as opposed to conflict suppression, depends on free and open discussion of issues. In order to serve this purpose, a legislature must be open and receptive to the expression of diverse interests, not dominated by a single party or governing clique.

Alexander Hamilton used a concept of "due deliberation" (see Ostrom 1987: 160-164) to assess this dimension of democratic practice. Due deliberation recognizes a trade-off between the gains from deliberation and its costs, measured in terms of both the time-and-effort expended and the delay of action that deliberation may cause. Deliberation is increased by bringing the same issue repeatedly before decision-makers. Thus, bicameral organization, a committee system, and numerous veto points that compel reconsideration of policies--all contribute to deliberation, though at a cost. The underlying democratic premise, however, is that deliberation has great potential value, usually sufficient to justify a large outlay of time and effort, as well as some necessary delay. Yet, due deliberation is not unlimited, and it can vary according to different types of decisions, some of which come with inherent deadlines.

Group deliberation is discussion leading to a collective decision. The concept requires that individuals make up their minds at least in part on the basis of discussion. This, in turn, requires that individuals are free to use their own discretion. Deliberation is therefore inconsistent with strict party control of legislators, as it is with arrangements that turn an elected legislature into a "rubber stamp" for executive proposals.

As a democratic discipline, due deliberation requires that nearly all important policy decisions be subjected to a deliberative process. In terms of the basic governance structure specified in a constitution, due deliberation strongly suggests an exclusive allocation of law-making authority to the elected representatives of the people, subject to constitutional discipline. A legislative process that uses such a broad brush that effective rule-making passes to the bureaucracy, which then legislates by issuing administrative decrees, must fail the test of due deliberation. This does not mean that all administrative rule-making is inappropriate, only that it be clearly subject to legislated guidelines. An elected chief executive may participate in--and even assume a leadership role--in the process of deliberation, but government by executive prerogative destroys the deliberative discipline.

D. Judicial Discipline: A Rule of Law

Like the other democratic disciplines, the rule of law constrains the use of authority, in this instance by creating an institutional buffer between individuals and the coercive power of government. Courts are created to apply law in individual cases, determining how general rules of law fit the facts of each particular case. The rule of law is intended to protect individuals from the arbitrary exercise of power by government officials. When amplified by constitutionalism, the rule of law allows for the application of fundamental rules to officials of government.

Procedurally, the judicial discipline is this: in order to exercise coercive power enforcement officers are obligated to obtain judicial approval, usually before the fact. If the judiciary is committed to the rule of law, the judicial discipline limits rule enforcement to applications of the law as prescribed in advance. In this way the use of the coercive power of government against individuals can be limited to judicially-approved applications of the law.

The need for judicial discipline to obtain a rule of law derives from the venerable principle that no one is considered a fit judge of his own cause (see Ostrom 1987: 79). When individuals are involved in a dispute, they need recourse to an independent, "third party," who is responsible for rendering an impartial judgment based on general rules. Institutionally, this requires three things: (a) individual citizens must be authorized to *invoke* the law and have reasonable access to the courts to do so; (b) members of the judiciary must have sufficient independence (and commitment to norms of justice) to *apply* the law faithfully and impartially; and (c) members of the executive must be obligated to *enforce* judicial decisions. Legislatures prescribe the law, but they do not invoke the law (this is the responsibility of affected individuals); they do not apply law in individual cases (this is the work of courts); nor do they enforce the law by means of coercive sanctions (this is the work of the executive). In this way, the rule of law implies a basic separation of powers among legislative, executive, and judicial officers.

The main contribution that a rule of law makes to the process of governance is the greater certainty it introduces into the process of applying general rules to individual cases.

Although all systems of governance entail some disparity between the law-as-prescribed and the law-as-applied-and-enforced, too much disparity enlarges the opportunity to apply law arbitrarily, increasing the unpredictability of what the law requires. Unpredictability has the dual effect of reducing the efficiency of transactions organized with reference to legal rules and at the same time amplifying the scope of potential injustice.

African governments, including the emerging democracies, typically lack judicial independence. Judges are usually considered to be civil servants, subject to bureaucratic supervision and exposed to political manipulation. It is well known that judicial corruption is pervasive. Without a rule of law, which is designed to discipline rule application and enforcement, it is doubtful that either elections or deliberation, which are intended to discipline rule prescription, can have much beneficial effect on the overall process of governance. Moreover, without judicial discipline, constitutions are reduced to empty rhetoric.

E. An Open Public Realm: The Discipline of Civil Society

In addition to electoral discipline and deliberation among elected representatives, democracy also depends on free and open discussion of the issues facing a society, discussion that occurs in a larger, more inclusive domain than any institution of government. This "open public realm," as Vincent Ostrom (1991: 199-221) has characterized it, is a necessary condition of free and competitive elections. Just as importantly, it adds the element of public scrutiny to the deliberative discipline. Only in such a context can the free exchange of ideas become a significant element in the process of governance. Free speech, a free press, and free assembly are all necessary conditions for the creation of an open public realm. Its maintenance is usually viewed as an appropriate subject of constitutional discipline.

It is the open public realm that creates the opportunity for free private association; by the same token, free private association serves a basic public purpose. In an agricultural society, the rules that apply to farmers' organization of marketing cooperatives, for example, are essential for the advancement of both private and public interests. The rules of association that specify the freedom to organize private associations and the powers of associative self-governance are constitutive of civil society. Without a freely organized civil society, the political order is like an empty container. The walls and boundaries that should provide the element of constraint needed for a productive civil society to function instead erect barriers against social and economic relationships built on willing consent in favor of those that extend the coercive power of government.

What happens to civil society when the political order fails to provide the conditions for free voluntary association? The answer seems to be that civil society develops as far as it can outside the political order--beyond its reach. This is the basic lesson of de Soto's discoveries with regard to the "informal sector" in Peru (de Soto 1989). Informality pervades African societies as well. In every underdeveloped society it can be posited that, to some extent, informal, extralegal relationships and associations provide an untapped

institutional foundation for development. Many forms of association, however, have been distorted by their relationship to the established political order. An analysis of civil society must be able to distinguish between forms of association that have developed as self-governing institutions and those that have developed as an extension of an authoritarian state.

In terms of the sequencing of democratic developments, the creation of an open public realm--equivalent to the Russian "glasnost"--may be one of the first democratic disciplines to be established along the path of democratic reform. This is because it can be introduced by simply relaxing the heavy hand of government control. It does not require the surrender or even the sharing of power--not immediately. Its only requirement is liberty. But once established, the open public realm begins to discipline the exercise of power. Public criticism has a disciplining effect--this is why authoritarian governments choose to silence their critics. This role does not diminish when the other democratic disciplines are added to it.

F. Democratic Governance at Multiple Levels

Democratic governance can be practiced at multiple levels in any society. One of the essential disciplines of democracy at any one level is the simultaneous practice of democracy at other levels (see Ostrom 1991). This is a discipline that applies both to national-level and to local-level democracy, as well as to intermediate levels. This does not imply a hierarchy of levels. Instead, the discipline is reciprocal; local democracy disciplines national governance as national democracy disciplines local governance. Multiple levels of governance give individuals and groups alternative points of recourse; dissatisfaction with governance at one level leads to efforts to secure action at another level. The potential for recourse to other levels disciplines the process of governance at each level.

Multiple levels of democratic governance allow societies to follow the principle of subsidiarity--devolving responsibility for the range of governance functions to the lowest feasible level and utilizing higher levels only as needed. This permits a greater reliance on local problem-solving, reducing the burden on central governments. It also diminishes incentives for political rent-seeking by requiring those who demand services or benefits to pay for them.

Dahl (1990) envisions the optimal structure of democratic governance as a set of jurisdictional "Chinese boxes," in which the smaller units are nested within larger units. Bigger units are able to preempt smaller units, but only within constitutionally specified and enforced limits. The mutual guarantees effected through constitutional discipline can include protection for the limited autonomy of democratic communities organized at various levels. Given the usual dominance of central governments in the developing world, the introduction of this particular democratic discipline is apt to focus on enhancing local autonomy. The relevant types of autonomy include fiscal autonomy (the freedom to raise revenue locally); rule-making, rule-applying, and rule-enforcing autonomy; and constitutional autonomy (the right to form new units).

In most African societies an authoritarian and bureaucratic state provides little authority and discretion to locally governed institutions. The most-local units sanctioned by the state tend to be extensions of the central authority, not instruments of local governance. However, there may also be a nonformal local-public-sector that is democratically organized and that governs local communities and resources mostly outside the state apparatus. This is the case, for example, in Mali. Despite central state dominance, local communities of interest are able to organize effectively without state sanction. This is in many ways the "real" local level, but its disconnection from the political order greatly weakens the discipline it exerts on the national level, while depriving local people of the positive discipline that might be exerted by a more responsive national level of governance.

G. The Effects of Democratic Discipline and of Its Absence

1. Governance Without Discipline: Bureaucratic Regimes

What happens to governance when the democratic disciplines are largely missing? What sort of institutional arrangement emerges for exercising the authority and discretion that governance entails? The contemporary answer throughout sub-Saharan Africa can be called a "bureaucratic regime." This is more than bureaucracy, for some significant reliance on bureaucracy as a mode of organization is a necessary part of all modern systems of government. A bureaucratic regime is a self-governing bureaucracy--a closed hierarchical decision-structure able to dominate the essential processes of governance--prescribing, invoking, applying, and enforcing the rules that govern society. Legislatures pass laws, but no set of rules is complete until the bureaucracy issues an implementing decree. Without effective courts, citizens cannot invoke rules; bureaucrats do. Bureaucrats also decide how rules apply in individual cases and enforce them. Citizens have little if any recourse. The only source of accountability lies within the bureaucracy. Without effective constitutional and electoral discipline, the bureaucratic regime goes unchallenged. In the absence of an open public realm, it will go uncriticized as well. The result is not a consistently if tightly governed society but the oft-cited "rent-seeking society" in which official discretion is used principally for private gain.

The absence of democratic discipline and consequent deterioration of governance create opportunities, periodically, for military leaders to impose their own style of discipline on the governance process, substituting the discipline of military rule for the disciplines of democracy. Unfortunately, the command-and-control approach of a military regime only reinforces the basic features of a bureaucratic regime--closed, hierarchical decision-making without possibility for alternative recourse.

"behaviors"

2. Some Characteristic Features of Democratic Governance

As democracy conditions and disciplines governance, the resulting process exhibits characteristic features. These include patterns of accountability, participation, and contestation, each one endogenous to the process of democratic governance--a consequence of the discipline exerted through democratic institutions:

- Each of the democratic disciplines contributes to *official accountability* by creating numerous exposures for government officials--subject to the scrutiny of electorates, courts, legislatures, civil associations and the free press, as well as other levels of government. Instead of only a single source of accountability, characteristic of a bureaucratic regime, multiple democratic disciplines create numerous sources of accountability.
- Each discipline also contributes to *popular participation* in a variety of modes--electoral, juridical (bringing a lawsuit against an official), and civic, the latter including numerous forms of participation in governance through the associations of civil society. The civil society contributes directly to governance, not simply by demanding good governance from governmental officials, but also by helping to produce good governance--maintaining civil peace and keeping order, resolving conflicts, securing compliance with rules, mobilizing resources for public purposes, and helping to moderate the demands of groups upon one another. The productivity of civil society--its contribution to a common good--is one of the principal benefits of popular participation at all levels.
- Finally, the democratic disciplines jointly contribute to a pattern of *pervasive contestation* in the process of governance. The opportunity to contest government decisions is one of the hallmarks of democracy. Contestation is not limited to the electoral process but extends also to the process of deliberation among elected representatives, to the judicial process, and into the open public realm. Every major action of public policy should be contestable in one or more authoritative forums. The multiple democratic disciplines create multiple opportunities for contestation. This makes it difficult, though by no means impossible, for one set of interests to dominate the instrumentalities of governance to the exclusion of others.

These democratic patterns of governance are products of institutional arrangements. It is difficult, if not impossible, to manufacture such patterns in the presence of institutional arrangements and resultant incentives that discourage them, although this does not always stop donors from trying. Efforts to encourage participation, or increase accountability, or foster contestation should focus on the basic rules of the political game. As reform progresses, however, it sets in motion a dynamic that reinforces reform, as accountability, participation, and contestation breed further reform and still better governance.

3. A Summing Up.

The democratic disciplines constrain the process of governance in all of its major dimensions. Constitutional constraints are fundamental because they create the capability to establish mutual guarantees among the members of civil society and to distribute public authority so as to discipline the conduct of governance itself. All of the other disciplines are thus rooted in the constitutional discipline. Electoral discipline provides for popular limits and creates incentives to respond to the interest and preferences of ordinary citizens. Due deliberation limits the exercise of governmental prerogative to a process based on free and open discussion among elected representatives. The open public realm extends the process of free discussion, as well as many aspects of governance itself, to the civil society. The rule of law limits the use of coercion by government to a process that recognizes the right of individuals to contest the application of law in specific cases. The concurrent practice of democracy at multiple levels exposes any one level or regime to the possibility of counteraction by other levels. Each discipline is exerted through a distinct set of institutional arrangements. The intention is never to cripple the process of governance but to discipline it so that it can serve its essential purposes.

No society, however, is or can be perfectly disciplined in its governance practices. This derives both from lingering or emerging institutional imperfections, which in principle can be corrected, and from the inevitable trade-offs that accompany institutional design. The trade-offs require that the advantages of one set of institutions be partially traded off against others. Constitutions can go only so far in limiting the set of possible political outcomes without depriving governmental authorities of needed flexibility. After a point, one must trust to other disciplines, such as elections and deliberation. Each discipline, however, has its limits. Electoral discipline is limited by a reasonable term of office, during which time the office-holder is shielded from the electorate. Deliberation must always be sacrificed to some extent to the ability to act; otherwise, discussion would continue, postponing action indefinitely. Correcting institutional errors and adjusting the trade-offs among different institutional arrangements is a never-ending process in any society, requiring long-term adaptability.

III. MACRO-ASSESSMENTS AND THEIR USES

The six "democratic disciplines" provide the basis for building a methodology of macropolitical assessment, roughly analogous to macroeconomic assessment, as a means for measuring and evaluating progress toward democratic governance and for diagnosing problems--locating institutional weaknesses and indicating corrective reforms. A *macro-assessment* must be able to estimate the aggregate effect of multiple institutional arrangements on broad patterns of political behavior. It is insufficient to assess the party system or legal system, for example, in isolation from other institutional arrangements. Broad patterns of political behavior--such as action tendencies toward rent-seeking or problem-solving, conflict resolution or exacerbation--derive not from singular institutions but from the aggregate effect of multiple institutions. This is why the degree of democratic discipline must be determined on several dimensions. A macro-assessment is based on the joint effect of the six disciplines on the major action tendencies in the politics of a country.

Macro-assessments have a broad utility, useful both for donors and for host-countries. A macro-assessment provides a way of estimating the progress made toward democratic governance. Institutional progress can occur on one or more disciplines even if the aggregate effect is not very much changed. At the same time, a macro-assessment can locate remaining institutional weaknesses and identify potential sources of difficulty. This diagnostic component is also the basis for suggesting corrective reforms. From a donor's perspective, macro-assessments are useful for allocating levels of efforts among countries, monitoring future political developments, carrying on policy dialogue with host-countries, and planning the development portfolio for each country in view of the constraints and opportunities offered by its system of governance. From a host-country perspective, macro-assessments are useful for informing the broad range of participants in the governance process, inside and outside of government, with respect to the strengths and weaknesses of their present arrangements. From both perspectives, macro-assessments provide the means for charting a meaningful and practical course of reform, while continuing to enlighten the reform process as it proceeds.

The reliability of macro-assessments is not yet known because they are so new. It is certain, however, that macro-assessments cannot provide an infallible source of guidance, especially during the early years of their development and use. This is why it is important to monitor subsequent developments carefully and update the assessment based on accumulating experience. Without an initial macro-assessment as a baseline, however, this sort of learning cannot occur. Until macro-assessments are conducted on a regular basis, donors will make policy based on partial assessments that can never provide adequate guidance and never provide the appropriate baseline for learning.

This section of the report discusses the methodology of macro-assessments, especially for the diagnostic component, the kinds of conclusions that follow, and their uses, especially in guiding the process of reform.

A. The Methodology of Macro-Assessment

Because democratic discipline is exerted through institutional arrangements, the appropriate methodology for assessing the democratic disciplines is institutional analysis. The methodology works by tracing observed patterns of interaction among political actors back to the rule configurations that shape those patterns. This, in turn, provides a basis for doing institutional design at the margin, proposing specific institutional steps--reforms--to increase democratic discipline on one or more dimensions.

An assessment must be concerned not only with institutional arrangements intended to exert democratic discipline but also with the institutional arrangements that thrive in its weakness or absence. The extent to which bureaucratic actors dominate the processes of governance is a basic indicator of democratic weakness. As democratic discipline develops, bureaucratic actors find themselves increasingly exposed to external constraints. Some focus on bureaucracy and the power it wields is therefore an essential component of an assessment. This requires a full description of the bureaucratic apparatus, including the military and its particular role in governance. An all-powerful, bloated bureaucracy is a sure sign of weak democracy; a more limited and responsive bureaucracy is an equally good sign of growing democratic discipline. The cure for the bureaucratic disease, however, is not found within bureaucracy. The cure is discipline exerted from outside the bureaucracy, and this can only be created by strengthening democratic discipline.

1. Analyzing the Effect of Rules on Behavior

Rules are the "stuff" of institutions. They are used to configure institutions by assigning and distributing limited discretion to make choices among diverse decision-makers--legislators, executives, judges, citizens. In short, rules specify who decides what in relation to whom. Democratic reforms are efforts to reconfigure institutions by changing the rules, modifying the assignment of discretion. Any institutional arrangement is subject to the possibility of weakness or failure. Institutional failure occurs when the assigned distribution of authority or discretion cannot be sustained. This is most obvious when one set of decision-makers usurps the authority assigned to others, but it also occurs, more subtly, when one set of decision-makers dominates the exercise of discretion by others.

In looking for sources of institutional weakness, a diagnostic assessment focuses on incentives--the incentives created by the existing rule configuration. Reform is aimed at getting the rules right--this is the focus of institutional design. Getting the rules right depends on creating an incentive-compatible distribution of discretion. This means that individuals must have sufficient incentive to use their discretion and defend it from encroachment. For example, rules that assign important law-making discretion to an elected legislature will be ineffectual if the rules also allow a chief executive to penalize legislators who challenge executive decisions. Such a combination of rules is not incentive-compatible, for legislators will tend to choose strategies that anticipate the likelihood of being penalized if they assert their legislative authority. Instead of contesting the exercise of executive

authority, they acquiesce in it. Yet, if due deliberation is an essential democratic discipline, one that requires a substantial assignment of authority to an elected legislature, then the full configuration of rules must support, not undermine, the use of legislative authority.

A diagnostic assessment traces patterns of decision-making back to the rule configurations that shape them. To do this, the assessment tracks decisions back to strategies, strategies to incentives, and incentives to rules. Decisions are (with some exceptions) observable, but strategies are internal to individual persons and must be inferred from the relationships among decision-makers and the payoffs likely to follow from alternative choices. Strategies therefore respond to incentives, which derive from the relative payoff from some alternatives as compared to others. Incentives can be traced back to the rule configuration, which establishes the relationships among decision-makers and their ability to control certain payoffs by distributing discretion among them.

2. Aggregate Institutional Effects: The Example of Mali

Relevant rule configurations cut across the six democratic disciplines. The democratic disciplines work together not in an additive manner but in a configural manner. Their joint effect is what counts. For example, the work of the assessment team in Mali provides a basis for aggregate assessment. The following specific findings emerge from the Mali assessment:

- The Malian state remains highly centralized and bureaucratic, disconnecting it from an often productive nonformal local-public-sector;
- Mali has an electoral system that greatly inflates the representation of the dominant minority party, giving it disproportionate majority status in the national legislature. This is a consequence of multi-member, winner-take-all seats, which are much more distorting than single-member seats. At the same time, the use of proportional representation in local elections encourages splinter parties and inhibits the formation of an effective opposition party in national elections.
- Mali is left with an unrepresentative legislature, as well as one that is closely tied politically to the executive, failing to lay an institutional foundation for effective deliberation and oversight.
- Constitutional rules fail to provide for an effectively independent judiciary, leaving Mali with a judiciary that can easily be manipulated by political actors.
- The national parliament holds a veto position on constitutional amendments, giving it a monopoly on constitutional change and making it more difficult to institute needed reforms.

On the basis of these findings, we can reasonably conclude that Mali remains on the path of a destructive, rent-seeking politics as opposed to good governance. Additional findings, however, suggests some potential for improvement:

- Mail has developed an open public realm that, while fragile, has brought about robust public discussion of important political and institutional issues.
- Mali is also endowed with a productive and democratic nonformal local-public-sector, one that often adheres to the democratic disciplines.
- Mali's recent experience with national constitution making has created social capital among civil society leaders that can potentially be used to address future constitutional issues.
- The new constitution explicitly provides for two institutions that might be used to keep the constitutional-level discussion going: a national forum of local organizations and another for social and economic groups. The former is better suited to ongoing discussion of issues related to multiple levels of democratic governance, which is a key point of future reform.
- On this basis, we can conclude that there is potential for future reform of Mail's democratic institutions, building on...
 - The institution of one of the national bodies provided for in the constitution as a national forum for discussion; and/or on
 - The nonformal local-public-sector as a foundation for more connective associations able to challenge existing rules at a variety of levels.
- The reform agenda should focus on the following institutional arrangements:
 - Electoral rules;
 - Constitutional amendment rules;
 - Judicial independence rules; and
 - Local autonomy rules, including recognition for nonformal local associations.

Thus, on the basis of a macro-assessment it is possible to generate specific reform proposals--hypothetical rule changes expected to produce different incentives, leading to different strategies, choices, and outcomes. The proposal should explain why and how the reform is expected to work, following the logic that links rules to incentives, to strategies, to choices, to outcomes. A rule change should be followed by a period of intensive monitoring and assessment to determine the extent to which the reform actually shifts behavior in the intended direction. Experience with the initial rule-change may lead to subsequent rule

changes, and so on, in an iterative process that has no obvious conclusion as long as the world continues to change around us.

B. From Analysis to Reform

1. The Extended Process of Rule Change

Because changing rules is at the heart of reform, it is imperative to understand the full extent of what is involved in such a change. Changing a rule is an extended, multi-step process. It requires that all four dimensions of governance--prescribing, invoking, applying, and enforcing--be carried out consistently and differently than before.

In order to move consistently from prescription to invocation, application, and enforcement, two conditions must be met:

- First, there must be a *common understanding* with respect to the meaning of a rule among the different persons charged with carrying out the four governance functions. This develops over time, for it includes not only a substantive understanding of specific rules but also an understanding of the more general prescriptive language in which rules are articulated. To some degree such a language is specialized to a legal community; yet the basic concepts must be broadly shared among those community members to whom rules apply, in particular if the authority to invoke rules is to be widely distributed. Reform must therefore be concerned not only with prescribing new rules but also with building the common understanding needed to be able to translate prescriptions into applications and sustain a rule change over time.
- Second, as discussed earlier, the distribution of authority to invoke, apply, and enforce rules in a manner consistent with legislated prescriptions must be *incentive-compatible*. The relevant parties must have adequate incentives to invoke the rules; those charged with the responsibility for application must have adequate incentives to apply rules-as-prescribed; and those charged with enforcement must have adequate incentives to act in a manner consistent with the rules-as-applied. Reform must therefore be concerned not only with the content of the rule to be changed but also with the underlying rules that structure the process for carrying out the four governance functions. This requires the use of multiple levels of analysis.

2. Levels of Analysis and Levels of Reform

Institutional analysis can be conducted at three distinct levels: (1) operational decision-making, (2) governance, and (3) constitutional choice (see Figure 1). The central focus of democratic reform and assessment is on the level of governance. At this level political actors (including citizens) draw on an existing governance structure to prescribe, invoke, apply, and enforce operational rules. Nested in the governance level is the operational level--the level at which individuals draw on operational rules to engage in everyday actions and transactions.

The governance level itself is nested in a constitutional level--the level at which underlying rules of constitutional choice are used both to sustain and to modify the governance structure.

The basic problem of African governance as it affects economic development is the inability of governments to apply operational rules consistently or to prescribe rules that can be consistently applied. Sophisticated markets depend on predictable market-rules that allow ample discretion to private actors. To create new private discretion (engaging in the process called economic liberalization) it is necessary to change the rules (pursuing what has been called economic policy reform). The difficulty is that changing the rules entails more than simple prescription. Prescribing new rules is a sufficient means of reform only when the remainder of the governance process--the process for translating prescriptions into applications--works well. For most of Africa, national economic problems lie deeper than the prescriptive content of market-rules and reach to the level of governance. This is the level at which market-rules (as well as the other operational rules for governing a society) are prescribed, invoked, applied, and enforced.

The operational level, in the case of markets, is the level at which economic actors engage in buying and selling within a set of market-rules that constrain their behavior. Analysis at this level has long concluded that most African economies suffer from rules that wrongly constrain economic behavior. The conclusion: change the rules. Structural adjustment programs throughout Africa have attempted to do just this--but with only occasional success. Although laws are rewritten, often with detailed guidance from international donors/lenders, the results are frequently disappointing. A deeper level of analysis is required to understand what is going on. This is the *governance level*--the level at which operational rules are prescribed, invoked, applied, and enforced. What matters at this level, once new operational rules have been prescribed, are the incentives of those who are assigned to invoke, apply, and enforce rules-as-prescribed. An economic reform program that stops once a new set of rules are written into law implicitly assumes that the governance process works smoothly to translate words on paper into real behavioral constraints.

Choices made at the governance level are shaped by the institutional framework constituted by the effective governance structure of a country. The governance structure is configured from rules that assign and distribute authority--the authority to prescribe, invoke, apply, and enforce operational rules. If there is something systematically wrong with patterns of governance, the problem can be traced to the configuration of governance rules. Just as at the operational level, the wrong governance rules create the wrong incentives. Improving governance depends on changing the rules that distribute the various types of governing authority.

At the constitutional level it is governance rules that are prescribed, invoked, applied, and enforced. Just as market behavior occurs in the context of rules supplied by a process of governance, governance behavior also occurs in the context of rules supplied, in this case, by a constitutional process. Fundamental political reform, such as democratization, occurs primarily at the constitutional level, by modifying and then sustaining the rules of governance

specified in a constitution. Finally, it may also be necessary to modify the rules of constitutional change, the rules for prescribing, invoking, applying, and enforcing the constitution itself.

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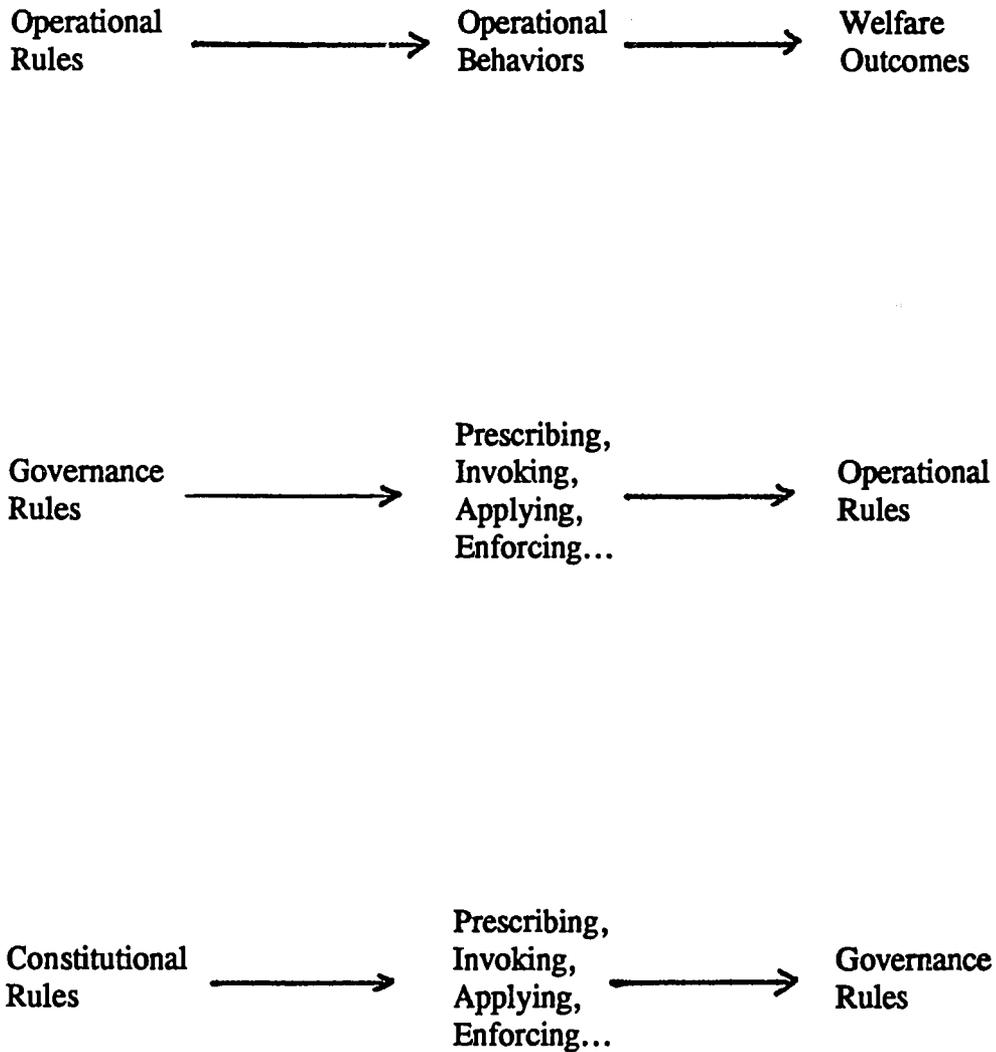


FIGURE 1: Three Levels of Analysis for Relating Rules to Choices and Behaviors. NB: This figure depicts only a portion of the full set of relationships required in a framework for institutional analysis.

A constitution typically specifies both governance rules and constitutional rules--the rules of constitutional change.

The focus of economic policy reform since the mid-1980s has been on using existing governance structures to modify the operational rules that govern market relationships. This represented a considerable shift away from previous development efforts, which had focused on direct market interventions (state-guided development), not rule changes. Although economic policy reform recognizes the importance of rules--an important step in an institutionalist direction--it is confined to seeking institutional changes at the operational level. This is an insufficient approach to reform when the process of governance-- the process that must translate rule-prescriptions into rule-applications--does not work well. Inadequate governance inhibits economic policy reform, despite the temporary illusion of change created as parliaments act and laws are rewritten.

The attention of international lenders and donors, as well as many of their host-countries, is therefore shifting to governance and democracy, rightly so. However, the early efforts of donors to assist the process of governance and democratic development have not been unlike their earlier efforts to assist markets and economic development: training, investment in technical capacity, and subsidization of basic activities. Arguably, direct assistance in the process of governance without modifying the rules of governance is no more likely to succeed than the decades of development assistance that ignored the effect of market-rules. Political actors respond to rule-based incentives just as economic actors do. As long as the rules that pertain to governance are unchanged, political actors continue to respond to much the same set of incentives as they prescribe, invoke, apply, and enforce market-rules. Governance reform, as distinguished from governance assistance, must reconfigure the rules that structure the governance process.

Democratic reform seeks to modify existing governance structures so as to improve the process of governance needed to sustain economic policy reform. It does so by changing the basic rules of governance. This new focus raises a different set of issues. At the operational level individuals need market-rules that supply incentives for economic actors to act efficiently; at the governance level individuals need governance rules that create incentives for political actors to act in a manner consistent with essential democratic values. Useful democratic assessments must be able to show the linkages among rules, incentives, patterns of governance, and values. This type of analysis provides a basis for proposing rule-changes that increase democratic discipline.

Reform at the governance level requires action at the constitutional level. This underscores the basic importance of a constitution--the legal instrument for specifying the basic governance structure of a society. The process of constitution-making is fundamentally important in democratic reform; it is why "constitutionalism" is a basic democratic discipline. The creation of an appropriate capability for constitutional choice is therefore a necessary part of the first order of business in democratic reform.

C. Assembling a Democracy and Governance Program

The following discussion focuses on the elements of donor assistance in a democracy and governance program and develops a series of steps for building an effective program to assist democratization and governance improvement. Such a program is centered on the adoption of specific reforms on which technical assistance and capacity-building are then conditioned. The core of the program is designed to assist the process of reform by means of diagnostic inquiry and assessment, efforts to build agreement and common knowledge with respect to new rules, vigilant monitoring of the reform process, and constructive resolution of conflict. Technical assistance, training, and capacity-building are complements to reform intended to support the operational changes that reform is designed to elicit.

1. Why Operational Help Is Not Enough

Development assistance was long focused on operational-level interventions. Donors supported direct economic interventions intended to spur development, providing capital investment by building physical infrastructure and training people in new technologies. Donors also encouraged governments to intervene directly in their economies, making the state the dominant economic actor in sub-Saharan Africa. The thinking that underlay this approach has been transformed, leading to an emphasis on policy reforms intended to establish market-based economies. This requires that the rules used to organize the operational level of economic activity be changed, but rule-change occurs at a deeper level--the governance level. Intervening at the governance level requires different analytics and skills than intervening at the operational level. The same approaches that worked to plan a road project or irrigation project² no longer are sufficient to advance the process of policy reform, which depends on changing the rules in use at the operational level.

Democracies, like markets, entail a wide range of operational activities. Deficiencies in democratic practice, like economic deficiencies, show up at the operational level. In fact, each of the democratic disciplines depends on a set of operational activities. The conduct of fair elections, for example, depends on solving operational problems. Training and technical assistance, not to mention financing, can be provided to help address those problems. The rule of law depends on the operation of courts, which may be poorly organized, equipped, and staffed. Donors may be asked to respond with training and financial support for facilities. Deliberation requires functioning legislatures, which depend on a range of operational activities including legislative research and information and policy analysis. The open public realm depends on mass media capable of gathering and disseminating news. Similarly, voting and other forms of political participation are operational activities analogous to buying and selling in the marketplace. Democratic deficiencies frequently show up as insufficient levels of participation in government-sponsored programs. One donor response is

²It should be pointed out that often such projects, while successfully completed, failed in the long run precisely because of the failure to address institutional issues. This is one of the important lessons that emerged from the Decentralization: Finance and Management (DFM) project, supported by the Research and Development Bureau of AID.

to encourage and support participation, perhaps financially, by sponsoring participatory activities and projects. All such interventions are intended to correct democratic deficiencies by directly changing operational-level behavior.

Governance also involves a wide range of operational activities, many of which are embraced by the standard meaning of the term "public administration." Poorly governed societies are also characterized by poorly administered governments. In fact, it is in the administration of the public household that the effects of poor governance are frequently most conspicuous--staffing, procurement, budgeting, planning, and supervision may all be grossly inadequate. Improved governance necessarily entails improved administration.

Operational interventions are usually the first sort of assistance that donors think of to support democracy and improve governance. Given their long record of operational support for economic growth, the response is natural. By itself, however, this approach failed to generate sustainable economic growth, and it can be expected to fail to generate a sustainable process of democratization for the same reasons. Behavior is shaped by incentives, and the basic incentives are shaped by the rules of the game. Unless the rules are changed, behavior is unlikely to change (except temporarily in response to short-term project support). Training judges and legislators, supplying facilities and support services for them, or setting up the mechanics of elections does little to modify the basic incentives by which operational decisions get made. Likewise, direct investment in public administration is unlikely to induce behavioral change except in the short run. Changing the rules--reform--is a whole step removed from operational behavior. Instead of attempting to alter behavior directly, reform seeks to modify behavior indirectly--by changing the incentives that push behavior in one direction or another.

2. The Need to Focus on Reform

Democratization depends on reform. A program intended to introduce democratic discipline and improve governance should be focused on specific reforms designed to change specific rules and secure specific modifications of behavior. Reform is an extended process because rule-change is an extended process. Prescribing new rules is not enough; new rules also have to be invoked, applied, and enforced. An effective program of assistance must remain engaged throughout the extended process of reform, not disengage as soon as new rules are prescribed or "enacted." In fact, some programs may not begin until after formal prescription has occurred and reform is underway; this should not weaken the focus of the program on a specific set of reforms, that is, on changes in rules still to be invoked, applied, and enforced over time.

The first step in reform is diagnostic--identifying behavior that should be changed, linking that behavior to incentives and the incentives to rules, then modifying the rules to produce a different set of incentives expected to change patterns of behavior. Reformers must not lose sight of the behavioral change being sought. This is what tells them whether or not reforms are working as intended. If a program of assistance begins after reforms have

been enacted, the diagnostics should still be done. What specific behavioral patterns prompted the reform? What new patterns are expected to emerge from reform? How are the reforms expected to accomplish this objective--what is the connection between the change in rules and the anticipated change in behavior? In some cases, the diagnostic could lead to a reassessment of reforms already underway.

3. The Need for a Country-Specific Assessment

Step one is a problem of applied institutional analysis. Identifying undesirable patterns of behavior and linking those patterns to the underlying rules of the game is institutional analysis at its core. No program of assistance tied to a process of reform should proceed without an institutional analysis of the specific rule changes being sought and supported. This cannot be done in the abstract but requires context-specific knowledge and information. Country-specific assessments are essential to provide the base of knowledge and information required to conduct the requisite institutional analysis. Although reforms may fall into generic categories as anticipated in the conception of democratic disciplines, knowledge of the categories instructs those who conduct country assessments in what to look for--it does not substitute for country-specific knowledge. All reform is a process of fitting specific changes to an existing stock of institutional arrangements. Because it is not possible to throw out one set of institutions wholesale and substitute another, reformers cannot simply prescribe generic form institutions and expect them to work. Applied institutional analysis proceeds by examining a specific set of institutional arrangements and recommending changes. Although the changes are based on general knowledge of how institutions work, the diagnostic work depends on local knowledge specific as to times and places.

- **STEP ONE in a democracy and governance program is to conduct a country-specific, diagnostic assessment.**
- **STEP TWO is to recommend specific reforms and/or appraise reforms in process.**

These two steps establish the analytical foundation and the knowledge-base for conducting a program of assistance. They are essential--these steps cannot be skipped. The adoption of specific reforms depends, of course, on a process of dialogue with the host-country and, more broadly, on an inclusive process of decision-making within the host-country. Step number two should be viewed as a process that occurs in tandem with the broader process of decision-making. It should not be hurried and can be expected to take at least a year, more likely longer. Having conducted an assessment, the entire first phase of a program might reasonably be completely taken up with deciding on a package of reforms.

The remainder of the program must be planned to fit the nature of the reform process--the requisites of successful reform. This too requires both general knowledge and country-specific knowledge.

4. The Requirements for Successful Reform

The requisites of reform can be summed up as follows:

- (a) *A common understanding* of both the means and ends of reform.

Common understanding must include the expected payoff from reform; the patterns of behavior that reforms are expected to modify; and the specific rule changes to be made. First, reforms should always be aimed at quite specific problems, not at implementing anyone's ideal vision of political order. The focus on problems disciplines the whole process of inquiry and discussion leading up to reform. Second, new rules cannot be invoked, applied, and enforced by different decision-makers without sharing an understanding of their meaning. This includes dissemination of information on new rules (individuals cannot invoke rules without information) plus a substantive understanding of what the new rules are intended to accomplish (general rules cannot be applied in individual cases without a substantive understanding of their purpose). All of this requires continuing, open discussion during the period of reform. Finally, common understanding can only be achieved in the open public realm, suggesting that one of the democratic disciplines must be in place as a prelude to serious governance reform.

- (b) *A shared commitment* to specific reforms by key participants;

The process of reform must begin with broad agreement (not unanimous, but broadly inclusive of legitimate interests in civil society) on the specific reforms to be undertaken. The key participants in the process--those who are required to observe a new democratic discipline--must be publicly committed to reform. All key participants must judge reform to be in their long-term best interest and commit to it. The presence of significant holdouts will undermine the commitment of others.

- (c) *Vigilant monitoring* of the reform process to be sure that shared commitments are kept.

Once reform is underway, there will be temptations to renege on commitments in order to obtain short-term advantages. For this reason the process of reform must be monitored to assure that the commitment to reform is being kept by all key participants. To some extent reform depends on a series of actions that can be anticipated. Monitoring of these actions can be programmed in advance. But reform also depends on the more or less continuous exercise of *restraint* by various governmental and nongovernmental actors. Failure to exercise restraint can occur at any time; it cannot be anticipated. This is why monitoring has to be vigilant and why monitors must be prepared to act--blowing the whistle on actions that betray the reform process.

- (d) **Constructive *resolution of conflict* as it arises.**

Conflict is usually viewed as unwanted and therefore to be suppressed as much as possible. In a process of reform, however, conflict should be seen as a necessary and integral part of the process. Conflict is to the body politic what pain is to a biological organism--a means of signaling that something is wrong in a way that cannot easily be ignored. Like pain, conflict is uncomfortable at best and intolerable at worst. However, it should not simply be suppressed but used as an indication of some underlying problem. The constructive resolution of conflict goes beyond determining winners and losers to a reconstruction of the common ground on which the participants in reform must stand. The need to find common ground occurs not only at the beginning of the reform process but throughout the process as conflict arises, indicating some partial unraveling of the agreement on which the reform is predicated.

- (e) ***Iterative diagnosis and inquiry* into unanticipated problems and the reexamination of reforms in view of experience.**

Conflict is therefore often an occasion for renewed inquiry and diagnostic assessment of the problems underlying reform. The complexity of political relationships is such that it is usually impossible to "get it right," at least not completely right, at the beginning. Reform always becomes an iterative process of modifying rules, observing what happens, and then making further adjustments. The design work is not finished just because reform is underway.

5. Operational Assistance as Conditional

Although operational-level *intervention* is not a sufficient approach to governance improvement and democratization, operational-level *change* is a must. Changes made at the governance level are without any effect on human welfare unless change at the operational level follows. Operational behavior depends on two factors: (1) the rules of the game and (2) technical capacity relative to the task environment. Intervention at the governance level is necessary to modify the rules of the game and thus change the rule-based incentives that operational actors face; this is the process of policy reform. Moreover, intervention at the constitutional level is necessary to modify the rules of the political game and change the incentives that political actors face at the governance level: this is the process of governance reform. But the lack of appropriate technical capacity at the operational level can still frustrate reform. Judges, for example, need facilities in which to meet and libraries in which to read the law, as well as a living wage that allows them to focus on judging. The improvement of technical capacity requires capital--both human and physical. It has long been understood that initial capital investments in equipment, facilities, and training depend on financial resources that developing countries lack.

- **STEP THREE in a democracy and governance program is to tie specific reforms to relevant technical assistance and capacity-building investment. This can be done by negotiating agreements with the host government and/or specific organizations in the civil society that condition technical and capacity-building assistance on a sustained commitment to specific policy and governance reforms.**

Donors have traditionally tried to supply the need for technical assistance, and they should continue to do so. The key difference in the governance approach is that donors should tie operational assistance to governance reform. Capacity-building investments at the operational level cannot be justified without a reasonable assurance that they will lead to significant and lasting changes in behavior. In most cases such assurance is highly implausible without changes in the rules of the game, usually requiring both governance reform and policy reform. Operational assistance must therefore be coupled with support for reform, specifically by conditioning such assistance on a sustained commitment to specific reforms.

6. Central Programmatic Components

Because reform is at the core of democratization and governance improvement, the central components of a program of assistance should be designed to assist in overcoming the major obstacles to reform. Potential obstacles include a lack of diagnostic understanding (how specific reforms contribute to specific changes in patterns of behavior), lack of common agreement and commitment to reform, lack of common understanding of rule changes (needed especially to move from prescription to application and enforcement), short-term incentives to undermine reform by failing to keep commitments, unanticipated conflict, and errors in the design of specific reforms. A program to support reform entails four major components:

a. Assessment: Inquiry and Analysis.

This component begins with a macropolitical assessment, continues with institutional analysis and inquiry into the problems and opportunities identified in the assessment, and proposes specific reform possibilities for discussion. Once reforms are underway, this component can be reiterated on a regular basis and as needed. Periodic review and assessment of the reform process should be built into the program, as well as provision for extraordinary review and assessment in the event of major unanticipated problems. Inquiry and analysis have not finished simply because reforms have begun.

b. Discussion: Sharing Ideas, Disseminating Information.

Once the first stages of assessment, analysis, and inquiry have been completed, the program should move mostly into the open public realm. It should be conducted, as much as possible, publicly, recognizing that there may be sensitive points of

discussion that have to be carried on in private with the government in the early stages. The program should assist with the creation and operation of one or more *public forums* that continuously or periodically examine the major issues related to reform. Such forums should involve representatives of all principal groups who must participate in the process of reform. Because reform is an extended process, discussion must extend beyond the opening phase and continue until reforms are well established. This will not happen until most or all major groups become stakeholders in the reformed system--acknowledged beneficiaries of reform.

c. Monitoring: 'Blowing the Whistle' on Unkept Commitments.

Monitoring is a continuous, not simply periodic, process that begins once reform is underway. To do monitoring, the program should establish a broadly representative committee or task force, one in which the donor or donors can participate alongside members of the host government and civil society. The monitoring group should meet both on a regular basis and on-call. Actions inconsistent with reform should be reported to the proper authorities and, if corrective action is not immediate, made public. Bold action by the monitoring group, demanding that reform commitments be kept, may sometimes be necessary. In the extreme, donors must consider withdrawing technical support conditioned on sustained reform.

d. Conflict Resolution: Looking for 'Win-Win' Solutions

When conflicts arise, the monitoring group can also function as a semi-private forum for examining the sources of conflict and carrying on a discussion with the parties to a dispute. Although there may be formal procedures for addressing such a conflict, the monitoring group can function as an informal venue for attempting to resolve conflicts constructively and agreeably. Access to the program component that supplies inquiry and analysis on an iterative basis may also be useful.

- **STEP FOUR is to establish public forums for the purpose of building common agreement and common knowledge.**
- **STEP FIVE is to establish a monitoring group, composed of both governmental and non-governmental representatives, for the purpose of observing the process of reform, calling attention to actions that threaten reform while demanding that commitments be kept, and seeking constructive and agreeable resolution of conflicts.**

With Steps Four and Five a Democracy and Governance program can be considered operational. The task is then to continue carrying out the four core functions through a period of reform. A transition to democracy can conceivably extend through a number of such reform programs, so that one set of reforms builds on a previous set. Over time, the role of donors should become less and less important.

7. Reform Embraces Both Civil Society and Government

Governance embraces both civil-society actors and governmental actors in a common process of mutual accountability. Civil society depends on legal constraint that only government can provide. Government must be disciplined in its provision of legal constraint so that the common values of civil society are well served. The first requires the accountability of civil-society actors to governmental authorities, while the second requires that governmental authorities are accountable to civil society. Governance reform aims to modify the pattern of interaction between government and civil society. Both sets of actors are necessarily involved in any reform effort. Reform should modify incentives on both sides of the governance relationship. Poor governance means that both sides tend to act perversely--corruption, for example, is based on incentives to seek as well as extend government favors for a price.

This is why a reform program must be conducted largely in the open public realm. It cannot be accomplished by donors' whispering in the ears of receptive government officials. Reform must be grounded in genuinely open discussion and must acquire even greater public visibility as it proceeds. Public forums should bring together diverse civil-society actors together with relevant public officials. A monitoring group should also include balanced representation from both sides of the relationship. "Ownership" of the reform program must not be allowed to reside solely in the government.

Assisting the process of reform therefore entails the delivery of assistance by donors to both governmental and civil-society actors. This jointness is inherent in the nature of governance and governance reform. Many actors are not individuals but organizational actors. Or it may often be that the only feasible way to reach individuals is through organizations. The participation of civil society in the process of reform as well as the governance process that reform seeks to establish may well depend on the significant organizational development. A new governance relationship may require different organizations on both sides--new government agencies as well as new citizen organizations. The development of new institutional infrastructure to accompany new rules of the game at a macro-level is also an appropriate object of donor support. The important prerequisite is to tie such support to reform--new rules of the game designed to transform the governance relationship. Without reform, investment in such institutional infrastructure is likely to subsidize both sides in playing the old game by the old rules.

8. Why Continued Donor Engagement Is Necessary

In all four central program components, the donor must remain actively engaged throughout the extended reform process. This is because the ability to commit to governance reform and carry through on the commitment is one of the critical constitutional capabilities missing throughout most of sub-Saharan Africa. Acting solely on their own, civil societies that lack the basic institutions of good governance find themselves in an institutional trap. Although the long-term interests of nearly all parties are well served by reform, they must

act collectively to achieve their common good. Numerous individuals and groups derive short-term advantage from maintaining the status quo. These selective incentives undermine any long-term reform movement. While able to envision the good society that lies beyond successful reform, the members of the society remain trapped by the immediate incentives derived from their current institutions. It is precisely the inability to maintain and enforce binding commitments to collective action for the common good that is missing in a society incapable of self-governance. The commitments made to donors--commitments that are enforceable to some degree--enable the members of such societies to make more credible commitments to one another. If donors can also assist in the mediation of reform through inquiry, discussion, monitoring, and the resolution of conflict, reform begins to look more feasible. But these activities are on-going, continuing throughout the extended process of reform. The donor becomes a partner in reform for the duration of the reform process.

9. Minimal Conditions and Sequencing Reforms

The minimal prerequisite to effective reform is the existence of an open public realm. This is the single democratic discipline must be observed as a prelude to the conduct of further reform. Without a significant degree of openness, it is not possible to engage in the public discussion necessary to obtain common commitments to reform. The principal requirement for the initial achievement of openness is government tolerance of dissent, including its communication and organization. Later reforms can attend to the definition of the open public realm and its legal boundaries, through, for example, constitutional guarantees of free speech and a free press. Governmental tolerance of dissent, including a commitment to the openness of the political process, should be a precondition for further bilateral discussion related to democracy and governance.

Otherwise, the sequence of reforms can be expected to vary from one country to another. Countries already in a democratic transition present one kind of situation, while countries still to enter the democratic transition present another.

A critical portion of a Democracy & Governance Assessment is concerned with the adequacy of the existing constitution for the maintenance of civil peace among the major groups in society. The fundamental role of a constitution is to establish the basic terms and conditions under which the members of a society are willing to live in peace with one another--to form a civil society. Many African constitutions, because they were largely borrowed from colonial traditions, fail to perform this basic role. The substantive terms and conditions to be incorporated into a constitutional structure cannot be imposed from outside but must reflect the a genuine process of constitutional settlement within a society. In societies where civil peace is especially fragile, the constitution-making process assumes a first order of priority. The appropriate public forum to be established will be a constitutional forum for the purpose of arriving at a basic constitutional settlement.

If the basic constitutional settlement, though not necessarily the entire constitutional structure, is satisfactory, the next step may be to conduct fair, competitive elections. Or, if

elections have been conducted, the next steps may be related to strengthening the role of deliberation or the rule of law. If specific reforms have already been adopted, the initial Assessment must be concerned with their incentive compatibility, including how well they fit with the rest of the system. On this basis, a Democracy & Governance program can proceed with its central components directed to discussion, monitoring, and conflict resolution, as well iterative reexamination and possible modification of reforms. Sometimes the choice of where to begin will depend on windows of opportunity--dimensions of democratic discipline that, for one reason or another, happen to be open to the negotiation of a common commitment to reform.

The eventual goal of a donor-assisted process of democratization is to enable the host-country to proceed with further reform on its own--to make the process of reform endogenous. This can only happen when the major groups in society feel a sufficient stake in the maintenance of democratic discipline to sustain a set of reforms without relying on external sources of credibility by binding themselves to donor conditionalities. If governance reform is successful, a process of self-governance will emerge as the role of donors diminishes. Mutual accountability can then replace accountability to external parties. Although various groups inside and outside of government will continue to test limits, others can be expected to maintain those limits, provided that the governance structure that has been put in place is adequate to the task.

The adequacy of a governance structure cannot be expected, however, to endure indefinitely. If democracy and governance reform is to be sustainable over the long-term, it must include a capability for adaptation to changing circumstances beyond those that can be foreseen at any given point in time. Constitutional discipline, in particular, must include ample provision for modifying as well as exerting constitutional constraints. This can allow the other democratic disciplines to be adapted to changes in economic and social conditions as well. Iterative reform depends, however, on iterative analysis and inquiry--on diagnostic assessment of governance problems and design of corrective institutional arrangements. The skill and methodology of institutional analysis and design must become part of the repertoire of human capital existing in the civil society if institutional adaptation is actually to occur. This requires a long-term effort in education and training, in addition to actual practice in diagnosis and reform, much of which will occur in civil society as well as in government.

10. Setting Up a Program: Reviewing the 5 Steps

The foregoing discussion developed five steps to follow in setting up a program of assistance in Democracy and Governance. They are

- a. To conduct a country-specific, diagnostic assessment.**
- b. To recommend specific reforms and/or appraise reforms in process.**
- c. To condition technical and capacity-building assistance on a sustained commitment to specific policy and governance reforms.**

- d. To establish public forums for the purpose of building common agreement and common knowledge.**
- e. To establish a monitoring group, composed of governmental and non-governmental, as well donor, representatives.**

The conduct of such a program, once established, will require appropriate allocation of resident staff resources by the donor agency, supplemented by support coordinated by either or both regional and central bureaus (in the case of AID). A full-time Democracy & Governance coordinator is essential, as are recurrent visits by teams of specialists, including institutional analysts. The Democracy & Governance coordinator should be responsible for coordinating the delivery of consultant services to regular participants in the public forums established by the program and meeting regularly with the monitoring group. The coordinator should also supervise technical assistance and capacity-building efforts, which can be contracted-out and conducted by resident teams of specialists, but which should be carried out in strict observance of the reform process.

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