





***LAW FOR DEVELOPMENT BULLETIN***

***2004***

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### **THE AFRICAN DEVELOPMENT BANK (ADB)**

The African Development Bank is a multilateral development finance institution whose members are 53 African countries and 24 non-African countries from Asia, Europe, North America, and South America.

The purpose of the Bank is to further the economic development and social progress of African countries, individually and collectively. To this end, the Bank promotes the investment of public and private capital for development, primarily by providing loans and grants for projects and programs that contribute to the growth and development of African countries. Established in 1964, the ADB started operations in 1966 from its Headquarters in Abidjan, Republic of Côte d'Ivoire.

Thereafter, the African Development Fund (ADF) and the Nigeria Trust Fund (NTF) were created in 1972 and 1976, respectively. Together with the ADB they constitute the African Development Bank Group.

### **THE OFFICE OF THE GENERAL COUNSEL & LEGAL SERVICES DEPARTMENT**

The Office of the General Counsel and the Legal Services Department provide techni-

cal legal advice to the Board of Governors, the Boards of Directors of the Bank and of the Fund, the Management and Staff. It is headed by a General Counsel, who is also Director of the Legal Services Department. The Office of the General Counsel and the Legal Services Department report directly to the President of the Bank. The Department is comprised of two divisions (i) the Operations Affairs Division and (ii) the Administrative and Finance Division. A Unit on Good Governance is attached to the Office of the General Counsel.

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The Law for Development Bulletin is an annual publication of the Office of the General Counsel & the Legal Services Department of the African Development Bank. It is intended to highlight some of the key activities of the Department in the preceding year and underscore some significant developments by the Bank that affect legal and judicial reform work in Africa. Produced by the Legal Services Department, the opinions expressed in the Bulletin are not necessarily the official policy of the Bank's Board of Directors or Management. Copies of these publications are available upon request from the Office of the General Counsel & Legal Services Department, African Development Bank.

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## FOREWORD



The publication of the Law for Development Bulletin is a very important event, and represents another significant milestone in the collective endeavor to promote Good Governance on the African Continent.

The idea of a Law for Development Bulletin may be traced back to the momentous decision by the Bank's Stakeholders to adopt a new Vision Statement in 1999. Good Governance was identified in the Bank's Vision as a singular generic theme and one of the pillars upon which the Bank should focus its operational interventions. The adoption of the Bank's Vision was followed by the approval in 2000 of a Good Governance policy and, in particular, the advancement of legal and judicial reforms. The Good Governance Policy contemplates that activities identified to promote Good Governance will also be pursued through a combination of advocacy, dialogue, research and consultation with Regional Member

Countries and other national, regional and international stakeholders.

The Law for Development Strategy prepared by the Bank's Legal Department sets out a manifesto of specific objectives to be accomplished in pursuing legal and judicial reforms. The road map established by the strategy included the publication of a Law for Development Bulletin in the medium term. The publication of the first Law for Development Bulletin to coincide with the 40th Anniversary celebrations of the establishment of the Bank is therefore the realization of a well-thought out strategy designed, in accordance with the Bank's mandate, for the promotion of sustainable development and social progress in Africa using law as an instrument.

As the General Counsel and Director of the Legal Department, I wholeheartedly welcome this new publication and pledge the Department's commitment to making it an effective tool for the dissemination of information about African Law and recent legal developments on the African Continent.

*Adesegun A. AKIN-OLUGBADE*  
General Counsel and Director

*September 2004*



## INTRODUCTION

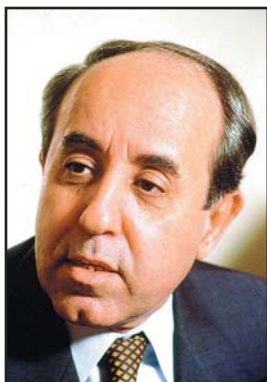
This first issue of the Law for Development Bulletin marshals some of the evidence in support of the indispensable need for legal and judicial reform on the priority list of the development agenda. Voices heard on the subject have been overwhelming in their support. Support has come from knowledgeable players – individuals and institutions. The ADB's President Kabbaj, World Bank's President Wolfensohn, United Nations Secretary-General Annan, and Nigeria's President Obasanjo, all concur that setting the proper legal and judicial framework is an essential building block for Africa's development. Within the context of the New Partnership for Africa's Development (NEPAD) good governance, which is unattainable without legal and judicial reform, rank high.

The following pages include statements, reports, and papers prepared on the subject

and recount some of the major activities undertaken in furtherance of the legal and judicial reform agenda during 2003. An extraordinary event in 2003 was the convening of the All-Africa Conference on Law, Justice and Development in Abuja, Nigeria, which brought together the largest gathering of jurists from all over Africa in decades. The Conference adopted the Abuja Declaration on Law, Justice & Development. Also significantly, the African Law Institute, for which the ADB has played a catalytic role, held its first Board of Governors meeting after being launched during the preceding year in Durban, South Africa. The Organization for the Harmonization of Commercial Laws in Africa (OHADA) benefited from a substantial ADF grant, which was received by the President of the Common Court of Justice and Arbitration. All of these together with ideas on law-related matters of regional implication are included in this issue.

*Seward M. Cooper*





*Statement by Omar Kabbaj, President of the African Development Bank at the Opening Ceremony of the All Africa Conference on Law, Justice, and Development*

*At the opening session of the All Africa Conference on Law, Justice and Development held in Abuja, Nigeria during February 2004, ADB'S President laid out the Bank's efforts in legal and judicial reforms*

Your Excellency President Olusegun Obasanjo,  
Honorable Chief Justices,  
Honorable Ministers,  
Distinguished Ladies and Gentlemen

It is an honor and a privilege for me to attend this august gathering of the first All Africa Conference on Law, Justice, and Development. Let me start by thanking our hosts and, in particular, H.E. President Olusegun OBASANJO, under whose patronage this Conference is being organized, for inviting me to take part in this conference. Let me also express my appreciation to the Supreme Court of Nigeria and the informal coalition of African Jurists -- under the leadership of the Honorable Justice Muhammadu Lawal UWAIS and the Chief Justice of Nigeria -- for organizing this Conference. Nigeria is the largest shareholder of the African Development Bank and it is indeed a pleasure to be in Abuja and to have the opportunity to exchange views with so many eminent persons on the many development challenges that our continent faces.

The organizers of this Conference have boldly set out the thesis that sustainable economic growth and development are achievable in each African country, if Africa re-commits itself to re-affirming the pre-eminence of the rule of law and if it acts resolu-

tely to promote justice for all of its people. We, at the African Development Bank, wholly subscribe to this noble objective of the Conference organizers.

In my Statement today, permit me therefore to share with you the Bank's perspective and strategy on these issues as well as the actions it has taken to support the implementation of law and justice in Africa. But as this gathering of prominent lawyers and jurists may not be very familiar with the African Development Bank Group, permit me to begin by describing its institutions and its principal activities.

**The African Development Bank: Reducing Poverty and Promoting Sustainable Economic Growth**

Your Excellencies,  
Honorable Justices,  
Ladies and Gentlemen,

The African Development Bank Group is comprised of the African Development Bank (ADB), the African Development Fund (ADF), and the Nigeria Trust Fund (NTF). While the

ADB window – with an authorized capital of US\$29 billion -- provides loans at preferred market rates, the ADF and the NTF windows provide grants and loans at highly concessional rates. Let me take this opportunity to express our gratitude to the Government of Nigeria, its people, and President Obasanjo for not only continuing to avail the resources of the Nigeria Trust Fund – which now stands at \$460 million – to finance projects and programs in the low income countries of our continent, but also for their strong and unflinching support to the Bank.

The principal objective of the African Development Bank Group -- as set out in its 1999 Vision Statement - is to reduce poverty and promote sustainable economic growth in its regional member countries. Its priority areas of intervention are agriculture and the social sectors -- such as health and education. But in addition, good governance, regional integration and cooperation, and gender mainstreaming are given high priority in the Bank's operations. And as the private sector must necessarily be the engine of growth for African economies, the Bank Group also provides financial and technical assistance for the development of this sector. A recent example of our interventions is our participation in the financing of the loan to the Nigeria Liquefied Natural Gas Project, which was awarded the "Deal of the Year".

Since its establishment in 1964, the Bank has provided over \$45 billion in loans, grants, and technical assistance to finance projects and programs in its regional member countries. Of this amount, \$27 billion is from the ADB window, and the balance of \$18 billion is from the highly concessional African Development Fund and the Nigeria Trust Fund.

In addition to financing investment projects in critical sectors such as agriculture, education, health and infrastructure, these resources have also been used to finance important reform measures to improve the

competitiveness of African economies. In the last few years, the average level of annual financing operations have been in the order of US\$3 billion - the highest level in 10 years.

I wish to note in this regard that the success that the Bank Group has enjoyed in the last few years is largely accounted for by the fundamental internal governance reforms that we begun to implement beginning in 1996. These set of reforms introduced by the Board of Governors of the Bank, the institution's highest governing organ, have sought to ensure proper separation of powers and responsibilities among the principal decision-making organs of the Bank. The respective duties and responsibilities of the Board of Governors, the Board of Directors, and the President were clearly defined and a system of checks and balances put in place. In addition, the capital ownership of the Bank was restructured to provide a more equitable balance between the partnership interests that comprise the Bank's shareholding. The voting rules for decision-making within the governing organs of the Bank were also amended to ensure greater participation in decision-making by all the shareholders of the Bank.

The internal governance reforms of the Bank culminated in 2001 with the adoption by the Bank's shareholders of comprehensive amendments to the constitutive instrument of the Bank, the most far-reaching to date of any of the multilateral development banks.

### The African Development Bank and Good Governance in Africa

Your Excellencies,  
Honorable Chief Justices  
Ladies and Gentlemen,

In addition to strengthening its own internal governance structure, the Bank Group has in the last few years put great emphasis on

improving governance systems in its regional member countries. The interventions of the Bank in this area are underpinned by the now universally accepted axiom that systems of governance are essential pillars for sustained economic growth and development. Indeed, it would be difficult to see any development taking place in their absence.

As I noted earlier, the Bank Group adopted its Vision Statement in 1999 in which good governance was identified as a priority area of intervention and in 2000 it adopted its Governance Policy adopted in 2000, and also endorsed its Law for Development Strategy Paper prepared by our General Counsel and Legal Services Department.

The Bank has defined good governance to include respect for the rule of law and human rights, enhanced accountability and transparency in the management of public resources, as well as a credible legal and regulatory system. And in its Good Governance Policy, it is stated that “... a pro-governance and pro-development legal and judicial system is one in which the laws are clear and are uniformly applied through an objective and independent judiciary. It is also one in which the legal system provides the necessary sanctions to deter or penalize breach. It promotes the rule of law and respect for human rights, and private capital flows.”

The Bank Group’s perspective on Law and Justice is thus clear. Good Governance is the cornerstone of the Bank’s development agenda, and good governance encompasses the promotion of law and justice in Africa.

To enable the Bank to operationalize the objective of promoting good governance in its regional member countries and implement its policy, it has undertaken a number of measures. Permit me to describe them briefly:

- First, the Bank Group has provided financial and technical assistance to improved systems of governance and support in a number of countries such as Cameroon, Cape Verde, Cote d’Ivoire, Djibouti, Tanzania, and Zambia.

In these projects, the Bank Group, consistent with the country strategy papers and approved by its Boards of Directors, focused on promoting the rule of law, transparency in the management of public resources, and strengthening capacity through legal and other types of training. The Zambia project, for example, known as the Fiscal Transparency and Accountability Support Program seeks to bring about an overhaul in the country’s fiscal management system. Further, in some of these projects, assistance has been given to provide equipment and facilities to national institutions entrusted with the administration of justice.

- Second, in furtherance of its governance activities, the Bank has started preparing Country Governance Profiles for all its regional member countries. These will be used as diagnostic tools to help in policy dialogues, to design the Bank’s country strategies, as well as to help formulate programs and projects to strengthen governance systems.

- Third, the Bank Group is providing support to the NEPAD, where it has been assigned the lead roles in Banking and Financial Standards as well as in Infrastructure Development. In addition the Bank, together with the UN-ECA is providing assistance in the area of governance, and particularly in promoting corporate governance.

- Fourth, the Bank has provided financial assistance to other regional initiatives such as OHADA, the International Law Institute, and has facilitated the establishment of the African Law Institute, the first African legal think-tank. It has also recently co-sponsored a Seminar with the African Union in

Addis Ababa on Preventing and Combating Corruption in Africa. The Bank is also co-sponsoring the first African International Financial Law School, with Euromoney Legal Training, which will be held in Accra, Ghana in March 2003, and regularly provides resource persons to the International Development Law Institute (IDLI) in Rome, Italy.

In addition, the Bank has taken Observer status with the Financial Action Task Force to work on matters pertaining to money laundering.

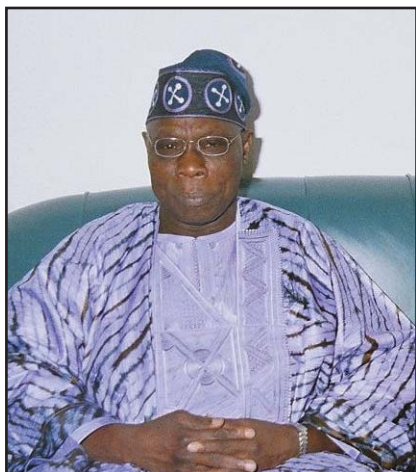
To implement its good governance policy, as well as the Law for Development Strategy, the Bank has established a Governance Division within the organization and a Good Governance Unit in the Office of its General Counsel. And in 1999, the Bank, together with the World Bank and the International Monetary Fund established the Joint African Institute (JAI) based in Abidjan. The Institute has provided training in various disciplines, including courses and seminars in the area of governance.

### Concluding Remarks

Your Excellencies  
Honorable Chief Justices  
Distinguished Ladies and Gentlemen

Permit me to conclude by stressing that the Bank Group is indeed committed to Law and Justice in Africa. Through the many projects and programs that we have financed to promote good governance on our continent, we are becoming acknowledged leaders for supporting legal and judicial reforms and partnering with other development agencies to enhance technical legal capacity. The Bank Group's perspective is clear. Its strategy is focused and it is beginning to achieve tangible results. We look forward to continuing our partnership with all stakeholders, including the distinguished jurists present at this Conference, toward achieving the laudable objective of promoting law, justice, and development in Africa. I wish you all fruitful deliberations and thank you for your kind attention.

## ALL AFRICA CONFERENCE ON LAW, JUSTICE AND DEVELOPMENT



*“Law should be used as one of the effective weapons in the battle against the economic gap”.*

*President Olusegun Obasanjo*

The Nigerian Head of State, His Excellency President Olusegun Obasanjo, addressed the All Africa Conference on Law, Justice and Development that took place on the 4th to 7th of February 2003 and was attended by representatives of fifty-three African countries.

President Obasanjo suggests three essential conditions to law: Justice, Substitutions and Acceptance.

He stated that not only should law be adapted to the changing society to make its activities relevant, but the institutions, through which law is given both force and meaning, should themselves be vehicles of that change. He also added that law must be the reflection of society’s judgments and aspirations if it wanted to play its role as the main instrument of bringing order to society.

President Obasanjo noted that a common heritage of colonialism has left Africans with divergent systems of law that necessitate the marriage of the inherited colonial traditions with pre-existing indigenous traditions of Islamic and customary laws and the problems encountered in that undertaking.

Furthermore, the Nigerian Leader advised that the judiciary should be transparently just, equitable and beyond reproach if it is to attend to its great responsibility of upholding legal norms. He added that “the judiciary should never allow itself to be subordinated into the role of serving narrow political ends by the agents of destabilisation, and other elements who do not mean well to the existence of the Nation –State”.

In the same vision, President Obasanjo stated that “law is the guardian of collective...and individual rights and privileges, and in a democratic society, it is only the strict adherence to the norms and ethics of the legal profession by the lawyers and judges themselves that will ensure protection of society from the schemes, caprices and nefarious contrivances of the criminal and authoritarian personality”.

He stressed that the legal regime is the only thing that can support a new and equitable international economic order that is the Challenge to Africa and the world. He cautioned that the North seems to be only concerned with nuclear proliferation though Poverty, like a nuclear bomb, has the potential to destroy the world. “So, they (the north) should be more concerned with eliminating the gap between the rich North and the poor South by using Law as one of the effective weapons in the battle against this economic gap”, President Obasanjo concluded.

## AFRICAN DEVELOPMENT BANK

After President Obasanjo's speech, the Chief Justice of Nigeria and Chairman of the Coalition of African Jurists, the Honourable Muhammad Lawal Uwais, also spoke to the Conference. In his welcome address, like

Chief Obasanjo, Mr Justice Uwais stated that the Law should be constantly on the move and adapt to the fast changing society. It is only through its dynamism that it will help to realize justice.

## ALL AFRICA CONFERENCE ON LAW, JUSTICE AND DEVELOPMENT

*Mr. James D. Wolfensohn: "So long as fair, transparent and honest legal and judicial systems are lacking in Africa, there can be no equitable development."*

These were the words of World Bank President James D. Wolfensohn in a speech read on his behalf by Mr. Paati Ofusu-Amaah, Acting Vice-President and General Counsel of the World Bank, at the All Africa Conference on Law, Justice and Development, held on February 4-7, 2003 in Abuja (Nigeria).

The World Bank's President noted first of all that the African continent's development prospects could significantly improve or worsen, depending on the situation that prevails, particularly with respect to justice, peace and the primacy of law.

In this respect, he stated that it is not only important but also essential that African countries possess legal and judicial systems, which function in accordance with the principles of fairness, transparency and honesty. So long as such systems are lacking in Africa, there can be no equitable development.

Mr. Wolfensohn then, listed the main problems that needed to be addressed during the Conference: (1) substantial inequalities and extensive poverty; (2) the absence of appropriate educational opportunities, which limits the continent's capacity to tap its abundant natural and mineral resources and thereby reduce poverty; (3) HIV/AIDS, which is eroding the continent's human

capital; and (4) armed conflicts and civil disturbances that prevent Africans from devoting their resources and energy to productive activities and that deter foreign investors from investing their capital and mobilizing resources in Africa.

Indeed, he added that when the legal and judicial systems of a country are functioning properly, then the rule of law is respected and citizens feel empowered to pursue their activities as they see fit. In such circumstances, entrepreneurship flourishes, small enterprises proliferate, direct foreign investors step forward, job opportunities abound, wealth is created, access to education and health improves, the economy prospers and, finally, poverty recedes. When the rule of law is flouted, the opposite occurs.

Furthermore, to explain to participants his firm conviction that there can be no sustainable development without justice and the rule of law, he briefly discussed the Comprehensive Development Framework (CDF), which is a global, long-term strategy based on the principle of countries joining forces and forming a partnership with the private sector, civil society and the international community for results-oriented development: "Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible."

Finally, the World Bank President noted that there is no universal model for organizing legal and judicial systems. Each country must determine how to build as effectively as possible its own legal and judicial systems that reflect the country's social, economic, cultural and political characteristics. He did, however, cite a number of basic principles that guide nearly all the legal and

## AFRICAN DEVELOPMENT BANK

judicial systems of the world, namely: (1) produce equitable results; (2) treat all plaintiffs fairly by following appropriate procedures at a reasonable cost; (3) be understandable to all members of society and meet

their needs; (4) provide assurance that the facts justify the outcome; (5) take prompt action; and (6) be efficient and appropriately organized.

## ALL AFRICA CONFERENCE ON LAW, JUSTICE AND DEVELOPMENT

*Mr. Kofi Annan : “Challenges of Development require a legal response.”*

In a message read on his behalf at the first All-Africa Conference on Law, Justice and Development, held in Abuja (Nigeria), from February the 4th through the 7th 2003 by the United Nations Legal Counsel and Under-Secretary-General for Legal Affairs, Hans Corell, United Nations Secretary General, Kofi Annan observed that efforts have been made by the African continent in the realm of justice and cited the efforts and the participation of Africa in the development and codification of international law.

He noted that African States have contributed to the development of international law by signing many international treaties and creating legal regimes on both important and long-standing matters ranging from human rights to the environment and the proliferation of nuclear weapons.

Moreover, he mentioned the fact that African States have often turned to peaceful mechanisms such as the International Court of Justice (ICJ) to settle territorial and other disputes and have played a visible role in the establishment of the International Criminal Court.

He also indicated that African States helped to promote human rights through the use of truth commissions in order to assure accountability and national reconciliation. However, he urged that only a proper implementation of the obligations embodied in treaties, norms and laws, and only the respect of their commitment will allow Africa to deal with the challenges it has to face:

“Challenges of Development require not only leadership and resources, but a legal response”, he emphasized.

He then called on lawyers and all others involved in the pursuit of justice to play a critical and active role in the continent’s future.

Mr Kofi Annan quoted the distinguished lawyer and founding member of the African National Congress, Pixley Isaka Seme, who expressed the hopes of all Africans that “the brighter day is rising upon Africa”.

Finally, he concluded his message by noting that “democratic roots are becoming firmer, and the rule of law is now understood as the sine qua non for stability and development”.

**ALL-AFRICA CONFERENCE ON LAW,  
JUSTICE AND DEVELOPMENT  
HELD IN ABUJA, NIGERIA,  
FROM FEBRUARY 4 TO 7, 2003**

**FINAL COMMUNIQUÉ**

- 1 We, African jurists and lawyers, assembled in Abuja to attend the All-Africa Conference on Law, Justice and Development organized by the Coalition of African Jurists (CAJ) under the leadership of the Honourable Muhammadu Lawal Uwais, Chief Justice of Nigeria and Chairman of the CAJ.
- 2 Having thoroughly discussed and considered all the topics on the Conference Program and having completed today the proceedings of this Conference, are pleased to issue this communiqué summarizing the conclusions reached at the end of four days of Conference proceedings;
- 3 We affirm unanimously that the All-Africa Conference on Law, Justice and Development is an important event of historic proportion which has called upon us, African jurists and lawyers, to fully assume our special responsibility as judges and lawyers in the quest for justice as the overriding factor that can bring about peace, reconciliation and good governance which are essential requisites for reducing poverty and promoting sustainable development for our respective countries as well as for our continent;
- 4 As an immediate step in assuming our special responsibility referred to above, we have adopted this day, the African Declaration on Law, Justice and Development, a document which encompasses basic actions the implementation of which would enable our countries to meet the Millennium Development Goals within the prescribed time frame.
- 5 These actions include the following: (i) sustaining the dignity of the judicial function by providing judges with adequate remuneration, working and living conditions commensurate with their social responsibility and position; (ii) enhancing original and continuing training for all lawyers and judges; (iii) urging the African Union to take all actions required to enable the African human rights court to commence its activities; (iv) urging the African Union to call a summit of African Heads of State dedicated to examining issues pertaining to law, justice and development in Africa; and finally, (v) the celebration of the African Justice Day on February 7 of each year.
- 6 We applaud the idea that a Conference of Chief Justices of Africa was established and encourage such a Conference to become active in providing leadership to reach the goals prescribed in the Abuja Declaration on Law, Justice and Development adopted this day.

- 7 We have also welcomed with gratitude Algeria's offer to organize the Second All-Africa Conference on Law, Justice and Development with the support of international financial institutions, including the African Development Bank.

*Issued in Abuja, Nigeria this 7th day of  
February, 2003.*

*Signed: The Honorable Justice  
Muhammadu Lawal Uwais  
Chief Justice of Nigeria and Chairman of  
the Coalition of African Jurists*

## THE ABUJA DECLARATION ON LAW, JUSTICE AND DEVELOPMENT

*We, African jurists and lawyers, meeting in Abuja, Nigeria, from 4th to 7th February 2003, at the All Africa Conference on Law, Justice and Development*

### HAVING CONSIDERED THAT:

- 1 The rule of law, justice, respect for fundamental rights, and development are inextricably linked;
- 2 Democracy in Africa and institutions established for that purpose can only be sustained through the observance of the rule of law and by a judicial system properly equipped to administer and deliver justice;
- 3 Democracy contributes to improvement in the delivery of justice, strengthens the independence of the judiciary, and contributes to mobilization of resources and of civil society in favour of justice;
- 4 Legal and judicial systems in many African States require reform in order to improve the justice system; however, insufficient resources have been provided by governments to ensure the delivery of equitable justice;

### DO HEREBY PROCLAIM THAT:

- 5 The rule of law and the dispensation of equitable justice are the cornerstones for democracy and sustainable development;
- 6 The independence and security of judicial officers, lawyers, and the Bar are

indispensable to an equitable legal and judicial system;

- 7 The provision of adequate resources is essential for safeguarding the rule of law and justice; and
- 8 Justice may be delivered through the use of alternative mechanisms for the resolution of disputes.

### TOWARDS THESE ENDS, WE HEREBY RESOLVE THAT:

- 9 Adequate human, financial, and material resources be provided for the judiciary, for the administration of justice, and for legal and judicial reforms;
- 10 The appointment, advancement, and removal of judges, as well as their conditions of service, shall not be politicised;
- 11 The dignity of the Judiciary and its social responsibility shall be upheld through the adoption and enforcement of codes of judicial conduct with a view to eliminate corruption;
- 12 Efforts for regional integration and cooperation, including the harmonization of laws and the mobilization of resources for these purposes, shall be sustained;
- 13 Original and continuing legal training for judges and lawyers shall be designed appropriately to achieve the desired goal of delivering efficient and equitable justice;
- 14 The involvement of civil society in streng-

thening the justice system and the administration of justice be supported;

- 15 Efforts to increase access to justice, especially for the poor, powerless, and disadvantaged, including the establishment of legal aid services and pro bono representation be expanded;
- 16 A network for improvement of African legal and judicial systems be established and maintained so as to ensure continuity of the aims and aspirations of this Conference;
- 17 The African Union be encouraged to undertake all measures necessary to ensure that the African Court of Human Rights becomes operational expeditiously;
- 18 African Heads of State be requested to convene urgently a summit dedicated to

issues pertaining to justice, fundamental rights, and their impact on poverty reduction and sustainable development in Africa;

- 19 The Conference of Chief Justices of Africa be convened to reinforce regional cooperation and exchange experiences from their respective jurisdictions;
- 20 The 7th day of February, being the date of adoption of this Declaration, be commemorated each year as 'African Justice Day' with appropriate activities.

*ADOPTED IN ABUJA, NIGERIA, THIS 7TH DAY OF FEBRUARY 2003,  
IN THE ENGLISH AND FRENCH LANGUAGES.*

*Signed: The Honorable Justice  
Muhammadu Lawal Uwais,  
Chief Justice of Nigeria and Chairman of  
the Coalition of African Jurists*

## THE AFRICAN DEVELOPMENT BANK SUPPORTS THE LAUNCHING OF THE AFRICAN LAW INSTITUTE



The African Law Institute was born out of a desire to create a centre that would serve, inter alia, as a research centre on law and law-related matters including promoting the clarification, simplification, and harmonization of laws in Africa.

The creation of the Institute was the result of discussions, conducted for the most part in two meetings chaired by Mr. Adesegun A. Akin-Olugbade, General Counsel of the African Development Bank. The first meeting was held in Durban (South Africa) on 26 and 27 October 2002, and the second meeting was held in Abuja (Nigeria) on 6 February 2003.

All the Members<sup>1</sup> of the Steering Committee, which subsequently became the Board of Governors, were present at these meetings.

A representative of the Commercial Law Development Programme (CLDP) of the United States Department of Commerce, Attorney Tanya Southerland, as well as representatives of Ghana's Ministry of Finance, Messrs. Paul Asimenu and E. Ampah, were also present as observers.

Both meetings considered basic constitutional issues as part of their respective agenda including (i) the adoption of the draft statutes, (ii) the choice of location for registration and establishment of the Institute's headquarters, (iii) funding of the Institute, (iv) the creation of a Board of Governors and the appointment of an acting Executive Secretary, (v) the report of the Commission in charge of research projects, (vi) capacity building and training and (vii) the criteria for granting observer status.

*(1) Professor I. A. AYUA, Director, Nigerian Institute of Advanced Legal Studies; Professor Daniel BRADLOW, Director, International Legal Studies, the American University, Washington, D.C.; Mr. Seward M. COOPER, Chief Counsel for Governance, the African Development Bank; Mr. Nnamdi EZERA, Program Director, United States Department of Commerce; Mr. Aboubacar FALL, Principal Counsel, the African Development Bank; Mr. William HANNAY, former Chair, International Law Section, American Bar Association; Mr. Stephen KARANGIZI, General Counsel of COMESA; Ms. Sylvia KITONGA, former General Counsel of PTA Bank, and head of S.M. KITONGA & Company Advocates (Kenya); Professor Jacqueline LOHOUES-OBLE, former Dean of the Law Faculty University of Abidjan and former Minister of Justice of Cote d'Ivoire; Professor Kojo YELPAALA, Director, International Legal Studies, McGeorge School of Law, the University of the Pacific; Ms. Elizabeth ADU, Deputy General Counsel, World Bank; Mr Mohamed GHANNAM: Partner, Baker and McKenzie, Cairo; and Mr. Lucien KWAWO-JOHNSON, Permanent Secretary, OHADA.*

## I. Adoption of the Institute's Statutes

The initial draft had been prepared by Professor I. A. Sam Ayua assisted by experts of the Nigerian Institute of Advanced Legal Studies, and discussed by several members of the Steering Committee prior to its adoption. In the draft statutes, Professor Ayua and his colleagues underscored corporate governance standards and best practices.

The suggestion was made to adopt an organisational structure for the Institute, comprising a General Assembly of Governors and Management, and to vest the Board of Directors with the authority to prepare the Internal Regulations and set the deadline for the mandate of the Executive Secretary.

## II. Location and Establishment of Headquarters

The two major criteria for selecting a location for the Institute were accreditation and easy availability of communications facilities. Fourteen countries were nominated and seven were pre-selected: South Africa (Durban/Pretoria/Cape Town/Sandton), Senegal (Dakar), Nigeria (Abuja), Cameroon (Yaounde), Kenya (Nairobi), Ghana (Accra), and Cote d'Ivoire (Abidjan). Upon further evaluation, a shortlist of four countries was agreed (South Africa, Kenya, Cameroon and Senegal). Most of the participants proposed Abidjan for the headquarters because of the proximity of the African Development Bank. Participants also desired for the place of registration of the Institute to be the same as the principal operational seat.

A special task force was commissioned to propose the location for the headquarters based on criteria to be defined which included among others, experience in accommodating international organisations. Until a final decision is made, the secretariat of the

Institute is officially based in Abidjan, Cote d'Ivoire.

## III. Funding of the African Law Institute

A plan of activities was drawn up identifying not only possible donors but also a strategic approach for potential donors and sponsors as well as a plan for a publicity campaign. Akere Muna, a lawyer, and Professor Lohoues-Oble were appointed to prepare the Institute's financial strategy. It was also decided that the main financing source would be payment of membership dues. Plans were also laid down to appoint honorary members who would be expected to make financial contributions. Lastly, an endowment fund is to be established to ensure the Institute's financial sustainability.

## IV. Establishment of the Board of Governors

The Steering Committee of eleven members was transformed into a Board of Governors. Subsequently, Mr Adesegun A. Akin-Olugbade was unanimously appointed Interim Chair of the Board of Governors. The election of the Vice-Chair was postponed to a later date. On that same occasion, Maitre Aboubacar Fall was appointed Interim Executive Secretary of the Institute.

## V. The Institute's Research Projects

The Commission in charge of draft projects presented an initial project on the topic Africa and foreign direct investment. It was an exhaustive study on investment laws in Africa. The project would enable the creation and harmonisation of a legal framework governing investment in Africa.

The Governors approved this first harmonisation project of the Institute. The decision was taken to put in place databases of existing national laws on investment, to analyse policies and guidelines in use in most African countries, to prepare a code of ethics for the Institute's experts and plan on

a compensatory provision specifying that the Institute will be held responsible for injuries sustained by a member of the Board of Governors in certain pre-determined activities related to the exercise of the Governors functions. In that respect, the CLDP, which provides backing for projects aimed at promoting regional integration in Africa and which seeks to improve the legal environment of developing countries so as to further enterprise and business, pledged to work in close collaboration with the Institute. This partnership between the CLDP and the Institute led to a draft model law on investment designed to serve as a standard for governments of the region and regional organisations. The model law evolved from a review of existing codes currently in force in various countries and the provisions of a Code being prepared by the West African Economic and Monetary Union (WAEMU).

The draft model law was amended during a Conference organised in Dakar from 15 to 19 December 2003, on the improvement of legal incentives for investments in sub-Saharan Africa. The amendments dealt with articles relating to investment centres, bribery, foreign exchange transfers and conflict resolution. The draft model law is now being studied by the Board of Governors of the African Law Institute.

## VI Capacity Building and Training

During the meetings, mention was also made of the African Development Bank's plan to organise the first Training Workshop on International Financial Law in Africa in association with Euromoney Legal Training<sup>2</sup>. The School aims at encouraging post-graduate legal scholarship and promoting continuous legal training for lawyers.

The idea of a joint LL.M programme between the American University (United States) and the Universities of Pretoria and Western Cape (South Africa), as well as a mechanism for legal aid and assistance to small enterprises that is often ignored at national levels was also tabled.

## VII Criteria for Granting Observer Status

It was decided that the criteria for granting observer status were to be set out by the Board of Governors and that the number of observers should be limited.

These criteria include in particular, the pursuit of objectives similar to those of the Institute (harmonisation and legal reform work), the definition of the role of observer from an international standpoint, and the terms of intervention in the deliberations of the Board.

The Institute plans to finalise the appointment of members of the first Board of Governors during 2004.

(2) See page 50 the article on the First African School of International Financial Law, Ghana

# THE AFRICAN DEVELOPMENT BANK, THE AFRICAN LAW INSTITUTE AND THE HARMONIZATION OF LAWS IN AFRICA

By Seward Montgomery Cooper\*

This article derives from the contribution made by Mr. Seward Cooper during the colloquium on international commercial arbitration and African states organized under the auspices of King's College London (KCL) and the British Institute of International and Comparative Law at the University of London on June 4th and 5th 2003.

## INTRODUCTION

This article deals with the role played by the African Development Bank Group in the development of Law in Africa. It first describes the African Development Bank Group and its impact in the process of the African judicial and legal reform systems. It then introduces the African Law Institute created within the framework of this reform and finally brings up the issue of harmonization of Laws in Africa. The article concludes with the emphasis placed on the importance of the role of law in economic development.

## THE AFRICAN DEVELOPMENT BANK GROUP

The African Development Bank was established in 1963 when twenty-three independent African States at a meeting in Khartoum, Sudan, signed the Agreement establishing the African Development Bank. That Agreement entered into force on 10th

September 1964 when twenty member countries subscribed sixty-five per cent of the initial authorized capital stock. As other African States gained independence from colonial rule, they too joined the Bank. Today, all fifty-three African countries are members of the Bank. In 1979 the Bank opened membership to countries from outside Africa. The Bank's non-Regional members, as distinguished from Regional members (i.e. the African member countries) are twenty-four countries from Asia, Europe, North America, and South America. This makes a total Bank membership of seventy-seven countries. Almost half a century after the Agreement establishing the Bank came into force, and after five general capital increases, the Bank's authorized capital has increased from an initial 250 million Units of Account<sup>3</sup> to 21.9 billion Units of Account or approximately 28 billion United States Dollars. In addition to the Bank itself, the Bank Group also has two windows through which financing is provided at concessional rates. These are the African Development Fund and the Nigeria Trust Fund. Until recently, the African Development Fund, which has been replenished nine times, benefited exclusively from contributions from non-Regional members<sup>4</sup>. The Nigeria Trust Fund was established by the Federal Republic of Nigeria, who is the sole contributor to that Fund.

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(3) Agreement establishing the African Development Bank provides that the value of the Unit of Account shall be equivalent to one Special Drawing Right (SDR) of the International Monetary Fund or any unit adopted for the same purpose by the International Monetary Fund.

(4) It has now been agreed that Regional Member Countries (RMC) may contribute up to an agreed maximum percentage to the African Development Fund. The Republic of South Africa will be the first RMC contributor.

At its inception, the founders of the Bank determined the purpose of the institution would be to contribute to the sustainable economic development and social progress of its regional members individually and jointly<sup>5</sup>. To implement its purpose, the Bank is required to, among other things, use the resources at its disposal for the financing of investment projects and programmes relating to the economic and social development of its regional members, giving special priority to projects or programmes which by their nature concern several members<sup>6</sup>, and projects or programmes designed to make the economies of its members increasingly complementary and bring about an orderly expansion of their foreign trade<sup>7</sup>. The Bank's functions also include promoting investment in Africa of public and private capital projects or programmes designed to contribute to the economic development or social progress of its regional members<sup>8</sup>. In all of its decisions, the Bank is guided by its stated purpose and functions<sup>9</sup>. While the Bank has other functions, the functions mentioned are the most germane to the subject of this Colloquium and the Bank's interests in these deliberations.

In seeking to fulfil its mandate, the Bank has approved loans and grants to its Regional Member Countries of close to \$45 billion to finance projects and programmes, of this amount US\$27 billion is from the ADB window, and the balance of US\$18 billion is from the African Development Fund and the Nigeria Trust Fund. In the last two years, the average level of financing operations by the

Bank Group has been approximately US\$3 billion annually. Since its inception, the Bank's private sector operations<sup>10</sup> have provided credit to private ventures doing business in Africa of close to US\$1 billion<sup>11</sup>.

Throughout its history the Bank has maintained its developmental focus. That focus remains its *raison d'être*. Accordingly, in 1999 in a Vision Statement, the Bank Group in re-confirming its commitment to its mandate and its niche, spelled out its mission in clear, unequivocal terms: "to assist Regional Member Countries break the vicious cycle of poverty in which they are entrapped. Working towards this goal, the Bank would endeavour to facilitate and mobilise the flow of external and domestic resources, public and private, promote investment, and provide technical assistance and policy advice to RMCs."<sup>12</sup>

The Bank has also over time adopted various policy papers to guide its interventions in Africa's development. Two of those papers are particularly relevant to the Bank's interest here. They are the Bank Group's Policy on Economic Cooperation and Regional Integration<sup>13</sup>; and the Policy on Good Governance<sup>14</sup>.

The Policy on Economic Cooperation and Regional Integration directly promotes the Bank's purpose as stated in Article 1 of the Agreement establishing the Bank. It is also in consonance with the operational principles of the Bank expressed in Article 17 of the Agreement. In fact, Article 17(a)(ii)

(5) *Ibid* Art. 1 The adjective 'sustainable' was added later to clarify the preferred nature of development.

(6) *ibid.* Art. 2 (1)(a)(i)

(7) *ibid.* Art. 2(1)(a)(ii)

(8) *ibid* Art. 2(1)(d)

(9) *ibid.* Art. 2(3)

(10) Private Sector operations began in 1991 with a Unit. It is now a full Department.

(11) *Promoting Investments in Africa: Role of the African Development Bank, Statement by Omar Kabbaj, President ADB at OECD, April 2003*

(12) *The Vision of the African Development Bank, published 1999 ADB*

(13) *Economic Cooperation and Regional Integration Policy Paper ADB/BD/WP/2000/13/Rev.1, 4 May 2000*

(14) *Bank Group Policy on Good Governance ADB/BD/WP/99/55/Rev.2, 15 December 1999*

requires the management of the Bank to pay special attention to the selection of multinational projects. The objective of the policy is to support the overarching goal of sustainable development and poverty reduction to underpin the Bank's strategy of getting African economies<sup>15</sup> integrated in a rapidly globalizing world. The Bank has therefore also taken an active role in the New Partnership for Africa's Development (NEPAD), a programme of the African Union, and serves as the lead institution under the NEPAD programme on infrastructure and on banking and financial standards.

The Policy on Good Governance defines governance as a process referring to the way power is exercised in managing the affairs of a nation, and its relations with other nations<sup>16</sup>. This includes considerations such as the respect for the rule of law, respect for human rights, enhanced accountability, enhanced transparency, and a credible regulatory and legal environment. The Bank's interest is to help create and nourish an enabling environment for socio-economic development because such an environment is inextricably linked to the effectiveness of the Bank's investments in RMCs. Empirical evidence shows that the absence of an appropriate environment deters investments, fosters corruption, and causes legal uncertainty, all of which undermine attempts to reduce poverty. The Bank's Good Governance Policy thus concentrates on five areas: (i) accountability; (ii) transparency; (iii) anti-corruption measures; (iv) participatory governance, and (v) legal and judicial reform. Within the context of legal and judicial reform<sup>17</sup>, the Bank's Legal Department in 2001 developed a Strategy Paper styled 'Law for Development'. Under the Law for

Development Programme, law is used as a tool to help foster economic development in Africa. The Bank recognizes this as one of several cardinal tools that can be used in the effort to achieve its Vision. The Bank also requires that efforts and achievements in legal and judicial reform must be measurable overtime and sustainable. The Bank recognizes that work in this area takes time and some intangibles cannot easily be measured but the Bank would seek to determine the developmental effectiveness of its efforts. The strategic approach of the Programme seeks to: "Fashion a judicial system that is socially sensitive and equipped to efficiently serve the local communities, an approach that engenders the confidence of business engaged in both domestic and global transactions that are desirous of doing business within the particular RMC."<sup>18</sup>

The Strategy recognizes the importance of transactions in the marketplace but is not limited to that. It includes ensuring access to justice for the poor as a means of redressing injustices, of ensuring stability, and of promoting informal transactions. The Strategy also places particular emphasis on both regional harmonization and regional approaches to legal and judicial reform. Since the endorsement of the Strategy, several particularly noteworthy steps in implementing the Programme have been taken.

First, a Unit responsible for Good Governance has been established in the Office of the Bank's General Counsel and Legal Services Department. Second, the All-Africa Conference on Law, Justice, and Development, was convened; and third, the African Law Institute was established. As far

(15) *Economic Cooperation & Regional Integration Policy, op. cit.*

(16) *Good Governance Policy op.cit.*

(17) *ibid.*

(18) *African Development Bank Group Strategy Paper on Law for Development, 1st Edition, June 2001, Legal Services Department, para. 1.2*

as the All-Africa Conference on Law, Justice, and Development is concerned, it was held in Abuja, Nigeria from the 4th through 7th February 2003 and was convened at the initiative of a coalition of African jurists under the auspices of the Supreme Court of Nigeria led by the Honourable M.L. Uwais, Chief Justice of Nigeria, and under the patronage of His Excellency President Olusegun Obasanjo of Nigeria, who is also one of the initiators of NEPAD. The African Development Bank, the Organisation Internationale de la Francophonie, and the World Bank, were the principal sponsors together with several bilateral and international agencies. It brought together Chief Justices, Presidents of the highest Courts, Ministers of Justice, Attorneys General, legal practitioners, academics, representatives of Finance Ministries in Africa, as well as lawyers from multilateral institutions, international lawyers and judges from Africa and elsewhere, especially from Europe and North America. The Conference deliberated on several issues pertinent to Africa's development including Legal and Judicial Reform, Legal Education, Human Rights, and Regional Integration.

At the conclusion of the Conference, on 7th February 2003, the Conference adopted the Abuja Declaration on Law, Justice and Development<sup>19</sup>. That Declaration ('the Abuja Declaration'), among other things, states and reaffirms certain basic principles of justice and calls for the provision of adequate resources to support legal and judicial reform in Africa. It also, significantly for this Colloquium, called for increase use of alternative methods of dispute resolution. The

specific language of the Abuja Declaration proclaims that: 'Justice may be delivered through the use of alternative mechanisms for the resolution of disputes.' It should not go without mention that judges themselves, at the highest level, some of whom often jealously guard their jurisdictional turfs, acceded to this proclamation in the Declaration. The Declaration resolved, *inter alia*, that: 'Efforts for regional integration and cooperation, including the harmonization of laws and the mobilization of resources for these purposes, shall be sustained<sup>20</sup>.' (Emphasis added.)

### THE AFRICAN LAW INSTITUTE

This resolution of the Abuja Declaration leads us to the African Law Institute, whose overall objective is to foster regional integration and cooperation through the harmonization of laws and the mobilization of technical legal expertise for this purpose. The idea of establishing the African Law Institute emerged during a meeting of African, European, and American lawyers on the harmonization of laws in Africa that took place in Cotonou, Benin in November 2000. At that meeting the African Development Bank offered to act as an initial secretariat to help bring to fruition and crystallize the various ideas exchanged. The Bank accepted to do so because one of its traditional activities has been to serve as a catalyst for new institutions that would assist in Africa's socio-economic development<sup>21</sup>. In furtherance of this role, and on the initiative of the Bank's General Counsel, Dr. Adesegun A. Akin-Olugbade, the Bank hosted the inaugural Steering Committee Meeting for the esta-

(19) *Final Communiqué of the All-Africa Conference on Law, Justice, and Development issued 7th February 2003, at Abuja, Nigeria*

(20) *The Abuja Declaration on Law, Justice, and Development adopted 7 February 2003. Because of its importance and the need to disseminate broadly the Declaration, a full text is included at the end of this paper.*

(21) *Some institutions the Bank has helped create are Shelter Afrique, African Re-insurance Corporation, African Export-Import Bank, the Joint-Africa Training Institute (with the World Bank and the IMF), the African Capacity Building Facility, and the African Business Roundtable*

blishment of the Institute. That inaugural meeting, held in Abidjan, Cote d'Ivoire from 11th to 12th October 2001, adopted a Concept Paper and a Statement on the Institute. A year later, in October 2002, at Durban, South Africa, shortly after the International Bar Association held its first Annual Conference in Africa, a Constitution was adopted and the African Law Institute was launched.

The Steering Committee was then transformed into a Board of Governors, which is chaired by the General Counsel of the African Development Bank, and includes, among others, the Permanent Secretary of the Organization for the Harmonization of Business Laws in Africa (OHADA), the World Bank's Chief Counsel for Africa, the General Counsel of the Common Market for East & Southern Africa (COMESA), a former chair of the Africa Law Initiative of the American Bar Association, and distinguished law professors and legal practitioners from Africa, Europe, and the United States of America. Its interim executive Secretary is a former law professor and former president of the Maritime Law Association of Senegal. These distinguished lawyers bring together a wealth of experience and mix of diverse legal traditions, appropriate for the work of the Institute. On 6 February 2003, the Board of Governors held its second meeting in Abuja, Nigeria.

The Institute works in both the English and the French languages with simultaneous interpretation and translation at all meetings<sup>22</sup>.

The mission of the African Law Institute is

“to serve as an independent non-governmental centre of professional excellence, a think-tank, and a research centre on law and law-related matters including promoting the clarification, simplification, and harmonization of laws that affect the socio-economic development of African States”<sup>23</sup>.

Three of the stated objectives in furtherance of its mission should be mentioned to this audience. They are: ‘(i) To work in close collaboration and interface with existing institutions and law reform commissions in Africa, and elsewhere, as appropriate, and conduct legal research to help develop and further harmonize key laws of African States as a means of enhancing regional economic cooperation, improving legal certainty, achieving effective integration, and promoting more rapid development in Africa; (ii) To draft model laws that take due consideration of existing laws, diverse legal traditions, recent legal developments, international best practices, and the socio-economic demands of African countries; and (iii) To identify new legal developments as well as commonalities in existing laws in various African States and inform, make recommendations to, and to offer advice to legislatures, judiciaries and other relevant bodies, including national and regional law reform commissions, of its findings as a means of enhancing the harmonization of laws and regional integration.’<sup>24</sup> These objectives are consistent with the preamble of the Institute's Constitution, which takes cognisance of the initiatives of African States in promoting OHADA, and NEPAD and the benefit the Institute would bring as a catalyst for legal reform.

(22) Art. 19 of the Constitution of the African Law Institute provides that the working languages, if possible, shall be African languages, Arabic, English, French and Portuguese. All documents and proceedings are in English and French, which are deemed equally valid.

(23) Statement on the African Law Institute in African Law Institute Background Documents. Published by courtesy of the African Development Bank Group, Legal Services Department.

(24) Constitution of the African Law Institute, Art. 2 (b)(c)(f)

Structurally, the main organs of the Institute are the General Membership, the Board of Governors, and the Management<sup>25</sup>.

The General Membership is on a voluntary basis and is limited to lawyers, law professors and judges of any nationality, institutional members (law reform commissions, legal research institutes, continuing legal education institutions, regional economic groupings in Africa and the African Union)<sup>26</sup>. The Board of Governors is also authorized to identify categories of ex-officio members and the Institute may supplement its technical resource base by using non-lawyers<sup>27</sup>. The General Membership meets once every two years but may hold a Special General Meeting, if required<sup>28</sup>. The Board of Governors is comprised of twenty-one members, who serve a four-year term but may not serve more than two terms<sup>29</sup>. They report to the General Membership yearly on the activities of the Institute and are responsible for determining the overall policies and operational programmes, and appoint the Executive Secretary<sup>30</sup>. The third organ is the Management, headed by an Executive Secretary, who runs the daily affairs of the Institute<sup>31</sup>.

### HARMONIZING LAWS IN AFRICA

Africa, by virtue of its history, has several legal traditions in addition to its customary legal systems. These additional legal traditions emanate from relationships with Belgium, Britain, France, Germany, Italy, Portugal, Spain, and the

United States of America. These have brought varied legal systems based on civil and common law antecedents. The differences however may not be as wide as they were initially. As one author has said 'legal systems are endowments but not straight jackets<sup>32</sup>.' Professor Paul Mahoney of the University of Virginia Law School goes further and asserts: 'The differences between the common law and civil law loom larger in theory than in reality. In the United States, for example, much of commercial law has become fairly code-like over the [last] century because of the adoption of the Uniform Commercial Code and the Federal Bankruptcy Code. In civil law countries judges and scholars have come to appreciate that no civil code can be sufficiently complete and unambiguous as to remove all discretion from judges who apply it. Thus, while in theory, civil law judges follow only the code and not precedent, in practice they pay attention to prior decisions of appellate tribunals.'<sup>33</sup>

Assuming that these scholars and many others who concur with them are correct, the idea of harmonizing laws in Africa, as indeed the European Community has been able to do to some extent, is realizable. It is generally recognized that serious legal problems must be tackled and resolved to help accelerate African economic cooperation and integration. Antiquated, archaic, and obsolete laws must give way to modern laws that are suitable for the African context and today's increasingly globalized economy.

(25) Art. 3 *ibid*.

(26) Art. 7(a)(b) *ibid*.

(27) Art. 7(c)(d) *ibid*.

(28) Art. 10 & 11 *ibid*.

(29) Art. 4 *ibid*.

(30) Art. 5 *ibid*.

(31) Art. 6 *ibid*.

(32) Forneris, Xavier, *Harmonising Commercial Law in Africa: the OHADA*, University of Warwick, paper presented at World Bank Conference 2000

(33) Mahoney, Paul G. *The Common Law & Economic Growth: Hayek Might be Right*, Transition Newsletter, the World Bank Group 2001

That is why both the Bank and the Institute have an interest on the work being done by the Organisation for the Harmonization of Business Laws in Africa (OHADA). While OHADA aims at uniformity of laws, which is more than harmonization, its success is encouraging. OHADA is the first programme for unifying laws in Africa that allows for supranational adoption of what would then become self-executing laws.

The Bank Group therefore has provided financial support to OHADA and is contemplating providing additional assistance within the next few months to help the work of the OHADA Common Court of Justice and Arbitration and to help consolidate its company and commercial registries. Given African Law Institute's mix of legal experts with diverse professional backgrounds and the shortage of legal draftsmen in many African countries, the Institute expects to assist OHADA and other countries, by drafting model laws, and by reviewing or commenting on new and proposed legislation. This would help minimize the financial costs to those countries that desire clearer, modern laws that are suitably tailored for emerging African countries.

## CONCLUSION

While the relationship between law and economic development continues to generate polemics in some quarters, it is clear that any society that does not adhere to a rule of law cannot progress, for in the absence of law exists chaos. No development takes place amidst chaos or anarchy.

It is posited that financial economists have adduced evidence that financial markets contribute to economic growth and legal institutions contribute to growth of financial markets<sup>34</sup>.

If this evidence is credible, then by logical extension, law contributes to economic growth, which almost invariably contribute to economic development. Work of multilateral institutions such as the African Development Bank Group and the nascent African Law Institute in Legal and Judicial Reform and in harmonizing laws to further economic cooperation and regional integration is therefore imperative.

(34) *ibid.*

## ADB'S SUPPORT TO OHADA

### INTRODUCTION

The African Development Bank takes a particularly keen interest in legal and economic integration in Africa. Indeed, it is fitting to recall Article 2 of the Agreement Establishing the African Development Fund (the ADB Group's concessional window), which assigns the Institution, the mission of promoting regional integration and international trade development among its members. Furthermore, the ADB's New Vision adopted in 1999 is based in particular, on two major thrusts, good governance on the one hand, private sector development by virtue of a reassuring legal and judicial framework, on the other. To translate the importance of the legal aspect of its development operations, the ADB has adopted a strategy paper (the ADB Group Policy on Good Governance), which contains its Law for Development Programme.

In this policy document, the initiative to harmonise business law in Africa occupies a pivotal point, since it is, from all standpoints, consistent with the ADB's over-riding missions. Accordingly, from that perspective, the ADB in its capacity as regional development institution is backing OHADA's activities. The ADB has been given special mention for the volume and quality of its support. It has on several occasions provided OHADA with direct technical and financial assistance thereby enabling the latter to build its capacity.

### I/ WHAT SORT OF ADB ASSISTANCE TO OHADA?

#### A) Financial Assistance

In November 2002, the African Development Fund (ADF) awarded OHADA, from its tech-

nical assistance resources, a grant of nearly US\$ 175,000 to finance a Central Database of the Commerce and Movable Credit Register. Computers, special software and the relevant training services were procured with this grant.

In September 2003, the African Development Fund awarded OHADA a grant of over one million US Dollars to build the institutional capacity of the Common Court of Justice and Arbitration (CCJA). This grant was used to procure services, in particular to train magistrates, create new positions of legal assistants, put in place an information, education and communications plan, introduce an evaluation and follow-up system and procure professional equipment.

Lastly, an institutional support request received from the Permanent Secretariat is still being reviewed by the ADB.

#### B) Non-Financial Assistance

In this connection, it is fitting to recall that under the "Good Governance" project component of lending or grant operations, the ADB is for as much as possible, encouraging its members to adopt either directly or indirectly, the legal framework harmonised by OHADA.

Since 2001, the ADB has been regularly attending the Annual Meeting of Experts of OHADA that precedes the meeting of the Council of Ministers. In addition, apart from being represented at the Experts' Meeting held in Lome in 2003, on the search for an autonomous financing mechanism, through its General Counsel and Director of Legal Services, the Bank took part in the meeting of the Coordination and Follow-up Committee held in Geneva in February

2004. Moreover, concerned about the financial strength of the Organisation, the President of the ADB wrote personally to all the Heads of the OHADA member states, requesting them to kindly clear financial contribution arrears to the Organization.

Lastly, within the framework of its private operations, several contracts signed by the ADB contain an arbitration clause that refers to the CCJA Arbitration Rules.

## II/WHAT PROSPECTS FOR OHADA'S DEVELOPMENT?

At the meeting of the Council of Finance Ministers of the Franc Zone, held in Paris, the ADB President restated the desire of the Bank to make OHADA an instrument of regional integration and investment promotion for the entire continent. One of the major challenges that OHADA still faces is the extension of its members to African countries of the Common Law tradition.

In that regard, the Bank is encouraging the consultations that have started with Anglophone countries of Africa. Thus, in October 2003, the Legal Department participated in the first seminar on OHADA organi-

sed by the Anglophone University of Cameroon in Buea. The Bank has also been approached by the Government of Cameroon to assist with a reliable translation into English of the Uniform Acts.

Finally, through the personal contribution of its General Counsel, the Bank has participated in the legal review of the first major work conducted in English on OHADA, which was done by the English law firm, Eversheds.

## CONCLUSION

Although there has been some reticence of an institutional nature and major financial and legal issues, the ADB is confident that if discussions continue and contacts are stepped up between the two dominant legal traditions in Africa, the harmonised law could soon be extended to Anglophone countries like Ghana and Nigeria and consequently OHADA could reach the goal of regional integration that it has set itself.

Accordingly, and in keeping with its development missions, the ADB Group is fervently supporting work to make OHADA an effective instrument for economic development in Africa.

## OHADA'S PRESIDENT WELCOMES THE BANK'S SUPPORT

*Speech of Mr. Seydou BA, President of the OHADA Common Court of Justice and Arbitration Accepting UA 0.750 Million Contribution from the African Development Bank*

**F**or us, the signing of this protocol attests to the confidence that the President and the entire African Development Bank Group (ADB) has placed in the Organization for the Harmonization of African Business Law, and, more especially, in one of its key institutions, the Common Court of Justice and Arbitration, which I have the honour of heading. The institutional support that you bring to our Court, on the terms we have concluded by our act here today, is the culmination of a process marked by various expressions of the interest that the President and the other ADB authorities have constantly shown in OHADA, an ambitious project to support the development of our countries, whose successful implementation was however never a foregone conclusion.

Right from our establishment in Abidjan, your President did us the honour of receiving us, in the presence of the Secretary General and the entire legal team.

The response we received following our presentation on OHADA and its objectives, and the questions put to us on that occasion, had already convinced us that we could rely on your Group and its leaders to remain with us in carrying our project through, and to enable us meet our objectives, which correspond to your own concerns with regard to good governance and poverty reduction, and thus fall into your plan of action aimed at placing the law at the service of development, on the

strength of a well thought-out reform of our legal and judicial systems. You have demonstrated your interest in and concern about us on several occasions. I will cite just two of these:

- It was the ADB Group that gave us our first computers.

- On the occasion of the Tokyo International Conference on African Development (TICAD II), I recall that, the ADB President, leading the deliberations of one Committee, somewhat departed from the rules of procedure in exceptionally giving us the floor, whereas all the speakers scheduled had already been heard, and with a remark that had not been made for any of the speakers preceding us. He said: "though we have completed the list of scheduled speakers, allow me, exceptionally, to call on the representative of OHADA, and I invite you to listen carefully, since what he has to say should be of interest to all of us working for the development of Africa."

OHADA, whose ambition is to achieve a progressive unification of the legislations of African nations in the area of business law and ensure the application of appropriate judicial procedures, should be seen as a veritable catalyst of growth toward the consolidation of the Rule of Law, which alone can secure investor confidence and thereby foster meaningful economic development.

Today, OHADA has entered its active phase and its institutions are functioning at their respective headquarters. The Common Court of Justice and Arbitration, the principal organ of OHADA, with its role of ensuring a common application and interpretation of the uniform legislation adopted by

the Council of Ministers, the normative organ- and ultimately producing jurisprudence that will serve as a reference for the entire OHADA territory - is conducting regular activities from Abidjan.

Since its establishment, it has received one hundred and sixty-three (163) disputes and handed down decisions in fifty (51) of these.

It receives requests from the OHADA member states, as well as the Permanent Secretariat and the national jurisdictions, for opinions concerning the interpretation and application of the Treaty and the Uniform Acts. It has already issued fifteen (15) opinions out of the sixteen (16) requested.

Regarding arbitration, which for OHADA is a prime instrument for settlement of contract disputes, CCJA has received six (6) applications. It has rendered judgment in two (2) of these cases, and the remaining four (4) arbitrations are in progress.

The grant that you have awarded us comes just at the right moment. It will in fact enable us :

- to address the growing dispute arising from the application of the eight (8) Uniform Acts currently in force (other Uniform Acts are in the process of adoption, particularly the Uniform Act on labor law), when we have upgraded our existing resources and improved our access to information and modern communication facilities;

- to train young lawyers who can assist the members of our Court with research work and subsequently take over from them;

- to carry out the information dissemination and sensitisation activities, without which our system's efficiency could be comprised.

In conclusion, I wish to reiterate our sincere gratitude to you and thank all who contributed to having this support project approved by your Board.

I however, believe that the best way to thank you would be to attain the objectives we have set for ourselves, and which have convinced you to lend us your support.

## **ADB'S GENERAL COUNSEL APPOINTED LONDON FORUM'S DIRECTOR**

The African Development Bank's General Counsel, Mr. Adesegun Akin-Olugbade participated in the First Annual Meeting of the London Forum for International Economic Law and Development.

The Meeting was held on the 22nd-23rd of May 2003 at Queen Mary & Westfield, University of London where he was appointed as a member of the Board of Overseers. The Board's main functions are to oversee, to advise, to consult and to account on Law and development issues.

It is expected that Mr. Akin-Olugbade will take this opportunity to promote views on financing for development issues from Africa's perspective.

The London Forum also approved the appointments of other members of its Board. Among them, Mr. Arthur Mitchell from the Asian Development Bank and Dr. Mohamed El-Fatih Hamad from the Islamic Development Bank.

The London Forum for the International Economic Law and Development was initiated by a group of scholars from the developing world in the memory of Dr. Ibrahim Shihata, former General Counsel to the World Bank, who was a leading international scholar in the international development law area. Its aims are to pool and foster specialised scholarship in the area of international economic law and development in developing countries by providing a venue for meaningful research and debate as well as publication opportunities accessible to promising scholars from the developing world.

Before the admission of the new members, the Board discussed various topics such as the Forum's outreach activities, the on-going projects and The Shihata distinguished lectures. In regard to the on-going projects, the Bank offered to sponsor the Forum and provide it with negotiation instructors because negotiation skills are crucial for the success of developing countries efforts in international arena.

The Board of the London Forum also welcomed the proactive efforts of its management to establish academic contacts with leading institutions in developing and emerging economies, and with developed countries that are concerned with issues in developing countries. In this context, the Chairman at the London Forum seized the occasion to welcome a new comer to the field of international economic law and development, namely the African Law Institute. The Chairman congratulated the African Development Bank for its catalytic role in establishing this important and much-needed initiative and invited Mr. Akin-Olugbade to introduce the African Law Institute. Mr. Akin-Olugbade explained that the African Law Institute is an institution focusing on the efforts of legal harmonization in Africa. The efforts of the African Law Institute were commended and emphasis was put on the importance of institutional structures for the functioning of capital markets.

The next annual meeting of the London Forum's Board will be held on the 9th-10th October, 2004 in Cairo, Egypt. The theme will be "Law, Cultures and Foreign Direct Investments".

## LEGAL ASPECTS OF FINANCING FOR DEVELOPMENT FROM THE PERSPECTIVE OF THE AFRICAN DEVELOPMENT GROUP

By Adesegun Akinjuwon AKIN-OLUGBADE

This article derives from the contribution made by Mr. A. Akin-Olugbade, General Counsel of the African Development Bank Group, during the First Annual General Meeting of the London Forum on International Economic Law and Development held on May 22nd and 23rd 2003.

### Introduction:

This article deals with the “Legal aspects of financing for development from the perspective of the African Development Bank Group”. To this end, the article first of all describes the institutions and principal activities of the African Development Bank Group; it will then examine the funding sources for the ADB Group institutions and afterwards present the legal framework for the financing instruments available to the African Development Bank Group for accomplishing its development mandate; it then turns to a description of the procedures for the financing activities (including limitations and restrictions on financing) before specific examples of projects financed with each of the financing instruments are provided, whereby the emphasis is placed on the

legal issues that were addressed. The article concludes with some remarks about the ADB Group’s future prospects.

### The African Development Bank Group

The African Development Bank Group comprises the African Development Bank (ADB), the African Development Fund (ADF) and the Nigeria Trust Fund (NTF). The ADB window – with an authorized capital of US\$29 billion – provides loans at preferred market rates and the ADF and NTF windows provide grants and loans at highly concessional rates. The principal objective of the African Development Bank Group – as set out in its 1999 Vision Statement – is to reduce poverty and promote sustainable economic growth in its African (regional) member countries<sup>35</sup>. Its priority areas of intervention are agriculture and the social sectors – such as health and education. In addition, good governance, regional integration and cooperation and gender mainstreaming are given high priority in the Bank Group’s operations. As the ADB Group also recognizes that the private sector must necessarily be the engine of growth for African economies, the Bank Group provides financial and technical assistance for the development of this sector. A recent example of the Bank’s intervention in the private sector is the its parti-

(35) Article 1 of the Agreement establishing the African Development Bank provides that: “The purpose of the Bank shall be to contribute to the sustainable economic development and social progress of its regional members individually and jointly.” The purpose of the African Development Fund, as set out in Article 2 of the Agreement establishing the African Development Fund “shall be to assist the Bank in making an increasingly effective contribution to the economic and social development of the Bank’s members and to the promotion of co-operation (including regional and sub-regional cooperation) and increased international trade, particularly among such members...” The Nigeria Trust Fund which was established in 1976 by an Agreement between the Bank and the Federal Government of Nigeria has as its purpose “to enable Nigeria to make an increasingly effective contribution to the economic and social progress of Africa, especially of those member countries of the Bank which are relatively less developed or are most seriously affected by unpredictable catastrophes, including adverse international economic events, through the financing of projects which will further economic and social development in their territories.” (Article 1, Section 1.2 of the NTF Agreement).

icipation in the financing of the loan to the Nigeria Liquefied Natural Gas Project<sup>36</sup>, a US\$2 billion project, which was awarded the “Deal of the Year” by Project Finance International.

The African Development Bank was established in 1964 and commenced lending operations in 1967<sup>37</sup>. The African Development Fund was established in November 1972 as a partnership between the Bank and non-African donors and commenced operations in 1974 with an initial subscription of US\$244 million, including a special general increase of US\$51 million. The resources of the Nigeria Trust Fund, established by the Government of Nigeria in 1976, now stands at \$460 million from an initial capital of US\$71 million. Since the establishment of the ADB in 1964, the Bank Group institutions have provided over US\$45 billion in loans, grants, and technical assistance to finance projects and programs in regional member countries. Of this amount, US\$27 billion is from the ADB window, and the balance of US\$ 18 billion is from the highly concessional ADF and NTF windows. In addition to financing investment projects in critical sectors such as agriculture, education, health and infrastructure, these resources have also been used to finance important reform measures to improve the competitiveness of African economies. In

the last few years, the average level of annual financing operations have been in the order of US\$3 billion – the highest level in 10 years<sup>38</sup>. The following section will now briefly examine the funding sources for the Bank Group institutions.

### Funding Sources for Bank Group Institutions

The ADB is a regional multilateral development institution. As with all multilateral development banks, the ADB is funded primarily by its shareholders (or members) who make periodic contributions<sup>39</sup> to the authorized capital stock of the institution. Article 5 of the ADB Agreement (Authorized Capital) sets out the initial authorized capital of the institution and the par value of each share. It also states that the authorized capital stock may be increased when the Board of Governors, the institution’s highest governing organ, deems it advisable<sup>40</sup>. Unlike most of the other multilateral development banks, the par value of an ADB share is defined in terms of a unit of account. In 2001<sup>41</sup>, the ADB’s Board of Governors defined the value of the Bank’s unit of account as follows: “The value of the unit of account shall be equivalent to one Special Drawing Right (SDR) of the International Monetary Fund or any unit adopted for the same purpose by the International Monetary Fund.”<sup>42</sup>

(36) *Approved by the ADB Board of Directors on 20 November 2002.*

(37) *The ADB Agreement was signed in Khartoum, Sudan on August 4, 1963 and entered into force on September 10 1964 when twenty member countries subscribed sixty five per cent (65%) of the initial authorized capital stock. The ADB commenced operations in 1967 with an equity participation in the National Development Bank of Sierra Leone and an international loan to Kenya for a road project.*

(38) *See: Statement by Omar Kabbaj, President of the ADB Group at the Opening Ceremony of the All Africa Conference on Law, Justice and Development, Abuja, Nigeria 4-7 February 2003; in this edition of the Law for Development Bulletin.*

(39) *These periodic contributions are made following general capital increases of the authorized capital.*

(40) *Article 5(1)(a) of the ADB Agreement. The authorized capital stock of the Bank has been increased five times. The Fifth General Capital Increase (GCI-V) was approved by the Board of Governors of the Bank in 1998. Resolution B/BG/98/05.*

(41) *Resolution B/BG/2001/08 approving certain amendments to the ADB Agreement, adopted by the Board of Governors of the Bank on 29 May 2001 entered into force on 5 July 2002.*

(42) *Article 5(1)(b) of the ADB Agreement.*

Like all multilateral banks, the ADB is also funded through periodic borrowings on the international capital markets, on the basis, inter alia, of the callable capital of their members. In this regard, Article 5(2) of the ADB Agreement provides that:

“The authorized capital stock shall be divided into paid-up shares and callable shares. The proportion between the paid-up shares and the callable shares shall be determined by the Board of Governors from time to time. The callable capital of the Bank shall be callable for the purpose defined in paragraph 4(a) of article 7 of the Agreement<sup>43</sup>.”

Funding the ADB is not always an easy task. The fifth General Capital Increase of the Bank, approved in 1998, is remarkable because its effectiveness was conditional upon the entry into force of specific amendments to the ADB Agreement, following the fundamental internal governance reforms that were implemented by the Bank from 1996<sup>44</sup>. These set of reforms, introduced by the Board of Governors, have sought to ensure proper separation of powers and responsibilities among the principal decision-making organs of the Bank.

The respective duties and responsibilities of the Board of Governors, the Board of Directors and the President were clearly defined and a system of checks and balances put in place. In addition, the capital ownership of the Bank was restructured to provide a more equitable balance between the partnership interests that compri-

se the Bank’s shareholding. The voting rules for decision-making within the governing organs of the Bank were also amended to ensure greater participation in decision-making by all shareholders of the Bank<sup>45</sup>.

The ADB mobilizes about US\$1 Billion under its Annual Borrowing Programme and has been quite successful in mobilizing resources from the international capital markets. It enjoys the highest ratings (AAA) from reputable rating agencies and has won many awards, including, most recently, an award in 2002 by the International Financial Review (IFR) for the Supranational Bond of the Year in respect of its US\$500 million 3-Year Borrowing under its First Global Deposit Issuance Facility.

The ADF is a multilateral donor-funded agency<sup>46</sup> that derives its resources from subscriptions by the ADB, subscriptions by its State participants, other resources received by the Fund and funds derived from its operations or otherwise accruing to the ADF<sup>47</sup>. The ADF mobilizes additional resources at periodic intervals, through general replenishments. These general replenishments are approved in three-year cycles, and the most recent was the ninth replenishment concluded in October 2002. It is noteworthy that for the first time in the history of the Fund, an interim financing arrangement was established in 2002 to provide resources for the continuation of the Fund’s operations when consultative meetings for the ninth replenishment had to be

(43) Article 7(4) enumerates the circumstances in which the callable capital may be called and these include when required by the Bank to meet its obligations incurred on the borrowing of funds for inclusion in its ordinary capital resources.

(44) *Reforming the Governance structures of the African Development Bank: The Report of the Panel on Governance established by the Board of Governors of the African Development Bank (March 1996)*.

(45) *Resolution B/BG/98/04 Amendments to the Agreement establishing the Bank, revised Stock Allocation, Quorum and Voting Structure, adopted on May 29 1998.* (46) *The ADF is a legal entity that is juridically separate and distinct from the Bank. Articles 31 and 42 of the ADF Agreement.*

(46) *The ADF is a legal entity that is juridically separate and distinct from the Bank. Articles 31 and 42 of the ADF agreement .*

(47) *Article 4 of the ADF Agreement.*

suspended, owing to an impasse among donors on the question of the level of grant funding<sup>48</sup>. Under this mechanism, the Fund was able to mobilize about US\$550 million, thus ensuring that there would be no gap in the lending operations of the Fund after the completion of the eighth replenishment period (1999-2001).

The NTF is a Special Fund of the ADB and is administered by the latter in accordance with the terms of the ADB Agreement, as well as the NTF Agreement. The Government of Nigeria (as sole donor) exclusively provides the resources of the NTF, and there have been two replenishments since the NTF was established in 1976.

### Legal Framework for Financing Instruments of the Bank Group

Although the Bank Group provides both financial and advisory services to its regional member states, this article focuses only on the financing instruments available to Bank Group institutions to the exclusion of non-financial instruments and advisory services. In 1994, the Board of Directors adopted a new Credit Policy for the Bank<sup>49</sup>. The Credit Policy divides potential regional member country borrowers into three categories on the basis of the Bank's assessment of the borrower's creditworthiness. This categorization, made on the basis of per capita GNP of eligible member countries, restricts affected member states to specific lending windows of the Bank, and led to the streamlining of existing financial instruments, as well as the development of new instruments. Category A countries have access and are restricted to the highly

concessional resources of the ADF (and the NTF). Category B countries are eligible to access both the ADF and ADB resources (the "Blend" countries) and Category C countries – considered to be the most creditworthy – may access only ADB resources. Certain exceptions were made to the general categorizations, notably that private sector borrowers could have access to the ADB resources regardless of the category in which the country where the borrower is located is placed. Borrowers in Category A countries could also access resources of the ADB window for enclave projects. Qualifying enclave projects, to be assessed on individual project basis, are defined as those projects which by reason of special financial arrangements made for targeting the use of income they generate, have the capacity to service the project loan indebtedness<sup>50</sup>.

The financial instruments available to the Bank Group may be classified as follows: (i) Public Sector Loans and Guarantees, (ii) Private Sector Loans and Guarantees, (iii) Enclave Projects, (iv) Risk Management Products and (v) Micro-credits. In accordance with the constitutive instruments and related policies of the Bank and the Fund, public sector loans are to be made to, or guaranteed by, States, agencies of States, or publicly-owned borrowers<sup>51</sup>. Specifically, the Bank provides project loans, lines of credit, policy-based loans and Non-State guaranteed loans. The Bank approved its first non-State guaranteed loans to two public sector borrowers in Egypt in October 2002. The lines of credit to two leading Egyptian banks were guaranteed (against credit default risk) by the Central Bank of Egypt and backed by a non-objection letter from

(48) Resolution F/BG/2002/03 on Additional Individual Subscriptions to the African Development Fund adopted by the Board of Governors of the Fund on 28 May 2002.

(49) Resolution B/BD/94/07/Rev.1 concerning the Amended Credit Policy of the Bank adopted on 16 May 1995.

(50) Bank Policy Guidelines on Financing Enclave Projects (ADB/BD/WP/96/166/Rev.3) dated 19 May 1998.

(51) Articles 12, 14, 17 and 18 of the ADB Agreement; Articles 14, 15 and 16 of the ADF Agreement.

the Egyptian Government. The non-objection letter stated that the Egyptian authorities had no objection to the ADB providing the credits to the Egyptian banks, and that the Bank's status, immunities and privileges contained in Chapter VII of the ADB Agreement, which Egypt had ratified in 1964 would apply to the lines of credit. The legal objective of this formulation was to ensure that the Bank had adequate coverage against political risk and that the Bank's preferred creditor status in Egypt would not be prejudiced, simply because the credits did not enjoy the full guarantee of the sovereign State<sup>52</sup>.

To complete this section on the Bank's intervention in the public sector, the Bank finances institutional support and capacity building (Good Governance) projects in regional member countries. The Bank has financed legal and judicial reform projects in Cameroon, Cape Verde, Côte d'Ivoire, Djibouti, Tanzania, Nigeria, Sierra Leone and Zambia. In these projects, the Bank Group, focussed on promoting the rule of law, transparency in the management of public resources and strengthening capacity through legal and other types of training<sup>53</sup>.

The Bank also provides loans to privately owned entities in its regional member countries. The ADB's private sector window was established in 1991 with the objective of broadening the scope of development assistance to regional member countries in recognition of the important role of the private sector in stimulating economic growth and development<sup>54</sup>.

The Bank's intervention in the private sector is governed by specific policies adopted by the Bank's Board of Directors and guidelines issued by the Bank's Management<sup>55</sup>. Annual approvals for private sector operations increased from UA 6,678,000 in 1991 to UA 196,713,000 in 2002, and cumulative private sector approvals as at 31 December 2002 amounted to UA 750.7 million (USD 1.020.6 million) for 61 projects in 23 countries and 3 regional projects covering several countries<sup>56</sup>.

Unlike the World Bank and the Inter-American Development Bank, private sector operations are conducted as an integral part of the ADB, and not in a separate legal entity, such as the International Finance Corporation (in the case of the World Bank) or the Inter-American Investment Corporation (in the case of the Inter-American Development Bank). In order to ensure that the operations are conducted within a proper legal framework and to address concerns about possible legal implications for the Bank's preferred creditor status and other protections afforded to the Bank in respect of operations in its member countries, the Bank developed and concluded Letters of Assurances with its regional member countries.

In the Letter of Assurances, a regional member country affirms that the Bank would continue to enjoy all its privileges and immunities in respect of exposures to the private sector, and undertakes not to impose any moratorium or other res-

(52) Submission of the Non-Objection letter was a condition precedent to the signing of the LOC Agreements, and the terms contained in the letter were negotiated over a period of six months.

(53) African Development Bank Group Policy on Good Governance (2000); and Bank Group Strategy on Law for Development (June 2001).

(54) Private Sector Department (OPSD) Annual Report Year 2002 (April 2003).

(55) Private sector Development Strategy (ADB/BD/WP/90/77); Revised Private Sector Operations Policies (ADB/BD/WP/94/127/Rev.2); Revised Equity Investment Policy Guidelines (ADB/BD/WP/94/125/Rev.2); Provisioning for Losses – Private Sector Operations (ADB/BD/WP/98/125); Policies for Lines of Credit, Agency Lines and Guarantees to Private Sector Financial Institutions (ADB/BD/98/37/Rev.3/Approval); and New Guidelines for

(56) Private Sector Loans (issued by the President in accordance with the General Authority on the Bank's Financial Products and Services (ADB/BD/WP/99/164)

trictions that would adversely affect the performance by the private sector borrower of obligations due to the Bank.

A third financing instrument which has been used by the Bank, particularly in Category A countries that would not otherwise have been entitled to have access to resources of the ADB window is the enclave project. The Bank has financed two such projects in Mauritania<sup>57</sup> and in Cameroon<sup>58</sup>. In terms of the legal framework, a condition precedent to the financing by the Bank of an Enclave project is the endorsement by the IMF that the proposed credit would not adversely affect the debt sustainability ratios of the member country<sup>59</sup>.

In 2002, the Bank introduced risk management products (credit derivatives) as a financing instrument for its regional member countries. Regional member countries can use these products to hedge against financial risks exclusively on their ADB loans. Specific guidelines for risk management products were issued by the President of the Bank, and the Bank is considering its first risk management transaction<sup>60</sup>.

To conclude this section, it is noteworthy that the Bank also offers credits to micro-finance institutions in its regional member countries, in the context of its ADF operations. A pilot programme was launched under the eighth replenishment of the ADF with an initial allocation of UA 150 million. A special unit was established in 1999 to coordinate the initiative and is in the process of being integrated into the Bank's organizatio-

nal structure, in conformity with a recent Board decision to mainstream micro finance activities of the Bank Group.

### Procedures for Financing

The publication of the findings of the Knox Report on the Bank Group operations in 1994 was a milestone in the history of the Bank<sup>61</sup>. Apart from provoking the internal governance crises in the mid nineties that delayed completion of the seventh replenishment of the ADF, the Knox Report highlighted portfolio quality problems. Consequently, as part of the internal governance reforms initiated in 1995, and implemented from 1996, the Bank introduced measures and adopted new policies to improve the quality of its operations at entry, as well as strengthen review and approval procedures.

Bank Group operations are conducted in accordance with established rules and policies, including, in particular, on procurement, environmental standards, financial management and evaluation. Projects and programmes are now financed within the framework of specific strategies aimed at optimising Bank Group interventions in priority sectors identified in Country Strategy Papers (CSPs), approved jointly by the Boards of Directors of the ADB and the ADF, in the case of Categories A and B countries, and the Board of Directors of the Bank in the case of Category C countries. The strategies contained in CSPs are normally formulated in consultation with stakeholders in the regional member countries, although legal

(57) *Société Nationale Industrielle et Minière (SNIM) project approved on May 18, 2001.*

(58) *Chantier Naval et Industriel du Cameroun (CNIC) project for the repairs of Crude Oil platforms in Limbe, approved on December 12, 2002.*

(59) *The Bank has sought and received formal opinions from the Legal department of the IMF for this purpose.*

(60) *Guidelines for the Use of Risk Management Products Approved by the President (January 2002).*

(61) *African Development Bank. "The Quest for Quality: The Report of the Task Force on Project Quality for the African Development Bank". (Abidjan 1994).*

ownership of the CSP vests in the Bank<sup>62</sup>. Bank interventions in Categories A and B countries are also guided by policy directives contained in the reports of plenipotentiaries of Governors of ADF State participants (ADF Deputies), issued at the completion of the consultations for triennial replenishments. These directives are endorsed by the ADF Board of Governors, as part of its approval of the replenishment and transformed into lending policies approved by the ADB Board of Directors for the utilisation of the resources of a specific replenishment. Other writers<sup>63</sup> have commented about the potential adverse effects of expansive policy-making by an extra-institutional forum. The concerns expressed, although mitigated somewhat in the context of the Bank Group because of the specific requirement that lending policies may only be approved by the Board of Directors, resonate for the Bank Group.

Specific project proposals are reviewed first by a working group of line managers, before further scrutiny by a senior management committee, following which a recommendation is made to the President, for his formal clearance of the project proposal, prior to submission to the Boards of Directors, for consideration and approval. Since the internal governance reforms, the voting majority rules of the Bank Group for the approval of projects and programmes are the highest among international financial institutions, and may have contributed to consensus decision-making<sup>64</sup>.

After approval, signature, effectiveness and disbursements of loans, the Bank Group has also improved its supervision and monitoring of approved projects. In the case of private sector projects, a portfolio management group was established in 2001 in order to formally separate the investment and portfolio management functions.

### Restrictions/Limitations on Financing

Both the ADB and ADF Agreements prescribe that only economic considerations should be taken into account in making financing decisions<sup>65</sup>. There are other restrictions or limitations on the use of the Bank Group resources, notably with regard to procurement (restricted to member states of the Bank), and more recently anti-corruption and anti-money laundering measures. Only regional member countries, or entities located in regional member countries, are eligible to borrow from the Bank Group institutions, and with the exception of Libya<sup>66</sup>, all other regional members are active borrowers.

### Examples of Specific Projects

The recently approved Lines of Credit to Egyptian banks in the context of the Non-State guaranteed financing instrument and the specific legal issue relating to coverage against political risks were described above<sup>67</sup>.

The Bank's participation in a multi-billion dollar financing to the Nigeria Liquefied

(62) CSPs should be distinguished from Poverty Reduction Strategy Programs (PRSP), which are country initiated and owned strategy documents. The CSPs however draw from the PRSPs.

(63) Andres Rigo: "Informality and Effectiveness in the Operation of the International Bank for Reconstruction and Development". (2003)

(64) Decision-making in the Bank is in accordance with a so-called Luxembourg formula of a two stage voting process (Article 35 of the ADB Agreement). During the first step, a proposal is approved by 66 2/3 % of the voting power of Directors represented at the meeting. However, at the request of a member, the requisite voting power increases to 70% of the total voting power. In the ADF, decisions are made by 75% of the total voting power of participants (Article 29 of the ADF Agreement).

(65) Article 38 of the ADB Agreement and Article 21 of the ADF Agreement.

(66) Libya, although a Category C country, has thus far voluntarily elected not to borrow from the Bank.

(67) See p 45.

Natural Gas (NLNG) project in Nigeria in 2002 is also instructive. The Bank approved a loan of UA74 million (US\$100 million) to the NLNG as a senior lender in a consortium comprising Export Credit Agencies and international commercial banks. A legal issue addressed in the context of this transaction is the Bank's preferred creditor status, in the event of convertibility problems or foreign exchange shortages. De facto preferred creditor status is accorded to multilateral finance institutions by member governments, in recognition that these institutions are lenders of last resort (i.e. they provide financing in situations where other creditors are unwilling to do so). To preserve this status, multilateral finance institutions provide for carve-out language in inter-creditor agreements so that proceeds are not shared with other creditors. In the NLNG project, certain export credit agencies challenged the Bank's position and considerable time was spent in negotiating the carve-out language in the inter-creditor agreement that preserved the Bank's preferred creditor status.

The Bank's financing of two enclave projects in Mauritania and Cameroon, respectively, are also noteworthy, as the structure and documentation of these projects were more similar to typical private sector project finance structures and documentation, than documentation for public sector projects<sup>68</sup>.

The most innovative recent financing of the Bank Group was, however, the arrears clearance operation for the Democratic Republic of Congo (DRC). This arrears clearance operation

was coordinated with other multilateral institutions (notably the World Bank and the IMF) and bilateral donors. The operation involved the complete clearance of the arrears owed by the DRC to the ADF with resources contributed by donors in the context of the interim financing arrangement established for the ADF in 2002. The second stage of the operation consisted of a part-payment of arrears owed to the ADB and then to consolidate the remainder of the arrears in the form of a new loan to the DRC. The legal technique used was a novation<sup>69</sup> of existing loans into a single consolidated loan. Repayments of the new consolidated loan would be from resources of the HIPC Trust Fund<sup>70</sup> and from a special account established by the Bank into which allocations would be made annually from its net income<sup>71</sup>.

To conclude this section, it should be mentioned that the Bank Group actively participates in the Enhanced HIPC Initiative, and Bank Group institutions have provided debt relief and resources to 22 eligible HIPCs.

### Conclusion

Since its establishment almost 40 years ago as a development institution owned exclusively by African states, the Bank has provided financing for development of African countries, and has earned a reputation of being the premier development finance institution in Africa. In this article, the institutions and the financing instruments used to deliver the Bank's development mandate have been described. The article concludes

(68) Loans for enclave projects are made without the sovereign guarantee of the State in which the borrower is located.

(69) Novation is defined in *Black's Law Dictionary (6th Edition)* as "substitution of a new contract, debt, or obligation for an existing one between the same or different parties..."

(70) Established to warehouse resources contributed to provide debt reduction to eligible countries in respect of their debts to multilateral institutions under the Enhanced HIPC Initiative established jointly by the World Bank and the IMF.

(71) Resolution B/BD/2002/16 "Mechanism for Clearing the Arrears of the Democratic Republic of Congo (DRC) to the Bank Group, adopted by the ADB Board of Directors on 26 June 2002; Resolution F/BD/2002/15 adopted by the ADF Board of Directors on the same date.

with remarks about the ADB's prospects, particularly, after the recent temporary relocation of the Bank Group's operations from its headquarters and principal office in Abidjan to its temporary relocation agency (TRA) in Tunis.

Although the Bank adopted a comprehensive vision statement in 1999 and its Board of Directors recently approved a Strategic Plan<sup>72</sup>, concerns have been expressed in certain quarters about the continued relevance of the Bank<sup>73</sup>. The criticisms range from dissatisfaction with the Credit Policy<sup>74</sup>, the Bank Group's Strategic Partnership Agreement with the World Bank Group<sup>75</sup> and the temporary relocation<sup>76</sup>. The first has been criticised as contravening the Spirit of the ADB Agreement. The Strategic Partnership Agreement has been described as a de facto merger of the ADB with the World Bank, thus undermining the "African Character" of the ADB Group. Concerns that Tunis will become the new permanent home of the ADB Group have centred around the idea that since most of the Bank's clients are in sub-Saharan Africa, the Bank should conduct its operations from a location in sub-Saharan Africa to maintain its competitive advantage.

These issues will no doubt be the subject of future discussions by stakeholders and commentators. Permit me to state here that these issues will pose fresh legal and policy challenges. For example, it is doubtful whether Category A countries, that are beneficiaries under the Enhanced HIPC Initiative would be allowed, in the foreseeable future, to borrow non-concessional resources from the ADB window. Is it fair and reasonable to expect that such countries would participate in future general capital increases of the ADB? What would be the implications of non-participation for the current capital structure of the ADB, as between the regional (African) and non-regional (non-African) members? The Bank Group's continued relevance, and sustenance of its status as the premier development finance institution in Africa would depend on the ability of its governing organs to address these concerns and allay the fears of sceptics. It is hoped that further reflections on these issues would not exclude bold initiatives, including recognition that the role of the Bank Group should extend beyond financing development to facilitating sustainable reconstruction of its regional members, on account of the exceptional challenges faced in its sphere of operations.

(72) In 2001, the Bank also approved comprehensive amendments to the ADB Agreement, the most extensive and far-reaching among multilateral development banks.

(73) Footnotes 36, 37 and 38 below. See also: Meltzer A., et al (2000) Report of the International Financial Institution Advisory Commission, where it was recommended that the World Bank should gradually withdraw from Asia and Latin America and later, if the ADB is capable of taking on this task from Africa too.

(74) Legal Opinion of Kofi K. Dei-Anang, former General Counsel of the ADB Group.

(75) Thomas Kampffmeyer. "A Larger Role for the Regional Development Banks; German Development Institute

(76) Oxford Analytica: Africa: Regional Bank deserts Abidjan for Tunis (25 February 2003).

## ***THE FIRST AFRICAN SCHOOL FOR INTERNATIONAL FINANCIAL LAW***



In June 2001, the African Development Bank Legal Department launched the Law for Development Strategy, which provides a road map for the implementation of the legal and judicial reform components of the Bank Group's Good Governance Policy. A key objective of this Strategy is the expansion of the Bank's capacity building mission to encompass legal and judicial training.

As a development-oriented financial institution, the African Development Bank recognizes the importance of increasing the capacity of legal counsels of the regional member countries both in private and public sectors and their capacity to draft and negotiate financing agreements.

Furthermore, the Bank is highly aware of the developments in financial instruments and risk management instruments and aware of the need to ensure that this knowledge is transferred to lawyers in regional member countries.

In light of the above, the Bank designed and sponsored, in association with Euromoney Legal Training, the first African School of International Financial Law, which was held in Accra, Ghana from 10-14 March 2003.

This School has been brought to Africa from London, England, by Euromoney Legal Training, which is the market leader for the training on a broad range of law and finance related topics. Euromoney reports that the ADB co-sponsored School for International Financial Law has quickly become one of its most successful programs.

The School, highly interactive and practical, covered the legal aspects of four financing areas, notably International Lending with emphasis on loan documentation and syndicate lending, legal issues and ISDA documentation for Derivatives, key considerations in legal due diligence, and project risks and documentation in Project Finance transactions. The first School was attended by

twenty-two finance and legal professionals from three of the five regions of Africa (South Africa, Ghana, Nigeria, Liberia and Uganda). The participants learned effective drafting techniques for international lending transactions, grasped the intricacies involved in structuring and documenting complex Project Finance transactions and gained the benefit of summaries of experience in Swaps and Derivatives.

The Bank noted with pleasure that the participants expressed deep interest for the diversity and quality of the interventions of

the speakers as well as the valuable opportunity to meet and exchange views on professional matters of common interest. A lecture was also provided on the Bank's experience in Project Finance. This was done through a presentation on non-recourse and limited recourse infrastructure projects financed by the Bank.

The School is useful in gaining insight into the key legal issues relating to financial operations/transactions. A second African School of International Financial Law was organized and held in Cape Town, South Africa from 15-19 March 2004.

## **TRANSPARENCY, ACCOUNTABILITY, GOVERNANCE IN AFRICAN COUNTRIES**

### **COUNTRY STRATEGY PAPERS, 2002-2004**

The African Development Bank formulates a Country Strategy Paper (CSP) for each of its fifty-three regional member countries, which reflects the Bank's approach and interaction with each of them over a three-year cycle. The Country Strategy Paper is both the main instrument for managing the Bank's assistance to borrowing countries and the business plan for the Bank Group to consider its support of countries' national poverty reduction strategies.

It is also the outcome of the collaboration and the coordination with external partners, including the private sector and Non Governmental Organizations, and the country itself. This collaboration enables the Bank to make strategic choices in areas of intervention such as Good Governance. Good Governance, seen as the respect of the primacy of Laws and human rights as well as an existing trustworthy judiciary and legal system constitute the basic foundations of sustainable economic growth.

In its Vision, the African Development Bank underscores its main role to promote Good Governance in its regional member countries. Still in the same line, the Bank has emphasized Governance issues in its recent Country Strategy Papers (2002-2004) in order to guide and assist authorities in regional member countries in their work in Governance. To that effect, the Bank has formulated a number of proposals related to policy issues for some of the fifty-three countries. To name but a few: Accountability and Transparency in the management of public resources, the reform of the judicial, regulatory and legal framework, and the strengthening of institutional capacities.

The summaries below are extracted from the summing-up of the Boards of Directors of the Bank and of the Fund on the governance-related aspects of Country Strategy Papers of some Regional Member Countries. In extracting key elements of the Country Strategy Paper for summary below, special attention was paid to areas that required legal or judicial reform.

#### **Benin**

At the level of governance, the implementation of a strategic action plan against corruption and the strengthening of the judicial system should be pursued to improve the business environment, which will in turn enhance private investment and the fight against poverty.

#### **Burkina Faso**

The Boards welcomed the pursuance of budgetary reforms aimed at enhancing efficiency and transparency in the management of public funds, the establishment of an Anti-Corruption Authority and a Good Governance Observatory. The Boards encouraged the Government to operationalize these structures with a view to boost the implementation of the National Good Governance Plan. The Boards also insisted on the urgency of improving the judicial system in tandem with the promotion of the private sector and direct foreign investments.

#### **Burundi**

The Boards called on the Government to deploy further effort to meet challenges aimed at consolidating the peace, promoting good governance and strengthening democratic institutions, thus laying the

foundation for sustainable economic and social development.

### Cameroon

The Boards encouraged the authorities to implement the national governance plan to ensure the transparency and efficiency of the public service and the legal system, further strengthen the role of the private sector in the economy and complete the privatization program.

### Cape Verde

The Boards encouraged the authorities to pursue efforts aimed at good governance and corruption control, and invited the Government to speed up the implementation of projects so as to boost their development impact and effectiveness.

### Chad

The Boards called on the Government to closely follow the action plan on good governance with a view to the effective implementation of public finance management, especially the oil resources and the HIPC. In addition, the Boards expressed concern over the weak macro-economic framework and the institutional weaknesses, and encouraged the Government to pursue reforms in those areas.

### Congo

The Boards invited the Government to initiate the necessary reforms on governance, the legal system and the transparent management of oil resources.

### Ethiopia

The Boards expressed satisfaction that measures have been taken to promote good governance, particularly in the areas of expenditure management and anti-corrup-

tion drive. While commending these efforts, the Boards emphasized the need to strengthen financial management capacities at all tiers of government and to respect the rule of law in the pursuit of anti-corruption drive. The Boards therefore urged the Government to actively pursue land reforms, and to create enabling conditions that promote private enterprises and the deepening of the financial sector.

### The Gambia

The Boards noted the progress made at combating money laundering and the ratification of international anti-terrorism conventions. The Boards, however, expressed concern over certain key areas, which must be urgently addressed in order to create the enabling environment for more rapid economic growth and reducing poverty in a sustainable manner: These areas include the need to further improve governance by promoting transparency and accountability in the use and management of public sector resources, protecting human rights, encouraging political liberalization and ensuring gender equity, and reducing the economy's over reliance on external and domestic borrowings. The Boards stressed the need for The Gambia to improve its legal and judicial framework, hasten the divestiture of public enterprises, and continue to pursue regional integration initiatives.

### Ghana

The Boards expressed some concerns at the continuing weaknesses in some areas, including the heavy reliance on external financing, expenditure control at the commitment stage, which resulted in a build up in new domestic expenditure arrears, and slow progress achieved in implementing the privatization and divestiture reforms. The Boards urged the Government to remain committed to the macroeconomic reforms and economic governance.

### Guinea Bissau

The Boards voiced concern over issues of governance attributable to institutional instability and the malfunctioning of key State institutions. They deplored the prolonged slackening of stabilization and structural reform efforts which resulted in the suspension of programs with the Bretton Woods Institutions.

### Lesotho

The Boards also commended the Government for the bold steps being taken in the fight against corruption. The Boards expressed concerns about the weak capacity in service delivery and in public financial management, which deserve close attention and implementation of the necessary remedial measures.

The Boards approved the indicative country allocation of UA13.17 million, of which up to 7.5% will be in the form of grants, based on the 2002 Country Performance Assessment. The grant resources would be used for capacity building in planning and service delivery of key government institutions.

### Madagascar

The Boards commended the Government for the measures taken since the end of the crisis in July 2002 to put the economy back on track, particularly the rehabilitation of the destroyed infrastructure, the establishment of a corruption-control agency, the resumption of cooperation with the international community and the extension of the agreement with the IMF in the context of the Poverty Reduction and Growth Facility.

The Boards took note of the finalization of the Poverty Reduction Strategy Paper (PRSP), which focuses on good governance and the fight against corruption.

The Boards raised the problems of institutional capacity and governance, which create persistent weaknesses in the mobilization of public revenues and budget implementation, as well as inadequate allocation of expenditure to the social sectors as well as basic infrastructure. The Boards also expressed concern about the weak judicial and legal system, which hampers the development of the private sector and micro-finance. The Boards urged the Government to intensify its efforts in these areas.

The Boards approved the base case scenario with an allocation of UA 49.97 Million, of which a maximum of UA 13.49 Million would be in the form of grants. The grants would be used for the strengthening of institutional capacity and combat against communicable diseases.

### Malawi

The Boards encouraged the Government to continue its efforts to reform the land policy. The Boards also underlined the importance of improving governance, including the fight against corruption, and mainstreaming gender issues in public actions, to strengthen the country's effort towards achieving the Millennium Development Goals. The Boards approved the base case lending scenario, reflecting the country's indicative country allocation of UA28.35 million, of which up to 27% will be in the form of grants, based on the 2002 Country Performance Assessment.

### Mali

The Boards welcomed the establishment of an Anti-Corruption Advisory Committee and the strengthening of control bodies with the appointment of an Auditor General. The Boards stressed the urgency to improve the functioning of the judiciary and the financial systems to foster the development of the private sector and direct foreign investments.

## Niger

The Boards also encouraged the Government to improve governance in general as well as that relating to private sector development in particular. The Bank would continue to support the on-going structural reforms and good governance promotion programme.

## Nigeria

The Boards noted with satisfaction the measures underway to promote good governance and to combat corruption, particularly in the budgetary process and reform of the judicial system. The Boards endorsed the strategy of using grant funds to build up the institutional capacity of the public sector at the federal and state government levels.

## Rwanda

The Boards congratulated the Government for actions taken to improve public affairs management by consolidating the independence of the Auditor General's Office and conducting a vast audit of public agencies. They called on the Government to persevere on the path of sub-regional peace so as to establish an enabling environment for national and foreign private investment.

## Senegal

With regard to governance, weaknesses have been identified in the management of public resources and in the judiciary, which is a handicap for the development of the private sector. The Bank will also support the consolidation of the macro-economic framework for sustained growth based on private initiatives.

## Sierra Leone

The Boards expressed concern on certain key areas, which must be addressed as the

country makes the transition to a post-conflict situation.

These areas include, the need to maintain a sound macroeconomic framework that is underpinned by strict expenditure controls; progressive reduction in the country's dependency on external aid; and improving the desperate poverty situation. In addition, attention must be paid to the rebuilding of the country's physical infrastructure; improving the weak institutional capacity, particularly in key public sector institutions; and reintegrating the vulnerable war victims, and creating employment opportunities for the unemployed.

Having regard to the magnitude and complexity of these challenges, the Boards urged the Government to continue implementing, more rigorously, the governance measures focusing on improving transparency and accountability in the use of public sector resources and combating corruption, and improving portfolio Management.

The Boards endorsed the proposed Bank Group Country Strategy in Sierra Leone for 2002-2004, and the proposed areas of intervention, which are premised on reviving the war-ravaged economy and rehabilitating the damaged social and physical infrastructure.

## Tanzania

While commending Tanzania for its efforts to improve budgetary management and governance, the Boards emphasized the need to speed up implementation of the National Anti-Corruption Action Plan. The Boards noted that the grant resources will be used for capacity building operations, including stand alone projects in governance.

## Uganda

The Boards commended Uganda's current efforts to improve governance and protect

pro-poor expenditure programs. Concern was expressed over the worsening security situation in Northern Uganda, which has had adverse humanitarian and budgetary consequences.

The Boards emphasized the need to improve revenue mobilization, maintain budget discipline and strengthen the fight against corruption.

They urged Uganda to strengthen its public financial management capacity, especially at the local tier of government, to ensure accountability and effective public service delivery.

### Zambia

The Boards noted that in the context of the PRSP, the new Government has affirmed its commitment to good governance, combating corruption and has resolved to implement a decentralization programme. The Boards approved the assistance strategy for Zambia for the period 2002-2004, which focuses on poverty reduction and aims to improve social conditions and promote good governance. The Bank Group will support operations to improve water and sanitation and child welfare and to promote economic governance, especially in the areas of decentralization and domestic debt management.