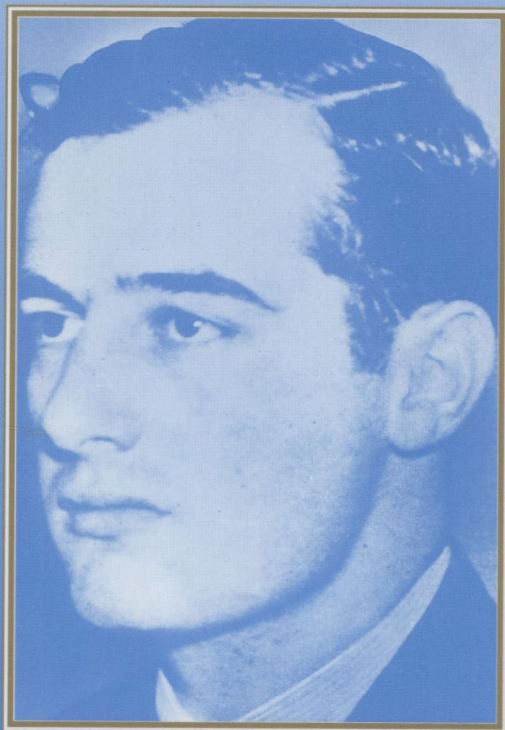


THE RAOUL WALLENBERG INSTITUTE HUMAN RIGHTS LIBRARY

Human Rights and Good Governance

Building Bridges



Edited by
Hans-Otto Sano and Gudmundur Alfredsson
with the collaboration of Robin Clapp

Martinus Nijhoff Publishers



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Edited by

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HUMAN RIGHTS AND GOOD GOVERNANCE

THE RAOUL WALLENBERG INSTITUTE HUMAN RIGHTS LIBRARY
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Introduction

Gudmundur Alfredsson and Hans-Otto Sano

The present book is the result of a Nordic research program examining the relationship and possible interaction between good governance and human rights. This first output, a series of meetings leading to this book, has brought together several academics and professionals with backgrounds in development studies, economics, law, political science and sociology. The meetings have demonstrated a need for interdisciplinary dialogue and clarification of concepts, contents and processes of realisation.

The Danish Centre for Human Rights in Copenhagen and the Raoul Wallenberg Institute for Human Rights and Humanitarian Law in Lund have undertaken the project, together with participants from the Institute of Human Rights at Åbo Akademi in Turku and the Norwegian Institute of Human Rights in Oslo. Observers from the Danish and Swedish development co-operation agencies (DANIDA and SIDA) have attended some of the meetings.

The structure of the book follows a quest for conceptual and institutional bridge-building. The target audiences are policy and decision makers in the development and human rights communities, the relevant agencies at national and international levels, the international financial institutions, business enterprises, non-governmental organisations and academic institutions.

While good governance is mainly pursued in a development context, it is a central message of the book that good governance guidelines ought to have universal applicability, affecting international organisations and public and private actors in Northern as well as Southern countries. Yet an established consensus does not exist on how good governance and human rights can or should complement each other. In this respect, and that is the second main message of the book, the advantages of using existing links and building new bridges for mutual support between governance and human rights are identified.

The authors examine their topics on the basis of theory, best practices, law, the experiences of societies undergoing democratic transition, and other empirical evidence, without attempting to come up with a common definition of good governance. The plurality of interpretations will hopefully further strengthen good governance and human rights as integral elements of a global agenda.

Part I of the book deals with the complementarity and contradictions of the concepts and contents of human rights and good governance. *Mette Kjær and Klavs Kinnerup* conclude that, when applied as an analytical concept, accountable governance goes hand in hand with human rights. In practice, good governance may strengthen human rights principles, and donor attention along these lines could significantly influence human rights fulfilment. As a normative concept, however, good governance may be at odds with human rights, especially when the managerial perspective on governance is emphasised.

Examining the same relationship from the point of view of human rights, *Gudmundur Alfredsson* concludes that there ought to be no serious conflict between

the substance of human rights standards and good governance guidelines. If clashes emerge, this has more to do with interdisciplinary rivalry and lack of communication than with conceptual differences. The process of building bridges at the levels of academic disciplines, program designs and operational activities thus requires dialogue and education.

Part II addresses a number of specific human rights topics. The debate on differences and complementarity is therefore continued from the point of view of specific rights, for example as regards minorities and indigenous peoples and economic, social and cultural rights. Part II also looks into how indivisibility, interdependence and human rights capacity-building can relate to good governance programs.

In order to avoid conflicts between good governance and human rights implementation, *Martin Scheinin* favours a broad approach to human rights. Human rights rely not only on negative obligations of a state; they also appear as positive obligations that address social conditions and possible state action.

Ashbjørn Eide examines how human rights may be employed to achieve good governance in ethnically heterogeneous societies. Institutional requirements can be deduced from human rights, but the political rights also embody important principles of good governance. Thus, human rights provisions set limits to or give guidance to processes of governance. Three closely related aspects of human rights are particularly relevant for the discussion of good governance in this context: the principles of equality and non-discrimination, the specific rights of persons belonging to minorities, and the rights of indigenous peoples.

Taking as point of departure the implementation of economic, social and cultural rights, *Ida E. Koch* argues that one should cautiously welcome the concept of good governance as a possible supporting mechanism for the implementation of economic, social and cultural rights. Good governance covers a broad set of substantive and procedural subjects and renders an addition to human rights mainly through its emphasis on procedural and administrative processes. This does not rule out conflicts between the realisation of human rights and ideals of good governance, but the perspectives of legally binding human rights and managerialism are compatible and useful for both the immediate and long-term implementation of economic, social and cultural rights.

Bård-Anders Andreassen focuses on the establishment of a new normative and political order in the context of political transformation in Africa. He approaches democratic governance as an activity for the construction or reconstruction of civic competence and new political identities and practices through civic education programs, i.e., as activities related to the formation of a human rights culture. In this effort, the strengthening of civil and political rights is essential for enabling public reasoning, informed political choice and genuine deliberation among free and equal members of society.

In Part III, bridge-building is explored from the point of view of governance subjects. Good governance guidelines concerning accountability, transparency, public sector improvements, anti-corruption, law reform, and electoral and other

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participation processes provide the point of departure. Governance objectives have been used as methodological lenses through which human rights standards can be discussed; human rights are thus examined in light of governance ideals.

In his article, *Hans-Otto Sano* argues that human rights is both an input to and an output of good governance policies. In the application of governance principles, donors and international institutions often associate good governance with vague notions of respect for human rights, whereas human rights fulfilment ought to be on the agenda of governance programs. The author also maintains that the growing emphasis on global governance will lead to human rights accountability in supranational institutions as well as in nation-states.

The focus on international institutions continues in the article by Tor Halvorsen and *Gunnar Guddal Michelsen* on public sector reform. Programs along such lines have been pursued by both multilateral and bilateral institutions, and donors have promoted a notion of the state along managerial lines where human rights become external to the role of the state. In two case studies of Ghana and the Ivory Coast, the authors demonstrate that public sector reforms carried out as part of structural adjustment packages have brought about new waves of corruption, even in the case of Ghana where the reforms otherwise were generally quite successful.

In her examination of the potentials of combining anti-corruption initiatives with a human rights focus, *Marella Buckley* points out that there is extensive common ground between civil, economic, political and social rights and anti-corruption. However, evidence shows that human rights can be skilfully ignored in anti-corruption work and that human rights can even be undermined by such efforts. The bridge building potential of the most far-reaching nature, according to Buckley, seems to be in political coalitions between human rights defenders and anti-corruption activists.

Markku Suksi's article on good governance in the electoral process examines how the application of human rights law on political participation can contribute to governance objectives, such as inclusiveness and transparency in the electoral process. On this basis, Suksi analyses the nature of the relationship between human rights and good governance. While good governance would seem to require the realisation of international human rights standards, it at the same time provides principles that look beyond the strict legal requirements, with a more political and economic orientation. Within the framework of good governance, human rights can be seen as minimum requirements, but good governance should never legitimise practices that fall short of the full implementation of accepted human rights standards.

Karin Buhmann's article on administrative law reform and increased human rights observance concludes the book. She emphasises that the donor discourse of the late 1980s and the early 1990s tended to link human rights with civil society development, whereas the support of public administration was often subsumed by good governance terminology. The author concludes, on the background of her case study of administrative law reform in China, that a major weakness of the reforms so far is the lack of provisions for procedural and substantive requirements for the

making and execution of all administrative acts. The limited independence of the administrative courts in the People's Republic of China is a further weakness.

All the articles in the book have been the subject of extensive comments by other authors and the participants in our research project. For that we are grateful. We also express our appreciation to observers from DANIDA and SIDA for having participated in some of the project meetings.

It flows clearly from the contents of the present book that many connections in concepts and contents exist between good governance and human rights. According to the authors, bridges and linkages can be built on legal, institutional, procedural, analytical, economic and political grounds. The links need to be further explored and defined, also in relation to processes of democratisation.

As stated at the outset of this introduction, this book is the result of a Nordic research program. This program co-operation will continue. Bringing together academics and practitioners in these fields is a challenge that we believe is useful and deserving of additional work. Interested readers of the book are therefore invited to contact the Danish Centre for Human Rights and the Raoul Wallenberg Institute for possible participation in and contribution to our continuing work along those lines.

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Good Governance: How Does It Relate to Human Rights?

Mette Kjør and Klavs Kinnerup

While vigorously advocating democratic reform and respect for civil and political rights elsewhere..., the international community has remained remarkably quiet on abuses of political rights in Uganda.¹

This despondency in the north, and apathy in the rest of the country, have created a 'human rights ghetto' in parts of the country, where life is mean and abuses are not out of place, and a 'human rights upmarket suburb' where one must tread cautiously...Over the years, I think the human rights ghettos have been growing, and the suburbs are shrinking.²

1. Introduction

The purpose of this chapter is to outline and discuss the concept of good governance and its relevance for human rights. The chapter will be concerned with sketching the emergence of the concept of good governance on the agenda for development aid, and with discussing what it means and how it touches upon human rights issues. There seem to be as many definitions of good governance as there are users of the concept. Much of the confusion about the concept stems from its usage on different levels: it is used by donors for practical purposes, it is used by academics as an analytical concept and it is used by others as a normative ideal. In this chapter, we argue that when good governance is set up as a normative ideal, tension as well as complementarity between good governance and human rights may be identified. When used as analytical tool, it can be argued that accountable governance and respect for human rights go hand in hand. When good governance is used by donors in operational guidelines, however, situations can arise in which the recipient government carries out successful good governance programmes at the same time as some human rights may be violated.

The chapter has two main sections: the first deals with the emergence and meanings of the good governance concept. Here, the development within the aid community is outlined and it is concluded that a consensus on core issues of good governance appears to exist, although there is disagreement among donors as what role the state should play in development. The other main section will deal with the relevance of the good governance concept for human rights. In this section, an attempt is made to identify how various components of good governance touch upon human rights issues. It is outlined how the two concepts supplement each other in many ways, but how they also might be at odds. This has primarily to do with the

¹ *Uganda, Hostile to Democracy*, Human Rights Watch Report 5 on <www.hrw.org/hrw/reports/1999/uganda/Uganweb-02.htm>.

² Charles Onyango-Obbo in *The Monitor*, 19 May, 1999.

‘economistic’ focus of good governance as opposed to the ‘humanistic’ focus of human rights.

2. The Emergence and Meanings of the Good Governance Concept in the Aid Agenda

The concept of governance has been around for a long time, referring to the task of running a government or an organisation (Hydén, 1992). In 1969, for example, Philip Selznick sought to develop a law of governance in his study of industrial organisation.³ But why did ‘good governance’ emerge on the development agenda? Largely because of the coincidence of three factors.⁴ First, the experiences of international financial institutions in implementing Structural Adjustment Programmes showed that after an initial adjustment phase where macro-economic balances were set straight, further economic growth, particularly in sub-Saharan Africa, failed to materialise. It was recognised that strengthening the capacity of key government agencies was necessary in order to create ‘an enabling environment’ for sustained growth.

Second, the end of the cold war and the associated collapse of communist economic and political systems showed how potentially damaging big and inefficient state apparatuses could be to economic development. Additionally, the end of superpower competition allowed western donors to impose political conditions in their policies towards third world countries. The paradigm of ‘negative sovereignty’, where recipient governments enjoyed the right of non-intervention in their internal affairs, gradually lost ground to a paradigm of ‘positive sovereignty’ where donor states increasingly demanded that recipient governments be held accountable for their way of governing.⁵ From a legal perspective, a similar development can be traced within the international law of human rights. According to the traditional doctrine of international law, no state must interfere in the internal affairs of another state.⁶ However, even though human rights issues primarily concern the relationship between the state and its own citizens, they are increasingly

³ Selznick’s law of governance related to private governments in a study of industrial justice. The law he developed was based on the American jurisprudence principle of due process. According to Selznick, the law of governance consisted of the following principles: governance should be restrained by a proper regard for all legal interests affected; the making and the application of law should affirm reason; a reliable assessment of legal fact should be assured; the legitimacy of authority should be assured; and a basic minimum of rights of personality should be protected. See Selznick, Philip, *Law, Society and Industrial Justice*, New York, Russell Sage Foundation, 1969.

⁴ For an account of the factors influencing the emergence of governance on the development agenda, see also Leftwich, Adrian, ‘Governance, the State and the Politics of Development’, *Development and Change*, Vol. 25, No. 2, 1994, pp 363-386.

⁵ See Robert Jackson, *Quasi-states: Sovereignty, International Relations and the Third World*, Cambridge, 1989.

⁶ See the Charter of the United Nations art. 2, 7.

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seen as a legitimate concern of international society. This can partly be explained by the fact that an increasing number of states have ratified the international law of human rights whereby human rights issues have to a growing extent been separated from the realm of national sovereignty. In addition, some human rights standards have over time gained recognition as fundamental principles of international law and thus have become international legal obligations for all states, as was pointed out in the -- albeit non-binding -- 1993 Vienna Declaration.⁷

A third factor which contributed to the emergence of good governance on the development agenda was the remarkable economic boom experienced by the East Asian 'tigers', which showed that strong and interventionist states can serve to promote economic growth.⁸ The World Bank's focus on good governance and the role of the state in development is (among other things) a consequence of Japan's increased influence as a donor. It was the Japanese influence that triggered the publication of the Bank's *Eastasian Miracle* in the early 1990s. The report recognised that a government's active intervention in the economy might actually have the effect of promoting economic growth. Whether the Bank has indeed fundamentally changed its view on the role of the state in development is another matter to which we shall return below.

In order to explore more fully the meaning of governance, we distinguish between the World Bank and the rest of the donor community. The World Bank sets the agenda and is a dominating actor in the aid community; at the same time, its stance on governance differs from that of the rest of the donors because its mandate restricts it from getting involved in the internal affairs of recipient countries.⁹ The Bank's mandate is limited to economic development, and it can only take non-economic factors into consideration where these are perceived to have an important impact on economic development.¹⁰ In these respects the mandate of the Bank influences the perspective from which the concept of governance is addressed.¹¹

⁷ For a further discussion on sovereignty, self-determination and human rights see, for instance, Alan D. Swanson, 'Good Governance and Human Rights in Development and Democracy' in Eugene Cotran and Adel Omar Sherif (eds.) *Democracy, the Rule of Law and Islam*, Dordrecht, Kluwer Law International, 1999, pp. 331-341.

⁸ See, for instance, R.L. Wade, *Governing the Market*, Princeton, Princeton University Press, 1990.

⁹ See article IV section 10 in Articles of Agreement for the World Bank.

¹⁰ David Michael Kendal, 'Human Rights in the World Bank's Work' in David Michael Kendal and Anders Krab-Johansen, *Human Rights & International Development Cooperation*, Copenhagen, Danish Centre for Human Rights, 1995. See also Asbjørn Eide, 'Good governance and the rights of minorities and indigenous peoples' in this book.

¹¹ It should be stressed that the World Bank is not a monolithic institution, which means that different opinions in relation to governance can be traced within the Bank. See Peter Gibbon, 'The World Bank and the New Politics of Aid' in Georg Sørensen (ed.), *Political Conditionality*, London, Frank Cass, 1993. In this chapter we will make use of the official reports of the Bank in exploring the concept of governance. Since the emergence of the governance concept on the aid agenda is closely related to the World Bank, we will primarily be looking at the concept of governance developed by the Bank.

The World Bank has implemented 'public sector management programmes', the forerunners of the current governance programmes, for many years. As early as in 1983, the *World Development Report* dealt with management in development. The report was concerned with how to obtain more economic efficiency, and it emphasised the importance of reducing the role of the state: '[I]n many countries the expansion of the public sector has stretched its managerial capacity to the point where serious inefficiencies result' and '[W]hen governments have tried to control too much economic activity, efficiency has been impaired -usually because key prices have been distorted'.¹² The report thus identified a need to strengthen the effectiveness of the state's core responsibilities. In spite of the report's quite neutral language, the neo-liberal rhetoric is easy to recognise. The state was to be 'rolled back' while its capacity to carry out core functions such as macro-economic management should be strengthened.

In the Bank's 1989 report on Africa, the emphasis on minimising the state was less apparent. It was in this report that the concept of governance was introduced for the first time.¹³ The report was written as a response to Africa's severe economic crisis, which had been significantly deepened during the 'lost decade' of the 1980's. It analysed why structural adjustment programmes had failed to create economic growth. The report's authors identified the economic crisis as a 'crisis of governance' -governance meaning 'the manner in which power is exercised in the management of a country's economic and social resources for development' (p.60). 'Bad governance', according to the authors, meant state officials serving their own interests without being held accountable, the reliance on personal networks for survival rather than on holding the state accountable, personalised politics and patronage, illegitimate leadership, and excessive control of information and of associations. The narrow focus on management was thus broadened and supplemented with concepts such as accountability and transparency. In the publications that followed, governance was further elaborated on and made more universally applicable.

In the 1992 publication *Governance and Development*, the Bank developed its four principal components of governance as follows: *Public Sector Management, Legal Framework for Development, Accountability, and Transparency and Information*. Public sector management deals mainly with civil service reform, such as removing functions that could be carried out by semi-autonomous or even private agencies, retrenchments of civil servants, and privatisation of public sector enterprises, but it also deals with building up capacities such as strengthening personnel management or improving budget procedures. A legal framework for development entails supporting the development of a set of rules securing property rights, governing civil and commercial behavior, and limiting the power of the state. Accountability-supporting measures for the Bank are, for instance, programmes that

¹² World Bank, *World Development Report 1983*, Washington, World Bank, 1983, p. 46.

¹³ World Bank, *Sub-Saharan Africa: from crisis to sustainable growth*, Washington, World Bank, 1989.

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support financial accountability, such as strengthening accounting and auditing systems, but also support for decentralisation and participation.¹⁴ Transparency and information are essentially about what is necessary to build a competitive market economy, for example ensuring open public procurement tenders in the presence of bidders or the timely publication of government budgets and accounts. The four components work as operational guidelines for the Bank. The report concluded that for sustainable development to occur, a predictable and transparent framework of rules and institutions for the conduct of private and public business must exist.

Also influential in broadening the management approach is Mamadou Dia's oft-quoted *A Governance Approach to Civil Service Reform* in which he identifies broader institutional factors such as patrimonial rule as the roots of bad management.¹⁵ Dia develops a framework for civil service reform which:

‘...emphasizes the need for more attitudinal and structural changes than reinforcing or strengthening existing organizations, structures and methods. The ultimate goal is to move away from patrimonial bureaucracy where the emphasis is on control and exercise of power as an instrument of exchange, to one where emphasis on the delivery of services needed for development and where rewards/sanctions reflect performance and merit.’¹⁶

In this sense, Dia argues for the adoption of a broader and less technical approach to public sector reform than the approach that had been applied throughout the 1980s.

In *Governance: The Bank's Experience* (1994), the Bank describes how in many countries it is moving beyond assistance solely to the executive branch of governments toward extending technical assistance to the legislative and judicial branches of government. In Africa, for instance, the World Bank has taken up supporting public accounts committees of parliaments. Finally, the Bank dedicated its 1997 *World Development Report* to the discussion of the state and its role in development. The report is an attempt to reconcile the ‘Washington Consensus’ on the minimal state with the ‘East Asian Model’.¹⁷ In this report, the Bank's view on governance becomes even more comprehensive. It develops a strategy which is about matching the state's role to its capabilities, but also about strengthening those capabilities. It recognises that the state can play an important role in encouraging community involvement in service delivery, initiating ‘social capital’-generating

¹⁴ World Bank, *Governance: The Bank's Experience*, Washington, World Bank, 1994, pp. 17-18.

¹⁵ Mamadou Dia, *A Governance Approach to Civil Service Reform in Sub-Saharan Africa*, World Bank Technical Paper, Number 225, Africa Technical Department Series, Washington, 1993.

¹⁶ *Ibid.*, p. 26.

¹⁷ See Giovanni Andrea Cornia, ‘Convergence on Governance Issues, Dissent on Economic Policies’, *IDS Bulletin*, Vol. 29, No. 2, 1998, pp. 32-39.

projects and, in general, encouraging participation. It has a specific chapter on 'Bringing the State Closer to the People' (Chapter 7).

There is thus no doubt that the World Bank's focus has changed from a narrow 'management' approach to a broader and more political 'governance' approach. The question is whether the basic neo-liberal ideology has changed, whether the East Asian model and the associated literature on the developmental state has really been incorporated into the Bank's view on the state. Peter Evans points out that there are two newer trends within the development literature: one focusing on the role of social capital (understood as norms of trust and networks of reciprocity) for economic development and government performance, and one focusing on the role of the 'developmental state' (understood as strong government agencies capable of active intervention in the economy) for capitalist development.¹⁸ He argues that these two trends could very well be integrated.

While there is no doubt that he is correct, the question remains whether the two trends have been integrated by the World Bank. Many observers do not seem to believe so. Ben Fine, for instance, gives an account of the change which has occurred within the World Bank: it has moved from the 'Washington-consensus' on the role of the state as restricted to being an 'enabling environment' for the private sector to the 'post-Washington-consensus' where the state is allowed a more active role in, for instance, promoting social capital.¹⁹ But this new focus on participation and social capital serves to allow the World Bank 'to broaden its agenda whilst retaining continuity with most of its practices and prejudices which include the benign neglect of macro-relations of power, preference for favored NGO's and decentralized initiatives'.²⁰ The old consensus became increasingly unacceptable due to, among other factors, Japan's increased influence as a donor, and the new consensus with its notion of social capital 'has provided the World Bank with the analytical capacity to propose its new agenda without having to come to terms in any serious or substantive way with the critical literature of the old consensus, especially that around the developmental state'.²¹ Likewise, Giovanni Cornia emphasises that even though the World Development Report from 1997 has a more comprehensive view of the state, its definition of the long-term role of the state is still reductionist,²² and Hildyard and Wilks stress the 'economistic approach to political issues' evident in the World Development Reports.²³ The Bank appears to have upheld a fairly 'minimalist' conception of the role of the state at the same time as it has broadened its conception of governance.

¹⁸ Peter Evans, 'Introduction: Development Strategies Across the Public-Private Divide', *World Development*, Vol. 24, No. 6, 1996, pp. 1033-1037.

¹⁹ Ben Fine, 'The Developmental State is Dead - Long Live Social Capital?', *Development and Change*, Vol. 30, 1999, pp. 1-19.

²⁰ *Ibid.*, p. 12.

²¹ *Ibid.*, p. 12.

²² *Op.cit.*

²³ Nicholas Hildyard and Alex Wilks, 'An Effective State? But Effective for Whom?', *IDS Bulletin*, Vol. 29, No. 2, April 1998, pp. 49-56.